

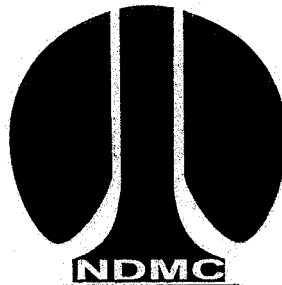
CONFIDENTIAL

COUNCIL'S MEETING

NO. 14/2016-2017

VOLUME-II

DATE	:	02 ND MARCH, 2017 (THURSDAY)
TIME	:	12-30 P.M.
VENUE	:	COUNCIL ROOM, 3 RD FLOOR, PALIKA KENDRA, NEW DELHI.



नई दिल्ली नगर पालिका परिषद्

NEW DELHI MUNICIPAL COUNCIL
PALIKA KENDRA : NEW DELHI

NEW DELHI MUNICIPAL COUNCIL
PALIKA KENDRA : NEW DELHI

COUNCIL'S MEETING NO. 14/2016-17 DATED 02.03.2017 AT 12-30 P.M.

Arrangement of business

ITEM NO.	SUBJECT	PAGE	ANNEXURE
	VOLUME II (CONFIDENTIAL)		
24 (L-30)	Re- e-Auctioning of Property situated at 1, Janpath earlier known as Hotel Asian International.	373 – 375	376 – 403
25 (L-31)	Decision in the matter of property situated at 1, Man Singh Road, commonly known as Hotel Taj Man Singh in light of the MHA's directions dated 01.01.2015 and 23.02.2017, and Hon'ble Supreme Court's directions dated 12.01.2017 in SLP (Civil) No. 33397 of 2016.	404 – 446	447 – 555
26 (L-32)	Regarding termination of license and initiating of eviction proceedings under Sections 5 & 7 of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 against CJ International Hotels Limited (hereinafter referred as "CJ International") for non-payment of outstanding license fee.	556 – 568	569 – 756
27 (L-33)	Proposal for e-auctioning of property situated at plot no. 37, Bhagat Singh Marg, New Delhi, known as Prominent Hotel (The Connaught).	757 – 759	760 – 887
28 (V-04)	Information about the two incidents of building roof collapse at C- Block and L-Block in Connaught Place. New Delhi.	888 – 894	895 – 928

ITEM NO. 24 (L-30)

1. Name of the Subject:

Re- e-Auctioning of Property situated at 1, Janpath earlier known as Hotel Asian International.

2. Name of the Department: Estate Department-I

3. Brief History:

3.1 As per Council Resolution dated 27.6.2016, it was decided as under:

""Resolved by the Council that M/s. SBICAPS may be appointed as Transaction Advisor for fixing the reserve price of the property situated at 1, Janpath, New Delhi, on nomination basis, for framing the documents for the purpose of conducting the auction, under Rule 176 of General Financial Rules, 2005. The principle laid down by the Council in the case of property situated at No. 1, Man Singh Road, New Delhi may be followed as far as possible for preparing auction document for e-auctioning of the property. Once the reserve price and terms & conditions of e-auction is finalised, further action may be taken with approval of the Chairperson. The Council authorised the Chairperson, NDMC, to fix remuneration of M/s. SBICAPS for the purpose."

3.2 Subsequent to this, M/s. SBICAPS submitted a report wherein it was concluded as under:

"4.3 Conclusion

The market rent of the property is estimated at Rs.10.20 lakh per month under the Sales Comparison Method and Rs.9.69 lakh per month under Discounted Cash Flow method. The average of the two methods stated above i.e. Rs.9.94 lakh may be considered as the reserve price for the auction of the licence rights of the property so as to encourage wider participation and wider participation may ensure fair price discovery."

3.3 Thereafter, the Council vide its Resolution dated 30.11.2016(Item No. 06(L-26) resolved as under:

" Resolved by the Council to accord approval for auction of the property situated at 1, Janpath earlier known as Hotel Asian International as per reserve price fixed by M/s. STICAPS and as per terms and conditions and licence deed finalized by the Estate-I Department in consultation with Finance Department as annexed with the preamble. It was further resolved by the Council that the department may initiate further necessary action in anticipation of confirmation of the minutes of the Council."

3.4 Subsequent to the approval by the Council, the property at 1, Janpath (earlier known as Hotel Asian International) was auctioned by M/s. MSTC Ltd. on 04.1.2017 after its wide publicity in national dailies like Economic Times, Times of India, Hindustan Times(English) Navbharat Times and Hindustan(Hindi). The highest bidder i.e. M/s. Abhilasha Enterprises offered Rs. 45 .48 lakhs as their bid and MSTC Ltd. informed about the highest bid vide their email dated 4.1.2017(Annexure - I, See page 376). Bid history of this property is also enclosed as (Annexure-II, See page 377-381) .

3.5 Subsequent to the e-auction, an offer letter was sent to M/s. Abhilasha Enterprises vide letter dated 12.1.2017 (Annexure-III, See pages 382-3.83) requesting the highest bidder to deposit the followings:

- "(a) A sum of Rs.2,72,88,000/-(equivalent to six months of licence fee) as interest free Security Deposit through Demand Draft or Bankers Cheque in favour of "Secretary NDMC" payable at New Delhi/Delhi. The amount of earnest money of Rs.29,00,000/- deposited by you before the e-auction shall be adjusted towards the Security Deposit after deducting the Service charge of MSTC @ 3% plus Service Deposit after deducting the Service Charge of MSTC @ 3% plus Service Tax/Swatch Bharat Cess/ etc. which works out to Rs.1,59,906/-(Rs.136440+Rs.20466/-).
- (b) The highest bidder is liable to pay Service Charge to MSTC @ 3% plus Service tax/Swatch Bharat Cess/ etc. of the monthly licence fee.
- (c) To Deposit a sum of Rs.1,36,44,000/-(equivalent to three months advance licence fee) through Demand Draft or Bankers cheque in favour of "Secretary NDMC" payable at New Delhi/Delhi.
- (d) To submit a Bank Guarantee of Rs.1,36,44,000/-(equivalent to three month licence fee).
- (e) Also submit a non judicial stamp paper of Rs.50/- in the name of the highest bidder, three passport size photographs and the details of the company PAN Card, Bank Details etc. alongwith authorization letter in favour of the signing authority who will duly authorize to execute the licence deed."

3.6 Subsequent to this, M/s. Abhilasha Enterprises vide their letter dated 25.1.2017(Annexure-IV, See pages 384-389) raised various objections and finally requested that the 3 months' period should be revised since refurbishment cannot be done within 3 months, apart from raising objections regarding permissible area and use of the premises.

3.7 This was examined in detail and a detailed reply was sent to M/s. Abhilasha Enterprises on 06.2.2017(Annexure-V, See pages 390-394). This was again represented by M/s. Abhilasha Enterprises vide their letter dated 13.2.2017 requesting for more period, which was rejected by the NDMC vide letter dated 27.2.2017(Annexure-VI, See page 395).

4. Recommendations:

The terms & conditions for e-auction of this property is enclosed as (Annexure-VII, See pages 396-400). The terms & conditions were already approved by the Council in its meeting held on 30.11.2016.

4.1 However, in the terms & conditions, to make it more amply clarified, the following terms & conditions have been added:

- (i) The total built up area is 22,592.46 sq. ft. However, the use of this premises will governed by the prevailing building bye-laws and the licence fee will be charged for the area measuring 22,592.46 sq. ft.
- (ii) The terrace area is part of licensed premises and is open area therefore it cannot be used for commercial purposes as per para 17 of the terms & conditions, which provides that the said Tourist Lodge should not be used for any other purpose except as permissible under Master Plan of Delhi, and applicable building bye-laws.
- (iii) As per clauses 3.4(v) and (vi) of the Licence Deed to be executed, the open space is to be used for car/two-wheeler parking for users of the Tourist Lodge Building. Therefore, the open area at Ground Floor cannot be used for commercial parking purposes. However, it can be used for parking users of the Tourist Lodge.
- (iv) The sub-station and feeder pillar in the basement are the properties of NDMC and the basement cannot be put to any commercial use by the prospective bidder.

4.2 Since M/s. Abhilasha Enterprises has refused to comply with the terms & conditions of e-auction, their EMD has been forfeited and now property has to be re-e-auctioned. The property may be re-e-auctioned through M/s. MSTC Ltd. as

per already approved terms & conditions and Reserve Price fixed by SBICAPS (Annexure-VIII, See pages 401-402). Accordingly, draft advertisement is placed at Annexure-IX (See page 403).

6. Draft Resolution :-

To be decided by the Council

COUNCIL'S DECISION

The Council resolved to approve the proposal of the concerned Department for re-auction of Property situated at 1, Janpath, New Delhi with following changes:

- (i) signing of Integrity Pact by applicants be made mandatory;
 - (ii) bidders should not be debarred / blacklisted by any Government or its agencies (Government of India, State Government, Municipality, or their attached office / subordinate office/ Public Sector Undertaking, etc.);
 - (iii) moratorium period be kept as five months instead of three months;
 - (iv) quoted licence fee be increased @10% every three years on compounding basis;
 - (v) the successful e-bidder will be required to deposit three months' advance quoted licence fee to NDMC in form of DD/Bankers Cheque/NEFT/RTGS;
 - (vi) in addition to the advance quoted licence fee, the successful e-bidder will be required to deposit Performance Security (interest free security deposit) equal to eight (8) months quoted monthly licence to NDMC. Performance Security should be valid till one year after the expiry or termination of the licence deed, whichever is earlier.
- If the Performance Security is deposited in the form of:
- (a) DD/Bankers Cheque/NEFT/RTGS, it should be replenished two (2) months prior to end of every three year to match the licence fee liabilities for the forthcoming year; or
 - (b) Bank Guarantee, it should have validity period of atleast three (3) years at one time, which should be replaced timely with a Bank Guarantee of an appropriate amount, two (2) months prior to end of every three year to match the licence fee liabilities for the forthcoming year.
- (vii) the property be given on 'AS IS WHERE IS BASIS' and the licence fee be charged on the basis of quoted licence fee. In case of any alteration / modification in the property in terms of provisions of chapter 4 of the licence deed, the licence fee of the property be enhanced proportionately w.r.t. built-up area. However, in any case, licence fee should not be decreased at any time;
 - (viii) the terrace area be part of licensed premises, which should be an open area, and therefore should not be used for commercial purposes;
 - (ix) the open area at Ground Floor be used for parking of car/two-wheeler for users of the Tourist Lodge Building, and should not be used for commercial parking purposes;
 - (x) the sub-station and feeder pillar in the basement remain as properties of NDMC;
 - (xi) the basement should only be used for the permissible purposes as per the Master Plan of Delhi.

The Council further resolved that the terms and conditions of the e-auction be amended accordingly.

It was also resolved by the Council that the department may initiate further necessary action in anticipation of confirmation of the minutes of the Council.

Secretary
New Delhi Municipal Council
Parika Kendra, New Delhi

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● Bid Provisionally Approved EA 14685

Annexure - I

From : mstcnro@mstcecommerce.com

Wed, Jan 04, 2017 10:40 PM

Subject : Bid Provisionally Approved EA 14685

To : abhilashaentdelhi@gmail.com

Cc : mstcnro@mstcecommerce.com,
admin@mstcecommerce.com, director estate
<director.estate@ndmc.gov.in>

Sale Intimation Letter

Company Name : **ABHILASHA ENTERPRISES**
Contact Person : ABHILASHA SINGH
Street : C2/207 2ND FLOOR SEC-16 ROHINI
City : DELHI
Country : INDIA
Pin : 110085
PAN NO :: : AWJPS7676R
VAT/TIN No :: : 077103703379
Telephone No :: : 9999044462
Mobile No :: :

Dear Sir,

Auction Number : **MSTC/NRO/New Delhi Municipal Council/2/New Delhi/16-17/14685**

Period Of Auction : 2017-01-04::2017-01-04

We are pleased to inform you that your bid/s against the following item/s of above mentioned Auction has /have been provisionally accepted subject to approval by the seller.

LOT No	QTY	UOM	YOUR BID	MATERIAL VALUE	S/D
1	1.0	LOT	4548000	4548000	454800

Total Security Deposit : INR **454800**

You are requested to deposit an amount of INR **454800** By way of RTGS/NEFT/ePayment gateway in favour of **Secretary NDMC New Delhi** within 7 days from the date of acceptance of the item/s (acceptance will be notified by system generated mail once decision is given by the seller) or as per Special Terms & Conditions of e-auction whichever is earlier at any Office of MSTC Ltd. Please note that in case, you fail to make payment towards Security Deposit for any or all lots, your deposit for Entry permit is liable to be forfeited.

From

MSTC Admin

Phase
Pw-1
on file
6/1/17

DO-E-2

Sr. Bhattacharya

6/1/17

0-27/0000
6/1/17

BID HISTORY

Auction No : MSTC/NRO/New Delhi Municipal Council/2/New Delhi/16-17/14685

Start Date : 2017-01-04 End Date: 2017-01-04

Bid History for Lot no : 1

Currency : INR

Sl.No.	Buyer Ref No	Bid-Amt	Bid-Date	Bid-Time	Type
1	ABHILASHA ENTERPRISES	4548000.00 INR	2017-01-04	15:14:42	e-Auction
2	Orbit Infrastructure Pvt Ltd	4528000.00 INR	2017-01-04	15:13:15	e-Auction
3	ABHILASHA ENTERPRISES	4508000.00 INR	2017-01-04	15:10:35	e-Auction
4	Ambuj Hotel And Real Estate Pvt Ltd	4498000.00 INR	2017-01-04	15:07:38	e-Auction
5	ABHILASHA ENTERPRISES	4488000.00 INR	2017-01-04	15:06:57	e-Auction
6	Ambuj Hotel And Real Estate Pvt Ltd	4438000.00 INR	2017-01-04	15:03:52	e-Auction
7	ABHILASHA ENTERPRISES	4428000.00 INR	2017-01-04	15:03:19	e-Auction
8	Orbit Infrastructure Pvt Ltd	4378000.00 INR	2017-01-04	15:01:59	e-Auction
9	Ambuj Hotel And Real Estate Pvt Ltd	4358000.00 INR	2017-01-04	14:59:57	e-Auction
10	ABHILASHA ENTERPRISES	4268000.00 INR	2017-01-04	14:59:20	e-Auction
11	Ambuj Hotel And Real Estate Pvt Ltd	4258000.00 INR	2017-01-04	14:59:03	e-Auction
12	ABHILASHA ENTERPRISES	4158000.00 INR	2017-01-04	14:58:35	e-Auction
13	Ambuj Hotel And Real Estate Pvt Ltd	4128000.00 INR	2017-01-04	14:58:05	e-Auction
14	ABHILASHA ENTERPRISES	3858000.00 INR	2017-01-04	14:55:13	e-Auction

15	Orbit Infrastructure Pvt Ltd 378	3788000.00 INR	2017-01-04	14:54:45	e-Auction
16	DIVINE UTILITY SERVICES PVT LTD	3778000.00 INR	2017-01-04	14:53:30	e-Auction
17	ABHILASHA ENTERPRISES	3768000.00 INR	2017-01-04	14:51:42	e-Auction
18	Orbit Infrastructure Pvt Ltd	3678000.00 INR	2017-01-04	14:50:59	e-Auction
19	DIVINE UTILITY SERVICES PVT LTD	3658000.00 INR	2017-01-04	14:48:21	e-Auction
20	ABHILASHA ENTERPRISES	3648000.00 INR	2017-01-04	14:47:37	e-Auction
21	Orbit Infrastructure Pvt Ltd	3598000.00 INR	2017-01-04	14:47:13	e-Auction
22	DIVINE UTILITY SERVICES PVT LTD	3578000.00 INR	2017-01-04	14:46:44	e-Auction
23	Ambuj Hotel And Real Estate Pvt Ltd	3568000.00 INR	2017-01-04	14:45:40	e-Auction
24	DIVINE UTILITY SERVICES PVT LTD	3528000.00 INR	2017-01-04	14:45:19	e-Auction
25	ABHILASHA ENTERPRISES	3518000.00 INR	2017-01-04	14:44:19	e-Auction
26	DIVINE UTILITY SERVICES PVT LTD	3508000.00 INR	2017-01-04	14:44:00	e-Auction
27	Orbit Infrastructure Pvt Ltd	3498000.00 INR	2017-01-04	14:42:43	e-Auction
28	ABHILASHA ENTERPRISES	3428000.00 INR	2017-01-04	14:40:51	e-Auction
29	Ambuj Hotel And Real Estate Pvt Ltd	3298000.00 INR	2017-01-04	14:39:57	e-Auction
30	Beacon Metals India Private Limited	3258000.00 INR	2017-01-04	14:38:30	e-Auction
31	ABHILASHA ENTERPRISES	3248000.00 INR	2017-01-04	14:34:08	e-Auction
32	Beacon Metals India Private Limited	2948000.00 INR	2017-01-04	14:30:50	e-Auction
33	ABHILASHA ENTERPRISES	2748000.00 INR	2017-01-04	14:30:07	e-Auction
34	Orbit Infrastructure Pvt Ltd	2668000.00 INR	2017-01-04	14:29:13	e-Auction
35	ABHILASHA ENTERPRISES	2658000.00 INR	2017-01-04	14:23:35	e-Auction
36	Beacon Metals India Private Limited	2548000.00 INR	2017-01-04	14:21:00	e-Auction
37	ABHILASHA ENTERPRISES	2498000.00 INR	2017-01-04	14:19:46	e-Auction
38	Beacon Metals India Private Limited	2298000.00 INR	2017-01-04	13:39:42	e-Auction
39	ASHIMA INFRASTRUCTURES PVT LTD	2288000.00 INR	2017-01-04	13:38:25	e-Auction

40	Beacon Metals India Private Limited	2278000.00 INR	2017-01-04	13:31:26	e-Auction
41	DIVINE UTILITY SERVICES PVT LTD	2268000.00 INR	2017-01-04	13:28:44	e-Auction
42	Beacon Metals India Private Limited	2248000.00 INR	2017-01-04	13:11:04	e-Auction
43	DIVINE UTILITY SERVICES PVT LTD	2238000.00 INR	2017-01-04	13:09:44	e-Auction
44	Beacon Metals India Private Limited	2228000.00 INR	2017-01-04	12:39:20	e-Auction
45	Beacon Metals India Private Limited	2218000.00 INR	2017-01-04	12:38:11	e-Auction
46	BISHAN SAROOP RAM KISHAN AGRO PRIVATE LIMITED	2208000.00 INR	2017-01-04	12:35:34	e-Auction
47	Beacon Metals India Private Limited	2198000.00 INR	2017-01-04	12:20:47	e-Auction
48	JRD PETROLEUM	2178000.00 INR	2017-01-04	12:18:03	e-Auction
49	BISHAN SAROOP RAM KISHAN AGRO PRIVATE LIMITED	2168000.00 INR	2017-01-04	12:17:33	e-Auction
50	ASHIMA INFRASTRUCTURES PVT LTD	2158000.00 INR	2017-01-04	12:17:08	e-Auction
51	BISHAN SAROOP RAM KISHAN AGRO PRIVATE LIMITED	2148000.00 INR	2017-01-04	12:15:50	e-Auction
52	Beacon Metals India Private Limited	2138000.00 INR	2017-01-04	12:14:57	e-Auction
53	BISHAN SAROOP RAM KISHAN AGRO PRIVATE LIMITED	2128000.00 INR	2017-01-04	12:14:38	e-Auction
54	DIVINE UTILITY SERVICES PVT LTD	2118000.00 INR	2017-01-04	12:13:45	e-Auction
55	Beacon Metals India Private Limited	2028000.00 INR	2017-01-04	12:13:31	e-Auction
56	BISHAN SAROOP RAM KISHAN AGRO PRIVATE LIMITED	2018000.00 INR	2017-01-04	12:12:42	e-Auction
57	Beacon Metals India Private Limited	2008000.00 INR	2017-01-04	12:10:43	e-Auction
58	BISHAN SAROOP RAM KISHAN AGRO PRIVATE LIMITED	1988000.00 INR	2017-01-04	12:09:50	e-Auction
59	Beacon Metals India Private Limited	1978000.00 INR	2017-01-04	12:09:11	e-Auction
60	Pioneer Lifesciences Enterprises Pvt Ltd	1968000.00 INR	2017-01-04	12:08:54	e-Auction
61	BISHAN SAROOP RAM KISHAN AGRO PRIVATE LIMITED	1958000.00 INR	2017-01-04	12:08:31	e-Auction
62	Beacon Metals India Private Limited	1948000.00 INR	2017-01-04	12:06:59	e-Auction
63	BISHAN SAROOP RAM KISHAN AGRO PRIVATE LIMITED	1938000.00 INR	2017-01-04	12:05:52	e-Auction
64	Beacon Metals India Private Limited	1928000.00 INR	2017-01-04	12:05:15	e-Auction
	BISHAN SAROOP RAM KISHAN		2017		

65	BISHAN SAROOP RAM KISHAN AGRO PRIVATE LIMITED	1918000.00 INR	2017-01-04	12:02:38	e-Auction
66	Pioneer Lifesciences Enterprises Pvt Ltd	1908000.00 INR	2017-01-04	12:01:19	e-Auction
67	Beacon Metals India Private Limited	1848000.00 INR	2017-01-04	12:00:06	e-Auction
68	BISHAN SAROOP RAM KISHAN AGRO PRIVATE LIMITED	1838000.00 INR	2017-01-04	11:59:11	e-Auction
69	Beacon Metals India Private Limited	1828000.00 INR	2017-01-04	11:58:05	e-Auction
70	BISHAN SAROOP RAM KISHAN AGRO PRIVATE LIMITED	1818000.00 INR	2017-01-04	11:56:22	e-Auction
71	Pioneer Lifesciences Enterprises Pvt Ltd	1808000.00 INR	2017-01-04	11:55:52	e-Auction
72	BISHAN SAROOP RAM KISHAN AGRO PRIVATE LIMITED	1718000.00 INR	2017-01-04	11:55:36	e-Auction
73	Beacon Metals India Private Limited	1708000.00 INR	2017-01-04	11:55:15	e-Auction
74	BISHAN SAROOP RAM KISHAN AGRO PRIVATE LIMITED	1698000.00 INR	2017-01-04	11:54:14	e-Auction
75	Pioneer Lifesciences Enterprises Pvt Ltd	1688000.00 INR	2017-01-04	11:53:53	e-Auction
76	BISHAN SAROOP RAM KISHAN AGRO PRIVATE LIMITED	1588000.00 INR	2017-01-04	11:52:10	e-Auction
77	ABHILASHA ENTERPRISES	1578000.00 INR	2017-01-04	11:51:24	e-Auction
78	BISHAN SAROOP RAM KISHAN AGRO PRIVATE LIMITED	1278000.00 INR	2017-01-04	11:49:32	e-Auction
79	PK Hospitality Services Pvt Ltd	1268000.00 INR	2017-01-04	11:48:44	e-Auction
80	BISHAN SAROOP RAM KISHAN AGRO PRIVATE LIMITED	1258000.00 INR	2017-01-04	11:43:57	e-Auction
81	PAWAN STORE	1248000.00 INR	2017-01-04	11:41:47	e-Auction
82	BISHAN SAROOP RAM KISHAN AGRO PRIVATE LIMITED	1238000.00 INR	2017-01-04	11:41:03	e-Auction
83	Orbit Infrastructure Pvt Ltd	1228000.00 INR	2017-01-04	11:39:47	e-Auction
84	BISHAN SAROOP RAM KISHAN AGRO PRIVATE LIMITED	1208000.00 INR	2017-01-04	11:38:39	e-Auction
85	Landmark Outdoor Media Services Private Limited	1198000.00 INR	2017-01-04	11:36:35	e-Auction
86	BISHAN SAROOP RAM KISHAN AGRO PRIVATE LIMITED	1188000.00 INR	2017-01-04	11:33:18	e-Auction
87	Jyoti Money exchange private limited	1178000.00 INR	2017-01-04	11:32:14	e-Auction
88	BISHAN SAROOP RAM KISHAN AGRO PRIVATE LIMITED	1168000.00 INR	2017-01-04	11:30:54	e-Auction
89	ASHIMA INFRASTRUCTURES PVT LTD	1158000.00 INR	2017-01-04	11:30:21	e-Auction
	BISHAN SAROOP RAM KISHAN		2017		

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90	BISHAN SAROOP RAM KISHAN AGRO PRIVATE LIMITED	1148000.00 INR	2017-01-04	11:28:50	e-Auction
91	Om Metals Infraprojects Limited	1138000.00 INR	2017-01-04	11:28:22	e-Auction
92	BISHAN SAROOP RAM KISHAN AGRO PRIVATE LIMITED	1128000.00 INR	2017-01-04	11:26:46	e-Auction
93	ASHIMA INFRASTRUCTURES PVT LTD	1118000.00 INR	2017-01-04	11:26:26	e-Auction
94	BISHAN SAROOP RAM KISHAN AGRO PRIVATE LIMITED	1108000.00 INR	2017-01-04	11:23:22	e-Auction
95	ASHIMA INFRASTRUCTURES PVT LTD	1098000.00 INR	2017-01-04	11:22:42	e-Auction
96	BISHAN SAROOP RAM KISHAN AGRO PRIVATE LIMITED	1078000.00 INR	2017-01-04	11:22:02	e-Auction
97	ASHIMA INFRASTRUCTURES PVT LTD	1068000.00 INR	2017-01-04	11:21:28	e-Auction
98	BISHAN SAROOP RAM KISHAN AGRO PRIVATE LIMITED	1058000.00 INR	2017-01-04	11:21:02	e-Auction
99	DIVINE UTILITY SERVICES PVT LTD	1048000.00 INR	2017-01-04	11:19:29	e-Auction
100	Premier Infra Services Pvt Ltd	1038000.00 INR	2017-01-04	11:15:34	e-Auction
101	INDIAN RAILWAY CATERING AND TOURISM CORPORATION LIMITED	1028000.00 INR	2017-01-04	11:15:00	e-Auction
102	PAWAN STORE	1018000.00 INR	2017-01-04	11:13:38	e-Auction
103	Beacon Metals India Private Limited	1008000.00 INR	2017-01-04	11:07:30	e-Auction
104	INDIAN RAILWAY CATERING AND TOURISM CORPORATION LIMITED	998000.00 INR	2017-01-04	11:06:45	e-Auction
105	JRD PETROLEUM	988000.00 INR	2017-01-04	11:05:14	e-Auction
106	ABHILASHA ENTERPRISES	978000.00 INR	2017-01-04	11:04:37	e-Auction

NEW DELHI MUNICIPAL COUNCIL
PALIKA KENDRA : NEW DELHI
ESTATE - I DEPARTMENT

Annexure - III

NO.D- 340/SO/Estate-I/2017

Date 19/01/2017

Sh. Abhilasha Singh,
M/s. Abhilasha Enterprises
C2/207, 2nd Floor,
Sector-16, Rohini
Delhi-110085

Sub.: Acceptance of highest bid received in respect of Tourist Lodge near Ashoka Road and Jantar Mantar Road crossing, 1, Janpath Lane, New Delhi.

An e-auction for the Tourist Lodge, 1, Janapth Lane was conducted on 4.1.2017 by M/s. MSTC Ltd. It has been conveyed by M/s. MSTC Ltd. that you have quoted the highest bid amounting to Rs.45,48,000/- as monthly licence fee in respect of Tourist Lodge, 1, Janpath Lane, New Delhi. I am directed to inform you that the said bid is accepted by the Competent Authority, NDMC.

2. Clause No. 6 of the terms and conditions of this e-auction submits that *"The successful e-bidder will be required to deposit equal to six (6) months licence fee as interest free security deposit alongwith : (i) three months advance licence fee to NDMC, and (ii) three months Bank Guarantee. The interest free security deposit and three months' advance licence fee shall be accepted only in the form of Demand Draft or Bankers Cheque in favour of "Secretary NDMC" payable at New Delhi/Delhi, within a period of 15 days of the receipt of the intimation of acceptance of the offer towards the fulfillment of the contractual obligations. The earnest money deposited by the successful e-bidder alongwith the bid will be adjusted towards the security deposited."*
3. Accordingly, you are directed to deposit as under;

- a) A sum of Rs.2,72,88,000/- (equivalent to Six months of licence fee) as interest free Security Deposit through Demand Draft or Bankers Cheque in favour of "Secretary NDMC" payable at New Delhi/Delhi. The amount of earnest Money of Rs.29,00,000/- deposited by you before the e-auction shall be adjusted towards the Security Deposit after deducting the Service Charge of MSTC @ 3% plus Service Tax/Swatch Bharat Cess/etc. which works out to Rs.1,56,906/- (Rs.136440/- + Rs.20466/-).
- b) The highest bidder is liable to pay Service Charge to MSTC @ 3% plus Service tax/Swatch Bharat Cess/etc.of the monthly licence fee.
- c) To Deposit a sum of Rs.1,36,44,000/- (equivalent to three months advance licence fee) through Demand Draft or Bankers Cheque in favour of "Secretary NDMC" payable at New Delhi/Delhi.
- d) To submit a Bank Guarantee of Rs.1,36,44,000/- (equivalent to three month licence fee).
- e) Also submit a non judicial stamp paper of Rs.50/- in the name of the highest bidder, three passport size photographs and the details of the company PAN Card, Bank Details etc. alongwith authorization letter in favour of the signing authority who will duly authorize to execute the licence deed.
- f) The above formalities are to be completed within the stipulated period of 15 days.

Delivered on 12-1-12.


(TANVIR AHMED)
DY. DIRECTOR (ESTATE-I)

Copy to:

The General Manager, M/s. MSTC Ltd., Northern Regional Office, Jeevan Vikas Building, 1st Floor, 30/31A, Asaf Ali Road (Opposite Hamdard), New Delhi -

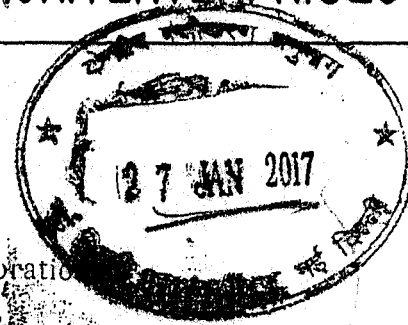
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ABHILASHA ENTERPRISES



27/1/17

Annexure - IV

Dated: 25.01.2017

To,

The Chairman/ Secretary,
New Delhi Municipal Corporation
Sansad Marg, New Delhi

WITHOUT PREJUDICE

Kind Attn: Sri Tanveer Ahmed, Dy. Director (Estate)

Pl. examine
without any
delay.

Subject: Acceptance of our highest bid in respect of e-auction for Tourist Lodge near Ashoka Road and Jantar Mantar Road Crossing-1, Janpath Lane, New Delhi

Dear Sir,

We thankfully acknowledge your Letter No. 340/SO/Estate-1/2017 dated 12-01-2017 conveying your acceptance to our highest bid in respect of e-auction for Tourist Lodge near Ashoka Road and Jantar Mantar Road Crossing-1, Janpath Lane, New Delhi carried out by MSTC Ltd. on 04-01-2017.

As directed in your letter, we are required to submit, while signing the Licence deed, (a) Security deposit (equal to 6 months' lease rental, after adjustment of Earnest Money), (b) Advance lease rental (equal to three months' lease rental) and (c) Bank guarantee (equal to three months' lease rental).

We have gone through the above letter, the draft lease deed and tender documents together with drawings and your public notice inviting the bid, to understand various terms and conditions applicable on us in this regard.

We have also visited the subject premises with our technical experts to examine and match the details and specifications given in your above-said documents and evaluate the condition of the building and further work required to make it suitable for Lodge purposes.

After the above exercise, we find that there are serious deficiencies in the representations made by you in the tender as well as other documents vis-à-vis the actual conditions of building, which is the subject matter of the bid and licence herein.

Accordingly, we have to submit as under:

(a) In the 'Public Notice' published in the Newspapers for 'e-Auction of NDMC Tourist Lodge on 04.01.2017' the following representation has been specifically made:

"Total Built-up area of property including basement is about 22,592.46 Sq. ft.

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For ABHILASHA ENTERPR
अभिलाषा एंटरप्राइजेस

ABHILASHA ENTERPRISES

This area is duly confirmed and substantiated by the drawings provided together with the tender documents, which are duly signed and certified as well.

In the Public Notice published in the Newspaper, the following representation has been specifically made:

"Total Built-up area of property including basement is about 22,592.46 Sq. ft.

Contrary to the above, in the draft Licence Deed provided to us, the following Clause has been mentioned:

"The NDMC has agreed to grant Licence for use of Tourist Lodge with covered area measuring 17,000 sq. ft (Seventeen Thousand square Feet).

We have further found that in Public Notice dated 29-04-2016 the area advertised for licence was 17,000 Sq.ft.

We are surprised and unable to understand the true and factual position. However, it is clear that a deliberate misrepresentation of the area has been made in the different documents and drawings by NDMC.

We have relied on Public Notice and have submitted our bid on the clear understanding of the commercially usable area of 22,592.46 sq ft., which was duly supported by the drawings provided with the tender. Now this difference is unacceptable. Please clarify whether NDMC will provide 22592.46 sq ft. commercially usable space as represented in the Public Notice? In case otherwise, the Licence fees should be adjusted proportionally by NDMC.

- (b) It is also noted that a condition has been added in the Licence Agreement that the Basement can be used only for the purpose of storage and utility equipments. It may be appreciated that if the space basement cannot be commercially usable, the commercially usable space further reduces, and consequently, the Licence fees would need to be adjusted/reduced proportionately which is based on commercially usable space area.
- (c) We also have to point out that the Licence Agreement does not specify anything about the Terrace area and thus, it needs clarification, whether the terrace area would be a part of licensed premises and the Licensee shall have right to use it commercially or otherwise, as it may desire, as the bid has been based considering the terrace area being available for commercial utilization by Licensee, as may be found practically possible.
- (d) In the same manner, it is not clarified/ specified in the Licence Agreement, whether the open area adjacent to the building of the Lodge shall be included in the licensed space or not and whether the Licensee shall have

For ABHILASHA ENTERPRISES
अभिलाषा एंटरप्राइजेस

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right to use it for commercial purposes including for parking, as the bid has been based considering the open area being available for commercial utilization by Licensee, as may be found practically possible, including for parking.

- (e) Further, when we have visited your subject building and was matching the actual construction with your drawings provided, we have gathered that there are some portions, which are unauthorisedly constructed.

We are surprised that a building is being licensed, which is not in conformity of approved drawings. It needs to be appreciated that as a Regulator at least NDMC building should have been in conformity with the approved drawings and the rules, regulations and byelaws, as applicable, should have been complied with. If there is any unauthorized construction in the building, this will be a misrepresentation and hence, objectionable, as the bid has been made on presumption that the drawings are duly approved and the actual construction is based on and is in conformity with the same.

- (f) When we inspected the premises with our technical expert, we have found and observed that the building is in completely dilapidated condition and equipments and fittings are in miserably bad condition. In view of the term and condition laid down in the Tender that "licensee after taking formal occupation of the licensed premises shall not contest thereafter that the licensed remises is not complete in any respect whatsoever", it requires a complete overhaul of the building NDMC, in accordance with the spirit of as well as representations in the Tender/Public Notice, as it is clearly misrepresented by NDMC.

Looking to the condition of the building and its age of 36 years, we also call upon you to kindly provide us certificate from IIT, Roorki certifying that the potential age of the building is more than the period of Licence (i.e. 30 Years) and that it will be safe and stable for running a Tourist Lodge.

- (g) We also found that in the basement, NDMC sub-station has been installed. As we understand it is not for exclusive supply to the Lodge building alone. In that be the case, how that space can be licensed to the Licensee by NDMC. This area should be excluded from the Licensed area and Licence fees adjusted accordingly.

- (h) It is provided in the tender condition that "if any addition/alterations are necessary, the licensee shall do the same at his own cost after obtaining prior written permission of the licensor and the liabilities for the payment of licence fee shall not be affected". Thus, the work required in the building has to be complete on the part of the Licensor, except any additions/alterations, if any required by the Licensee. However, the

For ABHILASHA ENTERPRISES
अभिलाषा एंटरप्राइज

ABHILASHA ENTERPRISES

building is not complete from that point of view. This requires a complete overhaul to meet the requirements, which have been stipulated in the Licence Agreement. While the condition of the building is so bad, we have been obligated to bring it to the conformity of the byelaws, rules and regulations of NDMC as well as other Authorities, as applicable in this behalf. It is estimated by the experts that this work alone may require about 12 months to complete. This is not in conformity with what is represented or what can be inferred from the Tender documents. The time of commencement of charging of Licence fees should be revised accordingly.

- (i) The basic clearance from fire department is the duty of the building owner i.e. the Licensor, in order to ensure that the basic requirements of fire safety, which are, in fact, the part of the completion of building, are met out before offering the building for Licence. The responsibility of the Licensee should be limited to renewal of the fire department clearance after augmentation, interior decoration and furnishing etc.. Thus, this work needs to be done by NDMC.
- (j) In the same manner, the basic environmental clearance/consent and approval of the Pollution Control Department should be the responsibility of the Licensor. It will be agreed that the Licensee can be responsible only for the renewal and updating of the clearance for the Lodge, when it is ready to operate. This work should accordingly be done by NDMC.
- (k) We have also seen that the condition of the lift provided in the building is not fit and proper and it would need replacement. While completed building should be handed over excluding refurbishment, the building and basic facilities are incomplete. The Lift needs to be provided by NDMC in fit operating condition duly certified by the Safety Department as fit for use.
- (l) The condition of electrification and electrical fittings and fixture is also in miserable condition and requires complete replacement keeping in view the safety requirement for the Lodge. This to be done/ replaced by NDMC before handing over.
- (m) It may be noted that it is only after completion of overhauling and replacement of various electric lines fixture and fittings and equipments etc. that the Licensee can proceed to augment the work of the interior decoration as well as finishing and furnishing of the Lodge to make it inhabitable for the Guests. This work itself may need not less than 3 to 4 months to complete the task if done on war-footings. The time period for commencement of charge of Licence fees needs to be revised accordingly.
- (n) It is stated in the basement should be used by the licensee for storage purposes only and keeping machineries related with utilities like electricity, water supply etc.. Needless to say that use of basement for

For ABHILASHA ENTERPRISE

अभिलाषा एंटरप्राइज

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installation of electrical equipments including generators, main switchboards and transformers is not permitted from fire hazard angle. Thus, forcing such a condition by NDMC is not fit and proper and needs to be withdrawn or the Licence fees should be adjusted accordingly excluding the area not available for commercial use.

- (o) It is specifically stipulated that after completion of the augmentation work the Licence has to submit to NDMC "As Built drawings" of the premises including details of services along with all approvals and permissions taken from the concerned departments. Upon this NDMC may issue completion certificate. It may be appreciated that while handing over the possession of the building it is expected to be complete in all respect and only refurbishment should be required to be done. But it is noted that the Licensee has to augment, make as built drawings and obtain completion etc. This work should be done by NDMC.
- (p) In order to operate the Lodge, various permissions, approvals, registrations, consents and franchises are required to be obtained. These can be applied for and obtained only after the completion of building. Hence, the period of three months after handing over the possession of the building, that also an incomplete building is a deliberate attempt to lead the Licensee to default, which is impractical and seems intentional. This needs to be reconsidered and revised accordingly.
- (q) It is also provided that the Licensee has to update/install and/or upgrade and also to obtain necessary connection of electrical power, water and other utilities. In a building to be leased out, it is the responsibility of the Owner/ Licensor to complete these installations of utilities and provide the same to the Licensee in operating condition.
- (r) It may require dismantling and reinstallation of various equipments and augmentation for the purpose of applying, getting inspected and obtaining connection etc.. It may be kindly appreciated that this itself is time consuming and it may require over three months. It is, of course, possible that the Licensee may require additional load, but that is a different issue altogether.
- (s) Before commencing operations at the Lodge, the Licensee shall also be required, in addition to the above consents, permissions, approvals etc., a registration with the respective tax department namely, VAT, service tax, luxury tax, GST (if made applicable) etc., which will also require time, as applicable. But NDMC has provided only 3 months to commence operation, which is unrealistic and intentionally kept insufficient. This needs to be considered and revised accordingly.
- (t) For providing complete services at a Lodge, It is also required to obtain State Excise Licence for storing and serving Liquors. It is learnt that at

For ABHILASHA ENTERPRISES

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present the grant of State Excise License has been stopped/withheld. The process may begin only after commencement of the new financial year in April. This needs to be kept into consideration.

- (u) The Licensee, thus, cannot be held liable to pay Licence fee only for the bare structure of the building. NDMC needs to confirm the entire status in accordance with its representations. NDMC should bring the building updated with the basic renovation as needed to make the building inhabitable. Installation of basic utilities should also be done before offering the building for occupation by the Licensee in terms of the Tender/Licence agreement. The Licence fee can be based on the commercially usable area. As a bid cannot be invited based on misrepresentation, hence NDMC is liable to amend the conditions accordingly.

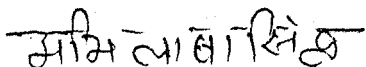
In view of these submissions, NDMC should take immediate action to conform the entire status in accordance with its representations made by NDMC and rectify the conditions in all respects. The Licence fees should be finalized in the light of factual commercially available space and other factors explained above.

Further, it is also required that the real and practical time required for completing the whole task and commencing the commercial operations by Licensee should be considered. It, specially, needs to appreciate that after overhauling is done by NDMC as explained/required above, refurbishing and furnishing work as well as the work of obtaining permissions, approvals, consents and registration will be started. This will require reasonable time. As the grant of permissions, approvals, consents and registration is vested with the Government authorities, Licensee will, in no way, have any control over it. In such case the stipulation of time to be adhered to by the Licensee is highly insufficient and impractically inadequate and that may further create complications and problems at a later stage, if no extension is granted by NDMC. Consequently, the Licensee will have to suffer huge liability of Licence fees without any commercial operations. Hence, the time of three months should be appropriately revised and Licence fees should be made chargeable with effect from three months after the completion of all works and formalities etc. We will proceed, if at all, to comply with the requisite formalities only after the above position is clarified and conditions accepted and confirmed.

We shall, accordingly, furnish necessary/requisite payments, as stated in your aforesaid letter, after receipt of reply from you as requested above.

Yours faithfully,

For ABHILASHA ENTERPRISES



Proprietor

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NEW DELHI MUNICIPAL COUNCIL
(ESTATE-I DEPARTMENT)
PALIKA KENDRA: NEW DELHI

Annexure - V

No. 541 / SOCE / 2017

February 6, 2017

To

M/s Abhilasha Enterprises
C2/207, 2nd Floor,
Sector - 16, Rohini,
Delhi-110 085

Sub: Regarding e-auctioning for allotment of Tourist Lodge situated at 1, Janpath Lane on licence basis.

Reference is invited to your letter dated 25.01.2017 on the subject mentioned above regarding e-auctioning for allocation of Tourist Lodge situated at 1, Janpath Lane on licence basis, held on 04.01.2017 through MSTC Limited.

2. The complete disclosures were made available on the MSTC's website as well as NDMC's website, wherein (i) terms & conditions of the e-auctioning, (ii) layout plans of the said Tourist Lodge indicating the area alongwith use and current side condition as reflected in the LOP envelopes, (iii) draft licence deed to be executed after compliance of all formalities, for allotment of the said Tourist Lodge on licence basis through e-auctioning were uploaded. Complete disclosures were made besides facilitating you, and other prospective bidders, to inspect the Tourist Lodge before participation in the e-auction.

3. Pursuance to the advertisement for e-auction for allotment of the said Tourist Lodge on licence basis, it is observed that your representatives have inspected the said premises before the date of e-auction viz. 04.01.2017.

4. You have participated after due-diligence in the e-auction process only after inspecting the place and understanding the disclosures, including the Terms & Conditions, and lay-out plans.

5. You were well-aware of the (i) terms & conditions of the e-auction, (ii) layout plans of the said Tourist Lodge indicating the area alongwith use and current site condition as reflected in the LOP envelopes, (iii) draft licence deed to be executed after compliance of all formalities, and you had not raised any query before participating in the e-auction, which clearly indicates that there was no such confusion at the time of participation in the e-auction on 04.01.2017, and all your queries are an after-thought after being declared as preferred bidder on the basis of highest bid.

6. Your attention is invited to the following terms and conditions of the e-auctioning:

i) in Para 8 of Terms & Conditions, it was specifically mentioned that it was the responsibility of the e-bidder to go through the terms and conditions given in the licence deed to be executed (annexed therewith) before participating in the e-auction process;

ii) in Para 8 of Terms & Conditions, it was further mentioned that in case of any discrepancy in documents related to the e-auction, the terms and conditions mentioned in the Licence Deed to be executed should have superseding effect;

iii) in Para 10 and 15 of Terms & Conditions, it was clearly mentioned that the Tourist Lodge will be licensed on 'AS IS WHERE IS' basis;

iv) in Para No. 3 of the forwarding letter to the MSTC, it was mentioned that the area and details of the said Tourist Lodge are as per the Survey Plan of the existing building as certified by Architecture Department, NDMC.

7. In addition to the above, it is clarified that:

(a) The built-up area of the said Tourist Lodge is approximately 22592.46 sq. ft. Attention is invited to clause 3.3 and Annexure I of the Licence Deed to be executed, wherein it was specifically mentioned that

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the Tourist Lodge is available on 'AS IS WHERE IS' basis, and the specified area of Tourist Lodge is approximate. The actual area of the said Tourist Lodge handed over subsequent to issue of Letter of Acceptance should be final.

(b) With respect to your query related to usage of basement and electric sub-station therein, attention is invited to para 17 of the Terms & Condition wherein it was mentioned that

"... The basement shall be used by the licensee for storage purposes only, and keeping machineries related with utilities like electricity, water supply etc. The Electric sub-station to be run in the basement shall remain in occupation of the licensor. ..."

Therefore, the area of the basement cannot be used for commercial purposes. The basement can be used for storage purposes only, and keeping machineries related with utilities like electricity, water supply etc.

It is clarified that there is no sub-station in the basement of the said Tourist Lodge. The Feeder Pillar, etc. installed in the basement are exclusively for electric supply for the Tourist Lodge. The basement is part of the licensed area.

(c) The terrace area is part of licensed premises and is open area therefore it cannot be used for commercial purposes as per para 17 of the Terms & Conditions, which provides that the said Tourist Lodge should not be used for any other purpose except as permissible under Master Plan of Delhi, and applicable building bye-laws.

(d) As per clause 3.4(v) and (vi) of the Licence Deed to be executed, the open space is to be used for car/two-wheeler parking for users of the Tourist Lodge Building. Therefore, the open area at Ground Floor

cannot be used for commercial parking purposes. However, it can be used for parking for users of the Tourist Lodge Building.

(e) There are no structural changes in the building *vis-a-vis* drawing provided alongwith e-auction document, the building envelope is same and is as per drawings provided alongwith the e-auction documents, and is in conformity with the applicable building bye-laws. There is no change in the covered area. As per Para 15 of the Terms and Conditions, if any change, additions/alterations are necessary, the licensee shall do the same at his own cost after obtaining prior written permission of the New Delhi Municipal Council.

(f) The building was put on e-auction on '**AS IS WHERE IS BASIS**'. The said Tourist Lodge is an RCC structure constructed in the year 1977 and the life of an RCC Structure is approximately 100 years. Therefore, the building is in habitable condition and have life for the period being considered for giving on license basis.

(g) As per Para 5.1(a) of the Licence Deed to be executed, it is the licensee's obligation to obtain all clearances, permits, authorizations, consents, approvals and sanctions from the competent authorities for all activities or infrastructure facilities, in connection with the "Tourist Lodge" during the subsistence of this Licence Deed.

(h) Para 16 of the Terms & Conditions, and para 4.1(m) of the Licence Deed to be executed specifically provides that the moratorium period for payment of license fee is only for a period of three months from the date of signing of the licence deed for the purpose of refurbishment and during such three months periods no licence fee will be charged from the licensee.

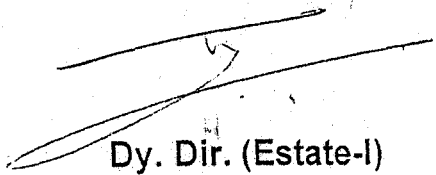
(i) In terms of clause 3.4(xvi) and (xvii) of the license deed to be executed, the licensee should be responsible for running, operation and maintenance of lifts and spendings in this regard are to be borne by the

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licensee. Further the said Tourist Lodge is to be licensed on the basis of 'AS IS WHERE IS' basis, which as per clause 2(iv) of the Licence Deed to be executed means:

"As is where is basis" means LICENSEE shall be licensed the said Tourist Lodge, equipments, installations, fittings and fixtures on "as is where is basis" and the LICENSEE shall not make any additions or alterations in the Tourist Lodge, installations including electric installations and wiring without the prior permission of NDMC in writing and when permitted by the LICENSOR the said additions and alterations shall be carried out by the LICENSEE at their own cost. They shall not be entitled to any compensation for any additions carried out by them in the Tourist Lodge rather LICENSEE shall be required to hand over the Tourist Lodge in original condition at the end of license period."

8. Considering all of the above, the issues raised by you cannot be agreed to. No relaxation/adjustments in the terms & conditions of the licence deed, and/or licence fee can be allowed.
9. It is clarified that you have already exhausted the time-period of 15 days allowed for deposition of security deposit and advance licence fee as per para 6 of the terms and conditions, as the demand letter was issued to you on 12.01.2017 in response to which you raised the queries vide your letter dated 27.01.2017.
10. You are, therefore, requested to comply with NDMC's letter dated 12.1.2017 within seven days i.e. by 13.02.2017 positively, failing which NDMC will forfeit the Earnest Money Deposits submitted by you in this regard and take further necessary action in the matter, including initiating the process for re-auctioning of the said Tourist Lodge.


Dy. Dir. (Estate-I)

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ESTATE -I DEPARTMENT
NEW DELHI MUNICIPAL COUNCIL
PALIKA KENDRA: NEW DELHI

Annexure - VI

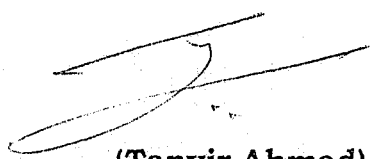
No. 613/SO/Estate-I/2017

Dated: 27.02.2017

Sh. Abhilasha Singh,
M/s. Abhilasha Enterprises,
C2/207, 2nd Floor,
Sector-16, Rohini,
Delhi-110085.

Sub : Regarding forfeiture of EMD.

This is in continuation to this office letter No. 541/SO/E/2017 dated 6.02.2017 on the subject cited above. The issue has been examined in detail. Your queries have been answered vide the above referred letter dated 6.02.2017. No case is made out for giving consideration with respect to license fee as represented by you. Since NDMC has already made detailed disclosure and the same was acknowledged by you and since you have not complied with the terms & conditions of the e-auction, your EMD is forfeited.


(Tanvir Ahmad)
Dy. Director (Estate-I)
27.02.2017

ok

NEW
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DEPARTMENT
MUNICIPAL COUNCIL
RA : NEW DELHI

**TERMS & CONDITIONS FOR AUCTION OF LICENCE IN RESPECT
OF 'TOURIST LODGE' NEAR ASHOKA ROAD & JANTAR MANTAR
ROAD CROSSING, JANPATH LANE, BEHIND JANPATH HOTEL, NEW
DELHI FOR RUNNING "TOURIST LODGE".**

1. The Licensor [i.e. New Delhi Municipal Council (NDMC)] reserves the right to reject any or all the e-bidders / bids without assigning any reasons.
2. The e-bidder shall furnish an earnest money of the amount equivalent to three times of reserve price for a month (i.e. EMD equal to Rs. 29,04,000/-) in the form of Demand Draft or Bankers Cheque in favour of Secretary, NDMC payable at New Delhi / Delhi.
3. The e-bidder should furnish details regarding financial soundness and credit worthiness of him duly certified by a CA firm which is empanelled with CAG in case of individual bidder. For others, balance sheet duly certified by Auditors is to be submitted.
4. The allotment will be made to the highest e-bidder in e-auction on licence fee payment basis.
5. The earnest money shall be forfeited in favour of the NDMC in case the applicant after participating in auction becomes successful e-bidder withdraws the offer or makes modifications therein or on acceptance of his application fails to complete any of the formalities of the licence within the period stipulated in conditions 6 and 7, and the allotment in such case shall be deemed terminated.
6. The successful e-bidder will be required to deposit equal to ^usix (6) months licence fee as interest free security deposit alongwith; ~~(i) three months' advance licence fee to NDMC,~~ and (ii) three months' Bank Guarantee. The interest free security deposit and three months' advance licence fee shall be accepted only in the form of Demand Draft or Bankers Cheque in favour of Secretary, NDMC payable at New Delhi / Delhi, within a period of 15 days of the receipt of the intimation of acceptance of his offer towards the fulfillment of the contractual obligations. The earnest money deposited by the successful e-bidder alongwith the bid will be adjusted towards the security deposited.

Director(Estate-I)

Financial Advisor

Secretary

7. The successful e-bidder will execute a licence deed on a non-judicial stamp paper within a period of 15 days from the date of depositing the security deposit alongwith two months advance licence fee to Licensor, in the proforma prescribed by the Licensor.
8. The terms and conditions of the licence are given in the attached licence deed in detail, and it is the responsibility of the e-bidder to go through such terms and conditions before participating in this e-auction process. In case of any discrepancy in documents related to the e-auction, the terms and conditions mentioned in the Licence Deed shall have superseding effect.
9. The licence fee will be increased at the rate of ten per cent (10%) every three (3) years, on compounding basis.
10. The Tourist Lodge Building will be licensed for 30 years from the date of commencement of licence deed i.e. the date of taking of possession of building on 'AS IS WHERE IS BASIS' by the licensee from licensor.
11. No renewal after expiry of license period of thirty (30) years shall be granted. After the expiry of the licence period of thirty (30) years or its sooner determination, the license shall be deemed as terminated.
12. In case of termination, Licensor shall enter into the premises, and in the event of the Licensee not surrendering the vacant possession of the premises within the stipulated period under this deed in a peaceful manner, the licensee shall render himself/herself/themselves liable for action for eviction under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, recovery of dues as arrears of tax under section 102 of NDMC Act read with section 363 of the Act, disconnection of electricity, water and other utilities/services, and any other action(s) as deemed fit by the licensor.
13. At the time of commencement of licence deed, the licence fee deposited in advance will be adjusted towards the monthly licence fee and after adjustment of the said licence fee, the licensee shall pay the licence fee in advance by the 10th of each English Calendar month at the latest.
14. Non-payment of the licence fee within the prescribed period will constitute breach of the terms of licence and shall render the licence liable to be terminated. In the event of the licensee committing default in the payment of the licence fee for any reason, what-so-ever, shall be liable to pay to the licensor monthly compounding interest for the period of default at a rate of 15% per annum on the amount of licence fee and any other dues including interests, the payment of which has been so defaulted. The interest on defaulted amounts shall be payable for full month irrespective of the fact whether default so committed is for the part of the month.

15. The Tourist Lodge Building will be licensed on "AS IS WHERE IS BASIS" and the licensee after taking formal occupation of the licensed premises shall not contest thereafter that the licensed premises is not complete in any respect whatsoever. If any change, additions/alterations are necessary, the licensee shall do the same at his own cost after obtaining prior written permission of the licensor and the liabilities for the payment of licence fee shall not be affected.
16. There shall be a moratorium period for payment of license fee for a period of three months from the date of signing of the licence deed for the purpose of refurbishment and during such three months periods no licence fee will be charged from the licensee.
17. The licensee shall use the licensed premises for the purposes of running "Tourist Lodge" of acceptable standard together with related facilities and business appurtenant thereto, which complies with the terms and conditions of the licence, and applicable Master Plan of Delhi and Building Bye-Laws, for the convenience and benefit of the tourist occupants of the Tourist Lodge. The basement shall be used by the licensee for storage purposes only, and keeping machineries related with utilities like electricity, water supply etc. The Electric sub-station to be run in the basement shall remain in occupation of the licensor. The licensee shall not use the said Tourist Lodge for any other purpose whatsoever except what has been detailed in this para, and permissible under Master Plan of Delhi and Building Bye-Laws, as amended from time to time.
18. The total built up area is 22,592.46 sq. ft. However, the use of this premises will governed by the prevailing building bye-laws and the licence fee will be charged for the area measuring 22,592.46 sq. ft.
19. The terrace area is part of licensed premises and is open area therefore it cannot be used for commercial purposes as per para 17 of the terms & conditions, which provides that the said Tourist Lodge should not be used for any other purpose except as permissible under Master Plan of Delhi, and applicable building bye-laws.
20. As per clauses 3.4(v) and (vi) of the Licence Deed to be executed, the open space is to be used for car/two-wheeler parking for users of the Tourist Lodge Building. Therefore, the open area at Ground Floor cannot be used for commercial parking purposes. However, it can be used for parking users of the Tourist Lodge.

21. The sub-station and feeder pillar in the basement are the properties of NDMC and the basement cannot be put to any commercial use by the prospective bidder.
22. Preparation of articles of food would be done in kitchen area only after getting a health license from the competent authority, and dish washing would be done only in the kitchen area & nowhere else.
23. The licensee shall run the Tourist Lodge himself. However, the licensee may run the shops, restaurants, limited open space car/two-wheeler parking, earmarked for such purposes as mentioned in Para 17 above, himself or allow temporarily such sub-licensee for a period terminating with the period of the licence deed or its termination at any stage, or any period earlier. Trades in the shops shall be the trades as may be permitted by the licensor. The licensee shall be further responsible for the conduct of the various sub-licensees and observance of rules and regulations etc. The licensees shall be further responsible to answer that the sub-licensees quit the premises on the expiry or sooner termination of the licence that may be accorded. The sub-licensees shall not get any right over and above the rights and privileges of the licence. The licensee shall furnish to the licensor the names of sub-licensees in the Tourist Lodge Building from time to time & the terms of licence of sub-licensees shall be got approved from the licensor in writing before executing the same.
24. Save as provided in the preceding paras, the licensee during the tenure of this license shall not sublet/transfer/ assign or part with the building or any portion thereof permanently or temporarily to anybody else nor shall be allowed to take any person/persons to occupy the premises or to use any part thereof save with the prior permission in writing of the licensor.
25. The licensee shall be bound to abide by all applicable statutes, laws, by-laws, rules, regulations, orders, ordinances, protocols, codes, guidelines, policies, notices, directions, judgments, decrees or other requirements or official directive of any governmental authority or court or other law, rule or regulation approval from the relevant governmental authority, government resolution, directive, or other government restriction or any similar form of decision of, or determination by, or any interpretation or adjudication having the force of law in India, including the provisions of the New Delhi Municipal Council Act, 1994 (44 of 1994) and the rules, regulations, bye-laws, orders, etc. made under them, as amended from time to time.
26. Any individual partnership firm and company registered under Companies Act, 1965 or Companies Act, 2013 are eligible to participate in the e-Auction. Regarding partnership and Company, they should be subsisting for the last 3 years prior to the date of auction.

27. The prospective e-Auctioneers/bidders should not be debarred/blacklisted by any Government/Public sector undertaking/ Local Bodies or any other statutory authority.
28. The participants should also furnish Income Tax returns for the last 3 financial years.
29. The participants should have at least average turnover of Rs.6 Crores in the last three years.

Director(Estate-I)

Financial Advisor

Secretary

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Copy of Memo No. 06(L-26)

ITEM NO. 06 (L-26)

Councils Ordinary Meeting
30-11-2016

1. Name of the Subject:
e-Auctioning of Property situated at 1, Janpath earlier known as Hotel Asian International.
2. Name of the Department:
Estate Department-I
3. Brief History:
 - 3.1.1 The property was transferred from L&DO to NDMC in the year 1938. There were five old shops which had outlived their lives, so, it was decided by Civil-II Deptt. to demolish those shops so as to provide cheap clean and convenient lodging for young visitors to the capital. Accordingly, plan for construction of an Eight storied building/youth hostel including basement was prepared by the Chief Architect. Preliminary estimate amounting to Rs. 17.42 Lac was prepared and approved by the committee vide Reso. No. 5 dt. 31.5.1975. The approval for same was received from Local Self-Government(LSG) vide letter dt. F3(30)/74-LSG dt. 5.5.1975. Accordingly, construction work was awarded to M/s. Kailash Nath and Associate at the lump-sum amount of Rs.13.25 Lac with a stipulated period of completion of one year. During the construction of the above project certain disputes regarding the occupation of land in small portion of ramp leading to the basement of the building were raised by L&DO stating the land belongs to them. In order to complete the work in time a meeting between officials of NDMC, Hotel Janpath and ITDC was arranged and it was decided that to complete the construction of ramp, a portion equivalent could be given to Hotel Janpath if it was mutually agreed. The matter was taken up with L&DO but decision arrived at is not available in the file. The work got completed in time i.e. on 1.4.1977 at a cost of Rs.13.25 Lac. During the same time, the decision for giving the building of Youth Hostel to M/s. Girdhar Bhagat & Co. at a monthly licence of Rs.35,550/- had been finalized. Completion certificate was issued by CA Branch on 22.4.1977. The possession of the building was taken over by M/s. Girdhar Bhagat & Co. on 11.5.1977. The licence deed between New Delhi Municipal Committee & Hotel Asian International was made on 8.5.1987. The term of license of M/s. Hotel Asian International expired on 10.05.2007. Accordingly, it was informed to the company that the license has not been renewed and company was requested to handover the premises to concerned Executive Engineer in peaceful manner by 10.05.2007. Subsequently, a sub-committee was constituted comprising of F.A, C.V.O., Advisor (L&R) and Director (Estate). The said Committee met on 14.06.2007 and

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authorised the Chairperson, NDMC, to fix remuneration of M/s. SBICAPS for the purpose."

SBICAPS Report:

8. M/s. SBICAPS in its report submitted in September 2016 has concluded as under:

"4.3 Conclusion

The market rent of the property is estimated at Rs.10.20 lakh per month under the Sales Comparison Method and Rs.9.69 lakh per month under Discounted Cash Flow method. The average of the two methods stated above i.e. Rs.9.94 lakh may be considered as the reserve price for the auction of the licence rights of the property so as to encourage wider participation and wider participation may ensure fair price discovery."

9. Pursuance to the above report, the Estate-I Department has finalized the Terms & Conditions (Annexure-I, See pages 39 - 42) and Licence Deed (Annexure-II, See pages 43 - 71) in consultation with the Finance Department.

10. **Recommendations of the department:**

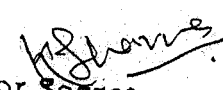
Council may kindly approve auction of property situated at 1, Janpath earlier known as Hotel Asian International as per reserve price fixed by M/s. SBICAPS and as per terms & conditions and licence deed finalized by the Estate-I Department in consultation with Finance Department as annexed above.

11. **Draft Resolution :-**
To be decided by the Council.

COUNCIL'S DECISION

Resolved by the Council to accord approval for auction of the property situated at 1, Janpath earlier known as Hotel Asian International as per reserve price fixed by M/s. SBICAPS and as per terms & conditions and licence deed finalized by the Estate-I Department in consultation with Finance Department as annexed with the preamble.

It was further resolved by the Council that the department may initiate further necessary action in anticipation of confirmation of the minutes of the Council.


For Secretary
New Delhi Municipal Council)
New Delhi



- 403- Annexure - IX
New Delhi Municipal Council
Palika Kendra: New Delhi



PUBLIC NOTICE

E-auction of NDMC Tourist Lodge on _____

New Delhi Municipal Council (NDMC) announces e-auctioning on licence fee basis of Tourist Lodge near Ashoka Road and Jantar Mantar Road Crossing, Janpath Lane, Behind Janpath Hotel, New Delhi - 110 001. The details of property are as follows:

- (i) Reserve price is ₹9,68,000/- per month and the pre-bid EMD equal to ₹ 29,04,000/- .
- (ii) Enhancement @10% after every 3 years cumulatively.
- (iii) Period of Licence is 30 years.
- (iv) Total **built-up** area of property (including basement) is about 22,592.46 sq. ft.
- (v) Any individual partnership firm and company registered under Companies Act, 1965 or Companies Act, 2013 are eligible to participate in the e-Auction. Regarding partnership and Company, they should be subsisting for the last 3 years prior to the date of auction.
- (vi) The prospective e-Auctioneers/bidders should not be debarred/blacklisted by any Government/Public sector undertaking/ Local Bodies or any other statutory authority.
- (vii) The participants should also furnish Income Tax returns for the last 3 financial year
- (viii) The participants should have at least average turnover of ₹ 6 Crores in the last three years.

* The total built up area is 22,592.46 sq. ft. However, the use of this premises will governed by the prevailing building bye-laws and the licence fee will be charged for the area measuring 22,592.46 sq. ft. ✓

The detailed terms and conditions and other information are available on websites of NDMC (www.ndmc.gov.in) and MSTC (www.mstcecommerce.com). To participate in the auction, prospective bidders have to register with MSTC. The e-auction will take place on MSTC platform (website) on _____. For participation in the e-auction, the applicant need to register on the MSTC's portal under '**For Scrap and Other Registration**'.

The prospective bidders may contact **Office of Director(Estate-I)**, NDMC in Room No. 3010, 3rd Floor, Palika Kendra, Sansad Marg, New Delhi -1100001 in case of any queries and/or inspection of the Tourist Lodge.

Dy. Director (Estate-I)

ITEM NO. 25 (L-31)

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Copy of Reso. No. 25(2-31) Copy of Reso. No. 25(2-31)
of
Council's Ordinary Meeting Council's Ordinary Meeting
Dated 06/03/2017 Dated 02/03/2017

1. Name of the Subject:

Decision in the matter of property situated at 1, Man Singh Road, commonly known as Hotel Taj Man Singh in light of the MHA's directions dated 01.01.2015 and 23.02.2017, and Hon'ble Supreme Court's directions dated 12.01.2017 in SLP (Civil) No. 33397 of 2016.

2. Name of the Department:

Estate-I Department

3. Brief History:

1 In early 1976, a piece of land measuring 3.78 acres at 1, Man Singh Road, along with structures was offered by the then Ministry of Works and Housing, Government of India to New Delhi Municipal Committee to construct a hotel which should be available for the PATA Conference of 1978. The New Delhi Municipal Committee, as it then was constituted, accepted the offer of allotment of land to construct the Hotel.

2 M/s Indian Hotels Company Limited (IHCL) approached New Delhi Municipal Committee to collaborate in construction of the hotel. An extract from the Agenda placed for consideration of the Committee in April, 1976 and its Resolution No. 35 dt.02.4.1976 are extracted as under :-

"The offer of India Hotels Co. Ltd. appears to be quite favourable if compared with the return that we are getting from ITDC in respect of Akbar Hotel. There is also an advantage that entire initial expenditure of preparation, design and management and supervision of the project would be borne by IHC. Broad terms and conditions of joint participation can be discussed in detail and interest of the Committee can be ensured. It is for consideration and in the interest of the Committee to take the following decisions:-

- (i) Acceptance of the allotment of land by the Ministry of Works and Housing for the construction of a hotel on the terms and conditions as may be offered.*
- (ii) Acceptance of the proposals of M/s. The Indian Hotels Co. Ltd. in principle, for participation jointly in the construction and running of the hotel.*
- (iii) Discussing further details with M/s. The Indian Hotels Co. Ltd. in order to finalize a draft of the License deed for approval of the Committee.*

Committee's Resolution / Observation :

Resolved that :-

- (i) The allotment of land by the Ministry of Works & Housing for the construction of a hotel on the terms and conditions as may be offered be accepted.*
- (ii) Proposals of M/s. The Indian Hotels Co. Ltd. for participation jointly in the construction and running of the hotel be accepted in principle.*
- (iii) Draft License deed to be executed with M/s. The Indian Hotels Co. Ltd. be discussed and finalized for approval of the Committee".*

3 A Collaboration Agreement was thereafter entered into between New Delhi Municipal Committee and IHCL. After executing the Collaboration Agreement, a License deed was also drawn between the New Delhi Municipal Committee and IHCL. IHCL was responsible for construction of the building on the plot of land allotted to the New Delhi

Municipal Committee and cost to the extent of Rs.475 lac was to be provided by the Committee. Through a Supplementary Deed, the said value was fixed at Rs.626 lac.

4 Relevant clauses from this License Deed are as under:

"Clause-I - License"

1. The Licenser has, subject to the provisions of sub-clause1 of Clause-II hereinafter, granted License to the Licensee to enter into and occupy the said hotel from a date to be mutually agreed upon for the purpose of running a hotel of acceptable standards together with all the related facilities and business appurtenant the ratio, for the furtherance and development of tourism in India.

2. In terms of the Collaboration Agreement entered into between NDMC and the Indian Hotels Company Limited on 18th December, 1976 at New Delhi [hereinafter called the Collaboration Agreement], the Licenser hereby agrees and allows the Licensee to commence hotel operations partially by the end of March, 1978 notwithstanding the fact that the hotel building is not completed in all respects in terms of the Collaboration Agreement provided a minimum of 40 guest rooms and one restaurant are ready for use and occupation.

Clause II - Term

1. The license hereby granted shall be in force a period of thirty three years commencing from the date of occupation of the hotel by the first paying guest subject to the condition that the Licensee shall be bound by and observe and perform all the terms and conditions contained in this license throughout the period of this license.

2. On expiry of the period of license of the said hotel building hereby granted, the Licenser shall have the option to grant the license for a further period on such terms and conditions as may be mutually agreed upon between the Licenser and the Licensee. If the Licensee shall be desirous of obtaining a License for a further period after the expiry of the present License, it shall give to the Licenser, a notice in writing of not less than sixty (60) days prior to the date of expiry of the present License for the consideration of the Licenser.

Clause - III - License Fee and Manner of Payment

1. In consideration of the Licenser granting to the Licensee, the License in respect of the said hotel building as hereinabove referred to, the Licensee shall pay to the Licenser as and by way of License fee an amount equivalent to 10-1/2 percent (ten and a half percent) of the gross income of the Licensee for every financial year of the Licensee as certified by the statutory auditors of the Licensee or a sum equivalent to 15% (fifteen percent) of the Licenser's investment in the said hotel building, the terms of the Collaboration Agreement, whichever is higher. The liability for the payment of License fee as aforesaid shall commence from the date of commissioning of 300 rooms in the hotel or first day of December, 1978, whichever is earlier. The License fee in respect of the period which is less than a full financial year shall be paid by the Licensee to the Licenser on a prorata basis on the basis of the statement certified by the statutory auditors of the Licensee.

EXPLANATION : i) Financial Year: For the purpose of this Clause, the term 'financial year' of the Licensee shall mean the 12 month period commencing from the first day of April of any year and ending on the 31st day of March of the following year.

(ii) *Gross Income* : For the purpose of this Clause, the term 'gross income' of the Licensee for any financial year shall represent the total amount of income derived by the Licensee from the said hotel as certified by the statutory auditors of the Licensee. The gross income shall include receipt of income on account of rooms, restaurants, banquet parties, pool side snack bar, bar-be-que, room service, public rooms, function rooms, laundry, shop rentals, entertainment shows, counter spaces, show windows, showcases and barber and beauty shops. The gross income shall not include;

- (a) *Income of the shops, counter spaces and any other area sub-Licensed by the Licensee to other persons or parties from whom the Licensee is only entitled to rental in respect of the area sub-Licensed.*
- (b) *Income from rooms shall be net income after adjusting the commissions or discounts paid or payable to travel agents, tour operators, group leaders or the agencies making the bookings of rooms in the said hotel.*
- (c) *Sales taxes, other taxes pertaining to sales and service charges collected on behalf of the employees.*

2. *Before a financial year comes to an end, the Licensee shall estimate the gross income from the said hotel for the ensuing financial year and accordingly estimate the amount of License fee payable by the Licensee to the Licensor as aforesaid. The License fee so estimated or the minimum annual guaranteed amount, whichever is higher, shall be paid by the Licensee to the Licensor in advance every year in twelve (12) equal monthly installments. The monthly installment will be paid on or before the 10th of the month for which it is due and payable.*

3. *The Licensee shall furnish to the Licensor every year, within a period of thirty (3) days of the date on which the audited accounts of the Licensee are approved and adopted at the Annual General Meeting of the shareholders of the Licensee, a statement duly certified by the statutory auditors of the Licensee appointed in pursuance of the relevant provisions of the Companies Act, 1956 giving break-up of the various items comprising the total income in relation to the business of the Licensee in the said hotel during the preceding financial year.*

4. *Within thirty(30) days of holding the Annual General Meeting of the shareholders of the Licensee in accordance with the provisions of Company Law at which the annual audited accounts of the Licensee are placed and approved, the Licensee shall pay to the Licensor the License fee falling short of the License fee becoming due and payable on annual audited income basis as certified by the statutory auditors on the basis of the License fee stipulated in sub-clause 1 here above and the estimated License fee paid to the Licensor as stipulated in sub-clause 2 hereinabove. Any amount of License fee paid in excess by the Licensee to the Licensor shall be adjusted from the next installments of License fee as due and payable by the Licensee to the Licensor.*

5. *Within thirty(30) days from the date of the Licensee commencing operations in the said hotel building, whether partially or fully, the Licensee shall furnish to the Licensor a Bank Guarantee underwritten by anyone of the nationalized banks having a branch in New Delhi equivalent to the amount of 3 months' License fee as estimated by the Licensee, as and by way of security.*

Clause- VI – Possession of Hotel Building

1. The Licensors and the Licensee shall mutually fix the date on which the possession of the said hotel building shall be handed over to the Licensee for commissioning it as a hotel, whether partially or fully notwithstanding that the construction of the said hotel building in terms of the Collaboration Agreement has not been completed and the Licensors have not given the Completion Certificate in respect of the said hotel building to the Licensee. At the time of handing over possession of the said hotel building as aforesaid the Licensors and the Licensee will jointly make an inventory of the assets being handed over to the Licensee for partial or full commissioning of the hotel and the Licensee shall not contend thereafter that the hotel building or equipment, installations, fittings, fixtures, or any of the other assets listed in the inventory to be prepared as aforesaid are not complete in any respect whatsoever. If any change, addition or alteration be necessary, the Licensee shall do the same at its own cost after obtaining the Licensors' written permission. The Licensors shall have no objection to the Licensee replacing any of the fittings and fixtures such as bath tubs, sanitary ware, lifts, doors etc. at the cost of the Licensee after giving intimation to the Licensors to this effect in writing.

2. The ownership of the said hotel [the land on which the said hotel is situated belongs to the Licensors] shall at all times vest in the Licensors, together, with all fittings, fixtures and other installations of immovable type or of the type the removal of which is likely to cause damage to the building. A list of such fittings, fixtures and installations shall be drawn jointly by the representatives of the Licensors and the Licensee before the Licensee takes over the hotel building for the purpose of running a hotel of acceptable standard therein.

3. All movable assets in the hotel building referred to in Schedule-III to the Collaboration Agreement as well as all other assets including assets such as air-conditioning compressors, air handling units, fan coil units, pumps, cooling towers, piping conduiting, electrical panels, lighting fixtures, diesel generating sets, water treatment plants, boilers, laundry equipment, kitchen equipment and other hotel equipment which the Licensee pays for and equips and furnishes the hotel building with, shall belong at all times to the Licensee. The Licensee shall be entitled to all rights, title and interest to or in respect of such assets throughout the currency of this agreement as well as upon its termination.

4. Upon the termination of this agreement, the Licensors may purchase the Licensee's assets at reasonable prices to be mutually agreed upon between the Licensee and the Licensors.

...

Clause- IX – Future Expansion

During the period of the License hereby granted or the renewed period of the License, should it be necessary or expedient in the interest of furtherance and development of tourism in the Capital City – Delhi to expand or add to the facilities in the said hotel building in terms of additional guest rooms, function rooms, public areas, restaurant and other facilities either in the same premises and/or adjoining property, if and when made available, the Licensors hereby permits the Licensee to carry out such additions or expansion on the terms and conditions to be mutually agreed upon.

Clause- X – Termination

If the Licensee commits a default in the payment of the License fee in the manner provided in this Deed of License or ceases to do business in the said hotel building or commits breach of any of the terms of this Deed wilfully or otherwise, the Licensor may give a notice in writing to Licensee for remedying the breach and if the Licensee fails to do so within a period of thirty (30) days from the date of such notice, the Licensor may terminate the License without giving any further notice.

Clause- XII – Handing over possession of the Hotel Building to the Licensor

On the expiry of the License period and in the event of the License having been terminated earlier, the Licensee shall hand over the possession of the hotel building together with fittings and fixtures and all other installations belonging to the Licensor as per the Collaboration Agreement [excluding those items of the Licensor replaced by the Licensee in terms of the Deed of License heretofore] in the same conditions as far as practicable as at the time of taking them from the Licensor alongwith the installations as described in the Deed of License heretofore save normal wear and tear and modifications alongwith the building referred to in this Deed with its fittings and fixtures and all other installations as stipulated in this License heretofore, within thirty(30) days from the expiry of the License period or termination of the License deed as the case may be. The Licensee shall pay such damage charges for Overstayal in the premises from the date of expiry of the License period or from the date the License is terminated at the rate as may be determined by the Licensor from time to time and which shall not be less than the License fee paid immediately before the expiry of the License period and in the event of the License having been terminated earlier, the Licensee shall have the right to take away the Licensee's assets including the assets referred to in Schedule-III to the Collaboration Agreement and all other assets belonging to the Licensee, which Licensee may voluntarily bring into the hotel at its own cost. "

4 The License commenced from 11.10.1978 and was for a period of 33 years up to 10.10.2011. IHCL was to pay a License fee of 15% of cost of Rs.626 lacs or 10.5% of gross income, whichever is higher. In addition, House Tax of Rs.12 lacs and ground rent of about Rs.23 lacs were also payable on yearly basis.

5 The Council of the New Delhi Municipal Council (NDMC) in its meeting held on 30th August, 2000 resolved that on the expiry of the term of License of the hotels/ cinemas and other similar commercial complexes, the Licenses shall not be renewed. A fresh License shall be as per provisions of section 141(2) of the NDMC Act, 1994.

6 A proposal for extension of the Collaboration Agreement between NDMC and IHCL in respect of Hotel Taj Mansingh was received from IHCL vide its letter dated 15.02.2010 in terms of Clause-II(2) of the License deed.

7 After receipt of the option from IHCL, the Chairperson, NDMC on 27.07.2010 constituted a Committee headed by Financial Advisor which included Legal Advisor and Director(Estate-I) as members to suggest action to be taken on the option exercised by IHCL.

8 The Committee held its meeting from time to time and advised the Estate Department to first obtain legal opinion on the applicability of provision of section-141(2) of the NDMC Act and only if the property is not to be put to auction and was proposed to

be given to IHCL, the only the Committee would give its recommendations to grant License for a further period on mutually acceptable terms and conditions.

9 The Estate Department suggested to IHCL to obtain a legal opinion about applicability of provision of Section-141(2) of the NDMC Act, 1994 and also sought opinion from Standing Counsel of the Council.

10 IHCL provided the following opinion of Shri Harish Salve dated 26.11.2010:

Question	Answer
<i>Whether the provisions of Sections 141(2) of NDMC Act, 1994 will be attracted/ applicable when the renewal/ extension of the License of the Taj Mahal Hotel comes up for consideration by NDMC</i>	<i>Considering the nature of the transaction, the renewal of the License may not be governed by section-141(2) of the Act. Even if it is, the renewal of the License, the consideration of which is a share of revenue for the hotel property, cannot be considered to be a violation of section-141(2) of the Act.</i>
<i>Whether the resolution dated 30th August, 2000 passed by NDMC apropos the provisions of Section-141(2) shall be applicable to the case of the Taj Mahal Hotel when the License granted by NDMC to IHCL is considered for extension/renewal by NDMC?</i>	<i>The resolution would apply to situations of License simplicitor where property [land and/or buildings] of the NDMC are made available to other agencies for use. It cannot apply to a joint venture in which there is a revenue share arrangements.</i>
<i>Whether the judgement of Delhi High court in the Chanakya case, the appeal against which was also dismissed by the Supreme Court shall be applicable to the case of renewal/extension of License in respect of the Taj Mahal Hotel and if not, the reasons therefore ?</i>	<i>In the negative.</i>

11 The opinion of the NDMC ;s Standing Counsel Smt. Madhu Tewatia dated 15th March, 2011 reads as under:

"The Resolution of the Council may not therefore be applicable in terms Stricto Sensu as in the present case, the License term would require to be extended or renewed subject to mutually agreed terms which does not fall in the category of cessation of License and consequent of a fresh lease or License.

...

The decision of the Supreme Court of India interpreting the provisions of section-141(2) and Resolution dated 30.08.2000 would not prohibit the continuation of the license arrangement of the NDMC with IHCL, the vital and dominant consideration always being maximum consideration for immovable property even in cases governing contractual rights inter-se the parties where the NDMC is to offer state grant.

...

NDMC could vary the percentage of revenue sharing based on gross receipts of the hotel, so as to get an amount equivalent to the fair market value."

12 After receipt of the opinion of Shri Harish Salve and Smt. Madhu Tewatia, the Estate Department placed a brief for consideration of the Committee constituted by the Chairperson. The Committee submitted its report on 14.07.2011. Among other things, the Committee recommended that the License may be extended further for a period of 30 years and License fee, with a minimum as well as percentage of gross income, whichever is higher, may be negotiated. License fee suggested was as under :-

Duration	Minimum Fee	Fee as Percentage of turnover
First ten years	21 crore per annum	17.25% of gross turnover
Second ten years	25 crore per annum	18.25% of gross turnover
Last ten years	30 crore per annum	19.25% of gross turnover

13 A copy of letter dated 15.07.2011 from IHCL on the subject was received in NDMC.

14 A meeting was held in the Ministry of Urban Development (MoUD) on 01st August, 2011 with respect to payment of certain dues in respect of certain hotels. An extract from minutes of the meeting dated 01.08.2011 is as under :-

"The issue of renewal of License of Hotel Taj Man Singh came up for discussion. Chairman, NDMC pointed out that as per the License, the existing operator has to first right of refusal. To maximize revenues, it was felt that NDMC should invite open bids and then ask the existing operator to match the highest bidder to exercise their right of first refusal. In case they are not willing to pay this amount, the bid of the highest bidder may be considered as per rules, after due diligence and following all procedural formalities".

15 Pursuant to these minutes, Chairperson, NDMC vide letter dated 14.09.2011 wrote to the MoUD clarifying that:-

- i) The stand of NDMC was not correctly reflected in the minutes.
- ii) The direction on 'Fresh Auction and First right of refusal' may not be implementable and may be reconsidered in view of the provisions of the existing agreement.

16 While the opinion of Shri Harish Salve, Sr. Advocate, Smt. Madhu Tewatia, Standing Counsel, report of the Committee and minutes of the Ministry of Urban Development were under consideration for being placed before the Council, it was felt that the department may examine other aspects such as recent transactions in DDA, DIAL, DMRC of similar nature and the practices followed in hotel projects in other states where revenue sharing has been the bidding criteria. It was also felt that NDMC may also assess NDMC's and IHC investment in this venture. Accordingly, ITDC was approached to make available their consultancy services and give recommendations in this regard.

17 Since the License was up to the period ending 10th October 2011, a proposal was put up to the Council as Item No.2(L-03) in its meeting held on 07.10.2011 for Council's decision for the period after 11.10.2011. The proposal was considered by the Council vide Item No.02 [L-03] in its meeting held on 7.10.2011, wherein the Council resolved as under:

- (i) to accord sanction for extension of existing collaboration project and lease deed for one year upto 10.10.2012, subject to the condition that the IHCL shall agree to pay license fee as per mutually agreed terms and conditions retrospectively w.e.f. 11.10.2011;

- (ii) to accord sanction for further review and actions in accordance with the decision of Ministry of Urban Development, the legal advice the Committee's recommendations and Consultant's reports;
- (iii) the Department should workout the timelines for completing the above exercise and the Council be informed of the progress.

18 After the receipt of intimation from the ITDC that they were not in a position to take up assignment, RFP was issued on 19th October, 2011 amongst the empanelled PPP consultants of Government of India. IDFC was the successful bidder and the work was assigned to it on 3rd December, 2011. IDFC cited conflict of interest in not taking up this project as a reason and withdrew its proposal. The RFP was then floated again among the remaining ten empanelled PPP Consultants. M/s. Ernst & Young were the successful bidder, and accordingly the work was awarded to M/s. Ernst and Young Private Ltd.

19 Ministry of Urban Development, in a meeting dated 14th November, 2011 has stated that NDMC should strive to get as close to the market rent as possible even if it has to negotiate with IHCL. MoUD noted the steps taken by the Council towards granting one year extension to IHCL and appointing a Transaction Consultant and gave directions that the Council may take further appropriate steps, as under:

"The Minutes of the meeting held on 01.08.2011 and 26.08.2011 and the D.O. letter written by Chairperson NDMC in response to the minutes was mentioned. Additional Secretary (UD & DL) and JS (FA) stated that NDMC should strive to get as close to the market rent as possible, even if it has to negotiate with M/s IHC in relation to the said minutes. Secretary NDMC stated that in the Meeting of the Council held on 07.10.2011, the Council has resolved to accord sanction for extensions of existing collaboration agreement and licence deed with M/s IHC for a period of one year subject to the condition that M/s IHC shall pay licence fee as per mutually agreed term and condition. It was further stated by him that NDMC has also already initiated the process of appointing a Transaction Consultant. Secretary (UD) noted NDMC's above decision and advised that the Council may take further appropriate steps."

20 As the report of the Consultant was awaited in July, 2012, the only option available to the NDMC was to implement the 1st part of the resolution dated 07.10.2011 i.e. to collect to licence fee for a period of one year on mutually agreed terms and conditions from 11.10.2011.

20.1 There were two options - to continue with the then structure of licence fee or to increase it on mutually agreed terms. To arrive at the mutually agreed terms for one year, the only information available to the NDMC is the report of the Committee, comprising of Financial Advisor, Legal Advisor and Director (Estate-I), constituted by the Chairperson, NDMC in 2010 to examine IHCL's request for extension. The Committee had recommended a licence fee of 17.25% of the gross turnover with a minimum of Rs.21 crore for a period of ten years, but no further action was taken on this report.

20.2 In pursuance of the directions from the Council dated 07.10.2011, representatives of IHCL were invited to discuss the mutually agreed licence fee for a term of one year from 11.10.2011 to 10.10.2012. IHCL made an offer of 17.25% of the gross turnover with a minimum of Rs.21 crore, whichever is higher. The representatives of IHCL were asked to confirm their offer and they have confirmed the offer vide letter dated 16.07.2012.

21 The Council, by majority decision, vide resolution No.08(L-01) dated 25.7.2012 resolved that NDMC may charge from IHCL License Fee @ of 17.25% of the Gross Turnover or Rs.21 Crores a year for the period from 11.10.2011 to 10.10.2012, whichever is higher. The Council further directed that the final report of the Consultant M/s. Ernst and Young Private Ltd. appointed to recommend further course of action be brought before the Council at the earliest.

22 Vide letter dated 17.08.2012, IHCL made payment of about Rs. 11.3 Cr for the period 11.10.2011 to 31.08.2012.

23 Report of the Consultant - M/s. Ernst and Young Private Ltd.

23.1 A letter dated 23.08.2012 was received from the Consultant. Report from the Consultants was received in two Volumes. Volume-I related to the analysis and Volume-II, a report of Legacy Law Office giving an overview on the legal aspects concerning Contractual Arrangement between NDMC and IHCL pertaining to the Taj Mahal Hotel.

23.2 Chapter-5 of Volume-1 related to comparable analysis. The conclusion arrived at in this chapter was available at Para-5.4 of report and is as under:

"

- *IHC is one of the largest players in the Indian Hotel Industry, the next biggest player [by revenues], EIH has only 3,721 rooms compared to 13,606 rooms of IHC. Furthermore IHC also has the maximum number of hotels as against its comparables.*
- *Revenues parameters such as Occupancy ratio, RevPAR and ADR for Taj Mahal Hotel are all higher than the ratios of comparable hotels in the Delhi Lutyens area.*
- *EBITDA of Taj Mahal Hotel in FY12 [Unaudited] is 39.2%; EBITDA margin [excl Lease payments] for the Taj Mahal Hotel for the FY12 is 53.5%.*
- *Lease cost of the Taj Mahal Hotel has been – 10.5% of revenues over the last few years.*
- *IHC [Taj Mahal Hotel] has not defaulted in making lease payments to NDMC.*
- *Among the 7 Hotel properties leased by NDMC, it receives the largest consideration from Taj Mahal Hotel."*

23.3 Chapter-6 of Report related to "Financial Analysis". While making the financial analysis the objectives was to consider return to NDMC under the following scenarios:

- The hotel is operated by any Private Sector Partner (PSP)
- Hotel operated by IHC Group
- Hotel operated by NDMC

23.4 The conclusions were available in para-6.4 of the Report and are as under:-

"

- *Present value of cash flows from Taj Mahal Hotel is INR 3,543 million for scenario 1; property is operated by a private sector partner other than IHC.*
- *Present value of cash flows from Taj Mahal Hotel is INR 6,088 million for scenario 2; property is operated by IHC. The reason for the higher cash flow in scenario 2 is primarily attributed to two reasons:-*
 - *High capital expenditure in scenario 1*
 - *A construction period of 1.5 years is estimated for scenario 1 when the PSP loses revenue due to restoration activities. Whereas for scenario 2, it is expected that the hotel will continue operations without loss of any revenues.*

- *Present value of cash flows from Taj Mahal Hotel is Negative INR 2,581 million for scenario 3; property is operated by NDMC. The negative cash flow is attributed to lack of capacity to efficiently handle the property by NDMC. Thus NDMC may choose not to opt for scenario 3.*
- *Present value of cash flows Taj Mahal Hotel available to firm is highest for scenario 2."*

23.5 Chapter 7 of Report related to the "Commercial structuring options". The purpose of this chapter was to illustrate various commercial structuring options and valuation of returns to NDMC under each option. The conclusions arrived at are available at para-7.5 of the Report and are as under:

"

- *Commercial structuring option – A revenue share mechanism with guarantee of a minimum payment would ensure that NDMC can benefit from the future upside of the property whilst limiting the downside. The mechanism would also be favourable to a PSP, as unlike an upfront premium mechanism the PSP would not have to incur huge initial capital expenditure.*
- *Economic return to NDMC is expected to be maximum under scenario 2, where NDMC negotiates and extends the contract with IHC."*

23.6 The conclusion of the report was Chapter-8. It was divided into legal aspects, commercial aspects, qualitative aspects and conclusion. The chapter is reproduced as under:

"Conclusion

In order to reach to a conclusion, this report attempts to analyze all possible risks and return to NDMC in the current state of affairs.

The final conclusion is based on detailed analysis of legal, financial and qualitative aspects surrounding the situation.

Legal Aspects

As per the legal opinion given by M/s. Legacy law offices [enclosed a Volume-II of this report], NDMC has the following legally tenable options :-

- *NDMC to re-negotiate the financial and other terms and conditions with IHC and thereby extend the lease period*
- *NDMC to conduct an open competitive bid for selection of a private sector partner.*
- *NDMC to conduct an open competitive bid for selection of a private sector partner with rights of first refusal to IHC*

The detailed legal opinion is presented as Volume-2 of this report

Commercial aspects

Volume-1 of this report discusses in detail the commercial aspects relating to the project. The commercial aspects evaluated have been further segregated under 3 broad topics namely (a) Comparable analysis; (b) financial analysis under various scenarios for NDMC (c) commercial structuring options alongwith risk analysis and impact or financial consideration to NDMC.

Topic A Commercial Analysis

Topic a [Comparable analysis] – Key findings are as follows:

- IHC is one of the largest players in the Indian Hotel Industry, the next biggest player [by revenues], EIH has only 3,721 rooms compared to 13,606 rooms of IHC. Furthermore IHC also has the maximum number of hotels as against its comparables;
- Revenues parameters such as Occupancy ratio, RevPAR and ADR for Taj Mahal Hotel are all higher than the ratios of comparable hotels in the Delhi Lutyens area;
- IHC [Taj Mahal Hotel] has not defaulted in making lease payments to NDMC;
- Among the 7 hotel properties leased by NDMC, it receives the largest consideration from Taj Mahal.

Topic b [Scenario analysis] - The three scenarios considered were

- Scenario 1 – Taj Mahal hotel is operated by a Private Sector Partner (PSP) selected through an open competitive bid conducted by NDMC (Other than IHC);
- Scenario 2 – Taj Mahal hotel is operated by IHC Group through re-negotiated contract between NDMC and IHC;
- Scenario 3 – Taj Mahal hotel is operated by NDMC.

Key findings from topic b [financial analysis under various scenarios], are as follows:

- Present value of free cash flows to firm is higher for scenario 2 when compared to scenario 1. The detailed reasoning is explained in the key takeaways section of chapter 6

Topic B (Commercial Analysis)

- Present value of cash flows from Taj Mahal Hotel is Negative INR 2,581 million for scenario 3. The negative cash flow is attributed to lack of capacity to efficiently handle the property By NDMC. Thus, NDMC may choose not to opt for scenario 3.

Topic C [commercial structuring options]

Covers risk analysis and impact of commercial structuring options on financial consideration. Key finds are as follows :

- A revenue share mechanism with guarantee of a minimum payment would ensure that NDMC can benefit from the future upside of the property whilst limiting the downside. The mechanism would also be favourable to a PSP, as unlike an upfront premium mechanism the PSP would not have to incur huge initial capital expenditure.
- Economic return to NDMC is expected to be maximum under scenario 2, where NDMC negotiates and extends the contract with IHC.

Qualitative Aspects

The key qualitative aspects taken into consideration are as follows:

- The hotel is located within 2 kms of eminent structures such as the Indian Parliament and President's House and security is one of the key concerns.
- The property has been a host to some of the country's most prestigious events such as the BRICS Summit.
- IHC has enormously contributed in creating the brand name of Taj Mahal Hotel, The Tata Group of which IHC is a part of, has every strong corporate governance norms and is among the most trusted brands of India incorporate.
- For NDMC, one of the key decision parameters for selecting a PSP would be high returns from the property. However in our opinion, other factors such as risk of non performance and risk of non-payment by a PSP are equally important. These factors would significantly affect the returns to NDMC.

Conclusion

Therefore, from the above we conclude that NDMC may choose any one of three legal options described above, however from a risk management and commercial consideration perspective NDMC stands to benefit most if the existing contract with IHC is renegotiated and extended."

23.6 The Consultant gave a report on legal aspects from Shri Gagan Anand, Advocate. Sr. Partner-Corporate Practice Legacy Law Offices, which is as follows:

"4 Legally tenable options for way forward :

a) NDMC to re-negotiate the financial and other terms and conditions with IHC

The New Delhi Municipal Council Act, 1994 [NDMC Act] came into force on the 25th day of May, 1994 for the establishment of the New Delhi Municipal Council and for matters connected therewith or incidental thereto. The License Deed was entered into by NDMC and IHC was on 8th December, 1976. Therefore, in the absence of a specific provision regarding the retrospective effect of the Act, a view can be taken that the conditions mentioned in the Act would not have any impact with respect to a Contract entered into by the parties prior to the date of coming into force of the Act

Moreover, it would be pertinent to note that relevant negotiation enabling provision of the License Deed, which is as follows :-

"On the expiry of the period of License of the said hotel building hereby granted, the licensor shall have the option to grant the License for a further period on such terms and conditions as may be actually agreed upon between the licensor and the licensee"

Therefore, it is to be understood that there is a negotiation enabling provision in the License Deed so as to facilitate the extension of the License period, in case both the parties mutually agree to the same.

b) Inviting bids without granting any special rights to IHC

i. Vashisht Kumar jaiswal Vs State of UP And Ors, The court had opined that, once a public contract has been granted for a specific period then on the expiry of the period there is no question of renewal and there must be public auction/public tender after advertising in well known newspapers having wide circulation, otherwise Article 14 of the Constitution will be violated, and a monopoly may be created.

If it is held that even if the period of the contract has expired there can be extension of the contract then logically it would mean that a contract can go on for term after term and can be extended for 100 years or even more. This would create a monopoly in favour of a party, which would be illegal. It would also be against the interest of the State because in a public auction the State naturally can get higher amount of royalty for grant of the mining lease. In fact granting such extension creates an impression that there is some collusion between the guarantee and the authorities.

ii. Nex Tenders (India) Private Limited Vs. Ministry of Commerce and Industry & Ors. - It was held that a public authority even in contractual matters should not have unfettered discretion and in contracts having commercial element even though some extra discretion is to be conceded in such authorities, they are bound to follow the

norms recognized by courts while dealing with public property. This requirement is necessary to avoid unreasonable and arbitrary decisions being taken by public authorities whose actions are amenable to judicial review. Therefore, merely because the authority has certain elbow room available for use of discretion in accepting offer in contracts, the same will have to be done within the four corners of the requirements of law especially Article-14 of the Constitution.

iii. In *Nagar Nigam Vs. Al Faheem Meat Exports(P) Ltd.* - It was held that public auction or tender has to be allowed by Government or any public authority, instead of private negotiation, considering various aspects and also the public interest.

In view of the above described case law, NDMC can exercise the option of inviting fresh bids for operating and maintaining the Hotel in future in public private partnership mode without granting any special rights to IHC.

c) Inviting bids while granting special rights to IHC.

There is no legal right vested with IHC for seeking any special rights/privileges in any bidding process to be conducted by NDMC. However, keeping in view the peculiar facts of the case wherein IHC has invested in the fittings, fixtures etc., besides creating goodwill and has been regularly paying good revenue to NDMC, NDMC may consider granting the right of first refusal to IHC in case NDMC decides to invite bids for operating and maintaining the hotel in Public Private Partnership mode. The grant of the right of first refusal to IHC by NDMC due to such justifiable reasons shall be lawful."

24 After the receipt of Report of the Consultant opinion of the Addl. Solicitor General was also sought. Legal opinion of the Addl. Solicitor General on the queries made by Director (Estate-I), NDMC are as under:

"Vide Para-13 of the Statement of facts in view of the above facts, NDMC has sought my opinion on the following issues :-

- (i) whether the decision of the Council taken through the resolution dt. 30th August 2000 that fresh licenses shall be as per provisions of section 141(2) of the N.D.M.C. Act 1994 is applicable to the facts of the case where IHCL has exercised option for grant of License for a further period as per Clause II(2) of the License deed;
- (ii) whether the judgement of Delhi High Court in the case of M/s. Aggarwal & Modi of which appeal was dismissed by the Supreme Court shall be applicable to the case of grant of License for a further period as opted by IHCL;
- (iii) whether the provisions of section 141(2) of the N.D.M.C. Act 1994 be attracted / applicable when notice exercising option for grant of License for a further period as per provisions of Clause II (2) of the License deed is under consideration of the Council;
- (iv) whether the option exercised by IHCL as per Clause II(2) of the License deed has to be rejected on the ground that as per provisions of section 141(2) of the N.D.M.C. Act 1994 only option available with the Council is to put the property to auction/ tender to get the best price of License fee with a view to obtain normal and fair competition.

Opinion of Add. Solicitor General

Query No.1 :-

Reply:- As is clear from the facts stated hereinabove the investment in land and building in this case was done by NDMC to the extent of Rs.475 lacs, however, by a

Supplementary Lease Deed the said value was fixed at Rs.626 lacs. The additional cost was borne by IHCL. As per the terms of the license clause II (1), the License was for a period of 33 years commencing from the date of occupation by the first guest. This was an admitted case of the parties to the agreement now that the said period of 33 years was over on 11.10.2011. As per clause II(2) of the Terms of Agreement, the expiry of period of License, licensor shall have options to grant License for the further period of such terms and conditions as mutually agreed upon by the licensor and the Licensees. If the licensee shall be desires of obtaining a License for a further period after the expiry of the License, it was obligatory to give licensor notice in writing of not less than 60 days prior to the date of expiry of the present License for the consideration of licensor. Admittedly, the said notice for consideration of extension of license was given by licensee in the year 2011. Pending consideration of the request of the Licensees, licensor NDMC extended the period of license for one year.

Perusal of the terms of License Deed therefore clearly shows that there was no renewal clause in the license deed, giving right to the licensee to seek the renewal.

As is also clear from the facts narrated above the NDMC Act came into force in the year 1994 and Sec.141 (2) thereof (quoted above) specifically provides that the consideration for which any immovable property may be sold, leased or otherwise transferred shall not be less than the value at which such immovable property would be sold, leased or otherwise transferred in normal and fair competition. The language of Sec.141 (2) is clear, unambiguous and mandatory in nature. In view of the clear and ambiguous nature of Sec.141(2) which is a statutory provision, the NDMC has no option but to lease the property now by normal and fair completion process so as to fetch a market value for leasing out the property.

As quoted above in para 8 of the narration of facts, given by the NDMC in view of the provisions of Section 141(2) of the NDMC Act, 1994, NDMC in its meeting held on 30th August, 2000 resolved that on the expiry of the terms of the license of the hotels/cinemas and other similar commercial complexes, the licenses shall not be renewed. The fresh licenses shall be as per the provisions of section 141(2) of the NDMC Act, 1994.

The aforesaid resolution of NDMC dated 30th August, 2000 came up for consideration of the Delhi High Court and Supreme Court in the case of Aggarwal and Modi Ent. Pvt. Ltd., hereinafter referred to as Chanakya Cinema case. In Chanakya Cinema case, also like in the present case, tenders were invited by NIT for grant of license. M/s. Aggarwal and Modi Ent. Pvt. Ltd. was the successful bidder for cinema hall and this culminated into execution license agreement dated 30th October, 1967 with NDMC. The licensee was granted license to use the proposed building housing a cinema ~~for~~ a period of 10 years. The agreement provided renewal clause whether licensee was given an option to get the license renewed for another period of 10 years on the terms and conditions to be mutually agreed between the parties. There was no further extension contemplated in the License deed. Upon the expiry of the renewal period, NDMC refused to renew the license and instead sent cancellation notice dated 14th September, 1990 to the licensee. The licensee instituted a suit. However, an out of court settlement was arrived at whereby NDMC agreed for renewal of license for a further period of 10 years from 01.10.1990 to 30.09.2000 by enhancing the license fee over and above the license paid earlier. Clause 7 reads as under:

"7. Next renewal due in the year 2000 will be decided between the licensor and licensees on mutually settled terms and conditions at that time."

However, the settlement failed to take off as the licensee failed to withdraw the pending case and instead filed a writ petition.

In the meantime, NDMC decided to redevelop the site as a multiplex. The licensee submitted a representation seeking right to develop the multiplex and seeking the renewal of the license of the cinema complex. The said representation was rejected on the ground that the request for redevelopment of multiplex and renewal of license is not in consonance of provision of Section 141(2) of NDMC Act. Another writ petition was filed challenging the said order. The writ petition was heard by the Ld. Single Judge of High Court. The Ld. Single Judge framed the following issue:

"The principal question involved in this writ petition is whether a party who has been issued a license/lease and has consequently enjoyed a long tenure in this complex can insist as a matter of law and legal right that the NDMC should not auction the same but must re-allot it to the petitioner as the petitioner was the original allottee inter alia on its plea that it was entitled to renewal in the year 2000."

The Ld. Single Judge came to the following conclusions:

"(i) Whether the grant was a license or lease had become academic because according to the appellants' own showing the period stipulated originally in the lease/license had come to an end. Even otherwise, the terms of acceptance of the tender in 1967 do not indicate any renewal beyond 2000.

(ii) As per the contractual terms, the appellants had no right to seek any renewal beyond 30th September, 2000 as there was no clause to this effect.

(iii) If a public authority were to allot an estate by inviting public tender then the very fact that more revenue was likely to be generated was clearly indicative of public interest as laid down by the Division Bench of this court in CWP No. 1066/1998 decided on 29th May, 1998.

(iv) Appellants were estopped from pleading discrimination qua hotels at this stage. Even otherwise hotels and cinema complexes, though figuring together in classification, could not be equated for the purpose of Article 14 as inherently the business of hotels and cinemas are different and, therefore, there was no discrimination, hostile or otherwise.

(v) The decision of the NDMC not to renew the lease of hotels/cinemas after present term coming to an end was a policy decision, adopting a uniform yardstick of the expiry of existing leases of hotels/cinemas and was, therefore, perfectly valid and reasonable. If the NDMC takes recourse to Section 141(2) of the Act for generating higher revenue from its resources such a policy decision cannot be questioned unless it is unconstitutional and it was not for the court to consider where a different policy should have been followed on the ground that other policy would have been fairer or wiser or more scientific or more logical.

(vi) Section 141 of the Act deals with the lease, let out on hire or transfer otherwise of any immovable property belonging to the Council. Section 141(2) clearly indicates that sale, lease or transfer of such property should not be less than the value at

which such property could be sold, leased or otherwise transferred in normal and fair competition. Thus, it is evident that the transfers should be at the market rate when any property of the Council is sold, leased or otherwise transferred.

(vii) The impugned action could neither be treated as unreasonable, nor it was against public interest nor could it be termed as irrational, discriminatory or arbitrary to be affected by the judgment of the Supreme Court in *Ramana Dayaram Shetty v. The International Airport Authority of India and Ors.* (AIR 1979 SC 1628)

16. The Writ Court accordingly dismissed the writ petition and granted appellants time to vacate the cinema complex on or before 30th September, 2003 subject to filing of an undertaking to vacate the complex by this date."

The decision of the Ld. Single Bench of the High Court was challenged before the Dn. Bench of the High Court of Delhi by way of a Letters Patent Appeal. The Hon'ble Division Bench framed the following questions for consideration:

"(i) Whether the appellants had any right of renewal or extension of lease under the lease agreement?

(ii) Whether, in the facts and circumstances of the case, Section 141(2) of the Act would apply and it is incumbent upon the NDMC to resort to the procedure laid down in this Section for grant of lease?

(iii) Whether the impugned decision dated 13th November, 2001 rejecting the offer of the appellants for extending the lease beyond 30th September, 2003 and to convert the cinema in a multiplex is arbitrary and/or discriminatory?"

The Hon'ble High Court in para 29 of the judgment summarized the position regarding the License Deed and its covenants as under:

(a) In the public auction held in the year 1965, bid of the appellants was accepted and 10 years' lease was granted i.e. from 1st October, 1970 to 30th September, 1980 (first block). This license deed contained renewal clause as per which one renewal could be allowed.

(b) On the appellants' exercising their option to renew the license/lease agreement dated 23rd September, 1980 was entered into for second block i.e. 1st October, 1980 to 30th September, 1990 by enhancing the license fee and mentioning the same in the said license deed. However, the appellants themselves challenged this license deed on the ground that it was executed under coercion and was not binding by filing Suit No.295/1981.

(c) Even if this license deed dated 23rd September, 1980 is to be treated as binding, fresh renewal could be, as per the license deed, only on both the parties agreeing for renewal and on terms on which renewal is to take place. No such thing happened; No further license deed was executed. Therefore, contract between the parties came to an end.

(d) Offer of further renewal beyond 1st October, 1990 (third block) was initiated vide NDMC's letter dated 2nd December, 1991. Although response dated 5th December, 1991 was given which was not an acceptance in the eyes of law; no further license deed/agreement was executed although offer dated 2nd December, 1991 clearly stipulated that the same was subject to execution of fresh agreement. Moreover, the

offer contained in the letter dated 2nd December, 1991 was challenged by the appellants themselves by filing CWP No. 3244/1992 meaning thereby it did not accept the said offer. However, they continued in possession because of stay orders granted in the writ petition. In this manner although without a contract, even the third block contained in the offer dated 2nd December, 1991 expired on 30th September, 2000. Therefore, this 'extension' did not flow from the lease executed in the beginning which had already expired, but was the result of the offer of the NDMC, an offer which did not fructify into a binding contract but the appellants enjoyed the occupation and term of 3rd block completed under the umbrella of court order.

(e) The Council extended the lease for another 3 years i.e. from 1st October, 2000 to 30th September, 2003. Again a unilateral act to validate the possession of the appellants for this period and to enable it to consider the proposal of the appellants. Otherwise there was no subsisting lease or agreement written or oral which gave any right to the appellants to seek further renewal under the lease.

The Hon'ble High Court in para 30 of its judgment held as under:

"30. It clearly follows from the aforesaid discussion that initial license/lease agreement dated 16th September, 1970 and thereafter second lease deed dated 23rd September, 1980 (even if it is to be treated as binding) came to an end and, therefore, there was no contract between the parties governing contractual relationship. Thus in so far as the appellants are concerned, they could not exercise any right for further extension under any contract/lease in the absence of any agreement in this behalf operating between the parties." (Emphasis Supplied)

In para 32 of the judgement, the Hon'ble Division Bench culled out the law relating to the lease deeds and renewal and extension thereof as under:-

"32.

a) In India, a lease may be in perpetuity and the law, either the Transfer of Property Act or the general law abhors a lease in perpetuity. If there is a covenant for renewal in the lease agreement, lessee can exercise his right unilaterally for extension of lease, for which consent of Lesser is not necessary.

(b) Where the principal lease executed between the parties containing a covenant for renewal, is renewed in accordance with the said covenant, whether the renewed lease shall also contain similar clause for renewal depends on the facts and circumstances of each case, regard being had to the intention of the parties as displayed in the original covenant for renewal and the surrounding circumstances.

(c) There is difference between an extension of lease in accordance with the covenant in that regard contained in the principal lease and renewal of lease. In the case of extension it is not necessary to have a fresh deed of lease executed. However, option for renewal consistently with the covenant for renewal has to be exercised consistently with the terms thereof and, if exercised, a fresh deed of lease shall have to be executed between the parties.

(d) Failing the execution of fresh deed of lease, another lease for a fixed terms shall not come into existence though the principal lease in spite of the expiry of the term thereof may continue by holding over for year by year or month by month, as the case may be.

(e) If the language in the lease deed is ambiguous, the court would opt for an interpretation negating the plea of the perpetual lease. Where there is a clause for renewal subject to the same terms and conditions, it would be construed as giving a right to renewal for the same period as the period of the original lease, but not a right to second or third renewal and so on unless, of course, the language is clear and unambiguous. While ascertaining the intention of the parties in this behalf, lease deed has to be read as a whole."

The Hon'ble Division Bench in para 33 of its judgment came to the conclusion that there is no right to seek any renewal under the lease (License Deed).

While considering the applicability of section 141(2) of the NDMC Act, the Hon'ble High Court in para 40 of the judgment culled out the principles regarding disposal of the public property as under:

"40.

(a) The demarcated approach for disposal of public property, in contradiction to the disposal of private property is that it should be for public purpose and in public interest.

(b) Disposal of public property partakes the character of a trust.

(c) Public purpose would be served only by getting best price for such property so that larger revenue coming into the coffers of the State administration can be utilized for beneficent activities to sub-serve public purpose, namely, the welfare State.

(d) For getting the best price, the public property should be put to public auction or by inviting tender with open participation i.e. ensure maximum public participation and a reserve price. This also ensures transparency and such an auction would be free from bias or discrimination and thus beyond reproach.

(e) Private negotiations should always be avoided as it cannot withstand public gaze and cast reflection on the Government or its official and is also against social and public interest.

(f) In exceptional cases, the authorities may depart from public auction or tender process and even dispose of the property at lower price than the market price or even for a token price. However, resort to this process can be taken only to achieve some defined constitutionally recognized public purpose, one such being to achieve the goal set out under Part-IV of the Constitution of India.

(g) When the statute provides for several modes for disposal of the property as in the case of New India Public School (supra) where Section 15(3) provided for the disposal of the property by public auction, allotment, or otherwise, the court declared that the word 'otherwise' would be construed to be consistent with the public purpose as public authority is discharging its public duty while disposing of the property when it is not resorting to public auction but 'otherwise'. Therefore, the court mandated the necessity of unequal guidelines or rules so that it is not at the whim and fancy of the public authorities or under their garb or cloak for any extraneous consideration. Again it would depend upon the nature of the scheme and object of public purpose sought to be achieved while resorting to this mode. The court thus held that it was necessary to make specific regulations or valid guidelines to exercise."

On the basis of the above principles the Hon'ble High Court regarding applicability of Section 141(2) of the NDMC Act held as under:

"41. This clinching principle for the grant of government property, i.e. normally by public auction and in a given case if that is not possible then by inviting tenders and in no case by private negotiations, is statutorily recognized under Section 141(2) of the Act. In fact the appellants could not dispute this principle enshrined in Section 141(2) of the Act or even inbuilt in Article 14 of the Constitution of India and recognized by the courts dehors Section 141(2) of the Act."

In para 43 of the judgment the Hon'ble Division Bench held that the lease deed having expired, there being no right to seek extension, there being no renewal clause, the requirement of consideration for renewal would be a case of fresh grant on lease. The conclusion in this regard under para 43 reads as under:

"We have already concluded that lease of the appellants had expired long ago. The appellants' right to seek extension of the lease, under the lease agreement, also stood extinguished. If after the lease period is over by efflux of time or otherwise, there is no renewal clause under which right can be exercised to get the lease extended and the lessee has no right to continue in occupation of the premises in question, any 'extension' would be a case of fresh grant only. Therefore, it would be a case of creating lease of an immovable property and once the immovable property is to be 'leased', the NDMC has to resort to provisions of Section 141(2) of the Act. That is the only interpretation which can be given to the provisions of Section 141(2) of the Act, more so when the generally accepted principle of law for disposal of public property, as detailed above, is the public auction where most important consideration is the economics of getting maximum price."

Further, in para 48, the Hon'ble Division Bench held as under:

"Obviously, when the appellants have no contractual right to continue and the complex is to be redeveloped into another project, the NDMC shall have to resort to Section 141(2) of the Act while dealing with disposal of the immovable property for another project/purpose. In that eventuality, it no more remains the case of 'renewal' of the lease because it would be a fresh grant for altogether different purpose and obviously on different terms for which the authorities will apply different parameters. In such a scenario, grant of lease in favor of the appellants, ignoring the provisions of Section 141(2) of the Act, would be contrary to the statutory mandate. [See: MI Builders Pvt. Ltd. v. Radhey Shyam Sahu [(1999) 6 SCC 464]]"

While considering the issue of arbitrariness and discrimination in para 60 of the judgment, the Hon'ble Division Bench noticed that in the case of Sun Air Hotel as well as Bharat Hotel, the allotment was after inviting tenders to a successful tenderer.

The judgment of D.B. and Single Judge were challenged by the Aggarwal & Modi in the Hon'ble Supreme Court.

Hon'ble Supreme Court while upholding the view taken by the Learned Single Judge as well as the Division Bench, in para 22 of the judgement held as under:

"22. The mandate of Sec.141(2) is that any immovable property belonging to NDMC is to be sold, leased, licensed or transferred on consideration which is not to be less than the value at which such immovable property could be sold, leased, or transferred in fair competition. The crucial expression is "normal and fair

competition". In other words, NDMC is obligated to adopt the procedure by which it can get maximum possible return/consideration for such immovable property. The methodology which can be adopted for receiving maximum consideration in a normal and fair competition would be the public auction which is expected to be fair and transparent. Public auction not only ensures fair price and maximum return it also militates against any allegation of favouritism on the part of the Government authorities while giving grant for disposing of public property. The courts have accepted public auction as a transparent means of disposal of public property. (See *State of U.P. v. Shiv Charan Sharma, Ram & Shyam Co. V. State of Haryana*, *Sterling Computers Ltd.v.M&N Publications Ltd.*, *Mahesh Chandra v.Regional Manager, U.P. Financial Corporation, Pachaiyappa's Trust v.Official Trustee of Madras*, *Chariman and MD, Sipcot v.Contromix(P) Ltd.*, *New India Public School v.HUDA*, *State of Kerala v. M.Bhaskaran Pillai* and *Haryana Financial Corpn.v.Jagdamba Oil Mills.*" (Emphasis Supplied)

Further the Hon'ble Supreme Court in para 23 of the said judgement held that invitation for participation in public auction ensures transparency and it would be free from bias or discrimination beyond reproach. Para 23 reads as -

"23. Disposal of public property partakes the character of trust and there is distinct demarcated approach for disposal of public property in contradiction to the disposal of private property i.e. it should be for public purpose and in public interest. Invitation for participation in public auction ensures transparency and it would be free from bias or discrimination and beyond reproach. (Emphasis Supplied)

Under the terms of the License deed clause II (2), the period of the License was 33 years. Licenser could request for consideration for extension for a further period which is to be considered by the licenser on such terms and conditions as may be mutually agreed upon between the licenser and the licensee. A perusal of the said clauses of the license clearly shows that upon expiry of the term of License, licenser does not have any right to have any further extension, there is no renewal clause under which right can be exercised to get the license extended and the licenser has no right to continue in occupation of premises, any 'extension' would be a case of fresh grant only. There is no compulsion on NDMC as a licenser to renew the License deed. That being the case the provision of Sec. 141(2) as interpreted by Hon'ble Supreme Court in *Chanakya Cinema case* (supra) will be attracted.

In view of the above, in my opinion, the Council will be bound to lease out property now by invitation by participation in public auction so as to fetch the market value of the property to be licensed/ leased. The query No.1 is answered accordingly.

Query No.2

Reply:- The judgement of the Hon'ble Single Judge as well as the Division Bench of the Delhi High Court in *Aggarwal & Modi case* was upheld by the Hon'ble Supreme Court. The judgments have been quoted in extensor in response to query no 1 above. The view taken in that case was that the lease/license period having expired, there being no Clause contemplating extension, there being no renewal clause under which right can be exercised to get the lease extended and the lessee has no right to continue in occupation of the premises in question, any "extension" would be a case of fresh grant only. Therefore, in such a case, for creating a lease/license of an immovable property NDMC has to resort to the provisions of Section 141 (2) of the Act. The Hon'ble Supreme Court in the said case has held that immovable property of the NDMC has to be sold, leased, licensed or transferred on a consideration which

shall not be the value at which the immovable property could be sold, leased or transferred in fair competition, is fully applicable to the present case. NDMC is bound to follow the law laid down by the Hon'ble Supreme Court and High Court. It may not be out of place to mention here that in the said judgement the Hon'ble Supreme Court has laid down that NDMC is obligated to adopt the procedure by which it can get maximum possible return/consideration for such immovable property and that the methodology which could be adopted in reaching maximum consideration in a normal and fair competition can be public auction which is expected to be fair and transparent. Hon'ble Court has further laid down that the public auction not only ensured fair price and maximum return it also militates against any allegation of favoritism on the part of the Government authorities while giving grant for disposing of public property.

In my opinion, NDMC is bound to follow the judgement of the Hon'ble Supreme Court in M/s Aggarwal & Modi's case. The query No.2 is answered accordingly.

Query No.3

Reply :- The query No.3 is partially answered by answering query No.1 but for the sake of clarity, I may say that the issue was considered by the Hon'ble Supreme Court in para 10 of its judgement in Aggarwal & Modi's case. Para 10 of the judgement reads as follows:

10. In essence, it means that the lease amounts should not be less than the market value. The expression in the renewal clause on which great emphasis is led speaks of "terms and conditions to be mutually agreed upon". According to the appellants it cannot mean that one of the parties can stipulate unreasonable terms and conditions. In essence, the terms and conditions have to be fair. While determining the fair value the amount is what the existing tenant is required to pay. NDMC itself had required payment of rupees two crores per year. The requirements of Section 141(2) cannot apply to a case of renewal. It is submitted that the appellants have spent more than rupees three crores after 2000. Though there has been no renewal the High Court noted that discriminatory treatment is being meted out to the appellants and, therefore, it had directed the respondent NDMC to give instances where public auction had been resorted to.

While dealing with the aforesaid contention the Hon'ble Supreme Court came to the conclusion in para 22 and 23 reproduced above while answering query No.1 and held that even in such case, the NDMC will have to follow the methodology of Section 141(2).

In my opinion, the provision of Section 141(2) as interpreted by the Hon'ble Division Bench of the High Court and upheld by the Hon'ble Supreme Court in para 22 and 23 of Aggarwal & Modi's judgement will be attracted/applicable in the present case. The NDMC, therefore, has to follow the procedure laid down by the Hon'ble Supreme Court in para 22 and 23 of Agarwal & Modi's judgement and grant License by public auction. The query No.3 is answered accordingly.

Query No.4

Reply :- A detailed discussion in response to query No.1 & 3 hereinabove may also be read as my response to the query No.4. The clause II (2) of the license deed provides that the NDMC has an option to grant a License for a further period on such terms and conditions as may be mutually agreed upon. The licensee can only request the licensor to consider its request for license for a further period. As such the

licensee after the lease period is over by efflux of time, there being no renewable clause to seek extension has no right to continue in occupation of premises and any extension would be a case of fresh grant only. In view of the law laid down by the High Court, upheld by the Hon'ble Supreme Court in para 22 and 23 of Aggarwal & Modi's case, the NDMC has no option but to grant lease/license to the Hotel building by invitation for participation in public auction so as to fetch fair market price and maximum returns as contemplated in Section 141 (2) of the NDMC Act. Query No.4 is answered accordingly."

25 The matter was again placed before the Council vide agenda item No. 09(E-03) dated 27.09.2012 alongwith the Report of Consultant M/s. Ernst & Young Private Ltd., and opinion of the Additional Solicitor General, with the following proposal:

- (i) The Council may grant extension for a further period on the terms and conditions as may be mutually agreed upon with IHC, or
- (ii) The Council may decide to go for public auction with first right of refusal to IHC.

26 Ld. ASG opined to go for public auction without any right of refusal to IHCL, and the legal advice tendered by the consultant giving three options viz. (a) NDMC to re-negotiate the financial and other terms and conditions with IHCL, (b) Inviting bids without granting any special rights to IHCL, and (c) Inviting bids while granting special rights to IHCL, however, only two options were placed before the Council viz.. (a) NDMC to re-negotiate the financial and other terms and conditions with IHCL and (b) Inviting bids with first right of refusal to IHCL.

27 The Council vide resolution item No. 09(E-03) dated 27.09.2012 resolved that:

"... After discussing at length the pros and cons of the two options proposed in the Item the Council resolved by majority, to opt for public auction, in a fair and transparent manner, of the NDMC property at 1, Man Singh Road, with first right of refusal to Indian Hotel Company. The recourse to public auction would serve to determine the market price of the license fee, that IHC would have to match if they wish to run a hotel at this property. This option, the Council noted would also safeguard its revenue interests.

The Council further resolved by majority to extend the period of license of IHC, on existing terms and conditions, for a further period of one year or till such time a new licensee is chosen through the bidding process, whichever is earlier.

..."

28 A writ petition was filed in the Delhi High Court by one Sh. Mithilesh Kumar Pandey. The petition was considered by the Delhi High court on 17.10.2012 in CWP No.6615/2012 and passed the order on the same day which is re-produced hereunder :-

"

ORDER

17.10.2012

1. This petition filed in public interest seeks a direction for a CBI probe into the matter of extension by the respondent NDMC of lease of property commonly known as Hotel Taj Mansingh by one year from 10th October, 2012 to 10th October, 2013; a relief for termination of the said lease deed is also sought. It is pleaded that the lease of the said property earlier granted expired in October, 2011 and was extendable for a term of one year only and was so extended till October, 2012; that though the respondent, NDMC was required to expedite the auction of the said

property, but instead of doing so, further extended the lease from October, 2012 till October, 2013 despite the fact that there was no agenda therefore in the meeting of the NDMC for such extension. In support of the plea that the property is to be auctioned, reliance is placed on the written opinion dated 14th September, 2012 received by the respondent NDMC from the Additional Solicitors General of India. It is alleged that the officials of the NDMC, however, for their personal illegal gain and in connivance with the tenant, i.e. M/s. Indian Hotels Company Limited(IHC) [which has not been impleaded as a respondent] extended the lease to the benefit of the tenant. The Counsel for the petitioner has argued that the property would have fetched a price of more than Rs.2000 crores and which would have fetched interest income of much more than the monthly rent for the extension negotiated by the NDMC with the tenant. Reliance is placed on Aggarwal and Modi Enterprises Private Ltd. V/s. NDMC, (2007) 8 SCC 75 and on Eureka Forbes Ltd. V/s. Allahabad Bank, (2010) 6 SCC 193.

2. The Counsel for the NDMC appearing on advance notice has refuted that the decision for extension of the lease for one year from October, 2012 to October, 2013 in the meeting of the NDMC was without any agenda item. He has produced before us the minutes of the Council's meeting No.07/2012-13 held on 27th September, 2012 at 4:00 pm in the Council Room, Palika Kendra, New Delhi and against agenda item No.09(E-03) titled "Operation and Management of Five Star Hotel Premises at 1, Man Singh road after the expiry of the extended license period on 10th October, 2012". The decision of the majority "to extend the period of license of IHC, on existing terms and conditions, for a further period of one year or till such time a new licensee is chosen through the bidding process, whichever is earlier" is noted. The Council further decided to opt for public auction in a fair and transparent manner, with first right of refusal to IHC.

3. The Counsel for NDMC further states that for the purposes of holding the public auction, M/s. Ernst and Young Consultants have been appointed and an attempt is being made to hold the public auction within a period of three to six months from today.

4. The petitioner, who is an advocate and has filed this petition on the basis of newspaper reports and without any detailed enquiry, is unable to rebut the aforesaid.

5. Though, it cannot be lost sight of that NDMC, in the matter has not acted in right earnest in as much as the date of expiry of lease was known in advance and preparation before hand could have been made for public auction but there is no material before us for deeming a CBI inquiry to be necessary in the matter. Every delay in decision making cannot be a cause for such inquiry and the CBI, a premier investigative agency cannot be bogged down by referring each such case to them. The pleas of the petitioner are also of lethargy on the part of NDMC and though collusion with the tenant is alleged, but without any names or particulars thereof.

We are thus not inclined to entertain this petition in public interest and dismiss the same."

29 Not satisfied with the dismissal of the writ petition CWP No.6615/2012, the petitioner filed a Special Leave Petition (Civil) No. 9142/2013 in the Supreme Court on 11.01.2013 and the Hon'ble Supreme Court on 04.03.2013 issued notices to the parties. The said SLP(Civil) was dismissed by the Hon'ble Supreme Court vide its order dated

04.04.2014 as the petitioner after arguing the matter for some time, prayed for withdrawal of the SLP.

30 Meanwhile, M/s Ernst & Young consultant for the project was informed about the decision taken in the Council in its meeting held on 27.09.2012 vide letter No. D/390/PA/DE-I/2012 dated 05.11.2012 and advising them to work on the Request for Proposal (RFP) document including Draft Agreement. The Consultant M/s Ernst & Young sought legal advice from Mr. Gagan Anand, Advocate and Solicitor/Sr. Partner Legally Law Officers as to whether IHCL would be required to participate in the bidding process or otherwise, who vide letter dated 31.01.2013 advised as under:

"In view of the above described legal position, we are of the considered opinion that in order to optimally safeguard the interests of NDMC against the underlying legal risks of proceeding ahead with the bidding process on the basis of its decision dt. 27.09.2012 to grant limited preferential treatment to IHC by allowing it an opportunity to match the highest offer, the latest version of RFP document and the Draft License Agreement forwarded to NDMC by E&Y have been legally structured in the best and the safest possible manner.

Further, in our considered opinion, adopting any other method such as addressing a letter to IHC by NDMC thereby calling upon IHC to accept certain terms & conditions shall be neither legally tenable nor required, in view of the legal position that there is no legal right vested with IHC for seeking any special rights/privileges in any bidding process to be conducted by NDMC. The decision under the special circumstances of the case can be implemented most effectively through the provisions of the RFP document and the Draft Licence Deed already submitted to NDMC by E&Y."

31 M/s Ernst & Young vide letter dated 15.03.2013 forwarded draft RFP document to the NDMC, containing the draft RFP and the draft Agreement. These draft RFP documents were placed before the Council in its meeting held on 10.04.2013, wherein the Council after detailed deliberations vide resolution item No. 07(L-05) dated 10.04.2013 resolved to discuss the matter in a Special meeting of the Council after receiving copy of the orders in the pending Court cases

32 MHA vide letter dated 10.5.2013 had communicated to the NDMC that the first right to refusal in the said public auction has not been provided for in the lease deed which may result to receive in lower bid in the public auction. Therefore, MHA was of the considered view that the first right of refusal should not be allowed to IHCL in the proposed auction and fresh lease should be granted by open public auction. MHA reiterated its stand vide its letter dated 27.06.2013.

33 On 08th April 2013, IHCL filed a suit CS(OS) No. 651 of 2013 for permanent injunction and prayed the Hon'ble Court which reads as under :-

(a) Pass a decree of permanent injunction restraining the Defendant by itself, its servants, agents, subordinates and successors from in any manner interfering with the possession, right to operate, run and maintain the hotel premises at 1, Man Singh Road, New Delhi of the Plaintiff, as per the Collaboration Agreement dated 18th December, 1976 read with the Deed of License dated 18th December, 1976 and Supplemental Agreement dated 25th September, 1979;

(b) Pass a decree of permanent injunction restraining the Defendant, its servants, officers, agents, subordinates and/or its successors from giving effect to the decision communicated through the letter dated 5.11.2012 having No.D/389/PA/D.E.-1/2012 in

respect of hotel premises at 1, Man Singh Road, New Delhi, and/or from giving effect to any known or unknown decision to conduct an auction for running/operating/maintain, the hotel premises at 1, Man Singh Road, New Delhi;
 (c) *Pass any orders as the Court may deem fit in the nature and circumstances of the case."*

34 The following prayers were also made by IHCL before the Hon'ble Court in civil suit titled as 'The Indian Hotels Co. Ltd. vs. NDMC' [CS(OS) No. 651/2013]:

- "*
- (a) *Pending the hearing and final disposal of the Suit, the Defendant by itself, its servant, agents, subordinates and successors, by a temporary order of injunction be restrained from in any manner implementing, and/or executing or taking any further steps in pursuance of the impugned decision contained in communication dated 5.11.2012 having No. D/389/PA/DE-I/2012 and in communicated dated 7.4.2015 having no. D-375/SO(Estate-I)/2015 in respect of Hotel premises at 1, Man Singh Road, New Delhi and restrain the Defendant from disturbing/hindering the Plaintiffs operations of the said Hotel on making payment of 17.25% of the gross turnover of the Hotel subject to a minimum guaranteed amount of Rs.21 crores per annum during the pendency of the Suit;*
- (b) *Pass ad interim, interim and/or ex-parte orders in terms of the above prayers;*
- (c) *Pass such other and further order(s) as this Hon'ble Court may deem fit and proper in the circumstances of the case."*

35 The matter came up for hearing in the Hon'ble High Court on 09th April 2013 and the Court has passed the following orders :-

"Summons in the suit and notice in the I.As be issued to the defendant. Learned Counsel appearing for the defendant accepts notice. Reply, if any, be filed within two weeks by supplying advance copy. Rejoinder and documents, if any, be filed within two weeks thereafter by supplying advance copy.

Learned Senior Counsel for the plaintiff has requested for ad-interim injunction against dispossession. This request will be considered on the next date. However, if there is any threat of coercive steps being taken by the defendant, the plaintiff will be a liberty to approach this Court."

36 Mr. C.K. Khaitan, JS (UT), MoUD and Member, NDMC vide his letter dated 22.04.2013 addressed to Secretary, NDMC mentioned that the minutes in respect to the aforesaid agenda No. 7 (L-05) dated 10.04.2013 i.e. for hotel property at 1, Man Singh Road has not been fully recorded. Further, the aforesaid minutes of the Council meeting dated 10.04.2013 were put up for confirmation in the Council Meeting held on 23.05.2013. While confirmation of the minutes, Sh. D. Diptivilasa, Additional Secretary (UD), MoUD and Member, NDMC and Sh. C.K. Khaitan, JS (UT), MoUD and Member NDMC had again objected to the recording of minutes of the Council Meeting held on 10.04.2013. After detailed discussion these minutes were approved by majority. Subsequently, Sh. D. Diptivilasa, Additional Secretary (UD), MOUD vide his letter dated 27.05.2013 addressed to Chairperson, NDMC conveyed his disagreement regarding recording of minutes.

37 The matter was placed before the Council vide Resolution No.07(L-03) dated 27.6.2013 and considering the difference of opinions in between the members of the Council, it was resolved to forward the matter for seeking advice of Solicitor General of

India through MHA. Accordingly, NDMC vide its letter dated 09.07.2013 requested the MHA to seek advice of Ld. SG in compliance of the Council's resolution dated 27.06.2013.

38 MHA vide letter dated 23.7.2013 directed NDMC to show cause by 06.8.2013 as to why a direction be not issued to NDMC to resort to public auction and find the best bidder before the end of October, 2013. This office memorandum was issued by virtue of the power vested in the Central Government in terms of Section 395 of the NDMC Act, 1994.

39 As the Council meeting was fixed for 4th September 2013 and the arrangement with IHCL was up to 10th October 2013, it was considered necessary to have the matter expedited in the Ministry of Home Affairs by making a reference to Department of Legal Affairs so that opinion of Solicitor General can be obtained by Ministry of Law at an early date. Accordingly, D.O. letters dated 29th August, 2013 and 3rd September, 2013 were sent by NDMC to MHA to have the matter expedited.

40 A letter no. 14011/12/2013-Delhi-II dated 3rd September, 2013 was received from the Ministry of Home Affairs conveying that the Ministry has no objection to referring the matter to the Solicitor General of India by NDMC themselves for legal opinion. However, MHA consequently agreed to send the matter for the opinion through Ministry of Law, Department of Legal Affairs and sought brief note vide letter dated 01.10.2013 for considered opinion of Solicitor General of India as referred to them by Department of Legal Affairs.

41 As the arrangement with IHCL as per Council's Resolution dated 27th September 2012 was available upto 10.10.2013, and since the instructions of the Ministry of Home Affairs consequent upon the opinion of the Solicitor General of India, as required by the Council in its meeting on 27.6.2013, were not received, the Council vide resolution item No. 18 (L-03) dated 07.10.2013 resolved that the arrangement with IHCL for payment of licence fee should continue till 31.3.2014, or till the Council takes a decision on receipt of such opinion, whichever is earlier.

42 As instructions in the matter had not been received, a D.O. letter dated 14.02.2014 was sent to Ministry of Home Affairs to help the NDMC to finalize and implement the decision on Hotel building at 1, Man Singh Road. As the instructions of the MHA were not expected before the 31.03.2014 and as it was understood that the Ld. Solicitor General was in process of finalising the advice to be rendered to MHA through the Ministry of Law & Justice, the Council vide resolution item No. 04 (L - 09) dated 21.03.2014 resolved to grant four months extension w.e.f. 01.04.2014 to IHCL.

43 The then Ld. Solicitor General of India (Ld. SG) vide his opinion dated 19.04.2014 (copy placed at **Annexure I, See pages 447-546**) opined which reads as under:

"...

50. Now let us consider the options as proposed and whether such an option is in tune with provisions of section 141(2) of the NDMC Act. Insofar as the above queries are related, I am proceeding to answer them together

Option 1 - Renewal of licence by mutual negotiation subject to ensuring fair market value

48. It would be pertinent to note that the Council vide its resolution dated 27.09.2012 has observed the fact "that IHC not only has a clean record in its dealing with the Council, but has also made regular payments of licence fee to it till date and that

there are no disputes between the Council and the License (IHC Ltd.)". Moreover, the increase in the overall turnover of the Hotel from Rd.8.96 crore in 1979-80 to Rs. 194.29 crores in 2010-11 has also benefitted NDMC by increasing its share of the gross revenue by way of licence fee per annum which increased gradually from Rs.0.94 crores in 1979-80 to Rs.20.40 crores in 2010-11 taking the NDMC's earnings cumulatively to Rs.237.78 crores upto 31.03.2011 as against the NDMC's total original investment of Rs.6.26 crores. Therefore, from the NDMC's own records and resolution, it appears that the association with IHCL has been financially very fruitful owing to the financial success of the hotel itself. [Refer to Paras 35 to 39 above for an Analysis of the E&Y Report and Comparative Chart of licence fee earned from other hotel projects.]

49. Section 141. Disposal of immovable property:

50. In my view, the statutory mandate of Section 141(2) of ensuring a fair market value during disposal of property can be achieved in a myriad ways, while safeguarding not only the revenue interests of the NDMC but also keeping in view the past performance of the incumbent licensee, the profitability of association with such licensee which the NDMC has enjoyed over more than thirty years as well as the expertise and experience of over a 100 years of the incumbent licensee in the hotel industry observed by the NDMC in the Collaboration Agreement. Keeping in mind all these considerations and market realities as well as the statutory mandate of fetching the market value which the property would ordinarily get through normal and fair competition, extending the lease in favour of IHCL, cannot be termed as an unfair decision since ultimately it is sought to be taken in public interests, in light of the past profitability of the Hotel and consequent ensuing benefit to the NDMC by way of licence fee as well as the well-known brand name of the Taj Group. The fact that the Road on which the Hotel stands has obtained secondary meaning and is also generically referred to as the Taj Man Singh Road is testament to its popularity and the NDMC will be within its statutory, constitutional and contractual obligations and mandate, if it so chooses to renew the licence in favour of the incumbent licensee in light of all the above considerations. Moreover, this is not a disposal of property by way of licence/lease simplicitor, rather as discussed above, it is more in the nature of a Collaboration / Joint Venture between NDMC and IHCL and stands on quite a different footing to all the existing leases. Keeping in view the above unique and peculiar facts and circumstances, and the fact that ultimately the object of the renewal of the licence is revenue maximisation, the NDMC should exercise the powers in a manner which should not be tainted by arbitrariness or lack of bona fides. The exercise of power of renewal is also subject to the test of responsiveness under Article 14 and although renewal can be rejected in public interest which prevails over private interest, if such renewal is equally relevant for public interest, it cannot be easily overlooked. Moreover, it must also be noted that the collaboration agreement between the parties still subsists and to put an end to it, there has to be valid reasons, failing which such decisions would be open to question on the grounds of unreasonableness and arbitrariness.

51. The NDMC in its meeting on 30th August 2000 resolved that "On the expiry of present term of licences of hotels/ cinemas and other similar commercial complexes, the licenses shall not be renewed. The fresh licence shall be as per provisions of Section-141(2) of the N.D.M.C. Act,1994." In my view, it is well-settled that the statute prevails over Circulars/Resolutions of Departments and ultimately the guiding principle in light of the Constitution Bench judgment in Natural Resources Allocation,

In re, Special Reference No. 1 of 2012 (2012) 10 SCC 1 as well as the statutory mandate of section 141(2), in light of the peculiar facts and circumstance of the matter, the NDMC need not necessarily dispose of the said premises by auction and may proceed to renew the terms of the licence provided it can ensure that a fair market value of rentals which the property will fetch is arrived at and this can be done by seeking views of an expert committee well-versed in valuation so that NDMC's financial interest is safeguarded. After procuring such valuation report, the Querist can further obtain a second opinion from a similarly well-reputed valuer and keeping in account potential increases in market value, terms may be negotiated with IHCL.

52. Therefore, in my view, subject to all the safeguards as provided above, the option to renew the licence in favour of IHCL provided that a fair, market value is arrived at, the NDMC's decision cannot be termed as unfair and would be within the requirements of statutory and constitutional parameters as discussed above.

Option II - To call for offers from various parties with the right to IHCL to match the Highest Offer

53. The sanctity of the bidding process may be jeopardized if a right of first refusal is given to IHCL since it may tantamount to negotiations during the tendering process after opening the price bid, which is prohibited as per the law laid down by the Hon'ble Supreme Court as well as CVC guidelines. Attention may be drawn to CVC Office Order No. 68/10/05 dated 25.10.2005 read with Circular No. 4/3/07 dated 03.03.2007. The CVC guidelines provide that there should not be any negotiations during the tendering process. Negotiations, if at all, shall be an exception and only in the case of proprietary items or in the case of items with limited source of supply. It further provides that negotiations, if at all, shall be held with L-1 only. Therefore, the right of first refusal allowing IHCL to match the offer of the L-1 may tantamount to post-tender negotiations which is clearly prohibited by the CVC guidelines and would set a bad precedent adversely affecting the sanctity of the bidding process. Apart from the fact that this would, in all likelihood, be bad in law, there are other pitfalls therein, like an inherent danger of parties without sufficient experience and background making offers and the defaulting in regular payments as already seen from the past experiences of NDMC, which is likely to adversely affect the sanctity of the bidding process. It is in under circumstances like these where the Courts have suggested the route of private negotiations so that the sanctity of the-bidding process is not affected.

Option III - Public Auction & Termination of Existing Arrangement

54. This option can be resorted to in a situation like the case of Aggarwal & Modi where there was a breach of agreement but this is a case of renewal of licence where the Collaboration Agreement is still subsisting. The pending litigation before the Delhi High Court, wherein the High Court has given IHCL the liberty to move the Court in case any coercive action is taken against them by NDMC, may endanger the entire bidding process. The Querist is likely to be restrained from taking any coercive actions against IHCL and even assuming the suit goes against IHCL, they always have a right of appeal which is likely to lead to a long-drawn litigation to the detriment of the revenue interests of NDMC since a property in litigation is likely to fetch lower revenues, which is not conducive to either parties. The disposal of the property under question by public auction, need not necessarily serve the "common good"nr does this decision completely safeguard the interests of NDMC.

Pending Litigation

55. ...

56. ...

57. In my view, it cannot be termed as unlawful or arbitrary if NDMC resorts to Option I. However, before resorting to this Option, a meaningful exercise has to be done in public interest since the contract visualises that in the event of a renewal, the terms and conditions are to be negotiated and settled between the parties. Therefore, any offer by IHCL can be duly considered if in the opinion of NDMC it best sub-serves public interest, public purpose and revenue maximisation keeping in view the ground realities as discussed above and considering the fact that there is a good commercial relationship between the parties, which has served the interests of NDMC with returns over Rs.237 crores (approximately till 2011). In my view, overturning this option would be against the revenue interests of NDMC and can be done so only if NDMC comes to the conclusion that grant of renewal through this option will be contrary to the law declared by the Hon'ble Supreme Court that it is fundamentally affecting revenue maximisation or conferring an undue advantage on any party. Option I appears to be the most suitable and advisable compared to Options II & III in light of what has been stated above. I have broadly stated the principles but it would be upto the NDMC to finally assess the situation but I must reiterate that the principles laid down in the case of Aggarwal and Modi cannot be mechanically applied ruling out Option I and this is all the more so in light of subsequent judgements of the Hon'ble Court restating the position of law that even where revenue maximisation is the object of the policy, auction would be one of the preferable methods, though not the only method for alienation / allocation of natural resources, and so long as it is done in a bona fide and reasonable manner, it would be consistent with the requirements of Article 14. Therefore, upon a careful consideration of the three options available to NDMC as discussed above, all of which are constitutionally and statutory permissible, it is my considered opinion that the NDMC, if it chooses to go ahead with Option I of negotiating the licence with IHC and arriving at a revenue sharing model at market value, which will best serve the Querist's financial and revenue interests, it cannot be termed unlawful or arbitrary.

58. My reasoning for arriving at the above conclusion, for the sake of convenience, can be summarised as below:

(i) The judgment of the Hon'ble Supreme Court in the case set of facts and circumstances and the principles therein cannot be mechanically applied to all matters of conveyance of property. Unlike the case in Aggarwal and Modi, this is neither a case of unauthorised occupation nor a change in user of property mandating auction as the only method. Moreover, unlike in that case where as the Supreme Court observed that there was no entitlement to seek renewal after 30.09.2000 and in fact (there was no such lease in operation under which this right of renewal could be exercised), the present matter is a case of renewal of a licence deed where a Joint Venture/ Collaboration arrangement still subsists and therefore, it stands on a completely different footing but even in such cases, revenue maximisation, ensuring of maximum return and satisfying the twin objects of public purpose and public interest are the quintessence. These are mandatory principles which have to be followed in every case.

(ii) Upon construction of both the Collaboration Agreement as well as the Licence Deed, it appears that the arrangement entered into between NDMC and IHCL is more

in the nature of joint venture for the construction, development, management and operation of a 5 star hotel in New Delhi with NDMC playing a lead supervisory role in the said Project and for this purpose the land at 1, Mansingh Road was given for the said use to IHCL.

(iii) This is further evident from the fact that the licence fee contemplated under the Licence Agreement is also not strictly in the nature of a fixed licence fee rather it contemplates a share of 10 1/2 percent of the gross income of the licence or 15% of the Licensor's investment, whichever is higher.

(iv) A share in the gross revenue is also a reflection of the market value in the use of property and therefore a revenue sharing arrangement in a profitable venture can also be said to fulfil the objective of revenue maximisation.

(v) NDMC, being a state authority within the ambit of Article 12 of the Constitution of India, is duty bound to act in a fair, reasonable, transparent, bona fide and non-arbitrary manner including considering the option of renewal granted to the licences under the contract.

(vi) The Hon'ble Supreme Court has reiterated the position of law in several judgments as follows.

(vii) In *Sachidananda Pandey Vs. State of West Bengal* 1987 (2) SCC 295 had upheld the decision of the State of West Bengal to lease out land for the construction of a 5 Star Hotel to the Taj Group of Hotels by mutual negotiations as fair and reasonable rather than inviting tenders or holding public auction since Tenders and auction were most impractical in the circumstances.

(viii) In the Presidential Reference in *Natural Resources Allocation, In re, Special Reference No. 1 of 2012* (2012) 10 SCC 1, a Five Judge bench of the Hon'ble Supreme Court has held that even where revenue maximisation is the policy, auction would be one of the preferable methods and cannot be the only constitutionally permissible method of disposal of natural / public resources.

(ix) The Hon'ble Supreme Court in *Pathan Mohammed Suleman Rehmatkhan vs. State of Gujarat & Ors.* (2013) 14 SCALE 385 has held that non-floating of tenders or absence of public auction or invitation alone is not a sufficient reason to characterize the action of a public authority as either arbitrary or unreasonable or amounted to mala fide or improper exercise of power. The Courts have always held that it is open to the state and the authorities to take economic and management decisions depending upon the exigencies of a situation guided by appropriate financial policy notified in public interest.

(x) The question whether the right of renewal under the Licence Deed constitutes a vested right or not is a matter which is sub-judice but it may be said to give rise to some legitimate expectation in the Contractor to discuss the possibility of renewal and negotiation and that exercise may also be useful for the Querist to ascertain the offer/view of the licensee and whether it is in the best interest of revenue maximisation. In fact, out of abundant caution, this exercise may be done with the leave of the Delhi High Court in the pending Civil Suit filed by IHCL, to arrive at a reasonable market value in consonance with the object of revenue maximisation.

(xi) The ground realities in the matter of earning of revenues by grant of leases /licences by NDMC for 5-Star Hotels when compared with revenue generated by virtue of Collaboration Agreement in the present case reflects favourably towards the latter. This is evident from the following.

(xii) The Querist vide its resolution dated 27.09.2012 has observed the fact "that IHC not only has a clean record in its dealing with the Council, but has also made regular payments of licence fee to it till date and that there are no disputes between the Council and the License (IHC Ltd.)".

(xiii) The Report of the Transaction Consultant (E&Y) appointed by NDMC is also a relevant factor which needs to be considered in the decision of renewal of licence, which records as follows:

1. Revenue parameters such as occupancy ratio, RevPAR and ADR for Taj Mahal Hotel are all higher than the ratios of comparable hotels in Delhi Lutyens area.
2. IHC has not defaulted in making lease payments to NDMC.
3. Among the 7 Hotel properties leased by NDMC, it received the largest consideration from Taj Mahal Hotel.
4. In conclusion the Report states that from a risk management and commercial consideration perspective NDMC stands to benefit most if the existing contract with IHC is renegotiated and extended.

(xiv) On a perusal of the comparative chart of licence fee collected from other hotels by NDMC, it is clear that the maximum revenue collected by NDMC in licence fee from Hotels is attributable to the taj Man Singh Hotel i.e. Rs.2.68 crore per month as it has never defaulted in any payment and there are no arrears in this regard.

(xv) Keeping in mind all these considerations and the ground realities as well as the statutory mandate of fetching the market value, extending the lease in favour of IHCL cannot be termed as an unlawful or unfair decision since ultimately it is sought to be taken in public interest keeping in mind the goal of revenue maximisation of NDMC which appears to be best served through Option 1, in light of the past profitable association with IHC in the running of the Hotel and the consequent ensuing benefit to the NDMC by way of a revenue-sharing licence fee as well as the well-known brand name of the Taj Group which has commercial viability.

(xvi) As pointed out by the Hon'ble Supreme Court in the case of Aggarwal & Modi (supra) since there has been no change in the dynamics/user and since this is only a case of renewal which had been contemplated by the parties and considering all past facts and ground realities, NDMC apart from carefully evaluating the offer of IHCL as to whether the said offer would adequately safeguard its interests by maximising its revenue share through the Agreement, should also have the offer thoroughly verified by a reputed and independent expert-body well-versed to these kinds of valuation and after taking into account potential increases in market value, can proceed to renew this Contract. I am suggesting the course since NDMC has secured returns which it has not secured in the past with any other entity and other ground realities and to avoid a long-drawn litigation. Further, I have also set out the principles of law of various Courts as well as the Hon'ble Supreme Court which supports the view I have taken."

44 Ld. Attorney General for India (Ld. AG) vide his opinion dated 20.08.2014 (copy placed at Annexure II, See pages 547-550) opined which reads as under:

"

9 *It is provided in the law that transfer of immovable property whether by way of sale, lease etc. should at such rates as would be available through "normal and fair competition"*

10 *The Supreme Court had occasion to deal with Section 141(2) in the case of Aggarwal & Modi which related to Chankya cinema.*

11 *The philosophy of law is that the NDM should not transfer property at an under valuation since the same will be contrary to public interest.*

12 *The notes in the file indicate that one option is outright auction while another option is public auction with a right of first refusal to IHCL and the third is a negotiation between the parties which yields the same consideration as would be available in "normal and fair competition".*

13 *In my view public auction with a right of first refusal to IHCL is impractical and would never yield a correct and fair price. The real choice is between negotiating for renewal or an outright public auction.*

14 *I agree with the opinion of the then Solicitor General that it will not be illegal for the NDMC to conduct mutual negotiations to arrive at a figure which would represent market value. This can be done through an expert in the field. M/s E&Y have already been given a report. Fresh reports can be asked to determine the market value. After market value is agreed to be paid by IHCL then that mode can be followed as suggested by the then Solicitor General.*

15 *If IHCL is not ready to give market value in terms of license for the renewed period then obviously public auction should be resorted to.*

16 *In nutshell, I agree with the view taken by the then Solicitor General in his opinion dated 19.04.2014."*

45 Ministry of Home Affairs, Government of India, after considering the opinions of Ld. AG and Ld. SG, vide its letter dated 1.1.2015 directed NDMC, by virtue of power vested in Central Government in terms of section 396 of the NDMC Act, 1994, to resort to public auction and find best bidder in respect of the property situated at 1, Mansingh Road, New Delhi.

46 The Council vide its resolution item no. 29 (L-17) dated 30.01.2015 resolved that:
"The matter was deliberated upon in detail. The Council took into consideration the directions of the Ministry of Home Affairs, Govt. of India conveyed vide letter dated 19.12.2014, by virtue of powers vested in Central Government in terms of Section 396 of the NDMC Act, 1994, to resort to Public Auction and find best bidder in respect of the property situated at No.1, Man Singh Road, New Delhi.

2. *As brought out in the agenda, the Council was also informed that multiple stages and factors which are involved in the process of Public Auction. The Model Code of Conduct is also in force.*

3. *The Council also took note of the fact that M/s Ernst & Young, who were appointed as Transaction Advisors for price discovery of the Hotel, vide their letter dated 12.01.2015, have shown their inability to proceed with their consultancy. Selection of another Consultant through open tendering process as before, would take time.*

4. *It was, therefore, resolved by the Council to ad-interim at this stage, extend the term of licence of M/s IHC Ltd. upto the period ending 31st March 2015, and to place the matter before the Council immediately after the Code of Conduct is lifted."*

- 47 The Council vide its resolution item no. 02 (L-23) dated 25.03.2015 resolved that:
"The Union Home Ministry has directed NDMC under Section 396 of NDMC Act to go for open auction of Taj Mansingh Hotel without giving first right of refusal to Indian Hotels. This direction is binding on NDMC."

The present extension given to Indian Hotel to run Taj Mansingh Hotel expires on 31st March, 2015. Therefore, NDMC has the following two options:

1. *NDMC may cancel the lease, ask Indian Hotels to vacate the hotel and go for open auction.*
2. *Extend the lease by a few months on present terms and conditions and auction the Hotel as a running enterprises.*

Option 2 seems to be a better option for the following reasons:

- a) *If the hotel is closed and Indian Hotels is asked to vacate the hotel, it would fetch much lesser price in open auction. If the hotel is auctioned as a running enterprise it would fetch much better price.*
- b) *If the hotel is allowed extension of few more months till such time as auction take place, it would give additional revenue to NDMC under the present terms and conditions.*
- c) *Closing down of running business for a gap of a few months may also send a negative signal to the entire business community.*

However, NDMC would need to work round the clock to take necessary actions so that open auction takes place at the earliest. Therefore, the council resolves to extend the lease for three months at present terms and conditions and directs the NDMC officials to complete open auction by the end of these three months."

- 48 Metal and Scraps Trading Corporation Ltd. (MSTC) vide its letter dated 23.3.2015 offered its services for e-auctioning of the properties of NDMC. Earlier vide its letter dated 08.8.2013, MSTC had offered its services in regard to e-auctioning of various properties. MSTC informed that, being in the government sector, it is following all the relevant CVC guidelines with STQC Certificate etc. and also requested that a presentation can be organized in NDMC office so that minor details in this regard can be worked out.

- 49 NDMC vide its letter dated 9.4.2015 sought guidance of Ministry of Coal, Government of India on (i) Appointment of Transaction Advisor and (ii) credentials of M/s MSTC Ltd. in the recent Coal block auctions, which had undertaken auction of coal blocks. In reply, Ministry of Coal, Government of India vide its letter dated 13.4.2015 informed as under:

"M/s. SBI Caps has been appointed as Transaction Advisor on nomination basis under Rule 176 of General Financial Rule, 2005 after obtaining approval of competent authority. Further, M/s. MSTC Ltd. has also been appointed as service provider to the Nominated Authority for e-auction of coal blocks on nomination basis following the same procedure as mentioned above. Here, it is pertinent to mention that both of the aforesaid appointments have been made on nomination basis due to paucity of time and the fact that timely completion of the allocation of coal mines was essential."

- 50 The Estate Department vide note dated 22.5.2015 requested the Projects Department, NDMC to take necessary steps for appointing Transaction Advisor, Fixing reserve price etc. The Project Department advised as under:

"In Principle approval from the Chairman, NDMC is required to engage M/s. SBI CAPS as Transaction Advisor for assisting NDMC in determining methodology for auctioning, developing the auction framework/rules, developing the standard bid document and evaluation of bids for the disposal of Hotel Taj Mansingh and M/s. MSTC as service provider for e-auction on nomination basis citing the Rule 176 of GFR 2005 and the circumstances in which the auction has attained urgency. Both the agencies have already been engaged successfully by the Ministry of Coal, GOI. The terms of reference and the fees can be subsequently worked out by the Estate Department for

these agencies after mutual consultation. MSTC is already having agreement with NDMC for the e-sale/e-auction of various products/obsolete/surplus/scrap and hence the auction of Hotel Taj Mansingh may be added in the list of various services for which agreement already executed.

51 As the period of extended term of licence of Hotel Taj Mansingh was going to expire on 30.6.2015, and to comply with the directions of the MHA dated 01.1.2015 the matter was referred to Director (Project), NDMC to take further steps to resort to Public Auction and find best bidder in respect of the property situated at No.1, Man Singh Road, and since the earlier Transaction Advisor M/s. Ernst & Young shown its inability to proceed with consultancy, and as such selection of another consultant through open tendering process would take time, therefore the Council vide its resolution item no. 16 (L-01) dated 12.06.2015 resolved that:

(a) Transaction Advisor:-

- (i) NDMC should nominate SBICAPS as Transaction Advisor on the lines of Ministry of Coal, Government of India. The fee should be worked out on mutual agreed terms with SBICAPS, in consultation with Finance Department of NDMC.
- (ii) The Chairman, NDMC authorised to finalize remuneration to the Transaction Advisor.

(b) e-Auction:

- (i) MSTC may be appointed as Service Provider for e-auctioning of this property on nomination basis since the same firm was appointed on nomination basis by Ministry of Coal, Government of India. The terms & conditions have to be mutually agreed upon in consultation with Finance Department.
- (ii) Till such time, the term of the licence to M/s. IHCL will be further extended by a reasonable period of 4 months, on the existing terms & conditions or till the completion of auction, whichever is earlier.

52 The decision of the Council dated 12.06.2015 was conveyed to all concerned i.e. M/s IHCL vide letter dated 02.7.2015 and to M/s. SBI Capital Market Ltd. vide letter dated 02.7.2015. Offer letter was received from M/s. SBI Capital Market Ltd. dated 8th July 2015 regarding the said assignment alongwith their scope of work and terms for undertaking the assignment. With the approval of the Competent Authority, NDMC, a Committee headed by Secretary, NDMC with Financial Advisor, Advisor(R&L), Director(Projects) and Director(Estates) as Members, was constituted for finalizing the terms of engagement of Transaction Advisor for auction of Hotel Taj Mansingh including scope of services, other terms & conditions and fee structure to be paid to Transaction Advisor. The scope of services and terms of agreement submitted by M/s SBI Capital Market Ltd. were placed before the Committee. Last meeting of the Committee was held on 17.7.2015. Deliberations were held with the representatives of the Transaction Advisor by the Committee. Following the discussions, final offer letter dated 17.7.2015 was submitted by Transaction Advisor in pursuance to the initial offer by NDMC. After negotiations, M/s SBI Capital Market Ltd. (Transaction Advisor) agreed to charge Rs.2.75 Crores instead of earlier offered amount of Rs.3.75 Crores. Out of this Rs.2.75 Crores to be paid to Transaction Advisor, Rs.1.0 Crore will be paid by the NDMC and Rs.1.75 Crores will be borne by the highest bidder.

53 The Council vide its resolution item no. 14 (L-02) dated 24.07.2015 resolved:

- (i) to accept the offer of the SBI Capital Market Ltd. to act as a Transaction Advisor for auction of license rights of Five Star Hotel at 1, Man Singh Road, New Delhi including acceptance of remuneration to be paid to M/s SBI Capital Market Ltd, on the negotiated amount of Rs.2.75 Crores (Rs. 1.00 Crore by the NDMC and Rs.1.75 Crore by the successful bidder) as per their offer letter;
- (ii) as M/s. SBI Capital Market Ltd., Transaction Advisor, shown inability to engage M/s MSTC as Auction Platform Provider and suggested that NDMC may engage the Auction Platform Provider directly, and the corresponding fee shall be paid to such Service Provider directly by the NDMC, in consultation with the Finance

Department of NDMC, therefore the Chairman, NDMC was authorised to finalize the remuneration to M/s MSTC Ltd., Auction Platform Provider and other terms and conditions of engagement.

54 The Council vide its resolution item no. 13 (L-06) dated 28.10.2015 resolved:

- (i) contract with the IHCL be extended, on payment of license fee and as per prevailing terms and conditions for a period of three months w.e.f. 01.11.2015 to 31.01.2016; and
- (ii) the Estate Department to submit the details of license fee being paid by various major hotels under NDMC, in the next meeting of the Council so that further deliberations can take place with the additional inputs and a decision can be finalised.

55 The Estate-I Department brought before the Council details of licence fee being paid by the various major hotels under NDMC, wherein the Council vide its resolution item no. 26 (L-09) dated 15.12.2015 resolved to convene a special meeting to finalise the matter of Five Star Hotel Premises (namely Taj Man Singh) at 1, Man Singh Road in near future. The Council also asked the department to bring a status note on all major hotels leased / licensed by the NDMC in the next meeting.

56 MHA vide letter dated 14th January 2016 directed the NDMC to expeditiously implement its directions for auctioning of the property.

57 The Estate-I Department, NDMC proposed for taking over the possession of the property situated at 1, Man Singh Road, New Delhi and proposed that Indian Hotels Company Ltd. (IHCL) shall handover the possession of the Hotel Taj Mansingh at 1 Mansingh Road New Delhi to NDMC as per license deed dated 18.12.1976 along with the assets mentioned under Collaboration Agreement and license deed dated 18.12.1976 read with Supplementary Agreement dated 25.9.79 within a period of one month on expiry of license. NDMC can go ahead with auction of hotel Taj Mansingh immediately after the expiry of the present licence period on 31.1.2016 and after seeking the approval of the council on the issues flagged by SBICAPS in its Bid Strategy papers, and recommended to the Council:

- (a) To take note of the status of the court case filed by IHCL in Civil Suit titled as the Indian Hotels Co. Ltd. vs NDMC (CS (OS)/651/2013) before the Hon'ble Delhi High Court.
- (b) To give an opportunity to the Transaction Advisor i.e. SBICAPS about the issues pertaining to the auction of the said property as enumerated in the Bid Strategy paper submitted, so that the Bid Paper can be finalized to enable the auctioning of the said property.
- (c) To approve the letter requesting IHCL to handover the said premises to NDMC by 29th February, 2016 alongwith assets as per Collaboration Agreement and Licence Deed.

58 The Council vide its resolution item no. 04 (L-10) dated 27.01.2016 resolved that:
"The Council discussed the matter in detail. SBI Caps has made detailed presentation about various issues on which it is seeking decision of the Council to finalise the bid strategy. The Council enquired about the legal status of the case with respect to the property and resolved that view from the NDMC defending Counsel in the case may be taken to ascertain whether there is any hindrance for auction of this property. Accordingly, advised the department to obtain the legal opinion from the Counsel concerned and place the same before the Special Meeting of the Council, which may be convened on 29.01.2016 for taking a view on the matter."

59 After going through the detailed presentation given by M/s. SBICPAS in the meeting held on 27.1.2016 regarding various issues raised by SBICAPS in their Bid Strategy Paper, the Council vide its resolution item no. 04 (L-10) dated 29.01.2016 resolved to approve the proposal of the department for issuing the letter to IHCL to

handover the possession of Hotel Taj Man Singh by 29th February, 2016. Apart from this, the Council decided the various issues raised by SBICAPS in its Bid Strategy Paper.

60 In compliance to the decision of the Council, NDMC vide letter dated 29.1.2016 requested IHCL to handover the possession of the said property to NDMC by 29.2.2016. A letter was received from Ministry of Home Affairs on 24.2.2016 regarding compliance of directions of MHA by the NDMC regarding auctioning of hotel property in a time bound manner. In response to the letter of MHA dated 24.2.2016, a detailed reply was sent to MHA by NDMC vide letter dated 09.3.2016.

61 The litigation as stated earlier was pending vide Civil Suit titled as the Indian Hotels Co. Ltd. vs. NDMC (CS (OS)/651/2013) before the Hon'ble Delhi High Court. Soon after the issue of the letter dated 29.1.2016 by NDMC directing the IHCL to vacate the premises, as IA was filed before the Hon'ble High Court of Delhi by IHCL and vide order dated 01.02.2016 in the CS(OS) No. 651/2013, the following was observed by the Hon'ble Court:

"In the application, the following prayers are made, which read as under:

- (i) Grant an interim injunction restraining the defendant from acting upon or giving effect to the letter dated 29.01.2016 bearing No. D-87/Dir.(E-I)/2015 and consequently stay/suspend the effect of the said letter during the pendency of the suit and the parties be directed to maintain status quo prevailing as on 29.01.2016;*
- (ii) Pass such other and further order as this Hon'ble Court may deem fit and proper in the circumstances of the case.*

Issue notice. Ms. Rachna Golcha, Advocate accepts notice on behalf of the defendant.

Mr. Jain, learned ASG states that he would like to file reply to this application. Let reply be filed within ten days. Rejoinder be filed within four days, thereafter.

Mr. Jain, learned ASG on instructions state that pursuant to the communication dated January 29, 2016, the defendant shall not take any coercive action against the plaintiff herein till the next date of hearing. His statement is taken on record".

62 Further, as vide order dated 19.02.2016 in the CS(OS) No. 651/2013, the following was observed by the Hon'ble High Court:

"Mr. Akshay Makhija, states that reply on behalf of the defendant has been filed on February 18, 2016 vide diary No. 47284. The same is not on record. Let the same be placed on record.

Mr. Rajiv Nayar, learned Senior Counsel seeks and allowed one week time to file rejoinder to the reply.

Adjourned to February 29, 2016.

Mr. Makhija, learned Counsel states that the statement made by Mr. Sanjay Jain, learned ASG on February 1, 2016 shall continue till the next date of hearing. The statement is taken on record".

63 Thereafter, the Hon'ble High Court vide order dated 29.02.2016 in the CS(OS) No. 651/2013 observed the following:

"Statement made by Mr. Jain, on February 1, 2016 shall continue till the next date of hearing".

64 There was a rider of the Hon'ble High Court not to take any coercive action and finally the matter was heard on 30.5.2016 and was reserved for judgement. The Hon'ble High Court of Delhi vide its order dated 30.5.2016 observed as under:

"The statement of Mr. Sanjay Jain, learned ASG dated 1st February, 2016 shall continue till pronouncement of the judgement.

Parties to file written submissions along with the list of judgements, they want to rely on by the evening of 2nd June, 2016."

65 NDMC could not proceed further as the Hon'ble High Court has directed the NDMC to continue with the statement of Sh. Sanjay Jain, Ld. ASG of not taking any coercive action till the issue is determined by the Hon'ble High Court. The Council noted this information vide its resolution item no. 07 (L-18) dated 05.09.2016.

66 Hon'ble High Court passed judgment dated 05/09/2016, deciding all the issues in the matter in favour of the NDMC. Single bench of Hon'ble High Court of Delhi in its judgment dated 05/09/2016 dismissed the suit by the current operator (IHCL) to renew its licence and upheld NDMC's decision to go for auction.

67 IHCL filed a RFA No. 67 of 2016 before the Division Bench of Hon'ble High Court of Delhi on 06th September, 2016, which was notified on 15th September, 2016. Sh. Sanjay Jain, Ld. ASG sought instructions from the department with respect to RFA No. 67 of 2016. The ASG raised the following query during the discussions on 06.09.2016, which is as under :-

"If we give a proposal to proceed with option during the pendency of a bill and if the court agrees to permit the same, please note that the Court is likely to pass two directions – First that you will notify that the auction is subject to the appeal and that the successful bidder will not be given entry till such a time the appeal is decided. This will result in two things, first we may not get the best bids and second the likely reduction in hotel's business will lower our shares of revenue during the intervening period. Please consider and instruct"

68 The Council vide resolution item no. 01 (L-22) dated 09.09.2016, while keeping in consideration the fact that (a) the matter is of commercial nature and involves public interest, and (b) RFA No. 67 of 2016 against the judgment and decree dated 05.09.2016 in CS(OS) No. 651 of 2013 in High Court of Delhi is listed for 15th September, 2016 i.e. after only two working days, resolved that Ld. ASG be instructed to:

- (i) request the Division Bench of the Hon'ble High Court of Delhi to reject, at the admission stage, the appeal RFA No. 67 of 2016 against the judgment and decree dated 05.09.2016 in CS(OS) No. 651 of 2013 in High Court of Delhi in the matter of Hotel Taj Mansingh;
- (ii) oppose stay on the judgment and decree dated 05.09.2016; and
- (iii) argue on the basis of findings of the Single Bench of Hon'ble High Court of Delhi in favour of the NDMC and the submissions made by the NDMC before the Single Bench of Hon'ble High Court of Delhi.

69 The appeal filed by IHCL before the division bench of Hon'ble High Court in RFA No. 67/2016 was dismissed by the Hon'ble High Court vide its judgment on 27.10.2016.

70 Subsequent to the decision of the Hon'ble High Court, NDMC written to IHCL vide its letter dated 2.11.2016 to clear all applicable dues and handover the possession of the property "immediately".

71 The Council was apprised of the decision of the Division Bench of Delhi High Court dated 27.10.2016 in its meeting held on 03.11.2016, wherein the Council resolved to take necessary action for finalization of tender documents in accordance with the earlier Council's decisions through SBICAPs for the purpose of auction of the said premises, and to take necessary action to defend the interests of NDMC in the Hon'ble Supreme Court, in case SLP is filed by IHCL before the Apex Court, and recover dues, if any, from IHCL.

72 IHCL filed a Special Leave Petition before the Hon'ble Supreme Court vide SLP (Civil) No. 33397/2016. The Hon'ble Supreme Court heard this SLP on 21.11.2016 and after extensive arguments directed to maintain status quo until further orders.

73 The Council resolved, vide resolution No. 05(L-25) dated 30.11.2016, that the Ld. Additional Solicitor General may be requested to take all necessary steps to get the stay order dated 21.10.2016 passed by Hon'ble Supreme Court in SLP(Civil) No.33397/2016 vacated, and get the said SLP dismissed. Accordingly, Ld. ASG was requested to take appropriate action in the matter vide NDMC's letter dated 30.11.2016.

74 O/o Ld. ASG provided a vetted copy of the draft affidavit to be filed in the Hon'ble Supreme Court in response to SLP (C) No. 33397/2016, which was sent to the NDMC's Advocate-on-Record on 15.12.2016 to file it in the Apex Court.

75 NDMC's Chairperson requested Ld. Attorney General for India to appear in the matter on behalf of NDMC on hearing scheduled on 10.01.2017, however, the same was not accepted due to prior engagement of Ld. AG.

76 On 10.01.2017, the matter was listed and argued by Shri Harish Salve, Senior Advocate on behalf of IHCL. During the hearing on 12.01.2017, Shri Harish Salve, who was representing the IHCL, informed the Apex Court that opinions were sought from the Ld. Attorney General for India (Ld. AG) as well as Ld. Solicitor General of India (Ld. SG) by NDMC, which were not placed before the Competent Authority - MHA, while deciding the matter, in which Competent Authority - MHA came to the conclusion that public auction without giving a first right of refusal to the IHCL, the petitioner alone should be done.

77 The Apex Court after hearing Shri Harish Salve passed the following orders on 12.01.2017 in SLP(C) No. 33397/2016 (copy placed at Annexure III, See pages 551-553):

"We have heard Mr. Harish Salve, learned Senior Counsel appearing for the petitioner - the Indian Hotels Company Limited and Mr. Sanjay Jain, learned Additional Solicitor General appearing for the respondent - New Delhi Municipal Council at considerable length.

During the course of hearing, we have been informed by learned Senior Counsel that opinions which were sought from the learned Solicitor General of India as well as the learned Attorney General for India by N.D.M.C. were not placed before the competent authority in the Ministry of Home Affairs while dealing with the matter, in which it came to the conclusion that public auction without giving a first right of refusal to the petitioner - the Indian Hotels Company Limited alone should be done.

It appears that even the N.D.M.C. vide its Resolution dated 27.09.2012 by majority agreed and came to a conclusion, after taking into consideration the facts, the Report of Committee of Officers, advice of competent authorities and also the legal opinion by advocates/law officers. This is summarized in its Minutes of the same date. Two options were short listed as follows:

- (i) The Council may grant extension for a further period on the terms and conditions as may be mutually agreed upon with IHC, or*
- (ii) The Council may decide to go for public auction with first right of refusal to IHC.*

After carefully considering all the facts placed before it in the Agenda Item, the Council came to the following decision:

"... After discussing at length the pros and cons of the two options proposed in the Item, the Council resolved by majority, to opt for public auction, in a fair and transparent manner, of the NDMC property at 1, Man Singh Road, with first right of refusal to Indian Hotel Company. The recourse to public auction would serve to determine the market price of the license fee, that IHC would have to match if they wish to run a hotel at this property. This option, the Council noted would also safeguard its revenue interests."

The Council further resolved by majority to extend the period of license of IHC, on existing terms and conditions, for a further period of one year or till such time a new licensee is chosen through the bidding process, whichever is earlier...."

In view of the above, at this stage, we direct the respondent - N.D.M.C. to reconsider the case of the petitioner in the light of their own decision dated 27.09.2012, and after taking into consideration the opinion expressed by the learned Solicitor General of India and learned Attorney General for India in the matter, and to submit their stand before this Court within a period of six weeks from today.

As prayed, list on Wednesday, the 1st March, 2017."

(operational portion has been highlighted)

78 Hon'ble Supreme Court asked NDMC to reconsider the case of the IHCL in the light of its decision dated 27.09.2012, and after taking into consideration the opinion expressed by the Ld. Attorney General for India and Ld. Solicitor General of India in the matter, and to submit its stand before Hon'ble Supreme Court within a period of six weeks from 12.01.2017 i.e. upto 23.02.2017.

79 As per records available on the file of NDMC, opinions of Ld. AG and Ld. SG were never been part of the record of the NDMC. A copy of the opinions of Ld. AG and Ld. SG has been received as an Annexure to the SLP (C) No. 33397/2016 pending before the Hon'ble Supreme Court.

80 In the light of the MHA's direction given vide letter No. 14011/12/2013-Delhi-II dated 01.01.2015 which were issued in exercise of the powers vested with the Central Government under Section 396 of the NDMC Act 1994 and to comply with the order of the Hon'ble Supreme Court dated 12.01.2017 passed in SLP(C) No.33397/2016, MHA has been requested vide NDMC's letter dated 24.01.2017 to issue further directions in the matter to the NDMC.

81 The matter is listed for hearing before Hon'ble Supreme Court on 03.03.2017.

82 MHA vide its letter dated 23.02.2017 (copy placed at Annexure IV, See pages 554-555) informed the NDMC that:

"...when the Competent Authority in the Central Government had taken a decision under section 396 of NDMC Act 1994, which was intimated to the NDMC on 01.01.2015, the opinions of Ld. AG for India and Ld. SG of India were taken into account. Therefore this aspect may be clarified before the Hon'ble Court. The relevant extracts of the opinion of Ld. AGI is as under:

"...

12 The notes in the file indicate that one option is outright auction while another option is public auction with a right of first refusal to IHCL and the third is negotiation between the parties which yields the same consideration as would be available in "normal and fair competition".

13 In my view public auction with a right of first refusal to IHCL is impractical and would never yield a correct and fair price. The real choice is between negotiating for renewal or an outright public auction.

14 I agree with the opinion of the then Solicitor General that it will not be illegal for the NDMC to conduct mutual negotiations to arrive at a figure which would represent market value. This can be done through an expert in the field. M/s E&Y have already been given a report. Fresh reports can be asked to determine the market value. After market value is agreed to be paid by IHCL then that mode can be followed as suggested by the then Solicitor General.

15 If IHCL is not ready to give market value in terms of license for the renewed period then obviously public auction should be resorted to."

As per the opinion of Ld. AG, the real choice was between negotiating for renewal or an outright public auction. Referring to the opinion of Ld. SG, it was stated in the opinion that the negotiation would not be illegal. However, outright public auction was also stated as the other option and auction with Right of First Refusal was clearly ruled out.

Accordingly, MHA took a decision to go for public auction to ensure highest level of transparency and to avoid any subjectivity in the course of negotiation. Thus the order vide memo dated 01.01.2015 in effect rendered the NDMC decision dated 27.09.2012 ineffective.

Therefore Ld. ASG, who is appearing for NDMC may be requested to apprise the Hon'ble Court with regard to the above."

4. Financial implications of the proposed project/subject:

No financial implication to inform the decision of the Council to the Hon'ble Supreme Court.

5. Implementation schedule with timelines for each stage including internal processing:

Decision of the Council will be informed to the Hon'ble Supreme Court on 03.03.2017.

6. Detailed proposal on subject :-

6.1 From the facts mentioned in Para 3 above, it may, inter-alia, be observed that:

- (i) Consultant Ms/ Ernst & Young gave three legal options to NDMC viz. (a) NDMC to re-negotiate the financial and other terms and conditions with IHC, (b) Inviting bids without granting any special rights to IHC, and (c) Inviting bids while granting special rights to IHC. (Refer Para 3, Sub Para 23 above);
- (ii) NDMC sought advice of the then Ld. ASG, who advised that outright auction is the only option available with NDMC (Refer Para 3, Sub Para 24 above);
- (iii) In the agenda dated 27.09.2012, only two options were submitted for taking decision by the Council viz. (a) negotiations with IHCL, and (b) public auction with First Right of Refusal to IHCL; and the third option of outright auction of the premises was not recommended for taking decision by the Council (Refer Para 3, Sub Para 25 above);
- (iv) Council vide resolution dated 27.09.2012 opted the option of public auction with First Right of Refusal to IHCL (Refer Para 3, Sub Para 27);
- (v) Ld. Solicitor General of India as well as Ld. Attorney General of India vide their opinions dated 19th April, 2014 and 20th August, 2014 respectively, categorically opined that public auction with right of first refusal to IHCL is impractical and would never yield a correct and fair price;
- (vi) Ld. Solicitor General of India vide his opinion dated 19th April, 2014 opined that the option to renew the licence in favour of IHCL provided that a fair, market value is arrived at, the NDMC's decision cannot be termed as unfair and would be well within the requirements of statutory and constitutional parameters. Ld. Attorney General for India vide his opinion dated 20.08.2014 opined that public auction should be resorted to if IHCL is not ready to give market value in terms of licence fee for renewed period;
- (vii) MHA informed vide letter dated 23.02.2017 that the directions issued vide its letter dated 01.01.2015 to NDMC, by virtue of power vested in Central Government in terms of section 396 of the NDMC Act 1994, to resort to public auction and find best bidder in respect of the property situated at 1, Mansingh Road, New Delhi were issued after considering the opinions of Ld. SG dated 19.04.2014 and Ld. AG dated 20.08.2014 to ensure highest level of transparency and to avoid any

subjectivity in the course of negotiation. Thus the order vide memo dated 01.01.2015 in effect rendered the NDMC decision dated 27.09.2012 ineffective. (Refer Para 3, Sub Paras 45 and 82 above);

- (viii) Council vide its resolution item no. 04 (L-10) dated 29.01.2016 resolved to approve the letter to IHCL to withdraw First Right of Refusal to IHCL given vide Council's resolution dated 27.09.2012, and to ask IHCL to handover the possession of Hotel Taj Man Singh by 29th February, 2016 (Refer Para 3, Sub Para 59 above).

6.2 It is observed that, while the Ld. Solicitor General opined to renew the licence in favour of IHCL provided that a fair, market value of rentals for the said property is arrived at, and also suggested the manner to arrive the fair market value of rentals by seeking views of an expert committee well-versed in valuation, seconded from a similarly well-reputed valuer; and Ld. Attorney General of India vide his opinion dated 20.08.2014 opined that public auction should be resorted to if IHCL is not ready to give market value in terms of licence fee for renewed period; however the best available method to NDMC, which is a public authority and custodian of public property, to obtain the fair market value of rental of the said property in a fair, reasonable, non-discriminatory, transparent, non-capricious, unbiased, without favouritism or nepotism, in pursuit of promotion of healthy competition and equitable treatment, is e-auction only to "sub-serve the common good".

6.3 After taking into consideration, the Central Government directions to NDMC under section 396 of the NDMC Act, 1994 to go for outright auction in the matter, and the reasons stated in Para 6.2 above, it is proposed that the Council may consider and decide the matter, which will be informed to the Hon'ble Supreme Court on 03.03.2017, as the matter is listed for hearing on 03.03.2017.

7. Comments of Finance Department:

No comments

8. Comments of Estate-I Department on comments of Finance Department:

No comments

9. Legal implication of the subject/project:

No legal issue is involved in this matter.

10. Comments of the Law Department on the Subject/ Project.

The Law department has concurred to the proposal with their comments that no legal issue is involved in this matter.

11. Details of previous Council Resolutions, existing law of Parliament and Assembly on the subject:

Given in the brief history mentioned in Para 3 above.

13. Certificate that all CVC Guidelines on the subject have been followed:

Yes.

14. Recommendations:-

It is proposed that the Council, after taking into consideration the above in totality, and the following:

- (i) the Council's decision dated 27.09.2012;
- (ii) opinion expressed by the Ld. Solicitor General of India and Ld. Attorney General for India in the matter; and
- (iii) the Central Government directions to NDMC under section 396 of the NDMC Act, 1994 to go for outright auction in the matter as informed vide letters dated 01.01.2015 and 23.02.2017,

and may consider to decide the following in the matter:

- (a) that the best available method to NDMC, which is a public authority and custodian of public property, to obtain the fair market value of rental of the said property in a fair, reasonable, non-discriminatory, transparent, non-capricious, unbiased, without favouritism or nepotism, in pursuit of promotion of healthy competition and equitable treatment, and to sub-serve the common good, is to opt for e-auction of the said premises.
- (b) that the right of first refusal to IHCL for the premises situated at 1, Man Singh Road, commonly known as Hotel Taj Mansingh, would not be in public interest being impracticable and would not yield a correct and fair price;
- (c) that the premises situated at 1, Man Singh Road, commonly known as Hotel Taj Mansingh, should be put to e-auction; and

The decision of the Council will be informed to the Hon'ble Supreme Court in its forthcoming hearing.

COUNCIL'S DECISION

The Council decided the matter in its meeting held on 02.03.2017.

"Whereas, the Council vide resolution dated 27.09.2012 resolved to accord approval for public auction of property situated at 1, Man Singh Road, commonly known as Hotel Taj Man Singh, situated with First Right of Refusal to Indian Hotels Company Limited (IHCL); and

Whereas, both Ld. Solicitor General of India as well as Ld. Attorney General of India vide their opinions dated 19th April, 2014 and 20th August, 2014 respectively, opined that public auction with right of first refusal is impractical and would never yield a correct and fair price; and

Whereas, Ld. Solicitor General of India vide his opinion dated 19th April, 2014 opined that the option to renew the licence in favour of IHCL provided that a fair, market value is arrived at, the New Delhi Municipal Council's decision cannot be termed as unfair and would be well within the requirements of statutory and constitutional parameters; and

Whereas, while agreeing to the opinion of Ld. Solicitor General, Ld. Attorney General for India vide his opinion dated 20.08.2014 opined that public auction should be resorted to if IHCL is not ready to give market value in terms of licence fee for renewed period; and

Whereas, Ministry of Home Affairs, Government of India (MHA) vide letter dated 01.01.2015 directed NDMC, by virtue of power vested in Central Government in terms of section 396 of the New Delhi Municipal Council (NDMC) Act 1994, to resort to public auction and find best bidder in respect of the property situated at 1, Man Singh Road, New Delhi; and

Whereas, the Council vide its resolution item no. 04 (L-10) dated 29.01.2016 resolved to approve the letter to IHCL to withdraw First Right of Refusal to IHCL given vide Council's resolution dated 27.09.2012, and to ask IHCL to handover the possession of Hotel Taj Man Singh by 29.02.2016; and

Whereas, the MHA vide letter dated 23.02.2017 informed NDMC, which reads as under:

"...when the Competent Authority in the Central Government had taken a decision under section 396 of NDMC Act 1994, which was intimated to the NDMC on 01.01.2015, the opinions of Ld. AG for India and Ld. SG of India were taken into account. Therefore this aspect may be clarified before the Hon'ble Court. The relevant extracts of the opinion of Ld. AGI is as under:

"...

12 The notes in the file indicate that one option is outright auction while another option is public auction with a right of first refusal to IHCL and the third is negotiation between the parties which yields the same consideration as would be available in "normal and fair competition".

13 In my view public auction with a right of first refusal to IHCL is impractical and would never yield a correct and fair price. The real choice is between negotiating for renewal or an outright public auction.

14 I agree with the opinion of the then Solicitor General that it will not be illegal for the NDMC to conduct mutual negotiations to arrive at a figure which would represent market value. This can be done through an expert in the field. M/s E&Y have already been given a report. Fresh reports can be asked to determine the market value. After market value is agreed to be paid by IHCL then that mode can be followed as suggested by the then Solicitor General.

15 If IHCL is not ready to give market value in terms of license for the renewed period then obviously public auction should be resorted to." As per the opinion of Ld. AG, the real choice was between negotiating for renewal or an outright public auction. Referring to the opinion of Ld. SG, it was stated in the opinion that the negotiation would not be illegal. However, outright public auction was also stated as the other option and auction with Right of First Refusal was clearly ruled out.

Accordingly, MHA took a decision to go for public auction to ensure highest level of transparency and to avoid any subjectivity in the course of negotiation. Thus the order vide memo dated 01.01.2015 in effect rendered the NDMC decision dated 27.09.2012 ineffective.

Therefore Ld. ASG, who is appearing for NDMC may be requested to apprise the Hon'ble Court with regard to the above."; and

In view of the above, and after taking into consideration (a) the opinion of Ld. Solicitor General of India dated 19.04.2014 and Ld. Attorney General for India dated 20.08.2014 in the matter, and (b) the Central Government directions to NDMC under section 396 of the NDMC Act, 1994 vide letters dated 01.01.2015 and 23.02.2017 to go for outright auction in the matter, and by taking holistic view in the matter, the Council resolved that:

- (i) the best available method to NDMC, which is a public authority and custodian of public property, to obtain the fair market value of rental of the said property in a fair, reasonable, non-discriminatory, transparent, non-capricious, unbiased, without favouritism or nepotism, in pursuit of promotion of healthy competition and equitable treatment, and to sub-serve the common good, is to opt for e-auction of the said premises;
- (ii) the right of first refusal to IHCL for the premises situated at 1, Man Singh Road, commonly known as Hotel Taj Man Singh, would not be in public interest being impracticable and would not yield a correct and fair price;
- (iii) the premises situated at 1, Man Singh Road, commonly known as Hotel Taj Man Singh, should be put to e-auction; and
- (iv) Hon'ble Supreme Court should be apprised in compliance of its order dated 12.01.2017 accordingly.

It was further resolved by the Council that the department may initiate further necessary action in anticipation of confirmation of the minutes of the Council."

K. S. Sharma
 Secretary
 New Delhi Municipal Council
 Patika Nendra, New Delhi

06.03.2017

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ANNEXURE P-44

MOHAN PARASARAN
Solicitor-General of India

Office/Chamber:
27, Law Officers Chamber,
Supreme Court of India
Tel. : 23381636, Fax : 23070238
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19-04-2014

OPINION

FTS No. 4640/2013/A
Ministry of Law and Justice
Department, of Legal Affairs

No. 14011/ 12/2013-Delhi-II
Government of India
Ministry of Home Affairs

The facts in the brief for opinion as furnished by NDMC are as follows:

- 1 In 1976, land admeasuring 3.78 acres at 1, Man Singh Road, alongwith structures was offered by the then Ministry of Works and Housing to New Delhi Municipal Committee, now New Delhi Municipal Council (NDMC) to construct a hotel, which should be available for the PATA conference of 1978. The New Delhi Municipal Committee, as it then was, considered the offer of allotment of the plot, of land and accepted the same. It appears from the Committee's agenda item that a request from Indian Hotels Co. Ltd. was also pending with the Ministry of Works and Housing for allotment of this plot of land to IHCL for construction of a hotel. IHCL approached the New Delhi Municipal Committee

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to collaborate in the construction of the hotel. An extract from the Agenda for consideration of the Committee and its Resolution are extracted as under:

"The offer of India Hotels Co. Ltd. appears to be quite favourable if compared with the return that we are getting from ITDC in respect of Akbar Hotel. There is also an advantage that entire initial expenditure of preparation, design and management and supervision of the project would be borne by I.H.C. Broad terms and conditions of joint participation can be discussed in detail and interest of the committee can be ensured. It is for consideration and in the interest of the Committee to take the following decisions:-

- i) Acceptance of the allotment of land by the Ministry of Works and Housing for the construction of hotel on the terms and conditions as may be offered.
- ii) Acceptance of the proposals of M/s The Indian Hotels Co. Ltd. in principle, for participation jointly in the construction and running of the hotel.

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- iii) Discussing further details with M/s The Indian Hotels Co. Ltd. in order to finalise a draft of the licence deed for approval of the Committee.

Committee's Resolution/Observation:

Resolved that:-

- (i) The allotment of land by the Ministry of Works & Housing for the construction of a hotel on the terms and conditions as may be offered be accepted.
- (ii) Proposals of M/s The Indian Hotels Co. Ltd. for participation jointly in the construction and running of the hotel be accepted in principle.
- (iii) Draft licence deed to be executed with M/s The Indian Hotels Co. Ltd. be discussed and finalized for approval of the Committee."

2. A Collaboration Agreement was thereafter entered into between New Delhi Municipal Committee and IHCL. After executing the Collaboration Agreement, a licence deed was also drawn between the New Delhi Municipal Committee and IHCL. The IHCL was responsible for construction of the building on the plot of land allotted to the New Delhi

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Municipal Committee and cost to the extent of Rs. 475 lacs was to be provided by the Committee. Through a Supplementary Deed, the cost of the land and building was fixed at Rs. 626 lacs. Expenses in addition to the above were to be met by IHCL.

3. The term of licence and the licence fee as per this licence deed were as under:-

Clause II- Term

1. The licence hereby granted shall be in force for a period of thirty three years commencing from the date of occupation of the hotel by the first paying guest subject to the condition that the Licensee shall be bound by and observe and perform all the terms and conditions contained in this license throughout the period of this licence.
2. On the expiry of the period of licence of the said hotel building hereby granted, the Licensor shall have the option to grant the license for a further period on such terms and conditions as may be mutually agreed upon between the Licensor and the Licensee. If the Licensee shall be desirous of obtaining a licence for a further period after the expiry of the present licence, it

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shall give to the Licensor, a notice in writing of not less than sixty (60) days prior to the date of expiry of the present license for the consideration of the Licensor.

Clause III - Licence Fee and Manner of Payment

1. In consideration of the Licensor granting to the Licensee, the license in respect of the said hotel building as hereinabove referred to, the Licensee shall pay to the Licensor as and by way of license fee an amount equivalent to 10 ½ per cent (ten and a half per cent) of the gross income of the Licensee for every financial year of the Licensee as certified by the statutory auditors of the Licensee or a sum equivalent to 15% (fifteen percent) of the Licensor's investment in the said hotel building, the terms of the Collaboration Agreement, whichever is higher. The liability for the payment of licence fee as aforesaid shall commence from the date of commissioning of 300 rooms in the hotel or first day of December, 1978, whichever is earlier. The licence fee in respect of the period which is less than a full financial year shall be paid by the Licensee to the Licensor on a prorate basis on the basis of the statement certified by the statutory auditors of the Licensee.

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4. The licence commenced from 11.10.1978 for a period of 33 years and was upto 10.10.2011. IHCL paid the licence fee as per the agreement and minor disputes about charging interest during moratorium period and method of calculation of gross income and interest on the additional amount due also stands settled. On the date of completion of 33 years of licence, no dues, no disputes and/or violations of the licence are available on record.
5. Prior to establishment of New Delhi Municipal Council through the N.D.M.C. Act 1994, the New Delhi Municipal Committee, as it then was, was governed by the Punjab Municipal Act 1911. As per section 416(2)(a) any licence or permission granted under the Punjab Municipal Act 1911 and in force immediately before the establishment of the Council shall in so far as it is not in-consistent with the provisions of N.D.M.C. Act 1994, shall continue in force and deemed to have been made under the provisions of the N.D.M.C. Act 1994 unless and until it is superseded by any licence or permission granted under the provisions of the N.D.M.C. Act 1994.
6. Under the N.D.M.C. Act 1994, Chapter-X relate to "Property and Contracts". Section 141 relate to disposal of immovable

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properties. The said section provides that the Chairperson may with the sanction of the Council, lease, sell, let out on hire or otherwise transfer any immovable property belonging to the Council. The consideration for which any immovable property may be sold, leased or otherwise transferred shall not be less than the value at which such immovable property could be sold, leased or otherwise transferred in normal and fair competition. As per sub-section (3) of this section, the sanction of the Council under this section may be given either generally or for any class of cases or specially for any particular case.

7. After the coming into force of the N.D.M.C. Act 1994, general guidelines to attend to cases of Estate Deptt. were not available. The Council in Resolution dt. 19th March 1999, approved detailed guidelines on the subject. In respect of "special categories of properties" the recommendation as contained in clause 9 of the said resolution was that "hotels, cinemas and similar projects etc may be governed as per mutually agreed terms and conditions as entered into by the Council from time to time.
8. The above policy of 19th March 1999 was reconsidered by the Council in its meeting on 30th August 2000. Para 3 and

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6(i) of the Agenda Item are relevant and are reproduced hereunder:-

"3. It has been observed that renewal in case of premises of hotels and the cinema complex is on mutually agreed term. The existing Estate Policy provides for determining terms and conditions as also licence fee on mutually agreed terms as approved by N.D.M.C. vide its resolution No.6 dated 18.3.99. Clause 9 for special categories reads as under:-

"Hotels / Cinemas and similar other projects may be governed as mutually agreed terms and conditions as entered into by the Council from time to time."

(i) The above decision appears contradictory to section 141(2) of N.D.M.C. Act, which relates to the disposal of immovable property and puts an embargo on transfer of premises on non-competitive terms. The Section reads as under:-

"141(2) - The consideration for which any immovable property may be sold, leased or otherwise transferred shall not be less than the value at which such immovable property could

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be sold, leased or otherwise transferred in normal and fair competition."

(ii) Thus, it is obvious from the above Section that its use should be allowed on payment of license fees determined on competitive basis. In case Council goes by the existing policy as stated above, the existing license can always involve the Council in unending disputes as it has happened in case of Chanakya Cinema in which the licensee started litigation against N.D.M.C. soon after obtaining the licence. Same is the fate of premises licensed for hotel businesses where the licensees stress on irrational terms and drag the Council in various courts.

6. In view of the above position, following proposal is laid before the Council for consideration and approval:-

(i) On the expiry of present term of licenses of hotels/ cinemas and other similar commercial complexes, the licenses shall not be renewed. The fresh licence shall be as per provisions of Section 141(2) of the N.D.M.C. Act, 1994."

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9. The Council accepted the proposal contained in para 6 of the Agenda Item that on the expiry of the term of licence of the hotels/cinemas and other similar commercial complexes, the licences shall not be renewed. The fresh licence shall be as per provisions of section 141(2) of the N.D.M.C. Act 1994.
10. After the above resolution, the claim of further renewal of licence of Chanakya Cinema Complex came up for consideration of the Council. In this case the premises were allotted on auction basis on licence for a period of 10 years from 01.10.1970. It had a renewal clause for a period of 10 years. The renewed licence deed was for a period of 10 years from 01st October 1980. It had no clause for further renewal. The New Delhi Municipal Committee, however, offered to the licensee to renew it for further period of 10 years on increased licence fee. This was not accepted by the licensee and no licence deed was executed and as such, from 01st October 1990, M/s Aggarwal & Modi, the licensee became un-authorised occupants. Instead of extending the licence in 2000, the Council decided to develop it as a multiplex. M/s Aggarwal & Modi gave an offer to develop it as a multiplex. This was not accepted by the New Delhi Municipal Council. Since the licence had not

been renewed and they were un-authorised occupants in the premises, an effort was made to take a vacant possession of the premises. M/s Aggarwal & Modi filed a writ petition in the Delhi High Court and challenged the Council's Resolution of 30th August 2000 and claimed that provisions of section 141 are not attracted. The writ petition was dismissed by the Single Judge vide Judgment dt. 08th August 2003. However, the Court permitted petitioner to continue to occupy the premises upto 30th September 2003. The petitioner filed a LPA against the order of the Single Judge. The Division Bench of the Delhi High Court vide judgment dt. 30th August 2005 dismissed the appeal with a cost of Rs.25,000/-. The Appellants filed a Civil Appeal in the Supreme Court which was decided by the Supreme Court on 31st August 2007. Para 23 of the Supreme Court judgment is as under:-

"22. The mandate of Section 141(2) is that any immovable property belonging to NDMC is to be sold, leased, licensed or transferred on consideration which is not to be less than the value at which such immovable property could be sold, leased, or transferred in fair competition. The crucial expression is "normal and fair competition". In other words,

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NDMC is obligated to adopt the procedure by which it can get maximum possible return/consideration for such immovable property. The methodology which can be adopted for receiving maximum consideration in a normal and fair competition would be the public auction which is expected to be fair and transparent. Public auction not only ensures fair price and maximum return it also militates against any allegation of favouritism on the part of the Government authorities while giving grant for disposing of public property. The courts have accepted public auction as a transparent means of disposal of public property. (See State of U.P. v. Shiv Charan Sharma [1981 Supp SCC 85 : AIR 1981 SC 1722], Ram & Shyam Co. v. State of Haryana [(1985) 3 SCC 267], Sterling Computers Ltd. v. M & N Publications Ltd. [(1993) 1 SCC 445], Mahesh Chandra v. Regional Manager, U.P. Financial Corpn. [(1993) 2 SCC 279], Pachaiyappa's Trust v. Official Trustee of Madras [(1994) 1 SCC 475], Chairman and MD SIPCOT v. Contromix (P) Ltd. [(1995) 4 SCC 595], New India Public School v. HUDA [(1996) 5 SCC 510 : AIR 1996 SC 3458], State of Kerala v. M. Bhaskaran Mal

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[(1997) 5 SCC 432] and Haryana Financial Corpn. v. Jagdamba Oil Mills [(2002) 3 SCC 496].)

23. Disposal of public property partakes the character of trust and there is distinct demarcated approach for disposal of public property in contradiction to the disposal of private property i.e. it should be for public purpose and in public interest. Invitation for participants in public auction ensures transparency and it would be free from bias or discrimination and beyond reproach."

11. Facts of the case in Aggarwal & Modi and IHCL in the present matter are quite different:

- (i) Aggarwal & Modi were un-authorised occupants and were occupying the premises from 01.10.1990 without license deed. IHCL are in occupation of premises by virtue of a valid license deed which has been extended upto 10.10.2012.
- (ii) In case of Chanakya Cinema, the Council had decided to convert it into a multiplex for which Aggarwal & Modi had no expertise. In the case of hotel at Man Singh Road, there is no proposal to change the usage

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of the building. IHCL has expertise to run similar hotels in Delhi and other places.

12. Opinion from Additional Solicitor General was sought on the following issues:-

- (i) whether the decision of the Council taken through the resolution dt. 30th August 2000 that fresh licenses shall be as per provisions of section 141(2) of the N.D.M.C. Act 1994 is applicable to the facts of the case where IHCL has exercised option for grant of licence for a further period as per Clause 11(2) of the licence deed;
- (ii) whether the judgment of Delhi High Court in the case of M/s Aggarwal & Modi of which appeal was dismissed by the Supreme Court shall be applicable to the case of grant of licence for a further period as opted by IHCL;
- (iii) whether the provisions of section 141(2) of the N.D.M.C. Act 1994 be attracted/applicable when notice exercising option for grant of licence for a further period as per provisions of Clause 11 (2) of the licence deed is under consideration of the Council;

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- (iv) whether the option exercised by IHCL as per Clause 11(2) of the licence deed has to be rejected on the ground that as per provisions of section 141(2) of the N.D.M.C. Act 1994 only option available with the Council is to put the property to auction/tender to get the best price of licence fee with a view to obtain normal and fair competition.

13. The case of Hotel Man Singh was under consideration of the Council. Since the Council could not take any decision in regard to extension of license or otherwise till 11th October 2011, the Council decided to extend the license for a period of one year upto 10th October 2012 and also resolved as under:-

- "(i) to accord sanction for extension of existing collaboration project and lease deed for one year upto 10.10.2012, subject to the condition that the Indian Hotel Corporation (IHC) shall agree to pay licence fee as per mutually agreed terms and conditions retrospectively w.e.f. 11.10.2011.
- (ii) to accord sanction for further review and action in accordance with the decision of Ministry of Urban

Development, the legal advice, the Committee's recommendation & Consultant's reports.

The Council also directed that the Deptt. should workout the timelines for completing the above exercise and the Council be informed of the progress.

It was also resolved by the Council that further action may be taken by the department in anticipation of confirmation of the minutes by the Council"

14. As resolved by the Council, opinion of the Additional Solicitor General was obtained. M/s Ernst and Young Consultants were appointed as i Consultant who gave their report which was considered by the Council along with opinion of the Additional Solicitor General in its meeting on 27.09.2012 and resolved as under:-

"The Council carefully considered all the facts placed before it in the Agenda Item, including the Annexures, and noted that IHC not only has a clean record in its dealing with the Council, but has also made regular payments of license fee to it till date and that there are no disputes between the Council and the License (IHC Ltd.).

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After discussing at length the pros and cons of the two options proposed in the Item the Council Resolved by majority, to opt for public auction, in a fair and transparent manner, of the N.D.M.C. property at 1, Man Singh Road, with first right of refusal to Indian Hotel Company. The recourse to public auction would serve to determine the market price of the license fee, that IHC would have to match if they wish to run a hotel at this property. This option, the Council noted would also safeguard its revenue interests.

The Council further resolved by majority to extend the period of license of IHC, on existing terms and conditions, for a further period of one year or till such time a new licensee is chosen through the bidding process, whichever is earlier.

That further action may be taken by the department in anticipation of confirmation of the Minutes by the Council."

15. M/s Ernst and Young Consultants prepared a RFP which was placed before the Council for acceptance. The RFP was prepared to put the property and auction with first right

of refusal to IHCL. Before the meeting of the Council, it came to notice that IHCL has filed a suit in the Delhi High Court and prayer was under:-

"(a) Pass a decree of permanent injunction restraining the Defendant by itself, its servants, agents, subordinates and successors from in any manner interfering with the possession, right to operate run and maintain the hotel premises at 1, Man Singh Road, New Delhi of the Plaintiff, as per the Collaboration Agreement dated 18th December, 1976 read with the Deed of License dated 18th December, 1976 and Supplemental Agreement dated 25th September, 1979.

(b) Pass a decree of permanent injunction restraining the Defendant, its servants, officers, agents, subordinates and/or its successors from giving effect to the decision communicated through the letter dated 05.11.2012 having No.D/389/PA/D.E.-I/2012 in respect of hotel premises at 1, Man Singh Road, New Delhi, and/or from giving effect to any known or unknown decision to conduct an auction for

running/operating, maintain, the hotel premises at 1,
Man Singh Road, New Delhi.

(c) Pass any order as the Court may deem fit in the
nature and I circumstances of the case."

16. In the meeting of the Council, members from the Ministry of Urban Development sought the matter to be referred to the Solicitor General of India for his opinion and special meeting of the Council with brief facts of the court cases. A copy of the Agenda for the Council's meeting dated 10.4.2013 is at Annexure-III. The report on the court cases is also submitted to the Council as per Agenda Item which is at 1 Annexure-IV.
17. The Council had taken a decision earlier to put the property to auction with first right of refusal to IHCL. The members from the Ministry of Urban Development requested for my opinion while the Ministry of Home Affairs vide their letter dated 10th May 2013 and 27th June 2013 (Annexure-V and Annexure-VI) have advised that the property should be put to public auction and not on first right of refusal.
18. The facts as mentioned in the brief for opinion by NDMC have also been substantially reiterated by the Ministry of

Law & Justice as well as the Ministry of Home Affairs. My opinion has been sought on the following queries:-

- (i) Whether the decision of the Council taken through the resolution dt. 10th August 2000 that fresh licenses shall be as per provisions of section 141(2) of the N.D.M.C. Act 1994 is applicable to the facts of the case where IHCL has exercised option for grant of licence for a further period as per Clause 11(2) of the licence deed;
- (ii) Whether the judgment of Delhi High Court in the case of M/s Aggarwal & Modi of which appeal was dismissed by the Supreme Court shall be applicable to the case of grant of licence for a further period as opted by IHCL;
- (iii) Whether the provisions of section 141(2) of the N.D.M.C. Act 1994 were attracted/applicable when notice exercising option for grant of licence for a further period as per provisions of Clause 11(2) of the licence deed was under consideration of the Council;
- (iv) Whether the option exercised by IHCL as per clause 2(ii) of the Licence Deed was rightly not accepted by

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the Council on the ground that as per provisions of Section 141(2) of the N.D.M.C. Act 1994 only option available with the Council is to put the property to auction/tender with the first right of refusal to IHCL to get the best price of licence fee with a view to obtain normal and fair competition;

- (v) Whether the property should be put to auction without first right of refusal as advised by the Ministry of Home Affairs;
- (vi) Any further opinion on the facts and circumstances of the case keeping in view the provisions of N.D.M.C. Act 1994;

Opinion

1. Even though the brief for opinion was furnished to me as early as end November 2013, certain clarifications and documents which were sought for has been provided to me in instalments to enable me to offer a considered opinion. The Chairman, NDMC and other officers have also held detailed conferences with me on various dates with the last one held on 12.04.2014. NDMC, through its standing

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counsel, Ms. Madhu Tewatia, has also furnished many additional particulars and documents on 03.04.2014.

2. At the outset, in order to understand the entire conspectus of the facts and circumstances involved in the present matter, it would be important to examine all the relevant documents which affect the rights and liabilities of the parties involved. It is trite law to state that all the surrounding circumstances as well as documents contemporaneously executed are to be taken into consideration for the purpose of construction of a contract and to understand the true intent of the parties and having said so, it would be pertinent to examine all the materials on record to properly determine the object and purport of the contract. [McDermott International Inc v. Burn Standard, (2006) 11 SCC 181; D.D. Sharma v. Union of India, (2004) 5 SCC 325; Khardarh Co. v. Raymon and Co. (India) Pvt. Ltd., (1963) 3 SCR 183, 207-208; Modi and Co. v. Union of India, 1968 SCR (2) 565; DLF Universal Ltd. & Anr. v. Director, T. and C. Planning Department Haryana & Ors., AIR 2011 SC 1463]

3. After examining all the documents and based on the conferences which I have had, it would be first relevant to

examine how the land in question came to be vested in the NDMC. The Government of India, Ministry of Works and Housing, Land & Development Office vide letter dated 13.07.1976 sanctioned the transfer of land measuring 3.78 acres together with structure standing thereon at No. 1 Man Singh Road, New Delhi to the New Delhi Municipal Committee (as it then was) for construction of a Hotel. As per the said letter the NDMC was required to pay for the land premium of Rs. 91,48,000/- in five equal annual installments of Rs. 18,29,600 each and the first installment was to be paid immediately. The letter further states that the land shall be used by the NDMC for the construction of a Hotel. It further states that the NDMC shall pay annual ground rent of 8 ½% of premium of Rs. 91,48,000/- till the premium amount is fully paid. It is also provided that in case the payment of the annual instalment of premium not being made promptly the NDMC shall be required to pay the annual ground rent @ 8 ½% of the premium of Rs. 91,48,000/- i.e. Rs. 8,00,450/- per annum. At Para (iv) of the letter, it states that after full payment of all the annual instalments of the premium of Rs. 91,48,000/- as stipulated above, the NDMC will pay annual ground rent @ 2 ½ of the premium of Rs. 91,48,000/-. Para (viii) states that the NDMC

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will also pay the Government outstanding dues of Rs. 10,66,000/- due from previous licensee immediately. Para (ix) casts a further obligation on the NDMC stating that the NDMC will ensure that a new Hotel is constructed on the site and the Hotel premises are ready by early 1978 to provide for large influx of Delegates who are to attend the conference of Pacific Area Travel Association (PATA). The NDMC will in addition pay the depreciated cost of the structures, as may be assessed by the Government. Therefore, it is apparent from the letter of allotment of the land to NDMC itself that the object of the said transfer was to construct a hotel for the PATA conference and an obligation was cast upon the NDMC to ensure that a new hotel is constructed in time to cater to the vast travelling delegates for the PATA conference. Pursuant to this, a collaboration agreement and a licence deed was executed between NDMC and IHCL to give effect to the original intent of the transfer of the land in question.

4. On a perusal of the Collaboration Agreement dated 18.12.1976 entered into between New Delhi Municipal Committee (as it then was) and the Indian Hotels Companies Ltd. ("IHCL") it appears that the said arrangement is more in the nature of a Collaboration/Joint

Venture and not merely a licence agreement simplicitor or disposal of Council property in the sense as visualised under the NDMC Act. But however, I am proceeding on the premise that even though it is in the nature of a Joint Venture/Collaboration agreement, it tantamounts to conveying or conferring an interest in immovable property but which is to be exploited or used for the mutual benefit of both the parties. This feature is not present in a licence agreement simplicitor, where conferment of the right to use property or be in occupation of property for licence fee based on market value is fixed on the highest offer and the highest offeror is granted that right under Section 141(2) of the NDMC Act. This aspect is dealt with in detail a little later. The Collaboration Agreement visualised joint participation by NDMC & IHCL for the purpose of construction, development, maintenance and operation of a 5 star hotel in New Delhi. This can be gleaned from the relevant provisions of the Collaboration Agreement as extracted hereinafter:

"Whereas NDMC, with the object of developing tourism in the capital city of Delhi is desirous of putting up a hotel of about 350 rooms together with all related facilities conforming to standards laid down by the Director-General of Tourism, Department of Tourism,

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Ministry of Tourism and Civil Aviation, Government of India for 5-Star classification (hereinafter for the sake of brevity referred to as the Hotel of acceptable standards) on the Plot No. 1, Mansingh Road, New Delhi - 110 011, which plot is delineated on the plan annexed hereto and marked red thereon and

Whereas NDMC with a view of achieving its objective of putting up of a hotel of acceptable standards as aforesaid expeditiously and in a professional manner, is desirous of seeking the assistance of professional in planning designing and construction of the said hotel and building; and

Whereas the Department of Tourism of the Ministry of Tourism and Civil Aviation, Government of India is expected to host a conference in Delhi sometime in 1978 to be attended by foreign delegates, participants, and members of Pacific Area Travel Association (hereinafter referred to as PATA Conference) necessitating additional hotel accommodation of acceptable standards; and

Whereas NDMC is keen to play some role in the said PATA conference and is desirous of providing some

additional hotel accommodation of acceptable standards and WHEREAS IHC has assured NDMS that it will with all reasonable diligence endeavour to do its best to undertake to make at least some rooms in the hotel building ready for occupation and IHC hereby undertakes to commission the hotel as early as possible and to create some accommodation for the use of the delegates of PATA Conference and further at the time at the disposal of NDMC and IHC is short, IHC also undertakes to construct the Hotel Building at the cost to be estimated not exceeding Rs. 475 lakhs (Rupees Four Hundred Seventy Five Lakhs).

Whereas IHC which owns the Taj Mahal and Taj Mahal Intercontinental Hotels at Bombay, has been in the field of hoteliering for over 70 years and has acquired considerable expertise and knowledge in the planning, designing, construction and operation of hotels and has in its employment or association, skilled and expert personnel in all fields relating to designing, planning, construction and operation of hotels; and

Whereas IHC has offered its services in the aforesaid areas to NDMC for the construction of about 350 room hotel of acceptable standards at the aforesaid plot, in terms of IHC's letter dated 31st March, 1976, annexed hereto and marked Schedule 1; and

Whereas NDMC has agreed in principle to collaborate with IHC in construction of the said hotel building by financing the construction of the hotel building at its cost not exceeding Rs. 475 lakhs the hotel building including civil construction, plumbing, sanitary fittings, heating, ventilation, air-conditioning, electrical installations, elevators and swimming pool, details of which are referred to in Schedule II attached hereto; and if during the stage of estimating the cost of various items referred to in Schedule II, it is found to be more than Rs. 475 lakhs, IHC undertakes to invest in some of the items (referred to in Schedule II), the details of which will be mutually worked out, so as to limit the investment of NDMC to Rs. 475 lakhs; and

Whereas IHC has agreed in principle to equip the said hotel building at its cost with the necessary equipment and assets such as kitchen equipment, laundry

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equipment, furniture, furnishings and other assets details of which are mentioned in Schedule III attached hereto so that the said hotel building can be run as a hotel of acceptable standards; and

Whereas based on the initial concept of the hotel and its size envisaged by NDMC and IHC, it is tentatively estimated that the cost of the hotel building together with the assets to be financed by NDMC as listed in Schedule II here to would of the order of Rs. 475 lakhs and the cost of the assets to be financed by IHC as listed in schedule III hereto would be of the order of Rs. 550 lakhs."

5. Article II of the Collaboration Agreement lays down the Services of IHC, namely Preliminary Services (Clause 1) wherein IHC will carry out a detailed study for the purposes of putting up a hotel and for this purpose, will confer with NDMC's officials in order to formulate the general conceptions, considerations and parameters. Clause 2 enjoins upon IHC to render Design and other technical services, including selecting and appointing Architect, Consulting Engineer, Quantity Surveyor and other specialists and consultants as may be required for the hotel

building. IHC will submit to the NDMC the names of the aforesaid Architect, consulting Engineers, Quantity Surveyor and other specialists and consultants for its approval. The Technical Report prepared has to be approved by NDMC as well. As per sub-clauses (2), (3) and (4), it is further provided that the IHC will within 15 days from the date of execution of this agreement prepare and submit to NDMC for its approval schematic plans, layouts, design user requirements and specifications in respect of the said hotel as well as the local authority plans and designs as may be required by it. As per sub-clause (5), IHC is required to review the schematic plans, designs, user requirements, specifications and cost estimate and the time schedule by the Architect and Consulting Engineers and make specification with special reference to the operational requirements, quality, cost and speed of the project. As per sub-clause (6), IHC is required to review the architectural, structural, heating, ventilation air conditioning, plumbing and electrical plans and specifications prepared by the Architect and Consulting Engineers and make modifications with special reference to the operational requirements, quality, cost and speed of the project. IHC will submit to NDMC, the above plans and specifications for its approval. As per sub-

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clause (7), IHC shall prepare plans, layouts, user requirements and specifications for elevators, kitchen, laundry, engineering, employee facilities, housekeeping, administration, lobby, bar and other services and public areas and submit to NDMC for its approval. As per sub-clause (8), IHC shall provide Project Management Services including site inspection and ensure that the work is being executed generally in accordance with the standards and specifications approved by NDMC. IHC, shall, however, employ technically competent staff for the day to day operations and execution of the work and ensure that the work is being carried out in conformity with the designs and specifications prepared by the Architect, consulting engineers and other consultants and Designers with the approval of NDMC and to ensure that the work is being carried out as per the terms and conditions of the various contracts awarded in respect of the constructed hotel building.

6. Clause 5, Article II of the Collaboration Agreement states that "with a view to achieving NDMC's objective of constructing the hotel building on the site, IHC will, on behalf of NDMC, undertake to construct the said hotel building through the contractor and sub-contractors, engaged,

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retained or appointed for the purpose by IHC. The list of contractors and sub-contractors so appointed will be submitted by IHC to NDMC for its approval.

7. Clause 6, Article II of the Collaboration Agreement states that all movable assets in the hotel building referred to in Schedule III to this Agreement as well as all other assets including assets such as air conditioning compressors, air handling units, fan coil units, pumps cooling towers, piping electrical panels, lighting fixtures, diesel generating sets, water treatment plants, boilers, laundry equipment, kitchen equipment and other hotel equipment, which IHC pays for and equips and furnishes the hotel building with, shall belong at all times to IHC. The IHC shall be entitled to all rights, title and interest to or in respect of such assets throughout the currency of this agreement as well as upon its termination.
8. Clause 2 of Article III states that it is agreed and understood by NDMC and IHC that nothing contained in this agreement shall be construed as a demise in law of the said site hereby agreed to be demised or any part thereof so as to give IHC any legal interest or claim therein of any nature whatsoever.

9. Clause 8 of Article III provides for the right and powers of NDMC, including inter alia, the right of authorized representative of NDMC to enter upon the site at reasonable times to view the site and progress of the constructions, to inspect and pass the material and workmanship and for all other reasonable purpose connected with this agreement. In case of breach of any covenant of the Collaboration Agreement, it shall be lawful for NDMC to evict IHC or its representatives from the site and take possession of all the machinery, materials, tools and plants as may be found on the site for the absolute use of NDMC, without any compensation. It is understood by IHC that the said site and the hotel building to be constructed thereon shall at all times remain public premises as defined under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.
10. Therefore, from a bare perusal of the above Collaboration Agreement, it cannot be said that the scheme under which the land at 1 Mansingh Road was given for use by IHCL was stricto sensu disposal of property, rather it was more in the flavour of a Collaboration/Joint Venture between NDMC and IHCL for the construction, development, management and operation of a 5 star hotel in New Delhi with NDMC playing a lead supervisory role in the said Project.

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Nevertheless, as stated above, I am proceeding on the premise that the above amounts to conveying or conferring an interest in immovable property which is to be exploited or used for the mutual benefit of the parties.

11. It will now be logical to examine the Licence Deed dated 18th December 1976 between the New Delhi Municipal Committee, the Licensor and IHCL, the Licensee wherein the Licensor had granted to the Licensee a license to enter into and occupy the said hotel from a date to be mutually agreed upon for the purpose of running a hotel of acceptable standards together with all the related facilities and business appurtenant thereto, for the furtherance and development of tourism in India.
12. The relevant provisions of the said Licence deed are as follows:

Clause I

LICENCE

1. The Licensor has, subject to the provisions of sub-clause 1 of the Clause II hereinafter, granted licence to Licensee to enter into and occupy the said hotel from a date to be mutually agreed upon for the purpose of running a hotel of acceptable standards.

together with all the related facilities and business appurtenant thereto, for the furtherance and development of tourism in India.

2. In terms of the Collaboration Agreement entered into between NDMC and the Indian Hotels Company Limited on 18th December, 1976 at New Delhi (hereinafter called the Collaboration Agreement), the Licensor hereby agrees and allows the Licencee to commence hotel operations partially by the end of March, 1978 notwithstanding the fact that the hotel building is not completed in all respects in terms of the Collaboration Agreement provided a minimum of 40 guests rooms and one restaurant are ready for use and occupation.

CLAUSE II TERM

1. The Licence hereby granted shall be in force for a period of thirty three years commencing from the date of occupation of the hotel by the first paying guest subject to the condition that the Licencee shall be bound by and observe and perform all the terms and

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conditions contained in this licence throughout the period of this licence.

2. On expiry of the period of licence of the said hotel building hereby granted, the Licensor shall have the option to grant the licence for a further period on such terms and conditions as may be mutually agreed upon between the Licensor and the Licensee. If the Licensee shall be desirous of obtaining a licence for a further period after the expiry of the present licence, it shall give to the Licensor, a notice in writing of not less than sixty (60) days prior to the date of expiry of the present license for the consideration of the Licensor.

CLAUSE III

LICENCE FEE AND MANNER OF PAYMENT

3. In consideration of the Licensor granting to the Licensee, the license in respect of the said hotel building as hereinabove referred to, the Licensee shall pay to the Licensor as and by way of license fee an amount equivalent to 10 ½ per cent (ten and a half per cent) of the gross income of the Licensee for every financial year of the Licensee as certified by the

to 15% (fifteen percent) of the Licensor's investment in the said hotel building, the terms of the Collaboration Agreement, whichever is higher. The liability for the payment of licence fee as aforesaid shall commence from the date of commissioning of 300 rooms in the hotel or first day of December, 1978, whichever is earlier. The licence fee in respect of the period which is less than a full financial year shall be paid by the Licensee to the Licensor on a prorate basis on the basis of the statement certified by the statutory auditors of the Licensee.

CLAUSE IV DEFAULT IN PAYMENT

1. In the event of Licencee committing a default in the payment of licence fee as mentioned hereinabove, for any reason whatsoever, the Licencee shall be liable to pay to the Licensor, Licence fee along with interest for the period of default at 12% (twelve per cent) per annum on the amount of licence fee, the payment of which has been defaulted.
2. In the event of the Licencee failing to make payment of the licence fee due to the Licensor, together with:

such interest as may be levied by the Licensor for default in pursuance of sub-clause 1 above, before the expiry of thirty (30) days from the date of such default, the Licensor shall have without further reference to the Licensor the sole discretion to call upon the bank which is furnishing the Guarantee to pay the total amount due to the Licensor from the Licencee within a period of 15 days from the date on which the bank is so called upon to make the payment.

3. In the event of the bank which has been called upon to make the payment of licence fee, in terms of the preceding sub-clause of behalf of the Licencee, failing to make payment for any reason whatsoever of the amount demanded by the Licensor in full or in part, the Licensor shall have absolute discretion without further reference either to the Licencee or to its bank to revoke/cancel the licence granted to the Licencee for running the said hotel in terms of this licence, to take possession of the licenced premises by recourse to law as provided in the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, or any other such law in force, after revocation of the licence and the Licencee cannot claim back the premises but only

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seek arbitration regarding item No. (ii) and (iii) in Clause XVI of this deed.

CLAUSE X
TERMINATION

If the Licencee commits a default in the payment of the licence fee in the manner provided in this Deed of Licence or ceased to do business in the said hotel building or commits breach of any of the terms of this Deed wilfully or otherwise, the Licensor may give a notice in writing to the Licencee for remedying the breach and if the Licencee fails to do so within a period of thirty (30) days from the date of such notice, the Licensor may terminate the licence without giving any further notice.

13. A Supplemental Agreement dated 25th September 1979 was executed between NDMC and IHCL with certain modifications to the earlier Agreement.
14. In Clause III Exp. II of original Licence Deed the word "gross income" and "shop rental" may be read as "gross receipt" and "shopping area rental" and the word "include" be replaced by the word "mean" whenever they occur.

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15. Explanation (A) for the purpose of arriving at the total investment of NDMC in the Hotel Building, the total of (a), (b) and (c) above, have been taken to be Rs. 626 lakhs at the maximum, reduceable by such amount being the difference between Rs. 475 lakhs in terms of (a) above and the amount invested and actually disbursed from time to time on the construction of the hotel building by NDMC, in terms of the Collaboration Agreement.
16. IHCL vide letter dated 15.02.2010 sought to renew the Licence for a fresh period on the expiry of the current term.
17. The NDMC had sought an opinion in respect of this matter from the Ld. Additional Solicitor General (ASG) Shri Rakesh Khanna who by his opinion dated 14.09.2012, has concluded that in view of the judgment of the Hon'ble Supreme Court in Aggarwal & Modi Enterprises (P) Ltd. & Anr. v. New Delhi Municipal Council (2007) 8 SCC 75 at Para 22 & 23, the Council will be bound to lease out property now by invitation by public participation in public auction so as to fetch the market value of the property to be lice need/leased.

18. The Council vide its Resolution dated 27.09.2012 considered the Report of M/s Ernst and Young Consultants as well as the opinion of the Additional Solicitor General and resolved as under:-

The Council carefully considered all the facts placed before it in the Agenda Item, including the Annexures, and noted that IHC not only has a clean record in its dealing with the Council, but has also made regular payments of license fee to it till date and that there are no disputes between the Council and the License (IHC Ltd.).

After discussing at length the pros and cons of the two options proposed in the Item the Council Resolved by majority, to opt for public auction, in a fair and transparent manner, of the N.D.M.C. property at 1, Man Singh Road, with first right of refusal to Indian Hotel Company. The recourse to public auction would serve to determine the market price of the license fee, that IHC would have to match if they wish to run a hotel at this property. This option, the Council noted would also safeguard its revenue interests.

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The Council further resolved by majority to extend the period of license of IHC, on existing terms and conditions, for a further period of one year or till such time a new licensee is chosen through the bidding process, whichever is earlier.

That further action may be taken by the department in anticipation of confirmation of the Minutes by the Council."

19. In the light of the above-mentioned facts for the purpose of answering the queries posed to me as mentioned above, it will be essential to appreciate the basis of the surrounding circumstances and all the documents. Courts has approved and adopted this method of interpretation of contracts in several judgments. Reference can be made to the following:

- a. McDermott International Inc v. Burn Standard, (2006)
11 SCC 181 @ Para 112

"...It is trite that the terms of the contract can be express or implied. The conduct of the parties would also be a relevant factor in the matter of construction of a contract. The construction of the contract agreement, is within the jurisdiction

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of the arbitrators having regard to the wide nature, scope and ambit of the arbitration agreement and passing the award by taking into consideration the conduct of the parties. It is also trite that correspondences exchanged by the parties are required to be taken into consideration for the purpose of construction of a contract..."

- b. Khardah Co. v. Raymon and Co. (India) Pvt. Ltd.,
(1963) 3 SCR 183 @ Para 18:

"The terms of a contract can be expressed or implied from what has been expressed. It is in the ultimate analysis a question of construction of the contract. And again it is well established that in construing a contract it would be legitimate to take into account surrounding circumstances."

20. Similarly, in Para 1.04 of Lewison's, THE INTERPRETATION OF CONTRACTS, 2nd Edition, the principle is stated as follows :-

"The intention of the parties must be ascertained from the language that they have used, considered in the

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light of the surrounding circumstances and the object of the contract, in so far as that has been agreed or proved"

21. In *Manks v. Whiteley* [1912] 1 Ch. 735 at 754, Fletcher Moulton L.J. held:-

"...where several deeds form part of one transaction and are contemporaneously executed they have the same effect for all purposes such as are relevant to this case as if they are one deed. Each is executed on the faith of all the others being executed also and is intended to speak only as part of the one transaction, and if one is seeking to make equities apply to the parties they must be equities arising out of the transaction as a whole. It is not open to third parties to treat each of them as a deed representing a separate and independent transaction for the purpose of claiming rights which would only accrue to them if the transaction represented by the selected deed was operative separately. In other words, the principles of equity deal with the substance of things, which in such a case is the whole transaction, and not with

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unrealities such as the hypothetical operation of one of the deeds by itself without the others."

22. As already mentioned above, on a fair construction of both the Collaboration Agreement as well as the licence deed, the Contract entered into between the parties is undoubtedly, as visualised by the parties, is a collaboration agreement, in the nature of a Joint Venture. The Agreement is not one where rights in immovable property have been granted by means of a lease/licence strict-sensu as visualised under the Transfer of Property Act but did tantamount to one of the ways of disposal of immovable property protecting the interest of the NDMC in the best possible manner and more in the nature revenue-sharing agreement, otherwise securing the interest of NDMC by stipulating a license fee of an amount equivalent to 10 ½ per cent (ten and a half per cent) of the gross income of the Licensee for every financial year of the Licensee as certified by the statutory auditors of the Licensee or a sum equivalent to 15% (fifteen percent) of the Licensor's investment in the said hotel building, per the terms of the Collaboration Agreement, whichever is higher. Therefore the licence fee contemplated under the Licence Agreement is also not strictly in the nature of a fixed licence fee rather it

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contemplates a share of 10 ½ per cent of the gross income of the Licencee or 15% of the Licensor's investment, whichever is higher. This further supports my view that the arrangement is in the nature of a collaboration as opposed to a licence simpliciter as understood in conventional law.

23. It would also be relevant to advert to the judgment of the Hon'ble Supreme Court in *New Horizons Ltd. v. Union of India* (1995) 1 SCC, 478 at Para 24, where it has examined the concept of a Joint Venture and in my view the present arrangement under the Collaboration Agreement and the Licence Deed between NDMC and IHCL appears to fall within such expression of a Joint Venture. The relevant observations of the Hon'ble Supreme Court are as follows:

"24. The expression 'joint venture' is more frequently used in the United States. It connotes a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for mutual profit or an association of persons or companies jointly undertaking some commercial enterprise wherein all contribute assets and share risks. It requires a community of interest in the performance of the subject-matter, a right to direct and govern the policy

in connection therewith, and duty, which may be altered by agreement, to share both in profit and losses. (Black's Law Dictionary, 6th Edn., p. 839) According to Words and Phrases, Permanent Edn., a joint venture is an association of two or more persons to carry out a single business enterprise for profit (p. 117, Vol. 23). A joint venture can take the form of a corporation wherein two or more persons or companies may join together. A joint venture corporation has been defined as a corporation which has joined with other individuals or corporations within the corporate framework in some specific undertaking commonly found in oil, chemicals, electronic, atomic fields. (Black's Law Dictionary, 6th Edn., p. 342) Joint venture companies are now being increasingly formed in relation to projects requiring inflow of foreign capital or technical expertise in the fast developing countries in East Asia, viz., Japan, South Korea, Taiwan, China, etc. [See Jacques Buhart Joint Ventures in East Asia — Legal Issues (1991).] There has been similar growth of joint ventures in our country wherein foreign companies join with Indian counterparts and contribute towards capital and technical know-how for

the success of the venture. The High Court has taken note of this connotation of the expression "joint venture". But the High Court has held that NHL is not a joint venture and that there is only a certain amount of equity participation by a foreign company in it. We are unable to agree with the said view of the High Court."

24. Consistent with the NDMC Act and also the principles laid down by the Hon'ble Supreme Court, the NDMC, being a state authority within the ambit of Article 12 of the Constitution of India, is duty bound to act in a fair, reasonable, transparent, bona fide and non-arbitrary manner. So long as the party adheres to these principles consistent with the requirements of Article 14, the Hon'ble Supreme Court has upheld and maintained a policy of judicial non-interference in ordinary commercial decisions of State authorities/instrumentalities. These principles have been followed by the Hon'ble Supreme Court in a catena of judgments:

- a. Aran Kumar Agrawal v. Union of India (2013)7 SCC 1

@ Para 37:

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"We notice that the ONGC and the Government of India have considered various commercial and technical aspects flowing from the PSC and also its advantages that ONGC would derive if, the Cairn and Vedanta deal was approved. This Court sitting in the jurisdiction cannot sit in judgment over the commercial or business decision taken by parties to the agreement, after evaluating and Assessing its monetary and financial implications, unless the decision is in clear violation of any statutory provisions or perverse or for extraneous considerations or improper motives. States and its instrumentalities can enter into various contracts which may involve complex economical factors. State or the State undertaking being a party to a contract, have to make various decisions which they deem just and proper. There is always an element of risk in such decisions, ultimately it may turn out to be a correct decision or a wrong one. But if the decision is taken bona fide and in public interest, the mere fact that decision has ultimately proved to be a wrong, that itself is not a ground to hold that the decision was mala fide or done with ulterior motives."

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b. Karnataka State Industrial Investment and Development Corporation Ltd. V. Cavalet India Ltd. and Ors. (2005) 4 SCC 456 @ Para 19:

"(i) The High Court while exercising its jurisdiction under Article 226 of the Constitution does not sit as an appellate authority over the acts and deeds of the financial corporation and seek to correct them. The Doctrine of fairness does not convert the writ courts into appellate authorities over administrative authorities.

(ii) In commercial matters, the courts should not risk their judgments for the judgments of the bodies to which that task is assigned.

(iv) Unless the action of the financial corporation is mala fide, even a wrong decision taken by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however more prudent, commercial or businesslike it may be, for the decision of the financial corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the

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corporation, the same cannot be assailed for making the corporation liable."

- c. U.P. Financial Corporation and Ors. v. Naini Oxygen & Acetylene Gas Ltd. and Anr. (1995) 2 SCC 754 @ Para 21:

"However, we cannot lose sight of the fact that the Corporation is an independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge. As such, in the discharge of its functions, it is free to act according to its own light. The views it forms and the decisions it takes are on the basis of the information in its possession and the advice it receives and according to its own perspective and calculations. Unless its action is mala fide, even a wrong decision taken by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however more prudent, commercial or i businesslike it may be, for the decision of the Corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the Corporation, the same cannot be assailed for making the Corporation liable."

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Response to Query (i) & (ii)

25. In as much as both the queries are inter-linked, I am proceeding to answer these queries as follows:

- (i) Whether the decision of the Council taken through the resolution dt. 10th August 2000 that fresh licenses shall be as per provisions of section 141(2) of the N.D.M.C. Act 1994 is applicable to the facts of the case where IHCL has exercised option for grant of licence for a further period as per Clause 11(2) of the licence deed;
- (ii) Whether the judgment of Delhi High Court in the case of M/s Aggarwal & Modi of which appeal was dismissed by the Supreme Court shall be applicable to the case of grant of licence for a further period as opted by IHCL;

26. At the outset I would wish to point out that the judgment of the Hon'ble Delhi High Court in Aggarwal & Modi Enterprises (P) Ltd. and Another v. NDMC has been elaborately considered and upheld by the Hon'ble Supreme Court by a bench comprising of Hon'ble Dr. Justice Arijit

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Pasayat and Hon'ble Mr. Justice S.H. Kapadia (as he then was), which can be found in (2007) 8 SCC 75.

27. In my view, the facts in the case of Aggarwal & Modi Enterprises (P) Ltd. and in the present case are vastly different on several grounds:

- i. The arrangement with Aggarwal & Modi Enterprises (P) Ltd. was neither in the nature of a Joint Venture or a Collaboration Agreement.
- ii. The licence which was granted to the appellant was for the purpose of running a Cinema Complex (Uniplex).
- iii. The licence agreement was not renewed beyond the third block, i.e. 01.10.1990. Therefore, no valid licence was granted for the third block i.e. 1.10.1990 to 30.09.2000.
- iv. It was only by virtue of the interim orders of the Delhi High Court that they continued to remain in possession of the property and their offer was never consummated into a contract nor was there any subsisting renewal clause. The Supreme Court in Para 4 & 5 notes the observations of the Division

Bench stating that contractually there was no entitlement to seek renewal after 30.09.2000 and in fact there was no such lease in operation under which this right could be exercised.

- v. At the least, the continuance of Aggarwal & Modi Enterprises (P) Ltd. beyond the date of the judgment of the Delhi High Court was unauthorized. In that context at Para 14, the Hon'ble Supreme Court observed that auction would be the first time exercise because NDMC was proposing to have multiplexes whereas the present arrangement is one of uniplex.
- vi. In Para 18, the Hon'ble Supreme Court has observed as follows:
- "For appreciating the true scope and ambit of Sections 141(2), it is to be noted that by nature of the proposed changes it has to be treated as fresh transaction particularly when not only the nature of property changes but also the lease has expired."
- vii. It was in this context that the Hon'ble Supreme Court proceeded to interpret Section 141(2) treating the transaction as a new transaction and the premise that

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the appellant was in unauthorised occupation and accordingly proceeded to hold in Paras 22 & 23 as follows: -

"22. The mandate of Section 141(2) is that any immovable property belonging to NDMC is to be sold, leased, licensed or transferred on consideration which is not to be less than the value at which such immovable property could be sold, leased, or transferred in fair competition. The crucial expression is "normal and fair competition". In other words, NDMC is obligated to adopt the procedure by which it can get maximum possible return /consideration for such immovable property. The methodology which can be adopted for receiving maximum consideration in a normal and fair competition would be the public auction which is expected to be fair and transparent. Public auction not only ensures fair price and maximum return it also militates against any allegation of favouritism on the part of the Government authorities while giving grant for disposing of public property. The courts have accepted public auction as a

transparent means of disposal of public property. (See State of U.P. v. Shiv Charan Sharma [1981 Supp SCC 85 : AIR 1981 SC 1722], Ram & Shyam Co. v. State of Haryana [(1985) 3 SCC 267], Sterling Computers Ltd. v. M & N Publications Ltd. [(1993) 1 SCC 445], Mahesh Chandra v. Regional Manager, U.P. Financial Corpn. [(1993) 2 SCC 279], Pachaiyappa's Trust v. Official Trustee of Madras [(1994) 1 SCC 475], Chairman and MD SIPCOT v. Contromix (P) Ltd. [(1995) 4 SCC 595], New India Public School v. HUDA [(1996) 5 SCC 510 : AIR 1996. SC 3458], State of Kerala v. M. Bhaskaran Pillai [(1997) 5 SCC 432] and Haryana Financial Corpn. v. Jagdamba Oil Mills ((2002) 3 SCC 496).)

23. Disposal of public property partakes the character of trust and there is distinct demarcated approach for disposal of public property in contradiction to the disposal of private property i.e. it should be for public purpose and in public interest. Invitation for participation in public auction ensures

transparency and it would be free from bias or discrimination and beyond reproach."

28. The facts of the present case are completely different from that in the above case. The salient features of the present case are as follows:

- i. This is neither a case of unauthorized occupation nor a change in user of property mandating auction as the only method. This is a case of a renewal of a Joint Venture/Collaboration arrangement which stands on a completely different footing but even in those cases, revenue maximization, ensuring of maximum return and satisfying the twin objects of public purpose and public interest are quintessence. These are mandatory principles which have to be followed in every case.
- ii. This is a case where an option of renewal is provided to the licensee for the consideration of the licensor. Whether this creates a vested right of renewal or not is arguable but at least, since the licence provides an option to the licensee to seek renewal, which is part of the agreed terms of the contract, if there is an offer for renewal, the same must be considered keeping in mind the fact whether 141(2), competing public

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interest and the benefits as opposed to potential disadvantages prejudicing the rights of NDMC, are all relevant facts which will have to be taken into account.

29. At this stage, it would, be apposite to consider the law laid down by the Hon'ble Supreme Court with regard to the issue as to whether auction is the only constitutionally permissible method of disposal of public property or whether if there are other methods which equally secure the public interest, public trust or public purpose, that would pass the muster of Article 14. One of the judges party to the judgment in Aggarwal & Modi Enterprises (P) Ltd. and Another v. NDMC (2007) 8 SCC 75 also presided over the Constitution Bench in Natural Resources Allocation, In re, Special Reference No. 1 of 2012 (2012) 10 SCC 1, namely Kapadia J. wherein on a Presidential Reference, a Five Judge Bench of the Hon'ble Supreme Court held that auction cannot be the only constitutionally permissible method of disposal of natural/public resources. Moreover, even where revenue maximization is the object of the policy, auction would be one of the preferable methods, though not the only method for alienation/allocation of natural resources, and so long as it is done in a bona fide and reasonable manner, it would be

consistent with the requirements of Article 14)' Relevant extracts of the judgment are provided as follows:

"119. The norm of "common good" has to be understood and appreciated in a holistic manner. It is obvious that the manner in which the common good is best subserved is not a matter that can be measured by any constitutional yardstick—it would depend on the economic, and political philosophy of the Government. Revenue maximisation is not the only way in which the common good can be subserved. Where revenue maximisation is the object of a policy, being considered qua that resource at that point of time to be the best way to subserve the common good, auction would be one of the preferable methods, though not the only method. Where revenue maximisation is not the object of a policy of distribution, the question of auction would not arise. Revenue considerations may assume secondary consideration to developmental considerations.

120. Therefore, in conclusion, the submission that the mandate of Article 14 is that any disposal of a natural resource for commercial use must be for revenue

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maximisation, and thus by auction, is based neither on law nor on logic. There is no constitutional imperative in the matter of economic policies—Article 14 does not predefine any economic policy as a constitutional mandate. Even the mandate of Article 39(b) imposes no restrictions on the means adopted to subserve the public good and uses the broad term "distribution", suggesting that the methodology of distribution is not fixed. Economic logic establishes that alienation/ allocation of natural resources to the highest bidder may not necessarily be the only way to subserve the common good, and at times, may run counter to public good. Hence, it needs little emphasis that disposal of all natural resources through auctions is clearly not a constitutional mandate.

147. Finally, market price, in economics, is an index of the value that a market prescribes to a good. However, this valuation is a function of several dynamic variables: it is a science and not a law. Auction is just one of the several price discovery mechanisms. Since multiple variables are involved in such valuations, auction or any other form of,

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competitive bidding, cannot constitute even an economic mandate, much less a constitutional mandate.

148. In our opinion, auction despite being a more preferable method of alienation/allotment of natural resources, cannot be held to be a constitutional requirement or limitation for alienation of all natural resources and therefore, every method other than auction cannot be struck down as ultra vires the constitutional mandate.

149. Regard being had to the aforesaid precepts, we have opined that auction as a mode cannot be conferred the status of a constitutional principle. Alienation of natural resources is a policy decision, and the means adopted for the same are thus, executive prerogatives/However, when such a policy decision is not backed by a social or welfare purpose, and precious and scarce natural resources are alienated for commercial pursuits of profit maximising private entrepreneurs, adoption of means other than those that are competitive and maximise revenue may be arbitrary and face the wrath of Article 14 of the

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Constitution. Hence, rather than prescribing or proscribing a method, we believe, a judicial scrutiny of methods of disposal of natural resources should depend on the facts and circumstances of each case, in consonance with the principles which we have culled out above. Failing which, the Court, in exercise of power of judicial review, shall term the executive action as arbitrary, unfair, unreasonable and capricious due to its antimony with Article 14 of the Constitution."

[emphasis supplied]

30. Recently, the Hon'ble Supreme Court in *Pathan Mohammed Suleman Rehmatkhan vs. State of Gujarat & Ors* (2013) 14 SCALE 385 has held as follows:-

"12. We are of the view that these are purely policy decisions taken by the State Government and, while so, it has examined the benefits the project would bring into the State and to the people of the State. It is well settled that non-floating of tenders or absence of public auction or invitation alone is not a sufficient reason to characterize the action of a public authority as either arbitrary or unreasonable or amounted to

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mala fide or improper exercise of power. The Courts have always held that it is open to the State and the authorities to take economic and management decision depending upon the exigencies of a situation guided by appropriate financial policy notified in public interest. We are of the view that is what has been done in the instant case and the High Court has rightly held so. We, therefore, find no reason to entertain this Special Leave Petition and the same is dismissed."

31. Even if we go slightly back to consider the nature of the duty on an instrumentality of a State in granting licence/lease, the Hon'ble Supreme Court in *Sachidananda Pandey v. State of West Bengal* 1987 (2) SCC 295 had upheld the decision of the State of West Bengal to lease out land for the construction of a 5 Star Hotel to the Taj Group of Hotels by mutual negotiation as fair and reasonable and had also considered its earlier judgment in *Ramana Dayaram Shetty v. International Airport Authority of India* (1979) 3 SCC 489 wherein the concept of 'State' for the purpose of Article 12 was expanded to include public corporations and public bodies within the definition of "other authorities" by virtue of which it was required to act in a manner which is neither irrational or unreasonable nor discriminatory. In

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Sachidananda Pandey, the Hon'ble Supreme Court had made the following observations, relevant for the present purposes:

"36. In R.D. Shetty v. International Airport Authority [(1979) 3 SCC 489 : (1979) 3 SCR 1014 : (1979) 2 LLJ 217] Bhagwati, J. (as he then was) speaking for the Court observed that the activities of the Government had a public element and if it entered into any contract, it must do so fairly without discrimination and without unfair procedure. Whenever the Government dealt with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licenses or granting other forms of largesse, the Government could not act arbitrarily at its sweet will but must act in conformity with standards or norms, without being arbitrary, irrational or irrelevant. If the Government departed from such standard or norm in any particular case or cases its action was liable to be struck down unless it could be shown that the departure was not arbitrary but was based on some valid principle which was not irrational, unreasonable or discriminatory. In the present case as earlier explained by us direct negotiation with those who had

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come forward with proposals to construct Five Star Hotels was without doubt the most reasonable and rational way of proceeding in the matter rather than inviting tenders or holding public auction. There was nothing discriminatory in the procedure adopted since no other leading hotelier had shown any inclination to come forward. Tenders and auction were most impractical in the circumstances.

39. In *Ram & Shyam Company v. State of Haryana* [(1985) 3 SCC 267] dealing with the question of disposal of State property, Desai, J. speaking for the Court said: (SCC p. 27.7, para 12)

"Let us put into focus the clearly demarcated approach that distinguishes the use and disposal of private property and socialist property. Owner of private property may deal with it in any manner he likes without causing injury to anyone else. But the socialist or if that word is jarring to some, the community or further the public property has to be dealt with for public purpose and in public interest. The marked difference lies in this that while the owner of

private property may have a number of considerations which may permit him to dispose of his property for a song. On the other hand, disposal of public property partakes the character of a trust in that in its disposal there should be nothing hanky panky and that it must be done at the best price so that larger revenue coming into the coffers of the State administration would serve public purpose viz. the welfare State may be able to expand its beneficent activities by the availability of larger funds. This is subject to one important limitation that socialist property may be disposed of at a price lower than the market price or even for a token price to achieve some defined constitutionally recognised public purpose, one such being to achieve the goals set out in Part IV of the Constitution. But where disposal is for augmentation of revenue and nothing else, the State is under an obligation to secure the best market price available in a market economy. An owner of private property need not auction it nor is he bound to dispose it of at a current market

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indicated that the best method of disposal of such property was by public auction and not by private negotiation. That was a case where land belonging to a math was sold by private treaty for Rs 20 lakhs when there were people ready to purchase the land for Rs 80 lakhs. The difference between sale of land and other readily saleable commodities and the allotment of land for establishing a modern Five Star Hotel of international standard is so obvious as to need no more explanation.

the following propositions may be taken as well established: State-owned or public-owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed. Public interest is the paramount consideration. One of the methods of securing the public interest, when it is considered necessary to dispose of a property, is to sell the property by public auction or by inviting tenders. Though that is the ordinary rule, it is not an invariable rule. There may be situations where there are compelling reasons necessitating departure from the rule but then the

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reasons for the departure must be rational and should not be suggestive of discrimination. Appearance of public justice is as important as doing justice. Nothing should be done which gives an appearance of bias, jobbery or nepotism.

43. On a consideration of all the facts and circumstances of the case, we are satisfied that the Government of West Bengal acted perfectly bona fide in granting the lease of Begumbari land to the Taj Group of Hotels for the construction of a Five Star hotel in Calcutta. The Government of West Bengal did not fail to take into account any relevant consideration. Its action was not against the interests of the Zoological Garden or not in the best interests of the animal inmates of the zoo or migrant birds visiting the zoo. The financial interests of the State were in no way sacrificed either by not inviting tenders or holding a public auction or by adopting the "net sales" method. In the result, the judgments of the learned Single Judge and the Division Bench of the Calcutta High Court are affirmed and the appeal is dismissed. In the

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circumstances of the case, we do not desire to award any costs."

32. At this stage, it would also be apposite to examine the terms of the licence deed to ascertain whether the incumbent licensee can claim any right to renewal of the licence which governs the present matter.

33. Clause 11(2) of the Licence Deed dated 18.12.1976 pertaining to the renewal clause states as follows:

"On expiry of the period of licence of the said hotel building hereby granted, the Licensor shall have the option to grant the licence for a further period on such terms and conditions as may be mutually agreed upon between the Licensor and the Licensee. If the Licensee shall be desirous of obtaining a licence for a further period after the expiry of the present licence, it shall give to the Licensor, a notice in writing of not less than sixty (60) days prior to the date of expiry of the present license for the consideration of the Licensor."

34. At this stage, one has to consider the ground realities in the matter of earning of revenues by grant of leases/licences by NDMC for other 5-Star Hotels and the same has to be

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compared with revenues generated by virtue of Collaboration Agreement in the present case.

ANALYSIS AMP FINDINGS OF THE E&Y REPORT

35. To reiterate, since the decision of the NDMC ultimately is to be taken keeping in mind the goal of revenue maximization, the Report of the Transaction Consultant appointed by NDMC is also a relevant factor which needs to be considered in the decision of renewal of licence. The Report runs into two Volumes. Chapter 5 of Volume 1 relates to comparable analysis, which would be relevant for our purposes. The conclusions arrived at Para 5.4 are provided as follows:

- IHCL is one of the largest players in the Indian Hotel Industry, the next biggest player [by revenues], EIH has only 3721 rooms compared to 13,066 rooms of IHC. Furthermore IHC also has the maximum number of hotels as against its comparables.
- Revenue parameters such as occupancy ratio, RevPAR and ADR for Taj Mahal Hotel are all higher than the ratios of comparable hotels in Delhi/Lutyens area.

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- IHC has not defaulted in making lease payments to NDMC.
- Among the 7 Hotel properties leased by NDMC, it receives the largest consideration from Taj Mahal Hotel.

36. Chapter 6 of the Report deals with financial analysis. While making the financial analysis the objective was to consider return to NDMC under the following scenarios:

- i. The hotel is operated by any Private Sector Partner (PSP)
- ii. Hotel operated by IHC Group
- iii. Hotel operated by NDMC

The conclusions are available in Para 6.4 of the Report and states that scenario (ii) above is most preferable since it generates the highest cash flow in favour of NDMC.

37. Moreover in conclusion at Chapter 8, the Report states as follows:

In order to reach to a conclusion, this report attempts to analyze all possible risks and returns to NDMC in the current state, of affairs. The final conclusion is based on detailed analysis of legal, financial and qualitative aspects

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surrounding the situation. As per the legal opinion, NDMC has the following legally tenable options:

- i. NDMC to re-negotiate the financial and other terms and conditions with IHC and thereby extend the lease period.
- ii. NDMC to conduct an open competitive bid for selection of a private sector partner.
- iii. NDMC to conduct an open competitive bid for selection of a private sector partner with rights of first refusal to IHC.

In conclusion, the Report states that NDMC may choose any of the three legal options described above, however from a risk management and commercial consideration perspective NDMC stands to benefit most if the existing contract with IHC is renegotiated and extended.

38. Therefore, upon examining an expert report after a careful analysis of the financial and commercial aspects involved herein, the most commercially viable option for NDMC as advised by the financial experts E&Y is to continue its association with IHCL. The statutory mandate in terms of transfer of property under Section 141(2) is to ensure most

competitive market value for the property, which, in the present facts and circumstances, seems to be best served by renewing the licence with IHCL and continuing with the collaboration with IHCL in running the hotel. Therefore, this decision can in no way be termed unfair or untenable both from a constitutional law perspective as well as from the stand point of the statutory mandate.

CHART OF LICENCE FEE EARNED FROM COMPARABLE HOTEL PROJECTS

39. The Querist, NDMC has also provided a chart indicating the demand/collection of total licence fee from Hotels and the arrears therein as on February 2014. [The said Chart provided by the Querist is extracted hereinafter] On a perusal of the comparative chart provided by NDMC, it is clear that the maximum revenue collected by NDMC in licence fee from Hotels is attributable to the Taj Man Singh Hotel i.e. Rs. 2.68 Crore per month as it has never defaulted in any payment and there are no arrears in this regard. On the contrary, from the chart it appears that Hotel Le Meridian despite its comparatively higher licence fee of Rs. 39.21 Crore per annum has a far lesser rate of collection per month, i.e. Rs. 1 Crore and huge arrears of Rs. 309.94

Crore with interest of Rs. 276.86 Crore running into a total of Rs. 586.80 Crores in total arrears as opposed to NIL arrears from the Taj Man Singh Hotel project. Therefore, past performance of parties and its direct consequential financial benefit/impact on NDMC is also a relevant factor which has to be considered in deciding the present issue in light of the fact that the ultimate goal of NDMC is to ensure the most profitable/revenue maximizing option in dealing with its property.

DEMAND / COLLECTION & ARREARS IN R/O HOTELS AS ON FEB - 2014							
Name of Hotel	Period of Demand	Demand (in Crs) -License Fee	Collecti on per Month (in Crs)	Arrears (in Crs)	Interest (in Crs)	Total Arrears (in Crs)	Remarks
C. J. International (Le Meridian) E-2881	Demand is raised in Sept. every year	39.21 (p. annum) Provisional	1 Crore p.m.	309.94	276.86	586.80	Evidence being recorded by Retd. ADJ. Sh. Dinesh Dayal appointed.
Bharat Hotel (E-2882)	Demand is raised in Nov. every year	1.45 (p. annum)	1.45 Cr. (Nov. 2013)	0.04	11.8	11.84	
Metropolitan (Sun-Air) E-2883	Demand is raised in Jan. every year	1.10 (p. annum)	1.10 (p. annum)	NIL	NIL	NIL	
Hotel Connaught (Prominent Hotel) E-2922	Demand is raised in Nov. every year	3.58 (p. annum)	1.20 (upto Feb 2014)	49.57	70.50	120.07	Appeal is being filed in the High Court for challenging the orders of the ADJ

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							Case also pending in E.O. Court.
Hotel Taj Mansingh E-2921	Enhancement is in Sept. every year but demand is raised every month	2.68 (p month)	2.68	NIL	NIL	NIL	
Asian Hotel E-2879	Enhancement @ 10% in May every year but demand is raised every month	0.36 (p. month)	0.2 (upto Feb 2014)	29.12	13.79	42.91	Pending for eviction and recovery in E.O. Court. Stay granted by the ADJ for dispossession.
Gesture Hotel E-2894	Enhancement @ 10% in July every year but demand is raised every month	0.16 (p. month)	0.16 (p.m.)	NIL	NIL	NIL	
GRAND TOTAL				388.67	372.95	761.62	

40. As already noticed above, this is a case of a renewal unlike the case of unauthorized occupants like the Chanakya Cineplex matter, which changes the complexion of the case even as noticed by the Hon'ble Supreme Court in the case of Aggarwal & Modi Enterprises (P) Ltd.

41. As already stated earlier, it appears from the licence deed that an option of renewal is provided to the licensee for the consideration of the licensor. Whether this creates a vested right of renewal or not is arguable but at least, since the licence provides an option to the licensee to seek renewal, which is part of the agreed terms of the contract, if there is an offer for renewal, the same must be considered by NDMC in accordance with the constitutional mandate to act in a fair, reasonable, transparent and non-arbitrary manner.
42. The Hon'ble Supreme Court in *M.P. Oil Extraction v. State of M.P.* (1997) 7 SCC 592 has held that in appropriate cases, the right of renewal may constitute a substantive and enforceable right while observing that renewal clause in agreement for distribution of State largesse to selected industrial units as a protective measure may give rise to a legitimate expectation of extension of their protection by giving effect to the renewal clause in usual manner and according to past practice. Relevant extracts of the judgment are as follows:

"44. The renewal clause in the impugned agreements executed in favour of the respondents does not also appear to be unjust or improper. Whether protection

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by way of supply of sal seeds under the terms of agreement requires to be continued for a further period, is a matter for decision by the State Government and unless such decision is patently arbitrary, interference by the Court is not called for. In the facts of the case, the decision of the State Government to extend the protection for further period cannot be held to be per se irrational, arbitrary or capricious warranting judicial review of such policy decision. Therefore, the High Court has rightly rejected the appellant's contention about the invalidity of the renewal clause. The appellants failed in earlier attempts to challenge the validity of the agreement including the renewal clause. The subsequent challenge of the renewal clause, therefore, should not be entertained unless it can be clearly demonstrated that the fact situation has undergone such changes that the discretion in the matter of renewal of agreement should not be exercised by the State. It has been rightly contended by Dr. Singhvi that the respondents legitimately expect that the renewal clause should be given effect to in usual manner and according to past practice unless there is any special

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reason not to adhere to such practice. The doctrine of "legitimate expectation" has been judicially recognised by this Court in a number of decisions. The doctrine of "legitimate expectation" operates in the domain of public law and in an appropriate case, constitutes a substantive and enforceable right.

45. Although to ensure fair play and transparency in State action, distribution of largesse by inviting open tenders or by public auction is desirable, it cannot be held that in no case distribution of such largesse by negotiation is permissible. In the instant case, as a policy decision protective measure by entering into agreements with selected industrial units for assured supply of sal seeds at concessional rate has been taken by the Government. The rate of royalty has also been fixed on some accepted principle of pricing formula as will be indicated hereafter. Hence, distribution or allotment of sal seeds at the determined royalty to the respondents and other units covered by the agreements cannot be assailed. It is to be appreciated that in this case, distribution by public auction or by open tender may not achieve the purpose of the policy of protective measure by way of

supply of sal seeds at concessional rate of royalty to the industrial units covered by the agreements on being selected on valid and objective considerations."

43. The Hon'ble Supreme Court in *State of Rajasthan v. Harishanker Rajendrapal*, (1965) 3 SCR 402 has held that for the purpose of renewal of mining lease, the word 'may' in the proviso with regard to the extension/renewal of the period by the Government should be construed as 'shall', so as to make it incumbent on the Government to extend the period of the lease a further period.
44. Therefore, whether or not there is a vested right of renewal in the present facts and circumstances is arguable; but on the basis of the contract there may be a legitimate expectation on the part of the licensee to have his offer considered by the NDMC.
45. In light of the above discussion, it can be concluded that the facts in the case of *Aggarwal & Modi Enterprises (P) Ltd.* are totally different even on a plain reading of the judgment of the Hon'ble Supreme Court since in the present case, neither has there been a change of user nor has the occupancy become unlawful. Here, IHCL is already in lawful occupation in light of the extensions granted by NDMC from

time to time on renegotiation and increase of licence fee including the latest extension granted in its meeting no. 16/2013-14 held on 21.03.2014 granting an extension for four months w.e.f. 01.04.2014 till 31.07.2014 and the fact that IHCL is seeking renewal of its Collaboration and Licence Agreement with NDMC.

46. Therefore, Query (i) and (ii) are accordingly answered.

47. Response to Query (iii), (iv) and (v).

(iii) Whether the provisions of section 141(2) of the N.D.M.C. Act 1994 were attracted/applicable when notice exercising option for grant of licence for a further period as per provisions of Clause 11(2) of the licence deed was under consideration of the Council;

(iv) Whether the option exercised by IHCL as per clause 2(ii) of the Licence Deed was rightly not accepted by the Council on the ground that as per provisions of Section 141(2) of the N.D.M.C. Act 1994 only option available with the Council is to put the property to auction/tender with the first right of refusal to IHCL to get the best price of licence fee with a view to obtain normal and fair competition;

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(v) Whether the property should be put to auction without first right of refusal as advised by the Ministry of Home Affairs;

48. Merely because I have answered queries (i) and (ii) in the above fashion, it does not mean the remaining three queries have become redundant and have to necessarily be answered by construing Section 141(2) in a proper and meaningful manner in the light of the principles as aforementioned.

49. The queries (iii), (iv) and (v) also provide for one among the options but one has to examine as to whether on the facts of the case, those options can be straightaway resorted to from a public interest perspective. The option which is the subject matter of query (v) can be resorted to if there is a complete failure of arriving at a satisfaction of revenue maximization or if the relationship in the past had seriously prejudiced the interests of NDMC in revenue generation as in the case of some other 5-Star Hotels coupled with the fact that there has to be a satisfaction that in future there are sufficient safeguards of adequately protecting NDMC's goal of revenue maximization, for which, in my view, there is already an in-built safeguard originally provided in the

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licence agreement in the nature of a revenue-sharing scheme. Nevertheless, I am suggesting additional safeguards hereinafter, but if these do not provide positive pointers, then option envisaged in query (v) can be resorted to.

50. Now let us consider the options as proposed and whether such an option is in tune with provisions of Section 141(2) of the NDMC Act. Insofar as the above queries are related, I am proceeding to answer them together.

**OPTION I - RENEWAL OF LICENCE BY MUTUAL
NEGOTIATION SUBJECT TO ENSURING FAIR MARKET
VALUE**

48. It would be pertinent to note that the Council vide its Resolution dated 27.09.2012 has observed the fact "that IHC not only has a clean record in its dealing with the Council, but has also made regular payments of license fee to it till date and that there are no disputes between the Council and the License (IHC Ltd.)". Moreover, the increase in the overall turnover of the Hotel from Rs. 8.96 Crores in 1979-80 to Rs. 194.29 crores in 2010-11 has also benefitted the NDMC by increasing its share of the gross revenue by;

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way of license fee per annum which increased gradually from Rs. 0.94 Crores in 1979-80 to Rs. 20.40 Crores in 2010-11, taking the NDMC's earnings cumulatively to Rs. 237.78 Crores upto 31.03.2011 as against the NDMC's total original investment of Rs. 6.26 Crores. Therefore, from the NDMC's own records and resolution, it appears that the association with IHCL has been financially very fruitful owing to the financial success of the hotel itself. [Refer to Paras 35 to 39 above for an Analysis of the E&Y Report and Comparative Chart of licence fee earned from other hotel projects.]

49. Section 141. Disposal of immovable property:

- "(1) The Chairperson may, with the sanction of the Council, lease, let out on hire or otherwise transfer any immovable property belonging to the Council.
- (2) The consideration for which any immovable property may be sold, leased or otherwise transferred shall not be less than the value at which such immovable property could be sold, leased or otherwise transferred in normal and fair competition.

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- (3) The sanction of Council under section 140 or this section may be given either generally for any class of cases or specially for any particular case.
- (4) Subject to any conditions or limitation that may be specified in any other provisions of this Act the foregoing provisions of section 140 and this section shall apply to every disposal of property belonging to the Council made under, or for any purpose of this Act.
- (5) Every case of disposal of property under sub-section (1) of section 140 shall be reported by the Chairperson without delay to the Council."
50. In my view, the statutory mandate of Section 141(2) of ensuring a fair market value during disposal of property can be achieved in a myriad ways, while safeguarding not only the revenue interests of the NDMC but also keeping in view the past performance of the incumbent licensee, the profitability of association with such licensee which the NDMC has enjoyed over more than thirty years as well as the expertise and experience of over a 100 years of the incumbent licensee in the hotel industry observed by the NDMC in the Collaboration Agreement. Keeping in mind all

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these considerations and the market realities as well as the statutory mandate of fetching the market value which the property would ordinarily get through normal and fair competition, extending the lease in favour of IHCL cannot be termed as an unfair decision since ultimately it is sought to be taken in public interest, in light of the past profitability of the Hotel and the consequent ensuing benefit to the NDMC by way of licence fee as well as the well-known brand name of the Taj Group. The fact that the Road on which the Hotel stands has obtained secondary meaning and is also generically referred to as the Taj Man Singh Road is testament to its popularity and the NDMC will be within its statutory, constitutional and contractual obligations and mandate, if it so chooses to renew the licence in favour of the incumbent licensee in light of all the above considerations. Moreover, this is not a disposal of property by way of licence/lease simplicitor, rather as discussed above, it is more in the nature of a Collaboration/Joint Venture between NDMC and IHCL and stands on quite a different footing to all the existing leases. Keeping in view the above unique and peculiar facts and circumstances, and the fact that ultimately the object of the renewal of the licence is revenue maximisation, the NDMC should exercise

its powers in a manner which should not be tainted by arbitrariness or lack of bona fides. The exercise of power of renewal is also subject to the test of reasonableness under Article 14 and although renewal can be rejected in public interest which prevails over private interest, if such renewal is equally relevant for public interest, it cannot be easily overlooked. Moreover, it must also be noted that the collaboration agreement between the parties still subsists and to put an end to it, there has to be valid reasons, failing which such decision would be open to question on the grounds of unreasonableness and arbitrariness.

51. The NDMC in its meeting on 30th August 2000 resolved that "On the expiry of present term of licenses of hotels/ cinemas and other similar commercial complexes, the licenses shall not be renewed. The fresh licence shall be as per provisions of Section-141(2) of the N.D.M.C. Act, 1994." In my view, it is well-settled that the statute prevails over Circulars/ Resolutions of Departments and ultimately the guiding principle in light of the Constitution Bench judgment in Natural Resources Allocation, In re, Special Reference No. 1 of 2012 (2012) 10 SCC 1 as well as the statutory mandate of Section 141(2), in light of the peculiar facts and circumstances of the matter, the NDMC need not

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necessarily dispose of the said property by auction and may proceed to renew the terms of the licence provided it can ensure that a fair market value of rentals which the property will fetch is arrived at and this can be done by seeking views of an expert committee well-versed in valuation so that NDMC's financial interest is safeguarded. After procuring such valuation report, the Querist can further obtain a second opinion from a similarly well-reputed valuer and keeping in account potential increases in market value, terms may be negotiated with IHCL.

52. Therefore, in my view, subject to all the safeguards as provided above, the option to renew the licence in favour of IHCL provided that a fair, market value is arrived at, the NDMC's decision cannot be termed as unfair and would be within the requirements of statutory and constitutional parameters as discussed above.

**OPTION II - TO CALL FOR OFFERS FROM VARIOUS PARTIES
WITH THE RIGHT TO IHCL TO MATCH THE HIGHEST OFFER**

53. The sanctity of the bidding process may be jeopardized if a right of first refusal is given to IHCL since it may tantamount to negotiations during the tendering process after opening

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the price bid, which is prohibited as per the law laid down by the Hon'ble Supreme Court as well as the CVC guidelines. Attention may be drawn to the CVC Office Order No. 68/10/05 dated 25.10.2005 read with Circular No. 4/3/07 dated 03.03.2007. The CVC guidelines provide that there should not be any negotiations during the tendering process. Negotiations, if at all, shall be an exception and only in the case of proprietary items or in the case of items with limited source of supply. It further provides that negotiations, if at all, shall be held with L-1 only. Therefore, the right of first refusal allowing IHCL to match the offer of the L-1 may tantamount to post-tender negotiations which is clearly prohibited by the CVC guidelines and would set a bad precedent adversely affecting the sanctity of the bidding process. Apart from the fact that this process would, in all likelihood, be bad in law, there are other pitfalls therein, like an inherent danger of parties without sufficient experience and background making offers and then defaulting in regular payments as already seen from the past experiences of NDMC, which is likely to adversely affect the sanctity of the bidding process. It is in under circumstances like these where the Courts have suggested the route of private

negotiations so that the sanctity of the bidding process is not affected.

OPTION III - PUBLIC AUCTION & TERMINATION OF EXISTING ARRANGEMENT,

54. This Option can be resorted to in a situation like the case of Aggarwal & Modi where there was a breach of agreement but this is a case of renewal of licence where the Collaboration Agreement is still subsisting. The pending litigation before the Delhi High Court, wherein the High Court has given IHCL the liberty to move the Court in case any coercive action is taken against them by NDMC, may endanger the entire bidding process. The Querist is likely to be restrained from taking any coercive actions against IHCL and even assuming the suit goes against IHCL, they always have a right of appeal which is likely to lead to a long-drawn litigation to the detriment of the revenue interests of NDMC, since a property in litigation is likely to fetch lower revenues, which is not conducive to either parties. The disposal of the property under question by public auction, need not necessarily serve the "common good" nor does this decision completely safeguard the interests of NDMC.

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PENDING LITIGATION

55. The PIL filed before the Delhi High Court in challenging the extension of licence of Hotel Taj Man Singh beyond 10.10.2012 was dismissed by the High Court. Thereafter, a Special Leave Petition was moved against the said dismissal in SLP (C) No. 9142/2013, wherein notice was issued. The matter had again come up for hearing as recently as 04.04.2014 and the Court was pleased to pass the following order:

"Mr. Mithilesh Kumar Pandey, petitioner-in-person after arguing the matter for some time, prays for withdrawal of special leave petition. Special leave petition is permitted to be withdrawn and it is dismissed as such.

We are informed that a suit between respondent No. 5 and respondent No.1 being CS (OS)No. 651 of 2013, titled "The Indian Hotels Company Ltd. vs. New Delhi Municipal Council" is pending before the Delhi High Court concerning the subject matter of the dispute.

We request the Delhi High Court to hear and decide CS(OS) No. 651 of 2013 as expeditiously as

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may be possible and preferably within four months from the date of production of copy of this order."

56. The Indian Hotels Company Limited in CS(OS) No. 651 of 2013 has challenged the decision of the NDMC to auction the Hotel and claims a vested right to Operate and Manage the same. The Delhi High Court has not granted any stay of auction but has granted liberty to IHC to move appropriate application in case of any immediate threat of coercive steps in the hands of the defendant/NDMC.
57. In my view, it cannot be termed as unlawful or arbitrary if NDMC resorts to Option I. However, before resorting to this option, a meaningful exercise has to be done in public interest since the contract visualizes that in the event of a renewal, the terms and conditions are to be negotiated and settled between the parties. Therefore, any offer by IHCL can be duly considered if in the opinion of NDMC it best sub-serves public interest, public purpose and revenue maximization keeping in view the ground realities as discussed above and considering the fact that there is a good commercial relationship between the parties, which has served the interests of NDMC with returns over Rs. 237 Crores (approximately till 2011). In my view, overruling this

option would be against the revenue interests of NDMC and can be done so only if NDMC comes to the conclusion that grant of renewal through this option will be contrary to the law declared by the Hon'ble Supreme Court that it is fundamentally affecting revenue maximisation or conferring an undue advantage on any party. Option I appears to be the most suitable and advisable compared to Options II & III in light of what has been stated above. I have broadly stated the principles but it would be upto the NDMC to finally assess the situation but I must reiterate that the principles laid down in the case of Aggarwal & Modi cannot be mechanically applied ruling out Option I and this is all the more so in light of subsequent judgments of the Hon'ble Supreme Court restating the position of law that even where revenue maximization is the object of the policy, auction would be one of the preferable methods, though not the only method for alienation/allocation of natural resources, and so long as it is done in a bona fide and reasonable manner, it would be consistent with the requirements of Article 14. Therefore, upon a careful consideration of the three options available to NDMC as discussed above, all of which are constitutionally and statutorily permissible, it is my considered opinion that the NDMC, if it chooses to go ahead

with Option I of negotiating the licence with IHC and arriving at a revenue sharing model at market value, which will best serve the Querist's financial and revenue interests, it cannot be termed unlawful or arbitrary.

58. My reasoning for arriving at the above conclusion, for the sake of / convenience, can be summarised as below:

- i. The judgment of the Hon'ble Supreme Court in the case set of facts and circumstances and the principles therein cannot be mechanically applied to all matters of conveyance of property. Unlike the case in Aggarwal & Modi, this is neither a case of unauthorized occupation nor a change in user of property mandating auction as the only method. Moreover, unlike in that case where as the Supreme Court observed that there was no entitlement to seek renewal after 30.09.2000 and in fact (there was no such lease in operation under which this right of renewal could be exercised, the present matter is a case of a renewal of a licence deed where a Joint Venture/Collaboration arrangement still subsists and therefore it stands on a completely different footing but even in such cases, revenue maximization, ensuring

of maximum return and satisfying the twin objects of public purpose and public interest are the quintessence. These are mandatory principles which have to be followed in every case.

- ii. Upon construction of both the Collaboration Agreement as well as the Licence Deed, it appears that the arrangement entered into between NDMC and IHCL is more in the nature of a joint venture for the construction, development, management and operation of a 5 star hotel in New Delhi with NDMC playing a lead supervisory role in the said Project and for this purpose the land at 1 Mansingh Road was given for the said use to IHCL.
- iii. This is further evident from the fact that the licence fee contemplated under the Licence Agreement is also not strictly in the nature of a fixed licence fee rather it contemplates a share of 10 ½ per cent of the gross income of the Licencee or 15% of the Licensor's investment, whichever is higher.
- iv. A share in the gross revenue is also a reflection of the market value in the use of property and therefore a revenue sharing arrangement in a profitable venture

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can also be said to fulfil the objective of revenue maximisation.

- v. NDMC, being a state authority within the ambit of Article 12 of the Constitution of India, is duty bound to act in a fair, reasonable, transparent, bona fide and non-arbitrary manner including considering the option of renewal granted to the licensee under the contract.
- vi. The Hon'ble Supreme Court has reiterated the position of law in several judgments as follows.
- vii. In *Sachidananda Pandey v. State of West Bengal*, 1987 (2) SCC 295 had upheld the decision of the State of West Bengal to lease out land for the construction of a 5 Star Hotel to the Taj Group of Hotels by mutual negotiation as fair and reasonable rather than inviting tenders or holding public auction since Tenders and auction were most impractical in the circumstances.
- viii. In the Presidential Reference in Natural Resources Allocation, In re, Special Reference No. 1 of 2012 (2012) 10 SCC 1, a Five Judge Bench of the Hon'ble Supreme Court has held that even where revenue

maximization is the policy, auction would be one of the preferable methods and cannot be the only constitutionally permissible method of disposal of natural / public resources.

- ix. The Hon'ble Supreme Court in *Pathan Mohammed Suleman Rehmatkhan vs. State of Gujarat & Ors.* (2013) 14 SCALE 385 has held that non-floating of tenders or absence of public auction or invitation alone is not a sufficient reason to characterize the action of a public authority as either arbitrary or unreasonable or amounted to mala fide or improper exercise of power. The Courts have always held that it is open to the State and the authorities to take economic and management decision depending upon the exigencies of a situation guided by appropriate financial policy notified in public interest.
- x. The question whether the right of renewal under the Licence Deed constitutes a vested right or not is a matter which is sub-judice but it may be said to give rise to some legitimate expectation in the Contractor to discuss the possibility of renewal and negotiation and that exercise may also be useful for the Querist to

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ascertain the offer/view of the licensee and whether it is in the best interest of revenue maximization. In fact, out of abundant caution, this exercise may be done with the leave of the Delhi High Court in the pending Civil Suit filed by IHCL, to arrive at a reasonable market value in consonance with the object of revenue maximization.

- xi. The ground realities in the matter of earning of revenues by grant of leases/licences by NDMC for 5-Star Hotels when compared with revenues generated by virtue of Collaboration Agreement in the present case reflects favourably towards the latter. This is evident from the following.
- xii. The Querist vide its Resolution dated 27.09.2012 has observed the fact "that IHC not only has a clean record in its dealing with the Council, but has also made regular payments of license fee to it till date and that there are no disputes between the Council and the License (IHC Ltd.)"
- xiii. The Report of the Transaction Consultant (E&Y) appointed by NDMC is also a relevant factor which

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needs to be considered in the decision of renewal of licence, which records as follows:

1. Revenue parameters such as occupancy ratio, RevPAR and ADR for Taj Mahal Hotel are all higher than the ratios of comparable hotels in Delhi Lutyens area.
 2. IHC has not defaulted in making lease payments to NDMC.
 3. Among the 7 Hotel properties leased by NDMC, it receives the largest consideration from Taj Mahal Hotel.
 4. In conclusion the Report states that from a risk management and commercial consideration perspective NDMC stands to benefit most if the existing contract with IHC is renegotiated and extended.
- xiv. On a perusal of the comparative chart of licence fee collected from other hotels by NDMC, it is clear that the maximum revenue collected by NDMC in licence fee from Hotels is attributable to the Taj Man Singh Hotel i.e. Rs. 2.68 Crore per month as it has never

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defaulted in any payment and there are no arrears in this regard.

xv. Keeping in mind all these considerations and the ground realities as well as the statutory mandate of fetching the market value, extending the lease in favour of IHCL cannot be termed as an unlawful or unfair decision since ultimately it is sought to be taken in public interest keeping in mind the goal of revenue maximization of NDMC which appears to be best served through Option 1, in light of the past profitable association with IHC in the running of the Hotel and the consequent ensuing benefit to the NDMC by way of a revenue-sharing licence fee as well as the well-known brand name of the Taj Group which has commercial viability.

xvi. As pointed out by the Hon'ble Supreme Court in the case of Aggarwal & Modi (supra) since there has been no change in the dynamics/user and since this is only a case of renewal which had been contemplated by the parties and considering all past facts and ground realities, NDMC apart from carefully evaluating the offer of IHCL as to whether the said offer would

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adequately safeguard its interest by maximizing its revenue share through the Agreement, should also have the offer thoroughly verified by a reputed and independent expert-body well-versed in these kinds of valuation and after taking into account potential increases in market value, can proceed to renew this Contract. I am suggesting this course since NDMC has secured returns which it has not secured in the past with any other entity and other ground realities and to avoid a long-drawn litigation. Further, I have also set out the principles of law of various Courts as well as the Hon'ble Supreme Court which supports the view I have taken.

I have nothing further to add.

Date: 19.04.2014
Place: New-Delhi

Sd/-
(MOHAN PARASARAN)

DISCLAIMER: This opinion is restricted to and based upon the facts and circumstances placed before me in the brief for opinion. This opinion is only for the guidance of the Querist, and shall not be used before any authority or Court of law.

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Annexure-II

ANNEXURE P-47

Mukul Rohatgi
Attorney General for India

Office: 59, Sunder Nagar, New Delhi-110 003 Phones: 24350019-20-21
Fax: +91-11-43546834 E-mail: attorneygeneral@rohatgi.in

FTS No. 2896/Adv.A/2014

20th August, 2014

OPINION

Sub: Public Auction of Hotel situated at: 1, Man Singh Road by
NDMC.

I have seen the notes in the file relating to property situated
at 1, Man Singh Road (presently Taj Man Singh Hotel), New
Delhi.

2. I have also seen the detailed opinion rendered by Shri
Mohan Parasaran, the then Solicitor General dated 19.04.2014.
3. The facts are set out in great detail in the opinion of the then
Solicitor General.
4. The basic question is as to what should be future course of
action in view of the fact that the licence to M/s Indian Hotels
Company Ltd. (IHCL), for 33 years, expired in 2011.
5. Whether the property should be put to auction or whether
other options can be considered?

6. The hotel building was constructed on the plot under a collaboration agreement. A licence deed was also executed wherein the term is 33 years. Sub-clause (2) of Clause II dealing with "term" provides that the licence can be renewed upon mutual agreement, after expiry of the licence.

7. It is seen from the record that IHCL has paid one of the highest licence fee during the term of 33 years as compared to other hotels and they have not defaulted in payment of such fee as was done by some other hotels like Le Meridian etc.

8. Section 141(2) of the NDMC Act, 1994 relates to disposal of immovable property. The same is reproduced herein below:-

"The consideration for which any immovable property may be sold, leased or otherwise transferred shall not be less than the value at which such immovable property could be sold, leased or otherwise transferred in normal and fair competition."

9. It is provided in the law that transfer of immovable property whether by way of sale, lease etc. should at such rates as would be available through "normal and fair competition".

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10. The Supreme Court had occasion to deal with Section 141(2) in the case of Aggarwal & Modi which related to Chankya cinema.

11. The philosophy of the law is that the NDMC should not transfer property at an under valuation since the same will be contrary to public interest.

12. The notes in the file indicate that one option is outright auction while another option is a public auction with a right to first refusal to IHCL and the third is a negotiation between the parties which yields the same consideration as would be available in "normal and fair competition".

13. In my view public auction with a right of first refusal is impractical and would never yield a correct and fair price. The real choice is between negotiating for renewal or an outright public auction.

14. I agree with the opinion of the then Solicitor General that it will not be illegal for the NDMC to conduct mutual negotiations to arrive at a figure which would represent market value. This can be done through an expert in the field. M/s E&Y have already given a report. Fresh reports can be asked to determine the market value.

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After market value is agreed to be paid by IHCL then that mode can be followed as suggested by the then Solicitor General.

15. If IHCL is not ready to give market value in terms of licence for the renewed period then obviously public auction should be resorted to.

16. In nutshell, I agree with the view taken by the then Solicitor General in his opinion dated 19.04.2014.

Sd/-
(Mukul Rohatgi)
Attorney General for India

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ITEM NO.1

COURT NO.6

SECTION XIV

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 33397/2016

(Arising out of impugned final judgment and order dated 27/10/2016 in RFA No. 67/2016 passed by the High Court Of Delhi At New Delhi)

THE INDIAN HOTELS COMPANY LTD

Petitioner(s)

VERSUS

NEW DELHI MUNICIPAL COUNCIL

Respondent(s)

(With appln. (s) for permission to place addl. documents on record, exemption from filing c/c of the impugned judgment and permission to file lengthy list of dates)

Date : 12/01/2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE PINAKI CHANDRA GHOSE
HON'BLE MR. JUSTICE ROHINTON FALI NARIMANFor Petitioner(s) Mr. Harish Salve, Sr. Adv.
Mr. Rajiv Nayar, Sr. Adv.
Mr. Rishi Agrawala, Adv.
Mr. Mahesh Agarwal, Adv.
Mr. Karan Luthra, Adv.
Mr. Raghav Shankar, Adv.
Ms. Niyati Kohli, Adv.
Mr. Abhinav Agarwal, Adv.
For Mr. E. C. Agrawala, AORFor Respondent(s) Mr. Sanjay Jain, ASG
Mr. Akshay Makhija, Adv.
Mr. Yoginder Handoo, AOR
Mr. Siddarth Thakur, Adv.
Ms. Rhea Verma, Adv.
Mr. S. Sanyam, Adv.
Sangam Kumar, Adv.
Mr. Nishant Kumar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

We have heard Mr. Harish Salve, learned Senior Counsel appearing for the petitioner - the Indian Hotels Company Limited and Mr. Sanjay Jain, learned Additional Solicitor General appearing for the respondent - New Delhi Municipal Council at considerable length.

During the course of hearing, we have been informed by learned Senior Counsel that opinions which were sought from the learned Solicitor General of India as well as the learned Attorney General for India by N.D.M.C. were not placed before the competent authority in the Ministry of Home Affairs while dealing with the matter, in which it came to the conclusion that public auction without giving a first right of refusal to the petitioner - the Indian Hotels Company Limited alone should be done.

It appears that even the N.D.M.C. vide its Resolution dated 27.09.2012 by majority agreed and came to a conclusion, after taking into consideration the facts, the Report of Committee of Officers, advice of competent authorities and also the legal opinion by advocates/law officers. This is summarized in its Minutes of the same date. Two options were short listed as follows:

- (i) The Council may grant extension for a further period on the terms and conditions as may be mutually agreed upon with IHC, or
- (ii) The Council may decide to go for public auction with first right of refusal to IHC.

After carefully considering all the facts placed before it in the Agenda Item, the Council came to the following decision:

"... After discussing at length the pros and cons of the two options proposed in the Item, the Council resolved by majority, to opt for public auction, in a fair and transparent manner, of the NDMC property at 1, Man Singh Road, with first right of refusal to Indian Hotel Company. The recourse to public auction would serve to determine the market price of the license fee, that IHC would have to match if they wish to run a hotel at this property. This option, the Council noted would also safeguard its revenue interests."

The Council further resolved by majority to extend the period of license of IHC, on existing terms and conditions, for a further period of one year or till such time a new licensee is chosen through the bidding process, whichever is earlier...."

In view of the above, at this stage, we direct the respondent-N.D.M.C. to reconsider the case of the petitioner in the light of their own decision dated 27.09.2012, and after taking into consideration the opinion expressed by the learned Solicitor General of India and learned Attorney General for India in the matter, and to submit their stand before this Court within a period of six weeks from today.

As prayed, list on Wednesday, the 1st March, 2017.

(R. NATARAJAN)
Court Master

(SNEH LATA SHARMA)
Court Master

F.No. 14011/12/2013-Delhi-II

Government of India
Ministry of Home Affairs

North Block, New Delhi

Dated...23 February, 2017

To:

The Chairman
NDMC
Palika Kendra
New DelhiChairman
Secy
1/2/17Subject: Public auction of property situated at 1, Mansingh Road, New Delhi
commonly known as Hotel Taj Mansingh

Sir,

I am directed to refer to NDMC's letter No.92/Dir(E-I) dated 24.1.2017, in which citing the MHA's instructions (Memo. No.14011/12/2013-Delhi-II dated 01.01.2015) directions of the Ministry have been solicited in view of hearing order dated 12.1.2017 of Apex Court in the SLP (Civil) No. 33397/2016 (IHCL Vs. NDMC).

2. In so far as Para 2 of the aforesaid hearing order is concerned, it is clarified that when the competent authority in the Central Government had taken a decision under Section 396 of NDMC Act 1994 (which was intimated to NDMC by above said Memo dated 1.1.2015), the opinions of Ld. AGI and Ld. SGI were taken into account. Therefore, this aspect may be clarified before the Hon'ble Court. The relevant extract of the opinion of Ld. AGI is as under:-

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23/2/17

"12. The notes in the file indicate that one option is outright auction while another option is a public auction with a right to first refusal to IHCL and the third is a negotiation between the parties which yields the same consideration as would be available in "normal and fair competition".

13. In my view public auction with a right of first refusal is impractical and would never yield a correct and fair price. The real choice is between negotiating for renewal or an outright public auction.

14. I agree with the opinion of the then Solicitor General that it will not be illegal for the NDMC to conduct mutual negotiations to arrive at a figure which would represent market value. This can be done through an expert in the field. M/s E&Y have already been given a report. Fresh reports can be asked to determine the market value. After market value is agreed to be paid by IHCL then that mode can be followed as suggested by the then Solicitor General.

15. If IHCL is not ready to give market value in term of license for the renewed period then obviously public auction should be resorted to."

As per the opinion of the Ld. AGI, the real choice was between negotiating for renewal or an outright public auction. Referring to the opinion of Ld. SGI, it was stated in the opinion that negotiation would not be illegal. However, outright public auction was also stated as the other option and auction with Right of First Refusal was clearly ruled out.

Accordingly Ministry of Home Affairs took a decision to go for public auction to ensure highest level of transparency and to avoid any subjectivity in the course of negotiation. Thus the order vide memo dated 01.01.2015 in effect rendered the NDMC decision dated 27.09.2012 ineffective.

Therefore, Ld. ASG, who is appearing for NDMC may be requested to apprise the Honble Court with regard to the above.

23/12
Yours faithfully
(R. K. Pande)

ITEM NO. 26 (L-32)

1. **Name of the Subject:**
 Regarding termination of license and initiating of eviction proceedings under Sections 5 & 7 of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 against CJ International Hotels Limited (hereinafter referred as "CJ International") for non-payment of outstanding license fee.

2. **Name of the Department:**
 Estate Department-I

3. **Brief History:**
 The licence of Hotel CJ International (Le-Meridien) was given for a total licence period of 99 years as per license deed dated 14.7.1982 (w.e.f. 16.04.1981). As per the licence deed, the licence fee had to be revised after 33 years i.e. with effect from 16.04.2014. However, instead of effecting revision, an attempt was made to freeze the license fee for good pursuant to which an application was moved by CJ International under Order XXIII Rule 3 to have this alleged settlement compromised in the court of law by having the suit no. CS(OS) 610/2000 (Annexure-I, See pages 569-578) disposed of; even though no such decision was taken by the council as per the NDMC Act; there was no basis to forego the recurring license fee with a one time settlement particularly when NDMC was fully protected by the order of Justice S.K. Mahajan dated 18.5.2001 was wrongly interpreted wherein more number of items were excluded for calculating the Gross Turn Over(GTO) for the purpose of paying the licence fee. The orders dated 18.05.2001 of Justice S.K.Mahajan in Suit No.610/2000 IA No.3075/2000 Annexure-II, See pages 579-596) as per which NDMC was permitted to charge and recover license fee on the basis of 21% of GTO to be calculated as per the directions given in the said order. Even after dilution of the formula for calculating 21% GTO, as per the Order dated 18.5.2001 passed in a suit filed by nonother than CJ International only, the liability of CJ International as upto 2015 alleged was Rs. 270 Crores (approx), whereas the alleged settlement was attempted to be done for Rs.151 crores(approx.).
 This alleged compromise was challenged by NDMC by filing an IA No. 15580/2015. Copy of the IA along with rejoinder is enclosed as Annexure-III (See pages 597-689). Subsequent to this, the Hon'ble High Court vide order dated 9.8.2016 (Annexure-IV, See pages 690 - 691) in CS(OS) 610/2000, set aside the order of Hon'ble High Court dated 21.4.2015 restoring the original suit. Subsequently, NDMC has raised demand for payment of outstanding dues, but CJ International as per the earlier court order dated 18.05.2001 failed to pay the same despite being notified through letter dated 7.11.2016 (Annexure-V, See pages 692 - 693). On

the contrary CJ International in its reply dated 06.12.2016 (Annexure-VI, See pages 694 - 696) declined to make payment of arrears.

4. Previous Council Resolution and action taken thereafter:

The detailed background of the case was placed before the Council in its meeting held on 05.9.2016 vide Agenda Item No. 08(L-19), copy of which is placed at Annexure-VII (See pages 697 - 703). Subsequent to this, the department has taken following steps to protect the interests of NDMC:

- (i) A demand was raised vide letter dated 07.11.2016 (Annexure-V, See pages 692 - 693). The same was issued after vetting by the Ld. ASG Sh. Sanjay Jain vide his opinion dated 26.10.2016 (Annexure-VIII, See pages 704 - 707).
- (ii) A letter was issued to Sh. Akshay Makhija, briefing counsel to Ld. ASG on 09.11.2016 to file an application before the Hon'ble High Court to appoint a Court Commissioner exclusively for this case. Sh. Akshay Makhija, Briefing Counsel to Ld. ASG was requested vide letter dated 05.12.2016 to file the application before the Hon'ble High Court to appoint a Court Commissioner exclusively for this case for completion of trial on day to day basis.
- (iii) Vide letter dated 17.11.2016, CBI was apprised about the amendment application filed by CJ International Ltd. (Annexure-IX, See pages 708 - 721).
- (iv) M/s. SBICAPS vide letter dated 28.11.2016 was requested to provide Service Agreement for fixing the licence fee in terms of Clause 53 of the Licence Deed.

4.1 Pursuant to the Council decision dated 26.4.2016, an inspection team was constituted to verify the ground position as to whether there is any commercial sale by the licensee. An inspection report was received by the inspection team comprising of the representatives of Chief Architect, Property Tax and Accounts Department.

4.2 Estate-I Department has submitted this report before the Council in its meeting held on 05.9.2016 vide Item No. 8 (L-19). The minutes after deliberations of this agenda were issued on 06.12.2016 wherein the Council has decided as under:

"The Council resolved that:

- (i) *the department concerned shall take necessary action to raise the demand of arrears that have to be realized from the CJ International (Le-Meridien) as per the judgment of Delhi High Court dated 09.8.2016 in IA No. 15580/2016 allowing the petition of NDMC to recall the decree dated 21.4.2015 passed on the illegal agreement;*
- (ii) *the department concerned shall issue a Show Cause Notice to the CJ International as to why suitable action as per the terms of licence conditions be not taken against it for illegally subletting 124 spaces*

- without the consent of the NDMC (licensor), in consultations with Ld. Additional Solicitor General of India;
- (iii) Architect Department and EBR Department to take necessary action as per the provisions of law against CJ International for not obtaining Completion Plan and Completion Certificate;
- (iv) the Department may check whether the revenue generated out of 124 sub-licenses is reflected in the Balance Sheet of Hotel CJ International or not as a part of GTO (Gross Turn Over).
- (v) Ld. ASG vide Legal Opinion dated 26.10.2016 advised that:
- "...
5. Therefore, the interest of the Querist (NDMC) would be better served in continuing to demand Licence Fee based on the order dated 18.05.2001. Upon the disposal of the Suit, at best or at worst, all that is likely to change is the inclusion or exclusion of certain components which the Querist wanted to include while calculating the G.T.O. In my considered view, when the Querist has a clause enabling it to change Licence Fee on the basis of G.T.O., which in the normal course would increase the licence fee, the commercial prudence would stand against opting for the other option of fixed Licence Fee, even if it is enhanced beyond 100%.
6. It is therefore suggested that arrears of Licence Fee be calculated on the basis of the Order dated 18.05.2001 and a demand be raised at once. If, for a particular period, accounts for calculating actual GTO as per the said Order are not available, a provisional demand may be made for the relevant months, based on the date, which may be duly available."
- (vi) Considering the advice of Ld. ASG, the Council resolved that it would be better for NDMC to continue to demand Licence Fee based on the Hon'ble High Court order dated 18.05.2001.

4.3 Subsequent to the decision of the Council, a demand notice dated 07.11.2016 was issued. CJ International vide their letter dated 6.12.2016 (Annexure-VI, See pages 694 - 696) has replied to our Demand Notice. The comments of the department in response to the reply of CJ International is as under:

Reply of CJ International	Comments of the department based on the Advice from ASG
(a) A suit was filed by us [CS (OS) 610 of 2000] seeking, <i>inter-alia</i> , a re-determination of the license fee, and specific performance of various agreements between NDMC and the Company.	The suit does not bar payment of license fee during the pendency of the suit. In fact as per order dated 18.5.2001 (confirmed by Division Bench of High Court vide order dated 12.3.2003) NDMC is at liberty to charge and recover license fee at the rate of 21% of GTO subject to the directions given for calculating the GTO for license fee.

<p>(b) The above order dated 18/05/2001 was passed by the Learned Single Judge in the said suit, and NDMC was enjoined from taking coercive steps against the Company, <u>subject to compliance with the directions contained in the said order.</u> This was not interfered with by Hon'ble Division Bench.</p>	<p>This order does not bar NDMC to initiate action if the CJ International fails to make payment of license fee as per the interim order of Hon'ble High Court and making violations of other terms and conditions of the license agreement like misuse, unauthorized construction, illegal subletting. Therefore, if CJ International fails to pay arrears despite notice, license can be determined; CJ International can be declared unauthorized occupant; eviction proceedings can also be initiated and the eviction can be secured subject to vacation of the interim order dated 18.05.2001</p>
<p>(c) The order dated 18/05/2001 was duly complied. Affidavits of compliance were duly filed by the Company. None of these were controverted. The injunction became final.</p>	<p>These were not complied with in as much as till date no credible proof has been given to this effect. CJ International defied the order right from the beginning by paying only a fixed on-account sum and not providing audited balance sheets to calculate GTO to the extent the same protects CJ International. Demand notice dated 7.11.2016 issued by NDMC reflects the arrears as calculated by the Accounts Department.</p>
<p>(d) During the pendency of the suit, NDMC and the Company came to an understanding. This was captured in NDMC's letter dated 02.03.2015 and a detailed calculation consistent with NDMC's understanding of the 18.05.2001 order was enclosed therewith</p>	<p>This alleged understanding was ex-facie unauthorized, misconceived and patently illegal and amounted to fraud. The Council vide Resolution No.16(L-02) dated 26.4.2016 resolved that the alleged compromise is done without the consent of the Council and is contrary to the provisions of the NDMC Act, 1994. The same plea was taken with the pleadings to have the alleged compromise set aside.</p>
<p>(e) The Company, solely in order to put a <i>quietus</i> to the issue, accepted the calculations. A sum of Rs. 180,42,43,676/- was paid to NDMC, which included a sum of Rs. 29.50 Crores to be adjusted in license fee for future years.</p>	<p>This is prima facie a fraud on NDMC as the future payments are to be guided by Clause 53 of License Deed besides at this point in time the license fee was to be paid on recurring basis as per the directions given in the order dated 18.05.2001. This calculation of Rs. 180 Crore was incorrectly arrived, and it is a subject matter of CBI investigation. Reference is invited to para 21 (iv) of the rejoinder of NDMC before the Hon'ble High Court in IA No.15580/2016, wherein the following was mentioned: <i>" (iv) The purported internal advice, correspondence and interpretation of interim order dated 21.5.2001 for calculations of licence fee is not in line with the directions made by the Hon'ble High Court in its interim order dated 18.5.2001. Even for the academic purpose, if it is assumed that the licence fee was calculated on the basis of internal advice, correspondence and interpretation of interim order dated 21.5.2001, then the licence fee figure would have been Rs. 270.51 cr. Approximately and not Rs.150.92 cr."</i></p>

<p>(f) A decree based, <i>inter alia</i> on, the said letter of 02.03.2015 was passed by the Hon'ble Delhi High Court. This was consented to be set aside by the Company upon NDMC's application, subject to the liberty to raise the understanding/arrangement arrived at between the NDMC and the Company in terms of the letter dated 02.03.2015 and 26.03.2015. An application for amendment has already been filed by the Company to this effect.</p>	<p>The correspondences between CJ International and NDMC is not valid as no approval was taken from the Council and the Council vide its resolution dated 26.4.2016 has rejected this understanding. This was also mentioned in para 21 (v) of the rejoinder of NDMC before the Hon'ble High Court in IA No. 15580/2016 as under:</p> <p><i>"(v) The alleged settlement of Rs.150.92 cr. Is unlawful in terms of section 383(1)(d) of the NDMC Act, 1994 since the Chairperson, NDMC is only authorized to withdraw or compromise any claim or a sum not exceeding one thousand rupees against any person. The instant matter involves settlement of hundreds of crores of rupees and compromising of the legal proceedings, approval of the competent authority i.e. the New Delhi Municipal Council in terms of section 383(1)(f) of the NDMC Act, 1994 should have been taken, which was not taken, thereby making such settlement unlawful and void."</i></p> <p>In fact the decision on the said IA was reserved after hearing both sides, where CJ International vehemently opposed the plea of NDMC to the effect that the compromise was without authority of law. The concession was given by CJ International only later, once they apprehended adverse remarks to be passed by the court.</p> <p>Further, while setting aside the decree dated 21.4.2015, the Hon'ble High Court vide its order dated 09.8.2016 has inter-alia recorded that:</p>
<p>(g) The matter is <i>sub judice</i>. The Company states that it is in compliance with the order dated 18.05.2001, even as per NDMC's own calculation. NDMC's challenge to its own calculation cannot be the basis of breaching the injunctive order passed, nor can be raising of an illegal demand vide the Demand Notice give NDMC such right, when the matter is pending determination.</p>	<p><i>" ...</i></p> <p><i>4. The senior counsel for the plaintiffs on instructions states that the application under Order XII Rule 6 was filed prior to the settlement and the plaintiffs would not be seeking decree on admissions on the basis of settlement.</i></p> <p><i>....." (plaintiff - CJ International)</i></p> <p><i>(emphasis added)</i></p> <p>The demand raised by NDMC on 07.11.2016 is based on directions of Hon'ble High Court dated 18.5.2001 (Justice Mahajan order). Further, it is stated that the Council vide Resolution No. 16(L-02) dated 26.4.2016 has already taken the alleged settlement as illegal as it is without the consent of the Council and is also contrary to the provisions of the NDMC Act, 1994.</p>

4.4 After non-payment of licence fee in terms of demand notice dated 07.11.2016, the issue was referred to Shri Akshay Makhija, Central Government Standing Counsel

who was engaged as special counsel to defend the Suit No. CS (OS) 610/2000 with the query "what should be the further course of action to be adopted by NDMC subsequent to the demand notice dated 7th November, 2016 issued by this office to M/s. Cj International Hotels Limited and their reply received this office on 7th November, 2016" with instructions to have his opinion reviewed by Learned ASG, Shri Sanjay Jain.

4.5 In pursuance to this, Central Government Standing Counsel Sh. Akshay Makhija has given his opinion dated 06.2.2017(Annexure-X, See pages 722 - 729) and his opinion is as under:

OPINION :

1. That vide my previous Opinion dated 26th October, 2016 I had opined that the interest of the Querist would be better served in continuing to demand license fee on the basis of the order dated 18th May, 2001. He had further suggested that the arrears of license fee be calculated on the basis of the order dated 18th May, 2001 and a concrete demand be raised immediately. It was also opined that if for a particular period accounts for calculating actual GTO as per the said order are not available, a provisional demand may be made for the relevant months based on the date, which may be duly available.
2. That subsequent thereto the Querist has raised a demand notice dated 7th November, 2016 wherein a sum of Rs.518.80 crores was ascertained, albeit provisionally based on the audited balance-sheet submitted till 2013-14. It was stated in the demand notice that the said demand would be revised taking into consideration of the audited balance sheets for the years 2014-15 and 2015-16. It has also been stated that the said demand is apart from the liability of service tax which M/s C.J. International Hotels Limited (C.J. International) have to pay. Further a caveat was put that the said amount of ₹518.80 did not take into consideration the share of NDMC with regard to Agreement entered into between C.J. International and its sub-licensee since the same was being examined separately. Thus, by the said demand notice, the Querist called upon C.J. International to deposit a sum of Rs.518.80 crores within 30 days failing which necessary action as per the terms of the license deed would be initiated against C.J. International.
3. That C.J. International has replied to the said demand notice vide their letter dated 6th December, 2016 wherein they have disputed the demand raised by the Querist and alleged that the order dated 18th May, 2001 has been duly complied with and also placed reliance on the fact that the order dated 18th May, 2001 injuncts the Querist from taking coercive steps against the said company subject to compliance with the directions contained in the said order. C.J. International has also placed reliance on the decree passed by the Hon'ble High Court of Delhi based on the letters of the Querist dated 2nd March, 2015 and 26th March, 2015. It is stated that an application for amendment of the plaint has already been filed with effect to understanding and arrangement that has been arrived at between the NDMC and the company. As such, it has been averred that the matter is sub-judice.
4. That C.J. International has further stated that a sum of Rs.4,04,11,12,514/- has been paid as license fee. They have further refuted the calculation and methodology annexed along with the demand notice. According to C.J. International they have complied with the order dated 18th May, 2001.
5. That the Hon'ble High Court vide its order dated 18th May, 2001 which was upheld by the Division Bench in FAO (OS) 310/2001 vide its order dated 12th March, 2003, held as under :

" Though it is mentioned in the agreement that it is the gross turnover of the hotel as certified by the certified auditors of the hotel on which the license fee is payable by the plaintiffs, however, prima-facie, in my view, plaintiffs may not be entitled to all the appropriations mentioned by the auditors in their certificates. Prima-facie, it appears to the Court that only that income which is compulsorily payable by the plaintiffs in terms of an agreement which it might have arrived at with the third party or statutory liability necessarily payable may only have been deducted for the purpose of arriving at the gross turnover of the hotel. The franchisee fee payable is 3% by the NDMC to the franchisee and it is only the 97% of the receipts which are received by the hotel. Prima-facie, this 3% may have to be deducted from the room tariff. Luxury tax on behalf of the Government is also received by the hotel at the time of providing its services to the guests and since this tax does not come in the hands of the hotel, this way also have to be deducted from the gross turnover of the hotel. The other amount which may have to be deducted from out of gross turnover of the hotel as shown in the balance sheets is the credit card commission as the amount which is received by the hotel on payments received through credit cards is net commission charged by the credit card companies. Other component which may have to be deducted from the gross turnover is the interest income on the deposits with banks. The only other receipt to which the plaintiffs may be entitled to deduction is the telephone receipts. The plaintiffs may be said to be acting as agents for the Mahanagar Telephone Nigam Limited while the telecommunication services are provided to the guests. The payment, therefore, which is actually made to the Mahanagar Telephone Nigam Limited may have to be deducted from out of the gross amount which is received by the hotel is taken as its income. Besides these deductions which, prima-facie, may be permissible from the gross turnover of the hotel, in my view, the plaintiffs are not entitled to any other deduction from out of the gross turnover of the hotel. The cost of food and beverages is a part of running of the hotel and cannot, in my opinion, be deducted from out of the gross turnover of the hotel. If this is deducted from the gross turnover, what will be arrived at is the gross income and not the gross turnover. At this stage of deciding this application the Court is not deciding finally as to what would be the gross turnover of the hotel on which it is liable to pay the license fee and it is only a prima-facie view of the Court that the aforesaid outgoings may have to be deducted from the gross turnover as reflected in the balance sheets.

Since, in my opinion, none of the supplementary agreements modified the terms of the agreement of 14th July, 1982 providing for payment of license fee @ 21% of the gross turnover of the hotel, plaintiffs are, prima-facie, liable to pay license fee @ 21% of the gross turnover filed on record by the plaintiffs and deducting from this turnover the amount to be calculated in terms of the aforesaid paragraph. The plaintiff being prima-facie liable to pay license fee @ 21% of the gross turnover of the hotel, in my opinion, there is no question of the plaintiff suffering irreparable loss in case it has to pay the

license fee in terms of the people it requires funds. Public benefit in the present case outweighs the case of the plaintiffs in withholding the amount legitimately due to the NDMC. Balance of convenience clearly lies in favour of the larger public interest rather than in favour of the plaintiffs. They only indulgence to which the plaintiffs may be entitled is to pay the arrears of license fee in instalments. Since the amount which may be calculated on the basis of the above formula may be quite heavy, the plaintiffs will be at liberty to deposit the said amount in four equal quarterly instalments, first of which will be paid within three weeks from the date of this order.

I accordingly, restrain defendant-NDMC, its agents and employees from interfering with the possession of the plaintiffs over the land and building situate at 1, Windsor Place, Janpath, New Delhi in any manner whatsoever and from disconnecting, withholding or causing to be withheld any amenities including water and / or electricity to the plaintiffs hotel, subject to the plaintiffs depositing the entire license fee in the manner directed in this order, calculated @ 21% of the gross turnover of the hotel arrived at on the basis of the observations made in this order. Prima-facie, I am also of the opinion that the plaintiff will also have to pay interest on this amount calculated for the time being @ 10% p.a. "

6. A plain reading of the above order makes it clear that the restraint on the Querist from interfering with the possession of the plaintiffs over land and building as well as from disconnecting, withholding or causing to be withheld any amenity is subject to the plaintiffs therein depositing the entire license fee in the manner directed vide order dated 18th May, 2001.
7. I have also examined the License Deed dated 14th July, 1982, the relevant clauses of the license deed for the purpose of this Opinion, read as under :

"9. In the event of the licensee failing to make the payment of license fee, interest due thereupon or any other payment due against the licensee for any reason whatsoever of the amount demanded by the licensor in full or in part, the licensor shall have absolute discretion without further reference to the licensee to revoke / cancel the license with immediate effect for running the said hotel in terms of this license, to take possession of the licensed premises by recourse to law as provided in the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 or any other such law in force, at that time, after revocation of the license and the licensees shall have no claim on the premises but only seek arbitration under clause 55 of this agreement.

11. The license will be liable for termination if at any time the licensee commits any breach of the terms, conditions and covenants on their part to be observed and performed under this licence deed. But before any action is taken in this behalf, the licensor shall communicate in writing to the licensee the breach, if any, of the terms and conditions on their part to be observed and performed under this license deed and it will be open to the licensee to satisfy the licensor

that there had in fact been no such alleged breach to the satisfaction of the licensor.

45. In any case, if any of the powers to revoke the license shall have become exercisable but the same if for any reason not exercised, non-exercise thereof shall not constitute a waiver of any of the conditions and the powers hereof and such powers shall be exercisable in the event of any violation of the conditions and the powers hereof shall be exercisable in the event of any future case of default and the liability of the unaffected besides other rights and remedies of the licensor.

47. In the event of breach of any of the terms & conditions of the license, the licensor shall terminate and revoke the license. On the revocation being made, it shall be the duty of the licensee to quit and vacate the premises without any resistance and obstruction and given the complete control of the premises to the licensor.

48. If the licensee defaults in terms of the licensee fee or ceases to do business in the 5-Star hotel building or commit breach any of the terms of the license fully or otherwise, the licensor may give a notice in writing to the licensee for remedying the breach and if the licensee fails to do so within a reasonable period as may be determined by the licensor, the licensor may terminate license forthwith. "

8. A reading of the above clauses makes it amply clear that the Querist has the power to terminate the license and takeover possession in the event of breach of any of the terms of the license deed. Clause 9 reproduced above makes it clear that non-payment of license fee is a major default and in the event of such default the Querist shall have absolute discretion without further reference to the licensee, to take possession by taking recourse to the provisions of the Public Premises Act, 1971.
9. That in my opinion, a reading of the license deed leaves no doubt with respect to the power of the Querist to terminate the license deed on account of fundamental breach of any of its conditions and especially with respect to non-payment of license fee, which would constitute a fundamental breach.
10. The Querist has even issued a demand notice dated 7th November, 2016 giving C.J. International an opportunity to remedy the breach. The said company has not availed of opportunity to remedy the breach and has instead, disputed the said demand; though, under normal circumstances there would be no impediment on the power of the Querist to proceed to take possession under the provisions of the Public Premises Act. However, in view of the fact that there is already a litigation pending between the parties and further in view of the fact that there is a conditional restraint order, which is subject to C J International paying arrears and recurring licence fee, none the less since the restrain order in place has the effect of restraining the Querist from interfering with possession of C J International. I would opine that the Querist should take simultaneous steps of :

(a) issuing a letter terminating the license deed in light of the default of payment of license fee; and

(b) *simultaneously move an application before the High Court of Delhi seeking leave of the Court to take possession in light of the fact that there has been a fundamental breach of the condition upon which the injunction / restraint was granted by the Hon'ble Court and asserting that the injunction ought to be vacated forthwith to enable the Querist to take possession of the premises.*

(c) *Make a complete tabulation of the amounts received from Cj International, from the inception of the License till date, and the amount due in accordance with the order dated 18th May 2001.*

It is opined accordingly."

4.6 The above opinion of Sh. Akshay Makhija, Central Government Standing Counsel, was placed before Sh. Sanjay Jain, the Additional Solicitor General of India for his comments, whereupon he vetted the same as under on 06/02/2017:

- I. *Pursuant to the our meeting this evening i.e. 06.02.2017, I have examined the draft opinion rendered by Special Counsel, Sh. Akshay Makhija, CGSC on the query as to "what should be the further course of action to be adopted by NDMC subsequent to the demand notice dated 7th November 2016 issued by this office to M/s. C.J. International Hotels Ltd. and their reply received by this office on 7th November, 2016."*
- II. *I have completed the exercise of vetting the said opinion.*
- III. *Having examined the same from the perspective of law/facts, pending litigation in the Hon'ble High Court CS (OS) 610/2000, I am of the view that the opinion rendered by Shri Akshay Makhija is legally in order and ought to be followed.*
- IV. *However, I may hasten to add that the advice rendered by Sh. Akshay Makhija in para 10 of his opinion would be effective only if both limbs of the advice, i.e. issuing a letter terminating the license deed and moving an application before the Hon'ble Court are undertaken simultaneously."*

4.7 Accordingly, Shri Akshay Makhija has drafted an application on behalf of defendant/NDMC, duly vetted by Ld. ASG Shri Sanjay Jain, under order XXXIX Rule 4 of the CPC read with Section 151 of CPC seeking variation of the order dated 18th May, 2001 passed in IA No.3075/2000 which is enclosed as Annexure-XI (See pages 730 - 743). The prayer in the said interim application is as under:

"In view of the submissions made hereinabove, it is most respectfully prayed that the order dated 18th May, 2001 be varied to the extend

that it restrains the applicant/NDMC, its agents and employees from interfering in the possession of the plaintiffs over the land and building situated at 1, Windsor Place, Janpath, New Delhi, and to the extent it restrains the applicant/NDMC, its agents and employees from in any manner disconnecting, withholding or causing to be withheld any amenities including water and/or electricity to the plaintiffs' Hotel. Any other order, direction or relief which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may also be passed in favour of the defendants as against the plaintiffs."

- 4.8 On the basis of the above advice of the learned ASG, a draft termination letter proposing to terminate the license deed on account of non-payment of arrears of license fee was prepared and placed before Learned ASG, who has finalized the same. (Annexure – XII, See pages 744 - 751)

5. Recommendations of the Department:

The latest summary outstanding dues and the payments received so far from CJ International is placed at Annexure-XIII (See pages 752 - 756). As per the said statement of accounts, CJ International has paid about Rs.401 crores(approx.) against a liability of Rs.925 crores(approx.) and the remaining outstanding liability is about Rs.526 crores, excluding Service Tax.

In view of above liability, which is not being paid by CJ International the following recommendations are submitted before the Council which may consider and add any other decision/suggestion, as the Council may deem fit keeping in view the above factual position:-

- (i) NDMC may terminate and revoke the licence as per terms and conditions of the licence deed dated 14.7.1982 in accordance with the advice given by Shri Akshay Makhija, Central Government Standing Counsel and as vetted by Ld. ASG Shri Sanjay Jain. After termination, NDMC may refer this case to Estate Officer court for initiating the eviction proceedings as per sections 2(e)(g), 4 and 5 of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 besides recovery of arrears of license fee and damages under

section 7 of the same act. In this regard the draft termination letter (Annexure – XII, See pages 744 - 751) as vetted by the Ld. ASG may also be perused, examined and approved and accordingly sent.

- (ii) NDMC may also file an application before the Hon'ble High Court for variation of interim order dated 18.5.2001, as advised by Shri Akhay Makhija, Central Government Standing Counsel and as vetted by Ld. ASG Shri Sanjay Jain, which may eventually pave way for taking possession, keeping in view the gross abuse of process of law and the interim order of Hon'ble Court, by CJ International. In this regard the draft application (Annexure – XI, See pages 730 - 743) as vetted by the Ld. ASG may also be perused, examined and approved.
- (iii) NDMC may also file an application before the competent Estate officer to initiate proceedings under Public Premises Act, 1971 to seek eviction and recovery of arrears of license fee with interest and that of damages.
- (iv) NDMC may also file an application before Estate Officer under section 7 of PP Act, 1971 w.r.t. payment of rent or damages in respect of public premises and in this regard Finance Department, NDMC may also calculate damage charges that are due against CJ International on account of misuse, illegal transfer of spaces on sublet basis, unauthorized construction and not reflecting this income in the calculation of licence fee, in light of advice of Sh. Akshay Makhija, Central Government Standing Counsel w.r.t. calculation of dues against CJ International, and Estate Department should provide all necessary support in this regard.

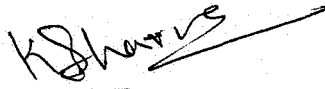
- (v) In view of the above, the resolution passed earlier, to the extent the same may stand superseded by the resolutions which may be passed now in pursuance of above suggestions.

COUNCIL DECISION

The Council decided the matter in its meeting held on 02.03.2017.

"The Council resolved to accord approval to the proposal of the concerned Department mentioned in Para 5(i) to 5(v) of the Preamble.

It was also resolved by the Council that the department may initiate further necessary action in anticipation of confirmation of the minutes of the Council."


For Secretary
New Delhi Municipal Council
Palika Nendra, New Delhi

1443
Annexure-I

Luthra & Luthra
Law Offices
Litigation

IN THE HIGH COURT OF DELHI AT NEW DELHI
I.A. NO. _____ OF 2015

IN

C. S. (OS) NO. 610 OF 2000

IN THE MATTER OF:

C.J. INTERNATIONAL HOTELS LTD.
& ANR

Versus

...APPLICANTS

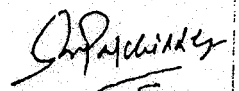
NEW DELHI MUNICIPAL
COUNCIL & ORS.

...DEFENDANTS

NOTICE OF MOTION

TAKE NOTICE that the accompanying Application will be listed before Court on 10.04.2015 at 10:30 a.m. or so soon thereafter as may be convenient to the Court.

New Delhi
Dated: 08.04.2015.

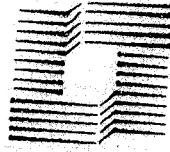

(Prashant Pakhiddey)
(Counsel for Applicants)

To

Mr. Arvind Shah,
Advocate for the Defendants,
Chamber No.....,
Delhi High Court,
New Delhi-110003.

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IN THE HIGH COURT OF DELHI AT NEW DELHI
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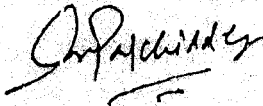
...APPLICANTS

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...DEFENDANTS

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(Prashant Pakhiddey)
(Counsel for Applicants)

New Delhi
Dated: 08.04.2015.

To

Mr. Arvind Shah,
Advocate for the Defendants,
Chamber No.....,
Delhi High Court,
New Delhi-110003.

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IN THE HIGH COURT OF DELHI AT NEW DELHI
I.A. NO. _____ OF 2015

IN

C. S. (OS) NO. 610 OF 2000

IN THE MATTER OF:

C.J. INTERNATIONAL HOTELS LTD.
& ANR

...APPLICANTS

Versus

NEW DELHI MUNICIPAL
COUNCIL & ORS.

...DEFENDANTS

URGENT APPLICATION

To

The Deputy Registrar,
High Court of Delhi
New Delhi

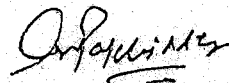
Sir,

Will you kindly treat this accompanying application as an urgent one in
accordance with the High Court Rules & Orders.

The grounds of urgency are: -

To make the present application along with the correspondence as part of
the Judgment/Decree. //

Through



(Prashant Pakhiddey)
Luthra & Luthra
Law Offices
Counsel for the Applicants
103, Ashok Estate
Barakhamba Road
New Delhi - 110 001
Email: delhi@luthra.com
Phone: 011-41215100
Mob: 9810374459

New Delhi

Date: 08-04-2015

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IN THE HIGH COURT OF DELHI AT NEW DELHI

I.A. NO. _____ OF 2015

IN

C. S. (OS) NO. 610 OF 2000

IN THE MATTER OF:

C.J. INTERNATIONAL HOTELS LTD.
& ANR

...APPLICANTS

Versus

NEW DELHI MUNICIPAL
COUNCIL & ORS.

...DEFENDANTS

APPLICATION ON BEHALF OF THE PLAINTIFFS UNDER
ORDER XXIII RULE 3 READ WITH SECTION 151 OF THE CODE
OF CIVIL PROCEDURE, 1908 FOR APPROPRIATE ORDERS

MOST RESPECTFULLY SHEWETH:

1. That the above-noted suit is pending adjudication before this Hon'ble Court and is listed for hearing on 21.04.2015. The matter is listed for adjudication of the Application filed by the Plaintiff under Order XII Rule 6 seeking judgment on admissions. The averments made in the plaint as well as the Application under Order XII Rule 6 may kindly be read as part of this application and the same are not being repeated herein for the sake of brevity. The Plaintiffs have a good case on merits.
2. Briefly, the facts governing the instant case are that a license deed was entered into between the Defendant No.1 and the

Applicant No. 1 on 14.07.1982 whereby 4.29 acres land was licensed by the Defendant No.1 to the Applicant No. 1.

3. Thereafter, certain disputes arose between the parties and various supplementary agreements were entered into between the Plaintiff and the Defendant No.1 herein. The same find mention in the plaint and are not being repeated for the sake of brevity.
4. The Applicant No.1 filed the instant Suit seeking, *inter alia*, reliefs as stated in the plaint. The same are not being reproduced for the sake of brevity.
5. During the pendency of the instant matter, in terms of the order dated 18.05.2001 passed by this Hon'ble Court, the Defendant No.1 recalculated the amounts due towards license fee upto 2013-2014, and asked the Plaintiff No.1 to accept the same and make payments, vide a letter dated 02.03.2015. Copy of the Letter dated 02.03.2015 along with the annexures thereto in this regard is Annexure 1(COLLY) hereto. The basis of the calculations is contained in Annexure C to the said letter dated 02.03.2015.
6. That in the interest of an amicable resolution of a long outstanding dispute, the Plaintiffs have communicated their acceptance vide a letter dated 26.3.2015 to the terms as contained in the letter of the respondents dated 02.03.2015. The Plaintiffs have also annexed with their letter under reference the cheques

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detailed therein. A copy of the letter dated 26.3.2015 addressed by the Applicant Company to the Defendant No.1 along with photocopies of the above cheques are annexed as Annexure 2 (Colly) hereto.

7. The Defendant No.1 has acknowledged the receipt of the letter dated 26.03.2015, the payments made thereby and also encashed the cheques due for payment. Vide a letter dated 26.03.2015, the Defendant No.1 acknowledged receipt of the license fee arrears uptill 2013-2014, as also confirmed that NDMC would be adjusting the Rs. 29.50 crores paid earlier during the financial year 2014-2015 for the financial year 2014-2015 and subsequent financial years. Copy of the letter dated 26.3.2015 received from Chairperson, NDMC is enclosed as Annexure 3 hereto.
8. The Plaintiff, in order to bring to an end, the instant litigation, have agreed with the Defendant to pay the license fee for the year 2014-2015 onwards consistent with the calculations made in the annexures to the letter dated 02.03.2015 (issued by the Defendant No.1). The Defendant No.1 has, vide its letter dated 26.03.2015, agreed to bring these facts before this Hon'ble Court.
9. The Plaintiff states that:
 - (a) all disputes with the Defendant No.1 stand resolved, pursuant to the communications dated 02.03.2015 (issued by the Defendant No.1 to the Plaintiff), 26.03.2015 (issued by the Plaintiff to the Defendant No.1), and 26.03.2015

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(issued by the Defendant No.1 to the Plaintiff) -
hereinafter referred to as the "Correspondence".

- (b) All show cause notices, legal notices, communications which are inconsistent with the prayers sought in this application stand withdrawn/ resolved.
- (c) The Plaintiff and the Defendant No.1 have agreed that:
 - (i) With the encashment of the cheques enclosed with the letter dated 26.03.2015, all outstandings upto and including the financial year 2013-2014 shall stand paid.
 - (ii) All disputes with regard to the rate, calculation and deductions of license fee calculations have been amicably resolved between the parties in terms of the Correspondence.
 - (iii) In terms of the Correspondence and the calculations contained in the Defendant No.1's letter dated 26.03.2014, the Plaintiff shall ensure that the cheques dated 20.04.2015 enclosed with their letter dated 26.03.2015 shall be duly encashed.
 - (iv) That the sum of Rs.29.50 crores paid during the financial year be adjusted against the license fee payable during the financial year 2014-2015 and subsequent financial years as accepted vide the Defendant No.1's letter dated 26.03.2015.

(v) That the license fee for the financial year 2014-2015 and subsequent financial years be adjusted / paid on or before 1st October in each year upon submission of an audited Financial Statements for that year and a certificate by the statutory auditor of the Plaintiff No. 1 computing License fee for that year arrived at as per the methodology of computation specified vide letter dated 02-03-2015 of Defendant No. 1.

(vi) In view of the above, nothing further remains in the Suit pursuant to the amicable settlement of all disputes.

10. That the Plaintiff Company has paid license fee of Rs 11 crores in 2002-03 and Rs 12.41 crores in the year 2003-04 and Rs 12 crores per annum from 2004-05 till 2013-14 to the respondent NDMC. The said liabilities are not contingent and were treated as an ascertained liability of the Plaintiff Company for that financial year in which it was paid as license fee to the respondent NDMC. This position is also evident in the letter dated 26.09.2014 received from NDMC (Copy enclosed as Annexure 4 hereto). These payments were irretrievable outflows adjusted by NDMC against principal dues of license fees to enable it arrive at the final arrears figure of Rs 150,92,43,676/-
11. The instant application is being filed *bona fide* keeping in mind the amicable resolution of all disputes vide the Correspondence.

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PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- a) Decree the suit in terms of the Correspondence [as defined in Paragraph 9 (a) of this Application], and make the present application alongwith the Correspondence as a part of the judgment/ decree;
- b) pass such other/ further order(s) as this Hon'ble may deem fit and proper in the facts and circumstances of the case.

Through

[Signature]
Luthra & Luthra
Law Offices
Counsel for the Applicants
103, Ashok Estate
Barakhamba Road
New Delhi - 110 001

[Signature]
APPLICANTS

New Delhi
Date:

1435

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IN THE HIGH COURT OF DELHI AT NEW DELHI
ORDINARY ORIGINAL CIVIL JURISDICTION

I. A. NO. _____ OF 2015

IN

CS (OS) NO. 610 OF 2000

IN THE MATTER OF:

C.J. INTERNATIONAL HOTELS LTD.
& ANR

...APPLICANTS

Versus

NEW DELHI MUNICIPAL
COUNCIL & ORS.

...DEFENDANTS

AFFIDAVIT

I, Mrs. Harjit Kaur, w/o Late S. Charanjit Singh, and r/o 9, Friends Colony, New Delhi, do solemnly state and affirm as under:

1. That I am the Director and CEO of the Applicant No. 1 Company and also the Applicant No. 2 and am conversant with the facts and circumstances of the present case and as such competent to swear this Affidavit.
2. That the accompanying Application has been drafted under my instructions. I have read and understood the contents of the Application and state that the contents thereof are true and correct to my knowledge based on the records maintained by the Applicant No.1 in its ordinary course of business.

[Signature]

VERIFICATION:

[Signature]
DEPONENT

Verified at New Delhi on this the 7th day of April, 2015, that the contents of the above affidavit are true and correct to my knowledge. No part of it is false and nothing material has been concealed therefrom.

2001 (60) DRJ 562**HIGH COURT OF DELHI**

IA. No. 3075/2000 in Suit No. 610/2000

C.J. International Hotels Ltd. & Ors.....Plaintiffs

Versus

N.D.M.C. & Others.....Defendants

S.K. Mahajan, J.

Decided on : May 18, 2001

Civil Procedure Code, 1908

Order 39 Rules 1 & 2—Interim application thereunder—Suit for injunction and specific performance of contract—Hotel Le Meridien—Licence fee—Parties are governed by agreement—Dispute over payment of licence fee—Plaintiff sought constitution of committee—NDMC declined—In official file L.G. made his opinion for reconsideration of matter by committee—Relevancy of—Whether any legal right accrue to the plaintiff because of notes of the Lieutenant Governor?—Principle for deciding interim injunction application discussed—Held, the L.G. has no role to play in contractual obligations between the parties and no legal right accrue to plaintiff—Notes of the L.G. cannot be binding upon the parties—Directions given to pay licence fee in instalments—Application disposed of.

Mr. A.S. Chandhiok, Sr. Advocate with Mr. M.S. Chandhiok, Mr. Prashant Pakiddey and Ms. Manmeet Arora, Advocates for the Plaintiffs

Mr. Mukul Rohtagi, Addl. Solicitor General with Mr. Arvind Shah, Advocate for the Defendants

S.K. Mahajan, J.

1. Plaintiff No. 1 is the owner of a five star hotel being run under the name and style of Hotel Le Meridien. The hotel is constructed on a plot of land bearing No. 8, Windsor Place, New Delhi. The land on which the hotel is constructed was taken from the defendant-NDMC on licence basis for which a licence agreement dated 16th April, 1981 was executed between the NDMC and M/s. Pure Drinks New Delhi Limited. This agreement was substituted by another licence agreement dated 14th July, 1982 between the plaintiff No. 1 and the NDMC. The parties are governed by the licence agreement dated 14th July, 1982. Though it is the stand of the plaintiff in the suit that this agreement has been modified by few subsequent agreements, however according to the defendant-NDMC, the parties continued to be governed by the agreement dated 14th July, 1982 and by the subsequent agreements only an indulgence was shown to the plaintiffs to make payment of the licence fee in instalments.

2. In or about 1989, the sum of more than Rs. 6 crores had become due from the plaintiffs to the NDMC and a notice dated 7th December, 1989 was, therefore, sent by the NDMC to the plaintiffs to make payment of the arrears of licence fee amounting to Rs. 6,84,091,331.89 paise. Plaintiffs were also called upon to show cause as to why the allotment/licence of the hotel site in question be not cancelled due to non-payment

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of the licence fee besides dis-connection of electricity supply and taking action under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act. By still another letter dated 6th March, 1990 the NDMC called upon the plaintiffs to stop the use of the plot of land alongwith construction raised thereon for any purpose whatsoever and to hand over vacant possession of the same to the NDMC and further to pay the amount of more than Rs. 13 crores being the arrears of licence fee and other charges.

3. Upon the aforesaid threats being given, the plaintiffs filed a suit being Suit No. 193/90 under Section 20 of the Arbitration Act, 1940 for appointment of an arbitrator. An application was filed in this suit for an ad-interim injunction. This application was dismissed by D.P. Wadhwa, J. on 16th October, 1990. While dismissing the application, the learned Judge observed as under :-

"Now in the present case before me, offers had been invited and that of the petitioner being the highest, was accepted. The licence agreement with Pure Drinks is dated 16.4.1981, and that with the petitioner 14.7.1982. It was much after the licence agreement with the Bharat Hotels Ltd. had been entered into. Then, as noted above, many meetings had been held by NDMC with - for construction of hotel project and those meetings had been attended by representatives of Bharat Hotels Ltd. as well as the petitioner. As far back as in 1981 the petitioner was well aware of the licence fee paid by Bharat Hotels Ltd. and yet it had agreed to offer at a higher rate. The land of the petitioner hotel is far better located than that of the Bharat Hotels Ltd. Rights of the parties even otherwise arise out of contractual obligations and any comparison with Bharat Hotels Ltd. is not only misplaced but thoroughly inappropriate. In the circumstances, NDMC, can't be restrained from exercising its rights under the licence agreement on the failure of the petitioner to abide by the terms of the licence agreement in making payments. Court would be loathe to exercise any discretion in favour a party in the grant of interim stay when it seeks to back out from its solemn obligation undertaken in a mutually agreed upon contract. The Court also cannot start with any presumption that a solemn obligation need not be adhered to on account of some specious plea. Here are two parties bargaining on equal terms. They have agreed to certain terms which deemed to them to be good. It is too late in the day for the petitioner to contend that any terms under the lease agreement were unreasonable or wrong. NDMC has been constituted under the Punjab Municipal Act, 1911 as extended to Delhi. It has various functions to perform as a local body. The licence fee and other charges payable to the NDMC under the agreement form parts of its municipal funds. But for the claim raised by the petitioner moneys are certainly due to NDMC under the agreement. While granting moratorium of the payments falling due it was agreed that these payments will be made in equal half yearly instalments and in case of delay interest was payable at the rate of 15% per annum. Now when the petitioner has itself given a go bye to the agreement regarding payment of licence fee and the licence for revoked/cancelled on that account, the whole of the arrears

of licence fee with interest becomes due and payable to the NDMC. NDMC is a local body and funds needed for various functions to be performed by it under the Punjab Municipal Act. Balance of convenience certainly lies in favour of the NDMC. Further I am of the view that the disputes raised by the petitioner are not *bona fide*. Its only purpose appears to be in raising the disputes to delay the payment of lawful dues to NDMC under the agreement. Petitioner is using prime land where hotel building has been constructed without paying anything for it. It has offered to pay during the course of hearing only Rs. 1 crores only against an agreed minimum amount of Rs. 2.68 crores. It has suppressed its accounts and has raised claims which are not tenable. It got extensions in the completion and commission of the hotel project and also moratorium on the licence fee payable. When the hotel project got into operation and licence fee became due and payable and moratorium ended, as it that only then it downed upon the petitioner that the licence fee was excessive or that it had claim for damages which points it never raised while seeking extension or moratorium. It was contended before me that the hotel of the petitioner Le Meridien was the best in the chain of hotels of similar names in the world over and that irreparable loss would occasion to the petitioner if NDMC was allowed to exercise its right to re-entry. I could not appreciate this type of argument. NDMC has invoked the provisions of the P.P. Act and it is not that it has taken the law into its own hands. Further if under the agreement a right accrues to NDMC on account of any default committed by the petitioner, the petitioner certainly cannot complain about that. Petitioner must have known the consequences of his default. Conduct of the petitioner does not commend to me and this conduct disentitles the petitioner to any discretionary relief.

I find that it is the petitioner who is in breach. It is utilizing land and building in breach of the agreement. Equity certainly is not in its favour. NDMC put trust on the representations of the petitioner and granted extension of time for completion and commission of the hotel project and also agreed to moratorium on payments running into crore of rupees and to accept the same in twenty half yearly instalments. It even agreed to forgo interest on the amounts which had already fallen due and accepted the request of the petitioner to charge interest only if the instalments were delayed. It appears the petitioner never honestly intended to pay. This application is, therefore, dismissed with costs. Counsel fee Rs. 2,000/-."

4. An appeal was preferred against the judgment of D.P. Wadhwa, J. and during the pendency of the appeal, an out of Court settlement was arrived at between the parties which resulted in the execution of the supplementary agreement dated 11th March, 1991. Since much emphasis has been laid by the plaintiff upon this agreement more particularly clause 7 of the agreement, it will be useful to read some of the clause of understood the real impact of the same.

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"4. That the LICENSEE has already paid a lump sum Rs. one crore on 29.1.91 and a sum of Rs. 54,26,348/- on 10.2.91 and has paid a sum of Rs. 53,78,298/- on 10th March, 1991 along with the execution of this SUPPLEMENTARY AGREEMENT. Thereafter the LICENSEE will pay a minimum amount of Rs. 45 lacs every month latest by 10th of each English Calender month. This amount will be paid by the LICENSEE in a manner so as to square up this within a maximum period not exceed 180 months w.e.f. 1st April, 1991.

7. That the LICENSEE has agreed to withdraw all claims and/or counter-claims pending in any court, judicial and/or quasi-judicial authority against the LICENSOR. The LICENSOR has also agreed to withdraw its claim preferred before the estate officer in respect of which schedule of payment has been mutually agreed to between the LICENSOR and the LICENSEES and further incorporated in this SUPPLEMENT TO PREVIOUS AGREEMENT. The LICENSEE will be at liberty to make any representation in respect of the licence fee which will be examined by the LICENSOR on merits as and when it is so preferred.

8. That the LICENSEE will strictly adhere to the above schedule of payment in monthly instalments as contained in this Supplement to Agreement. Non-payment of any instalment as per terms I conditions of this agreement will constitute breach of the terms and conditions of original licence deed dated 14.7.1982 and the present Supplement to Agreement. It is further made clear that in case of default of any monthly instalment, the licensor will also claim further interest at the rate of 21% p.a. (as against 15% stipulated in Licence agreement dated 14.7.1982) alongwith the arrears and interest already agreed to in this Agreement and the entire amount will be claimed in lump sum.

9. THIS SUPPLEMENTARY AGREEMENT will form an integral part of the licence deed already executed by the LICENSOR and the LICENSEE, on 14.7.1982 and subsequent supplementary agreement executed on 20.7.1984, 20.11.1984 and 31.3.1987, the other terms and conditions will remain the same and are to be read in conjunction thereof and these will form a compact unit of the licence deed dated 14.7.1982."

5. This agreement was followed by two further supplementary agreements dated 4th August, 1995 and 31st March, 1998 whereby the amount of instalment of Rs. 45 lacs mentioned in the 1991 agreement was increased to Rs. 60 lacs by the 1995 agreement and to Rs. 1 crore by the 1998 agreement. With the execution of 1991 agreement, the plaintiff withdraw all its respective claims, suits and appeals, etc. pending in different courts. The stand of the plaintiff is that the agreement was arrived at and the claims, suits, appeals, etc. pending in different courts were withdrawn by the plaintiffs on the understanding that the defendant-NDMC in terms of clause 7 of the agreement would examine the case of the plaintiffs on merits about the payment of licence fee in respect of the hotel.

6. Immediately after the execution of the agreement, the plaintiff represented to the defendant-NDMC that it should not discriminate between different hotels without objectively considering the submissions made by the plaintiffs in relation to the charge of the higher licence fee. The case of the plaintiffs is that despite various representations, the defendant-NDMC did not take a final decision on the representations of the plaintiffs in respect of licence fee and the same was, therefore, not been examined on merits. In the meantime, the plaintiffs continued to make payments of the licence fee at the rate of Rs. 2.68 crores per year in terms of the 1991 agreement. It is the submission of the plaintiffs that all dues towards licence fee had been paid upto the year 2003. On 25th September, 1998, however, the NDMC gave another notice to the plaintiffs calling upon them to pay the arrears of licence fee. It was stated that in case the entire outstanding dues were not deposited, action would be taken under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act against the plaintiffs. On 28th June, 1999 the NDMC sent a show cause notice to the plaintiffs calling upon them to deposit Rs. 109,82,16,368/- allegedly due to the NDMC upto 30th June, 1999. This was naturally disputed by the plaintiffs and it was asserted that licence fee upto the year 2003 stood paid and no amount was payable by them to the NDMC. Thereafter certain meetings took place between the parties, however, no amicable solution was arrived at between them. A notice dated 12th November, 1999 was then issued by the NDMC to the plaintiffs informing the plaintiff that the re-valuation of the licence fee was neither possible nor warranted. A meeting of the plaintiffs representatives also took place with the Chairman of the NDMC on 22nd November, 1999. Plaintiffs allege that in that meeting the Chairperson of the plaintiffs hotel agreed to pay a sum of Rs. 3 crores on the clear understanding that an independent agency/committee would be constituted by the NDMC to determine the fair and equitable quantum/rate of licence fee. However, the chairperson refused to have agreed to the appointment of any such committee and gave one week's time to the plaintiffs to make payment failing which it was threatened that the licence would be cancelled and possession of the hotel would be taken. On this threat being given, the plaintiffs filed a petition being Civil Writ Petition No. 7163/99 in this Court.

7. In the aforesaid Writ Petition filed by the plaintiffs, they prayed for issue of Writ of Certiorary or any other appropriate writ order or direction for quashing the show cause notice dated 28th June, 1999 and 12th November, 1999 and for issue of an appropriate writ order or direction directing the respondents to constitute a committee of independent persons to evaluate the legitimate/fair licence fee payable in respect of the land having regard to the licence fee paid by other hotels which were similarly situate as well as the economic viability of the plaintiffs hotel consistent with the supplementary agreement dated 11th March, 1991. Certain other reliefs were also claimed in this Writ Petition. This Petition was dismissed by A.K. Sikri, J. by order dated 7th March, 2000 on the ground that since the matter involved disputed questions of fact, the same cannot be decided in the writ petition. While dismissing the petition, the Court continued the interim order granted earlier till 31st March, 2000. Present suit was thereafter filed by the plaintiffs for an injunction restraining the

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defendant from taking any action pursuant to the show cause notices mentioned above and from causing any obstruction to the amenities like water and electricity to the premises of the plaintiffs. Plaintiffs also claimed a decree for specific performance of the agreement dated 14th July, 1982 as allegedly modified by the agreements dated 11th March, 1991 ; 4th August, 1995 and 31st March, 1998. Alongwith the suit, an application for temporary injunction was also filed by the plaintiffs. By this order, I propose to dispose of this application of the plaintiffs for the grant of an ad-interim injunction.

8. The stand of the plaintiff is that on the execution of the supplementary agreement dated 11th March, 1991 as also of 4th August, 1995 and 31st March, 1998 the defendant-NDMC had promised to examine the matter regarding payment of licence fee and consider the representation of the plaintiffs and to arrive at a decision on the representation after hearing the plaintiffs. It is submitted that based on these promises, the NDMC induced the plaintiffs to withdraw all their claim including the appeals filed against the order of D.P. Wadhwa, J. and the NDMC is, therefore, estopped from claiming anything more than what had been agreed to in the agreement dated 11th March, 1991, namely, the licence fee at the rate of Rs. 2.68 crores per year. It is also their submission that the NDMC had agreed to form a committee to go into the question of the licence fee to be paid by the plaintiffs and consider the representation after giving hearing to them. It is submitted that till date the representation of the plaintiffs has not been considered and no decision has been taken thereon. It is submitted that in terms of the agreement dated 11th March, 1991 the parties had clearly agreed that the plaintiffs would make a representation in respect of the licence fee which would be examined by the NDMC on merits. It is submitted that acting on the promises made by the NDMC, the plaintiffs paid the licence fee as per that agreement and the licence fee till 2003 stood paid. It is submitted that by the supplementary agreements of 1995 and 1998 instalments of Rs. 45 lacs which were agreed to be paid by the 1991 agreement were increased to Rs. 60 lacs by the 1995 agreement and Rs. 1 crore by the 1998 agreement. It is submitted that clause 7 of the 1991 agreement was not modified by the 1995 agreement and 1998 agreements and it was, therefore, the duty of the defendant-NDMC to consider the representation of the plaintiffs in respect of payment of licence fee. This allegedly having not been done, it is submitted that the NDMC has no right whatsoever to claim the alleged licence fee at the rate of 21% of the gross turn over to the hotel. It is also the contention of the plaintiffs that in a note dated 5th November, 1989 made by the Lieutenant Governor on the file, the Lieutenant Governor had observed as under :-

NOTE OF THE LT. GOVERNOR OF DELHI DATED 25.11.1989

"This file has been with me for sometime as I wish to ponder over the issue involved.

I have seen the note of N.D.M.C. as well as the LSG Department. The hotel has been constructed after a very long delays. The N.D.M.C. has so far not been able to recover any of his dues from the hotel. It has made several claims against CJ International Hotels Ltd. The N.D.M.C. has not made any

payments to L&DO. In turn the management claims the project is not viable financially. That they have suffered on the part of delays by the N.D.M.C., DESU and others. That the licence fee should be reduced etc. Considering the fact that the financial institutions are also tied up with this project, the matter has figured in Parliament. The Public Accounts Committee has also considered it and given its report. This is also to be gone into and view taken. To my mind, therefore, the matter needs to be looked into all its facts.

For long each side is blaming the other and made their claims on each other without any results as such it would be best to constitute a committee to look into the issue in its totality and make appropriate recommendations."

9. It is submitted that the Lieutenant Governor having decided to constitute a committee to look into the issue in its totality and make appropriate recommendations, the NDMC could not refuse to appoint the committee and till such time the committee was constituted and the matter was looked into, the NDMC cannot threaten to recover the licence fee from the plaintiffs at the rate of 21% of the gross turn over of the hotel.

10. Appearing on behalf of the NDMC, the contention of Mr. Mukul Rohtagi, learned Additional Solicitor General, is that the parties are governed by the 1982 agreement. It is submitted that the plaintiffs with open eyes having given a bid for the land and having agreed to pay the licence fee @ 2.68 crores per year, 21% of the gross turn over of the company cannot now wriggle out of its contractual obligations and refuse to pay on the ground that the licence fee being claimed by the defendant NDMC was not viable. It is also submitted that no reliance can be placed upon the note of the Lieutenant Governor firstly for the reason that the Lieutenant Governor had no role to play in the contractual obligations between the parties and no legal right will accrue to the plaintiffs because of the said note and secondly it is the submissions of learned Additional Solicitor General that these notes are meant for official use and do not confer any vested right in favour of any party. It is also the submission of the defendant that the note was made sometimes in 1989 and the suit was filed by the plaintiffs after the said note was made on the file. It is, therefore, submitted that the argument of the defendant this plea will be barred by principles of *res-judicata* inasmuch as a plea which might and ought to have been taken in the earlier litigation between the parties as a ground of defence or attack would be deemed to have been a matter directly and substantially in issue in the suit. It is submitted that the plaintiff could have taken this plea in the earlier suit decided by D.P. Wadhwa, J. on 13th October, 1990 and the same having been decided against the plaintiff, the present suit is otherwise barred by principles of *res-judicata*. It is submitted by Mr. Rohtagi that execution of a fresh agreement did not make any difference in the contractual obligations to which the parties had agreed in the lease agreement dated 14th July, 1982. It is submitted that the only concession given by the supplementary agreement was to permit the plaintiffs to pay the amount of arrears of licence fee in instalments. It is submitted that the supplementary agreements clearly stipulated that except for the

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indulgence shown to the plaintiffs to pay the arrears of licence fee in instalments, all other clauses of the main agreement dated 14th July, 1982 were to remain the same which include the quantum of licence fee agreed to be paid by the plaintiffs to the defendant-NDMC. It is further argued by Mr. Rohtagi that the NDMC in any case had considered the representation of the plaintiffs as is clear from the notice dated 12th November, 1989 given by the defendant to the plaintiffs where it is clearly mentioned "your reply dated 27th July, 1999, in view of the show cause notice and subsequent letters for re-writing the contract for the past for reducing the licence fee had been examined. The matter regarding reconsideration of the percentage of turn over was neither possible nor warranted." It is submitted that this clearly shows that the matter regarding the reduction of licence fee was examined by the defendant-NDMC but it was not found possible to reduce the same and the same was accordingly rejected. It is submitted that the entire attempt of the plaintiffs was to somehow avoid payment of the licence fee which amounts to almost about Rs. 110 crores. It is submitted that in terms of the balance sheets filed on record by the plaintiffs, huge amount of licence fee is admittedly due from the plaintiffs to the defendant-NDMC.

11. At the stage of deciding the application for temporary injunction, the Court is not required to go into the merits of the case in detail. What the Court has to examine is: (i) the plaintiff has a *prima facie* case to go for trial; (ii) protection is necessary from that species of injuries known as irreparable before his legal right can be established; and (iii) that the mischief of inconvenience likely to arise from withholding injunction will be greater than what it likely to arise from granting it. The principles governing the grant of injunction are well settled. The power is discretionary and is to be exercised on sound judicial principles. Where no violation of the rights of the plaintiffs was involved, the interim injunction should not be granted. It is on these principles that the Court has to examine the respective case of the parties.

12. A narration of events mentioned above clearly show that the case set up by the plaintiffs is entirely based upon clause 7 of the supplementary agreement dated 11th March, 1991 as allegedly modified by the 1995 and 1998 agreements. A passing reference has also been made to the note of the Lieutenant Governor and also to the promises alleged to have been made by the defendant-NDMC to the plaintiffs that it would not recover the licence fee till such time the representation of the plaintiffs for reconsideration of the licence fee was examined and decided by the NDMC after giving a hearing to the plaintiffs. Mr. Amarjit Singh Chandhiok, learned Senior Advocate, appearing on behalf of the plaintiffs has referred to the judgments reported as *S.N. Mukherjee v. Union of India*, AIR 1990 Supreme Court 1984; *Travancore Rayon Limited v. Union of India*, AIR 1971 Supreme Court 862 and *Mahabir Prasad Santosh Kumar v. State of Uttar Pradesh*, (1970) 1 Supreme Court Cases 764 to contend that a reasoned decision should have been given on the representation of the plaintiffs. Merely by writing in the notice dated 12th November, 1999 that re-valuation of the licence fee was neither possible nor warranted, it cannot be said that the NDMC has considered the representation of the plaintiffs on merits and in any case the NDMC ought to have given a speaking order on the said representation.

13. In *S.N. Mukherjee v. Union of India* (Supra), it was held by the Supreme Court that in view of the expanding horizon of the principles of natural justice, the requirement of record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the Legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. The recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and assures a degree of fairness in the process of decision making. Therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It is, however, not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of the decisions would depend on particular facts and circumstances. The Court in this case was examining the validity of the findings of the sentence recorded by the General Court Martial and it was in that context that the Court had observed that the object underlying the rules of natural justice was to prevent mis-carriage of justice and secure fair play in action. The Court was examining the provisions of the Army Act and the Rules framed thereunder and the Court had made these observations keeping in view the provisions of Rules 66 of the Army Rules. The Court in the facts of that case observed that there was no such requirement in other provisions relating to recording of findings or sentence and Rule 66(1) proceeds on the basis that there is no such requirement because if such a requirement was there, it would not have been necessary to make a specific provision for recording of reasons for the recommendation to mercy. The said provisions thus negative a requirement to give reasons for its findings and sentence or court martial and reasons were required to be recorded only in cases where the court martial made a recommendation of mercy. The Court was, therefore, of the opinion that at the stage of recording of findings and sentence the court martial was not required to record its reasons and at that stage reasons are required only for the recommendation to mercy if the court martial makes such a recommendation.

14. In *Travancore Rayond Limited v. Union of India* (Supra), the Court was examining the provisions of the Central Excises and Salt Act and the Court, therefore, observed that when judicial power is exercised by an authority normally performing executive or administrative functions, there should be disclosure of reasons in support of the order on two grounds; (i) that the party aggrieved in a proceeding before the High Court or the Supreme Court has the opportunity to demonstrate that the reasons which persuaded the authority to reject his case were erroneous; and (ii) that

obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power.

15. In *Mahabir Prasad Santosh Kumar v. State of Uttar Pradesh* (Supra), the Court was examining the provisions of the Sugar Dealers' Licensing Order, 1962 and it was in that context that the Court held that the power of the District Magistrate was quasi-judicial; exercise of the power of the State Government was subject to the supervisory power of the High Court under Article 227 of the Constitution and of the appellate power of the Supreme Court under Article 136 of the Constitution. It was, therefore, held that the High Court and the Supreme Court would be placed under a great disadvantage if no reasons were given and the appeal was dismissed without recording and communicating any reasons.

16. A reading of the aforesaid judgments clearly show that the Supreme Court in all these cases was concerned with the exercise of powers by the administrative authority under a statute or the rules framed under the statute and it was in that context that the Supreme Court observed that the administrative authority exercising quasi-judicial functions must give reasons to arrive at the finding so as to avoid any arbitrariness therein. In my opinion, none of these judgments would be applicable to the facts of the present case. In the present case, the defendants were dealing with a representation which the parties had agreed to be dealt with under the contract, the NDMC was not exercising judicial or quasi-judicial powers while dismissing the representation of the plaintiffs. *Prima facie*, I am of the view that the NDMC after having examined the matter on the basis of the material before it and having decided that the reconsideration of the licence fee was neither possible nor warranted, was not required to give any detailed reasons for the same.

17. It is next contended by Mr. Chandhiok that the note of the Lieutenant Governor dated 5th November, 1989 was binding upon the NDMC and the defendant-NDMC, therefore, ought to have constituted a committee to look into the entire aspect of the fixation of licence fee. It is submitted that the notes, correspondence, etc. made by the Government were relevant under Section 35 of the Evidence Act, of course, what evidentiary value must attach to the statements contained in these reports is a matter which would have to be decided by the Court after considering these reports. For this, he has placed reliance upon the judgments reported as *Chandulal v. Pushkar Raj and Others*, AIR 1952 Nagpur 271; *Khatri and Others (IV) v. State of Bihar and Others*, (1981) 2 Supreme Court Cases 493; *P.C. Purushothama Reddier v. S. Perumal*, 1972 (1) Supreme Court Cases 9; *M/s. Jain Malleables v. Bharat Sahay*, (1982) 1 Supreme Court Cases 149; and *Gurbax Singh v. Usha*, 1991 Rajdhani Law Reporter 390.

18. In *Chandulal v. Pushkar Raj and Others* (Supra), the Court was examining a case under the provisions of C.P. Land Revenue Act and the Court observed that reports made by the Revenue Officers, though not regarded as having judicial authority where they express opinions on the private rights of the parties, are entitled to great consideration being reports of public officers made in the course of duties insofar as they supply information of official proceedings and historical facts and also insofar as they are relevant to explain the conduct and acts of the parties in relation to

them and the proceedings of the Government founded on them. The Court was concerned with a dispute between the private parties where the Revenue Officers had made certain reports on the rights of the parties and the Court was, therefore, considering the question as to whether at the time of deciding the rights of the parties, report of the Revenue Officers should be taken into consideration.

19. In *Khatri and Others (IV) v. State of Bihar and Others* (Supra), the Court was considering the case of certain under-trial prisoners who had alleged that they were blinded by the members of the State police force acting as police officials and their fundamental right to life guaranteed under Article 21 was, therefore, violated and for this violation, the State was liable to pay compensation to them. It was while dealing with this question that the Court was of the opinion that as to whether or not the petitioners in that case were blinded by the members of the State Police force and the police officials and whether the State can be made to pay compensation for such acts of the police officials, the report of the investigation conducted by an officer of the Government into the conduct of the police officials was relevant for considering the matter raised in that petition. In that case, the report of the Investigating Officer, appointed by the State Government, to look into the conduct of the police officials was a relevant piece of information to enable the Court to give a finding under public law.

20. In *P.C. Purushothama Reddiar v. S. Perumal* (Supra), the Court was examining the election matter involving corrupt practices adopted by a candidate and the Court in those circumstances held that the issue before the Court was whether the respondent in that case had arranged certain election meetings on certain dates and for deciding this question the police reports in question were extremely relevant to establish that fact. It was again a case where the report of the police officers were directly relevant for deciding the question of the corrupt practices adopted by a particular candidate.

21. Again in *M/s. Jain Malleables v. Bharat Sahay* (Supra), the Court was examining the question under the Delhi Rent Control Act and was concerned as to whether or not a Government servant who was in possession of the official accommodation could ask its tenant to vacate the premises on the ground that the Government servant has been ordered to vacate the official accommodation or in default to incur certain obligations. It was in that context that the Court relied upon a special order of the Assistant Director of Estates calling upon the Government servant to vacate the Government accommodation allotted to him failing which he would be charged market rent w.e.f. June 1, 1996 at the rate fixed by the Government from time to time. The Court in this case relied upon certain notings of the Government and the aforesaid order to come to a finding that since the Government servant could continue to occupy the Government accommodation only subject to certain obligations, he would be entitled to have recourse under Section 14-A of the Delhi Rent Control Act for vacating the tenant from the premises in question.

22. In my view, none of these judgments can be of any assistance to the plaintiffs. In all these cases, the Court was concerned with certain reports, notes and orders of the Government which were directly relevant to the matter in dispute between the

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private parties and had a bearing on the merits of the case. In my view, the case in hand involves the rights of the parties under a contract which has been arrived at by them consciously with eyes wide open. Any right which a party claims against the other has to flow from the agreement between them. The Lieutenant Governor, in my view, has no role to play in the contractual obligations between the parties and no legal right will accrue to the plaintiff because of the note of the Lieutenant Governor. Moreover, these notes are meant for official use and do not give any vested right to any of the parties who may like to take advantage of the same.

23. In a case reported as *Bachhittar Singh v. State of Punjab and Another*, AIR 1963 Supreme Court 395, the Court was concerned with the termination of services of an Assistant Consolidation Officer. The said officer was first suspended from service for his having tempered with official records and on an enquiry being held against him by the Revenue Secretary of the Pepsu Government, he was dismissed on the basis of the enquiry. Against the order of dismissal, he preferred an appeal before the State Government. It appeared that he had submitted an advance copy of his appeal to the Revenue Minister of Pepsu who called for the records of the case immediately. After perusing the records, he wrote on the file that the charges against the delinquent were serious and they were proved. He, however, expressed the opinion that as the delinquent was a refugee and had a large family to support, his dismissal would be too hard and instead of dismissing him outright, he should be reverted to his original post of Qanungo and warned that if he did not behave properly in future, he would be dealt with severely. The delinquent taking support of this note had contended that since the Minister himself had recommended that leniency should be shown to him, the order of dismissal should be set aside. It was also argued that the Minister having reduced the punishment from dismissal to reversal, the Chief Minister could not sit over that order and still direct dismissal of the delinquent. While dealing with this note of the Minister, the Supreme Court held that :-

"Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by clause (1) of the Article 166 of the Constitution and then it has to be communicated. The Constitution requires that the action must be taken by the authority concerned in the name of the Governor. It is not till this formality is observed that the action can be regarded as that of the State. Constitutionally speaking the Minister is no more than an adviser and that the head of the State, the Governor is to act with the aid and advice of his Council of Ministers. Therefore, until such advice is accepted by the Governor whatever the Minister of the Council of Ministers may say in regard to a particular matter does not become the action of the State until the advice of the Council of Ministers is accepted or deemed to be accepted by the Head of the State. Indeed, it is possible that after expressing one opinion about a particular matter at a particular stage a Minister of the Council of Ministers may express quite a different opinion, one which may be completely opposed to the earlier opinion. Therefore to make the opinion amount to a decision of the Government it must be communicated

to the person concerned. It is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order. For, until the order is communicated to the person affected by it, it would be open to the Council of Ministers to consider the matter over and over again and, therefore, till its communication the order cannot be regarded as anything more than provisional in character."

24. It is thus clear that for an order to be binding, firstly it must be communicated to the person who is to be affected by the order and until the order was communicated to the person affected, it would be open to the authorities to reconsider the matter and till this communication, the order cannot be regarded as anything more than provisional in character.

25. In the present case, all that the Lieutenant Governor had written in the note is that the matter be reconsidered. This note was never communicated to any of the parties. It was a mere nothing on the file and was an opinion of the Lieutenant Governor which, in my view, cannot be held to be binding between the parties.

26. As observed above, the plaintiff had offered its bid for taking on licence the land on which the hotel is constructed. The terms and conditions of the auction were known to the plaintiffs before the auction was held and the bidders participated in the auction without a demur and with full knowledge of the commitments which the bids involved. The Government's acceptance of those bids was the acceptance of willing offers made to it and on such acceptance the lease agreement was executed between the parties which is binding between them. The commercial considerations may have revealed an error of judgment in the initial assessment of profitability of the adventure but that is a normal incident of trading transactions. Those who contract with open eyes must accept the burden of the contract alongwith its benefit. Reciprocal rights and obligations arising out of contract do not depend for their enforceability upon whether a contracting party finds it prudent to abide by the terms of the contract. By such a test, no contract could even have a binding force. The plaintiffs entered with full knowledge of conditions, which they had to carry out in the conduct of their business, on which they had willingly and voluntarily embarked. Merely because the plaintiffs are not finding the licence fee payable under the agreement to be viable for purposes of running the hotel, it cannot ever be said that a licensee can work out the licence if he finds it profitable to do so and he can challenge the conditions under which he agreed to take the licence, if he finds it commercially inexpedient to conduct his business. The supplementary agreement to 1991, in my opinion, does not at all modify or vary the terms of the licence entered into between the parties on 14th July 1982. The only concession given by the 1991 agreement was to enable the plaintiffs to pay the amount in instalments. A reading of the preamble of the 1991 agreement clearly shows that the plaintiff had approached the defendant - NDMC for an out of Court settlement and also for grant of instalments in the payment of licence fee payable upto 27th September, 1990 and interest accrued thereon upto 31st March, 1991 as well as to liquidate the current demand and the NDMC-defendant after considering

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the said request of the plaintiffs had agreed to grant instalments for the payment on account of licence, deferred payments and interest. The agreement nowhere provides that because of the parties having entered into supplementary agreement, the plaintiffs would not be liable to pay the licence fee @ 21% of the gross turn over of the hotel. The parties never intended to change the licence fee payable under the 1982 agreement but it agreed only to the payment of arrears and the current demand in the manner mentioned in the supplementary agreement. All other clauses of the 1982 agreement were to remain the same and after consideration of the representation of the plaintiffs, the defendant-NDMC having decided that the matter regarding reconsideration of the percentage of turn over was neither possible nor warranted, the plaintiffs had to pay the licence fee in accordance with the terms of the 1982 agreement.

27. The only question which remains to be considered is as to how this licence fee is to be calculated. While the case of the defendants is that the plaintiffs were required to pay 21% of the annual gross turn over of the hotel as disclosed by the balance sheets, the plaintiffs' case is that even assuming that the plaintiffs are required to pay the licence fee @ 21% of the gross turn over of the hotel, it has to be 21% of the gross turn over as certified by the certified auditors of the plaintiffs. The question is as to what is the gross turn over as certified by the certified auditors of the plaintiffs. A chart has been placed on record by the defendant-NDMC showing the annual gross turn over of the hotel from 1988-89 to 1998-99 and the amount of licence fee payable by the plaintiffs has been calculated in terms of the said annual gross turn over. The chart is being reproduced for ready reference as under :-

ANNUAL YEAR	C.J. INTERNATIONAL HOTEL GROSS TURN OVER	DEMAND OF LICENCE FEE AMOUNT OF ANNUAL LICENCE FEE
1987-88		2,68,00,000
1988-89	14,49,55,728.92	3,04,40,703
1989-90	17,83,75,211.23	3,74,58,794
1990-91	17,64,71,968.54	3,70,59,113
1991-92	29,29,08,640.64	6,15,10,815
1992-93	38,20,23,220.57	8,02,24,876
1993-94	44,79,06,922.07	9,40,60,454
1994-95	56,99,58,926.31	11,96,91,375
1995-96	82,09,31,048.83	17,23,95,520
1996-97	86,08,27,229.50	18,07,31,718
1997-98	81,43,00,604.68	17,10,03,127
1998-99	104,42,30,000.00	21,92,88,300

28. The plaintiffs have placed on record the balance sheets of the hotel from 1988-89 to 1998-99 and the aforesaid chart has been prepared on the basis of the gross turnover of the hotel which includes the commission payable to the travel agents, income derived by way of interest from banks and certain other income like income from telecommunication services, etc. The plaintiffs have, however, placed on record the certificates of the certified auditors of the company. According to these certificates, for the purpose of computing the gross turn over of the hotel, the following appropriations based on the alleged accepted accounting principles, industry norms and practices were applied to gross receipts of the hotel to arrive at the appropriate and correct gross turn over for the purpose of the licence fee payable to the defendant-NDMC:

"(i) The LICENCEE hotel has to pay 3% of the gross receipts generated on rooms as Franchise Fee to the Franchiser. The Licencee Hotel therefore is *dejure* and *defacto* entitled only to 97% of the room receipts which amount is being included in Gross turn over.

(ii) Receipts from various outlets including from Room revenue is a composite charge and includes the element of Licence Fee of 21% also. As the Licence fee is not intended required to be paid on licensee fee, appropriate adjustment by metting the amount after removal of element of licence fee from gross receipts is being included in the gross turn over from the licensee hotel.

(iii) The licensee hotel also extends facilities like Telephone, Telex, Fax etc. to its customers which services are primarily rendered by MTNL. Amounts payable to such external Govt. Agencies have been excluded from the gross receipts. Similarly, licence fee paid for beverage licence and luxury tax have also not been included in the amount of gross turn over.

(iv) Credit card commission paid on gross receipts being collection charges have been treated as a charge on the gross turn over. Similarly, bad debts are also being treated as a direct revenue loss affecting gross turn over.

(v) Direct costs in respect of food and beverages, which could be alternatively sourced from outside agencies, need not form part of the gross turn over. Therefore, the income generated attributable directly to the building as a setting remains included in the gross turn over. Similarly, other income is also being included sans cost of direct consumables/commission.

(vi) In accordance with the terms of the licence deed, while the building alongwith fixture, etc. remains vested with the licensor, the licensee hotel is required to maintain and keep the building and its surroundings in a manner befitting a 5 star hotel. We are advised that in this view of the matter and till such time the NDMC claims the building to be vested in it and such claim is not refuted in a court of law, expenses on Insurance and repairs and renewals of the buildings, etc. are chargeable from NDMC and therefore adjustable against the licence fees."

29. Though it is mentioned in the agreement that it is the gross turn over of the hotel as certified by the certified auditors of the hotel on which the licence fee is

28. The plaintiffs have placed on record the balance sheets of the hotel from 1988-89 to 1998-99 and the aforesaid chart has been prepared on the basis of the gross turnover of the hotel which includes the commission payable to the travel agents, income derived by way of interest from banks and certain other income like income from telecommunication services, etc. The plaintiffs have, however, placed on record the certificates of the certified auditors of the company. According to these certificates, for the purpose of computing the gross turn over of the hotel, the following appropriations based on the alleged accepted accounting principles, industry norms and practices were applied to gross receipts of the hotel to arrive at the appropriate and correct gross turn over for the purpose of the licence fee payable to the defendant-NDMC:-

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(vi) In accordance with the terms of the licence deed, while the building alongwith fixture, etc. remains vested with the licensor, the licensee hotel is required to maintain and keep the building and its surroundings in a manner befitting a 5 star hotel. We are advised that in this view of the matter and till such time the NDMC claims the building to be vested in it and such claim is not refuted in a court of law, expenses on Insurance and repairs and renewals of the buildings, etc. are chargeable from NDMC and therefore adjustable against the licence fees."

29. Though it is mentioned in the agreement that it is the gross turn over of the hotel as certified by the certified auditors of the hotel on which the licence fee is payable

able by the plaintiffs, however, *prima facie*, in my view, plaintiffs may not be entitled to all the appropriations mentioned by the auditors in their certificates. *Prima facie*, it appears to the Court that only that income which is compulsorily payable by the plaintiffs in terms of an agreement which it might have arrived at with the third party or statutory liability necessarily payable may only have to be deducted for the purpose of arriving at the gross turn over of the hotel. The franchisee fee payable is 3% by the NDMC to the franchisee and it is only the 97% of the receipts which are received by the hotel. *Prima facie*, this 3% may have to be deducted from the room tariff. Luxury tax on behalf of the Government is also received by the hotel at the time of providing services to the guests and since this tax does not come in the hands of the hotel, this also may have to be deducted from the gross turn over of the hotel. The other amount which may have to be deducted from out of the gross turn over of the hotel as shown in the balance sheets is the credit card commission as the amount which is received by the hotel on payments received through credit cards is net of commission charged by the credit card companies. Other component which may have to be deducted from the gross turn over is the interest income on the deposits with banks. The only other receipt to which the plaintiffs may be entitled to deduction is the telephone receipts. The plaintiffs may be said to be acting as agents for the Mahanagar Telephone Nigam Limited while the telecommunication services are provided to the guests. The payments therefore, which is actually made to the Mahanagar Telephone Nigam Limited have to be deducted from out of the gross amount which is received by the plaintiffs for providing telecommunication services so that the balance amount received by the hotel is taken as its income. Besides these deductions which, *prima facie*, may be permissible from the gross turn over of the hotel, in my view, the plaintiffs are not entitled to any other deduction from out of the gross turn over of the hotel. The cost of food and beverages is a part of running of the hotel and cannot, in my opinion, be deducted from out of the gross turn over of the hotel. If this is deducted from gross turn over, what will be arrived at is the gross income and not the gross turn over. At the stage of deciding this application the Court is not deciding finally as to what would be the gross turn over of the hotel on which it is liable to pay the licence fee and it is only a *prima facie* view of the Court that the aforesaid outgoings may have to be deducted from the gross turn over as reflected in the balance sheets.

Since, in my opinion, none of the supplementary agreements modified the agreement of 14th July, 1982 providing for payment of licence fee @ 21% of the gross turn over of the hotel, plaintiffs are, *prima facie*, liable to pay licence fee of 21% of the gross turn over to be calculated on the basis of the gross turn over as shown in the balance sheets filed on record by the plaintiffs and deducting from the gross turn over the amount to be calculated in terms of the aforesaid paragraph. The plaintiffs being *prima facie* liable to pay licence fee at the rate of 21% of the gross turn over of the hotel, in my opinion, there is no question of the plaintiff suffering irreparable loss in case it has to pay the licence fee in terms of the agreement. Defendant NDMC is a civic authority and for purposes of providing service to the people it spends funds. Public benefit in the present case outweighs the case of the plaintiffs.

in withholding the amount legitimately due to the NDMC. Balance of convenience clearly lies in favour of the larger public interest rather than in favour of the plaintiffs. The only indulgence to which the plaintiffs may be entitled is to pay the arrears of licence fee in instalments. Since the amount which may be calculated on the basis of the above formula may be quite heavy, the plaintiffs will be at liberty to deposit the said amount in four equal quarterly instalments, first of which will be paid within three weeks from the date of this Order.

31. I, accordingly, restrain defendant-NDMC, its agents and employees from interfering with the possession of the plaintiffs over the land and building situate at 1, Windsor Place, Janpath, New Delhi in any manner whatsoever and from disconnecting, withholding or causing to be withheld any amenities including water and/or electricity to the plaintiffs hotel, subject to the plaintiffs depositing the entire licence fee in the manner directed in this Order, calculated @ 21% of the gross turn over of the hotel arrived at on the basis of the observation made in this Order. *Prima facie*, I am also of the opinion that the plaintiff will also have to pay interest on this amount calculated for the time being at the rate of 10% p.a.

32. With these observations, the application of the plaintiffs stands disposed of. Any observations made in this order will not be taken as expression of opinion on the merits of the case.

2001 (60) DRJ 578
HIGH COURT OF DELHI

I.As. 6558/94, 7886/97, 8488/99 in S. No. 1368/94

Galaxy Power Cables Limited.....Plaintiff

Versus

Canara Bank & Anr.....Defendants

Vikramajit Sen, J.

Decided on : May 7, 2001

Bank Guarantee

Bank Guarantee—Bank Guarantee in the nature of a performance Guarantee—Plaintiff declared as a sick company—Bank Guarantee accepted by defendant in lieu of cash deposit by way of security for due and faithful performance—Bank Guarantee only requires lodging of demand—Mere perfunctory use of the word 'performance' will not transform an unequivocal and 'on demand' Bank Guarantee into a conditional one—Bank Guarantee is unconditional—Plaintiff's application for interim injunction restraining bank from releasing Bank Guarantee has no merit—Application dismissed—Bank Guarantee directed to be encashed.

Held : In this analysis I am of the opinion that the subject Bank Guarantee is unconditional. This being so no reasons need have been stated for justifying its release. The statement in the telegram to the effect that the Bank Guarantee was being released

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P. Gupta, Ad
Shwar Sahai, J
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NEXT DATE - DISPOSED OFF on 21/04/2015

IN THE HIGH COURT OF DELHI : AT NEW DELHI

I.A. No. 15580 /2015

IN

CS (OS) No.610/2000

In re :

M/s C.J. International Hotel Ltd. & Anr.

... Plaintiffs

Versus

N.D.M.C. & Ors.

... Defendants

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5	Annexure A-2 Worksheet of the fresh calculation of arrears	22-25

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28/7/15
31/7/15
re-memo

Akshay

Akshay Makhija, D-660/1997
Central Govt. Standing Counsel
Advocate for Defendant No 1
461, Lawyers Chambers
Delhi High Court
New Delhi-110003
Mobile No.9810079901

New Delhi

Date: 31st July, 2015

Note:- All Parties have been served by hand.

13/4/16

NEXT DATE- DISPOSED OFF on 21/04/2015

IN THE HIGH COURT OF DELHI AT NEW DELHI

I.A. No. _____ 2015

IN

CS (OS) No. 610/2000

In re :

M/s C.J. International Hotel Ltd. & Anr.

... Plaintiffs

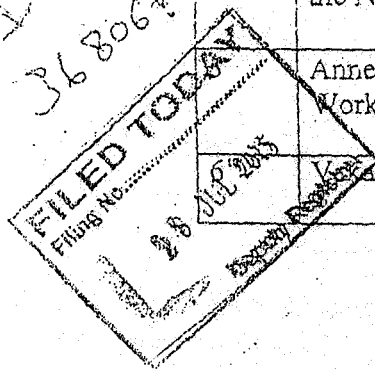
Versus

N.D.M.C. & Ors.

... Defendants

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Akshay Makhija

Central Govt. Standing Counsel

Advocate for Defendant No 1

461, Lawyers Chambers

Delhi High Court

New Delhi-110003

Mobile No.9810079901

New Delhi

Date: 28th July, 2015

Note:- All Parties have been served.

13/4/16

IN THE HIGH COURT OF DELHI : AT NEW DELHI

NOTICE OF MOTION

To,

CS (OS) No.610/2000

In re :

M/s C.J. International Hotel Ltd. & Anr.

... Plaintiffs

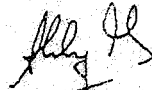
Versus

N.D.M.C. & Ors.

... Defendants

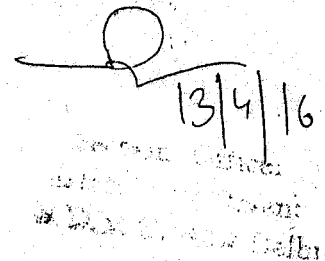
Sir,

The enclosed application in the aforesaid matter as being filed on
behalf of the Defendant No.1 is likely to be listed on 3/08/2015
or any date, thereafter. Please take notice accordingly.



Akshay Makhija
Central Govt. Standing Counsel
Advocate for Defendant No 1
461, Lawyers Chambers
Delhi High Court
New Delhi.110003
Mobile No.9810079901

New Delhi

Date: 28th July, 2015

13/4/16
RECEIVED
CLERK
DELHI HIGH COURT

IN THE HIGH COURT OF DELHI : AT NEW DELHI

To
The Deputy Registrar
Delhi High Court of Delhi
New Delhi

CS (OS) No.610/2000

In re :

M/s C.J. International Hotel Ltd. & Anr.
Plaintiffs

Versus

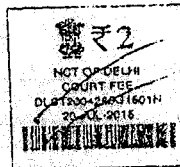
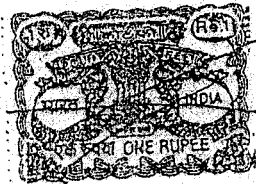
N.D.M.C. & Ors.

... Defendants

Sir,

Will be you kindly treat this accompanying his application as an urgent one in accordance with the High Court Rule and Orders.

1. The grounds of urgency are mentioned in prayer of application.



Yours faithfully

Akshay Makhiya
Central Govt. Standing Counsel
Advocate for Defendant No 1
461, Lawyers Chambers
Delhi High Court
New Delhi.110001
Mobile No.9810079901

New Delhi

Date: 28th July, 2015

13/4/16

IN THE HIGH COURT OF DELHI : AT NEW DELHI

I.A. No. 15580/2015
IN

CS (OS) No.610/2000

In re :

M/s C.J. International Hotel Ltd. &Ans.

... Plaintiffs

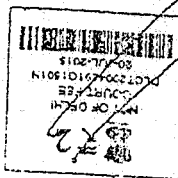
Versus

N.D.M.C. & Ors.

... Defendants

APPLICATION, UNDER SECTION 151 CPC ON BEHALF OF
DEFENDANT No.1, SEEKING SETTING ASIDE OF THE
ORDER / DECREE DATED 21ST APRIL, 2015 PASSED IN I.A.
No.7172/2015 STYLED AS AN APPLICATION UNDER ORDER
XXIII RULE 3 CPC BY THE PLAINTIFFS HEREIN

MOST RESPECTFULLY SHOWETH :



1. That the plaintiffs had filed the instant suit seeking permanent injunction against the defendant No.1/NDMC from interfering in the possession of the plaintiffs with respect to land and building situated at 1, Windsor Place, Janpath, New Delhi, as also from taking any punitive action in pursuance to the show-cause notices dated 28th June, 1999 and 12th November, 1999. The plaintiffs had also sought specific performance of alleged promises and assurances of the defendants.
2. That the plaintiff upon receiving the impugned demands/ show cause notices, disputed the computation of license fee, alleging that certain heads ought not to be included in arriving at the basic figure of annual gross turnover.

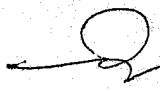
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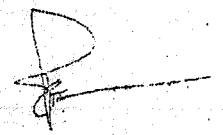
3. That the defendant No.1/NDMC filed its written statement in the said suit and has been contesting the same on merits and is still desirous of contesting the same having never taken any decision to compromise the same or to renege from its original demand towards unpaid licensee fee. The license fee to be calculated as per clause 3 of the License Agreement dated 14th July 1982 which is reproduced as follows:

"In consideration of the licensor granting to the Licensees the licence in respect of the said plot of land for construction of 5-star Hotel Building vesting in the Licensor, i.e. New Delhi Municipal Committee, the Licensees shall pay to the Licensor as and by way of licence fee an amount of Rs.2.68 Crores(Rupees Two Crores and Sixty Eight Lakhs only) per annum as minimum guaranteed amount or 21% of the gross turnover of the licencees from the said hotel for every financial year of the licencees as certified by the statutory auditors of the Licencees whichever is higher. The liability for the payment of licence fee shall commence from the date of handing over the said plot of land by the Licensor to the Licencees including former Licencees. The licence fee in respect of the period which is less than the financial year shall be paid by the licencees to the licensor on a prorate basis of the statement certified by the statutory auditors of the licencees.

Explanation: Financial Year 'For the purpose of this clause the term 'financial year' of the licencees shall be mean the 12 months period commencing from the day of November of every year and ending on the 31st day of October of the following year.


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SECRETARY
New Delhi



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4. That notwithstanding the above, an order dated 21st April 2015, evocative of a compromise decree has been passed at the behest of the plaintiff and as such, the following factual background needs to be narrated to bring forth as to how and in what circumstances the same happened, whereas the same ought not to have happened.
5. That in the above titled suit an interim arrangement was worked out to ensure that pending the disposal of the suit, the defendant No 1, NDMC continues to receive and correspondingly the plaintiff continues to pay a particular amount towards license fee, so that revenue interests of Defendant No 1 are not defeated. This arrangement was worked out vide order dated 18th May, 2001, of this Hon'ble Court, while deciding the plaintiffs' application under Order XXXIX Rules 1 and 2 CPC. The same is reproduced as under:

" Since in my opinion, none of the supplementary agreements modified the terms of the agreement of 14th July, 1982, providing for payment of license fee @ 21% of the gross turnover of the hotel, plaintiffs are, prima-facie, liable to pay license fee @ 21% of the gross turnover to be calculated on the basis of the gross turnover as mentioned in the balance sheets filed on record by the plaintiffs and deducting from this turnover the amount to be calculated in terms of the aforesaid paragraph. The plaintiff being prima-facie liable to pay license fee @ 21% of the gross turnover of the hotel, in my opinion, there is no question of the plaintiff suffering irreparable loss in case it has to pay the license fee in terms of the agreement. Defendant/NDMC is a civic authority and for purposes of providing service to the people it requires funds. Public benefit in the present case outweighs the case of the plaintiffs in withholding the amount legitimately due to the NDMC. Balance of convenience clearly lies in favour of the larger public interest rather than in favour of the plaintiffs. The only indulgence to which the plaintiffs may be entitled is to pay

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the arrears of license fee in instalments. Since the amount which may be calculated on the basis of the above formula may be quite heavy, the plaintiffs will be at liberty to deposit the said amount in four equal quarterly instalments, first of which will be paid within three weeks from the date of this order.

I, accordingly, restrain defendant/NDMC, its agents and employees from interfering with the possession of the plaintiffs over the land and building situate at 1, Windsor Place, Janpath, New Delhi in any manner whatsoever and from disconnecting, withholding or causing to be withheld any amenities including water and / or electricity in the plaintiffs' hotel, subject to the plaintiffs depositing the entire license fee in the manner directed in this order, calculated @ 21% of the gross turnover of the hotel arrived at on the basis of the observations made in this order. Prima-facie, I am also of the opinion that the plaintiffs will also have to pay interest on this amount calculated for the time being @ 10% per annum. With these observations, the application of the plaintiffs stands disposed of. Any observation made in this order will not be taken as expression of opinion on the merits of the case."

6. That the aforesaid order was upheld by the Hon'ble Division Bench in an appeal filed by the Plaintiff herein, being FAO (OS) No.310/2001 decided on 12th March, 2003. None of the parties took the same in any further challenge. As such the above order became binding on the Plaintiff pending disposal of the suit.
7. That the plaintiff however did not comply with the said order in its true letter and spirit. The Plaintiff did not submit before the defendant No. 1 its duly audited balance sheets regularly and timely to enable the defendant No 1 to assess the gross turnover and raise a demand of the license fee keeping in view the observations of the Hon'ble High Court vide order dated 18th May 2001. Instead the plaintiff started paying Rs. 1 crore per month to defendant No 1 presumably as an "on account" ad-hoc payment of license fee. It is submitted that the same was been

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accepted by the defendant No 1 without giving up its right to recover the balance unpaid sum as per the interim arrangement worked out by the Hon'ble Court along with interest.

8. That the suit continued to be contested; the pleadings were completed; the issues were framed; a local commissioner was appointed for recording of evidence, however not much progress was made in recording of evidence for one reason or the other. In the meantime, as it so transpired that on the basis of certain correspondence that ensued between the plaintiffs and the defendant No.1, more importantly, the letter dated 2nd March, 2015, an application under Order XXIII Rule 3 CPC was filed by the plaintiffs herein being I.A. No.7172/2015. It is pertinent to state that the said application was not accompanied by an affidavit of the defendant No 1 nor was it signed by the defendant No 1 or any counsel of the defendant No 1.

9. That the said application under Order XXIII Rule 3 CPC was disposed of vide order dated 21st April, 2015. as under:

* IA No.7172/2015

This is an application under Order XXIII Rule 3 CPC filed by the plaintiffs. By the present application, it is pointed out that in view of correspondence with the defendant including letters dated 2nd March, 2015 and 26th March, 2015 received from the defendant and communication dated 26th March, 2015 written by the plaintiffs to the defendant, the matter with the defendant has been sorted out and up to date arrears of license fee of Rs.150,92,43,676/- has been paid to the defendant in satisfaction of the full license dues and CS(OS) 610/2000. Interest payable up to the year 2013-14, Ld. Senior Counsel for the plaintiffs will continue to abide by the terms of the interim order passed on 16th May, 2001 in this suit on the basis of which

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the defendant has communicated the calculations of the license fee as calculated by the defendant. Ld. Counsel for the defendant confirms above position. Accordingly, the suit is disposed of in terms of the said satisfaction as stated by the parties.

In view of the satisfaction as recorded above, a decree is passed in terms of the correspondence between the parties which are attached to the application. Suit and all pending applications stand disposed of accordingly."

10. That it is clear from the above order that the very edifice of the same is the letter dated 2nd March 2015 written by an officer of the Defendant No 1/ NDMC.

11. That the letter dated 2nd March, 2015 relied upon for the purpose of moving the application under Order XXIII Rule 3 CPC reads as under :

" NEW DELHI MUNICIPAL COUNCIL
PARLIKA KENDRA, NEW DELHI
(ESTATE-I DEPARTMENT)

No.599/DD(E)/2015

Dated : 2.3.2015

To

Chairperson,
M/s C. J. International Hotels Ltd.,
Windsor Place,
New Delhi-110 001

Sub : Payment of outstanding dues in respect of Hotel
Le-Meridien reg.

1. Please refer to the various meetings held with the representatives of the Hotel on the above subject. In this regard it is to intimate you that the arrears of license fee payable by the Hotel and so far not complied with, has been recalculated as per the orders of Justice S. K. Mahajan dated 16th May, 2001 in I.A. No.3075/2000 in Suit No.610/2000 (titled C. J. International Hotels Ltd. & Ors. Vs. NDMC & Ors.)

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only upheld by Enclave Bench of the Delhi High Court pronounced by Hon'ble Justice Usha Mehra and Hon'ble Justice Praanesh Nandrajog in F.A.O. (OS) No.310/2001 dated 12th March, 2003.

2. As per these orders the net arrears of license fee payable by you comes to Rs.150,92,43,676/- (Rupees one hundred fifty crores ninety-two lakhs forty-three thousand and six hundred and seventy-six only) (Rs.75,46,85,601/- as license fee arrears plus Rs.,75,45,58,075/- as interest) up to 2013-14. This is over and above the licence fee so far paid by you (detailed calculation sheet enclosed as Annexure - C).
3. Now this is to inform you that you are required to pay these arrears calculated (as of now by 31st March, 2015 pending final decision in the Suit No.610/2000 (Presently sub-judice before Hon'ble High Court of Delhi).
4. You may intimate your acceptance of above stated position of arrears to NDMC and should submit cheques for the amount of arrears as indicated at para 1 with an undertaking that you will further abide by the final orders of the Hon'ble High Court of Delhi in Suit No.610/2000.

This issues with approval of Competent Authority.

Sd/- Deputy Director (E-I)
HIMANSHU RANJAN
Deputy Director (Estate)
NDMC."

12. That it is clear from a bare reading of the above letter that the same did not contemplate termination of the suit; that the same does not communicate the Defendants No 1's satisfaction of its entire claim and that the same, merely confined to a demand based on the defendants contemporaneous calculation, which is purportedly made in adherence to the formula worked out in the interim order dated 18th May 2001. The arrears were seemingly calculated pending final decision in the suit and above all a request was made to the plaintiffs to undertake to abide by the final orders that may be passed in the suit.

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13. That in fact, even the office noting of the Chairperson of the NDMC dated 20th April, 2015 whereby the purported compromise was approved, albeit under a misconceived appreciation of the legal position, it has been noted as under :

"As of now, a major, almost unprecedented recovery of dues has happened. It is strictly in conformity with the Court orders of long past and we are admitting in next Court hearing, absolutely nothing beyond (i) compliance of old orders; (ii) leaving to Court to adjudicate on pending dues towards a final settlement. It must be impressed upon the Court that we are not in that sense compromising outside the Court, but merely carrying out old Court orders in the spirit of DB's last orders; particularly when the advice from Revenue Collection and legal standing viewpoint is not to prefer an appeal for the sake of litigation."

14. That it thus emerges from the above noting of the Chairman of Defendant No 1 dated 20th April 2015 read in conjunction with the earlier letter dated 2nd March 2015 that what was contemplated by Defendant No 1, is only recovery of arrears in terms of the orders dated 18th May 2001, pending final adjudication in the suit. Disposal of the suit by means of a compromise application was never under contemplation of the Defendant No 1 nor was the same ever approved by the Competent Authority in terms of the requirements of the NDMC, Act. Had it been so, there would have been a clear cut mention of such a decision in the file notings and additionally there would have been a mention of withdrawal of the impugned demand / show cause notices. A Copy of the said office noting of the Chairperson of the NDMC dated 20th April, 2015 is annexed hereto as Annexure A-1.

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[Signature]

15.1 That, apart from the fact that there was neither any decision nor was there any mandate given by the competent authority of defendant no.1 to compromise the Suit, there was also no instruction to the Counsel appearing for the Defendant No 1 to the effect that the claim of Defendant No 1 stood satisfied by the Plaintiff by paying the said demanded arrears of licence fee. The actual amount of licence fee, if calculated in pursuance of this Hon'ble Court's order dated 18.5.2001 ought to have been 21% of Gross Turn Over (hereinafter referred to as GTO), as reduced by 5 items of expenses clearly spelt out in the said order dated 18th May 2001 (as stated in Para 16 infra), in addition to the payment of interest thereon at 10% per annum. The calculation of demand of licence fee for the period ended 31st March 2014 of Rs.150,92,43,676/-, as communicated to the plaintiff vide letter dated 2nd March 2015 was found to be incorrect and much less than what it ought to have been in terms of this Hon'ble Court's order dated 18th May 2001.

15.2 The correct amount of licence fee, calculated in terms of this Hon'ble Court's order dated 18th May 2001, contemplating deduction of only 5 items of expenses from GTO before computing the license fee at 21% works out to Rs.269,99,46,665/- . As per the said Order dated 18th May 2001, the Plaintiff was required to pay an interest at 10% on outstanding amount of license fee. The interest amount works out to Rs.256,97,68,330/- for the period ending March 2014. The total dues, therefore, stood at Rs.526,97,14,995/- (Rs.269,99,46,665/- as Principal amount + Rs.256,97,68,330/- as interest) as of 31st March 2014, as against the demand raised for Rs.150,92,43,676/- which shows that the plaintiff was aware of the above miscalculation and therefore rushed to deposit the same and that too claiming full satisfaction of the claim of NDMC. The above act is unmistakably fraudulent. Plaintiff knew that what was due and what NDMC intended to receive was arrears along with

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interest as per the interim order dated 18th May 2001. Otherwise, the outstanding licence fee including interest actually would have amounted to Rs.618,01,39,617/- at the end of 31st March 2014 if deduction of 5 items as spelt out in the Order dated 18th May 2001 of the Hon'ble High Court was not made and which NDMC had not accepted as final determination.

15.3 The aggregate GTO for the period from 1988-89 to 2013-14 is Rs.2463,86,04,162/-. From this amount, as per the Interim order dated 18th May 2001 of this Hon'ble Court, a sum of Rs.213,10,45,955/- was deductible from GTO towards 5 items of expenditure as spelt out in the said order. After deducting the said expenses, the turn over works out to Rs.2250,75,58,207/- on which the licence fee at 21% was required to be paid by the plaintiff in terms of this Hon'ble Court's order dated 18th May 2001. In addition, an interest at 10% per annum on the outstanding amount of licence fee was also payable.

15.4 The total outstanding amount of licence fee thus works out to Rs.526,97,14,995/- which is payable by the plaintiff upto end of 2013-2014 in terms of the Hon'ble High Court order dated 18.5.2001. After adjusting the amount of Rs.150,92,43,676/- paid in April 2015, purportedly to secure this impugned orders dated 21.4.2015, the net amount that is still payable by the plaintiff is Rs.376,04,71,319/- as per this Hon'ble Court's interim order dated 18th May 2001. Therefore there was no reason or occasion for the NDMC to settle the suit for Rs.150,92,43,676/-. A detailed worksheet of the fresh calculation is annexed hereto as Annexure A-2.

16. That in the order dated 18th May, 2001, the Hon'ble Court, as a prima-facie opinion, had listed out certain exclusions from the gross turnover of the hotel. The same are as follows :

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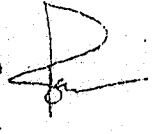
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- (i) 3% franchisee fee;
- (ii) Luxury tax;
- (iii) Credit Card commission;
- (iv) Interest income on bank deposits; and
- (v) Telephone receipts.

17. That on examination of the calculation of Rs.150,92,43,676/- it has been revealed that certain heads which were not excluded by the Order dated 18th May, 2001 have also been excluded by the concerned officer of NDMC while calculating the gross turnover of the hotel. The extra heads excluded from the gross turnover of the hotel are as under:

- (i) Bar License Fee
- (ii) Service Tax
- (iii) Wealth Tax
- (iv) Rates & Taxes
- (v) Sales Tax
- (vi) Excise Duty
- (vii) Cess Charges
- (viii) Insurance
- (ix) Power, Fuel and Gas
- (x) Consumption and provision of beverages
- (xi) Repair and maintenance (50%)

18. That besides the fact that the compromise of the suit is unauthorised and has in essence compromised the revenue interests of the defendant No. 1, the aforesaid calculation itself is causing a severe and grave loss to public funds and revenues. As such, it is imperative that the order dated 21st April, 2015 be set aside and the suit be adjudicated on merits.


13/4/16

Section Officer
District Court
Gurgaon

(14)

19. That without prejudice to the above contentions, it is also submitted that the application under Order XXIII Rule 3 CPC is not supported by any affidavit on behalf of the defendants nor is the said application signed by the defendants or its counsel; as such, the said application is not in consonance with the requirement of Order XXIII Rule 3 CPC. It is also pertinent to note that the Plaintiff has deliberately and strategically manipulated the entire transaction in such a manner that it is able to claim that the entire monetary claim of the Defendant No 1 towards license fee stands satisfied as on the date of the purported compromise on dated 21st April, 2015. It is for this reason that it first replaced the originally submitted cheques dated 20th April 2015. However it is respectfully submitted that in the absence of ad-idem on compromise and any intention to give quietus to the litigation or any decision to accept a sum of Rs150,92,43,676/- towards full and final discharge of all the claims of defendant no 1, such compromise is no compromise in the eyes of law and in securing an order evocative of a compromise, the plaintiff has played a fraud upon the Defendant No. 1 and upon the Court as well.

20. That besides the above, the following acts and omission on the part of the plaintiff would reveal that it has practiced a fraud which resulted in passing of the order dated 21.4.15, culminating in a compromise decree;

- i) That while defendant No. 1 was willing to believe the veracity and authenticity of the audited balance sheets to be submitted by the plaintiff for the purpose of calculating the gross turnover and for the purpose of calculation of the license fee @ 21% thereof, (in terms of the orders of this Hon'ble Court dated 18th May

13/4/16

2001), the Plaintiff while submitting the relevant record vide cover of its letter dated 11th September 2014, fraudulently made deductions under such heads which were not permissible in terms of the order dated 18th May 2001, and thereafter proceeded to make further unexplained deductions without any rationale, to arrive at the basic figure for the purpose of calculation of licence fee. Naturally, in such circumstances the figure calculated as demand could not be correct, even otherwise.

- ii) Not only this, the plaintiff failed and neglected to submit regularly its balance sheets to facilitate calculation of the gross turnover in terms of the interim arrangement worked out vide order dated 18th May 2001. The Plaintiff once again misinterpreted the facts and figures when it submitted its data vide cover of letter dated 16th February 2014 and falsely claimed that it was liable to pay only Rs. 62,06,85,601/-, besides the amount already paid. (Rs. 99.03 Crores in all, including interest).
- iii) That the Plaintiffs on its own, despite being fully aware of the fact that Defendant No 1, NDMC had intended to arrive at a figure on the basis of data submitted by the Plaintiff only for the purpose of recovering arrears as per the interim arrangement ordered by this Hon'ble Court vide order dated 18th May 2001, fraudulently filed an application under Order 23 Rule 3 of the Civil Procedure Code, purportedly for compromise of the suit. Needless to say, that the Plaintiff being a regular litigant, assisted by the best lawyers (including in the present case) was aware that if an application under Order 23 Rule 3 is filed, it might lead to passing of a decree, bringing an end to the suit, while the defendant No. 1 had clearly not intended the same. This act on

13/4/16

the part of the Plaintiff is nothing but a fraud played on defendant No 1. It is only for this reason that the Plaintiff avoided on insisting on a supporting affidavit from defendant No 1, or for that matter, obtaining signatures of the defendant or its counsel on the application.

- iv) That the Plaintiff appears to have hoodwinked this Hon'ble Court by stating in paragraph 9 of the said application, purported to be under Order 23 Rule 3 of the CPC, claiming that the same represented the terms of agreement with defendant No 1, whereas there is nothing on record to show that Defendant No 1 ever agreed to the same.
- v) That the Plaintiff was well aware that if it would have insisted on the defendant No 1 signing an accompanying affidavit to the said application, or signing on the application, or the presence of a responsible / competent officer of Defendant No 1, it might not be able to achieve its purpose of forcing an unauthorised compromise on defendant No 1 for it is well known that no responsible / competent officer would take the risk of signing / endorsing such type of purported compromise which virtually amounts to giving an unauthorised concession in respect of a monetary claim of a statutory body.
- vi) That the Plaintiff further played a fraud upon the Court by going ahead with the disposal of the compromise application without presenting before the Court a duly authorised officer of Plaintiff No. 1 or Plaintiff No 2 in person. The Plaintiff instead sought to take benefit of the fact that defendant No 1 was represented by a Counsel, even though the said Counsel did not have any written instructions to record any satisfaction of the claims of defendant No 1.

13/4/16

[Signature]

(17)

- vii) That without prejudice to the fact that a Counsel represented defendant No 1 on 21st April 2015, it is submitted that as far as the record of the case is concerned, the said Counsel has on the face of it, recorded his agreement only to the effect that the Plaintiff had deposited a sum of Rs. 150,92,43,676/- with defendant No 1, as is clear from the order dated 21.4.15. The Counsel for defendant No 1 did not specifically agree to anything else.
- viii) That, without prejudice to the above, the defendant No 1 respectfully submits that it was still the imperative upon the counsel for defendant No 1 to point out to the Court that there was no decision to compromise the suit and that the decree under Order 23 Rule 3 of the CPC ought not to have been passed. The Defendant No 1 accordingly has issued a notice to the said Advocate seeking an explanation and has withdrawn work from him as in interim measure.
- ix) It is further submitted that merely because the defendant No 1 has been let down by its Counsel who ought to have pointed out that such a compromise was without statutory authority and in fact illegal under Section 383(1)(d) of the NDMC Act and that the intention of the Defendant No1 was only to recover the arrears in terms of the order on this Hon'ble Court dated 18th May 2001. Defendant had never intended to go for compromise for claim and licence fee contrary to law i.e. without the approval of 'Council', as per provision of section-383 of NDMC Act, 1994. Any statement to the contrary, if any, made by Ld. Counsel for 'NDMC' at the time of passing the order in-question by Hon'ble Court only tantamounts to giving wrong concession on question of law, which cannot bind the client or any person as there can be

13/4/16

no estoppel against the statute. The defendant No 1 cannot be made to agree to a settlement which is to its detriment, being a public authority, and contrary to public policy, as also contrary to its decision. Needless to say that any settlement which has the effect of depriving the State exchequer of Rs.376,04,71,319/- had to be lawfully accepted by the statutory body which is not the case in the present case. As stated above, in any case, at no point of time was there ad-idem on the alleged terms of settlement, as stated in paragraph 9 of the application and the act of inducing the Court to pass a compromise decree on the strength of such representation amounts to a deceitful act on the part of the Plaintiff.

21. That the order dated 21st April, 2015 records satisfaction of the parties; whereas no such satisfaction has been expressed by the defendants. It is clear from the noting of the Chairman of Defendant No 1 dated 20th April 2015 as well as the earlier letter dated 2nd March 2015 that what was contemplated by defendant No 1, is only recovery of arrears in terms of the orders dated 18th May 2001, pending final adjudication of the suit.

22. That it is also pertinent state that as per Section 383(1)(d) and (f) of the NDMC, Act 1994, the Chairman, NDMC can only withdraw or compromise a claim not exceeding an amount of Rs. 1000/-; for an amount of more than Rs. 1000/- an approval of the Council would be required, which is not there in the present case.

23. That the present application is being moved bona-fide and in the interest of justice as also in public interest.

13/4/16

PRAYER :

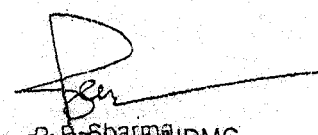
In view of the submissions made hereinabove, it is most respectfully prayed that the impugned order / decree dated 21st April, 2015 may be set aside and the suit be heard on merits.

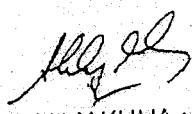
Any other order, direction or relief which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may also be passed in favour of the defendant No.1/NDMC as against the plaintiffs.


It is prayed accordingly.

Through :

NEW DELHI;
July 28th, 2015.


DEFENDANT NO.1/NDMC
Jt. Director (Estate)
NDMC, New Delhi-110 001


(AKSHAY MAKHIJA : ADVOCATE)
Counsel for Defendant No.1/NDMC


13/4/16

IN THE HIGH COURT OF DELHI : AT NEW DELHI

L.A. No. _____/2015

IN

CS (OS) No.610/2000

In re :

M/s C.J. International Hotel Ltd. & Anr.

... Plaintiffs

Versus

N.D.M.C. & Crs.

... Defendants

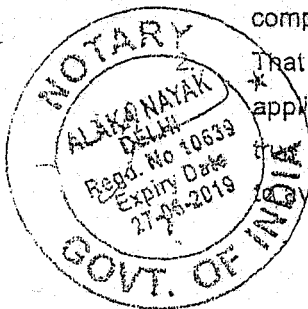
AFFIDAVIT

Affidavit of Sh. P.P. Sharma working as Joint Director (Estate), New Delhi Municipal Corporation, aged about 49 years, R.N. 5006, Palika Kenda, Sarod Nagar New Delhi.

I, the above-named deponent, do hereby solemnly affirm and declare on oath as under:

1. That I am working as Joint Director (Estate), New Delhi Municipal Corporation/Defendant No 1, conversant with the facts of the case and competent to swear this affidavit.

That I have read and understood the contents of the accompanying application and the statement of facts and submissions made therein are true and correct and the same be read as part and parcel of this affidavit, to avoid repetition.



28 JUL 2015

P. P. Sharma
Jt. Director (Estate-I)
NDMC, New Delhi-110 001

VERIFICATION :

Verified at ND, on this 28 day of July, 2015, that the contents of paras 1 and 2 of the above affidavit are true and correct to my knowledge. Nothing is false and nothing material has been concealed therefrom.

CERTIFIED THAT THE DEPONENT
Shri/Smt./Kum. P. P. Sharma
S/o, W/o R/o ...

Identified by Shri/Smt. ...
Has solemnly affirmed before me at
Delhi on 28/07/2015 as S.I. No. ...
That the contents of the affidavit which
have been read & explained to
him are true & correct to his knowledge

I identified the deponent who
has signed in my presence

28 JUL 2015

NOTARY

DEPONENT
P. P. Sharma
Jt. Director (Estate-I)
NDMC, New Delhi-110 001

13/4/16

Broadly, I agree with the aforesaid. We had a single Bench and a D.B. judgement over a decade back and then approached the Apex Court with a caveat. For some reason pending the outcome of the suit, M/S C.J. International have been stalling due payments for over 13 years, on the basis of one "modification" after another.

At this very belated stage, whether A of 43/N by our efforts for the past year to open discussions with HNI defaulters (including PSUs) for which I had addressed individual letters in Feb., 15 also; or by (B of 44/N) common sense prevailing, or whether our strict action in Jan-Feb 15 of sealing Hotels Asian & Connaught have exhibited our resolve to maximise revenue recovery, fact is, fortunately M/S Bharat & M/S C.J. International have exhibited willingness to discuss and pay up what is indisputably due to NDMC. What is contentious between NDMC and M/S C.J.I. or beyond the orders of SB and DB passed fifteen years back, may still be decided upon by the court of law and we would address it then.

As of now, a major, almost unprecedented recovery of dues has happened. It is strictly in conformity with the court orders of long past and we are admitting in next Court hearing absolutely nothing beyond (i) Compliance of old orders, (ii) leaving to Court to adjudicate on pending dues towards a final settlement.

It must be impressed upon the Court that we are not in that sense "Compromising" outside the Court but merely carrying out old Court orders in the spirit of DB's last orders; particularly when the advice from Revenue Collection and Legal standing view point is not to prefer an Appeal for the sake of litigation.

To that end, we may submit to the Court, acclly. If any other Hotel wants to raise these issues in support of its closure, while prima facie all cases are distinct from each other and to be treated on their own merits. We should certainly attempt to bring all pending litigations to a closure within the legal framework and towards maximising revenues for NDMC.


Sd/-
(Jalaj Srivastava)
20.04.2015
5 P.M.

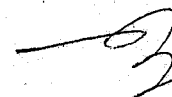
Secy. nio

Director (Estates - nio)

Dy. Director (Estates) - to attend immediately as court date tomorrow.

Typed Total Copy


37.07.2015
P. P. Sharma
Jt. Director (Estate-1)
NDMC, New Delhi-110 001


13/4/16

Annexure-A-2 (22)

C.J. INTERNATIONAL (HOTEL LE-MERIDIEN)

CALCULATION OF LICENCE FEE & INTEREST DUES
(for the Period 1982-83 to 2013-14)

(Figures in ₹)

Sr. No.	Particulars	As per Hon'ble High Court order dated 18.05.2001
1	Gross Turnover (1982-83 to 2013-14) as submitted by the Plaintiff	24638604162
2	Deductions Allowed - 5 items	2131045955
3	Net Turnover for Calculating Licence Fee - GTO	22507558207
4	Licence Fee @ 21% of Net Turnover - GTO	4887387223
5	Payment made by C.J. International 1982-83 to 2013-14	2187440559
6	Balance of Licence Fee	2699946664
7	Cummulative Interest @10% on Balance of Licence Fee	2569768330
8	Cummulative Outstanding dues of Licence Fee+Interest for the period 1982-83 to 2013-14	5269714995

21/4/16

True copy
S. K. Kapoor
Sr. A.O. (Exstn)
NDMC, New Delhi

AAO (E-4)

15.02.15
S. K. Kapoor

15.02.15

C.J. INTERNATIONAL (HOTEL LE-MERIDIEN)

CALCULATION OF LICENCE FEE DUES

(Figures in ₹)

As per Hon'ble High Court order dated 18.05.2001								
1	2	3	4	5	6	7	8	9
Financial Year	Gross Turnover	Deduction Allowed (5 items)*	Net Turnover *	Licence Fee (21% of Col. 4)	Payment made by C.J. International	Commulative Balance	Interest (10% of Col. 7)	Cummulative Total Outstanding dues of Licence Fee & Interest
1982-83		0	0	26800000	0	26800000	2680000	29480000
1983-84		0	0	26800000	0	53600000	5360000	61640000
1984-85		0	0	26800000	0	80400000	8040000	96480000
1985-86		0	0	26800000	0	107200000	10720000	134000000
1986-87		0	0	26800000	0	134000000	13400000	174200000
1987-88		0	0	26800000	0	160800000	16080000	217080000
1988-89	144955730	16625588	128330142	26949330	0	187749330	18774932.98	262804263
1989-90	178375213	23012641	155362572	32676140	5000000	215375470	21537546.99	311967950
1990-91	176471967	22898774	153573193	32250371	20804646	226821194	22682119.45	346095794
1991-92	252908641	71686191	221222450	46456715	54000000	219277909	21927790.9	360480299
1992-93	382023221	41136151	340887070	71586285	54000000	236864194	23686419.37	401753003

Shw
27/12
Amc (C-1)

Shw
27/12
Amc (C-1)

Shw
27/12
Amc (C-1)

True copy
27.12.15
(S. K. Bhatnagar)
AO (Extd)
NOCC, New Delhi

9/1/16
3/4/16

24

(Figures in ₹)

As per Hon'ble High Court order dated 18.05.2001

1	2	3	4	5	6	7	8	9
Financial Year	Gross Turnover	Deduction Allowed (5 items)*	Net Turnover *	Licence Fee (21% of Col. 4)	Payment made by C.J. International	Commulative Balance	Interest (10% of Col. 7)	Cummulative Total Outstanding dues of Licence Fee & Interest
1993-94	447906923	52913707	394993156	82948563	54000000	265812756	26581275.64	457282842
1994-95	569958927	87475436	482483491	101321533	54000000	313134290	31313428.95	535917804
1995-96	820931049	122551804	698379245	146659641	79500000	380293931	38029393.1	641106838
1996-97	860627229	99738767	760888462	159786577	72000000	468080508	46808050.8	775701466
1997-98	814300854	85787333	728513221	152987776	100000000	521068284	52106828.44	880796071
1998-99	736029479	53330812	682696667	143366720	100000000	654435004	65443500.45	1079606292
1999-00	675514099	43810342	631703757	132657789	60000000	727092793	72709279.35	1224973360
2000-01	746549749	55288191	691261558	145164927	110000000	762257721	76225772.06	1336364059
2001-02	652650558	52225259	600434297	126091202	60000000	828348923	82834892.3	1485290154
2002-03	690010953	46356719	643660244	135168651	110000000	853517574	85351757.43	1595810562
2003-04	758789735	48071987	710717748	149250727	144135913	858632388	85863238.83	1680788615
2004-05	868116290	45050454	823016736	172833527	120000000	911465915	91146591.55	1830768734
2005-06	1099030725	61900000	1037130725	217797326	120000000	1009263241	100926324.1	2020192384

2/13/16

copy
15.12.2015
A.O. (Estt)
H.O. New Delhi

2.12.17
AAC (E-1)

F.A

10/11/17
S. K. Singh

25

(Figures in ₹)

As per Hon'ble High Court order dated 18.05.2001

1	2	3	4	5	6	7	8	9
Financial Year	Gross Turnover	Deduction Allowed (5 items)*	Net Turnover *	Licence Fee (21% of Col. 4)	Payment made by C.J. International	Cumulative Balance	Interest (10% of Col. 7)	Cummulative Total Outstanding dues of Licence Fee & Interest
2006-07	1429581978	75984345	1353597633	284255503	120000000	1173518744	117351874.4	2311099761
2007-08	1820629033	122490442	1698138591	356609104	120000000	1410127848	141012784.8	2686721650
2008-09	1611577132	125688020	1485889112	312036714	120000000	1602164562	160216456.2	3040974820
2009-10	1650157646	116524024	1533633822	322063100	120000000	1804227665	180422766.5	3423460689
2010-11	1644717036	164096233	1480620799	311030368	120000000	2037158032	203715803.2	3860108860
2011-12	1807254609	156550577	1710704032	359247847	120000000	2276495879	227649587.9	4326895295
2012-13	1762136854	164819711	1597317143	335436600	120000000	2491842479	249184247.9	4791616143
2013-14	1737383572	174582689	1562400883	328104185	120000000	2699946664	269994666.4	5269145935
Total	24638604162	2131045955	22507559207	4687387223	2187440559		2569768330	

9/11/16
13/4/16

623

As per Annexure I

AAO (ESTATE)

SR. AO (ESTATE)

F. A

True copy

(S. Kapoor)
& A.O. (Estate)
NDMC, New Delhi

IN THE HIGH COURT OF DELHI : AT NEW DELHI

I.A. No. _____/2015

IN

CS (OS) No.610/2000

In re :

M/s C.J. International Hotels Ltd. & Anr.

... Plaintiffs

Versus

N.D.M.C. & Ors.

... Defendants

**REJOINDER, ON BEHALF OF DEFENDANT No.1,
TO THE REPLY FILED BY THE PLAINTIFFS TO
I.A. No.15580/15**

MOST RESPECTFULLY SHOWETH :

PRELIMINARY SUBMISSIONS :

I. That the contents of Reply filed by the plaintiffs are, unless
hereinafter specifically admitted, denied in their totality. \

II. Investigations by the Central Bureau of Investigation

(i) That the Government of India, Ministry of Home Affairs
(MHA) had got conducted an inquiry by an Inspection Team
of senior officers of MHA, headed by a Joint Secretary to the
Government of India, into the irregularities by New Delhi
Municipal Council (NDMC) in terms of section 394 of the
NDMC Act, 1994. In respect of M/s C.J. International Hotels

Ltd. & Anr.(i.e.Hotel Le-Meridian), the inspection team in its inquiry report dated 20.7.2015 has concluded that:

"...on reading the judgment of the High Court, it seems that there is a need for wider investigation into the affairs of Le Meridian which may include inspection of Le Meridian hotel documents as a whole. It is important to see who all are on the pay rolls of Hotel Le Meridian and whether there is any linkage of these people with NDMC."

(ii) On the basis of recommendation made by the inspection team, MHA vide its letter dated 28.8.2015 requested the Director, CBI to investigate the allegations pointed out by inspection team regarding irregularities in fixing the licence dues in respect of Hotel Le-Meridian by NDMC. Copy of letter dated 28.8.2015 is enclosed as Annexure – I.

(iii) CBI vide its letter dated 6.10.2015 (copy enclosed as Annexure- II) had requested the NDMC to furnish the following records in the matter

"... complete files containing all papers/ correspondence, note sheets etc. pertaining to granting of licence and renewal thereof subsequently in case of Hotel Taj Man Singh, Hotel Lalit, Hotel Gesture, Hotel Le-Meridian & Lodhi Garden Restaurant from beginning till date are required urgently. Apart from this, the guidelines, rules relevant to granting of license by NDMC to hotels/restaurants and renewal of the license subsequently are also required."

(iv) Accordingly, NDMC had handed over the certified copies of records of Hotel Le-Meridian also to the CBI vide letter dated 8.10.2015(copy enclosed as Annexure-III).

- (v) That the investigation in this matter is with the CBI in the instant case as the matter pertains to huge revenue loss to the public exchequer.

III. Fixing of Licence Dues

- (i) The determination of licence fee has to be in accordance with the terms and conditions of the Licence Deed. The Licence Deed between NDMC and the plaintiff has adopted a time bound approach regarding fixation of licence fee in the first 33 years and how further licence fee can be fixed after 33 years.

- (ii) Clause 1 states as under:

"The licence shall be for a period of 99(ninety nine) years with effect from 16th day of April 1981."

- (iii) Clause 53 of the licence deed which reads as under:

"The licence fee in terms of the fixed minimum annual guaranteed amount only will be enhanced after every 33 years countable from 16th day of April 1981 provided that the increase in the licence fee at each such time shall not exceed 100% of that immediately before the enhancement is due. For determination of the increase, the percentage increase in the minimum annual guaranteed amount would depend on the market value of the plot at the relevant time. In this regard the decision of the Licensor shall be final and binding on the licencees. However, the aforesaid provision would not be applicable to any increase in the licence fee on percentage basis on gross turnover"



- (iv) The first period of 33 years end on 15.4.2014.

- (v) The second period of licence period on expiring of 33 years starts with effect from 15.4.2014, and the licence fee and the relation between the licensor and the licensee has to be worked out as per Clause 53 of the licence deed.

Position with respect to first 33 years i.e. up to 15.4.2014:

- (vi) That the following amounts is payable by the Plaintiff on account of arrears of license fee:

A. Total outstanding liability without allowing any deduction up to financial year 2013-14 is Rs.618,01,39,617/-;

B. Justice S. K. Mahajan's order dated 18.5.2001 reads as under:

"Prima facie, it appears to the Court that only that income which is compulsory payable by the plaintiffs in terms of an agreement which it might have arrived at with the third party or statutory liability necessarily payable may only have be deducted for the purpose of arriving at the gross turn over of the hotel. The franchisee fee payable is 3% by the NDMC to the franchisee and it is only the 97% of the receipts which are received by the hotel. Prima facie, this 3% may have to be deducted from the room tariff. Luxury tax on behalf of the Government is also received by the hotel at the time of providing its services to the guests and since this tax does not come in the hands of the hotel, this way also have to be deducted from the gross turn-over of the hotel. The other amount which may have to be deducted from out of the gross turn-over of the hotel as shown in the balance sheets is the credit card commission as the amount which is received by the hotel on payments received through credit cards is net of commission charged by the credit card companies. Other component which may have to deducted from the gross turn-over is the

(N)

interest income on the deposits with banks. The only other receipt to which the plaintiffs may be entitled to deduction is the telephone receipts. The plaintiffs may be said to be acting as agents for the Mahanagar Telephone Nigam Limited while the telecommunication services are provided to the guests. The payment, therefore, which is actually made to the Mahanagar Telephone Nigam Limited may have be deducted from out of the gross amount which is received by the plaintiff for providing telecommunication services so that the balance amount received by the hotel is taken as its income. Besides these deductions which, prima facie, may be permissible from the gross turn over of the hotel, in my view, the plaintiffs are not entitled to any other deduction from out of the gross turn over of the hotel. The cost of food and beverages is a part of running of the hotel and cannot, in my opinion, be deducted from out of the gross turn over of the hotel. If this is deducted from the gross turn over, what will be arrived at is the gross income and not the gross turn over. At this stage of deciding this application the Court is not deciding finally as to what would be the gross turn over of the hotel on which it is liable to pay the license fee and it is only a prima facie view of the court that the aforesaid outgoings may have to be deducted from the gross turn over as reflected in the balance sheets.

Since, in my opinion, none of the supplementary agreements modified the terms of the agreement of 14th July, 1982 providing for payment of license fee @ 21% of the gross turn over of the hotel, plaintiffs are, prima facie, liable to pay license fee @ 21% of the gross turn over to be calculated on the basis of the gross turn over as mentioned in the balance sheets filed on record by the plaintiffs and deducting from this turn over the amount to be calculated in terms of the aforesaid paragraph. The plaintiff being prima facie liable to pay license fee at the rate of 21% of the gross turn over of the hotel, in my opinion, there is no question of the plaintiff suffering irreparable loss in case it has to pay the license fee in terms of the agreement. Defendant-NDMC is a civic authority and for purposes of providing service to the people it requires funds. Public benefit in the present case outweighs the case of the plaintiffs in withholding the amount legitimately due to the NDMC. Balance of convenience clearly lies in favour of the larger public interest rather than in favour of the plaintiffs. The

(2)

only indulgence to which plaintiffs may be entitled is to pay the arrears of license fee in installments. Since the amount which may be calculated on the basis of the above formula may be quite heavy, the plaintiffs will be at liberty to deposit the said amount in four equal quarterly installments, first of which will be paid within three weeks from the date of this Order.

I, accordingly, restrain defendant-NDMC, its agents and employees from interfering with the possession of the plaintiffs over the land and building situated at 1, Windsor Place, Janpath, New Delhi in any manner whatsoever and from disconnecting, withholding or causing to be withheld any amenities including water and/or electricity to the plaintiffs hotel, subject to the plaintiffs depositing the entire licence fee in the manner directed in this order, calculated @ 21% of the gross turn over of the hotel arrived at on the basis of the observations made in this Order. Prima facie, I am also of the opinion that the plaintiff will also have to pay interest on this amount calculated for the time being at the rate of 10% p.a. With these observation, the application of the plaintiffs stands disposed of. Any observation made in this order will not be taken as expression of opinion on the merits of the case."(emphasis added)

The total arrears, as per this order dated 18.5.2001, as calculated up to financial year 2013-14 should have been Rs.526,97,14,995/- (Rs.269,99,46,664/- as an arrear and Rs.256,97,68,330/- as cumulative interest @ 10% per annum on balance of licence fee) (calculation sheet is attached as Annexure-IV);

(vii) That figure of approximately Rs.151 crores was neither

correctly calculated nor arrived in a proper manner, and that

illegal additional benefits accorded to the plaintiff, in a mala fide and fraudulent exercise.

IV. That another significant factor, which exemplifies the mala fide intent of the Plaintiff is that in its reply to the instant application, in paragraph 'J' of the preliminary submissions and paragraph 'O' of the preliminary objections, the Plaintiff has specifically stated that it has paid the arrears with the intention to claim refunds thereafter. The above averment is inherently paradoxical, juxtaposed, the stand of the plaintiff that it has paid such a huge amount only with the intention of bringing the litigation to an end, is ex facie false.

V. That the impugned compromise is ex-facie misconceived, unfounded and untenable and has been premised on fraud resulting in loss to the tune of several hundred crores to the public exchequer. That it is a settled principle of law that "*fraud vitiates al'*", as such the Defendant No 1, upon discovery of fraud, is not in any manner estopped from preferring an application for setting aside the decree passed vide order dated 21.4.2015 passed at the sole behest of the plaintiff.

Determination of licence fee w.e.f. 16.4.2014:

The licence deed contemplated different kind of relationship between the licensor and the licensee after 33 years of licence deed i.e. after 15.4.2014 which has to be in accordance with

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Clause 53 of the licence deed.

In view of the above stated factual position, it is evident that the licence deed has been fraudently and intentionally suppressed with a purpose to give undue benefit to the plaintiff thereby causing loss to the public exchequer and contrary to the terms and conditions of the licence deed. The whole exercise of arriving at a settlement and calculation of licence fee is void-initio and should not have been taken up in the first instance after 16.4.2014.

Contravention of Section 383 of NDMC Act, 1994:

VI. It is submitted that Section 383 of the NDMC Act, 1994 reads as under:

"383. Power to institute, etc., legal proceedings and obtain legal advice.-

(1) The Chairperson may-

...

(d) withdraw or compromise any claim for a sum not exceeding one thousand rupees against any person;

...

(f) with the approval of the Council admit or compromise any claim, suit or other legal proceeding brought against the Council or against the Chairperson or any officer or other employee in respect of anything done or omitted to be done as aforesaid;"

In the instant case, approval of the Competent Authority i.e. the New Delhi Municipal Council was not taken before arriving at such alleged settlement as per the scheme laid down in the NDMC Act, 1994, therefore, the alleged settlement is non-est in

(A) the eye of law. It therefore necessarily follows that any such

interpretation being attributed to the notings, which are contrary to the above legal provisions, would otherwise be redundant.

PARA-WISE REJOINDER :

REPLY TO PRELIMINARY SUBMISSIONS :

A. That with respect to the contents of para A of the Preliminary Submissions are wrong and denied. It is denied that the application filed by the defendant No.1 / applicant is not maintainable in its present form. The order dated 18.5.2001 is a matter of record and the same may be read for its true content and purport.

It is, however, denied that the said order was duly complied with by the plaintiffs herein. It is reiterated that the plaintiffs, instead of complying with the order, started paying a sum of Rs.1,00,00,000/- per month presumably as an on account ad-hoc payment of license fee. The same was accepted by the defendant No.1 without giving up their right to recover balance unpaid sum as per the interim arrangement worked out by the Hon'ble Court along with interest. It is stated that that acceptance of the ad hoc payment by the defendant did not amount to compliance of the order dated 18.5.2001 and nor did it foreclose the right of the defendant to recover the balance amount due, along with interest. It is also pertinent to highlight that it was the plaintiff No.1 herein who filed

(N) an appeal against the order dated 18.5.2001. The said appeal being

FAO No.310/2001 was decided on 12.3.2003 whereby the order dated 18.5.2001 was upheld by the Hon'ble Division Bench, thus making it imperative for the Plaintiff to deposit the amounts as per the formula worked out by the order dated 18.5.2001. It is nobody's case that the formula left any scope for further interpretation.

B. That with respect to the contents of para B of the Preliminary Submissions, it is stated that vide the present application, i.e. I.A. No.15580/15, defendant No.1/applicant has prayed for the said order dated 21.4.2015 to be set aside. The said application, as recorded in the order dated 11th August, 2015, has been treated by this Hon'ble Court as an application under Order XXIII Rule 3 of the CPC read with Section 151 of the CPC. In fact arguments, being raised in the present reply against the maintainability of the application, were raised by the counsel for plaintiffs before the Hon'ble Court, which after hearing and considering all objections raised by the plaintiffs, found that there is no impediment in issuing notice on the application. The arguments on maintainability of the instant application were in fact rejected by the Hon'ble Court. It is denied that the amount paid by the plaintiffs is in excess of the calculations of the amount of license fee payable, if the same had been calculated strictly in terms with the order dated 18th May, 2001. It is vehemently denied that it was all along understood that the payment of approximately Rs.151 crores will form basis of payments to be made by plaintiff No.1 towards future license fee. It

is submitted that it has never been accepted by the Defendant No 1 that the said sum was acceptable to it in full satisfaction of its claim and the defendant No 1 approached this Hon'ble Court to have the record set straight after it discovered the fraud played upon it by the plaintiff to have the decree set aside. It is again reiterated that the order dated 21st April, 2015 is sought to be set aside for the reasons set out in the application and the same are not being repeated herein for the sake of brevity.

C. With respect to the contents of para C of the Preliminary Submissions, it is denied that the fact that the I.A. No.27172/15 which was disposed of vide order dated 21st April, 2015, and that it did not have a supporting affidavit filed by the defendant No.1 and that as such there was never any agreement to have the suit disposed of, has no bearing on the order dated 21st April, 2015. It is submitted that I.A. No.27172/15 filed by the plaintiff under Order XXIII Rule 3 CPC was based on an alleged compromise/agreement entered into between the plaintiffs and the defendant No.1, and as such, it was mandatory for it to have accompanied by an affidavit of a responsible officer of defendant No.1 to confirm the factum of compromise / agreement. It is submitted that the Defendant No 1 at no point in time, had agreed to suffer a decree, upon the payment which was made the basis of the alleged compromise application. It is further submitted that the defendant No 1 did not take any decision, as required under the NDMC Act, to finally settle its

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claims for a specific sum to be paid by the plaintiff and that it did not permit or authorize any officer or counsel to convey its satisfaction or agreement to the amount offered by the plaintiff as full and final settlement. Thus the satisfaction which is alleged to have been recorded by the Court is based on fraud and the same is a ground for setting aside the said order which records such satisfaction.

It is denied that the payments made by the plaintiffs are in terms of the order dated 18th May, 2001. It is reiterated that the order dated 18th May, 2001 was an interim order whereby an arrangement was worked out for the defendant No.1/NDMC to receive and the plaintiffs to pay a particular amount towards license fee so that revenue interests of defendant No.1 are not prejudiced during the pendency of the suit. It is a matter of record that the suit continued to be contested after the order of 18th May, 2001. The letter dated 2nd March, 2015 only records that what was being contemplated was the acceptance of part payment of arrears, pending final decision in the suit. There was no understanding for termination of this suit nor does the letter of 2nd March, 2015 communicate defendant No.1's satisfaction of its entire claim. As a matter of fact Defendant No 1 has not made any admissions to the effect directly or impliedly that it is satisfied with the amount offered / being paid by the plaintiff towards full and final discharge of all its claim, either as per its demand letters, or for that matter in terms of the interim order dated 18.1.2001 and that Defendant No 1 decided to

approach this Hon'ble Court for setting aside the so-called compromise decree immediately upon learning that the Hon'ble Court has recorded "satisfaction" indicating disposal of the suit itself on the premise of full and final settlement. Thus there was never any agreement to have the suit disposed of, particularly in the manner it was manipulated by the plaintiff and the matter even otherwise is under investigation of the CBI.

D. The contents of para D of the Preliminary Submissions are wrong and denied. It is submitted that the process/decisions /correspondence / satisfaction in arriving at settlement alleged by the plaintiff, contrary to the NDMC Act, 1994 and the manner in which such action have been obtained is a matter of investigation by the CBI.

E. The contents of para E Preliminary Submissions are wrong and denied. It is denied that any claim of defendant No.1 for sums in excess of which satisfaction has been recorded amounts to contempt of the order of 18th May, 2001. It is reiterated that the order of 18th May, 2001 was an interim arrangement pending final disposal of the suit. In any event, it is the plaintiff who has repeatedly violated the order of 18th May, 2001 by not making payment in accordance thereto. It is denied that if amounts were to be calculated in terms of the order of 18th May, 2001 an amount of Rs.66 crores only would have to be paid by the plaintiffs towards
 arrears of license dues upto 2013-14. The amounts required to be

payable by the Plaintiff on account of arrears of license fee is as mentioned in Para III (*Fixing of Licence Dues*) of Preliminary Submissions above. It is reiterated that the plaintiffs have paid much less than what is due and payable by the plaintiffs, and as such, no loss is being caused to the plaintiffs.

It is further stated that in any event even if one has to go by the order of 18th May, 2001, the amount payable by the plaintiffs is far in excess of Rs.151 crores (approx), and as such, the plaintiffs have no right to recover an amount of Rs.75 crores along with interest as alleged. It is denied that the defendant No.1 ought to have placed the entire sum of Rs.180 crores before this Hon'ble Court. It is denied for want of knowledge that plaintiff No.1 has paid the monies / borrowed from bank and altered its position. On the contrary, it merely paid part of the outstanding amounts, which were payable by it in terms of the above Court order and as such there is no reason or occasion for the Defendant No 1 to return an amount received towards part payment of its legitimate outstanding dues.

F. The contents of para F of the Preliminary Submissions are wrong and denied. It is denied that the plaintiff, in order to avoid protracted litigation and to put an end to the dispute, paid amounts in excess of the amounts that would have to be paid in case calculations were made strictly in terms of the order of 18th May,

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2001. The contents of Para III (*Fixing of Licence Dues*) of Preliminary Submissions above are reiterated.

G. The contents of para G of the Preliminary Submissions are wrong and denied. It is reiterated that the decree has been obtained on the basis of mischievous and fraudulent submissions of facts to the Hon'ble Court, and as such, the same is liable to be set aside.

H. With respect to para H of the Preliminary Submissions, it is stated that the application being I.A. No.15580/2015 may be read for its true content and purport. The interpretation and alleged admissions sought to be deduced by the plaintiffs in para H(i) till para H(viii) are wrong and denied.

I. The contents of para I of the Preliminary Submissions are wrong and denied. It is denied that the defendant No.1 of its own volition made calculations qua arrears payable by the plaintiffs. The Preliminary Submissions made hereinabove (in Rejoinder) with respect to the calculations are reiterated. With respect to the letter dated 2nd March, 2015, it is reiterated that the said letter only contemplates requirement for the plaintiffs to pay the arrears pending final decision in the suit. The same does not contemplate termination of the suit or satisfaction of the entire claim of the defendant No.1. It is denied that the calculation submitted by the defendant No.1 was considered and thereafter accepted with a view to bring to an end pending litigation as alleged by the plaintiffs. It is

denied that the computation was a unilateral exercise by defendant No 1. The letter of the plaintiffs dated 26th March, 2015 was in reply to the letter dated 2nd March, 2015 whereby the plaintiffs have misinterpreted the offer made in the letter of 2nd March, 2015, and sought to have a decree passed in the suit by alleging an agreement and satisfaction when none existed. Even in the said letter dated 26th March 2015 it is not sated that the payment tendered by the plaintiff was being received in full and final settlement of the entire claims, rather there is a reference to subsequent proceedings. In any event, it is reiterated that the entire matter of fixing of licence dues, including the processes, decisions and communications regarding calculation of Rs.150 crore, is a matter of investigation by the CBI.

J. The contents of para J of the Preliminary Submissions are wrong and denied. It is denied that the plaintiffs could not have had any role / contribution in the calculation of Rs.151 crores (approx.) made by the defendant No.1 as the plaintiffs' calculation in terms of the order dated 18th May, 2001 was Rs.66 crores. It is ex-facie evident as set out in the Preliminary Submissions made hereinabove that there has been some misconduct in arriving at a figure of Rs.151 crores (approx.) which is currently under investigation by ~~the~~ CBI. In fact, in the stand of the plaintiffs in this para that the plaintiffs had decided to make the payments "subject to refund towards plaintiffs in due course" exemplifies the mala-fide intent of

the plaintiffs. It also shows that the plaintiffs had no intention of bringing an end to an alleged protracted litigation as alleged.

K. With respect to the contents of para K of the Preliminary Submissions, it is stated that the amount deposited by the plaintiffs is a matter of record. However, it is reiterated that the ad-hoc payments being made by the plaintiffs since passing of the order of 18th May, 2001, in fact, amounted to contempt of the said order as the said order was not being complied with by the plaintiffs. It is reiterated that the ad-hoc payments were being accepted by the defendant No.1 towards arrears of dues, which were not fully paid even as per the interim order dated 18.5.2001 and as such the offer by the plaintiff was considered by the Defendant No 1 without prejudice to its right to recover full license fee due and payable which in any event was the subject-matter of the pending suit, and which right was not abandoned, waived off or written off by the Defendant No 1 in any manner whatsoever.

L(a)-(g) With respect to the contents of para L(a) to L(g) of the Preliminary Submissions, it is stated that the contents of the suit are a matter of record and the written statement filed by the defendant No.1 may also be read in this regard. It is denied that any excess money has been paid by the plaintiffs to the defendant No.1 which was liable to be refunded. With respect to I.A. No.3075/2000, it is stated that the same culminated vide order dated 18th May, 2001

against which the plaintiffs herein sought to file an appeal. The Hon'ble Division Bench upheld the order of 18th May, 2001, and as such, the said interim arrangement was to be adhered to during the pendency of the suit. It is reiterated that the plaintiffs have not complied with the order of 18th May, 2001. The payments made by the plaintiffs till date are a matter of record; however, it is denied that the plaintiff No.1 has paid any amount in excess of its liability to the defendant No.1. It is denied that any amount is recoverable by the plaintiff No.1 from defendant No.1. It is denied that such a fact stands admitted and uncontroverted.

The contents of para L(d) of the Preliminary Submissions are specifically and vehemently denied. With respect to the calculations of a sum of Rs.150,92,43,676/- the Preliminary Submissions made hereinabove (in this Rejoinder) are reiterated. With respect to the letter of 26th March, 2015, it is reiterated that the plaintiffs misinterpreted the offer made vide letter dated 2nd March, 2015, and as such, have obtained a decree by misrepresentation, and have got recorded a satisfaction when none existed. It is further reiterated that in fact a sum of more than Rs.151 crores is due and payable even if one has to go simply by the order of 18th May, 2001; as such, no excess amount has been deposited by the plaintiffs.

M. With respect to para M of the Preliminary Submissions, it is

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submitted the fact of plaintiff filing application under Order XII

Rule 6 CPC being I.A. No.7432/11 is a matter of record; however, all other allegations are denied. It is denied that there was any clear admission by the defendant No.1 which would have entitled the plaintiffs to a decree. It is denied that the plaintiffs would have succeeded in getting a reduction fee from 21% to 7-8%.

N. That the contents of para N of the Preliminary Submissions are wrong and denied. It is denied that there are glaring inconsistencies in the application of the defendant No.1. It is denied that the defendant No.1 has accepted the amount of Rs.152 crores to be correct.

O. That the contents of para O of the Preliminary Submissions are a matter of record. It is reiterated that the plaintiffs have paid much less than what is due and payable by the plaintiffs.

REPLY TO PRELIMINARY OBJECTIONS :

A&B. With respect to para A and B of the Preliminary Objections, it is stated that the order dated 18.5.2001 and 12.3.2003 may be read for its true content and purport. The deductions granted by the said orders are a matter of record and have been enumerated in para 16 of the application by the defendant No.1 /applicant. It is denied that the defendant No.1 illegally tried to extract license fee as per own whims and fancies and tried to coerce the plaintiffs into paying the exorbitant license fee in total disregard of the orders of this Hon'ble Court. It is

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stated that the ad-hoc payments being made by the plaintiffs since passing of the order of 18th May, 2001, in fact, amounted to contempt of the said order as the said order was not being complied with by the plaintiffs. It is reiterated that the ad-hoc payments were being accepted by the defendant No.1 without prejudice to its right to recover full license fee due and payable which in any event was the subject-matter of the pending suit. It is stated that that acceptance of the ad hoc payment by the defendant, which is not in compliance of the order dated 18.5.2001, does not foreclose the right of the defendant to recover the balance amount due, along with interest. It is also pertinent to highlight that it was the plaintiff No.1 herein who filed an appeal against the order dated 18.5.2001. The said appeal being FAO No.310/2001 was decided on 12.3.2003 whereby the order dated 18.5.2001 was upheld by the Hon'ble Division Bench, thus making it imperative for the Plaintiff to deposit the amounts as per the formula worked out by the order dated 18.5.2001. It is nobody's case that the formula left any scope for further interpretation, and as such it was imperative for the plaintiffs to pay the license fee, strictly as per the said formula, till the same was varied by any subsequent or final order, upon adjudication of the rival contentions.

C. The contents of para C of the Preliminary Objections are wrong and denied. The allegation that the recoveries in accordance with the orders dated 18th May, 2001 and 12th March, 2003 having become time-barred as on March, 2015 is based on an incorrect understanding of the law of limitation by the plaintiffs. It is stated

that once the parties were already embroiled in a *lis* and the Court has passed positive directions vide order dated 18th May, 2001 which was upheld by the Hon'ble Division Bench vide order dated 12th March, 2003 and the suit filed by the plaintiffs herein was still being adjudicated; there is no question of the amounts payable under the orders of this Hon'ble Court becoming time-barred.

D. That with respect to the contents of para D of the Preliminary Objections, it is submitted that the amount of Rs.1,00,00,000/- per month being paid by the plaintiffs was in gross violation of the orders dated 18th May, 2001 and 12th March, 2003. It is denied that the demand dated 2nd March, 2015 was non-recoverable on account of being barred by time.

E. With respect to the contents of para E of the Preliminary Objections, the Preliminary Submissions made (in this Rejoinder) with respect to the calculations/computation for fixing of licence dues are reiterated. Further, as already stated in the application, the matter of fixing of licence dues, including arrears, is currently under investigation by the CBI. It is denied that the full benefit of the order of 18th May, 2001 has not been accounted for in the said calculation. It is denied that the said calculations are on the higher side and no interest is payable on the same. It is denied that there is any delay or that the demand is inconsistent with the orders of this Hon'ble Court. It is denied that any excess amount has been paid by the plaintiffs. With respect to the letter of 2nd March, 2015, the

Submissions already made hereinabove with respect to the said letter are reiterated.

F. The contents of para F of the Preliminary Objections are wrong and denied. It is denied that the applicant / defendant is guilty of *suppression vari*. It is not denied that the applicant / defendant had got filed in the Registry of this Hon'ble Court an application under Order XLVII Rule 1 CPC seeking a review of the orders / decree dated 21st April, 2015 in as much as the dominant purpose behind such filing was to have the compromise re-visited, since it was without authority or consent. However, the said application was never got listed before this Hon'ble Court. It is submitted that till the time the said application is numbered and listed before the Hon'ble Court and an order is passed thereon, there is no application in the eyes of law. It cannot be held that the mere filing of the review application, though never listed before Court, bars filing of the present application. It is submitted that on obtaining further legal advice it was found that the review application was an incorrect remedy in law, and as such, the then Additional Standing Counsel was advised not to file the said review application. The said application was subsequently withdrawn from the Registry of this Hon'ble Court. It is further pertinent to point out that the Submissions with regard to the present application being barred on account of filing of the review application were made before this Hon'ble Court on 11th August, 2015 and the same were rejected by

this Hon'ble Court while issuing notice in the application. The interpretation sought to be given by the plaintiffs to the application for review in para F(a) to F(e) are wrong and denied. It is denied that having filed the review application in the Registry debars the defendant No.1 from preferring the instant application under reply without first listing the review application for hearing. It is reiterated that the review application has been withdrawn from the Registry of this Hon'ble Court. The same was never listed before this Hon'ble Court, and as such, does not constitute a valid application upon which adjudication is required by this Hon'ble Court. It is reiterated that the review application was found to be incorrect remedy in law, and therefore, the same was withdrawn. It is denied that practice, direction No. 7 was under the Delhi High Court Rules debars filing of the present application. Even this argument of the plaintiffs has been rejected by the Hon'ble Judge vide his order dated 11th August, 2015. It is denied that the present application is not maintainable. It is denied that there are contradictory averments in the present application and the review application.

G. The contents of para G of the Preliminary Objections are wrong and denied. It is denied that the documents annexed with the application are incomplete. It is further denied that the same having been filed in order to mislead this Hon'ble Court and play

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fraud thereon. It is denied that the defendant No.1 has concealed

any document. It is submitted that in terms of the order dated 18th August, 2015 a complete inspection of the entire record of defendant No.1 has been given to the representatives of the plaintiff No.1 over a span of several days and copies of all the documents requested by the said representative have been supplied to them, as such the Plaintiff cannot complain of any concealment. It is denied that the present application is an abuse of the process of this Hon'ble Court and that the defendant No.1 is guilty of fraud for withholding vital documents with an intent to gain advantage on the plaintiffs.

H. The contents of para H of the Preliminary Objections are wrong and denied. It is reiterated that the application dated 29th May, 2015 which was never listed before this Hon'ble Court does not in any manner bar the present application. All other allegations in the para under reply are denied.

I. The contents of para I of the Preliminary Objections are a matter of record and need no reply.

J. With respect to the contents of para J of the Preliminary Objections, it is submitted that the contents of this para are based on surmises and conjectures by the plaintiffs, and as such, the same need no reply.

K. The contents of para K of the Preliminary Objections are wrong and denied. It is denied that it is the defendant No.1 who is

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beneficiary in respect of the decree of 21st April, 2015. It is denied that the plaintiffs would have been entitled to any further relief of reduction in the amounts of license fee if the suit is adjudicated on its merits. It is denied that the application is devoid of material particulars as alleged.

L. The contents of para L of the Preliminary Objections are wrong and denied. It is denied that the present application is not supported by an affidavit of a competent officer of defendant No.1 as the affidavit filed by Mr. P. P. Sharma was duly approved by the competent authority.

M. The contents of para M of the Preliminary Objections are wrong and denied. It is denied that the contents of the application are contrary to the factual matrix and aimed at reneging from the understanding between the parties. With respect to the particulars of various Notings on the file set out in para M, it is submitted that the actual Notings may be read for their true intent and purport. The deductions, interpretation and averments made by the plaintiffs on the basis of these file notings are based on surmises and conjectures and need no reply. The file notings are a matter of record. It is reiterated that the defendant No.1 does not admit to the interpretation of the filing noting given in the para under reply and the said file notings may be read in their entirety. It is reiterated that the matter of fixing of licence dues, including the file notings, is

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under investigation by the CBI. The submissions made at Para VI of the Preliminary submissions to this Rejoinder are reiterated.

N. With respect to the contents of para N of the Preliminary Objections, it is stated that the plaintiffs are misrepresenting the facts. It is stated that the plaintiffs are roping the name of Shri Mukul Rohatgi, the then Additional Solicitor General in a mala-fide manner in order to misrepresent the facts. It is stated that the opinion of Shri Mukul Rohatgi was sought much prior to any discussions between the parties and was limited to acceptance of the balance-sheets being submitted by the plaintiffs for calculation of gross turnover. With respect to the opinion given by the Chief Adviser (Law), it is stated that the same is under investigation as prima-facie the same is contrary to the judgment dated 18th May, 2001. It is reiterated that there was no conscious decision taken towards ending the litigation. The decision was only for recovery of arrears pending final adjudication of the suit. Further, Preliminary Submissions made (in Rejoinder) with regard to the calculations of the amount of Rs.150 crores (approx.) are reiterated.

O. With respect to para O of the Preliminary Objections, it is stated that Noting dated 13th March, 2015 is also a subject matter of CBI investigation. It is vehemently denied that Section 383 of the NDMC Act, 1994 is not applicable in this case. It is reiterated that the plaintiffs had been a repeated defaulter with respect to arrears of license fee. Further, the mala-fide of the plaintiffs is apparent from

the reply that the plaintiffs intended to claim refunds for payments were deposited by the plaintiffs. In effect, what the plaintiffs have tried to achieve is to get the suit decreed on the basis of an interim order and alleged satisfaction, paid arrears on the basis of a mala fide miscalculation which itself is under investigation.

P. The contents of para P of the Preliminary Objections are wrong and denied. The contents of the application of the defendant No.1 are reiterated. It is reiterated that an alleged fraud has been played, which is under investigation by the CBI. It is denied that the allegations of fraud are belied from a perusal of the internal / official records of the defendant No.1. It is denied that the defendant No.1 is now attempting to play a fraud on the plaintiffs. It is denied that the defendant No.1 has in any manner lured the plaintiffs with pressures and threats and induced the plaintiffs into making payment of a colossal amount. The factum of the plaintiffs having to take loan from third party is denied for want of knowledge. It is denied that the defendant No.1 is now resorting to any fraudulent tactics as alleged or otherwise. It is denied that the plaintiffs are being deprived of its valuable rights as per law.

Q. That the contents of para Q of the Preliminary Objections are wrong and denied. It is denied that the present application is not maintainable in equity. It is denied that the stand of the defendant No.1 is unreasonable, whimsical, unfair, unjust and tainted with arbitrariness and capriciousness. It is reiterated that the matter of

fixing of licence dues is under investigation by the CBI. It is denied that the plaintiffs are undergoing any hardship for having paid the amounts as alleged. It is reiterated that the amount paid by the plaintiffs was, in fact, due and payable by the plaintiffs to defendant No.1 and, in fact, much higher amounts are due and payable by the plaintiffs to defendant No.1. It is stated that the plaintiffs have defaulted in the payment of arrears of license fee for years at end.

R. The contents of para R of the Preliminary Objections are wrong and denied. It is reiterated that the allegation pointed out by the inspection team of MHA regarding irregularity in fixing the license dues is under investigation by the CBI. The averments of the plaintiffs that they have paid the demand raised by the defendant No.1 without demur or protest is belied by their own stand that it decided to first pay the arrears and thereafter claim refunds from the defendant No.1.

S. The contents of para S of the Preliminary Objections are wrong and denied. It is stated that since the decree dated 21st April, 2015 has been obtained by fraud, the same can be set aside and there is no bar under law in this regard. It is denied that the application is barred by time. It is denied that the application is even otherwise not maintainable.

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REJOINDER ON MERITS :

1. That with respect to para 1 of the reply, the averments made in para 1 of the application are reiterated. It is reiterated that the suit in question was for permanent injunction. In any event, the plaint may be read for its true content and purport. The written statement of the defendant No.1 may be read in this regard.

2. That with respect to the contents of para 2 of the reply, the contents of para 2 of the application are reiterated. In addition, the Preliminary Submissions made hereinabove and Reply to Preliminary Submissions / Objections are reiterated. It is denied that the plaintiff had replied to and disputed the demands / show-cause notices not only on the point of certain heads ought not to be included at arriving at the basic figure of annual gross turnover but also on other grounds such as various supplementary agreements executed between the plaintiff and defendant No.1. It is denied that the fundamental question raised was non-adherence to the promise of NDMC to get the entire percentage of license fee re-examined after having sent a Note to the Hon'ble Lt. Governor in this regard. It is denied that there was any promise by defendant No.1 to get the entire proceedings of license fee re-examined.

3. That with respect to the contents of para 3 of the reply, the contents of para 3 of the application are reiterated. In addition, the

(N) Preliminary Submissions made hereinabove and Reply to

Preliminary Submissions / Objections are reiterated. It is denied that the defendant No.1 had admitted many of the averments made by the plaintiff or deemed to have admitted the same. It is stated that the plaintiff was under a legal obligation to pay license fee to defendant No.1 on the basis of the formula set out vide order dated 18th May, 2001. Therefore, it was well within the knowledge of the plaintiff as to how much amount would be payable towards license fee. It is stated that despite such knowledge the plaintiff for no justifiable reason avoided to pay the license fee on the basis of the said order and instead was depositing ad-hoc payments of Rs.1,00,00,000/- per month. It is submitted that as such it is not open to the plaintiff to contend that it was depending upon defendant No.1 to know as to how much amount payable by it. Therefore, the submission of the plaintiff that it has paid what was asked for is factually incorrect and misconceived. It is submitted that even at the time when the plaintiff received a demand of Rs.151 crores (approximately) from the defendant No.1, the plaintiff knew that it was not the final calculation and that the demand was provisional in nature. It, therefore, necessarily follows that there is no question of defendant No.1 inducing the plaintiff to pay the said amount inasmuch as the said amount was much lesser than what the plaintiff was liable to pay at the relevant time. It is denied that the defendant No.1 was merely inducing the plaintiff to fraudulently extort money. It is reiterated that no agreement, as alleged, in I.A. No.7172/15, was arrived at between the parties. It

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is denied that in order to arrange for the funds in question the plaintiff had to raise loans from third parties as alleged. It is denied that the plaintiff borrowed Rs.151 crores from the HDFC Bank as alleged or otherwise. It is denied that the Chairperson and Managing Director had to furnish the personal guarantees to the bank. It is denied that the borrowings were at a rate of 10.6% per annum. It is denied that it was only with the assistance of these borrowings and some internal accruals that the plaintiff-company was able to pay Rs.151 crores. It is reiterated that the plaintiff was well-aware at all times of the amount due and payable by it, and as such, the plaintiff ought to have made provision for the same in its books of accounts / balance-sheets. It is denied that upon paying these sums the plaintiff, for the first time in 27 years, became a loss-making company and posted a loss of Rs.172 crores. It is denied that due to such losses, as alleged, the remuneration paid to the then Chairperson and Managing Director (now Director and Chief Executive Officer) of the plaintiff-company had to be halved since the plaintiff-company could not pay beyond the prescribed ceilings and that she has to refund the excess salary drawn by her during the financial year 2014-15. It is further stated that the averments with respect to raising of loan / salary of Managing Director are, in any event, of no relevance to the present application. It is denied that reliance on the terms of the license deed dated 14th July, 1982 is unnecessary and irrelevant. It is vehemently denied that it is undisputed that the amount qua arrears

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submitted by the plaintiff was not acceptable to the defendant No.1 and vice-versa yet it was complied with the interest of the plaintiff's long standing reputation and prestige and that the defendant as per its own calculation intimated the arrears to the plaintiff which was accepted out of this goodwill by the plaintiff. It is denied that the defendant No.1 is stopped from raising the issue as alleged or otherwise. It is denied that the defendant in going to the media and press, has caused serious prejudice to the reputation and prestige of the plaintiff. It is denied that the conduct of the defendant is liable to be deprecated. It is denied that any illegal statements have been made to the media and that the prestige and dignity of plaintiff No.2, apart from defendant No.1, has been lowered. It is denied that the defendants have accepted the amount as alleged. It is also denied that the defendant having accepted the amount is barred in law to urge anything to the contrary.

4. That the contents of para 4 of the reply are wrong and denied and those of para 4 of the application are reiterated. In addition, the Preliminary Submissions made hereinabove and Reply to Preliminary Submissions / Objections are reiterated. It is reiterated that the judgment dated 21st April, 2015 has been passed at the behest of the plaintiff. It is denied that the defendant is guilty of suppression-vari. It is denied that there is no evocation of a compromise in the said order at the behest of the plaintiff. It is denied that a perusal of the order would reveal that there is not even

a whisper of the term compromised in the said order. It is denied that the Hon'ble Court, in the said order has at the most, recorded the satisfaction of up-to-date arrears of license fee due and interest payable up to the year 2013-14. It is denied that to this extent defendant No.1 had confirmed the factum of receipt of the amount of approx. Rs.151 crores and that is all that it translates to. It is denied that accordingly the Hon'ble Court recorded the fact that there was satisfaction in respect thereof. It is denied that the said order further records the admitted fact that the calculation in question was arrived at / intimated by the defendant No.1. It is denied that the plaintiff's role was limited to accepting such proposed calculations and making the payment in respect of the same. It is denied that by no stretch can this be deemed to be read as passing of the said order at the behest of the plaintiff far less the insinuation of a compromise or settlement. It is reiterated that the said order has to be read along with averments made in the application, i.e. I.A. No.7172/15, in para 9 thereof, the plaintiff has clearly alleged an agreement between the parties. It is submitted that the suit has been decreed on the basis of an alleged compromise as averred by the plaintiff in the said I.A. It is further stated that there was no understanding or agreement whatsoever to ~~have the suit disposed of~~ in terms of the interim order dated 18th May, 2001. It is further stated that it is not as if the plaintiff has withdrawn its suit; the plaintiff has averred a specific agreement between the parties and prayed for a decree to be passed in terms of

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para 9 of the said application. As such, the averments made in the corresponding para under reply are completely denied.

5. That with respect to the contents of para 5 of the reply, the contents of the corresponding para of the application are reiterated. In addition, the Preliminary Submissions made hereinabove and Reply to Preliminary Submissions / Objections are reiterated. It is reiterated that the amount of Rupees one crore per month being paid by the plaintiff was contrary to the interim arrangement arrived at vide order dated 18th May, 2001. Further, the submissions made in reply to para 3 hereinabove in this regard, are also reiterated.
6. That with respect to the contents of para 6 of the reply, the contents of the corresponding para of the application are reiterated. In addition, the Preliminary Submissions made hereinabove and Reply to Preliminary Submissions / Objections are reiterated. It is, however, denied that the plaintiff has complied with the order of 18th May, 2001.
7. That with respect to the contents of para 7 of the reply, the contents of the corresponding para of the application are reiterated. In addition, the Preliminary Submissions made hereinabove and Reply to Preliminary Submissions / Objections are reiterated. It is denied that there is nothing on record to establish that the plaintiff did not submit its duly audited balance-sheets regularly and / or timely.

The table submitted by the plaintiff giving details of submission of the balance-sheets itself demonstrate that the delay in submission of annual balance-sheets and substantiate the averment of the defendant No.1. It is, however, correct that the defendant No.1 has received the balance-sheets submitted by the plaintiff. It is denied that the monthly payment of Rupees one crore by the plaintiff were towards license fee and completely with the approval and acquiescence of defendant No.1. It is denied that there was no contractual obligation on the part of the plaintiff whereby the plaintiff was obliged to make payment of any other nature to defendant No.1. It is denied that the defendant No.1 never raised any objection to the nature of ad-hoc payments made by the plaintiff and that in any case at this belated stage it cannot be held against the plaintiff. It is stated that the contractual obligations between the plaintiff and the defendant No.1 emanate from the License Agreement dated 14th July, 1982. It is further reiterated that the payments were being accepted by the defendant without prejudice to the right to recover the full amount due. In any event, acceptance of the payments does not, in any manner, preclude the defendant No.1 from recovering what is legally due to it.

8. That with respect to the contents of para 8 of the reply, the contents of the corresponding para of the application are reiterated. In addition, the Preliminary Submissions made hereinabove and Reply to Preliminary Submissions / Objections are reiterated. With

respect to the letter dated 2nd March, 2015, the Preliminary Submissions made in this regard are reiterated. It is further stated that the plaintiff is seeking to give an incorrect interpretation to the said letter. It is denied that the obligations of the plaintiff stood performed as on the date of the application. It is stated that if, in fact, there was an agreement as alleged, nothing prevented the plaintiff from moving a joint application along with the defendant No.1. The very fact that the plaintiff chose to adopt this method of unilaterally moving an application under Order XXIII Rule 3 of CPC substantiates and magnifies the mala-fide intent of the plaintiff. The orders of this Hon'ble Court are a matter of record and need no reply. It is denied that the judgment records the satisfaction of the claims of the parties and that such satisfaction need not be by an agreement of compromise in writing and signed by the parties. It is denied that the law deals with two distinct situations. It is denied that the defendant, while accepting the truth on the one hand, now seeks to make noise of half-truth. It is denied that the judgment and decree dated 21st April, 2015 records the truth between the parties and truth passes within herself a penetrating force unlike to error and falsehood. It is denied that the conduct of the defendant demonstrates arbitrariness and, in fact, seeks to interfere with the administration of justice and seeks to put a cloud on the satisfaction of those who approached this Hon'ble Court in the hope that truth will ultimately prevail. It is stated that the defendant No.1 being an instrumental of state has to ensure that

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revenue due to it is recovered and that fraud adopted to prevent such revenues from being collected are brought to book. It is denied that there has been a highhanded treatment by the defendants. It is denied that the defendant induced the plaintiff to part with large sum and then subjected the plaintiff to harassment and serious prejudice to their goodwill. It is denied that for these reasons the present application is liable to be dismissed. It is denied that the application is manifestly misconceived and mala-fide. It is reiterated that fraud vitiates all and the order dated 21st April, 2015 is liable to be set aside.

9. That the contents of para 9 of the reply need no rejoinder and the corresponding para of the application is reiterated.

10. That with respect to the contents of para 10 of the reply, the contents of the corresponding para of the application are reiterated. In addition, the Preliminary Submissions made hereinabove and Reply to Preliminary Submissions / Objections are reiterated. It is denied that the letter dated 2nd March, 2015 is not edifice of the order dated 21st April, 2015. It is denied that there is any misinterpretation being projected by the defendant No.1. It is stated that all the interpretations and deductions sought to be given by the plaintiff to the correspondence between the parties and the internal file noting is denied. The same may be read at the time of arguments for their true content and purport. It is denied that it was

the chain events as alleged including various opinions sought by defendant No.1 which led to the passing of the said order. It is denied that any dogmatic and narrow corners are being sought to be portrayed by the defendant No.1 as alleged.

11. That with respect to the contents of para 11 of the reply, the contents of the corresponding para of the application are reiterated. In addition, the Preliminary Submissions made hereinabove and Reply to Preliminary Submissions / Objections are reiterated. It is stated that the matter of fixation / calculation of license dues and the process / decision / correspondence / satisfaction are all under investigation. Further, the reply to the preceding paras is reiterated.

12. That the contents of para 12 of the reply are wrong and denied and those of the corresponding para of the application are reiterated. In addition, the Preliminary Submissions made hereinabove and Reply to Preliminary Submissions / Objections are reiterated. It is denied that defendant No.1 is selectively reading the factual matrix as alleged or otherwise. The defendant No.1 craves leave and liberty to rely on the actual contents of the letter dated 26th March, 2015 for arriving at their true content and purport at the time of final arguments. The interpretation being sought to be given by the plaintiff is vehemently denied. It is denied that the letter dated 26th March, 2015 reveals that defendant No.1 was grateful for the manner in which the issue of payment of past arrears was addressed

in an amicable manner and with mutual appreciation. It is denied that the factum of this letter has been deliberately withheld by defendant No.1. It is denied that the harmonious and constructive objective reading of the letters dated 2nd March, 2015 and 26th March, 2015 issued by the defendant No.1 would reveal the sole intention behind the payment of moneys as demanded by the defendant No.1 was to bring the present litigation to an end by implementing the order dated 18th May, 2001. It is denied that both these letters issued by the defendant No.1 categorically state that the amounts demanded were towards license fee arrears along with interest up to 31st March 2015. It is denied that the letters themselves would prima-facie encapsulate the entire amount receivable by the defendant No.1 which figure was calculated by defendant No.1 itself over several months. It is denied that the defendant No.1 was aware that the plaintiff was making the payment of the amounts in question with the intention that to its own satisfaction and intent all past arrears qua license fee and interest thereupon were sought to be cleared in the spirit of being a law-abiding party. It is denied that it was within the knowledge of defendant No.1 that the plaintiff intended to move application before the Hon'ble Court in order that the instant suit be decreed in terms of the calculations submitted by the defendant No.1 towards closure. It is denied that such facts were duly intimated to the defendant No.1 vide plaintiff's letter dated 26th March, 2015. It is denied that no strong reservations / objections were raised by the

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defendant No.1 in this regard. It is denied that hence the defendant No.1 was presumably aware that the plaintiff was paying the amount as per calculations submitted by the defendant including past arrears and interest without merit of the admissibility of such dues, and further, that the plaintiff might be moving an appropriate application for finalizing the instant suit. It is denied that the factum of such application proposed to be filed by the plaintiff also, finds the mention in the internal notings of the defendant No.1. It is denied that the defendant No.1 cannot prima-facie dispute the knowledge of the application per-se under Order XXIII Rule 3 CPC. It is denied that the entire conduct of the defendant No.1 is contrary to the allegations raised in the application under reply. It is denied that having received the entire amount towards license fee arrears along with interest thereupon, which amount was calculated by the defendant No.1 itself, it does not now lie in the mouth of the defendant No.1 to deny the very existence of the calculations worked out by the defendant No.1. It is denied that even if the calculations are erroneous and exaggerated that a judicial scrutiny would yield huge refund from the defendant No.1. It is reiterated that the matter of fixing of license fee dues has been found to be a fraudulent and mala-fide exercise.

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13. That the contents of para 13 of the reply are wrong and denied and those of the corresponding para of the application are reiterated. In addition, the Preliminary Submissions made hereinabove and Reply

to Preliminary Submissions / Objections are reiterated. It is denied that the defendant No.1 has fraudulently not reproduced the entire portion of the file noting dated 20th April, 2015. It is submitted that the entire file notings have to been made available to the CBI and the same can also be pursued by this Hon'ble Court for a meaningful reading of the same in the context of the case put forth in the application. It is stated that some of the relevant file noting have already been reproduced in the application, and in any event, the plaintiff has been given an inspection of the entire original file by the defendant No.1. Thus, the plaintiff cannot allege any mala-fide in this regard. It is further stated that the file noting may be read in their totality for their true content and purport. It is stated that the interpretations and conjectures being alleged by the plaintiff with respect to the filing noting are vehemently denied. It is denied that a perusal of the file noting dated 20th April, 2015 would reveal that the Chairperson broadly agreed with the view / opinion of the Chief Adviser (Law) dated 20th April, 2015, and as such, the views / opinion of the Chief Adviser (Law) became relevant to the general intent. It is denied that the said note would reveal that the plaintiff has exhibited willingness to discuss and pay up what is indisputably due to the defendant No.1. It is denied that the said Note reveals that any other hotel wants to raise such issues, the defendant No.1 should certainly attempt to bring all litigation to a closure within the legal framework and towards maximizing revenue of the defendant No.1. It is denied that the said Note

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reveals that M/s C. J. International Hotels Ltd. exhibited willingness to discuss and pay up what is indisputably due to the defendant No.1. It is once again reiterated that the file noting of Shri HimanshuRajan may be referred at the time of final arguments for their intent and purport. The interpretation being sought to be given by the plaintiff is denied. It is denied that the noting goes to show that the Counsel of the defendant No.1 had sought instructions which were duly accorded to the said Counsel, who, on the receipt of the instructions appeared and placed before the Hon'ble Court the relevant position of the parties. It is denied that any mails and communications between the NDMC and its Counsels are being deliberately and mala-fidely withheld. It is denied that it is clear that the NDMC took a well-informed and conscious decision that litigation must be brought to an end within the legal framework. It is stated that the final adjudication of pending dues was to be decided by the Hon'ble Court and there was no agreement as alleged.

14. That the contents of para 14 of the reply are wrong and denied and those of the corresponding para of the application are reiterated. In addition, the Preliminary Submissions made hereinabove and Reply to Preliminary Submissions / Objections are reiterated. It is denied that the intention was to bring to an end to the present litigation. The stand of the plaintiff that it has paid such a huge amount only

with an intention to bring litigation to an end is ex-facie false as explained in para IV of the Preliminary Submissions hereinabove.

15. That the contents of paras 15.1 to 15.4 are wrong and denied and those of the corresponding paras of the application are reiterated. In addition, the Preliminary Submissions made hereinabove and Reply to Preliminary Submissions / Objections are reiterated. It is reiterated that the internal file notings of the defendant No.1 may be seen by this Hon'ble Court for their true content and purport. It is reiterated that there was no intention to have the suit decreed in terms of the order dated 18th May, 2001. It is stated that the order dated 21st April, 2015 records the statement of the Ld. Counsel of the plaintiff that they will continue to abide by the terms of the interim order of 18th May, 2001. It is stated that the Additional Standing Counsel for NDMC was only instructed with respect to the fact that the amount of approx. Rs.151 crores has been received by the NDMC. Even the order does not record that the NDMC has agreed to have the suit disposed of in terms of the order of 18th May, 2001. Unfortunately, after recording the statement of the Ld. Senior Counsel for the plaintiff, the Hon'ble Court has disposed of the suit in terms of "The said satisfaction as stated by the parties". It is stated that the suit could not have been disposed attributing satisfaction to the NDMC in terms of the order of 18th May, 2001. This is without prejudice to the fact that the calculation itself has been fraudulently obtained and is a mala-fide exercise. It is denied

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that the averment in the application that the amount of Rs.150,92,43,676/- was found to be incorrect, is without any basis. It is denied that this factum was never intimated to the plaintiff at any time during the acceptance of this amount. It is denied that having suggested the amounts qua arrears and thereafter proceeded to encash the same, the plaintiff has satisfied the defendant No.1 at that time and that no further amount can be claimed by the plaintiff as refund and the issue cannot be rehashed by the defendant No.1 to the prejudice of the plaintiff. In this regard, it is further stated that the cheques earlier presented by the plaintiff was changed, i.e. pre-dated. The same was done to manipulate the proceedings so as to project the same in a manner, that the plaintiff could furnish an explanation, albeit incorrect, for not supporting the application by an affidavit on behalf of the NDMC as also the application not being signed by an authorized officer / counsel of the NDMC. It is stated that it is for this reason that the plaintiff substituted cheques originally tendered by another set of cheques of date prior to the date fixed by the Court and ensured that they first take a short adjournment and that in the meantime the cheques would be cashed well before their statement is recorded in Court. This entire manipulated exercise was undertaken to artificially bring the case within the parameters of the second part of Order XXIII Rule 3 CPC, for which the plaintiff wanted to make a paper-trail to show that the alleged demand of Rs.151 crores (approx.) having been fully paid, should be treated as satisfaction, on the part of NDMC in

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order to persuade the Court to express its satisfaction on the same. It is reiterated that no such valid decision was taken by NDMC and that NDMC cannot be made bound to accept such a satisfaction or compromise or for that matter to suffer such a decree.

It is denied that the amount qua arrears and interest were under discussions between the plaintiffs and officers of the defendant No.1. It is denied that defendant No.1's non-acceptance of the figure of Rs.13 crores as payable by the plaintiff, the plaintiff was constrained to increase the amount towards arrears to a principal sum of approx. Rs.66 crores. It is denied that the calculation as sought to be raised by the defendant No.1, is based on misinterpretation of the order of 18th May, 2001. It is reiterated that the amount of Rs.151/- crores (approx.) calculated by the Accounts Branch has been calculated fraudulently and in a mala-fide manner. It is denied that the amount qua arrears having originated from a calculation done by the defendant No.1, it cannot be said that such an act was fraudulent. It is denied that the calculation, as per plaintiff, was far less than what was proposed by the defendant No.1. In this regard, it is reiterated that the plaintiff was well-aware of the amounts due and payable by it under order dated 18th May, 2001, and as such, the plaintiff has manipulated the entire exercise. It is denied that the entire set of allegations raised by the defendant No.1 are grossly misplaced and unsustainable. It is denied that the numerical figures of the defendant No.1 in para

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15.2 of the application are concocted, without any basis and has been abruptly brought by the defendant No.1 in the month of July, 2015. It is denied that such figures could never be said to be emanated from the certified report of the auditors nor is based on the interpretation of the order of 18th May, 2001. The submissions made with respect to fixing of license fee as mentioned in the Preliminary Submissions are again reiterated.

16. That the contents of para 16 of the reply need no rejoinder; however, those of the corresponding para of the application are reiterated. In addition, the Preliminary Submissions made hereinabove and Reply to Preliminary Submissions / Objections are reiterated. It is denied that the five deductions mentioned in para 16 of the application are indicative and not exhaustive. It is stated that the deductions are clearly set out in the order of 18th May, 2001 and there is no scope of any substantive interpretation beyond what has been specifically mentioned in the order of 18th May, 2001.

17. That the contents of para 17 of the reply are wrong and denied and those of the corresponding para of the application are reiterated. In addition, the Preliminary Submissions made hereinabove and Reply to Preliminary Submissions / Objections are reiterated. It is denied that in the order dated 18th May, 2001 two types of deductions were allowed for calculation of gross turnover. It is stated that the

deductions permissible were specifically stated in the order itself and no other interpretation is possible to the said order. It is denied that the plaintiff was entitled for a deduction under the category of income which was compulsorily payable by the plaintiff in terms of agreement with third party and deductions of statutory liability. It is denied that even the Chief Adviser (Law) has denied all the eligible deductions to the plaintiff.

18. That the contents of para 18 of the reply are wrong and denied and those of the corresponding para of the application are reiterated. In addition, the Preliminary Submissions made hereinabove and Reply to Preliminary Submissions / Objections are reiterated. It is denied that the arrangement between the parties has been considered by various officers at various levels with the defendant No.1. It is denied that there are file notings which spelt out approval of the arrangement regarding calculation of Rs.150.92 crores. It is denied that having derived maximum possible and unjustified revenues through threat and coercion which the plaintiff paid with the expectation of being refunded through Court of law, the defendant No.1 has now sought to take 'U' turn on its position to the detriment of the plaintiff, which is not permissible. It is reiterated that the matter in question is causing severe and gross loss to the public exchequer. It is further reiterated that the amount payable by the plaintiff to defendant No.1 is far in excess of what has been

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paid, and as such, there is no prejudice caused to the plaintiff nor is it to the detriment of the plaintiff.

19. That the contents of para 19 of the reply are wrong and denied and those of the corresponding para of the application are reiterated. In addition, the Preliminary Submissions made hereinabove and Reply to Preliminary Submissions / Objections are reiterated. It is reiterated that the application under Order XXIII Rule 3 CPC was not filed in consonance with the requirement of Order XXIII Rule 3 CPC. It is reiterated that the said application alleges an agreement between the parties and seeks a decree to be passed in terms of the agreement alleged to have been entered, as pleaded in the application. It is once again stated that there is no agreement between the parties to have the suit disposed of in terms of the order of 18th May, 2001. It is denied that in accordance with the second para of Order XXIII Rule 3 CPC where a supplementary arrangement has already been acted upon, a statement of the counsel to such an extent is sufficient to record satisfaction under Order XXIII Rule 3 CPC. It is stated that the plaintiff has deliberately and strategically manipulated the entire matter in such a manner that it is able to claim the entire monetary claim of defendant No.1 towards license fee stands satisfied as on the date of the purported compromise, i.e. 21st April, 2015. It is reiterated that it is for this reason the plaintiff substituted the cheque originally tendered by another set of cheques of date prior to the date fixed by

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the Court and ensured that the same are encashed before their statement is recorded in the Court. It is stated that the entire exercise was manipulated in such a manner to artificially bring the case within the parameters of second part of Order XXIII Rule 3 CPC. It is stated that the plaintiff wanted to create proper trail to show that the alleged amount of Rs.151 crores (approx.) having been fully paid should be treated as satisfaction, in order to persuade the Court to express its satisfaction to the same.

In any event, it is once again reiterated that in the absence of acceptance of compromise and any intention to give quietus to the litigation or any decision to accept the sum of Rs.150,92,43,696/- in accordance with the NDMC Act towards full and final discharge of all claims of the defendant No.1, the compromise as alleged is no compromise in the eyes of law. Thus, the plaintiff in securing the order evocative of a compromise being played a fraud which even otherwise is under investigation. It is denied that there was due satisfaction qua arrangement between the parties and this fact was sufficiently covered in the second para of Order XXIII Rule 3 CPC. It is denied that the plaintiff had no role to play in the calculation of arrears. It is reiterated that the plaintiff has fraudulently manipulated the exercise of calculation of arrears to their benefit. It is denied that the exercise of calculation was solely undertaken by defendant No.1 apropos discussions and considerations across various levels of defendant No.1. It is denied that the replacement

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of cheques, has no strategy behind it. It is denied that the defendant No.1 has calculated and accepted the amount of Rs.150 crores and as such, it does not lie in the mouth of defendant No.1 to plead absence of ad-idem and / or intention. It is denied that the parties brought quietus to the instant proceedings which is reflected from the internal file notings of the defendant No.1 itself. It is submitted that internal file notings have to be read in totality and not in isolation and a collective reading would dispel the allegation to the effect that the defendant No 1 wanted to bring quietus to the proceedings, and that too, when it would be to its own detriment. It is reiterated that the plaintiff has played fraud upon the defendant No.1 as also this Hon'ble Court. It is denied that the money was paid as per the calculations derived by the defendant No.1. It is denied that having discussed the issue over many months the defendant No.1 cannot raise an alibi of fraud.

20. That the contents of para 20 of the reply are wrong and denied and those of the corresponding para of the application are reiterated. It is denied that the averments made in para 20 of the application are not relevant for the adjudication of the application under reply.

20(i). That the contents of para (i) of para 20 of the reply are wrong and denied and those of the corresponding para of the application are reiterated. In addition, the Preliminary Submissions made hereinabove and Reply to Preliminary Submissions / Objections

are reiterated. It is not denied that the defendant No.1 was proceeding on the basis that the balance sheets submitted by the plaintiff are authenticated. It is reiterated that the balance-sheets while submitting the relevant records, fraudulently made deductions which were not permissible in terms of the order of 18th May, 2001. It is denied that the calculations that have been made by the defendant No.1 are based on a gross misinterpretation of the order dated 18th May, 2001. The interpretation being sought to be given by the plaintiff to file noting is vehemently denied.

20(ii). That the contents of para (ii) of para 20 of the reply are wrong and denied and those of the corresponding para of the application are reiterated. In addition, the Preliminary Submissions made hereinabove and Reply to Preliminary Submissions / Objections are reiterated. It is denied that the averments made in the para under reply are not connected with the issue of adjudication of the application under reply. It is denied that the calculations submitted by the plaintiff were in consonance with the order of 18th May, 2001. It is denied that the defendant No.1 has all throughout misinterpreted the facts of the case in light of order dated 18th May, 2001 and thereafter coerced the plaintiff into paying exaggerated demands raised by it. It is denied that the defendant No.1 has in any manner coerced the plaintiff or raised exaggerated demands as alleged.

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20(iii). That the contents of para (iii) of para 20 of the reply are wrong and denied and those of the corresponding para of the application are reiterated. In addition, the Preliminary Submissions made hereinabove and Reply to Preliminary Submissions / Objections are reiterated. It is denied that the record of the defendant No.1 itself negate the averments made in the application under reply. It is denied that the defendant No.1 had ample opportunity to consider this application under Order XXIII Rule 3 CPC. It is denied that the mutual objective behind the application was that both parties would eventually bring an end to the instant dispute in an amicable and harmonious manner. It is stated that there was no mutual objective whatsoever behind the application under Order XXIII Rule 3 CPC. It is stated that the letter dated 26th March, 2015 is being misinterpreted by the plaintiff. It is denied that the instant application is blatant abuse of the process of law by the defendant No.1.

20(iv). That the contents of para (iv) of para 20 of the reply are wrong and denied and those of the corresponding para of the application are reiterated. In addition, the Preliminary Submissions made hereinabove and Reply to Preliminary Submissions are reiterated. It is denied that the application under Order XXIII Rule 3 CPC merely encapsulate the correspondence between the parties leading to the payment of the amount of Rs.151 crores approx. It is reiterated that the none of the correspondences between the parties talk

about an arrangement to have the suit disposed of as has been obtained by the plaintiff. It is reiterated that if there was any material objective, then in that event the parties would have moved a joint application.

20(v). That the contents of para (v) of para 20 of the reply are wrong and denied and those of the corresponding para of the application are reiterated. In addition, the Preliminary Submissions made hereinabove and Reply to Preliminary Submissions / Objections are reiterated. It is denied that in terms of second para of Order XXIII Rule 3 CPC the parties having satisfied the arrangement, by virtue of the payments made by the plaintiff being encashed by the defendant No.1, there was no occasion for the defendant No.1 to sign the application, supporting affidavit thereto and the statement of the counsel to the extent of such moneys having been received by the defendant No.1 was sufficient in the eyes of law for the purpose of the said order. It is reiterated that the plaintiff deliberately chose not to get the application signed by defendant No.1 nor did it get an affidavit of a competent officer of defendant No.1. It is stated that the plaintiff was well-aware that the alleged arrangement was not in accordance with the provisions of the NDMC Act. It is reiterated that there was no understanding to have the suit disposed of as has been obtained by the plaintiff.

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20(vi). That the contents of para (vi) of para 20 of the reply are wrong and denied and those of the corresponding para of the

application are reiterated. In addition, the Preliminary Submissions made hereinabove and Reply to Preliminary Submissions / Objections are reiterated. It is reiterated that the plaintiff has played a fraud upon the Court by going ahead with the compromise application without a duly authorized officer of the plaintiff No.1 or plaintiff No.2 being present in person. It is also reiterated that the Counsel of NDMC did not have written instructions to record any satisfaction of the claims of the defendant No.1. The file notings of defendant No.1 may be read for their true content and purport in this regard.

20(vii). That the contents of para (vii) of para 20 of the reply are wrong and denied and those of the corresponding para of the application are reiterated. In addition, the Preliminary Submissions made hereinabove and Reply to Preliminary Submissions / Objections are reiterated. It is denied that the statement of the counsel for defendant No.1 to the effect that the plaintiff having deposited a sum of Rs.150,92,43,676/- tantamounts to satisfaction of the arrangement between the parties. It is denied that such satisfaction is within the ambit of the second para of Order XXIII Rule 3 CPC.

20(viii). That the contents of para (viii) of para 20 of the reply are wrong and denied and those of the corresponding para of the application / Objections are reiterated. In addition, the Preliminary Submissions made hereinabove and Reply to Preliminary Submissions are reiterated. It is further denied that the defendant No.1 having

(2)

that the statement of the Counsel of the NDMC when read in harmony with the noting dated 13th March, 2015 leaves no doubt that what was stated by the Ld. Counsel was in conformance of the understanding / intention of the defendant No.1.

21. The contents of para 21 of the reply are wrong and denied and those of corresponding para of the application are reiterated. In addition, the Preliminary Submissions made hereinabove and Reply to Preliminary Submissions / Objections are reiterated. It is denied that the defendant No.1 having received the moneys deposited by the plaintiffs, there was due satisfaction to this extent in terms of second para of Order XXIII Rule 3 of the CPC. It is further submitted that;

(i) NMDC is constituted and working as per the provisions of the NDMC Act, 1994 (hereinafter referred as Act), an Act of Parliament. NDMC, being custodian of the civic services to the public, is to work within the framework of the Act and in the public interest;

(ii) Considering the parameters in terms of Interim Order of 18.5.2001 in CS(OS) 610/2000, pending adjudication of CS(OS) 610/2000, the amount of licence fee due as on 31.3.2014 comes at around Rs.527 cr. as mentioned in Para 15.2 of the Application. It is to be noted that this Interim Order dated 18.5.2001 was challenged before the Division Bench by way of filing appeal being FAO No

(M)

310/2001 and same was dismissed vide order dated 12.3.2003.

Since the order of the Division Bench of the Hon'ble High Court was not challenged before the Hon'ble Supreme Court, therefore, the order dated 18.5.2001 attained finality pending final disposal of the suit;

(iii) NDMC is duty bound to protect and safeguard the public funds at all cost. In the instant case, hundreds of crores of rupees of public exchequer is involved, therefore, utmost care need to be given to safeguard the public interest;

(iv) The purported internal advice, correspondence and interpretation of interim order dated 21.5.2001 for calculations of licence fee is not in line with the directions made by the Hon'ble Court in its interim order dated 18.5.2001. Even for the academic purpose, if it is assumed that the licence fee was calculated on the basis of internal advice, correspondence and interpretation of interim order dated 21.5.2001, then the licence fee figure would have been Rs.270.51 cr. approximately and not Rs.150.92cr.

(v) The alleged settlement for Rs. 150.92 cr. is unlawful in terms of section 383(1)(d) of the NDMC Act, 1994 since the Chairperson, NDMC is only authorized to withdraw or compromise any claim for a sum not exceeding one thousand rupees against any person. The instant matter involves settlement of hundreds of crores of rupees and compromising of the legal proceedings, approval of the competent authority i.e. the New Delhi Municipal Council in terms of section 383(1)(f) of the NDMC Act, 1994 should have been

②

taken, which was not taken, thereby making such settlement unlawful and void.

22. The contents of para 22 of the reply are wrong and denied and those of corresponding para of the application are reiterated. In addition, the Preliminary Submissions made hereinabove and Reply to Preliminary Submissions / Objections are reiterated. It is denied that the provisions of Section 383(1)(d) and (f) of the NDMC Act are not applicable in the instant case.

23. The contents of para 23 of the reply are wrong and denied and those of corresponding para of the application are reiterated. In addition, the Preliminary Submissions made hereinabove and Reply to Preliminary Submissions / Objections are reiterated. It is denied that the present application is blatant abuse of power, process of law and principles of natural justice. It is denied that the present application is devoid of any merit and is not maintainable.

24. The contents of para 24 of the reply are wrong and denied and those of corresponding para of the application are reiterated in this regard. In addition, the Preliminary Submissions made hereinabove and Reply to Preliminary Submissions / Objections are reiterated.

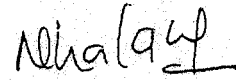
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PRAYER :

In view of the submissions made hereinabove, it is most respectfully submitted that the prayer made in the application under reply may be allowed in favour of the defendant No.1 as against the plaintiffs.

Any other relief, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may also be passed in favour of the defendant No.1 as against the plaintiffs.

It is prayed accordingly.



DEFENDANT No.1

(Neelam Venkatachalam)
Jr. Director (Estate-I)

Through :

(AKSHAY MAKHIJA)
CENTRAL GOVT. STANDING COUNSEL

NEW DELHI;
January , 2016.

North Block, New Delhi
 Dated the 28 August, 2015

To
 The Director,
 Central Bureau of Investigation,
 CGO Complex,
 Lodhi Road,
 New Delhi.

Sub.: Irregularities in the affairs of Hotel Le Meridian, New Delhi.

Sir,

I am directed to say that an Inspection Team, constituted by MHA to look into allegations/irregularities pointed out by Sh. B.N. Singh against the New Delhi Municipal Council (NDMC), while examining the allegations regarding irregularity in fixing of licence fees dues, has proposed that a wider investigation is required in the matter. It is, therefore, requested to take over the investigation of the allegation pointed out by Inspection Team regarding irregularity in fixing the licence dues in respect of Hotel-Le-Meridian by NDMC. Copy of Report of Inspection Team is enclosed.

This issues with approval of Competent Authority.

Yours faithfully,

Sd/-
 (Suman Dixit)
 Under Secretary to the Govt. of India
 Tel: 23093147

Copy to The Chairman, NDMC, Palika Kendra, Sansad Marg, New Delhi for further necessary action to provide all necessary information/documents etc. to CBI for carrying out the investigation in the aforementioned matter.

2. The Secretary, DoP&T, North Block.

For n/a pl.
Sd/-
 (Suman Dixit)
 Under Secretary to the Govt. of India

79/11
11/9/15
R-6087/Dire
01/09/15
Received int'l
01/09/15
D-2267/Dire
29/8/15
Dir (Est/Adm)
51/24/15
31/8/15

Chairman
Secy

lln
21/8/15

30/8/15
50/8/15
29/8/15

52/Kishore Pras
31/8/15

Annexure - II

SECRET

No. 12544/CO-71/2015
 Central Bureau of Investigation
 Anti Corruption Branch
 5-B, 1st Floor
 CGO Complex, Lodhi Road
 New Delhi-110003

Dated 06.10.2015

To

The Chief Vigilance Officer,
 New Delhi Municipal Council,
 Palika Kendra, Sansad Marg
 New Delhi

Sub: Verification of CO-71/2015 of CBI, ACB, Delhi-reg.

Sir,

In connection with the verification of the subject-cited matter, complete files containing all papers/correspondence, note sheets etc. pertaining to granting of license and renewal thereof subsequently in case of Hotel Taj Man Singh, Hotel Lalit, Hotel Gesture, Hotel Le-Meridian & Lodhi Garden Restaurant from beginning till date are required urgently. Apart from this, the guidelines, rules relevant to granting of license by NDMC to hotels/restaurants and renewal of the license subsequently are also required.

It is, therefore, requested that the above mentioned documents may please be supplied to this office latest by 12.10.2015 through an officer who is well conversant with the facts & circumstances of the above mentioned documents/matter. The officer so detailed may please be asked to liaise with Sh. G. Bairwa, Addl.SP, CBI, ACB, Delhi on mobile no. 9968080010.

Yours sincerely

(Signature)
 (Anish Prasad)
 Supdt. of Police

1437/Div (P)
 6/10/15
(Signature)

(Signature)
 May 10/15
(Signature)
 06/10/15

- 1/c

5/c

Page 1 of 2

Annexure - 181

NEW DELHI MUNICIPAL COUNCIL
PALIKA KENDRA: NEW DELHI
(ESTATE-I DEPARTMENT)

No. Sc/Estate/D-869Dated: 8/10/15

Sh. G. Bairwa, Addl. SP,
Central Bureau of Investigation
Anti Corruption Branch
5-B, 1st Floor,
CGO Complex, Lodhi Road
New delhi-110003

Sub: Verification of CO-71/2015 of CBI, Delhi-reg.

Sir,

Please refer letter No. 12544/CO-71/2015 dt. 6.10.2015 of Sh. Anish Prasad, Suptd. of Police, CBI/ACB/New Delhi regarding above cited subejct. CBI has asked the files in respect of Hotel Taj Mansingh, Hotel Lalit, Hotel Gesture, Hotel Hotel Le-Meridian & Lodhi Garden Restaurant. In this connection please find enclosed herewith the following files as per details give below:

1. Le-Meridian

File (Volume-2)

- (i) Noting upto 392 to 408
- (ii) Correspondence (1086 to 1390/C)

File (Volume-3)

- (i) Noting (307 to 391 copies)
(392 to 407 original)
- (ii) Correspondence (1391-1731/C)

File (Volume-1)

- (i) Correspondence (525 - 1085/C)

File (Volume-4)

- (i) Noting (1)
- (ii) Correspondence (104/C)

*Discussed with SPCH
1/c draft the request
handed over*

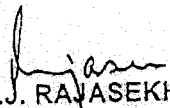
2. Lodhi Garden Restaurant(Current File)

File

- (i) Noting (P-200 to P-411/N)
- (ii) Correspondence (P-476-968/C)

The remaining files are being photocopied and the same will be submitted before 12.10.2015, as per the above reference. Further, Sh. D.S. Dhaka, Section Officer(E-I) and Sh. P.P. Sharma, Jt. Director(E-I) are hereby deputed for handing over the files in original in person, for which a receipt may kindly be provided.

Yours faithfully,


(Y.V.V.J. RAJASEKHAR)
Director.(Estates)

Copy to:

Secretary, NDMC – for kind information.

C.I. INTERNATIONAL (HOTEL LE MERIDIEN)

CALCULATION OF LICENCE FEE DUES

AS PER JUSTICE MAHAJAN ORDER										AS PER ADVISOR (LAW) FORESIA									
Financial Year	Gross Turnover	Deduction Allowed (5% net)	Net Turnover	Licence Fee (1% of Net Turnover)	Payment made by C.I. International	Commutative Balance	Interest 10% of Col. 7	Commutative Total Outstanding Dues & Interest	Financial Year	Gross Turnover	Deduction Allowed (5% net)	Net Turnover	Licence Fee (1% of Net Turnover)	Payment made by C.I. International	Commutative Balance				
1982-83	2940000	0	2940000	29400	0	2940000	294000	3234000	1982-83	2940000	0	2940000	29400	0	2940000				
1983-84	3360000	0	3360000	33600	0	3360000	336000	3696000	1983-84	3360000	0	3360000	33600	0	3360000				
1984-85	3960000	0	3960000	39600	0	3960000	396000	4356000	1984-85	3960000	0	3960000	39600	0	3960000				
1985-86	4680000	0	4680000	46800	0	4680000	468000	5148000	1985-86	4680000	0	4680000	46800	0	4680000				
1986-87	5400000	0	5400000	54000	0	5400000	540000	5940000	1986-87	5400000	0	5400000	54000	0	5400000				
1987-88	6120000	0	6120000	61200	0	6120000	612000	6732000	1987-88	6120000	0	6120000	61200	0	6120000				
1988-89	6840000	0	6840000	68400	0	6840000	684000	7524000	1988-89	6840000	0	6840000	68400	0	6840000				
1989-90	7560000	0	7560000	75600	0	7560000	756000	8316000	1989-90	7560000	0	7560000	75600	0	7560000				
1990-91	8280000	0	8280000	82800	0	8280000	828000	9144000	1990-91	8280000	0	8280000	82800	0	8280000				
1991-92	9000000	0	9000000	90000	0	9000000	900000	9900000	1991-92	9000000	0	9000000	90000	0	9000000				
1992-93	9720000	0	9720000	97200	0	9720000	972000	10772000	1992-93	9720000	0	9720000	97200	0	9720000				
1993-94	10440000	0	10440000	104400	0	10440000	1044000	11584000	1993-94	10440000	0	10440000	104400	0	10440000				
1994-95	11160000	0	11160000	111600	0	11160000	1116000	12300000	1994-95	11160000	0	11160000	111600	0	11160000				
1995-96	11880000	0	11880000	118800	0	11880000	1188000	13188000	1995-96	11880000	0	11880000	118800	0	11880000				
1996-97	12600000	0	12600000	126000	0	12600000	1260000	14040000	1996-97	12600000	0	12600000	126000	0	12600000				
1997-98	13320000	0	13320000	133200	0	13320000	1332000	14972000	1997-98	13320000	0	13320000	133200	0	13320000				
1998-99	14040000	0	14040000	140400	0	14040000	1404000	15984000	1998-99	14040000	0	14040000	140400	0	14040000				
1999-00	14760000	0	14760000	147600	0	14760000	1476000	16660000	1999-00	14760000	0	14760000	147600	0	14760000				
2000-01	15480000	0	15480000	154800	0	15480000	1548000	17308000	2000-01	15480000	0	15480000	154800	0	15480000				

AS PER ADVISOR (AS) FORM 100-1									
1	2	3	4	5	6	7	8	9	10
Financial Year	Gross Turnover	Deduction Allowed (18 items)	Net Turnover**	License Fee (2% of Col 4)	Payment made by C.J. International	Commutative Balance	Balance of Col 7	Commutative Balance	Balance of Col 9
2001-02	6,55,595.56	2,75,108.50	3,79,536.56	7,590.73	6,94,000.00	8,05,489.23	8,05,489.23	8,05,489.23	8,05,489.23
2002-03	6,00,000.00	2,92,175.25	3,07,824.75	6,156.49	5,93,868.26	8,11,645.72	8,11,645.72	8,11,645.72	8,11,645.72
2003-04	7,58,707.25	2,90,977.22	4,67,730.03	9,354.60	7,49,375.43	8,21,000.32	8,21,000.32	8,21,000.32	8,21,000.32
2004-05	8,58,146.79	3,41,517.03	5,16,629.76	10,332.59	8,48,297.17	8,31,332.91	8,31,332.91	8,31,332.91	8,31,332.91
2005-06	10,99,007.25	4,40,672.76	6,58,334.49	13,166.69	10,85,867.80	8,44,499.60	8,44,499.60	8,44,499.60	8,44,499.60
2006-07	14,73,501.97	5,52,334.00	9,21,167.97	18,423.39	14,55,088.58	8,62,823.00	8,62,823.00	8,62,823.00	8,62,823.00
2007-08	18,70,280.33	6,81,275.35	11,89,004.98	23,780.10	18,46,224.88	8,86,603.10	8,86,603.10	8,86,603.10	8,86,603.10
2008-09	16,13,571.32	5,05,282.75	11,08,288.57	22,165.77	15,91,412.80	9,08,768.87	9,08,768.87	9,08,768.87	9,08,768.87
2009-10	16,58,157.46	4,90,618.08	11,67,539.38	23,350.79	16,34,788.69	9,32,119.66	9,32,119.66	9,32,119.66	9,32,119.66
2010-11	18,44,110.00	5,91,440.00	12,52,670.00	25,053.40	18,19,056.60	9,57,173.06	9,57,173.06	9,57,173.06	9,57,173.06
2011-12	18,72,400.00	6,49,150.00	12,23,250.00	24,465.00	18,48,785.00	9,81,638.06	9,81,638.06	9,81,638.06	9,81,638.06
2012-13	17,62,136.54	5,59,526.75	12,02,609.79	24,052.19	17,38,557.60	10,06,690.25	10,06,690.25	10,06,690.25	10,06,690.25
2013-14	17,13,353.27	5,69,756.93	11,43,596.34	22,871.93	16,90,724.35	10,29,568.18	10,29,568.18	10,29,568.18	10,29,568.18
Total	246,860,882	86,376,056	160,484,826	35,174,055	211,310,771	211,310,771	211,310,771	211,310,771	211,310,771

As per Annexure II

FA

331715
RAO (ESTATE)
SRINAGAR

331715
RAO (ESTATE)
SRINAGAR

331715
RAO (ESTATE)
SRINAGAR

IN THE HIGH COURT OF DELHI : AT NEW DELHI

I.A. No. _____/2015

IN

CS (OS) No.610/2000

In re :

M/s C.J. International Hotels Ltd. & Anr.

... Plaintiffs

Versus

N.D.M.C. & Ors.

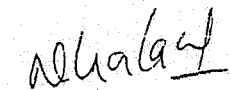
... Defendants

AFFIDAVIT

Affidavit of Smt. Neelam Venkatachalam working as Jt. Director(Estate-I) in the New Delhi Municipal Council, Sansad Marg, New Delhi-1

I, the above-named deponent, do hereby solemnly affirm and declare on oath as under :

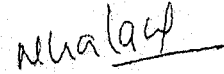
1. That I am working as Jt. Director(Estate-I) with the defendant No.1/Council, conversant with the facts of the case based on the records maintained with the defendant No.1, thus, competent to swear this affidavit.
2. That I have read and understood the contents of the accompanied Rejoinder which has been drafted by the Counsel for the defendant No.1 on my instructions, and the statement of facts and submissions made therein are true and correct and the same be read as part and parcel of this affidavit, to avoid repetition.



DEPONENT
(Neelam Venkatachalam)
Jt. Director (Estate-I)

VERIFICATION

Verified at New Delhi, on this _____ day of February, 2016, that the contents of paras 1 and 2 of the above affidavit are true and correct to my knowledge based on the records maintained with the NDMC. Nothing is false and nothing material has been concealed therefrom.



DEPONENT

(Neelem Venkataswamy)
Jt. Director (Estate-I)

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IN THE HIGH COURT OF DELHI AT NEW DELHI

+

CS(OS) 610/2000

C.J. INTERNATIONAL HOTELS LTD. & ANR. Plaintiffs

Through: Mr. A.S. Chandhiok, Sr. Adv. with
Mr. H.S. Chandhok, Ms. Shweta
Kakkad, Mr. Shiv Sapra & Mr.
Chaitanya, Advs.

Versus

N.D.M.C. & ORS.

..... Defendants

Through: Mr. Sanjay Jain, ASG with Mr.
Akshay Makhija, Mr. Vidur Mohan,
Ms. Pallavi Shali & Mr. Shivi
Sanyam, Adv. for NDMC.

CORAM:**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW****ORDER**

%

09.08.2016

**IA No.15580/2015 (of the defendant no.1 NDMC for setting aside of
order dated 21st April, 2015 decreeing the suit)**

1. The matter is listed for direction upon mention having been made by the counsel for the plaintiffs.
2. The senior counsel for the plaintiffs, on instructions, states that without prejudice to the rights and contentions of the plaintiffs and without admitting any of the averments made in IA No.15580/2015 of the defendant No.1 New Delhi Municipal Council (NDMC), the plaintiffs have no objection to the order dated 21st April, 2015 decreeing the suit being set aside / recalled and the suit being proceeded with in accordance with law, with liberty to the plaintiffs to in support of their suit claim also plead the settlement on the basis of which the suit was earlier decreed.

3. The learned ASG appearing for the defendant no.1 NDMC states that the defendant no.1 NDMC also controverts the allegations made in reply by plaintiffs to IA No.15580/2015 against the defendant no.1 NDMC and its officials and the plaintiffs should not, in the application pending under Order XII Rule 6 of the CPC, seek decree in the suit on the basis of the settlement leading to the decree which is being set aside.
4. The senior counsel for the plaintiffs on instructions states that the application under Order XII Rule 6 was filed prior to the settlement and the plaintiffs would not be seeking decree on admissions on the basis of settlement.
5. Recording the aforesaid, the order dated 21st April, 2015 decreeing the suit is recalled / set aside.
6. IA No.15580/2015 is disposed of.

CS(OS) No.610/2000

7. The counsels state that the suit was at the stage of recording of the evidence and one of the witnesses of the plaintiffs had already been examined.
8. List before the Joint Registrar on 23rd August, 2016 for fixing the dates of trial.

RAJIV SAHAI ENDLAW, J

AUGUST 09, 2016
'gsr'..



नई दिल्ली नगरपालिका परिषद

ESTATE-I DEPARTMENT
NEW DELHI MUNICIPAL COUNCIL
PALIKA KENDRA : SANSAD MARG
NEW DELHI: 110001

No. D-1415/SO(Estate-I)/2016

Dated: 07.11.2016

The Chairperson & Managing Director,
M/s. CJ International Hotels Ltd(Le-Meridien),
Windsor Place, Janpath,
New Delhi.

DEMAND NOTICE

Whereas, CJ International Hotels Ltd have consented to setting aside the decree dated 21.4.2015 passed by Hon'ble High Court of Delhi, the Hon'ble High Court vide its order dated 09.08.2016 set aside the decree dated 21.04.2015 resulting in allowing NDMC to raise the demand as per the Hon'ble High Court judgement dated 18.5.2001 pronounced by Justice S.K. Mahajan, which was upheld by the Division Bench of Hon'ble High Court (Justice Usha Mehra and Justice Pradeep Nandrajog) vide orders dated 12.3.2003 in FAO(OS) No. 310/2011; **and**

Whereas a sum of about Rs.518.80 Crores is outstanding against CJ International Hotels Ltd., apart from the liability of Service Tax, which CJ International Hotels Ltd. has to pay (**provisional demand statement enclosed**). This demand is provisional and based upon the audited balance sheet submitted till 2013-2014, and will be revised after taking into consideration the audited balance sheets for the year 2014-2015 & 2015-2016. Further, this demand has not taken into consideration the share of NDMC with regard to agreements entered between the CJ International Hotels Ltd and its sub-licensees, since the same is being examined separately; **and**

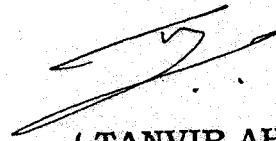
-757-

Whereas this demand notice is without prejudice to the NDMC's right to revise the license fee after completion of 33 years as per clause 53 of the license fee wherein the licensee has completed 33 years on 15.04.2014; **and**

Whereas CJ International Hotels Ltd. has defaulted in not making the payment as per the above mentioned order of Hon'ble High Court dated 18.05.2001 and continuously subjecting NDMC to litigation depriving its valuable revenue and resources which have to be realized by NDMC for public use and interest.

Now therefore, CJ International Hotels Ltd. is hereby requested to deposit the sum of Rs. 518.80 crores outstanding against it as per the statement enclosed within 30 days of receipt of this demand notice, failing which necessary action as per terms of licence deed shall be initiated against CJ International Hotels Ltd.

]



(TANVIR AHMAD)
Dy. Director(Estate-I)

Encl: As above.

Received
Prigula
7/10/16



MERIDIEN

CJ INTERNATIONAL HOTELS LIMITED

WITHOUT PREJUDICESpeed Post A.D./ HAND

06 DEC/16

December 6, 2016

To,

The Deputy Director (Estate - I)
New Delhi Municipal Council (NDMC)
Palika Kendra,
Sansad Marg,
New Delhi - 110001

Dear Sir,

Subject: Reply to Demand Notice dated 07.11.2016 and Letter dated 09.11.2016

Reference: (i) Letter dated 07.11.2016 bearing Ref. No. D-1415/SO(Estate-I)/2016
(ii) Letter dated 09.11.2016 bearing Ref. No. D-1422/SO(Estate-I)/2016

We refer to your aforesaid letter dated 07.11.2016 ("Demand Notice"), as well as the letter dated 09.11.2016 ("Said Letter"). In this regard, we would like to place on record as follows:

1. The Demand Notice is clearly raised in deliberate ignorance of
 - a) the facts and events that have transpired over the past years;
 - b) the injunction passed by the Hon'ble High Court of Delhi;
 - c) the very pendency of the dispute before the Hon'ble High Court of Delhi is CS (OS) 610 of 2000.
2. To put the record straight, the following merits attention.
 - a) A suit was filed by us [CS (OS) 610 of 2000] seeking, *inter-alia*, a re-determination of the license fee, and specific performance of various agreements between NDMC and the Company.
 - b) An order dated 18/05/2001 was passed by the Learned Single Judge in the said suit, and NDMC was enjoined from taking coercive steps against the Company, subject to compliance with the directions contained in the said order. This was not interfered with by Hon'ble Division Bench.
 - c) The order dated 18/05/2001 was duly complied. Affidavits of compliance were duly filed by the Company. None of these were controverted. The injunction became final.
 - d) During the pendency of the suit, NDMC and the Company came to an understanding. This was captured in NDMC's letter dated 02.03.2015 and a detailed calculation consistent with NDMC's understanding of the 18.05.2001 order was enclosed therewith.

- e) The Company, solely in order to put a *quietus* to the issue, accepted the calculations. A sum of Rs. 180,42,43,676/- was paid to NDMC, which included a sum of Rs. 29.50 Crores to be adjusted in license fee for future years.
 - f) A decree based on, *inter alia*, the said letter of 02.03.2015 was passed by the Hon'ble Delhi High Court. This was ~~consented to be set~~ aside by the Company upon NDMC's application, subject to the liberty to raise the understanding/arrangement arrived at between the NDMC and the Company in terms of the letter dated 02.03.2015 and 26.03.2015. An application for amendment has already been filed by the Company to this effect.
 - g) The matter is *sub judice*. The Company states that it is in compliance with the order dated 18.05.2001, even as per NDMC's own calculation. NDMC's challenge to its own calculation cannot be the basis of breaching the injunctive order passed, nor can the raising of an illegal demand vide the Demand Notice give NDMC such right, when the matter is pending determination.
3. The Company has, till date, paid Rs.4,04,11,12,514.00 (Rupees Four Hundred Four Crore, Eleven Lacs Twelve Thousand Five Hundred Fourteen Only) as license fee. Clearly the facts and history reveal the *bona fides* of the Company and its compliance with the law and judicial orders at all times.
4. The Company strongly refutes the calculations, the methodology, the components and the amounts set forth in the chart annexed with the Demand Notice. The same are contrary to NDMC's own calculations attached with the letter dated 02.03.2015. The Company states that these are also not in consonance with the heads allowed to be deducted from the gross turnover for calculation of license fees vide the order dated 18.05.2001.
5. NDMC can have no claim under the agreements with the Company and its sub-licensees in respect of the commercial towers. Clearly this has been raised for the first time and is a classic case of overreach by a statutory authority.
6. As regard the Said Letter, the following merits noting:
- a) The payment was made consistent with the understanding arrived at between the Company and NDMC
 - b) All previous payments under the same understanding were duly accepted and encashed without demur by the NDMC
 - c) The cheque was received by NDMC on 05.10.2016 and was deliberately not presented by NDMC till the Demand Notice was raised. Clearly, the presentation of the cheque is an acceptance of the understanding arrived at

between the parties, and Said Letter is a vain attempt to camouflage this acceptance in some illegal demands contained in the Demand Notice.

- d) The Company has never accepted that NDMC deposit the cheque in some adjustment in terms of the Demand Notice. ~~The cheque~~ was specifically issued for the reason stated in the covering letter and no more. NDMC cannot unilaterally change the intent and purpose behind the payment.
- e) Vague references have been made to Clause 53 without articulating either the issues or the demand. Clause 53 is completely irrelevant to the present issue or payment made in terms of the understanding between NDMC and the Company.
- f) Various issues already stand framed by the Hon'ble High Court of Delhi in CS(OS) No.610 of 2000 vide an order dated 24.08.2004. Without prejudice to the fact that these need to be supplemented on account of developments which took place post institution of the suit, it is clear that the issue with regard to determination of the license fee, including quantum thereof, is *sub-judice*.
- g) In terms of the letter dated 02.03.2015 issued by NDMC, the Company has already paid to NDMC a sum of Rs. 150,92,43,676/- in terms of NDMC's calculations annexed to said letter. This amount of Rs. 150,92,43,676/- includes a sum of Rs. 75,46,85,601/- towards interest, notwithstanding that the demand for interest, though not maintainable, was being raised for the first time in 13 years by NDMC vide its letter dated 2nd March, 2013. The demand for interest was illegal, irrational and contrary to law. The Company agreed to the same only with a view to bring *quietus* to the *lis*.

In view of the afore said, please note that any action by you in pursuance of the Demand Notice and/ or the Said Letter, would impede the administration of justice, as also be violative of the injunctive orders of the Hon'ble High Court of Delhi. As the injunctive orders passed by the Hon'ble High Court have been duly complied with by the Company, NDMC is bound by the said orders and any threat sought to be made *qua* the Company is contemptuous and seeks to overreach the issues pending before the Hon'ble High Court.

Thanking you,

Yours Sincerely,
for CJ INTERNATIONAL HOTELS LTD.


(Mrs. HARJIT KAUR)
DIRECTOR & CEO

ITEM NO. 08 (L-19)

Copy of Reso. No.
of
Councils Ordinary Meeting
Dated 05/09/2016

1. Name of the Subject:

Revision of licence fee in respect of M/s. C.J. International (Le-Meridian) as per Clause No. 53 of Licence Deed dated 14.7.1982.

2. Name of the Department:

Estate Department-I

3. Brief History

The Council vide its meeting held on 26.4.2016 has taken the following decisions:

"Resolved by the Council that:

- (i) as M/s. SBICAPS is a Central PSU and is also appointed by the NDMC in project of IHCL auctioning process, M/s. SBICAPS may be appointed to determine the market value and the licence fee that has to be paid by M/s. C.J. International (Le-Meridian), on nomination basis u/s 175 of General Financial Rules, 2005.
- (ii) As an interim measure and till the examination is completed by M/s. SBICAPS, and in exercise of powers conferred under section 141(2) read with section 416 of the NDMC Act, 1994, the licence fee may be raised provisionally(interim arrangement) to (i) Rs. 3.13 Crores per month, in proportion to the area as per the rate of licence fee of Taj Mansingh, till the market rate is determined by M/s. SBICAPS or till the market value is determined through e-auction or any other similarly placed property, whichever is earlier; or (ii) 21% of GTO, whichever is higher. The licensee has to pay the Service Tax, Service Charge etc. over and above the licence fee.
- (iii) The provisional llicece fee has to be paid with effect from the date of expiry of 33 years i.e. 15.4.2014.
- (iv) The department shall take appropriate action to defend the interests of the NDMC in alleged compromise between NDMC and C.J. Internationals by requesting the concerned Court for setting aside the order dated 21.4.2015, as the alleged compromise is done without the consent of the Council and is contrary to the provisions of the NDMC Act, 1994. Applications and rejoinders that were filed for setting aside the order dated 21.4.2015 of Hon'ble High Court of Delhi should be pursued vigorously.
- (v) an inspection team be constituted to do site inspection to verify the ground position as apprehensions were expressed as to whether

R-3389/A.(ET)
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there is any commercial sale by the licensee in violation of terms and conditions of the licence.

4. Detailed Proposal:

4.1 Pursuance to the directions of the Hon'ble Council, reference was sent to Shri Akshay Makhija, Advocate for drafting the letter and have the same vetted from Ld. ASG Sh. Sanjay Jain, that has to be sent to Hotel CJ International for fixing the provisional licence fee that has to be paid after the expiry of 33 years i.e. w.e.f. 15.4.2014(Annexure-I, See page 137). However, the same could not be finalized since the decision on the recall application was pending. Secondly, the department had contested the case in public interest and the matter was reserved for judgement by the Hon'ble High Court on 15.7.2016. The Hon'ble Court had observed in its oral observations on 15.7.2016 that this is a clear case of fraud and it requires deeper investigation. On 09.8.2016, the Hon'ble High Court has recalled the decree which was passed on the basis of the alleged agreement between NDMC and CJ International(Le-Meridien), NDMC in its rejoinder had argued before the Hon'ble High Court that this is an agreement which is illegal and fraudulent and was obtained without the prior sanction of the Council and by compromising with the formula upheld by the Hon'ble High Court in its order dated 18.05.2001, which was subsequently upheld by the Division Bench vide its order dated 12.3.2013. CJ International in the course of the court proceedings on 09.8.2016 (Annexure-II, See pages 138 - 139) had given its consent to allow the recall of the decree despite earlier opposing the same. Now it is open to NDMC to revive its claim of raising the dues as per the latest calculations which over a period of time alongwith interest might increase much more.

4.2 Apart from this, pursuant to the Council's decision, NDMC had inspected the site to see whether there is any commercial sale/lease by the licensee in violations of the terms and conditions of the licence. Prima facie, it is revealed that the hotel has sub-licensed illegally more than 120 spaces admeasuring approximately 83,000 sq.ft. This case is being examined with inter-departmental consultations, Shri Akshay Makhija is now being requested to draft the appropriate letters and have the same vetted from Shri Sanjay Jaiy, Ld. ASG.

5. Sale of commercial space:

Council vide its Resolution dated 26.4.2016, apart from increasing the licence fee of hotel CJ International(Le-Meridien) after 33 years, had also resolved as under:

"(v) an inspection team be constituted to do the inspection to verify the ground position as apprehensions were expressed as to whether there is any commercial sale by the licensee in violation of terms and conditions of the licence."

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The inspection was got conducted Chief Architect, Accounts and Property Tax Departments. As per the inspection report, it is noticed that 29+95 spaces have been given to sub-licensees in various floor. From the agreements provided to the inspection team during the inspection, it is noticed that Hotel CJ International is charging Rs.330/- per square feet(Annexure-III, See pages 140 - 151). From the inspection report it is noticed that number of spaces that have been subletted are 29 shops in the hotel premises and 95 spaces at Western Tower i.e. Commercial Block. The illegally sub-licensed spaces ranging from 200 sq.ft. to 4180 sq.ft. As per the latest agreement, per square feet monthly rental charge is Rs.330/- and for the entire illegally sub-licensed spaces both shops as well as office spaces comes to Rs. 2.75 Crores per month on 83,479 sq.ft. i.e. 7370 sq.ft. for 29 shops and 76109 sq.ft. for 95 spaces. This was not brought on the balance sheet of the hotel while calculating the GTO and NDMC was put to loss.

In this context, we have to see with whom the ownership lies and who is competent to further transfer the property on sub-licence basis. In this context, one may see the licence deed dated 14.7.1982(Annexure-IV, See pages 152 - 181). As per clause 10 of the licence deed, the property shall vest with licensor i.e. NDMC in terms of both land as well as building constructed there upon. Clause 10 of the licence deed states as under:

"The land for construction and commission of 5-Star Hotel would continue to be on lease with the licensor in whom in building so constructed, will also vest and the period of licence would be for 99 years but the licensees shall have the right to raise the loan on the security of the structures/buildings/fixtures and fittings etc, which shall be put up by the licensees aforesaid on the said licensed plot from any Indian or Foreign licensed bank or from any Financial Corporation including the IFCI, ICICI and IDBI and the Licensor, New Delhi Municipal Committee will have no objection to the licensees, adopting such a course facilitating for the completion of the project."

Further, as per Clause 16 of the licence deed, CJ International does not have power to transfer property on sub-licence basis. In this context, may kindly see Clause 16 which is as under:

"The licensee shall not be at liberty in any way to underlet, sublet, encumber, assign or transfer their rights and interest or part with possession of the land and the building thereon or any part thereof or share therein to any person, directly or indirectly without the previous written consent of the licensor. But the licensees shall have the right to sub-licence the licensed property, as stipulated in clause 34 of the licence agreement."

As far as clause 34 of the licence deed is concerned, it states as under:

"The licensees shall run the 5 star Hotel themselves. However, the licensees may allow sub-licensees within the period of licence for running car parking, cycle-scooter stand for parking and shopping arcade, bank, offices(within the shopping arcade) etc.. The licensees shall be further responsible for the conduct of various licensees and observance of rules

and regulations etc. The licensees shall be further responsible to answer that the sub-licensees privileges of the licensees."

The office spaces that have been sub-licensed do not fall in the category as mentioned in clause 34. As per the licence deed, CJ International under clause 35 is not competent to transfer on sub-licensed basis any office space other than what is mentioned in clause 34. From the inspection report it is noticed that only shopping arcade is provided at Mezzanine floor of Western Tower at 10.84 meter level. From the inspection report it is noticed that all the 95 office spaces are not at Mezzanine floor. They are situated from first floor to 9th floor (Annexure-V, See pages 182 - 185). Apart from this, 29 shops which were also illegally sub-licensed are not situated at Mezzanine floor and they are not in the shopping arcade whereby they also do not come under the permitted category of Clause 34 of the licence deed. Thus all the 124 spaces do not fall under shopping arcade section and as a result, CJ International cannot take benefit under Clause 34 of the licence deed and it requires the permission of the NDMC, which was not taken.

This is a case of fraud being played by CJ International on NDMC by not only suppressing the income while calculating the GTO but also violation of terms and conditions of licence deed for illegally transferring to various sub licenses. This amounts to misuse and the illegally sub-licensed spaces are liable for sealing and eviction.

6. Unauthorized Construction:

The Architect Department has conducted an inspection with regard to unauthorized construction and the inspection report in this regard is as under (Annexure -VI, See pages 186 - 189) :

Sub: Deviations observed from the available sanctioned plan in r/o Hotel Le-meridian during the Site Inspection by NDMC Architect and E-BR officials.

BASEMENTS (HOTEL BLOCK & COMMERCIAL BLOCK)

Lower Basement Floor

- i internal brick partition walls provided to bifurcate engineering equipment stores into smaller store.
- ii. Staircase provided adjoining Boiler Room.
- iii Toilet provided adjoining Boiler Room.
- iv Size of Lift Machine Room increased and another Machine Room provided for other lifts. Size of the AC Plant Room enlarged.

Part of the Engineering store area converted into Air Fan Room, AHU Rooms, and Pump Room for Fire fighting provided on part of the parking area.

Upper Basement Floor

- i Extent of the basement extended on Janpath Side to accommodate DG set.
- ii Internal Brick Partition walls in electric Sub Station, Telephone Exchange Room/Laundry Fresh Air and Exhaust

Basement Floor

- i AHU Room, Toilets, Passage provided in place of store, Gents lockers bifurcated into gents and ladies lockers, Kitchen, etc.
- ii Size of the Convention Hall modified.
- iii External dimensions of the basement reduced from 57m to 52m and 9.10m to 8m under East Tower.
- iv The external wall of the basement extended in a portion towards RAISINA ROAD.
- v Addition staircase provided in part of the store area.
- vi Internal brick partition walls provided.
- vii Basement level is 1.02 mts below the ground level in place of 1.5 mtr on Janpath Side and in line with road on Raisina Road.

(HOTEL BLOCK)

Ground Floor

- i. The size of Tower reduced from 57 m to 52 m.
- ii. AHU Rooms in the Coffee Shop Kitchen, Chinese and French restaurants and Bar in the East Tower not as per the sanctioned plan.
- iii. Shops provided in the Atrium in both Tower.
- iv. Position of the Brick partition wall changed for front office counters, Coffee Shops and in the lobby.
- v. Escalators replaced by the Staircase.

Mezzanine Floor

- i. The Size of Tower reduced from 57m to 52 m .
- ii. Brick partition walls modified.
- iii. Size of the electrical panel room enlarged.
- iv. One no. of lift deleted.
- v. Sizes of the shops modified and lift machine room, AHU Room converted into shops.
- vi. The Size of Indian Restaurant increased.

Service Floor

- i. External Size reduced from 57 m to 52 m of Tower.

-1006-
-985-

- ii. Brick partition walls provided to segregate various services.
- iii. One of the service floor converted into regular Guest Rooms.

Terrace Floor (SWIMMING POOL)

- i. Area enclosed for providing/change room, Beauty Parlour and Health Clun in the East Tower.
- ii. Individual RCC Columns and brick wall converted into RCC wall construction.

Typical Floors

- i. Internal brick partition walls are not as per the sanctioned plan.
- ii. Profile of the corridor is not as per the sanctioned plan.
- iii. Adjustment/modification in staircase size, electrical panel room, guest rooms and toilets.

Terrace Plan at 64.40 Mtr

- i. Bar, Kitchen Toilet provided in place of Mechanical Room.
- ii. Shape of the restaurant modified.
- iii. Area of Terrace converted into conference Room, Restaurant ect.

(COMMERCIAL BLOCK)

Ground Floor

- i. Bank area provided in the Tower Atrium.
- ii. Banquet Hall provided in the Tower Atrium.

Typical Floors

- i. One no. of lift deleted out of the total of 5 nos.
- ii. Internal brick partition walls are not as per the sanctioned plan.
- iii. Profile of the corridor is not as per the sanctioned plan.
- iv. Adjustment/modification in staircase Size, electrical panel room, guest rooms and toilets.

Suite/Apartment Floor Plan – Low Rise Tower

- i. One lift deleted and an internal Change at site has been observed.
- ii. Guest Rooms are converted into Offices.

Note :The exact FAR cannot be ascertain as there is no completion plan in record and not obtained by the party

1. Party has not obtained Completion Plan & completion Certificate.
2. Party has to submit built-up plans of the existing building for ascertaining the existing FAR& ground Coverage
3. The Completion Certificate of this premises not approved, only TOC was granted."

Recommendations:

- (i) The department shall take necessary action to raise the demand of arrears that have to be realized from the CJ International (Le-Meridien) as per the judgement of Delhi High Court dated 09.8.2016 in IA No. 15580/2016 allowing the petition of NDMC to recall the decree dated 21.4.2015 passed on the illegal agreement.
- (ii) Issue a Show Cause Notice to the CJ International as to why a suitable action as per the terms of licence conditions be not taken for illegally subletting 124 spaces without the consent of the licensor, in consultations with Additional Solicitor General of India.
- (iii) CJ International have not obtained Completion Plan and Completion Certificate. Architect Department and EBR Department may take necessary action as per the provisions of law in this regard.
- (iv) We may ask the Inspection team to clarify/confirm whether the revenue generated out of 124 sub-licenses is reflected in the Balance Sheet of Hotel CJ International or not as a part of GTO (Gross Turn Over).

COUNCIL'S DECISION

The Council resolved that:

- (i) the department concerned shall take necessary action to raise the demand of arrears that have to be realized from the CJ International (Le-Meridien) as per the judgment of Delhi High Court dated 09.8.2016 in IA No. 15580/2016 allowing the petition of NDMC to recall the decree dated 21.4.2015 passed on the illegal agreement;
- (ii) the department concerned shall issue a Show Cause Notice to the CJ International as to why suitable action as per the terms of licence conditions be not taken against it for illegally subletting 124 spaces without the consent of the NDMC (licensor), in consultations with Ld. Additional Solicitor General of India;
- (iii) Architect Department and EBR Department to take necessary action as per the provisions of law against CJ International for not obtaining Completion Plan and Completion Certificate;
- (iv) the Department may check whether the revenue generated out of 124 sub-licenses is reflected in the Balance Sheet of Hotel CJ International or not as a part of GTO (Gross Turn Over).
- (v) Ld. ASG vide Legal Opinion dated 26.10.2016 advised that:

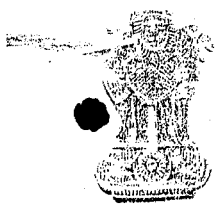
"...
5. Therefore, the interest of the Querist (NDMC) would be better served in continuing to demand Licence Fee based on the order dated 18.05.2001. Upon the disposal of the Suit, at best or at worst, all that is likely to change is the inclusion or exclusion of certain components which the Querist wanted to include while calculating the G.T.O. In my considered view, when the Querist has a clause enabling it to change Licence Fee on the basis of G.T.O., which in the normal course would increase the licence fee, the commercial prudence would stand against opting for the other option of fixed Licence Fee, even if it is enhanced beyond 100%.

6. It is therefore suggested that arrears of Licence Fee be calculated on the basis of the Order dated 18.05.2001 and a demand be raised at once. If, for a particular period, accounts for calculating actual GTO as per the said Order are not available, a provisional demand may be made for the relevant months, based on the date, which may be duly available."

- (vi) Considering the advice of Ld. ASG, the Council resolved that it would be better for NDMC to continue to demand Licence Fee based on the Hon'ble High Court order dated 18.05.2001.

[Signature]
For Secretary
New Delhi Municipal Council
New Delhi

05.09.2016



सत्यमेव जयते

SANJAY JAIN

ADDITIONAL SOLICITOR GENERAL OF INDIA

LEGAL OPINION

Date: 26.10.2016

QUERIST

NDMC

Through

Shri Y.V.V.J. Rajshekhar,

Director (Estate-I)

QUERY

- A. Whether it is mandatory for NDMC (hereinafter referred to as "Querist") in exercise of its option under Clause 53 of the License Deed (hereinafter referred to as "*Deed*"), to seek enhancement of license fee from C.J. International Hotels Ltd. (hereinafter referred to as "**C.J. International**") to the extent of 100%, taking Rs.2.68 crores (minimum guaranteed figure) as the basic figure or keeping in view that as per formula of Gross Turn Over (hereinafter referred to as "**GTO**"), the license fee is recoverable as of today is several times more than the said minimum figure, it would be possible for Querist to treat the above course only as an option and not to exercise the same and continue with the current method?

R-3063/AL (F.D.)
21/10/2016

OPINION

1. That as the present opinion pertains to increase in license fee and provisions for calculating the same have been made in Clause 3 and 53 of the Deed dated 14.07.1982, it would be apposite to reproduce the said clauses:

Chamber

443, Lawyers' Chambers

High Court of Delhi, New Delhi-110003

Tel.: 91-11-23389950

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Office

AB-83, Shahjahan Road, New Delhi-110003

Tel.: 91-11-23070866 / 23071349

e-mail : sanjay.jain62@nic.in

18702 242

"3. In consideration of the Licensor granting to the Licensees, the license in respect of the said plot of land for construction of 5 – Star Hotel building resting in the Licensor, i.e. New Delhi Municipal Committee, Licensor shall pay to the Licensor as and by way of license fee an amount of Rs 2.68 crores (Rupees two crores and sixty eight lacs only) per annum as minimum guaranteed amount or 21% of the Gross Turnover of the Licensees as certified by the statutory auditors of the Licensees whichever is higher

.....

.....

53. The license fee in the terms of the fixed minimum annual guaranteed amount only will be enhanced after every 33 years countable from 16th day of April 1981 provided that the increase is in the license fee at each such time shall not exceed 100% of that immediately before the enhancement is due. For determination of the increase, the percentage increase in the minimum annual guaranteed amount would depend on the market value of the plot at the relevant time. In this regard, the decision of the Licensor shall be final and binding on the Licensees. However, the aforesaid provision would not be applicable to any increase in license fee on percentage basis on Gross Turnover (G.T.O.)."

2. From a combined reading of the above clauses it is clear that the license fee can be paid as either a fixed amount known as the minimum guaranteed amount of Rs. 2.68 Crores or as a variable amount which shall be 21% of the G.T.O.. The said clause clarifies that whichever of the amount(s) is higher, the said amount shall be payable as license fee.
3. Clause 53 of the Deed gives the Querist the option to revise the license fee payable as the minimum guaranteed amount but subject to a cap of 100%. That vide an earlier opinion dated 17.03.2016 rendered by me to the Querist, interpreting a similar clause in another license deed (Bharat Hotels), I had opined that so far as the cap of 100% qua increase in the

minimum guaranteed amount is concerned, such a cap is violative of public policy and Section 141(2) of the NDMC Act. And therefore, the said cap is not sustainable or applicable for calculating the enhancement of the license fee. I had also opined that the said clause of License Deed (Bharat Hotels) which caps the increase on the minimum guaranteed amount at 100% has to be read down and the Querist should raise a fresh demand prospectively, for the license fee in line with contemporaneous market value of the property. Though in the same opinion I had also added that reading down of the clause by NDMC unilaterally would be subject to challenge in a court of Law.

4. The current formulae of charging licensee fee @ 21% of G.T.O. is an option available in the present case and charging license fee at the same is also desirable in the context that at present the Querist is engaged in defending a Civil Suit against C.J. International which is CS (OS) No. 610/2000. In the said Suit, there is already an interim order dated 18.05.2001 passed as per which the components of GTO have been spelled out and the G.T.O. has to be calculated taking into account only the said components as has been directed by the Hon'ble Court. Furthermore, in the License deed of Bharat Hotels, there was only one mode of changeability of License - Fee and unlike some other arrangements entered into by the Querist, there was no option of charging License - Fee on the basis of a particular percentage of Gross Turn Over(G.T.O).
5. Therefore, the interest of the Querist would be better served in continuing to demand Licensee Fee based on the order dated 18.05.2001. Upon the disposal of the Suit, at best or at worst, all that is likely to change is the



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SANJAY JAIN
ADDITIONAL SOLICITOR GENERAL OF INDIA

inclusion or exclusion of certain components which the Querist wanted to include while calculating the G.T.O.. In my considered view, when the Querist has a clause enabling it to change License Fee on the basis of G.T.O., which in the normal course would increase the license fee, the commercial prudence would stand against opting for the other option of fixed License Fee, even if it is enhanced beyond 100%.

6. It is therefore suggested that the arrears of License Fee be calculated on the basis of the Order dated 18.05.2001 and a demand be raised at once. If, for a particular period, accounts for calculating actual GTO as per the said Order are not available, a provisional demand may be made for the relevant months, based on the date, which may be duly available.

It is opined accordingly.

(SANJAY JAIN)

ADDITIONAL SOLICITOR GENERAL OF INDIA

Confidential

ESTATE-I DEPARTMENT
NEW DELHI MUNICIPAL COUNCIL
PALIKA KENDRA : NEW DELHI

No.D-1444/so(Estate-1)/2016

Dated: 17.11.2016

Shri M.K. Jaiswal,
Inspector CBI,
Anti Corruption Branch, 1st Floor,
CBI HO Building, 5-B,
CGO Complex, Lodhi Road,
New Delhi-110003.

Sub: Enquiry in the matter of M/s. CJ International Hotel Pvt. Ltd.
(Hotel Le-Meridian).

Sir,

This is with reference to Ministry of Home Affairs' letter No. 14011/12/2015-Delhi-II dated 28th August 2015 (**copy enclosed**) on the subject cited above.

2. In this context, it is informed that M/s C. J. International Hotel Pvt. Ltd. has disputed the payments of outstanding dues. A suit was filed in CS(OS) No. 610/2000 in Hon'ble Delhi High Court by M/s C. J. International Hotel Pvt. Ltd. in the year 2000. In this original suit, the Hon'ble High Court vide its order dated 18.5.2001 (Justice Mahajan's Order) had allowed few deductions and provided the interim payment arrangement to be made by the M/s C. J. International Hotel Pvt. Ltd. to NDMC. This was challenged by the CJ International before the Division Bench of Hon'ble Delhi High Court, which was disposed by the Hon'ble High court vide its order dated 12.3.2003 (Justice Usha Mehra and Justice Pradeep Nandrajog). The Division Bench had affirmed the order of Single Bench and both the orders have confirmed that the balance of convenience is in favour of public interests i.e. NDMC and M/s C. J. International Hotel Pvt. Ltd. is bound to pay the licence fee as per the interim arrangement made in Justice Mahajan's order dated 18.5.2001 till final disposal of the suit.

3. This licence fee arrangement, as directed by Hon'ble High Court vide its order dated 18.05.2001, was reversed by an administrative arrangement, and was presented before the Hon'ble High Court of Delhi as settlement / compromise between NDMC and M/s C. J. International Hotel Pvt. Ltd., on the basis of which Hon'ble High Court passed the order dated 21.04.2015 disposing of the CS(OS) No. 610 of 2000.

4. The action between NDMC and M/s C. J. International Hotel Pvt. Ltd. was termed as fraud and contrary to law by the Council vide its resolution No. 16(L-02) dated 26.04.2016 (**copy enclosed**) and pleaded by NDMC in IA No. 15580/2015 before the Hon'ble High Court of Delhi.

5. NDMC had filed the review application of IA No. 15580/2015 praying the Hon'ble High Court to set aside the alleged fraudulent agreement between CJ International and NDMC in settlement / compromising with the pending Suit of CS(OS) 610/2000. Considering the veracity of the case, Hon'ble High Court allowed to admit the NDMC's review application IA No. 15580/2015.

6. M/s C. J. International Hotel Pvt. Ltd. filed its reply in IA No. 15580/2015, wherein M/s C. J. International Hotel Pvt. Ltd. submitted under oath that the allegations raised by NDMC in its application are not relevant and for the sake of clarity, the reasons submitted by CJ International in its reply inter-alia includes the following:


"20. vii) The contents of Sub-Paragraph (vii) are admitted to the extent that the Counsel for the Defendant No.1 recorded his agreement to the effect that the Plaintiff had deposited a sum of INR 150,92,43,676/-. It is submitted that such admission on the part of Defendant No.1 tantamount to satisfaction of the arrangement between the Parties herein – which is specifically what has been recorded by virtue of the Said Order. Such satisfaction is within the ambit of the second part of Order XXIII Rule 3.

- viii. In response to Sub-Paragraph(viii), it is reiterated that in light of the Defendant No.1 having withdrawn the amount in question, the factum of satisfaction was necessary to be recorded in the Said Order. In fact, this fact is clearly reflected in the file noting dated 29.4.2015 recorded by Shri Kishore Prasad, Sr. Asstt. Furthermore, the Counsel of the Defendant No.1 has issued a detailed reply to the notice issued by the Defendant No.1 qua the Said Order.
- ix) The contents of Sub-Paragraph (ix) are false and denied. The Counsel for the Defendant No.1 merely recorded the aspect of satisfaction in the matter, and the Said Order nowhere reflects any 'compromise' or 'settlement' between the Parties - only the factum of satisfaction which is in parity with the second part of Order XXIII Rule 3. The fact that the issue qua calculations was approved by the Defendant No.1 is evident from a perusal of the noting dated 13.3.2015 recorded by Shri Kishore Prasad, Sr. Asstt. This noting clearly reflects, inter alia, the following:
- That there was a meeting dated 26.2.2015 which was attended by:
 - Shri Jalaj Shrivastava, Chairperson, Defendant No.1
 - Justice(Retd.) Sh. R.B. Mishra, Legal Advisor, Defendant No.1
 - Shri Nikhil Kumar, Secretary, Defendant No.1
 - Sh. Hrishikesh Kumar, Financial Advisor, Defendant No.1
 - Sh. R.K. Gaur, Director, Defendant No.1
 - Sh. Himanshu Ranjan, Deputy Director(Estate), Defendant No.1
 - That in the meeting it was deliberated and was duly confirmed by recorded minutes of meeting that the net

arrears of licence fee payable by licensee(plaintiff herein) comes to Rs.150,923,43,676/- up to 2013-2014.

- That this was over and above the license fee so far paid by licensee
- That the licensee was required to pay these arrears calculated by 31st March 2015.
- That it may be written to Sr. AO(E-I) that the calculation as submitted by him vide his note dated 25.2.2015(P-35-36/n) as para (c) of the said note has been approved in the meeting and the party has paid the amount.
- Thus, the account branch may reconcile its accounts accordingly subject to realization of the cheques dated 20.4.20125.

The above leaves no doubt that the matter of calculations and monies payable by the Plaintiff as was agreed upon/approved by the highest levels within the Defendant No.1. Hence, there is no question of applicability of Section 383 of the NDMC Act, 19994. Furthermore, the statement of the Counsel when read in harmony with this noting dated 13.3.2015 leaves no doubt that what was stated by the Learned Counsel was in conformance to the understanding/intention of the Defendant No.1. Any submission/allegation to the contrary is misfounded and not tenable especially as the Plaintiffs were forced to pay a far higher amount than was admissible in terms of this Hon'ble Court orders dated 18.5.2001, only so that Defendant No.1 may treat them as "not defaulters" and instead as law abiding taxpayers.

 21. ~~The~~ contents of Paragraph 21 are false and denied. For the reasons afore stated, it is reiterated that Defendant No.1 having received/encashed the monies deposited by the Plaintiff, there was due satisfaction to this extent, in terms of the second part to Order XXIII Rule 3. Submissions made hereinabove in this regard may kindly be

deemed as incorporated herein and the same are not being repeated for the sake brevity.

22. The contents of Paragraph 22 are false and denied. For the afore stated reasons/submissions, it is reiterated that the provisions of Section 383 (1)(d) of the NDMC Act are not applicable to the instant case, in light of the approval accorded on behalf of the Defendant No.1 in the instant case.

23. The contents of Paragraph 23 are false and denied. The instant applicable is a blatant abuse of the powers vested, the process of law and principles of natural justice from the Defendant No.1 since February 2015. Basis the facts encapsulated hereinabove, it is respectfully submitted that the instant applicable is devoid of any merit(s) and the same is not maintainable, except to the extent that the Plaintiffs have been coerced into paying exaggerated amounts as dictated by the ad hoc calculations done by Defendant No.1 and to which the Plaintiff are desirous of approaching the court of law for legal recourse by way of relief and refunds."

7. It may be noted that M/s C. J. International Hotel Pvt. Ltd. contended that agreement arrived between NDMC and M/s C. J. International Hotel Pvt. Ltd. is valid and there is an ad-idem between the parties in arriving at the alleged satisfaction/compromise in settling the outstanding dues. It was contended in the reply of M/s C. J. International Hotel Pvt. Ltd. as stated above that section 383 of NDMC Act, 1994 does not apply and as stated in their reply vide para 21 (mentioned above), there is a due satisfaction in terms of second part of Order XXIII Rule 3.

8. After seeing the averments of M/s C. J. International Hotel Pvt. Ltd., NDMC in defence of public interests countered the pleading of CJ International thereby filed its reply vide rejoinder in consultation with the Office of Ld. ASG for Delhi and reiterated that depositing of about Rs. 150 Crores does not tantamount to satisfaction between the parties. Besides

this, it was submitted by NDMC before the Hon'ble High Court vide its rejoinder as under:

- "21. (i) NDMC is constituted and working as per the provisions of the NDMC Act, 1994 (hereinafter referred as Act), an Act of Parliament. NDMC, being custodian of the civic services to the public, is to work within the framework of the Act and in the public interest;
- (ii) Considering the parameters in terms of Interim Order of 18.5.2001 in CS(OS) 610/2000, pending adjudication of CS(OS) 610/2000, the amount of licence fee due as on 31.3.2014 comes at around Rs.527 Cr. as mentioned in Para 15.2 of the Application. It is to be noted that this Interim Order dated 18.5.2001 was challenged before the Division Bench by way of filing appeal being FAO No. 310/2001 and same was dismissed vide order dated 12.3.2003. Since the order of the Division Bench of the Hon'ble High Court was not challenged before the Hon'ble Supreme Court, therefore, the order dated 18.5.2001 attained finality pending final disposal of the suit;
- (iii) NDMC is duty bound to protect and safeguard the public funds at all cost. In the instant case, hundreds of crores of rupees of public exchequer is involved, therefore, utmost care need to be given to safeguard the public interest;
- (iv) The proposed internal advice, correspondence and interpretation of interim order dated 21.5.2001 for calculations of licence fee is not in line with the directions made by the Hon'ble Court in its interim order dated 18.5.2001. Even for the academic purpose, it is assumed that the licence fee was calculated on the basis of internal advice, correspondence and interpretation of interim order dated 21.5.2001, then the licence fee figures would have been Rs.270.51 Cr. approximately and not Rs.150.92 Cr.
- (v) The alleged statement for Rs.150.92 Cr. is unlawful in terms of section 383(1) (d) of the NDMC Act, 1994 since the Chairperson,

NDMC is only authorized to withdraw or compromise any claim for a sum not exceeding one thousand rupees against any person. The instant matter involves settlement of hundreds of crores of rupees and compromising of the legal proceedings, approval of the competent authority i.e. the New Delhi Municipal Council in terms of section 383(1) (d) of the NDMC Act, 1994 should have been taken which was not taken, thereby making such settlement unlawful and void.

22. The contents of para 22 of the reply are wrong and denied and those of corresponding para of the application are reiterated. In addition, the Preliminary Submissions made hereinabove and Reply to Preliminary Submissions/Objections are reiterated. It is denied that the provisions of Section 383(1) (d) and (f) of the NDMC Act are not applicable in the instant case."

9. Besides this, at para 19 of the rejoinder NDMC has stated as under:

"19. That the contents of para 19 of the reply are wrong and denied and those of the corresponding para of the application are reiterated. In addition, the Preliminary Submissions made hereinabove and Reply to Preliminary Submissions/Objections are reiterated. It is reiterated that the application under Order XXIII Rule 3 CPOC was not filed in consonance with the requirement of Order XXIII Rule 3 CPC. It is reiterated that the said application alleges an agreement between the parties and seeks a decree to be passed in terms of the agreement alleged to have been entered, as pleaded in the application. It is once again stated that there is no agreement between the parties to have the suit disposed of in term of the order of 18th May 20001. It is denied that in accordance with the second para of order XXIII Rule 3 CPC where a supplementary arrangement has already been acted upon, a statement of counsel to such an extent is sufficient to record satisfaction under Order XIII Rule 3 CPC. It is stated that the plaintiff has

deliberately and strategically manipulated the entire matter in such a manner that it is able to claim the entire monetary claim of defendant no.1 towards licence fee stands satisfied as on the date of the purported compromise i.e. 21st April 2015. It is reiterated that it is for this reason the plaintiff substituted the cheque originally tendered by another set of cheques of date prior to the date fixed by the Court and ensured that the same are encashed before their statement is recorded in the Court. It is stated that the entire exercise was manipulated in such a manner to artificially bring the case within the parameters of second part of Order XXIII Rule 3 CPC. It is stated that the plaintiff wanted to create proper trail to show that the alleged amount of Rs.151 Crores(approx) having been fully paid should be treated as satisfaction, in order to persuade the Court to express its satisfaction to the same.

In any event, it is once again reiterated that in the absence of acceptance of compromise and any intention to give quietus to the litigation or any decision to accept the sum of Rs.150,92,43,696/- in accordance with the NDMC Act towards full and final discharge of all claims of the defendant No.1, the compromise as alleged is no compromise in the eyes of law. Thus, the plaintiff in securing the order evocative of a compromise being played a fraud which even otherwise is under investigation. It is denied that there was due satisfaction qua arrangement between the parties and this fact was sufficiently covered in the second para of Order XXIII Rule 3 CPC. It is denied that the plaintiff had no role to play in the calculation of arrears. It is reiterated that the plaintiff has fraudulently manipulated the exercise of calculation of arrears to their benefit. It is denied that the exercise of calculation was solely undertaken by defendant no.1 apropos discussion and considerations across various levels of defendant no.1. It is denied that the replacement of cheques, has no strategy behind it. It is denied that the defendant no.1 has calculated and accepted the amount of Rs.150 Crores and as such, it does not lie in the mouth of defendant no.1 to plead absence of ad-idem and/or intention. It is

denied that the parties brought quietus to the instant proceedings which is reflected from the internal file notings of the defendant no.1 itself. It is submitted that internal file notings have to be read in totality and not in isolation and a collective reading would dispel the allegation to the effect that the defendant no.1 wanted to bring quietus to the proceedings, and that too, when it would be to its own detriment. It is reiterated that the plaintiff has played fraud upon the defendant no.1 as also this Hon'ble Court. It is denied that the money was paid as per the calculations derived by the defendant no.1. It is denied that having discussed the issue over many months the defendant no.1 cannot raise an alibi or fraud."

10. Arguments in IA No. 15580/2015 were heard on 15.7.2016 by the Hon'ble Delhi High Court, and Hon'ble High Court reserved the judgment on 15.07.2016.

11. Vide judgment dated 09.08.2016, the Hon'ble Delhi High Court passed the following judgment:

"1. The matter is listed for direction upon mention having been made by the counsel for the plaintiffs.

2. The senior counsel for the plaintiffs, on instructions, states that without prejudice to the rights and contentions of the plaintiffs and without admitting any of the averments made in IA No.15580/2015 of the defendant No.1 New Delhi Municipal Council (NDMC), **the plaintiffs have no objection to the order dated 21st April, 2015 decreeing the suit being set aside / recalled** and the suit being proceeded with in accordance with law, with liberty to the plaintiffs to in support of their suit claim also plead the settlement on the basis of which the suit was earlier decreed.

3. The learned ASG appearing for the defendant no.1 NDMC states that the defendant no.1 NDMC also controverts the allegations made in reply by plaintiffs to IA No.15580/2015 against the defendant no.1 NDMC

and its officials and the plaintiffs should not, in the application pending under Order XII Rule 6 of the CPC, seek decree in the suit on the basis of the settlement leading to the decree which is being set aside.

4. The senior counsel for the plaintiffs on instructions states that the application under Order XII Rule 6 was filed prior to the settlement and the plaintiffs would not be seeking decree on admissions on the basis of settlement.

5. Recording the aforesaid, the order dated 21st April, 2015 decreeing the suit is recalled / set aside.

6. IA No.15580/2015 is disposed of." (emphasis added)

12. Again, M/s C. J. International Hotel Pvt. Ltd. filed an IA. No. in CS(OS) No. 610/2000 on 08th November, 2016 (**copy enclosed**) for changes in its prayer in CS(OS) No. 610/2000 by addition of the following paragraphs:

Addition of Paragraphs in Grounds of Original Suit CS(OS) 610/2000

"9. That in the amended Paragraph 60 after Ground 'Q' the following grounds shall be added:

R. Because the communication dated 2nd March, 2015 was responded to by the Defendant No. 1 vide letter dated 26th March, 2015 and the amount as claimed by the Defendant No. 1 was tendered. This was not only accepted by the Defendant No. 1 but confirmation thereof was sent in writing and the cheques tendered were encashed the effect whereof was a concluded arrangement between the parties which will govern their rights under the License Agreement and the communication dated 2nd March, 2015 and the two letters of 26th March, 2015 detailed above stood incorporated in the License Agreement governing the rights of the parties in future.

- S. *Because the Defendant No. 1's allegation that officers of the Defendant No. 1, including its Chairperson, were not enjoying the power, is not only incorrect but has been raised in bad faith and for the attainment of an end on the pretention of gaining of legitimate goal. The allegations are inconsistent with the conduct and action of the Defendant No. 1 itself, and are, therefore, mere malicious catalysation, which are neither legal nor legitimate.*
- T. *Because the acts of the Defendant No. 1 through its Chairperson and other officers and the entire exercise in relation to arriving at the concluded contract on March, 26, 2015, were performed by them within the scope of their de facto and assumed official authority in the interest of the Defendant No. 1, and are acts of officers of the Defendant No. 1 de jure. They were not for their own benefit and in fact, all their acts were prejudicial to the Plaintiffs. The said doctrines are founded on good sense, sound policy and practical experience. Thus, all their acts are binding on the Defendant No. 1. The acts of the Chairperson and officers have also been ratified, and the amounts received having been retained by the Defendant No. 1, it has benefited by over Rs. 150 crores. Thence, the Plaintiff's actions were meant to bring an end to the lies, as has been the intent of the Plaintiff's.*
- U. *That the Chairman of the Defendant No. 1 is the Chief Executive Officer administering the Act and is vested with all powers. Even under the doctrine of indoor management, the Defendant No. 1 is bound by the acts of its Chairpersons and others acting on their behalf. In any event, the NDMC has never objected to either the receipt of an amount of Rs. 150,92,43,676/- (Rupees one hundred fifty crores, ninety two lacs forty three thousand six hundred seventy six only) and never offered to refund the same.*

The Defendant No.1 claims that the action of Chairperson is not binding. The concluded arrangement between the parties is not

barred by the statute. The arrangement between the parties stands ratified by the NDMC itself. Ratification of the said arrangement by the counsel of the NDMC is both expressed and implied by its conduct. The circumstances warrant a clear inference that the counsel was adopting the actions of its Chairperson and consequently, the ratification by the counsel relates back to the time of inception of the transaction and has a complete retroactive efficacy.

- V. Because an instrumentality of State is bound to be reasonable. Every action of it must be informed by reason. It must be fair and after having offered to the Plaintiffs a calculation and after acceptance thereof by the Plaintiffs and having enriched itself by over Rs. 75 crore as 'interest' contrary to law, cannot now claim anything contrary thereto.
- W. Because the Respondent is presumed to have held its periodical meetings as mandated by the New Delhi Municipal Council Act and has considered all periodically statements of receipts and disbursements including the receipts of Rs. 150,92,43,676/- (Rupees one hundred fifty crores, ninety two lacs forty three thousand six hundred seventy six only) in pursuance of the arrangement detailed above.
- X. The Defendant No. 1 is bound by the said arrangement for it has acquiesced unto the same and in the facts and circumstances of the case the assent can be reasonably inferred more so when it elected to file an application for a limited review and did not press the same.
- Y. Because the Plaintiffs, to the knowledge of the Defendant No.1, borrowed money from HDFC Bank to meet the demand by the Defendant in its letter dated 2nd March, 2015 and in order to meet the deadline suggested by the Defendant No.1. This is also contrary to the stand of the Defendant No.1, itself that the said amount was demanded towards "recovery of arrears in terms of the order dated 18th May, 2001.....". The plaintiff having offered to comply with the said calculations in future too and in order to meet the demand is suffering a great hardship by taking loans



cannot now be prejudiced by the Defendant No.1 seeking to wriggle out of the same. Admissions made by the Defendant No.1 are binding on it entitling the Plaintiffs for the judgement in the suit based on admissions and the arrangement.

Addition of Paragraphs in Prayer of Original Suit No. CS(OS) 610/2000

"In the prayer clause after the sub paragraph 'd' paragraph 'e' would be added:

(e) Decree the suit of the Plaintiffs in terms of letter dated 2nd March 2015 issued by Defendant No.1 to the Plaintiff and letters dated 26th March, 2015 by the Plaintiffs and Defendant No.1 and in terms of the arrangement arrived at and payments made and accepted by the Defendant No.1 and retained by it with a direction that the said communication shall form part of decree."

13. M/s. C.J. International Hotel Pvt. Ltd. is trying to revive the earlier fraud agreement by way of amendments of pleadings in original suit No. CS(OS) 610/2000. Amendment of application was filed under Order VI Rule 17 read with Section 151 of CPC.

14. The ratio of this amendment application is that, if pleas of M/s. C.J. International Pvt. Ltd. are allowed, then it amounts to reviving the fraudulent agreement between the NDMC and M/s. C.J. International Pvt. Ltd. whereby NDMC will be forever losing its revenue of about Rs.600 Crores, besides losing public exchequer's revenue for future generations also to the tune of thousand of Crores of rupees for next 66 years.

15. The intentions of M/s. C.J. International Hotel Pvt. Ltd. in filing amendment application amounts are malafide and of criminal nature.


16. NDMC is a public body acting as the trustee for public exchequer and if its expected revenue is not being realized, it would lead to default in the responsibilities assigned to NDMC to act as trustee to the public interests. In fact, suppressing of information by both the parties were severely criticised in the oral observations made by the Hon'ble High Court on 15.7.2016. M/s. C.J. International Hotel Pvt. Ltd., fearing adverse remarks, promptly took U-turn from its reply and consented to the reviving of old suit

and setting aside the decree dated 21.4.2015 and accordingly the order of 09.8.2016 was passed by the Hon'ble High Court.

17. After about 2 months and after receiving NDMC's demand notice D-1415/SO(Estate-I)/2016 dated 07.11.2016, M/s. C.J. International Hotel Pvt. Ltd. has taken this step of amendment of their original pleadings in the original suit. This tantamount to criminal misrepresentation before the Court, besides contempt of Hon'ble High Court for misguiding.

18. A proper application is being filed before the Hon'ble High Court in consultation with the Office of Ld. Additional Solicitor General of India. This is for information of CBI for taking necessary action.

Yours faithfully,



(TANVIR AHMAD)
Dy. Director (Estate-I)

o/c

Encl: as above.



सत्यमेव जयते

SANJAY JAIN

ADDITIONAL SOLICITOR GENERAL OF INDIA

06.02.2017

To,
Shri Y.V.V.J Rajshekhar,
Director(Estate-I),
NDMC

Dear Sir,

- I. Pursuant to the our meeting this evening, i.e. 06.02.2017, I have examined the draft opinion rendered by Special Counsel, Sh. Akshay Makhija, CGSC on the query as to *"what should be the further course of action to be adopted by NDMC subsequent to the demand notice dated 7th November 2016 issued by this office to M/s C.J International Hotels Ltd and their reply received by this office on 7th November, 2016."*
- II. I have completed the exercise of vetting the said opinion.
- III. Having examined the same from the perspective of law/facts, pending litigation in the Hon'ble Delhi High Court CS(OS) 610/2000, I am of the view that the opinion rendered by Sh. Akshay Makhija is legally in order and ought to be followed.
- IV. However, I may hasten to add that the advice rendered by Sh. Akshay Makhija in para 10 of his opinion would be effective only if both limbs of the advice, i.e. issuing a letter terminating the license deed and moving an application before the Hon'ble Court are undertaken simultaneously.

Yours Sincerely,

Sanjay Jain**Chamber**

443, Lawyers' Chambers
High Court of Delhi, New Delhi-110003
Tel.: 91-11-23389950

Office

AB-83, Shahjahan Road, New Delhi-110003
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LEGAL OPINION

February 6, 2017

QUERIST

NDMC

Through :

Shri Y.V.V.J. Rajshekhar,
Director (Estate - I)

QUERY :

- What should be the further course of action to be adopted by NDMC subsequent to the demand notice dated 7th November, 2016 issued by this office to M/s C. J. International Hotels Limited and their reply received by this office on 7th November, 2016 ?

OPINION :

1. That the Ld. ASG in his previous Opinion dated 26th October, 2016 had opined that the interest of the Querist would be better served in continuing to demand license fee on the basis of the order dated 18th May, 2001. He had further suggested that the arrears of license fee be calculated on the basis of the order dated 18th May, 2001 and a concrete demand be raised immediately. It was also opined that if for a particular period accounts for calculating actual GTO as per the said order are not available, a provisional demand may be made for the relevant months based on the date, which may be duly available.
2. That subsequent thereto the Querist raised a demand vide notice dated 7th November, 2016 wherein a sum of Rs.518.80 crores was ascertained, albeit provisionally based on the audited balance-sheet submitted till 2013-14. It was stated in the demand notice that the said demand would be revised taking into consideration the audited balance sheets for the years 2014-15 and 2015-16. It has also been stated that the said demand is apart from the liability of service tax which M/s C.J. International Hotels Limited (C.J. International) have to pay. Further a caveat was put that the said amount of Rs. 518.80 Crores did not take into consideration the share of NDMC with regard to Agreement entered into between C.J. International and its sub-licensee since the same was

being examined separately. Thus, by the said demand notice, the Querist called upon C.J. International to deposit a sum of Rs.518.80 crores within 30 days failing which necessary action as per the terms of the license deed would be initiated against C.J. International.

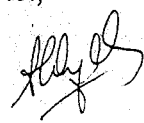
3. That C.J. International has replied to the said demand notice vide their letter dated 6th December, 2016 wherein they have disputed the demand raised by the Querist and alleged that the order dated 18th May, 2001 has been duly complied with and also placed reliance on the fact that the order dated 18th May, 2001 injuncts the Querist from taking coercive steps against the said company subject to compliance with the directions contained in the said order. C.J. International has also placed reliance on the decree passed by the Hon'ble High Court of Delhi based on the letters of the Querist dated 2nd March, 2015 and 26th March, 2015. It is stated that an application for amendment of the plaint has already been filed with effect to understanding and arrangement that has been arrived at between the NDMC and the company. As such, it has been averred that the matter is sub-judice.
4. That C.J. International has further stated that a sum of Rs.4,04,11,12,514/- has been paid as license fee. They have further refuted the calculation and methodology annexed along with the demand notice. According to C.J. International they have complied with the order dated 18th May, 2001
5. That the Hon'ble High Court vide its order dated 18th May, 2001 which was upheld by the Division Bench in FAO (OS) 310/2001 vide its order dated 12th March, 2003, held as under :

" Though it is mentioned in the agreement that it is the gross turnover of the hotel as certified by the certified auditors of the hotel on which the license fee is payable by the plaintiffs, however, prima-facie, in my view, plaintiffs may not be entitled to all the appropriations mentioned by the auditors in their certificates. Prima-facie, it appears to the Court that only that income which is compulsorily payable by the plaintiffs in terms of an agreement which it might have arrived at with the third party or statutory liability necessarily payable may only have been deducted for the purpose of arriving at the gross turnover of the hotel. The franchisee fee payable is 3% by the NDMC to the franchisee and it is only the 97% of the receipts which are received by the hotel. Prima-facie,



this 3% may have to be deducted from the room tariff. Luxury tax on behalf of the Government is also received by the hotel at the time of providing its services to the guests and since this tax does not come in the hands of the hotel, this way also have to be deducted from the gross turnover of the hotel. The other amount which may have to be deducted from out of gross turnover of the hotel as shown in the balance sheets is the credit card commission as the amount which is received by the hotel on payments received through credit cards is net commission charged by the credit card companies. Other component which may have to be deducted from the gross turnover is the interest income on the deposits with banks. The only other receipt to which the plaintiffs may be entitled to deduction is the telephone receipts. The plaintiffs may be said to be acting as agents for the Mahanagar Telephone Nigam Limited while the telecommunication services are provided to the guests. The payment, therefore, which is actually made to the Mahanagar Telephone Nigam Limited may have to be deducted from out of the gross amount which is received by the hotel is taken as its income. Besides these deductions which, prima-facie, may be permissible from the gross turnover of the hotel, in my view, the plaintiffs are not entitled to any other deduction from out of the gross turnover of the hotel. The cost of food and beverages is a part of running of the hotel and cannot, in my opinion, be deducted from out of the gross turnover of the hotel. If this is deducted from the gross turnover, what will be arrived at is the gross income and not the gross turnover. At this stage of deciding this application the Court is not deciding finally as to what would be the gross turnover of the hotel on which it is liable to pay the license fee and it is only a prima-facie view of the Court that the aforesaid outgoings may have to be deducted from the gross turnover as reflected in the balance sheets.

Since, in my opinion, none of the supplementary agreements modified the terms of the agreement of 14th July, 1982 providing for payment of license fee @ 21% of the gross turnover of the hotel,

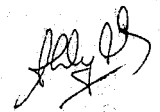


AKSHAY MAKHIJA
ADVOCATES

plaintiffs are, prima-facie, liable to pay license fee @ 21% of the gross turnover filed on record by the plaintiffs and deducting from this turnover the amount to be calculated in terms of the aforesaid paragraph. The plaintiff being prima-facie liable to pay license fee @ 21% of the gross turnover of the hotel, in my opinion, there is no question of the plaintiff suffering irreparable loss in case it has to pay the license fee in terms of the people it requires funds. Public benefit in the present case outweighs the case of the plaintiffs in withholding the amount legitimately due to the NDMC. Balance of convenience clearly lies in favour of the larger public interest rather than in favour of the plaintiffs. They only indulgence to which the plaintiffs may be entitled is to pay the arrears of license fee in instalments. Since the amount which may be calculated on the basis of the above formula may be quite heavy, the plaintiffs will be at liberty to deposit the said amount in four equal quarterly instalments, first of which will be paid within three weeks from the date of this order.

I accordingly, restrain defendant-NDMC, its agents and employees from interfering with the possession of the plaintiffs over the land and building situate at 1, Windsor Place, Janpath, New Delhi in any manner whatsoever and from disconnecting, withholding or causing to be withheld any amenities including water and / or electricity to the plaintiffs hotel, subject to the plaintiffs depositing the entire license fee in the manner directed in this order, calculated @ 21% of the gross turnover of the hotel arrived at on the basis of the observations made in this order. Prima-facie, I am also of the opinion that the plaintiff will also have to pay interest on this amount calculated for the time being @ 10% p.a. "

6. A plain reading of the above order makes it clear that the restraint on the Querist from interfering with the possession of the plaintiffs over land and building as well as from disconnecting, withholding or causing to be withheld any amenity is subject to the plaintiffs therein depositing the



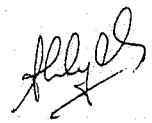
entire license fee in the manner directed vide order dated 18th May, 2001.

7. I have also examined the License Deed dated 14th July, 1982, the relevant clauses of the license deed for the purpose of this Opinion, read as under :

" 9. In the event of the licensee failing to make the payment of license fee, interest due thereupon or any other payment due against the licensee for any reason whatsoever of the amount demanded by the licensor in full or in part, the licensor shall have absolute discretion without further reference to the licensee to revoke / cancel the license with immediate effect for running the said hotel in terms of this license, to take possession of the licensed premises by recourse to law as provided in the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 or any other such law in force, at that time, after revocation of the license and the licensees shall have no claim on the premises but only seek arbitration under clause 55 of this agreement.

11. The license will be liable for termination if at any time the licensee commits any breach of the terms, conditions and covenants on their part to be observed and performed under this licence deed. But before any action is taken in this behalf, the licensor shall communicate in writing to the licensee the breach, if any, of the terms and conditions on their part to be observed and performed under this license deed and it will be open to the licensee to satisfy the licensor that there had in fact been no such alleged breach to the satisfaction of the licensor.

45. In any case, if any of the powers to revoke the license shall have become exercisable but the same if for any reason not exercised, non-exercise thereof shall not constitute a waiver of any of the conditions and the powers hereof and such powers shall be exercisable in the event of any violation of the conditions and the powers hereof shall be exercisable in the event of any future case of default and the



liability of the unaffected besides other rights and remedies of the licensor.

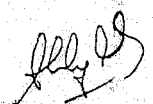
47. In the event of breach of any of the terms & conditions of the license, the licensor shall terminate and revoke the license. On the revocation being made, it shall be the duty of the licensee to quit and vacate the premises without any resistance and obstruction and given the complete control of the premises to the licensor.

48. If the licensee defaults in terms of the licensee fee or ceases to d business in the 5-Star hotel building or commit breach any of the terms of the license fully or otherwise, the licensor may give a notice in writing to the licensee for remedying the breach and if the licensee fails to do so within a reasonable period as may be determined by the licensor, the licensor may terminate license forthwith. "

✓ 8. A reading of the above clauses makes it amply clear that the Querist has the power to terminate the license and takeover possession in the event of breach of any of the terms of the license deed. Clause 9 reproduced above makes it clear that non-payment of license fee is a major default and in the event of such default the Querist shall have absolute discretion without further reference to the licensee, to take possession by taking recourse to the provisions of the Public Premises Act, 1971.

✓ 9. That in my opinion, a reading of the license deed leaves no doubt with respect to the power of the Querist to terminate the license deed on account of a fundamental breach of any of its conditions and especially with respect to non-payment of license fee, which would constitute a fundamental breach.

✓ 10. The Querist has even issued a demand notice dated 7th November, 2016 giving C.J. International an opportunity to remedy the breach. The said company has not availed of opportunity to remedy the breach and has instead, disputed the said demand; though, under normal circumstances there would be no impediment on the power of the Querist to proceed to take possession under the provisions of the Public Premises Act. However, in view of the fact that there is already a litigation pending

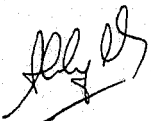


AKSHAY MAKHIJA
ADVOCATES

between the parties and further in view of the fact that there is a conditional restraint order, which is subject to CJ International paying arrears and recurring license fee, nonetheless since the restraint order in place has the effect of restraining the Querist from interfering with possession of CJ international. I would opine that the Querist should take simultaneous steps of :

- (a) issuing a letter terminating the license deed in light of the default of payment of license fee; and
- (b) simultaneously move an application before the High Court of Delhi seeking leave of the Court to take possession in light of the fact that there has been a fundamental breach of the condition upon which the injunction / restraint was granted by the Hon'ble Court and asserting that the injunction ought to be vacated forthwith to enable the Querist to take possession of the premises.
- (c) Make a complete tabulation of the amounts received from CJ International, from the inception of the License till date, and the amount due in accordance with the order dated 18th May 2001. "

It is opined accordingly.


(AKSHAY MAKHIJA)
ADVOCATE

February 6, 2017.

Fwd: Changes by Mr. Jain - CJ International- 15/2/2017

Annexure - XI

From : Akshay Makhija <makhijacgsc@gmail.com>
Subject : Fwd: Changes by Mr. Jain - CJ International- 15/2/2017

Thu, Feb 16, 2017 07:49 AM

1 attachment

To : Raj Shekar Director Estate
<director.estate@ndmc.gov.in>, y v v j rajasekhar
<rajasekhar.energy@gmail.com>

Attached application for modification as vetted and corrected by Mr Jain, Ld ASG.

Regards
Akshay Makhija

Sent from my iPhone

Begin forwarded message:

From: Akshay Makhija <makhijacgsc@gmail.com>
Date: 15 February 2017 at 21:27:53 IST
To: Vidhur S Jain <vidurmohan@gmail.com>
Cc: Akshay Makhija <akshay@makhija.firm.in>
Subject: Changes by Mr. Jain - CJ International- 15/2/2017

Dear Vidur,

Kindly find attached the draft with changes made by Mr. Jain for your perusal.

Regards,

Akshay Makhija
Central Government Standing Counsel

Chamber No 461
Delhi High Court
New Delhi

Tel: 23381256 / 23381444
M : 9810079901

CJ International Vs. NDMC - Application - 7.2.17.docx
23 KB

IN THE HIGH COURT OF DELHI : AT NEW DELHI

I.A. No. _____/2017
IN
CS (OS) No.610/2000

In re :

M/s C. J. International Hotels Ltd. & Ors. ... Plaintiffs

Versus

NDMC & Ors. ... Defendants

APPLICATION, ON BEHALF OF
DEFENDANT/NDMC, UNDER ORDER XXXIX
RULE 4 OF THE CPC READ WITH SECTION 151
OF CPC SEEKING VARIATION OF THE ORDER
DATED 18TH MAY, 2001 PASSED IN I.A.
No.3075/2000

MOST RESPECTFULLY SHOWETH :

1. That the plaintiffs have filed the instant suit seeking permanent injunction against the defendant No.1/NDMC from interfering in the possession of the plaintiff with respect to land and building situated at 1, Windsor Place, Janpath, New Delhi, as also from taking any punitive action in pursuance to the show-cause notices dated 28th June, 1999 and 12th November, 1999. The plaintiffs have also sought performance of alleged promises and assurances of the defendants.
2. That the plaintiffs upon receiving the impugned demand / show-cause notices disputed the computation of the license fee alleging

that certain heads ought not to be included in arriving at the basic figure of annual gross turnover.

3. That the defendant No.1/NDMC filed its written statement in the said suit and has been contesting the same on merits. It is stated that the defendant No.1/NDMC has never taken any decision to compromise or to renege from its original demand towards unpaid license fee. It is stated that the license fee is to be calculated as per clause 3 of the license agreement dated 14th July, 1982 whereunder the plaintiffs are liable to pay a minimum guaranteed amount of Rs.2.68 crores per annum or 21% of the gross turnover of the plaintiffs from the said hotel for every financial year on the basis of balance sheet duly audited by the statutory auditors, whichever is higher.
4. It is submitted that the plaintiffs herein managed to get the instant suit decreed vide order dated 21st April, 2015 on the basis of an alleged compromise. The said order dated 21st April, 2015 was set aside vide order dated 9th August, 2016. It is pertinent to add that the Hon'ble Court, after hearing arguments in detail reserved orders in I.A. No.15580/15 moved by the defendant No.1/NDMC herein for setting aside the order dated 21st April, 2015, decreeing the suit. The matter was mentioned on behalf of the plaintiffs herein, and the Hon'ble Court set aside the order dated 21st April, 2015 at the request of the plaintiffs without passing any order on merits. A

copy of the order dated 9th August, 2016 is annexed hereto as Annexure A-1.

5. That taking undue advantage of the said order dated 9th August, 2016, passed by the court on the basis of request of the plaintiffs, the plaintiffs have now moved this application under Order VI Rule 17 CPC seeking amendment of the plaint on the basis of an alleged compromise that has taken place between the parties as also on the basis of an alleged liberty granted by the Hon'ble Court to move such amendment. It is stated that the applicant/defendant refutes the fact that any such liberty to this effect was either called for/justified in facts or in law or that the same has been granted. In any event, the applicant/defendant is filing its reply to the said application being I.A. No. _____/16 on merits and shall be contesting the same.

6. It is submitted that vide order dated 18th May, 2001 in I.A. No.3075/2000 the following order was passed :

" Though it is mentioned in the agreement that it is the gross turnover of the hotel as certified by the certified auditors of the hotel on which the license fee is payable by the plaintiffs, however, prima-facie, in my view, plaintiffs may not be entitled to all the appropriations mentioned by the auditors in their certificates. Prima-facie, it appears to the Court that only that income which is compulsorily payable by the plaintiffs in terms of an agreement which it might have arrived at with the third party or statutory liability necessarily payable may only have been deducted for the purpose of arriving at the gross turnover of the hotel. The franchisee fee payable is 3% by the NDMC to the franchisee and it is only the 97% of the receipts which are received by the hotel. Prima-facie, this 3% may have to be deducted from

the room tariff. Luxury tax on behalf of the Government is also received by the hotel at the time of providing its services to the guests and since this tax does not come in the hands of the hotel, this way also have to be deducted from the gross turnover of the hotel. The other amount which may have to be deducted from out of gross turnover of the hotel as shown in the balance sheets is the credit card commission as the amount which is received by the hotel on payments received through credit cards is net commission charged by the credit card companies. Other component which may have to be deducted from the gross turnover is the interest income on the deposits with banks. The only other receipt to which the plaintiffs may be entitled to deduction is the telephone receipts. The plaintiffs may be said to be acting as agents for the Mahanagar Telephone Nigam Limited while the telecommunication services are provided to the guests. The payment, therefore, which is actually made to the Mahanagar Telephone Nigam Limited may have to be deducted from out of the gross amount which is received by the hotel is taken as its income. Besides these deductions which, prima-facie, may be permissible from the gross turnover of the hotel, in my view, the plaintiffs are not entitled to any other deduction from out of the gross turnover of the hotel. The cost of food and beverages is a part of running of the hotel and cannot, in my opinion, be deducted from out of the gross turnover of the hotel. If this is deducted from the gross turnover, what will be arrived at is the gross income and not the gross turnover. At this stage of deciding this application the Court is not deciding finally as to what would be the gross turnover of the hotel on which it is liable to pay the license fee and it is only a prima-facie view of the Court that the aforesaid outgoings may have to be deducted from the gross turnover as reflected in the balance sheets.

Since, in my opinion, none of the supplementary agreements modified the terms of the agreement of 14th July, 1982 providing for payment of license fee @ 21% of the gross turnover of the hotel, plaintiffs are, prima-facie, liable to pay license fee @ 21% of the gross turnover filed on record by the plaintiffs and deducting from this turnover the amount to be calculated in terms of the aforesaid paragraph. The plaintiff being prima-facie liable to pay license fee @ 21% of the gross turnover of the hotel, in my opinion, there is no question of the plaintiff suffering irreparable loss in case it has to pay the license fee in terms of the people it requires funds. Public benefit in the present case outweighs the case of the plaintiffs in withholding the amount legitimately due to the NDMC. Balance of convenience clearly lies in favour of the larger public interest rather than in

favour of the plaintiffs. They only indulgence to which the plaintiffs may be entitled is to pay the arrears of license fee in instalments. Since the amount which may be calculated on the basis of the above formula may be quite heavy, the plaintiffs will be at liberty to deposit the said amount in four equal quarterly instalments, first of which will be paid within three weeks from the date of this order.

I accordingly, restrain defendant-NDMC, its agents and employees from interfering with the possession of the plaintiffs over the land and building situate at 1, Windsor Place, Janpath, New Delhi in any manner whatsoever and from disconnecting, withholding or causing to be withheld any amenities including water and / or electricity to the plaintiffs hotel, subject to the plaintiffs depositing the entire license fee in the manner directed in this order, calculated @ 21% of the gross turnover of the hotel arrived at on the basis of the observations made in this order. Prima-facie, I am also of the opinion that the plaintiff will also have to pay interest on this amount calculated for the time being @ 10% p.a. "

7. From the aforestated order it is evident that the restraint on the defendant No.1/NDMC from interfering in the possession of the plaintiffs on land situated at 1, Windsor Place, Janpath, New Delhi, was subject to and conditioned upon the plaintiffs depositing the entire license fee in the manner directed vide order dated 18th May, 2001 calculated @ 21% of the gross turnover of the hotel arrived at on the basis of the observations made in the order dated 18th May, 2001. The condition of deposit the entire sum was the essence of the order and was fundamental to the restrain "from interfering with the possession of the plaintiffs"

8. It is submitted that the plaintiffs have been in consistent and willful default of the order dated 18th May, 2001. The plaintiffs have

miserably failed to comply with the condition imposed on it to sustain the restraint order passed in its favour.

9. It is submitted that despite such open defiance on the part the plaintiffs, the defendant No.1/NDMC gave a reasonable opportunity to the plaintiffs to make amends and accordingly issued a demand notice dated 7th November, 2011 calling upon the plaintiffs to deposit a sum of Rs.518.80 crores based on the balance sheet submitted till 2013-14. It was stated in the said demand notice that the same would be revised taking into consideration the audited balance-sheets of the years 2014-15 and 2015-16. It was also stated that the said demand is apart from the liability of service tax which the plaintiffs have to pay. A further caveat was put that the said amount of Rs.518.80 crores did not take into consideration the share of the defendant No.1/NDMC with regard to agreement entered into by the plaintiffs and its sub-licensee since the same was being examined separately. The plaintiffs were called upon to deposit a sum of Rs.518.80 crores within 30 days; failing which necessary action as per the terms of the license deed would be initiated against it. A copy of the demand dated 7th November, 2016 is annexed hereto as **Annexure A-2**.

10. That the aforesaid demand notice was replied to by the plaintiffs herein vide their letter dated 6th December, 2016 wherein they have disputed the said demand and alleged that the order dated 18th May, 2001 has been duly complied with. Further reliance has been

placed by the plaintiffs on the fact that the order dated 18th May, 2001 injuncts the applicant herein from taking any coercive step against the plaintiffs. The plaintiffs have also placed reliance on the decree passed by this Hon'ble Court based on the letters of the defendant No.1/NDMC dated 2nd March, 2015 and 26th March, 2015. It has been stated that the plaintiffs have moved an application for amendment of the plaint with effect to the understanding and arrangement that has been arrived at between defendant No.1/NDMC and the plaintiffs; as such, it has been averred that the matter is sub-judice. A copy of the reply-letter dated 6th December, 2016 is annexed hereto as **Annexure A-3**.

11. It is the allegation of the plaintiffs herein that it has paid a total sum of Rs.4,04,11,12,514/- as license fee, and as such, the order dated 18th May, 2001 stands complied with. It is submitted that the license fee deposited by the plaintiffs since the inception of the license deed has been tabulated by the defendant No.1/NDMC. Further, the tabulation with respect to the demand of Rs.518.80 crores has also been done in compliance of the order dated 18th May, 2001, a consolidated tabulation of the amount paid by the plaintiffs as also the amount due and payable towards license fee is annexed hereto as **Annexure A-4**.

12. It is submitted that the plaintiffs are in fundamental breach of the terms of the license deed dated 14th July, 1982. The relevant clauses of the license deed are as under :

" 9. In the event of the licensee failing to make the payment of license fee, interest due thereupon or any other payment due against the licensee for any reason whatsoever of the amount demanded by the licensor in full or in part, the licensor shall have absolute discretion without further reference to the licensee to revoke / cancel the license with immediate effect for running the said hotel in terms of this license, to take possession of the licensed premises by recourse to law as provided in the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 or any other such law in force, at that time, after revocation of the license and the licensees shall have no claim on the premises but only seek arbitration under clause 55 of this agreement.

11. The license will be liable for termination if at any time the licensee commits any breach of the terms, conditions and covenants on their part to be observed and performed under this licence deed. But before any action is taken in this behalf, the licensor shall communicate in writing to the licensee the breach, if any, of the terms and conditions on their part to be observed and performed under this license deed and it will be open to the licensee to satisfy the licensor that there had in fact been no such alleged breach to the satisfaction of the licensor.

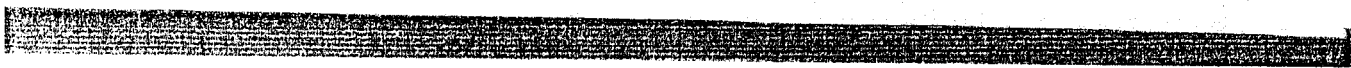
45. In any case, if any of the powers to revoke the license shall have become exercisable but the same if for any reason not exercised, non-exercise thereof shall not constitute a waiver of any of the conditions and the powers hereof and such powers shall be exercisable in the event of any violation of the conditions and the powers hereof shall be exercisable in the event of any future case of default and the liability of the unaffected besides other rights and remedies of the licensor.

47. In the event of breach of any of the terms & conditions of the license, the licensor shall terminate and revoke the license. On the revocation being made, it shall be the duty of the licensee to quit and vacate the premises without any resistance and obstruction and given the complete control of the premises to the licensor.

48. If the licensee defaults in terms of the licensee fee or ceases to d business in the 5-Star hotel building or commit breach any of the terms of the license fully or otherwise, the licensor may give a notice in writing to the licensee for remedying the breach and if the licensee fails to do so within a reasonable period as may be determined by the licensor, the licensor may terminate license forthwith. "

13. A reading of the above clauses makes it amply clear that the NDMC has power to terminate the license and takeover possession in the event of breach of any of the terms of the license deed. Clause 9 reproduced above makes it clear that non-payment of license fee is a major default and in the event of such a default the applicant/NDMC has the absolute discretion without further reference to the plaintiffs / licensees herein to take possession by taking recourse to the provisions of the Public Premises Act, 1971.

14. That though the restraint upon the applicant/NDMC herein is only conditional; however, the applicant/NDMC being a statutory authority does not, in any manner, wish to fall foul of the directions and the orders passed by this Hon'ble Court. Therefore, the applicant/NDMC herein is moving the instant application seeking leave of this Hon'ble Court to take possession of property bearing No.1, Windsor Place, Janpath, New Delhi, from the plaintiffs herein on account of the fundamental breach of the plaintiffs of the license deed, being non-payment of license fee.

15. That the applicant/NDMC has already issued a letter dated _____ terminating the license deed dated 14th July, 1982 on account of default in payment of license fee; a copy of the letter dated _____ is annexed hereto as **Annexure A-5**.
16. It is submitted that the non-payment of license fee under the garb of pendency of the present suit and certain applications for amendment is causing a huge financial loss to the applicant/NDMC, which is a statutory body.
17. That the continuance of the restraint vide order dated 18th May, 2001 is causing undue hardship to the applicant/NDMC and in any event in view of the fact that the plaintiffs herein have failed to comply with the condition upon which such restraint was granted, the plaintiffs cannot be allowed to take shelter of such restraint order any further.
18. That the balance of convenience lies in favour of the applicant/NDMC as against the plaintiffs. The plaintiffs cannot be permitted to make merry at the cost of public exchequer and deprive the defendant from the cash resources, thereby preventing it from carrying out its statutory duties as a public authority in an optimum manner.
19. That the present application is being moved bona-fide and in the interest of justice.
- 

PRAYER :

In view of the submissions made hereinabove, it is most respectfully prayed that the order dated 18th May, 2001 be varied to the extent that it restrains the applicant/NDMC, its agents and employees from interfering in the possession of the plaintiffs over the land and building situate at 1, Windsor Place, Janpath, New Delhi, and to the extent it restrains the applicant/NDMC, its agents and employees from in any manner disconnecting, withholding or causing to be withheld any amenities including water and / or electricity to the plaintiffs' Hotel.

Any other order, direction or relief which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may also be passed in favour of the defendants as against the plaintiffs.

It is prayed accordingly.

DEFENDANT No. 1/NDMC

Through :

(AKSHAY MAKHIJA : ADVOCATE)
Counsel for Defendant No.1/NDMC

NEW DELHI;
February , 2017.

IN THE HIGH COURT OF DELHI : AT NEW DELHI

I.A. No. _____/2017

IN

CS (OS) No.610/2000

In re :

M/s C. J. International Hotels Ltd. & Ors. ... Plaintiffs

Versus

NDMC & Ors. ... Defendants

AFFIDAVIT

Affidavit of _____, working as _____
with the defendant No.1/NDMC, Palika Kendra, Sansad Marg,
New Delhi-110 001

I, the above-named deponent, do herewith solemnly affirm and
declare on oath as under :

1. That I am working as _____ with the defendant
No.1/NDMC, conversant with the facts of the case based on the
records maintained with the NDMC and competent to swear this
affidavit on oath.
2. I have read and understood the contents of the accompanying
application which has been drafted by the counsel on my
instructions and the statement of facts and submissions made
therein are true and correct and the same be read as part and parcel
of this affidavit, to avoid repetition.

DEPONENT

VERIFICATION :

Verified at New Delhi, on this _____ day of February, 2017, that the contents of paras 1 and 2 of the above affidavit are true and correct to my knowledge based on the records maintained with the defendant No.1/NDMC. Nothing is false and nothing material has been concealed therefrom.

DEPONENT

ESTATE-1 DEPARTMENT
NEW DELHI MUNICIPAL COUNCIL
PALIKA KENDRA: NEW DELHI

No. D- /SO(ESTATE-1)2016

Dated: _____

Termination of licence of M/s. CJ International Hotels Ltd. (Le-Meridien)

1. Whereas, a Licence Deed with M/s Pure Drinks was entered on 14.07.1982 w.e.f. 16.04.1981 for a period of 99 years for construction of a (now known as CJ International Hotels Limited) Five Star Hotel on a land measuring about 4.5 acres at 1, Windsor Place. As per the License Deed, the licence fee was agreed to be Rs. 2.68 crores per annum or 21% of annual Gross Turn Over (GTO) of hotel business, whichever was higher; and
2. Whereas upon non-payment of huge outstanding amount towards licence fee, New Delhi Municipal Council had issued Show Cause Notice which was challenged by CJ International before the High Court in CWP No. 7163/99. This was dismissed by the Hon'ble High Court vide order dated 07.03.2000, observing that "Since the matter involves disputed questions of facts the matter cannot be settled in writ petitions and it can be only through proper suit." Further, vide order dated 29.03.2000, while disposing the prayer of the CJ International for extension for stay for a period of 4 weeks, the Hon'ble High Court had extended the stay for another 4 weeks subject to a further payment of Rs. 1 crore towards license fee; and
3. Whereas, CJ International thereafter filed Suit being CS (OS) 610/2000 along with IA 3075/2000, in which IA was disposed off vide order 18.05.2001 whereby Hon'ble Justice S.K. Mahajan was pleased to exclude certain items from calculations of GTO for the purpose of arriving at a figure of licence fee payable by the CJ International to NDMC during the pendency of the Suit; and
4. Whereas, the above order dated 18.05.2001 was challenged before the Division Bench of Hon'ble High Court of Delhi by CJ International, but the Division Bench of

Hon'ble High Court vide its order dated 12.03.2003 in FAO (OS) No. 310/2001 dismissed the appeal of CJ International and upheld the order dated 18.05.2001 while observing as under:

"Having failed to find any prima facie case in favour of the appellant we need not go into the issues of irreparable loss and injury, except to record that being a money claim, prima facie justified as per the licence deed, no injury would be caused if the appellant pays. It can be resituated. On balance of convenience, respondent being a statutory body engaged in providing civic amenities in NDMC area needs the funds to meet its budgetary obligations in each financial year and hence the balance convenience lies in its favour.

We find no infirmity in the impugned order. The appeal stands dismissed. There shall be no order as to costs.

The final mantra: Nothing observed by us shall be taken as final expression on the issues involved in the suit and the learned single judge shall decide the suit on merits based on evidence uninfluenced by our observations." ; and

5. Whereas, the above order dated 12.03.2003 of the Division Bench of Hon'ble High Court of Delhi was not challenged in the Hon'ble Supreme Court and therefore, attained finality, till the final disposal of the suit No. CS(OS) 610/2000; and
6. Whereas, after the orders dated 18.05.2001 and 12.03.2003, CJ International was paying a sum of Rs. 1 Crore per month from 2003-04, which NDMC was accepting without prejudice to its rights and without giving up its rights to recover the balance unpaid amount as per the above interim orders; **and**
7. Whereas, on 10.02.2015 in violation of the above High Court orders, the then officials of NDMC and CJ International, without ensuring that the entire arrears upto date as per the above interim orders were deposited by CJ International and without having the formula of GTO adjudicated by the Hon'ble Court, purported to arrive at an understanding, albeit unauthorizedly and illegally.
8. Whereas there was no basis in fact or in law to waive huge arrears due to a public authority like NDMC, which even up to 10.02.2015 was running into several hundred crores of rupees, coupled with the fact that no decision to settle the dues was taken by the Competent Authority viz. Council of the NDMC in terms of Section 383 of the NDMC Act, 1994, the above proposed understanding was ab-initio illegal and could

not be acted upon, however in spite of such inherent illegality, it appears that CJ International tried to manipulate the court proceedings, as a result of which it proceeded to file a compromise application under Order 23 Rule 3 of C.P.C. without any signature or affidavit on the said application on behalf of NDMC.; and

9. Whereas the said application of CJ International Hotels Limited was disposed off by Hon'ble High Court of Delhi vide order dated 21.04.2015 as under:

"..By the present application it is pointed out that in view of correspondence with the defendant including letter dated 2.3.2015 and 26.3.2015 received from the defendant and communication dated 26.3.2015 written by the plaintiff to the defendant, the matter with the defendant has been sorted out and up to date arrears of license fee of Rs.150,92,43,676/- have been paid to the defendant in satisfaction of the full license dues and interest payable upto the year 2013-14. Learned senior counsel for the plaintiff submits that the plaintiff will continue to abide by the terms of the interim order passed on 18.5.2001 in this suit on the basis of which the defendant has communicated the calculations of the license fee as calculated by the defendant. Learned counsel for the defendant confirms above position. Accordingly, the suit is disposed of in terms of the said satisfaction as stated by the parties.

In view of the satisfaction as recorded above, a decree is passed in terms of the correspondence between the parties which are attached to the application. Suit and all pending applications stand disposed of accordingly" ; and

10. Whereas NDMC, upon learning of the above irregularity and illegality, which had the potential of causing enormous financial loss to it running into hundred of cores of public money, which was sought to be inflicted upon it by CJ International Hotels Limited, without any valid settlement, NDMC moved an application dated 31.7.2015 before the Hon'ble High Court of Delhi, praying for setting aside of the Order dated 21.04.2015, and that the suit be revived and heard on merits; and
11. The said application dated 31.07.2015 registered as IA No. 11580 in CS (OS) 610/2000 was eventually heard at length by the court, where upon the pronouncement of the order was reserved; and
12. Whereas before an order could be pronounced on the said application on merits of the case, plaintiff that is CJ International Hotels Limited approached the Hon'ble Court

and by way of oral mentioning stated that the application filed by NDMC for setting aside of the purported settlement and restoration of original suit be allowed; and

13. Whereas, the following order dated 09.08.2016 therefore passed by the Hon'ble High Court of Delhi:

"1. The matter is listed for direction upon mention having been made by the counsel for the plaintiffs.

2. The senior counsel for the plaintiffs, on instructions, states that without prejudice to the rights and contentions of the plaintiffs and without admitting any of the averments made in IA No.15580/2015 of the defendant No.1 New Delhi Municipal Council (NDMC), the plaintiffs have no objection to the order dated 21st April, 2015 decreeing the suit being set aside / recalled and the suit being proceeded with in accordance with law, with liberty to the plaintiffs to in support of their suit claim also plead the settlement on the basis of which the suit was earlier decreed.

3. The learned ASG appearing for the defendant no.1 NDMC states that the defendant no.1 NDMC also controverts the allegations made in reply by plaintiffs to IA No.15580/2015 against the defendant no.1 NDMC and its officials and the plaintiffs should not, in the application pending under Order XII Rule 6 of the CPC, seek decree in the suit on the basis of the settlement leading to the decree which is being set aside.

4. The senior counsel for the plaintiffs on instructions states that the application under Order XII Rule 6 was filed prior to the settlement and the plaintiffs would not be seeking decree on admissions on the basis of settlement.

5. Recording the aforesaid, the order dated 21st April, 2015 decreeing the suit is recalled / set aside.

6. IA No.15580/2015 is disposed of. CS(OS) No.610/2000

7. The counsels state that the suit was at the stage of recording of the evidence and one of the witnesses of the plaintiffs had already been examined."(emphasis added); and

14. Whereas, in spite of the fact that the interim order dated 18.05.2001 passed in IA No. 3075/2000 got revived pursuant to the above order and is still operative, CJ International Hotels Limited in gross disregard and wilful disobedience did not pay the license fee as contained in the said order, as a result of which on..... after adjusting all the part payments received by CJ International Hotels Limited a sum of Rs.(exclusive of taxes) is due and payable by CJ International Limited; and

15. Whereas, despite such open defiance on the part CJ International Hotels Limited vis-à-vis the license conditions and the interim order mentioned above, which rendered the license determined with immediate effect in terms of Clause 53 of the licence agreement dated 14.7.1982, NDMC gave a reasonable opportunity to CJ International Hotels Limited to make mends and rectify the breach by issuing a demand notice dated 7th November, 2016 calling upon CJ International Hotels Limited to deposit a sum of Rs.518.80 crores based on the balance sheet submitted till 2013-14. It was stated in the said demand notice that the same would be revised taking into consideration the audited balance-sheets of the years 2014-15 and 2015-16. It was also stated that the said demand is apart from the liability of service tax which the CJ International Hotels Limited have to pay. A further caveat was put that the said amount of Rs.518.80 crores did not take into consideration the share of the NDMC with regard to agreement entered into by CJ International Hotels Limited and its sub-licensee since the same was being examined separately. CJ International Hotels Limited were called upon to deposit a sum of Rs.518.80 crores within 30 days; failing which necessary action as per the terms of the license deed would be initiated against it; and
16. Whereas, the afore-stated demand notice was replied to by CJ International Hotels Limited herein vide its letter dated 6th December, 2016 wherein the said demand is disputed claiming the frivolous settlement of Feb-March, 2015 and without providing any statement of account that they have paid up to date arrears of licensee fee as per the directions given in order dated 18th May, 2001; and
17. Whereas, CJ International itself gave an undertaking before the Hon'ble High Court as recorded in the Order dated 09.8.2016 that it would not seek any decree on admission on the basis of the above mentioned frivolous settlement, therefore, the reply of the CJ International is not acceptable; and
18. Whereas, the position which emerges even after the issuance of demand notice and expiry of 30 days from the receipt of the same, is that the default on the part of C.J. International Hotels Ltd. on account of non-payment of license fee continues; the demand raised has not been complied with and C.J. International Hotels Ltd. is in fundamental breach of the license deed dated 14.07.1982, by failing to pay the entire

arrears of license fee, required to be paid by it as per the directions in the order dated 18.05.2001 in CS (OS) No. 610/2000; and

19. Whereas, the allegation of CJ International Hotels Limited herein is that it had paid a total sum of Rs.4,04,11,12,514/- as license fee, and as such, the order dated 18th May, 2001 stands complied with, whereas the license fee deposited by CJ International Hotels Limited since the inception of the license deed is much less than what CJ International is required to pay in compliance with the order dated 18.05.2001, and the arrears have been calculated by the NDMC after giving credit to all the payments tendered and deposited by C.J. International Hotels Ltd.; and

20. Whereas, CJ International Hotels Limited is in fundamental breach of the terms of the license deed dated 14th July, 1982 due to non-payment of arrears against licence fee, which inter-alia provides that:

“9. In the event of the licensee failing to make the payment of license fee, interest due thereupon or any other payment due against the licensee for any reason whatsoever of the amount demanded by the licensor in full or in part, the licensor shall have absolute discretion without further reference to the licensee to revoke / cancel the license with immediate effect for running the said hotel in terms of this license, to take possession of the licensed premises by recourse to law as provided in the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 or any other such law in force, at that time, after revocation of the license and the licensees shall have no claim on the premises but only seek arbitration under clause 55 of this agreement.

11. The license will be liable for termination if at any time the licensee commits any breach of the terms, conditions and covenants on their part to be observed and performed under this licence deed. But before any action is taken in this behalf, the licensor shall communicate in writing to the licensee the breach, if any, of the terms and conditions on their part to be observed and performed under this license deed and it will be open to the licensee to satisfy the licensor that there had in fact been no such alleged breach to the satisfaction of the licensor.

45. In any case, if any of the powers to revoke the license shall have become exercisable but the same if for any reason not exercised, non-exercise thereof shall not constitute a waiver of any of the conditions and the powers hereof and such powers shall be exercisable in the event of any violation of the conditions and the powers hereof shall be exercisable in the event of any future case of default and the liability of the unaffected besides other rights and remedies of the licensor.

47. In the event of breach of any of the terms & conditions of the license, the licensor shall terminate and revoke the license. On the revocation being made, it shall be the duty of the licensee to quit and vacate the premises without any resistance and obstruction and given the complete control of the premises to the licensor.

48. If the licensee defaults in terms of the licensee fee or ceases to do business in the 5-Star hotel building or commit breach any of the terms of the license fully or otherwise, the licensor may give a notice in writing to the licensee for remedying the breach and if the licensee fails to do so within a reasonable period as may be determined by the licensor, the licensor may terminate license forthwith. "

21. Now, therefore, in view of the facts as summarized above, CJ International Hotels Limited, despite being duly notified and being called upon to pay outstanding licence fee and interest as set out in demand notice dated 07.11.2016, failed to pay the arrears of license fee and have thus committed fundamental breach of licence deed dated 14.07.1982 in general and clauses 9,11, 47 & 48 of the licence deed in particular, and such breach has rendered CJ International ineligible to continue in the said premises which is a public premises within the meaning of the Public Premises (Eviction of Unauthorised Occupants) Act,1971; and accordingly the Competent Authority has resolved to declare CJ International continued occupation in the said public premises as unauthorized and terminate the license forthwith with immediate effect; and to file an application before the Estate Officer to initiate proceedings of eviction and recovery under the provisions of Public Premises (Eviction of Unauthorised Occupants) Act,1971 as a result thereof.

22. And, now therefore. C.J. International Hotels Ltd. stands notified that license which was granted to M/s. Pure Drinks(now known as CJ International Hotels Ltd.) vide license deed dated 14.07.982 has been determined with immediate effect and CJ International is no more eligible to occupy the premises at 1, Windsor Place with immediate effect and that henceforth your continued occupation in the said premises (public premises) is unauthorized and therefore, CJ International is requested to handover the peaceful possession of the said premises to NDM, failing which CJ International is liable to be evicted from the said public premises and also pay the arrears of licensee fee and damages in accordance with law

(TANVIR AHMAD)

Dy. Director (Estate - I)

To:

The Chairperson & Managing Director,
C.J. International Hotels Ltd.,
Windsor Place, Janpath

New Delhi

Copy of the information and necessary action to:

1. The Joint Secretary (UT). Ministry of Home Affairs, Govt. of India, North Block, New Delhi.
2. Director(CBI), CBI Headquarter, CGO Complex, New Delhi.

Calculation of Licence Fee Dues as per statement already submitted by the Accounts Department
As per Justice Mahajan Order of C.J. INTERNATIONAL

Financial Year	Demand As per Justice Mahajan Order	Payment made by C.J. International	Balance	Interest	Total Outstanding dues of Licence Fee & Interest
1982-83 To March 2013-14	488,73,87,223	218,74,40,559	269,99,46,664	256,97,68,330	5269714995
April 2014 to Jan 2017	98,43,12,555 + 9,68,68,064 (Service Tax) 596,85,67,842	1049685601+ 754558075 (Interest)+ 2,26,28,279 (1.10.16) 401,43,12,514	2634573618 + 96868064 (Balance S.Tax) 273,14,41,682	3262293121+ 22014364 (Int. On S. Tax) 3284307485	5261191091 (as per statement) 523,85,62,813+ 2,26,28,279= 526,11,91,091

NOTE:

1. Demand for the period upto 2013-14 based on the GTO which was submitted by the Hotel Authorities and Demand for the period of 2014-15, 2015-16 & 2016-17 on provisionally basis and subject to revision on receipt of Audited Annual Statement After period of 2013-14 by C.J. International.
2. Payment amounting to Rs. 2,26,28,279 has already been taken in this statement.
3. Security amounting to Rs. 2,68,00,000 may be treated as Separate i.e. 401,43,12,514 + 2,68,00,000 = 404,11,12,514/-.
4. Service Tax w.e.f. 2007 is yet to be taken and other points will be as per statement submitted notes thereof.

C/S
A. O. (Estate)
NDMC, New Delhi

9/2/17
AAO (E-2)
Estate A/c Branch

1. Proposal as per verbal direction of Director (E-I) on the basis of Justice-S.K. Mahajan dated 18.05.2001.

PROVISIONAL CALCULATION IN R/O C.J. INTERNATIONAL ON THE BASIS OF JUSTICE S.K. MAHAJAN JUDGEMENT

LICENCE FEE ARREAR DETAILS

INTEREST DETAILS

MONTH	OPENING BALANCE	DEMAND	SURC HARG E	SERVICE TAX	TOTAL	C.R. NO.	DATE	AMOUNT PAID	REBAT E ALLD.	BALANCE	SERV ICE TAX PAID	BALANCE SERVICE TAX	INTT DUE	INTT ON SERVICE TAX	INTT PAID	TOTAL INTEREST SERVICE TAX	TOTAL INTEREST	TOTAL LICENCE +INTEREST	GRAND TOTAL INCLUDING SERVICE TAX
THIS CALCULATION IS CONTINUED ON THE BASIS JUSTICE S.K. MAHAJAN ORDER DT.18.05.2001 STATEMENT PREPARED FOR Rs.526.97 CR. ALLOWING DEDUCTION FIVE ITEMS UPTO 2013-14 AND DEMAND FOR THE PERIOD OF 2014-15, 2015-16 & 2016-17 IS ON PROVISIONAL BASIS.																			
AMOUNT CARRIED FORWARD AS PER PREVIOUS STATEMENT																			
Apr-14	2599946664	0	0		2699946664	8703	4-Apr	10000000		2689946664			2569768330				2569768330		
May-14	2689946664	0	0		2689946664	5203	3-May	10000000		2679946664			22416222				2592184552	5282131216	5282131216
Jun-14	2679946664	0	0		2679946664	6441	5-Jun	10000000		2669946664			22332889				2614517441	5294464105	5294464105
Jul-14	2669946664	0	0		2669946664	9785	4-Jul	10000000		2579946664			22249556				2636766997	5306713661	5306713661
						4112	12-Jul	80000000					21499556				2658266552	5238213216	5238213216
Aug-14	2579946664	0	0		2579946664	7650	12-Aug	25000000		2554946664			21291222				2679557774	5234504438	5234504438
Sep-14	2554946664	328104185	0		2883050849	9213	18-Sep	30000000		2853050849			23775424				2703333198	5556384047	5556384047
Oct-14	2853050849	0	0		2853050849	3481	24-Oct	30000000		2823050849			23525424				2726858622	5549909471	5549909471
Nov-14	2823050849	0	0		2823050849	574	27-Nov	30000000		2793050849			23275424				2750134046	5543184895	5543184895
Dec-14	2793050849	0	0		2793050849	6809	26-Dec	30000000		2763050849			23025424				2773159469	5536210318	5536210318
Jan-15	2763050849	0	0		2763050849	1183	28-Jan	30000000		2733050849			22775424				2795934893	5528985742	5528985742
Feb-15	2733050849	0	0		2733050849					2733050849			22775424				2818710317	5551761166	5551761166
Mar-15	2733050849	0	0		2733050849	114	31-Mar	0		2487608924			20730074	754558075			2084882316	4572491240	4572491240
						8503	31-Mar	245441925											
Apr-15	2487608924	0	0		2487608924	3325	16-Apr	300000000		1978365248			16486377				2101368693	4079733941	4079733941
						5539	16-Apr	209243676											
May-15	1978365248	0	0		1978365248					1978365248			16486377				2117855070	4095220318	4095220318
Jun-15	1978365248	0	0		1978365248					1978365248			16486377				2134341447	4112706695	4112706695
Jul-15	1978365248	0	0		1978365248					1978365248			16486377				2150827824	4129193072	4129193072
Aug-15	1978365248	0	0	0	1978365248					1978365248			16486377				2167314201	4145679449	4145679449
Sep-15	1978365248	328104185	0	45934586	2306469433					2306469433	45934586	19220579	689019		689019		2186534780	4493004213	4539627818
Oct-15	2306469433	0	0		2306469433					2306469433	45934586	19220579	689019		1378038		2205755359	4512224792	4559537415
Nov-15	2306469433	0	0	1304349	2306469433					2306469433	47238935	19220579	708584		2086622		2224975937	4531445370	4580770927
Dec-15	2306469433	0	0		2306469433					2306469433	47238935	19220579	708584		2795206		2244196516	4550665949	4600700090
Jan-16	2306469433	0	0		2306469433					2306469433	47238935	19220579	708584		3503790		2263417095	4569886526	4620629252
Feb-16	2306469433	0	0		2306469433					2306469433	47238935	19220579	708584		4212374		2282637673	4589107106	4640558415
Mar-16	2306469433	0	0		2306469433					2306469433	47238935	19220579	944779		5157152		2301858252	4608327685	4660723772
Apr-16	2306469433	0	0		2306469433					2306469433	47238935	19220579	944779		6101931		2321078830	4627548253	4680869129
May-16	2306469433	0	0		2306469433					2306469433	47238935	19220579	944779		7046710		2340299409	4646768842	4701054487
Jun-16	2306469433	0	0	413501	2306469433					2306469433	47652436	19220579	953049		7999759		2359519988	4665989421	4721641615
Jul-16	2306469433	0	0		2306469433					2306469433	47652436	19220579	953049		8952807		2378740566	4685209999	4741815242
Aug-16	2306469433	0	0		2306469433					2306469433	47652436	19220579	953049		9905855		2397961145	4704430578	4761988870
Sep-16	2306469433	328104185	0	49215628	2634573618					2634573618	96868064	21954780	2421702		12327558		2419915925	5054489543	5163685164
Oct-16	2634573618	0	0		2634573618					2634573618	96868064	21954780	2421702		14749259		2441870705	5076444323	5188051546
Nov-16	2634573618	0	0		2634573618					2634573618	96868064	21954780	2421702		17170961		2463825485	5098399103	5212438128
Dec-16	2634573618	0	0		2634573618					2634573618	96868064	21954780	2421702		19592652		2485780265	5120353883	5236814610
Jan-17	2634573618	0	0		2634573618					2634573618	96868064	21954780	2421702		22014364		2507735046	5142308664	5261191091
TOTAL		984312555	0	96868064				104955501	0		0		3262293121	22014364	754558075				

U. D. M. M.
A. O. (Estate)
A. O. (Estate)
A. O. (Estate)

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A. O. (Estate)
A. O. (Estate)

OPENING BALANCE AS ON Apr-14	2609946664 ✓
TOTAL DEMAND UP TO Jan-17	984312555 ✓
LESS PAYMENT RECEIVED UP TO Jan-17	1049685601 ✓
LESS REBATE ALLOWED UP TO Jan-17	0
SURCHARGE UP TO Jan-17	0
BALANCE ARREAR UP TO Jan-17	2634573618 ✓
SERVICE TAX ARREAR UP TO Jan-17	96868064
SERVICE TAX PAID UP TO Jan-17	0
BALANCE SERVICE TAX UP TO Jan-17	96868064 ✓
INTEREST ON SERVICE TAX DUE UP TO Jan-17	22014364
INTEREST DUE UP TO Jan-17	3262293121
INTEREST PAID UPTO Jan-17	754558075
BALANCE INTT. UPTO Jan-17	2507735046
TOTAL ARREAR (DEMAND + INTEREST):	5261191091

NOTES:-

1. SERVICE TAX IS DEDUCTED @ 14% W.E.F. SEP-2015, 14.5% W.E.F. 15-NOV-2015 DUE TO INPOSITION OF SWACH BHARAT CESS @ 0.5% AND 15% W.E.F. JUNE-2016 DUE TO INPOSITION OF KRISHI KALYAN CESS @ 0.5%.

IT IS NOTICED BY AO/AAO THAT SOME OF THE AUDITED BALANCE SHEETS SUBMITTED BY C.J. INTERNATIONAL FOR THE PERIOD 1988-89 TO 2013-14 ARE UNSIGNED. FURTHER, AUDITED BALANCE SHEETS FOR THE PERIOD 1988-89 TO 2013-14 SUBMITTED BY AAO (E-I) HAVE BEEN PROVIDED TO THE CBI (IN ORIGINAL).

3. DEMAND FOR THE PERIOD UP TO 2013-14 IS BASED ON THE GTO WHICH WAS SUBMITTED BY HOTEL AUTHORITIES AND DEMAND FOR THE PERIOD OF 2014-15, 2015-16 & 2016-17 IS ON PROVISIONALLY BASIS AND SUBJECT TO REVISION ON RECEIPT OF AUDITED ANNUAL STATEMENT AFTER THE PERIOD OF 2013-14.

4. SERVICE TAX W.E.F. 2007 AS PER FINANCE DEPARTMENT OF NDMC IS YET TO BE ADDED IN THIS STATEMENT.

5. THE STATEMENT PREPARED IS ON THE PROVISIONAL BASIS AND EFFECT OF AUDITED BALANCE SHEETS WILL BE TAKEN FOR THE YEAR 2014-15 & 2015-16.

6. THE STATEMENT DOES NOT CONTAIN THAT EFFECT ON LICENCE FEE AND ON INTEREST THEREON DUE TO SUBLETTING DONE, IF ANY BY THE C.J. INTERNATIONAL AND THE SAME WILL BE CONSIDERED AFTER A DECISION BY THE COMPETENT AUHTORITY IN THE MATTER.

-3-

C.J. INTERNATIONAL (HOTEL LE-MERIDIEN)
CALCULATION OF LICENCE FEE DUES

(Figures in ')

AS PER JUSTICE MAHAJAN ORDER

2	3	4	5	6	7	8	9
Gross Turnover	Deduction Allowed (5 items)*	Net Turnover *	Licence Fee (21% of Col. 4)	Payment made by C.J. International	Commulative Balance	Interest (10% of Col. 7)	Commulative Total Outstanding dues of Licence Fee & Interest
1982-83	0	0	26800000	0	26800000	2680000	29480000
1983-84	0	0	26800000	0	53600000	5360000	61640000
1984-85	0	0	26800000	0	80400000	8040000	96480000
1985-86	0	0	26800000	0	107200000	10720000	134000000
1986-87	0	0	26800000	0	134000000	13400000	174200000
1987-88	0	0	26800000	0	160800000	16080000	217080000
1988-89	144955730	16625585	128330142	26949330	0	18774933	262804263
1989-90	178375213	23012641	155362572	32626140	5000000	21537547	311967950
1990-91	176471987	22336774	154035213	32250371	20804546	22982115	346095794
1991-92	292908541	31686181	221222450	46456715	54000000	219277509	360480299
1992-93	382023221	41136151	340887070	71586285	54000000	236864194	401753003
1993-94	447906923	52913767	394993156	82945563	54000000	26581276	457282842
1994-95	569958027	67475436	482483491	101321533	54000000	313134250	535917804
1995-96	820531049	122551804	698379245	146659641	79500000	380293931	641106838
1996-97	895627229	99730767	760884452	159785577	72000000	458080508	775701455
1997-98	814300504	85787383	728513221	152987776	100900000	521068264	880796071
1998-99	735925478	53330812	682595667	143366720	100000000	65435004	1079665252
1999-00	675514099	45810342	631793757	132557488	60000000	727082793	1224573360
2000-01	740546749	59258191	691264558	145164527	119900000	762257721	1336364059

AS PER ADVISOR (LAW) FORMULA

1	2	3	4	5	6	7	8	9
Financial Year	Gross Turnover	Deduction Allowed (18 items)**	Net Turnover **	Licence Fee (21% of Col. 4)	Payment made by C.J. International	Commulative Balance	Interest (10% of Col. 7)	Commulative Total Outstanding dues of Licence Fee & Interest (I+II)
1982-83		0	0	26800000	0	26800000	2680000	29480000
1983-84		0	0	26800000	0	53600000	5360000	61640000
1984-85		0	0	26800000	0	80400000	8040000	96480000
1985-86		0	0	26800000	0	107200000	10720000	134000000
1986-87		0	0	26800000	0	134000000	13400000	174200000
1987-88		0	0	26800000	0	160800000	16080000	217080000
1988-89	144955730	65487598	78468132	26800000	0	187600000	18760000	262804000
1989-90	176375213	71415142	104960071	26800000	50000000	209400000	20940000	265360000
1990-91	176471987	78825215	97646772	26800000	20804546	215395354	21539535	337914889
1991-92	292908541	117814335	175094206	36769804	54000000	198165158	19816516	335501209
1992-93	382023221	141246478	240776743	50563179	54000000	194728337	19472834	351537222
1993-94	447906923	161553743	286353180	60134156	54000000	200662505	20066251	377757641
1994-95	569958027	234757849	335160178	70383826	54000000	217246331	21724633	415866100
1995-96	820531049	280803510	540127539	113426783	79500000	251173115	25117311	474910186
1996-97	895627229	276477671	619149558	129671407	72000000	301844522	30184452	555766954
1997-98	814300504	278946395	535354109	112512983	100900000	314457564	31445756	599824787
1998-99	735925478	247507442	488418036	102589628	100000000	407047132	40704713	733119120
1999-00	675514099	258549424	416964675	87541580	60000000	434586712	43458671	804115579
2000-01	740546749	263258100	477288649	99871227	119900000	421459939	42145994	832136800

33/015
J.A. (C)

A.O. (Estate)
NDMC, New Delhi
Estate A/c Branch

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(Figures in ')

AS PER JUSTICE MAHAJAN ORDER

	2	3	4	5	6	7	8	9
	Gross Turnover	Deduction Allowed (5 items)*	Net Turnover **	Licence Fee (21% of Col. 4)	Payment made by C.J. International	Commulative Balance	Interest (10% of Col. 7)	Commulative Total Outstanding dues of Licence Fee & Interest
01-02	652659556	52325255	600434297	126091202	60000000	826348523	82634852	1485290154
02-03	690016963	46356719	643660244	135166651	110000000	852517574	85351757	1555810552
03-04	758789735	41071967	710717748	149250727	144135913	858632388	85863239	1686705515
04-05	866116290	45056494	823016796	172833527	120000000	911465915	91146592	1630768734
05-06	1099030725	61900600	1037130123	217797320	120000000	1069263241	106926324	2029492364
06-07	1423681978	71984345	1355597633	284255503	120000000	1173516744	117351674	2311095761
07-08	1824629033	122490442	1659138591	348509104	120000000	1410127849	141012785	2668721650
08-09	1611577132	125686020	1455589112	312036714	120000000	1602164562	160216456	3040974620
09-10	1650157846	116524024	153363822	322063103	120000000	1694227655	169422766	3423460689
10-11	1844717036	164096239	1680620799	352930368	120000000	2037158632	203715893	3860106860
11-12	1867254609	156550577	1710704032	359247647	120000000	2276405679	227640568	43269595295
12-13	1762135864	164819711	1597317143	335436600	120000000	2491842479	249184246	4791616143
13-14	1737363572	174687565	1562400883	328104185	120000000	2659940664	265994066	5269714995
	24638604162	2131045955	22507558207	487387223	2187440559		2569768330	

AS PER ADVISOR (LAW) FORMULA

	2	3	4	5	6	7	8	9
Financial Year	Gross Turnover	Deduction Allowed (12 items)**	Net Turnover **	Licence Fee (21% of Col. 4)	Payment made by C.J. International	Commulative Balance	Interest (10% of Col. 7)	Commulative Total Outstanding dues of Licence Fee & Interest
2001-02	652659556	276106191	376551365	79075787	60000000	446535726	44653573	686266158
2002-03	690016963	292172049	397844914	83547432	110000000	414093158	41409316	911221907
2003-04	758789735	284924725	463865010	97411652	144135913	367356897	36735690	901233536
2004-05	866116290	341515039	526601251	110586263	120000000	357945160	35794516	927614315
2005-06	1099030725	446857936	652172789	136956286	120000000	374901445	37490145	962060745
2006-07	1423681978	454235400	975346578	204822781	120000000	459724227	45972423	1112855549
2007-08	1824629033	454125939	1350503094	284065650	120000000	514559375	51455938	1340180580
2008-09	1611577132	506280275	1105296857	232112340	120000000	736702216	73670222	152953148
2009-10	1650157846	490618900	1159539046	243593200	120000000	860205416	86020542	1736456889
2010-11	1844717036	583449020	1261269018	264966494	120000000	1005071910	100507191	1803860574
2011-12	1867254609	642875045	1224279564	257068709	120000000	1142170618	114217052	2232176344
2012-13	1762135864	659552825	1102584029	231542845	120000000	1253713264	125371326	2469090317
2013-14	1737363572	666970659	1050412913	22056712	120000000	1354216976	135421698	2795107028
Total	24638604162	8637670516	16000933646	3541740535	2187440559		1350807050	

** As per Annexure -II

SR AO (ESTATE)

F.A.

ure-I

23/7/15
prepared by

33/HLS
AAO (ESTATE)

Signature

A.O. (Estate)
NPMC New Delhi

AAO (Estate)
Estate A/c Branch

Copy of Reso. No. 27 (L-33)
 of
 Council's Ordinary Meeting
 dated 06-03-2017

ITEM NO. 27 (L-33)

1. Name of the Subject:

Proposal for e-auctioning of property situated at plot no. 37, Bhagat Singh Marg, New Delhi, known as Prominent Hotel (The Connaught).

2. Name of the Department:

Estate Department-I

3. Brief History:

- 3.1 The e-auctioning of property at 37, Bhagat Singh Marg, New Delhi earlier known as 'The Connaught' was already approved by the Council vide its Resolution dated 27.6.2016 wherein it was resolved as under:

"We may request the Council for appointment of M/s. SBICAPS as the Transaction Advisor for fixing the reserve price of the 37, Bhagat Singh Marg, New Delhi on nomination basis and framing the documents for the purpose of conducting the auction under GFR 176. The principle laid down by the Council in the case of No. 1, Man Singh Road, New Delhi property may be followed as far as possible for preparing auction documents in e-auctioning the property. Once the reserve price and terms and conditions of e-auction is finalized by SBICAPS, same would be brought before the Council for approval. Chairman, NDMC may be authorized to fix remuneration of SBICAPS for the purpose."

- 3.2 Further, the following was decided by the Council vide Item No. 07(L-27) in its meeting held on 30.11.2016:

"Resolved by the Council to conduct the e-auction of the property situated at 37, Bhagat Singh Marg, New Delhi, earlier known as "The Conngaht" as per the reserve price to be fixed by the SBICAPS, in pursuance to their Service Agreement entered with NDMC and as per Terms and Conditions and Licence Deed placed before the council with the preamble.

It was further resolved by the Council that the department may initiate further necessary action in anticipation of confirmation of the minutes of the Council."

Council Resolution dated 30.11.2016 alongwith annexures is placed as Annexure-I (See pages 760 - 770).

4. SBICAPS Report:

4.1 Pursuance to the decision of the Council, M/s. SBICAPS were pursued, who have finally submitted their report on 28.2.2017. The report of SBCAPS is placed at Annexure-II (See pages 771 - 846) As per SBICAPS report, following is submitted:

- (i) The recommended reserve price is Rs. 47.25 lakhs.
- (ii) The refurbishment period is 9 months from the date of execution of the licence agreement.
- (iii) Bid Security amount/EMD is Rs.47.25 lakh , which can be in the form of Bank Guarantee with validity of 3 months from the date of declaration of successful bidder.
- (iv) Performance Security amount may be equivalent to one year's licence fee. The exact amount of the performance security will depend on the winning bid submitted by the successful bidder. The performance security can be in the form of bank guarantee which will remain valid from commencing of the licence term until 6 months after the expiry of the licence term. The bank guarantee should always be renewed one month prior to its expiry and should always be renewed one month prior to its expiry and should be appropriate amount to cover the licence fee payable over the next 12 months.

5. Recommendations:

We may accept the recommendations submitted by M/s. SBICAPS and conduct e-auction of the property and as per terms and conditions already approved by the Council, copy of which is placed at Annexure-III (See pages 847 - 879). In the terms & conditions, the conditions proposed by SBICAPS may be suitably incorporated in addition to the terms & conditions already approved by the Council. The revised terms and conditions after incorporating the recommendations by SBICAPS is annexed as Annexure-IV (See pages 880 - 884). The entire property was surveyed and vetted by Architect Department and copies of layout plan are enclosed at Annexure-V (See pages 885 - 887).

6. Draft Resolution

To be decided by the Council.

COUNCIL'S DECISION

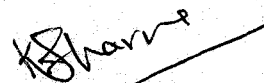
The Council resolved to approve the proposal of the concerned Department for auction of Property situated at plot no. 37, Bhagat Singh Marg, New Delhi as per SBICAPS report with the following changes:

- (i) signing of Integrity Pact by applicants be made mandatory;

- (ii) earnest money deposit be kept equal to three months of reserve price of monthly licence fee;
- (iii) In eligibility conditions, average turnover requirement during each of the last three years for participation in bidding be kept at Rs.18 crore each year, considering the number of rooms in this property vis-à-vis in Asian Hotel;
- (iv) In eligibility conditions, applicant should be a company registered under Companies Act 1956 /2013;
- (v) bidders should not be debarred / blacklisted by any Government or its agencies (Government of India, State Government, Municipality, or their attached office / subordinate office/ Public Sector Undertaking, etc.);
- (vi) moratorium period be kept as nine months;
- (vii) quoted licence fee be increased @10% every three years on compounding basis;
- (viii) the successful e-bidder will be required to deposit three months' advance quoted licence fee to NDMC in form of DD/Bankers Cheque/NEFT/RTGS;
- (ix) in addition to the advance quoted licence fee, the successful e-bidder will be required to deposit Performance Security (interest free security deposit) equal to twelve (12) months quoted monthly licence to NDMC. Performance Security should be valid till one year after the expiry or termination of the licence deed, whichever is earlier. If the Performance Security is deposited in the form of:
 - (a) DD/Bankers Cheque/NEFT/RTGS, it should be replenished two (2) months prior to end of every three year to match the licence fee liabilities for the forthcoming year; or
 - (b) Bank Guarantee, it should have validity period of atleast three (3) years at one time, which should be replaced timely with a Bank Guarantee of an appropriate amount, two (2) months prior to end of every three year to match the licence fee liabilities for the forthcoming year.
- (x) the property be given on 'AS IS WHERE IS BASIS' and the licence fee be charged on the basis of quoted licence fee. In case of any alteration / modification in the property in terms of provisions of chapter 4 of the licence deed, the licence fee of the property be enhanced proportionately w.r.t. built-up area. However, in any case, licence fee should not be decreased at any time;
- (xi) the property be used to run a 4 star Hotel as per classification given by Ministry of Tourism, Government of India with requisite refurbishments/modifications, as mentioned at Notes (a), (b) and (c) on page 16 of the report of the SBICAPs, to run the property as a 4 star hotel. However, such changes be only made after taking prior written approval from the Chief Architect, NDMC in this regard;
- (xii) the terrace area be part of licensed premises, which should be an open area, and therefore should not be used for commercial purposes;
- (xiii) the open area at Ground Floor be used for parking of car/two-wheeler for users of the Hotel, and should not be used for commercial parking purposes;
- (xiv) the basement should only be used for the permissible purposes as per the Master Plan of Delhi;
- (xv) a pre-bid meeting be kept in the auction procedure.

The Council further resolved that the terms and conditions of the e-auction be amended accordingly. The Council also authorizes the Chairperson, NDMC to make necessary changes, as required, in the terms and conditions of e-auction after the pre-bid meeting.

It was also resolved by the Council that the department may initiate further necessary action in anticipation of confirmation of the minutes of the Council.


 For Secretary

New Delhi Municipal Council
 Pankajendra, New Delhi

06.03.2017

ITEM NO. 07 (L-27)

Copy of Reso. No. 07(L-27) - 667/C-
of

Council's Ordinary Meeting

Date: 30-11-2016

1. Name of the Subject:

Proposal in respect of property situated at plot no. 37, Bhagat Singh Marg, New Delhi, known as Prominent Hotel (The Connaught).

2. Name of the Department:

Estate Department-I

3. Brief History:

A. Facts:

- NDMC invited tender for license of Plot No.37, Shaheed Bhagat Singh Marg, New Delhi measuring 0.66 acres for the construction of a youth hostel to meet the requirement of Asian Games in 1982.
- M/s. PSJ Housing Enterprises Pvt. Ltd. submitted the highest bid, which was accepted by NDMC and a licence deed dated 4th November, 1981 was executed by NDMC in favour of M/s. PSJ Housing Enterprises Pvt. Ltd. M/s. PSJ Housing Enterprises Pvt. Ltd. incorporated a public company, M/s. Prominent Hotels Ltd. with the object of taking over the youth hostel.
- On 16th July 1982, NDMC executed a licence deed dated 16th July, 1982 in favour of M/s. Prominent Hotels Ltd. (hereinafter referred as Licensee) for running an international youth hostel for a period of 99 years with effect from 4th November, 1981 subject to increase in licence fee after 33 years.
- The licensee constructed a hotel, instead of a youth hostel, on the licensed plot which was completed in September, 1987.
- In September, 1987, the management of the Licensee changed by the sale of the project by H.R. Sabharwal group to Shri Hari Ram Kakkar, an Afgan national of Indian origin who invested in this project.
- The licence deed provides for a minimum guaranteed annual licence fee of Rs.21,08,040/- or 23% of the annual gross turnover of the licensee, whichever is more, from the date of handing over of the possession i.e. 4th November, 1981.

- Clause 5 of the licence deed dated 16th July, 1982 requires the licensee to furnish the annual audited reports to NDMC to enable the NDMC to calculate the licence fee. However, the licensee defaulted in furnishing the annual audited reports for the year 1991-92 to 1993-94 and therefore, NDMC issued a show cause notice dated 15th June, 1994 to the licensee to show cause why legal action be not initiated for violation/breach of the licence deed in pursuance of which the licensee furnished the annual reports to NDMC, whereupon NDMC computed dues of Rs.3,05,67,355.20 towards the licence fee and interest upto period ending July 1994.
- Vide Show Cause Notice dated 09th September 1994, NDMC called upon the licensee to pay Rs. 3,05,67,355.20 towards the arrears of licence fee and interest upto July, 1994.
- Vide show cause notice dated 23rd December, 1994, NDMC called upon the licensee to show cause as to why the licence be not cancelled on account of non-payment of Rs.3,05,67,355.20.
- On 1st February, 1995, NDMC cancelled the licence due to non-payment of Rs.3,05,67,355.20. Vide letter dated 21st February, 1995, NDMC intimated the cancellation of the licence to the licensee and notified the licensee that their occupation, after the cancellation of the licence, was unauthorized and therefore the licensee should stop the use of the premises.
- NDMC initiated proceedings against the licensee under section 5 and 7 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 for eviction of the Licensee and recovery of licence fee and damages before the Estate Officer, which are pending.

B. District Court proceedings:

- (I) On 28th February, 1995, M/s. Prominent Hotels Ltd. filed a suit for declaration of permanent and mandatory injunction and sought following prayers in the plaint:

"(i) Pass a decree of declaration declaring that the term and condition in the Licence Deed dated 16.7.1982 that the plaintiff company is liable to pay annual license fee for plot numbered as 37-Shaheed Bhagat Singh Marg, New Delhi at the rate of 23% on the annual gross turnover of the business is unlawful and is null and void abinitio.

(ii) *Pass a decree of mandatory injunction directing the NDMC to grant to the plaintiff company for the plot of land referred to in para (i) above, a Floor Area Ratio at the rate of 250.*

(iii) *Pass a decree of permanent injunction restraining the defendant NDMC from in any manner interfering, obstructing and otherwise affecting the supply of water, electricity and other amenities provided to the plaintiff's premises at 37, Shaheed Bhagat Singh Marg, New Delhi.*

(iv) *Pass a decree of permanent injunction restraining the defendant NDMC from in any manner re-entering into the plaintiff's premises at 37, Shaheed Bhagat Singh Marg, New Delhi taking any action pursuant to order of cancellation dated 21.2.1995 of Licence Deed dated 16.7.1982."*

- !!) NDMC defended the case stating that contentions of the hotel cannot be allowed as the licence of the property is cancelled and the licensee is an unauthorized occupant. Grievance in respect of FAR is misconceived, the licensee is running a hotel instead of a youth hostel and conversion of youth hostel into 4/5 Star hotel was never approved by NDMC. The District Court(Trial Court) decreed the Suit of the Licencee vide judgement dated 22.11.2013 holding therein that the licence deed dated 16.7.1982 cannot be revoked and it is not terminable. Further, the Trial Court had allowed certain incentives on reductions in respect of Gross Turn Over(GTO). Further, the Trial Court declared that Clause 3 of the licence deed dated 16.7.1982 is arbitrary, unreasonable and unjust. Accordingly, the Trial court had given relief to the licensee i.e. Prominent Hotels by setting aside the cancellation order dated 21.2.1995 and directed NDMC to renegotiate the terms particularly clause 3 of the licence deed.

C. High Court proceedings:

- (i) NDMC challenged the judgement dated 22.11.2013 by preferring RFA 78/2014. The Hon'ble High Court of Delhi vide its order dated 11.9.2015 had set-aside the order of the Trial Court and observed as under:

"9.4.....The licensee has given the highest bid in respect of the licence fee which has been accepted. In that view of the matter, NDMC had no control whatsoever in fixing the licence fee and therefore, the licensee cannot raise any objection with respect to the licence fee fixed on the basis of highest bid.

"9.5. In commercial contracts entered into with open eyes, there cannot be variation to the terms of a concluded contract which has already been acted upon....."

"9.9. The licensee has become unauthorized occupant after the cancellation/termination of the licence and cannot be permitted to challenge the terms of the licence deed that too when the licensee has derived the benefit from the allotment of the licensed premises for such a long time."

"9.13. With respect to the licensee's plea of comparison with other hotels, the licensee is not entitled to any benefit as the allotment was done by the tender and admittedly, there was no discrimination in the bidding process.....".

"11.1 Section 15 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as "Public Premises Act") bars the jurisdiction of the Civil Court to entertain any suit or proceedings in respect of the eviction of any person, who is in unauthorized occupation of the public premises as well as for recovery of arrears of rent, damages and interest payable by such person."

"15. The licence deed dated 16th July, 1982 does not suffer from any arbitrariness. Under Section 141(2) of the NDMC Act, NDMC is entitled to adopt a procedure by which it can get maximum return on its properties as held by Supreme Court in Aggarwal & Modi Enterprises Pvt. Ltd V. New Delhi Municipal Council(2007) 8 SCC 75....."

"25.8. This is a classic case in which the licensee instituted a frivolous suit in the year 1995 to challenge the terms of the licence deed relating to the payment of licence fee to NDMC and succeeded in obtaining an interim order. The licensee did not lead any evidence despite number of opportunities granted and therefore, the evidence was closed as back as on 10th April, 2002 and the case was listed for final arguments. However, the licensee did not let the Court to proceed with the final arguments and kept on filing one frivolous application after the other and in this manner, the licensee dragged the suit for more than 18 years. In the meantime, the NDMC's claims of licence fee which was to the

tune of Rs.3.5 Crores in 1995 have crossed more than Rs.100 Crores. The licensee's suit was clearly barred by well settled law. However, the licensee misled the learned Trial Court and succeeded in obtaining the impugned judgement in utter disregard of the well settled law and thereby avoided the liability of more than Rs.100 Crores."

"27.11.1. On 12th July, 2010, the licensee filed an application for impleading Union of India, L&DO, Ministry of Works and Housing as parties on the ground that the land belonged to the L&DO and NDMC was not the owner of the land in question. This application was dismissed on 24th July, 2010 on various grounds, inter alia, that the licensee is stopped from challenging the title of NDMC under section 116 of the Evidence Act.".....

"29.13. Dishonest and unnecessary litigations are a huge strain on the judicial system. The Courts are continued to be flooded with litigation with false and incoherent pleas and tainted evidence led by the parties. The judicial system in the country is choked and such litigants are consuming courts' time for a wrong cause.".....

"30.1. Prayer(i) of the suit seeking declaration of clause 3 of the licence deed dated 16th July, 1982 as null and void ab initio, is barred by well settled law laid by the Supreme Court.".....

"30.5. With respect to prayer(ii) of the suit seeking mandatory injunction for increase of FAR from 100 to 250, there was no cause of action in various of licensee and against the NDMC.".....

"30.11 The licensee misled the Trial Court to disregard Section 15 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 to pass a decree restraining the NDMC from re-entering the suit property and taking any action in pursuance of order of cancellation dated 21st February, 1995 and for restraining them from disconnecting electricity, water and other amenities."

"31.12. The decree of permanent injunction passed by the Trial Court is hereby set aside."

"30.27. In view of the clear expression of law recorded in judgements discussed above, without any divergence of view whatsoever, I have no other alternative but to conclude the Licensee's suit for declaration, mandatory and permanent injunction was not maintainable and it amounts to gross abuse and misuse of the process of law. The submissions advanced by learned senior counsel for the licensee asserting the maintainability of the suit are devoid of any merit and are rejected."

"30.32 The conclusion arrived at by the Trial Court are nothing but sheer perversity and contradiction in terms. Even common sense, reason and ordinary prudence would commend for rejecting the claim of the licensee."

"30.33. The manner in which the Trial court has chosen to decree the suit not only demonstrates perversity of approach, but per se proves flagrant violation of the principles of law. The principles of well settled law are found to have been observed more in their breach."

"30.37. For the reasons discussed hereinabove, the appeal is allowed. The licensee's suit was not maintainable. The Trial Court had no jurisdiction in this matter. The impugned judgement and decree are non-est and therefore set aside. The licensee's suit is dismissed with costs of Rs.5,00,000/- to be paid by the licensee to NDMC within two months. All pending applications are disposed of.

"30.38. This Court is constrained to hold that the licensee made a false claim, dragged the case for years by filing on application after the other and misled the Court on law as well as facts. The licensee did not puruse the proceedings honestly before the Trial Court."

"30.41. The licensee has no respect for truth and has polluted the pure fountain of justice with tainted hands. The licensee has played tricks by delaying the proceedings before the Trial Court for more than 18 years. The licensee has interfered with the administration of justice. This case warrants strict action to be taken. It is a fit case for ordering inquiry or initiating proceedings for contempt of Court. However, the action against the licensee is deferred for two weeks to enable the licensee to introspect and file

an undertaking to abide by the terms of the licence deed dated 16th July, 1982 and not to resort to any frivolous proceedings/action in future. Since this appeal is being disposed of, the licensee shall file his undertaking before the Writ Court in WP(C) No.1629/2015. In the event of the failure of the licensee to file such an undertaking within two weeks, NDMC is permitted to initiate proceedings for criminal contempt against the licensee."

"30.42. The Estate Officer is directed to expedite the proceedings under section 5 and Section 7 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and endeavor to decide the same within six months. The Estate Officer shall not permit the licensee to re-agitate the finding of this Court."

D. Special Leave Petition before the Supreme Court:

An SLP(Nos. 32021-32024/2015) was filed by M/s Prominent Hotels Ltd. challenging the order of Delhi High Court dated 11.9.2015 in RFA No. 78/2014, which was dismissed by the Hon'ble Supreme Court.

E. Proceedings before the Estate Officer:

- (i) The proceedings before the Estate Officer were being conducted as per the above directions of the Hon'ble Delhi High Court vide its orders dated 11.9.2015. As per the directions, the proceedings were to be completed on or before 11.3.2016 (i.e. within 6 months from the date of order). Counsel for NDMC Sh. Nilesh Sawhney alongwith Joint Director(Estate-I) represented the matter before the Estate Officer (late) Sh. M.M. Khan. During the course of hearings, the case of NDMC was presented before the Estate Officer keeping in view the above directions of the High Court. However, M/s. Prominent Hotels Ltd. used to seek frequent adjournments on false pretext i.e. on medical grounds of counsel, witness and going out of station etc. The NDMC advocate objected to number of frivolous applications filed by the licensee, referring the deadline given by the Hon'ble Delhi High Court. Various applications were filed by the licensee as an attempt to derail the proceedings so that

the same is not culminated within the stipulated period as directed by the Hon'ble Delhi High Court.

- (ii) Parallely, when the period of 6 months was about to be completed and the order was not passed by the Estate Officer, another order of High Court dated 9.3.2016 was received on the petition of Prominent Hotels wherein the Prominent Hotel tried to delay the matter further. However, the Hon'ble High Court vide its order dated 9.3.2016 had given the direction, which is as under:

"15. In these circumstances, though disposing of the petition recording the aforesaid, I deem it appropriate to direct the proceedings before the Estate Officer to be taken on a day to day basis and to be positively concluded on or before 31st May, 2016. Both parties are directed not to take adjournments before the Estate Officer and the Estate Officer to positively comply with the directions as hereby issued."

"16. As far as the plea of the petitioner of the licence fee being determined in accordance with the directions contained in the dicta of this Court in C.J. International Hotels is concerned, all that can be observed is that it will be open to the petitioner to urge all contentions to contend so before the Estate Officer and it will be open to the respondent NDMC to contend that the said plea has already been decided and has attained finality and cannot be reopened now."

- iii) It has been ensured by the representatives of NDMC before the Estate Officer that all these facts were brought on record of Estate Officer as pleadings and final arguments were addressed by both the parties on 13.5.2016. Parties were directed to file written submissions, if any, latest by 17.5.2016.

F. Other developments related to the case:

- (i) The Hon'ble High Court of Delhi vide orders dated 02.2.2015 had granted stay against the order dated 22.11.2013 of the District Court (Tees Hazari). On the advice of NDMC's counsel and the

with the approval of the Competent Authority, NDMC, the electricity/water supply to Prominent Hotel got disconnected on 09.2.2015. Further, the premises of Prominent Hotel (The Connaught) located at 37, Shaheed Bhagat Singh Marg was got sealed on 16.2.2015.

(ii) The property was de-sealed as per orders of Hon'ble High Court of Delhi dated 20.2.2015. The order of the High Court states as under:

"In the meantime, the respondent (NDMC) is directed to de-seal the premises forthwith to enable the guests of the petitioner and the petition to remove their belongings."

(iii) A CM (No.19657/2016) was filed by NDMC for clarification of order dated 20.2.2015 to the effect that NDMC is entitled to re-seal the property. The Hon'ble High Court of Delhi vide order dated 20.5.2016 stated and clarified as under:

"7. According to me, the order dated 20th February, 2015 is clearly of temporary de-sealing only and could not possibly have allowed the writ petition itself on that date."

"8. Accordingly, it is clarified that the order dated 20th February 2015 was of temporary de-sealing only with the property to be re-sealed, as it was prior to the institution of the petition."

(iv) The case under Public Premises Act 1971 of 'NDMC Vs. Prominent Hotels Ltd.' was assigned to (late) Sh. M.M. Khan, Dy. Law Officer as he was one of the five notified Estate Officers under the PP Act 1971. As per the orders of Delhi High Court dated 11.9.2015 in RFA No. 78/2014, he had to hear and decide the case under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 by 31st May 2016. On 13.5.2016, a hearing was taken place before his Court and the parties were given a final chance to give their arguments and submit their written submissions latest by 17.5.2016. M/s. Prominent Hotels, which is dragging the case and not keen to have the matter settled, with ulterior motives had kept on filing vicious litigation both before the Estate Officer as well as before the High Court of Delhi. The department is successful in

preventing its design in Delhi High Court where it had rejected any compromise in the hearing that had taken place on 29th April 2016 and 16th May 2016. Shri M.M.Khan was shot dead near his residence on 16.05.2016. Delhi Police have cracked the case within 24 hours and arrested Sh. Ramesh Kakkar, Managing Director of Prominent Hotels Ltd.

4. Present status of the case:

(i) After receiving the order dated 20.5.2016 of Delhi High Court, the NDMC property at 37, Shaheed Bhagat Singh know as Prominent Hotel was sealed at around 9.00 PM on 20.5.2016 by the NDMC in the presence of Delhi Police.

(ii) Since a Public Sector Bank (Bank of India) was operating from the hotel premises, they had requested a week's time for removing their belonging and documents etc. from the site. The bank was allowed to take out their belongings by temporarily de-sealing the portion of premises from where they were operating. The entire premises was re-sealed on 23.5.2016.

(iii) A Criminal contempt petition has been moved against M/s. Prominent Hotels Ltd. in accordance with the directions of the Hon'ble High Court dated 11.9.2015.

(iv) The case under section 5 & 7 of the PP Act, 1971 for eviction and recovery has been transferred to new Estate officer Sh. Murari Lal Sharma with request to decide the matter at the earliest.

5. Earlier Council Resolution:

The Council vide its decision dated 27.6.2016 has taken the following decision;

"We may request the Council for appointment of M/s. SBICAPS as the Transaction Advisor for fixing the reserve price of the 37, Bhagat Singh Marg, New Delhi on nomination basis and framing the documents for the purpose of conducting the auction under GFR 176. The principle laid down by the Council in the case of No. 1, Man Singh Road, New Delhi property may be followed as far as possible for preparing auction documents in e-auctioning the property. Once the reserve price and terms and conditions of e-auction is finalized by SBICAPS, same would be brought before the Council for approval. Chairman, NDMC may be authorized to fix remuneration of SBICAPS for the purpose."

6. Conclusion of Eviction Proceedings:

There is no legal hurdle to go ahead with the auction process as the subject matter was dismissed by the Hon'ble Supreme Court as stated above. The Estate Officer vide Order dated 05.8.2016 in case no. 8/153/2000/EO has passed the eviction order against the erstwhile licensee M/s. Prominent Hotels Ltd. and thereafter NDMC has taken over the possession of the premises on 31.8.2016. Subsequently, Service Agreement was entered with SBICAPS on 11.11.2016 pursuant to the decision of the Council dated 27.6.2016 for fixing of reserve price of this hotel property. SBICAPS is in the process of fixing the reserve price.

7. Recommendations:

NDMC may conduct the e-auction of the property situated at 37, Bhagat Singh Marg, New Delhi earlier known as "The Connaught" as per the reserve price to be fixed by the SBICAPS in pursuance to their Service Agreement entered with NDMC and as per Terms and Conditions (Annexure-I, see pages 83 - 85) and Licence Deed (Annexure-II, see pages 86 - 116). Draft terms & conditions and Licence Deed was already finalized in consultation with the Finance Department in the context of property situated at 37, Shaheed Bhagat Singh Marg, New Delhi earlier known as Prominent Hotel (The Connaught).

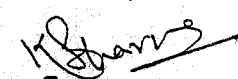
8. Draft Resolution

To be decided by the Council.

COUNCIL'S DECISION

Resolved by the Council to conduct the e-auction of the property situated at 37, Bhagat Singh Marg, New Delhi, earlier known as "The Connaught" as per the reserve price to be fixed by the SBICAPS, in pursuance to their Service Agreement entered with NDMC and as per Terms and Conditions and Licence Deed placed before the Council with the preamble.

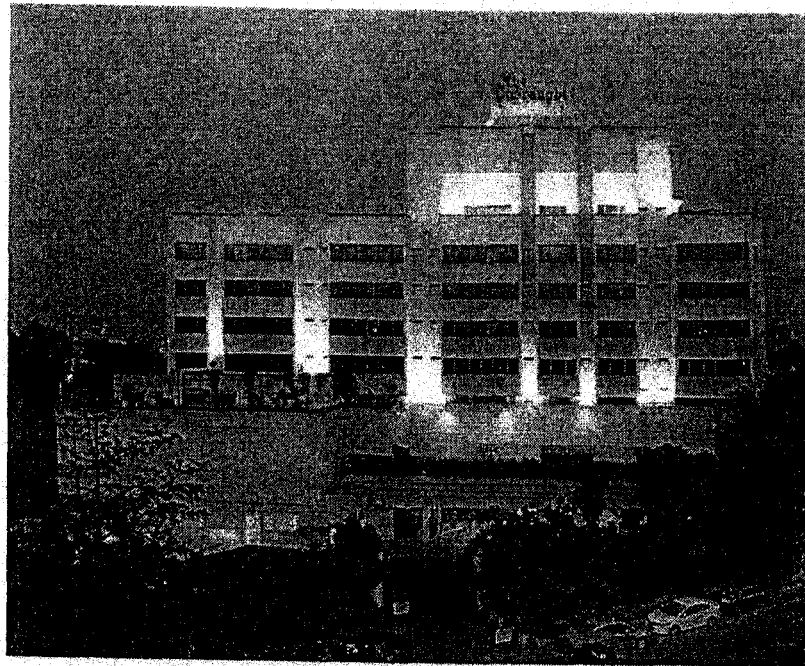
It was further resolved by the Council that the department may initiate further necessary action in anticipation of confirmation of the minutes of the Council.


For Secretary
New Delhi Municipal Council
New Delhi

7/1

**Determination of Reserve Price
for Auctioning of Licence Rights
of the Property at
Plot No. 37, Shaheed Bhagat Singh Marg, New Delhi**

Final Report



Prepared for
New Delhi Municipal Council
(Strictly Private and Confidential)

Sole Advisor



SBI Capital Markets Limited
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LIST OF ABBREVIATIONS

ARR	: Average Room Rate
CAGR	: Compound Annual Growth Rate
DCF	: Discounted Cash Flow
DDA	: Delhi Development Authority
EBITDA	: Earnings Before Interest, Tax, Depreciation and Amortization
FAR	: Floor Area Ratio
FTAs	: Foreign Tourist Arrivals
GoI	: Government of India
MoT	: Ministry of Tourism
NCR	: National Capital Region
NCT	: National Capital Territory of Delhi
NDMC	: New Delhi Municipal Council
OR	: Occupancy Rate
PAT	: Profit After Tax
RBSA	: RBSA Valuation Advisors LLP
RCC	: Reinforced Cement Concrete
RevPAR	: Revenue Per Available Room
SBICAP	: SBI Capital Markets Limited
SFT/ Sq.ft.	: Square feet
WACC	: Weighted Average Cost of Capital
y-o-y	: Year on year

1 Executive Summary

New Delhi Municipal Council (NDMC) is planning to undertake the auction of the licence rights of the property located at Plot No. 37, Shaheed Bhagat Singh Marg, New Delhi (the "Property"). NDMC has appointed SBI Capital Markets Ltd. to determine the reserve price at which the licence rights of the Property may be put up for auction.

1.1 About NDMC

NDMC looks after the municipal administration of a portion of the National Capital Territory of Delhi, generally described as Lutyen's Delhi which is spread over an area of 47.74 sq. km. NDMC operates under the provisions of New Delhi Municipal Council Act, 1994 and is responsible for water supply, health, education, estate, roads, sanitation etc. in its area.

1.2 Background

NDMC owns¹ Plot No. 37, on Shaheed Bhagat Singh Marg, New Delhi - 110001. NDMC gave the above mentioned plot on licence to PSJ Housing Enterprise Pvt. Ltd. on November 4, 1981 to use the plot for the construction and operation of a youth hostel. PSJ Housing Enterprise Pvt. Ltd. was required under the licence deed to form a public limited company and get the licence transferred to the so formed public limited company. Accordingly, PSJ Housing Enterprise Pvt. Ltd. formed a public limited company with the name of Prominent Hotels Ltd. and transferred the licence to Prominent Hotels Ltd. via another fresh licence deed on July 16, 1982.

As per the licence deed, Prominent Hotels Ltd. was allowed to construct and run a youth hostel for a period of 99 years with effect from November 4, 1981. Due to non-payment of licence fee as per the terms of the licence deed, the licence was cancelled by NDMC on February 21, 1995. Subsequently, litigations continued between NDMC and Prominent Hotels Ltd. The Court of Estate Officer, NDMC vide its order dated August 5, 2016 for Case No. 8/153/2000/EO allowed NDMC to take possession of the Property and to use the premise or to allot it to any other entity/ person as per the rules and policies of NDMC.

NDMC appointed SBICAP to suggest the appropriate reserve price at which the licence rights of the Property may be put up for auction.

¹ NDMC generally obtains plots/ land parcels on lease from Land and Development Office (LDO), Ministry of Urban Development. However for all practical purposes, it is usually assumed that NDMC owns the plots/land parcels.

1.3 Approach

SBI Capital Markets Ltd. appointed a specialized valuation consultant, RBSA Valuation Advisors LLP for the purpose of this exercise. SBI Capital Markets Ltd. and RBSA Valuation Advisors LLP visited the property on November 11, 2016 along with NDMC executives.

Based on the information provided by NDMC monthly licence fee has been estimated assuming that the prospective licensee will operate the Property as a star Hotel for a period of 30 years. Primary and secondary market research data have also been used in the estimation of reserve price.

1.4 Estimated Reserve Price

SBICAP computed the monthly licence fee to be used as the reserve price for the auction by two approaches, the Market Comparison Method and the Discounted Cash Flow Method. The respective amounts are as follows:

Table 1-1: Estimated Monthly Licence Fee

Description	Amount (Rs. Lakh/month)
Monthly Licence Fee as per the Market Comparison Method	45.49
Monthly Licence Fee as per the Discounted Cash Flow Method*	49.00
Simple Average of the above two methods	47.25
* Assuming a refurbishment period of 9 months. Details regarding the same are provided in Section 6.3.1	

The two methodologies mentioned above are equally acceptable and one does not have any specific advantage over the other. Accordingly, the simple average of the monthly rentals derived from the two methods stated above i.e. Rs. 47.25 lakh per month may be considered as the reserve price for the auction of the licence rights of the Property.

1.5 Other Commercial Terms

Adequate bid security/ Earnest Money Deposit (EMD) may be sought from bidders participating in the auction of the licence rights to safeguard the licencor's interest against fraudulent practices of the bidders, alteration in the bid or any other defaults by the bidder. Accordingly, a bid security equal to one month's licence fee amount of Rs. 47.25 lakh may be considered appropriate. Performance security provides a safeguard to the interest of the licencor against any default or non-performance of obligations by the licensee during the licence term. It should ideally be valid for a period beyond the licence term so that the licensee fulfils all the contractual obligations. To adequately safeguard NDMC's interests, a performance security equivalent to one year's licence fee as per the bid submitted by the winning bidder may be considered appropriate.

2 Introduction

2.1 About NDMC

Three urban local bodies viz. the Municipal Corporation of Delhi, New Delhi Municipal Council (NDMC) and the Cantonment Board look after the municipal functions of the National Capital Territory (NCT) of Delhi. NDMC looks after the municipal administration of the important area of the territory that is generally described as Lutyen's Delhi, spread over an area of 47.74 sq. km which consists of approximately 3% of the area and population of NCT. The area comprises of Rashtrapati Bhawan, Parliament House, Supreme Court, North and South Blocks and also all the diplomatic missions. NDMC is governed by the Chairperson appointed by the Central Government in consultation with the Chief Minister of Delhi. NDMC operates under the provisions of New Delhi Municipal Council Act, 1994 and is responsible for water supply, health, education, estate, roads, sanitation etc. in its area.

2.2 Brief Background

NDMC owns Plot No. 37, on Shaheed Bhagat Singh Marg, New Delhi - 110001. The plot is centrally located with close proximity to railway stations, metro stations, market complexes, hospitals and various private and Government offices.

NDMC had auctioned the licence rights to build and operate a youth hostel on the above mentioned plot. PSJ Housing Enterprise Pvt. Ltd. had submitted the highest bid and was accepted by NDMC as the highest bidder. Consequently, NDMC licenced the plot to PSJ Housing Enterprise Pvt. Ltd. on November 4, 1981 to use the plot for the construction and operation of a youth hostel.

PSJ Housing Enterprise Pvt. Ltd. was required under the terms of the licence to form a public limited company and get the licence transferred to the so formed public limited company. Accordingly, PSJ Housing Enterprise Pvt. Ltd. formed a public limited company with the name of Prominent Hotels Ltd. and transferred the licence to Prominent Hotels Ltd. via another fresh licence deed on July 16, 1982.

As per the licence deed, Prominent Hotels Ltd., was to construct and operate a youth hostel for a period of 99 years with effect from November 4, 1981. Prominent Hotels Ltd., instead constructed and operated a luxury hotel on the same plot. Subsequently, due to non-payment of appropriate licence fee as per the terms of the licence deed, the licence was cancelled by NDMC on February 21, 1995.

Subsequently, litigations continued between NDMC and Prominent Hotels Ltd. The Court of Estate Officer, NDMC vide its order dated August 5, 2016 for Case No. 8/153/2000/EO allowed NDMC to take possession of the Property and to use the premise or to allot it to any

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other entity/ person as per the rules and policies of NDMC. The Property is currently under NDMC's possession.

For the purpose of this exercise, it has been assumed that the subject property has a clear and marketable title and is free from any legal and physical encumbrances, disputes, claims and other statutory liabilities. Further, it has been assumed that the subject property has received requisite planning approvals and clearances from appropriate local authorities and complies with local development control regulations. No legal advice regarding the title and ownership of the subject property has been obtained while estimating the reserve price of licence rights of the Property.

NDMC now proposes to auction the licence rights of the Property through an open auction process and has appointed SBI Capital Markets Ltd. ("SBICAP") to determine an appropriate reserve price of the licence rights of the Property.

2.3 Appointment of SBI Capital Markets Ltd.

SBICAP has been appointed by NDMC vide an Offer Letter dated November 11, 2016 as its Advisor for determining the appropriate reserve price for the auction of the licence rights of the Property. The broad scope of services of SBICAP is as follows:

- a. Study and evaluate valuation models prevalent in the industry such as Income Capitalization Approach, Market Comparison Approach, Cost Approach etc., to adopt appropriate valuation model(s).
- b. Select suitable valuation models in consultation with NDMC and carry out calculations based on the selected model using suitable assumptions along with justifications.
- c. Determining appropriate reserve price for the licence rights of the Property.

The above exercise will culminate in a report with a recommendation of appropriate monthly licence fee.

2.4 Appointment of Sub-Consultant

SBICAP has engaged the services of RBSA Valuation Advisors LLP (the "Sub-Consultant") as a sub-consultant to assist in determining the reserve price for auction of the licence rights of the Property. The Sub-Consultant is an independent valuation advisory firm. The broad scope of services of the Sub-Consultant is as follows.

- a. Outline suitable metrics/ models for estimation of licence fee with detailed reasoning/ justification supporting the model to be adopted.
- b. Carry out estimation of licence fee by evaluating the market demand, analysing the economics and projecting the income and expense for the property for the period of the licence.

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The Sub-consultant outlined the proper metrics and models to be adopted for the estimation of an appropriate reserve price and provided estimates of appropriate reserve price of the licence rights of the Property.

2.5 Approach to Estimating of Reserve Price

In order to estimate the appropriate reserve price of the licence rights of the Property, the Property's location and its present condition were observed. Based on the above information, a suitable method was selected for estimating the appropriate reserve price at which the licence rights of Property could be auctioned. NDMC proposes to auction the licence rights of the Property, with the Property to be operated as a hotel. Therefore, for the purpose of this exercise it has been assumed that the Property would be operated as a hotel by the prospective bidder.

SBICAP and the Sub-Consultant visited the Property on November 11, 2016 along with NDMC executives to inspect the present condition of the Property. Site plans of the Property were also obtained from NDMC and the same were analysed. The details of the property as identified from the site visits and study of the site plans and methodology adapted for estimating the reserve price of the licence rights of the Property are detailed in the subsequent sections.

3 Details of the Property

3.1 Location and Connectivity

The Property is a hotel building located on Plot No. 37, Shaheed Bhagat Singh Marg, New Delhi - 110001. As per the Master Plan for Delhi - 2021, the plot falls under the commercial category. The plot is located in a prime area of New Delhi and Shaheed Bhagat Singh Marg runs along the Northern side of the plot while the Jain Mandir Marg lies on the West and South Western Side of the Property. The Shivaji Stadium lies to the East of the Property.

The Property is well connected to the nearest airport, railway station and bus terminus. The distances to the nearest transportation hubs are provided below:

Table 3-1: Distance of Major Transportation Hubs from the Property

Name	Approximate Distance
Indira Gandhi International Airport	19 km
New Delhi Railway Station	3 km
Old Delhi Railway Station	7 km
Sarai Rohilla Railway Station	6 km
Hazrat Nizamuddin Railway Station	10 km
Maharana Pratap Interstate Bus Terminal (Also known as Kashmere Gate ISBT)	8 km
Vir Haqiqat Rai Interstate Bus Terminal (Also known as Sarai Kale Khan ISBT)	11 km
Swami Vivekananda Interstate Bus Terminal (Also known as Anand Vihar ISBT)	15 km
Rajiv Chowk Metro Station	1 km
Ramkrishna Ashram	2 km
Shivaji Stadium Metro Station	1 km
Source: Shortest route as per Google Maps, rounded to the nearest km.	

3.2 Details of Land Area and Buildings²

The plot area as per the Licence Deed dated July 16, 1982 is 0.66 acres. A building exists on the plot, construction of which was completed around September 1987³. The building is a Reinforced Cement Concrete (RCC) structure and consists of seven floors and a basement. The building has a total built up area of 6,265.03 m² including the terrace and basement. The plot area being 2,740.12 m² the Floor Area Ratio (FAR) for the Property works out to be 174.33% with 36% ground coverage. The floor wise built up area is provided below:

² The details of Built up Area and usage of the same is based on the building plan provided by NDMC.

³ The completion date of the construction of the building has been taken from the the Order from Court of the Estate Officer of NDMC dated August 5, 2016.

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Table 3-2: Floor wise breakup of Built-up Area

Floor Description	Built-up Area	
	(m ²)	(ft ²)
Basement	1,358.26	14,620.31
Ground Floor	987.67	10,631.28
First Floor	407.08	4,381.81
Second Floor	689.29	7,419.52
Third Floor	611.77	6,585.09
Fourth Floor	611.77	6,585.09
Fifth Floor	611.77	6,585.09
Sixth Floor	611.77	6,585.09
Seventh Floor	245.64	2,644.07
Terrace	130.01	1,399.47
Total	6,265.03	67,436.83
Conversion Factor: 1 m ² = 10.764 ft ²		
<i>Note: Two sets of building plans were provided by NDMC. The basement area as mentioned in these two plans were different. Taking a conservative approach, the lower of the two figures have been taken for this exercise.</i>		

Details of usage of built up area floor wise is provided below:

Table 3-3: Usage Details of Built up Area

Floor Description	Usage of Built up Area
Basement	1 banquet hall
Ground Floor	1 banquet hall, 1 swimming pool, 9 shops, reception area, lobby and open parking space
First Floor	1 banquet hall and 1 bar
Second Floor	4 standard rooms, 2 Spas and one large office space with 4 cabins
Third Floor	19 rooms (18 standard rooms and 1 suite)
Fourth Floor	19 rooms (18 standard rooms and 1 suite)
Fifth Floor	19 rooms (18 standard rooms and 1 suite)
Sixth Floor	19 rooms (18 standard rooms and 1 suite)
Seventh Floor	5 rooms (4 standard rooms and 1 suite)
Terrace	Used for utilities like generators, air conditioning etc.

During the site visit, the room nomenclature indicated that the Property had 103 rooms (based on numbering on the room doors). However, the building plan indicates that there are 85 rooms in the building. The estimation of licence fee for the Property has been done by assuming that the Property has 85 rooms. 80 of these rooms were standard rooms while the remaining 5 were suites. The building had two passenger elevators and one service elevator.

Based on the usage details of the built-up area, it has been assumed that the Property will have the following three revenue streams:

- a. Revenue from renting out of shops

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- b. Revenue from renting out of the office space
- c. Revenue from hotel operations

Accordingly, the total built-up area has been segregated into the above three categories based on the details available in the building plan. The carpet area of shops and office space has been determined from the building plan. The built-up area of shops and office space has been calculated from the carpet area based on the assumption that generally the ratio of carpet area to built-up area is 1:1.10. The details are provided below:

Table 3-4: Built up Area of Shops and Office Space

Description	Carpet Area (in ft ²)	Built-up Area (in ft ²)
8 shops with area of 67.25 ft ² on Ground Floor	538.00	591.80
1 large shop with area of 152.25 ft ² on Ground Floor	152.25	167.48
Total Area for Shops	690.25	759.28
1 Office space with 4 cabins on second floor	2,284.55	2,513.00

The built-up area available for the hotel segment has been calculated as under:

Table 3-5: Breakup of Built up Area for Revenue Streams

Description	Built up Area (in ft ²)
Total Built up Area of the Property	67,436.83
Less: Built up Area of Terrace	(1,399.47)
Built up Area available for revenue generation	66,037.36
Built up Area for the 9 shops	759.28
Built up Area for the office space	2,513.00
Built up Area for the Hotel (85 rooms and banquets)	62,765.08

The section below details how the hotel has been classified to enable revenue estimation for the hotel.

3.3 Classification of the Hotel

Ministry of Tourism (MoT) in an effort to standardize the facilities and services offered by hotels has formulated a voluntary scheme for classification/ re-classification of operational hotels into different categories. The Scheme No. 8-Th-I (3)/2013 issued on December 16, 2014 applies to all existing classified hotels and those seeking classification/ re-classification.

The Ministry of Tourism classifies hotels into two broad categories with various sub-categories as listed under:

- a. **Star Category Hotels:** Sub-categories under this include 5 Star Deluxe, 5 Star with alcohol service, 5 Star without alcohol service, 4 Star with alcohol service, 4 Star without alcohol service, 3 Star, 2 Star and 1 Star

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- b. **Heritage Category Hotels:** Sub-categories under this include Heritage Grand, Heritage Classic with alcohol service, Heritage Classic without alcohol service and Heritage Basic

A hotel must meet certain criteria to be classified into any of the above categories. The MoT guidelines list certain criteria as mandatory while some are mentioned as desirable. The criteria are based on room and bathroom sizes, facilities and services provided, type of restaurant, kitchen/food production area, safety/security features, communication facilities provided etc.

Since NDMC proposes to auction the licence rights of the Property to a new owner, it has been assumed that the new owner may invest and decide upon the facilities and services to be provided in the Property and accordingly the classification of the Property may be decided.

To arrive at the reserve price of the licence rights of the Property, an estimation of room rentals was necessary. Room rentals are dependent among other parameters on the hotel category. A preliminary analysis of the Property against the MoT's guidelines has been carried out to determine under which Star Category Hotel this Property may be classified and the likely room rentals have been estimated accordingly. The Property does not qualify as a heritage property, thus an analysis for Heritage Category has not been conducted. The results of the analysis against major requirements of MoT is tabulated below:

Table 3-6: Major Requirements for Star Category Hotels as per MoT

Description of Requirement	Requirement for Hotel Category			Subject Property's Status
	Three Star	Four Star	Five Star	
24 hr. lifts for buildings higher than three floors.	Necessary	Necessary	Necessary	Meets the criteria.
Minimum 10 lettable rooms, all rooms with outside windows/ ventilation	Necessary	Necessary	Necessary	Meets the criteria.
Minimum Size of bedroom excluding bathroom in Sq.ft.	130 ft ²	140 ft ²	200 ft ²	161 ft ²
Air-Conditioning -% of Rooms	50%	100%	100%	Meets the criteria. ^a
Suites (2 % of room block with a minimum of 1 suite room)	Desirable	Necessary	Necessary	Meets the criteria.
Number of rooms with attached bathrooms	All	All	All	Meets the criteria.
Minimum Size of Bathroom in Sq.ft.	36	36	45	Meets the criteria of 4 Star Hotel. ^b
Lounge or seating area in the lobby and reception facility	Necessary	Necessary	Necessary	Meets the criteria.

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Description of Requirement	Requirement for Hotel Category			Subject Property's Status
	Three Star	Four Star	Five Star	
Food & Beverage - 1 Multi-cuisine Restaurant cum coffee shop open from 7 a.m. to 11 p.m and 24 Hr. room service)	Necessary	Necessary. Additionally for hotels in Grade A cities, one Speciality Restaurant is also necessary.	Necessary. Additionally for hotels in Grade A cities one Speciality Restaurant is also necessary.	Meets the criteria. ^c
Bar	Desirable	Necessary	Necessary	Meets the criteria.
Swimming Pool	Desirable	Desirable	Necessary	Meets the criteria.
Notes: a - During the site visit it was not possible to ascertain if a central air conditioning system was installed in the Property. The building plan did not have an electrical layout or HVAC diagram so the same could not be verified from the building plan either. However, it is reasonable to assume that the operator will be able to install an air conditioning system while refurbishing the Property. b - 8 rooms had attached bathrooms that were smaller than the minimum stipulated size. It has been assumed that those rooms will be modified to increase the bathroom size to meet the minimum size criteria. c - The Property has 1 bar and 3 restaurant cum banquet halls. It has been assumed that the operator will convert one of those into a Speciality Restaurant				

The analysis above indicates that the Property can be operated as a 4 Star Hotel after certain modifications and refurbishments. Details of methods which can be used to estimate the reserve price of the licence rights of the Property and their suitability to estimate the reserve price is provided in the subsequent chapters.

4 Determination of the Reserve Price

4.1 Methods for Calculation of Reserve Price

Various methodologies exist for estimation of the appropriate value of a property. In the following table, two methodologies prevalent to determine of value of properties are described, along with their relevance:

Table 4-1: Standard Methodologies to Determine Reserve Price

Details	Relevance to the Property
Method A: Market Comparison Method or the Direct Comparison Method	
The comparable properties which are available on rent are identified and market survey is conducted to know the market rental of identified properties. Further, appropriate adjustments are carried out with respect to various factors such as location, physical conditions, demand and supply, type and age of construction etc. to determine market rental of the identified property in case it has factors similar to that of the subject Property. Appropriate weightages are assumed to the various identified properties totalling up to 100% and weighted average rentals are calculated to determine the market rent of the subject Property.	This technique takes into account the price parties are willing to pay or have paid in the recent past for similar properties in an open and competitive market. This method is often considered the most preferred to arrive at the market rental as this takes into account the present market conditions of the property.
Method B: Income Method - Discounted Cash Flows Method (DCF)	
Discounted cash flow analysis relates the value of an asset to the present value of expected future cash flows from that asset. This method consists of projecting future cash flows, deriving a suitable discount rate and applying this rate to the future cash flows. Resulting valuation is the sum of the discounted future cash flows over the useful life of the asset.	This method is often considered the most preferred tool to value businesses as it is based on projected, future operating cash flows rather than historical operating performance. The financial performance of the hotel is projected for the period of licence to determine the expected future cash flows from the hotel operations. An appropriate discount rate is then determined and all future cash flows are discounted to arrive at the value of the hotel. A suitable capitalization rate dependent on the property type and property location is applied to the value of the hotel to arrive at the periodic licence fee.
Method C: Income Method - Income Capitalization Method (DCF)	
Income capitalization involves capitalizing a 'normalized' single year net income estimated by an appropriate market based yield.	This approach is best utilized with stable revenue producing assets, whereby there is little volatility in the net annual income. Hotel revenues are generally seasonal in nature and dependent on various social and economic factors, hence normalizing a single year's income for the entire

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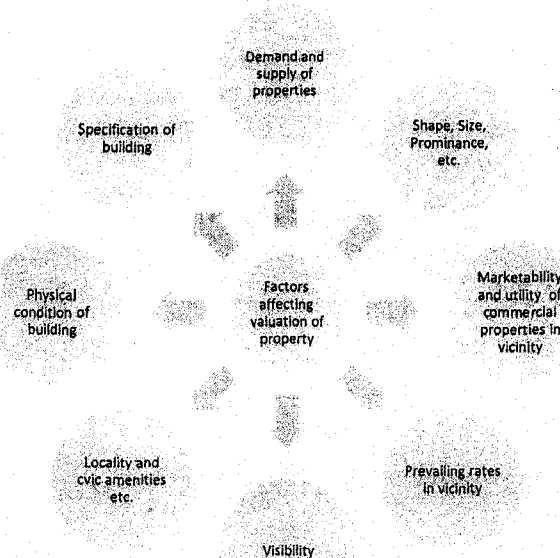
Details	Relevance to the Property
	licence period is not an appropriate way to estimate the future income from a hotel.
Method D: Replacement Cost Method	
This method involves determining the estimated value of the replacement cost of the asset.	This method is usually used to determine the sale price of an asset and not preferred to determine the market rental. Therefore, the method is not used.

Two out of the four methods mentioned above are more suitable for estimating the reserve price of licence rights of the Property. The two methods are the Market Comparison Method and the Discounted Cash Flow Method. Brief details of the two methods are detailed in the section below.

4.2 The Market Comparison Method

The Market Comparison Method arrives at a value of the subject property by comparing it to value of similar properties available in the market for rent/sale and adjusting for factors that affect the valuation of a property. The value of a property in the market is dependent on multiple factors as depicted in the figure below:

Figure 4-1: Factors Affecting the Market Value of a Property



The adjustments of value of comparable properties are necessary, as no two properties are identical. As a first step, a market survey is conducted to identify comparable properties available for rent/lease/licencing/ sale as the case may be. Once such properties are identified, they are studied and appropriate adjustments are made to the rentals for each such property to account for their similarities/ differences. Some examples of such

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adjustment factors are property rights (leasehold vs. freehold), availability of amenities and utilities at the sites, visibility of the property, construction quality, access to the property from main roads etc.

A weighted average rental of the comparable properties is then calculated depending on the relevance to the identified comparable property to the subject property. Detailed estimation of the reserve price of the licence rights of the Property by the Market Comparison Method is detailed in Section 6.2 of this Report.

4.3 Discounted Cash Flow (DCF) Method

Under the DCF method, the value of the subject property is estimated by discounting the expected free cash flows from the property over its useful life. For this, the expected free cash flows from the property are estimated by analysing key revenue streams and major cost heads (both capital costs and operational costs). For a hotel, key factors that affect the revenue streams are occupancy rates, room rentals, restaurant & banquet income, rental income, direct & indirect expenses etc.

Once the free cash flow from the property over its useful life have been estimated the same are discounted back to the present date to arrive at the net present value. The discount rate to be applied is determined by considering factors like the risk free rate of return, market equity risk premium, country risk premium and capital structure. The capitalization rate (which is the expected rate of return on the real estate investment) is then applied on the net present value to arrive at the market rental to be paid by the lessee to NDMC.

The subsequent section looks into key aspects of the hospitality industry in India with particular focus on NCR with a view to analyse future occupancy rates and average room rentals and other trends.

5 Outlook of the Hotel Industry in India

5.1 Brief Background

As per Crisil Research (CRISIL), the premium segment hotels in India have been under stress since 2008-09. In 2008-09 and 2009-10, demand growth had remained stunted due to the Mumbai terror attacks and a slowdown in economic activity. Occupancy Rate (OR) in 2008-09 fell to 63% from 73% as witnessed in 2007-08. In 2009-10, the ORs further fell to 63%. A brief recovery of the economy had led to the improvement in demand during 2010-11 and ORs had increased by 3% while Average Room Rate (ARR) had improved by 2% compare to the previous year.

Subsequently, the Indian hotel industry witnessed another downturn due to reduced demand and huge supply additions. Room inventory grew by a CAGR of 11% between 2011-12 and 2012-13 while demand grew by 8% during the same period. The OR fell to a low of 59% in 2013-14 as growth in room inventory continued to outpace the demand for rooms. During the same period, ARRs declined by nearly 6% CAGR to around Rs. 7,250 amidst a challenging macro-economic environment.

In 2014-15 the industry's OR increased marginally to 60% and further to 62% in 2015-16, because of moderation in supply growth and a pick-up in demand. In 2015-16, demand has been estimated to increase by 11% vis-à-vis a supply growth of 7%. The ARRs, however, are estimated to remain stable as competition continues to remain intense. The ORs are expected to increase marginally to 64% in 2016-17 and to 66% in 2019-20 as demand is likely to grow marginally better than inventory growth over the next four years.

The addition of supply and the slowdown in demand during 2013-14 and 2015-16 led to a stable ARR. With the improvement in demand, intense competition and demonetisation, ARR growth is likely to be steady in 2016-17. In the long term, players' aggressive expansion will restrict ARR growth to a mere 2% compound annual growth rate (CAGR) by 2019-20.

5.2 Impact of Demonetization on the Hotel Industry

As per CRISIL, there is likely to be marginal short term impact on the hotel segment due to demonetisation. As per CRISIL, premium hotels have not witnessed any major effect of demonetisation. The reason for this could be attributed to the fact that bookings are premium hotels are either prepaid or paid via cheques/bank transfers or credit/debit cards. Similarly, business destinations were not much effected by demonetisation.

On the other hand, leisure destinations, such as Goa, Jaipur and Agra, saw a few event cancellations. Goa witnessed a slight fall in the OR in November, largely due to cancellations of offline/spot bookings. Delhi witnessed a few cancellations in deals on account of last minute cancellations post the demonetisation effect. Social event cancellations in Noida have

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also led to a reduction in the OR. Hotels across India have witnessed a marginal drop in the Food and Beverage (F&B) segment. However, over the next calendar year, the industry foresees a healthy growth in occupancy, especially due to planned events across business destinations.

5.3 Future Outlook

Revenue Per Available Room (RevPAR) is a key performance metric for the hotel industry. In 2015-16 RevPAR of premium hotels in India increased 4%, with the OR improving and the ARR remaining largely stable. The aggregate RevPAR of 12 Indian cities are expected to increase over the next four years, as demand conditions improve and addition to rooms reduces. Growth in room demand is expected to remain strong over the next four years and supply addition is expected to be moderate, leading to an increase in RevPAR. CRISIL projects domestic room demand to grow at a CAGR of 8% in 2016-17, versus 10% growth in 2015-16, due to an improvement in the business sentiment as well as a continuous increase in supply.

Room demand in business destinations - Mumbai, National Capital Region (NCR), Kolkata, Chennai, Pune, Ahmedabad, Hyderabad and Bengaluru - is expected to grow 9% during the year, while supply is estimated to rise by 5%. While the OR is expected to increase to 64%, the ARR is expected to increase by 1% due to intense competition. As a result, RevPAR in business destinations is expected to increase 5% in 2016-17 to Rs 4,600.

Room demand in leisure destinations - Goa, Agra, Jaipur and Kerala (Kochi, Kovalam and Thiruvananthapuram) - is expected to outpace room supply (expected to increase 1%) by growing 5% on-year in 2016-17. While the OR in leisure destinations is expected to grow marginally in 2016-17 to 64%, the ARR is expected to remain stable on-year at Rs 6,800 on account of demonetisation leading to a drop in offline bookings and cancellation of a few planned events. Consequently, RevPAR for leisure destinations is expected to grow only marginally at 2% to Rs 4,350 in 2016-17. Key past trends and expected outlook of the Indian hotel industry is summarized below:

Table 5-1: Trends in ARR and OR of Hotels in India

Time Frame	Average ARR (Rs/Day)	ARR Growth (CAGR)	Average OR (%)
Historic Data			
2007-08 to 2012-13	8,350	-5%	64%
2013-14	7,000	-5%	59%
2014-15	7,050	1%	60%
2015-16	7,100	1%	62%
Future Outlook			
Short Term (2016-17)	7,100	0%	64%
Medium Term (up to 2019-20)	7,350	2%	64%

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The data for the month of November 2016 across various key destinations in India looks fairly promising:

Table 5-2: OR and AR of Hotels in major Metros during November 2016

Destination	Occupancy Rate (%)	ARR (Rs. Day)
Goa	80%	8,775
Jaipur	80%	8,200
Mumbai	78%	9,950
Hyderabad	76%	5,600
Kolkata	75%	7,100
NCR	74%	10,250
Pune	73%	5,800
Chennai	73%	4,550
Agra	72%	9,200
Bangalore	72%	7,700
Ahmedabad	72%	4,950
Kerala	62%	8,400

5.4 Delhi - NCR's Hotel Outlook

The NCR market includes premium hotels in Delhi, Gurugram and Noida (including Greater Noida). Premium hotels in Delhi cater to leisure and business travellers, with the former having a 25-30% share. The premium hotels in Gurugram and Noida cater largely to business travellers. As of 2015-16, Delhi constituted 69% share of the 15,560 premium segment rooms in the NCR, followed by Gurugram (25%) and Noida (6%).

In Delhi, room demand is from diverse segments, such as banks, financial services companies and public sector undertakings. Diplomatic and government related travel also drives room demand, as Delhi is the national capital. In Gurugram, room demand is mainly from sectors such as IT/ITeS, telecom and the automobile sectors. Gurugram has developed into an IT/ITeS hub, with companies like Genpact, Cognizant, Convergys, HCL, TCS etc. having offices in the city. Auto majors such as Maruti Suzuki, Hero Motors and telecom companies Bharti Airtel, Nokia, Alcatel Lucent etc. are also based in the city. Room demand in Noida is mainly driven by IT/ITeS sector. Companies like Adobe, IBM, Tech Mahindra, Dell etc. also have offices in Noida.

Aggregate RevPAR in the NCR is projected to increase 4% on-year in 2016-17 vis-a-vis a rise of 7% in 2015-16, on account of demand outpacing supply. Overall, OR in the NCR is expected to edge higher by 3%, whereas ARR is projected to slip 1%. Among micro-markets, Gurugram is expected to witness the sharpest rise in occupancy with occupancy rates increasing by 7% and reaching 65%, followed by Delhi CBD (with an increase of 5%) at 71%. ORs in Noida are expected to remain flat at 52%.

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In terms of ARR, the Delhi airport micro-market will likely remain flat because of intensifying competition (Pullman and Novotel became operational along with Andaz by Hyatt).

Key past trends and expected outlook of the hotel industry in Delhi - NCR is summarized below:

Table 5-3: Past Trends and Future Outlook of Hotels in Delhi - NCR

Time Frame	Average ARR (Rs./Day)	ARR Growth (CAGR)	Average OR (%)
Historic Data			
2007-08 to 2012-13	10,500	-4%	69%
2013-14	8,850	-4%	60%
2014-15	8,650	-2%	61%
2015-16	8,550	-1%	61%
Future Outlook			
Short Term (2016-17)	8,500	-1%	64%
Medium Term (up to 2019-20)	8,600	1%	63%
<i>Source: Crisil Research</i>			

Over the next four years, although supply additions in the NCR will be considerable (a little over 4,000 rooms to be added on a base of 15,560 rooms), demand growth is expected to match pace, following an expected improvement in the macro-economic environment.

5.5 Delhi - NCR's Advantage for Foreign Tourist Arrivals

The Indira Gandhi International Airport is one of the key international airports in the country and the closest international airport to Agra. This along with the rich historical heritage of Delhi itself, provides Delhi with a natural advantage to tap on to the lucrative foreign tourist segment.

Foreign Tourist Arrivals (FTAs) have been steadily increasing over the last three years. During the period January- November 2016 there were 78.53 lakh FTAs with a growth of 10.4% as compared to the FTAs of 71.14 lakh during January- November 2015. The FTAs in January- November 2015 had similarly shown a growth of 4.7% over the FTAs during January- November 2014. The major ports of arrival for FTAs in till November 2016 were as follows:

Table 5-4: Share of FTAs across three main International Airports

Airport	Share of FTAs
Delhi Airport	33%
Mumbai Airport	19%
Chennai Airport	7%

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The recently launched e-visa scheme continues to witness strong response from tourists; with nearly 15% of the total FTAs arrived by availing visa through this scheme. During the same period, the number of countries for which the facility is available has also been increased from 43 to 161.

Other than the Taj Mahal at Agra being a major attractor of tourists, Delhi is also the closest and well-connected entry airport to various other very famous and popular tourist circuits like:

- a. Delhi - Agra - Jaipur circuit (The Golden Triangle)
- b. Mathura - Vrindavan - Agra circuit
- c. Delhi - Agra - Jaipur - Khajurao circuit
- d. Shimla - Kullu - Manali - Dalhousie - Dharmashala circuit
- e. Delhi - Chandigarh - Amritsar circuit
- f. Jodhpur - Jaisalmer - Bikaner circuit (The Desert Triangle)

Delhi will likely continue to see a major share of FTAs and thus ORs and ARR of hotels in Delhi are likely to be satisfactory.

6 Reserve Price Estimation

6.1 Introduction

The reserve price of the licence rights of the Property has been determined through two methods, the Market Comparison Method and the Discounted Cash Flow Method. Each of these methods are based on a set of objective data like area of plot, built up area and property features, location and a range of subjective parameters like desirability of the neighbourhood, appeal/ appearance of the building, prevailing market sentiments of the hotel industry etc.

The reserve price so estimated is thus dependent on both objective and subjective parameters. The following observations, assumptions and limiting conditions form the basis of the estimation of the reserve price of the licence rights of the property and need to be kept in mind while considering the reserve price estimated in the subsequent sections:

1. The real estate market in India is not very transparent. The market is fragmented with limited availability of authentic, credible and reliable data with respect to market transactions. The actual transaction value may be significantly different from the value that is documented officially and thus market feedback from actual lessors, brokers, developers and other market participants also needs to be considered. The reserve price estimation factors in such market feedback.
2. For the purpose of this exercise, it has been assumed that the subject Property located on Plot No 37, Shaheed Bhagat Singh Marg, New Delhi - 110001, has a clear and marketable title and is free from any legal and physical encumbrances, disputes, claims and other statutory liabilities. Further, it has been assumed that the subject Property has received requisite planning approvals and clearances from appropriate local authorities and complies with local development control regulations. No legal advice regarding the title and ownership of the subject Property has been obtained while estimating the reserve price for the auction of the licence rights of the Property.
3. The estimation of reserve price is based on information provided by NDMC and includes the following:
 - a. Copy of the Licence Deed dated July 16, 1982
 - b. Copy of the Order from Court of Estate Officer, NDMC dated August 5, 2016
 - c. Building and site plans

It has been assumed that the information contained therein is reliable, accurate and complete in all respects.

4. Transaction Costs like Stamp Duty, Registration Charges, Brokerage etc., pertaining to the sale/purchase of this Property and costs of obtaining necessary licences/ approvals/ permits required for the operation of a star category hotel have not been considered while estimating the reserve price.

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5. Soil analysis or geological or other technical studies have not been carried out in connection with this report, nor was the presence of any water, oil, gas or other subsurface mineral and use rights or conditions investigated.
6. The estimated reserve price is based on prevailing market dynamics as on the date of this report and does not take into account any unforeseeable developments which could influence the same in the future.
7. During the site visit, it was observed that certain vehicles were parked within the Property, certain banqueting and kitchen equipment were stored in the Property and furniture and fitments were also present throughout the Property. The reserve price of the licence rights of the Property estimated in this report does not factor in any such assets. These movable and immovable assets present within the Property have not been considered in the estimation of the reserve price of the licence rights of the Property.

6.2 Reserve Price Estimation via Market Comparison Method

As per the layout plan the land area of plot of the Property is 2,740.12 m² and a building exists on the plot. The building is a Reinforced Cement Concrete (RCC) structure and consists of seven floors and a basement. As detailed under Section 3 the building has 85 rooms, 3 banquets, 1 bar, 1 swimming pool, 9 shops and one large office space and thus it has been assumed that the Property will have the following three revenue streams:

- a. Revenue from renting out of shops
- b. Revenue from renting out of the office space
- c. Revenue from hotel operations

Accordingly, the built-up area of the Property of 67,436.83 ft² has been allocated to these three revenue streams as detailed below:

Table 6-1: Breakup of Built up Area for Revenue Streams

Description	Built-up Area (in ft ²)
Total Built-up area of the Property	67,436.83
<i>Less: Built-up area of Terrace</i>	<i>(1,399.47)</i>
Built-up area available for revenue generation	66,037.36
Built-up area for the 9 shops	759.28
Built-up area for the office space	2,513.00
Built-up area for the hotel (85 rooms and banquets)	62,765.08
<i>Note: The Terrace will be used for common utilities like generators, air conditioning etc. and thus has been excluded when calculating revenue.</i>	

*Strictly Privileged & Confidential***6.2.1 Comparable Rent Analysis for Shops**

The instances of comparable retail shops available for lease/licencing near the subject Property were identified and listed as follows:

Table 6-2: List of Comparable Shops

Reference	Property Description	Leasable Area (ft ²)	Rent (Rs./month)	Approximate Area Rate (Rs./ft ² per month)
Shop 1	Commercial shop available for lease in Gole Market	250	43,000	170
Shop 2	Commercial shop available for lease in Gole Market	225	29,000	130
Note: Both these shops are located at an approximate distance of 550 m from the subject property. Shop 1 is located on the front side of the market and has higher rental due to better visibility.				

Key comparison factors of these two shops with the shops in the subject property are outlined in the table below:

Table 6-3: Key Comparison Factor of Identified Shops

Reference	Shops in the subject property	Shop 1	Shop 2
Property Rights	<i>Licence</i>	Freehold	Freehold
Zone	<i>Commercial</i>	Commercial	Commercial
Present use	<i>Vacant</i>	Vacant	Vacant
Amenities of site	<i>Good</i>	Good	Good
Frontage (Width/Depth)	<i>Excellent</i>	Excellent	Good
Floor	<i>Ground Floor</i>	Ground Floor	Ground Floor
Leasable Area in ft ²	<i>759.28</i>	250	225
Topography	<i>Levelled</i>	Levelled	Levelled
Visibility	<i>Good</i>	Good	Good
Availability of Utilities Services	<i>Available</i>	Available	Available

The rents of the two shops are then adjusted to account for the differences to arrive at an indicative rent for the shops at subject property as follows:

Table 6-4: Adjustment of Individual Shop Rents

Description	Shop 1	Shop 2
Approximate Area Rate (Rs./ ft ² per month)	170	130
Adjustment for Location	-	20%
Adjustment for Marketability	-	-
Adjustment for Frontage /Depth	-	-

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Description	Shop 1	Shop 2
Adjustment for Shape of the site	-	-
Adjustment for Amenities	-	-
Adjustment for Site Size	10%	10%
Adjustment for Floor Level	-	-
Adjustment for Availability of Utilities Services	-	-
Adjustment for Visibility	-	-
Final Adjusted Area Rate (Rs./ft² per month)	187	169
Net Adjustment	10%	30%
Gross Adjustment	10%	30%
Weighting	60%	40%
Weighted Adjusted Area Rate (Rs./ft² per month)	112	68
Total of Weighted Adjusted Area Rate (Rs./ft² per month)	180	

The rental revenue from the comparable shops have been adjusted to factor in larger area availability for shops at the subject property and to factor in the better location and visibility at the subject property and then average revenue per square feet per month has been calculated. Then, the expected rental revenue from the shops at the subject property has been calculated as follows:

Figure 6-1 : Estimation of Rental Revenue from Shops at the Subject Property

Description	Value
Area of shops in subject property	759.28 ft ²
Total of Weighted Adjusted Area Rate	Rs. 180 per ft ² per month
Monthly expected revenue from shops	Rs. 1.37 Lakh per month

6.2.2 Comparable Rent Analysis for Office Space

The instances of comparable office spaces available for lease/licencing near the subject property were identified and listed as follows:

Table 6-5: List of Comparable Office Spaces

Reference	Property Description	Leasable Area (ft ²)	Rent (Rs./month)	Approximate Area Rate (Rs./ft ² per month)
Office 1	Office space on 5 th floor is available for lease in Ansal Bhawan approximately 1.6 km from the subject property.	1,040	1,75,000	170
Office 2	Office space on 12 th floor is available for lease in Naurang House approximately 1.3 km from the subject property.	1,700	2,99,115	180

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Reference	Property Description	Leasable Area (ft ²)	Rent (Rs./month)	Approximate Area Rate (Rs./ ft ² per month)
Office 3	Office space on 6 th floor is available for lease in Hansalaya Building approximately 1.6 km from the subject property.	1,530	2,85,039	190
Office 4	An office space on 1 st floor is available for lease in Statesman House approximately 1.4 km from the subject property.	1,650	4,30,650	260

Key comparison factors of these four office spaces with the office space in the subject property are outlined below:

Table 6-6: Key Comparison Factor of Identified Office Spaces

Reference	Office Space in subject property	Office 1	Office 2	Office 3	Office 4
Property Rights	<i>Licence</i>	Freehold	Leasehold	Leasehold	Leasehold
Zone	<i>Commercial</i>	Commercial	Commercial	Commercial	Commercial
Present use	<i>Vacant</i>	Vacant	Vacant	Vacant	Vacant
Amenities of site	<i>Good</i>	Good	Good	Good	Good
Frontage (Width/Depth)	<i>Good</i>	Good	Good	Good	Good
Floor	<i>2nd Floor</i>	5 th Floor	12 th Floor	6 th Floor	1 st Floor
Leasable Area - SFT	<i>2,513</i>	1,040	1,700	1,530	1,650
Topography	<i>Levelled</i>	Levelled	Levelled	Levelled	Levelled
Visibility	<i>Good</i>	Good	Good	Good	Good
Availability of Utilities/ Services	<i>Available</i>	Available	Available	Available	Available

The rents of the four office spaces are then adjusted to account for the differences to arrive at an indicative rent from the office space at subject property as follows:

Table 6-7: Adjustment of Individual Office Rents

Description	Office 1	Office 2	Office 3	Office 4
Area Rate (Rs./ ft ² per month)	170	180	190	260
Adjustment for location	-10%	-10%	-10%	-10%
Adjustment for furnishing	-	-	-	-10%
Adjustment for marketability	-	-	-	-
Adjustment for Frontage / Depth	-	-	-	-
Adjustment for shape of the site	-	-	-	-
Adjustment for age of building and its condition	-	-	-	-10%
Adjustment for Amenities	-	-	-	-
Adjustment for Site Size	-5%	-5%	-5%	-5%
Adjustment for Floor Level	-	-	-	-
Availability of Utilities Services	-	-	-	-

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Description	Office 1	Office 2	Office 3	Office 4
Adjustment for Visibility	-	-	-	-
Final Adjusted Area Rate (Rs./ft² per month)	145	153	162	169
Net Adjustment	-15%	-15%	-15%	-15%
Gross Adjustment	15%	15%	15%	15%
Weighting	25%	25%	25%	25%
Weighted Adjusted Area Rate (Rs./ft² per month)	36	38	41	42
Total of Weighted Adjusted Area Rate (Rs./ft² per month)	157			

The rents of comparable office properties have been adjusted to factor in the smaller office space availability in the subject property. The comparable office properties are located at areas that are commercially more desirable for office spaces, in addition Office 4 is furnished and is located in a newer/ better maintained building and hence additional adjustments have been made to the rental for Office 4. After these adjustments the average revenue per square feet per month has been calculated. Then, the expected rental revenue from the office space at the subject property has been calculated as follows:

Table 6-8: Estimation of Rental Revenue from Office Space at the Subject Property

Description	Value
Area of office space in subject property	2,513 ft ²
Total of Weighted Adjusted Area Rate	Rs. 157 per ft ² per month
Monthly expected revenue from the office space	Rs. 3.95 Lakh per month

6.2.3 Comparable Rent Analysis for Hotel

Comparable hotels available for lease/ licencing near the subject property were identified via a market survey and are listed as follows:

Table 6-9: List of Comparable Hotels

Reference	Property Description	Leasable Area (ft ²)	Rent (Rs./month)	Approximate Area Rate (Rs./ft ² per month)
Hotel 1	A fully furnished hotel is available for lease at Green Park Extension, New Delhi. The hotel features 16 rooms with attached bathroom and fully furnished with AC, TV and intercom along with 24 hours running water and power backup.	6,000	5,52,500	92
Hotel 2	A fully furnished hotel is available for lease at Kalkaji, New Delhi. The hotel features 33 rooms with attached bathroom and fully furnished with AC, TV and intercom along with 24 hours running water and power backup.	22,500	13,50,000	60

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Reference	Property Description	Leasable Area (ft ²)	Rent (Rs./month)	Approximate Area Rate (Rs./ft ² per month)
Hotel 3	A fully furnished hotel is available for lease at Kalkaji, New Delhi. The hotel features 36 rooms with attached bathroom and fully furnished with AC, TV and intercom along with 24 hours running water and power backup.	22,500	14,40,000	64
Hotel 4	A fully furnished hotel on lease is available at Safdarjung Development Area, New Delhi. The hotel features 42 rooms. It is two sided open property with basement and four upper floors and a restaurant with 2 banquet halls.	36,000	25,50,000	71

Key comparison factors of these four hotels with the hotel in the subject property are outlined in the table below:

Table 6-10: Key Comparison Factor of Identified Hotels

Description	Hotel at subject property	Hotel 1	Hotel 2	Hotel 3	Hotel 4
Property Rights	<i>Licence</i>	Freehold	Freehold	Freehold	Freehold
Zone	<i>Commercial</i>	Commercial	Commercial	Commercial	Commercial
Present use	<i>Vacant</i>	Vacant	Vacant	Vacant	Vacant
Amenities at site	<i>Good</i>	Good	Good	Good	Good
Frontage (Width/Depth)	<i>Excellent</i>	Excellent	Good	Good	Excellent
Access type	<i>Primary</i>	Primary	Primary	Primary	Primary
Leasable Area (ft ²)	<i>62,765.08</i>	6,000	22,500	22,500	36,000
Topography	<i>Levelled</i>	Levelled	Levelled	Levelled	Levelled
Visibility	<i>Good</i>	Good	Good	Good	Good
Availability of Utilities Services	<i>Available</i>	Available	Available	Available	Available

The rents of the four hotels are then adjusted to account for the differences to arrive at an indicative rent from the hotel at subject property as follows:

Table 6-11: Adjustment of Individual Hotel Rents

Description	Hotel 1	Hotel 2	Hotel 3	Hotel 4
Area Rate (Rs./ ft ² per month)	92	60	64	71
Adjustment for Location	-	10%	10%	-
Adjustment for Utility of Space	-3%	-3%	-3%	-3%
Adjustment for Frontage /Depth	-	-	-	-
Adjustment for Shape of the site	-	-	-	-
Adjustment for Amenities	-	-	-	-
Adjustment for Site Size	-25%	-10%	-10%	-5%
Adjustment for Access	-	-	-	-
Availability of Utilities Services	-	-	-	-

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Description	Hotel 1	Hotel 2	Hotel 3	Hotel 4
Adjustment for Visibility	-	-	-	-
Final Adjusted Area Rate (Rs./ ft² per month)	66	58	62	65
Net Adjustment	-28%	-3%	-3%	-8%
Gross Adjustment	28%	23%	23%	8%
Weighting	30%	20%	20%	30%
Weighted Adjusted Area Rate (Rs./ ft² per month)	20	12	12	20
Total of Weighted Adjusted Area Rate (Rs./ ft² per month)	64			

The rents of comparable hotels have been adjusted to factor in the better utilization of space in the other hotels compared to the subject property. Similarly, adjustments have been carried out for location and property size. After adjustments, the average revenue per square feet per month has been calculated. Then, the expected rental revenue from the hotel at the subject property has been calculated as follows:

Table 6-12: Estimated Monthly Revenue from the Hotel at the Property

Description	Value
Area of hotel in subject property	62,765.08 ft ²
Total of Weighted Adjusted Area Rate	Rs. 64 per ft ² per month
Monthly expected revenue from the hotel	Rs. 40.17 Lakh per month

Thus, the total expected monthly rental from the Property can be estimated as:

Table 6-13: Estimated Total Monthly Revenue from the Property

Description	Value
Monthly expected revenue from the shops	Rs. 1.37 Lakh
Monthly expected revenue from the office space	Rs. 3.95 Lakh
Monthly expected revenue from the hotel	Rs. 40.17 Lakh
Total monthly revenue from the Property	Rs. 45.49 Lakh

Thus, the estimated reserve price of the licence rights of the Property as per the Market Comparison Method works out to be Rs. 45.49 Lakh per month or Rs. 5.46 Crore per year.

6.3 Estimation of Reserve Price via Discounted Cash Flow Method

6.3.1 Key Assumptions

Some key assumptions used in arriving at the estimated reserve price of the licence rights of the Property through the Discounted Cash Flow Method are provided below:

- **Licence Period:** As per NDMC, the subject Property will be offered on a 30 year licence. It has been assumed that the will commence from April 1, 2017. Thus, the cash flows for calculating the estimated reserve price have been projected for a period of 30 years from April 1, 2017.

- **Refurbishment Time:** It may take 2-3 months for the winning bidder/ prospective hotel operator to survey the Property, complete the designs, and seek approval from the relevant authorities before they can initiate the refurbishment/renovation works. Further, due to restrictions on movement of heavy vehicles in the NDMC area, and the property not being occupied/maintained for some period of time, the winning bidder/ prospective hotel operator may require around 4-6 months to complete the refurbishment/renovation works of the subject Property. Thus, it has been assumed that hotel operations will commence after a period of 9 months from the date of execution of the licence agreement with the winning bidder/ prospective hotel operator.
- **Refurbishment Costs:** It has been assumed that the refurbishment costs of the Property will be around Rs. 5 crore. The same has been considered as the only capital expenditure for the Property. The refurbishment cost has been estimated by the Sub-consultant based on the physical condition of the Property as observed during the site visit. Breakup of the refurbishment costs is as follows:

Table 6-14: Break-up of Refurbishment Costs

Description	Amount (Rs. Crore)
Interior Refurbishment Cost (including Furniture & Fixtures)	2.00
Exterior Refurbishment Cost	1.00
Refurbishment Cost for Kitchen Furniture	1.00
Refurbishment Cost for Kitchen Equipment	1.00
Total Refurbishment Cost	5.00

- **Depreciation:** Depreciation and amortization assumption have been based on the provisions of Companies Act, 2013 and Income Tax Act, 1961. Further, as the licence period is 30 years, it is assumed that at the end of the licence period i.e. last operating financial year, the complete value of the asset coming on to the licensee's books will be written off. Depreciation has been calculated by WDV method as given below:

Table 6-15: Depreciation Rates

Description	Depreciation Rates
Building	10%
Furniture and Fixtures	10%
Kitchen Equipment	15%

- **Revenue Assumptions:** It has been assumed that the Property will have three revenue streams viz. revenue from hotel operations, revenue from shop rentals and revenue from office space rental.

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The hotel has 85 rooms including 5 suites. Hotels generally have the following main revenue sources:

- Revenue from room rentals
- Food & Beverage related revenues including revenue from banqueting
- Revenues from other sources including car rental, telecommunications, laundry etc.

Room rental revenue is dependent on Occupancy Rates (OR) and Average Room Revenue (ARR). Based on the market analysis as detailed in Section 5, conservatively it has been assumed that the annual occupancy will 50% in the first year of operation and will gradually increase to stabilize at 70% by FY2024. Similarly, based on the market data, ARR for the hotel has been assumed to be Rs. 6,000 in the first year of operation and is assumed to increase at a rate of 3% year on year over the 30 year period. Growth of OR and ARR are depicted below:

Table 6-16: Growth in OR and ARR

Description	Financial Year						
	2018	2019	2020	2021	2022	2023	2024
Occupancy Rate	50%	55%	60%	63%	65%	68%	70%
Y-O-Y growth in ARR	NA	3%	3%	3%	3%	3%	3%
Average Room Rate (ARR)	6,000	6,180	6,365	6,556	6,753	6,956	7,164

Food & Beverage related revenues, revenues from banquets and other income have been assumed to be fixed percentages of room revenue as details in the table below:

Table 6-17: Assumptions for F&B, Banqueting Revenues and Other Income

Revenue Source	% of Total Room Revenue
Food & Beverage Revenue	30%
Revenue from Banquets	20%
Other Income	8%

Rental income from office and shops have been calculated based on the actual built-up area in the Property and average market rentals as obtained from market survey. Details are provided below:

Table 6-18: Assumption for Shop and Office Rents

Description	Built-up Area (in ft ²)	Monthly Area Rental (Rs./ft ²)	Rental Growth Rate (%)*
Shop Space	759.28	180	10%
Office Space	2,513.00	157	10%
* Shop and office rentals have been projected to increase at three year intervals.			

- Direct and Indirect Cost

- Direct Cost

The direct cost of the hotel is expressed in terms of percentage of revenue from that particular source. The room/ F&B/ banqueting and other facilities expenses are calculated as a percentage of the room/ F&B/ banqueting and other facilities revenues respectively. Direct cost assumptions are based on the inputs provided by the Sub-consultant. The details of the direct cost assumptions are provided below:

Table 6-19: Assumption for Key Direct Cost Items

Description	Value
Direct Room Cost as % of Room Revenue	15.0%
F&B Cost as % of F&B Revenue	45.0%
Banqueting Cost as % of banquet revenue	35.0%
Other Cost as % of Other Revenue	60.0%

- Indirect Cost

Certain indirect costs like administrative costs and insurance and property tax have been calculated in the first year administrative costs of operation as a percentage of revenue for the first year of operation and then projected to increase at the CPI growth rate (CAGR) between the FY2012 to FY2016. Reserve Bank of India's CPI data has been used to arrive at the growth rate. Since the Property is operational only for 3 months in the first year of operation, Insurance and Property Tax costs have been calculated on the basis of annualized revenue for the first year. Details are provided below:

Table 6-20: Assumption for Certain Indirect Cost Items

Description	% of Total Revenue	Annual Growth Rate (%) *
Administrative Costs	9.0%	5.674%
Insurance & Property Tax	0.5%	5.674%

Other indirect costs such as sales & marketing costs, property maintenance costs and costs related, reserves for furniture and fixtures and power and fuel expenses have been assumed to be a constant percentage of total revenue as under:

Table 6-21: Assumption for Certain Indirect Cost Items

Description	% of Total Revenue
Sales & Marketing Costs	5.0%
Property Maintenance Costs	5.0%
Furniture and Fixtures Reserve	2.5%
Power & Fuel Expenses	9.0%

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- **Taxation:** The assumption for calculating tax liability is based on current income tax rate of (30%), surcharge (7%) and education cess (3%) and the effective tax rate comes out to be 33.06%.
- **Weighted Average Cost of Capital (WACC):** For the purpose of this exercise it has been assumed that no debt will be raised by the lessee to cover the capital expenditure of Rs. 5 Crore required for the refurbishment.

Table 6-22: Key Details of WACC Calculation

Description	Value
Risk-Free Rate of Return ¹	6.66%
Expected Market Return ²	12.66%
Selected Equity Beta ³	1.16
Equity Risk Premium	6.95%
Return on Equity	13.61%
<i>Source of Data as of January 13, 2017</i>	
<i>1 10 Year G-Sec rate as per RBI</i>	
<i>2 Data obtained from Bloomberg</i>	
<i>3 Data obtained from Bloomberg and Capitaline</i>	

No debt has been assumed in the financial projections and thus, the WACC is the same as the Return of Equity of 13.61%.

- **Capitalization Rate:** The capitalization rate (which is the expected rate of return on the real estate investment) has been considered as 13% p.a. of the market value of the property determined by the DCF method. The capitalization rate has been assumed as per the suggestion of the Sub-consultant and is based on their market study.

6.3.2 Projected Profitability Statement and Free Cash Flow

Based on the set of assumptions as mentioned above, future profitability of the licensee has been estimated for a period of licence i.e. 30 years. Brief snapshots of the projected profitability statement and cash flow statement is provided below. Please refer to Annexure I for the detailed projections.

Table 6-23: Summary of Profitability Statement

(Alternate years until FY2024 and every fourth year from there on)

Particulars	Financial Year (Rs. Lakh)								
	2018	2020	2022	2024	2028	2032	2036	2040	2044
Room Revenue	232	1185	1356	1569	1766	1988	2237	2518	2834
Shop and Office Rent	16	64	70	77	85	93	113	124	137
F&B Revenue	70	355	407	471	530	596	671	755	850
Banquet Revenue	46	237	271	314	353	398	447	504	567
Other Income	19	95	108	126	141	159	179	201	227
Total Revenue	383	1936	2212	2556	2875	3234	3647	4102	4614

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Particulars	Financial Year (Rs. Lakh)								
	2018	2020	2022	2024	2028	2032	2036	2040	2044
Direct Cost									
Room Related Costs	35	178	203	235	265	298	336	378	425
Food & Beverage Costs	31	160	183	212	238	268	302	340	383
Banqueting Costs	16	83	95	110	124	139	157	176	198
Other Costs	11	57	65	75	85	95	107	121	136
Total Direct Costs	94	478	546	632	712	801	902	1,015	1,142
Indirect Costs									
Admin & General Expenses	34	156	174	195	243	303	377	471	587
Sales & Marketing Cost	19	97	111	128	144	162	182	205	231
Property Maintenance Cost	19	97	111	128	144	162	182	205	231
F&FE Reserve	10	48	55	64	72	81	91	103	115
Insurance & Property Tax	8	9	10	11	13	17	21	26	33
Power & Fuel Costs	34	174	199	230	259	291	328	369	415
Total Indirect Costs	125	581	660	755	874	1,015	1,182	1,379	1,611
Total Costs	218	1,058	1,206	1,387	1,586	1,816	2,084	2,393	2,753
EBITDA	135	877	1,006	1,169	1,289	1,418	1,563	1,709	1,861
PAT	92	557	649	763	851	942	1,042	1,141	1,244

Table 6-24: Summary of Projected Free Cash Flow to Firm
(Alternate years until FY2024 and every fourth year from there on)

Particulars	Financial Year (Rs. Lakh)								
	2018	2020	2022	2024	2028	2032	2036	2040	2044
PAT	92	557	649	763	851	942	1,042	1,141	1,244
Add: Depreciation	28	46	36	29	18	11	7	5	3
Less: Capex *	(500)	-	-	-	-	-	-	-	-
FCFF	(381)	603	686	792	869	953	1,049	1,146	1,246
Discounted Cash Flow	(395)	411	362	324	213	141	93	61	40

* Since the capex will be incurred in the beginning of the year while revenue will accrue over the entire year, the capex expenditure has not been discounted back to the beginning of the year.

6.3.3 Net Present Value

The Net Present Value (NPV) of the free cash flows to the firm (FCFF) is calculated for the purpose of estimating the reserve price of the licence rights of the Property based on the projected profitability statements. The NPV works to Rs. 45.23 crore.

6.3.4 Reserve Price of the Property Market Rental

Based on a NPV of Rs. 45.23 crore the annual rental for the Property based on the assumed capitalization rate of 13% works to Rs. 5.88 crore per year which translates to a monthly rental of Rs. 49.00 lakh.

6.4 Recommended Reserve Price

The two methodologies mentioned above are equally acceptable and one does not have any specific advantage over the other. Accordingly, the simple average of the monthly rentals from two methods stated above may be considered as the reserve price for the auction of the licence rights of the Property. The average monthly rental from the property of the two method comes out to be Rs. 47.25 lakh as detailed below:

Table 6-25: Average Reserve Price

Description	Amount (Rs. Lakh/month)
Monthly Licence Fee as per the Market Comparison Method	45.49
Monthly Licence Fee as per the Discounted Cash Flow Method	49.00
Simple Average of the above two methods	47.25

6.5 Other Commercial Terms

6.5.1 Refurbishment Time

As detailed earlier, the winning bidder/ prospective hotel operator may require around 2-3 months for surveying the Property, completing the designs and obtaining the required approvals before initiating refurbishment/renovation works. Further, around 4-6 months may be required to complete the refurbishment/renovation works. Thus, it may be appropriate for NDMC to allow for a refurbishment period of 9 months from the date of execution of the licence agreement.

6.5.2 Bid Security/ Earnest Money Deposit

Bid security/ Earnest Money Deposit (EMD) is generally stipulated to safeguard the interest of the licensor against fraudulent practices of the bidders, alteration in the bid or any other defaults by the bidder. As per the General Financial Rules, 2005, a bid security of 2-5% of the estimated value of the contract/licence may be stipulated in a tender. Bid security amounts as 5% of the licence value are provided below:

Table 6-26: Bid Security Amounts

Description	Value*
Estimated Reserve Price/ Monthly licence fee	Rs. 47.25 per month
Licence value for 1 year period	Rs. 5.67 crore
Licence value for the entire licence term (i.e. 30 years)	Rs. 170.10 crore
5% of the licence value for 1 year period	Rs. 28.35 lakh
5% of the licence value for 30 year period	Rs. 8.51 crore
* The bid security amounts have been calculated assuming a constant licence fee over the 30 year period.	

Usually, the bid security is replaced by a performance security from the successful bidder on execution of licence agreements and thus calculating the bid security on the licence value for the entire licence term may not be appropriate. Also, the bid security calculated as 5% of the one year licence's value works out to be Rs. 28.35 lakh which is less than one month's licence fee. Under such a scenario, a bid security equal to the monthly licence fee amount of Rs. 47.25 lakh may be more appropriate and may be incorporated in the tender document.

The bid security can be taken in the form of an acceptable bank's Bank Guarantee (BG) or interest free deposits. For bid security taken in the form of a BG, the BG should have a minimum validity of 3 months from the date of declaration of successful bidder. Further, the bid security of the successful bidder should remain valid until a performance security is submitted. Bid security of unsuccessful bidders should be refunded at the earliest.

6.5.3 Performance Security

Performance security by way of interest free deposit or a BG from an acceptable bank provides a safeguard to the interest of the licencor against any default or non-performance of obligations by the licensee during the licence term. The performance security is generally prescribed in the bidding documents and should be irrevocable and unconditional. The performance security is generally in the range of 5-10% of the contract value. It should ideally be valid for a period beyond the licence term so that the licensee fulfils all the contractual obligations.

The performance security was fixed at 5% of the lease premium while granting perpetual lease by DDA for developing and operating an International Conventional & Exhibition Centre in Dwarka, Delhi in 2007. Delhi Metro Rail Corporation, for licencing spaces for commercial usage in Delhi Metro stations stipulates deposit of interest free deposit/ BG equivalent to 12 months of licence fee. The interest free deposit/ BG amount are escalated by 20% on successful completion of every three years, on compounding basis. Delhi International Airport Ltd. (DIAL), in case of licensing of 45 acre of hospitality district mandated an initial refundable security deposit to be paid back when developers part ways with DIAL. The refundable security deposit was three times the average annual lease rental.

Considering the above examples, to adequately safeguard NDMC's interests (to the extent of 12 months licence fee income), a performance security equivalent to one year's licence fee may be considered appropriate and incorporated in the tender document. The exact amount of the performance security will depend on the winning bid submitted by the successful bidder. If the performance security is submitted in the form of an interest free deposit, the same should be topped up periodically so that at all times it covers the licence fee payable over the next 12 months. In case the performance security is submitted in the form of a BG, the BG should remain valid from the commencement of the licence term until 6 months after the expiry of the licence term. The BG should always be renewed one month prior to its expiry and should be of appropriate amount to cover the licence fee payable over the next 12 months.

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7 Annexure I: Projected Profitability and Free Cash Flow Statement

Table 7-1: Projected Profitability Statement (FY2018 - FY2032)

Particulars	Financial Year (Rs. lakh)														
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
Room Revenue	232	1,060	1,185	1,268	1,356	1,447	1,569	1,616	1,665	1,714	1,766	1,819	1,873	1,930	1,988
Shop Rent	16	64	64	70	70	70	77	77	77	85	85	85	93	93	93
F&B Revenue	70	318	355	380	407	434	471	485	499	514	530	546	562	579	596
Banquet Revenue	46	212	237	254	271	289	314	323	333	343	353	364	375	386	398
Other Income	19	85	95	101	108	116	126	129	133	137	141	146	150	154	159
Total revenue	383	1,739	1,936	2,074	2,212	2,357	2,556	2,630	2,707	2,794	2,875	2,959	3,053	3,142	3,234
Direct cost															
Rooms	35	159	178	190	203	217	235	242	250	257	265	273	281	289	298
Food & Beverage	31	143	160	171	183	195	212	218	225	231	238	246	253	261	268
Banquet	16	74	83	89	95	101	110	113	117	120	124	127	131	135	139
Other	11	51	57	61	65	69	75	78	80	82	85	87	90	93	95
Total Direct Costs	94	427	478	511	546	583	632	651	671	691	712	733	755	778	801
Indirect Costs															
Admin & General	34	148	156	165	174	184	195	206	217	230	243	256	271	286	303
Sales & Marketing	19	87	97	104	111	118	128	132	135	140	144	148	153	157	162
Property Maintenance	19	87	97	104	111	118	128	132	135	140	144	148	153	157	162
F&FE Reserve	10	43	48	52	55	59	64	66	68	70	72	74	76	79	81
Insurance & Property Tax	8	8	9	9	10	10	11	11	12	13	13	14	15	16	17
Power & Fuel	34	156	174	187	199	212	230	237	244	251	259	266	275	283	291
Total Indirect Costs	125	530	581	620	660	701	755	783	811	843	874	907	942	978	1,015
Total Costs	218	957	1,058	1,131	1,206	1,284	1,387	1,434	1,482	1,534	1,586	1,640	1,697	1,755	1,816

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Particulars	Financial Year (Rs. lakh)														
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
EBITDA	165	782	877	943	1,006	1,072	1,169	1,197	1,225	1,260	1,289	1,319	1,356	1,387	1,418
PAT	92	489	557	604	649	696	763	784	805	830	851	872	898	920	942

Table 7-2: Projected Profitability Statement (FY2033 – FY2047)

Particulars	Financial Year (Rs. lakh)														
	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047
Room Revenue	2,047	2,109	2,172	2,237	2,304	2,373	2,444	2,518	2,593	2,671	2,751	2,834	2,919	3,006	3,097
Shop Rent	103	103	103	113	113	113	124	124	124	137	137	137	150	150	150
F&B Revenue	614	633	652	671	691	712	733	755	778	801	825	850	876	902	929
Banquet Revenue	409	422	434	447	461	475	489	504	519	534	550	567	584	601	619
Other Income	164	169	174	179	184	190	196	201	207	214	220	227	234	241	248
Total Revenue	3,337	3,434	3,534	3,647	3,753	3,863	3,986	4,102	4,222	4,357	4,484	4,614	4,762	4,900	5,043
Direct cost															
Rooms	307	316	326	336	346	356	367	378	389	401	413	425	438	451	464
Food & Beverage	276	285	293	302	311	320	330	340	350	361	371	383	394	406	418
Banquet	143	148	152	157	161	166	171	176	182	187	193	198	204	210	217
Other	98	101	104	107	111	114	117	121	124	128	132	136	140	144	149
Total Direct Costs	825	850	875	902	929	956	985	1,015	1,045	1,076	1,109	1,142	1,176	1,212	1,248
Indirect costs															
Admin & General	320	338	357	377	399	421	445	471	497	525	555	587	620	655	692
Sales & Marketing	167	172	177	182	188	193	199	205	211	218	224	231	238	245	252
Property Maintenance	167	172	177	182	188	193	199	205	211	218	224	231	238	245	252
F&FE Reserve	83	86	88	91	94	97	100	103	106	109	112	115	119	123	126
Insurance & Property tax	18	19	20	21	22	23	25	26	28	29	31	33	34	36	38
Power & Fuel	300	309	318	328	338	348	359	369	380	392	404	415	429	441	454

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Particulars	Financial Year (Rs. lakh)														
	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047
Total Indirect Costs	1,055	1,095	1,137	1,182	1,228	1,275	1,327	1,379	1,432	1,491	1,550	1,611	1,678	1,745	1,815
Total Costs	1,880	1,945	2,012	2,084	2,156	2,232	2,312	2,393	2,478	2,568	2,659	2,753	2,855	2,957	3,063
EBITDA	1,457	1,489	1,522	1,563	1,597	1,631	1,674	1,709	1,744	1,789	1,825	1,861	1,907	1,944	1,980
PAT	969	991	1,014	1,042	1,065	1,088	1,117	1,141	1,165	1,195	1,219	1,244	1,275	1,299	1,311

Table 7-3: Projected Free Cash Flow to the Firm (FY2018 – FY2032)

Particulars	Financial Year (Rs. lakh)														
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
PAT	92	489	557	604	649	696	763	784	805	830	851	872	898	920	942
Add: Depreciation	28	52	46	41	36	32	29	25	23	20	18	16	14	13	11
Less: Capex	(500)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
FCFF	119	541	603	645	686	728	792	809	827	850	869	888	912	932	953
Discounted Cash flow	(395)	419	411	387	362	339	324	292	262	237	213	192	174	156	141

Table 7-4: Projected Free Cash Flow to the Firm (FY2033 – FY2047)

Particulars	Financial Year (Rs. lakh)														
	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047
PAT	969	991	1,014	1,042	1,065	1,088	1,117	1,141	1,165	1,195	1,219	1,244	1,275	1,299	1,311
Add: Depreciation	10	9	8	7	6	6	5	5	4	4	3	3	3	2	21
Less: Capex	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
FCFF	979	1,000	1,022	1,049	1,071	1,094	1,122	1,146	1,169	1,199	1,223	1,246	1,278	1,302	1,332
Discounted Cash flow	127	114	103	93	83	75	68	61	55	49	44	40	36	32	29

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8 Annexure II : Report of Sub-Consultant

Report on Estimation of Licence Fee for Hotel Connaught situated at 37, Shaheed Bhagat Singh Marg, Connaught Place, New Delhi – 110 001



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Ref No.: RVA/BAS/2016-17/DEL/0281

Date: 24th February, 2017

1.0 Valuation Summary

PROPERTY DETAILS	
Property	Hotel Building of 'NDMC' known as The Connaught Hotel
Location	37, Shaheed Bhagat Singh Marg, Connaught Place, New Delhi – 110 001, India.
Area	Total Land area is 2740.1227 SMT as per layout plan provided by NDMC.
VALUATION	
Purpose of Valuation	To estimate the Market Rentals
Date of Valuation	1 st December, 2016 for Method 1 and 1 st April, 2017 for Method 2
Date of Inspection	11 th November, 2016
Market Rentals	The Market Rental of Hotel Building Space proposed to be auctioned by 'NDMC' on license fee basis situated at 37, Shaheed Bhagat Singh Marg, Connaught Place, New Delhi – 110 001, India as on 1 st December, 2016 is estimated as INR 45.50 Lacs/Month (Indian Rupees Forty-Five Lacs Fifty Thousand per month only) by method 1 and as on 1 st April, 2017 is INR 42.85 Lacs/Month (Indian Rupees Forty-Two Lacs Eighty-Five Thousand per month only) by Method 2.
Valuation Done by	RBSA Valuation Advisors LLP
Valuation Done for	SBI Capital Markets Ltd

2.0 Introduction

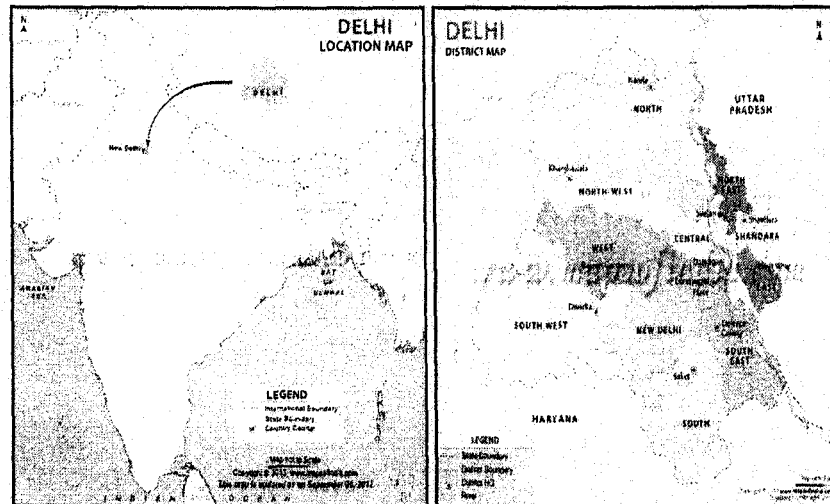
- 2.1 New Delhi Municipal Council (NDMC) is the municipal council of the city of New Delhi, India, and the area under its administration is referred to as the NDMC area. NDMC, covering an area of 43.7 square kilometers, is governed by a council with a chairperson appointed by the central government, and includes the Chief Minister of Delhi. The state of Delhi is divided into three statutory urban regions: the Municipal Corporation of Delhi (MCD), the New Delhi Municipal Council (NDMC), and the Delhi Cantonment Board. NDMC intends to offer on license fee basis a Hotel Property and in this regards RBSA Valuation Advisors LLP referred as 'consultants' has been appointed by the SBI Capital Markets Limited to provide an opinion on the Fair Market Rentals of a Hotel Building Space situated in Shaheed Bhagat Singh Marg, Connaught Place, New Delhi – 110 001, India. Accordingly, our team of experts visited the site on 11th November, 2016 to inspect and to carry out Market Survey for the said purpose.
- 2.2 The purpose of valuation is to estimate Fair Market Rental of a Hotel Building Space for purpose of estimation of license fee for auction on an 'as is where is' basis.
- 2.3 The scope of work of this exercise is as under:
- a. Inspection of Real estate property for estimating market rentals.
 - b. Review of documentary data made available to us.
 - c. Collection of data pertinent to valuation exercise.
 - d. Market survey.
 - e. Determination of valuation parameters, methods and key assumptions.
 - f. Submission of the report.

Note –This report is based upon the information provided by NDMC and subject to our assumptions and limiting conditions.

3.0 Location

3.1 Delhi

3.2.1 Delhi, officially the National Capital Territory of Delhi, is the Capital territory of India. It has a population of about 16.3 million, making it the second most populous city and second most populous urban agglomeration in India.



Delhi is located at 28.61°N 77.23°E , and lies in Northern India. It borders the Indian states of Haryana on the north, west and south and Uttar Pradesh (UP) to the east. Two prominent features of the geography of Delhi are the Yamuna flood plains and the Delhi ridge. The National Capital Territory of Delhi covers an area of 1,484 square kilometers, of which 783 square kilometers is designated for rural and 700 square kilometers for urban area, therefore making it the largest city in terms of area in the country. It has a length of 51.9 kilometers and a width of 48.48 kilometers.

3.2 Connectivity



Indira Gandhi International Airport, New Delhi is operated by the Delhi International Airport Limited, a joint venture led by GMR Group. It is the largest aviation hub of South Asia with a current capacity of more than 46 million passengers. The subject property is approximately 20 kms from IGI Airport, Delhi.



The New Delhi Railway Station (station code NDLS), situated between Ajmeri Gate and Paharganj is the main railway station in Delhi. It is the busiest Railway Station in the country in terms of both Trains and Passenger Movement. It handles near about 400 Trains and 500,000 passengers daily with 16 platforms. The New Delhi railway station holds the record for the largest route interlocking system in the world along with the Kanpur Central Railway Station. The station is about two kilometres north of Connaught Place, in central Delhi. New Delhi Railway Station is approximately 2-3 kms from the subject property.



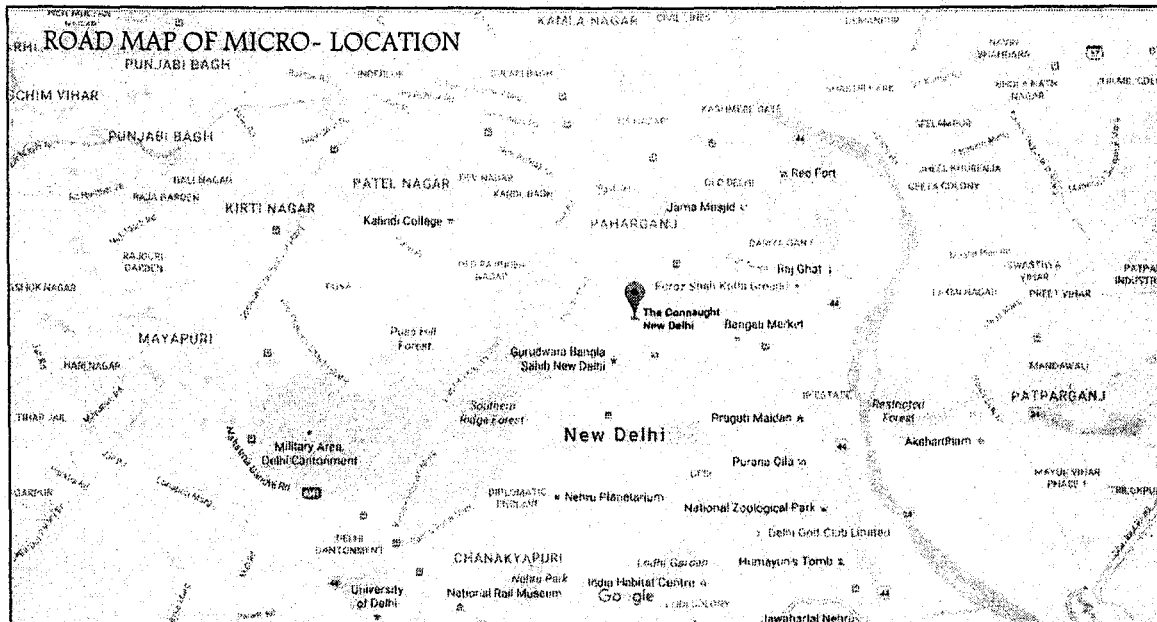
The Maharana Pratap Inter-state Bus Terminus popularly known as Kashmere Gate ISBT or ISBT, located in Delhi is the oldest and one of the biggest Inter State Bus Terminals in India. It operates bus services between Delhi and 7 other states viz. Haryana, Jammu & Kashmir, Punjab, Himachal Pradesh, Uttar Pradesh, Rajasthan and Uttarakhand. Spread over an area of about 13 acres, it handles over 1800 buses a day. ISBT Kashmiri Gate is approximately 8 kms from the subject property.



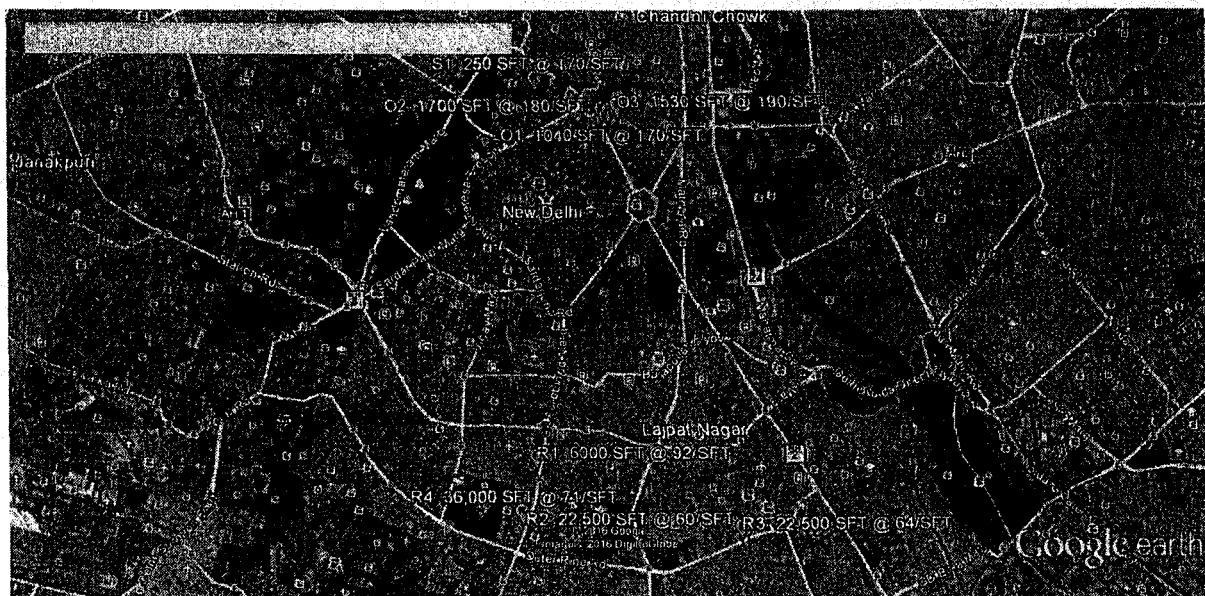
The Delhi Metro Rail Corporation Ltd., abbreviated to DMRC, is a Centre-state Public Sector company that operates the Delhi Metro. The DMRC is also involved in the planning and implementation of metro rail, monorail, and high-speed rail projects in India and abroad. Rajiv Chowk is an interchange station between the Blue line on the upper level & the Yellow line on the lower level. It is one of the busiest stations on the network, serving Connaught Place in the heart of Delhi. The Connaught Hotel is 850 mts. from Rajiv Chowk metro station.

4.0 Micro-location

- 4.1 The property under valuation is a Hotel Building Space situated at 37, Shaheed Bhagat Singh Marg, Connaught Place, New Delhi – 110 001, India.



Google image of Subject Property and its Neighbourhood along with Comparables



5.0 Inspection and Background of the Property

- 5.1 As per the instruction of NDMC the inspection of the property was carried out. At the time of our site inspection, we observed that the Hotel Building space was vacant & in average condition due to non maintenance.

Owner	NDMC
Address	37, Shaheed Bhagat Singh Marg, Connaught Place, New Delhi – 110 001, India.

Total Land area is 2740.1227 SMT as per layout plan provided by NDMC.

- 5.2 Subject property is constructed as Hotel Building and was reportedly built in year 1987 as mentioned in the copy of court order dated 5.08.2016. The property is currently lying vacant and under the possession of NDMC.
- 5.3 As per copies of building plan provided by NDMC, the subject property comprises of a basement plus 7 storied RCC structure. The basement has 1 banquet, there are 9 shops and banquet hall on ground floor and there is also 1 banquet and 1 bar on first floor. The second floor has a large office space with 4 cabins, there are also 2 spa's on the second floor. From second to seventh floor there are 85 rooms, 4 rooms on second floor, 19 rooms each from third to sixth floor and 5 rooms on seventh floor, all the rooms are offered with attached toilets. There are 3 lifts in the building (2 guest lift and 1 service lift). The hotel has one swimming pool on ground floor.
- 5.4 At the time site inspection, most of the rooms and terrace and basement were found locked. Few rooms on (third, fourth & fifth floor) were opened. It was observed during our site inspection that the subject property comprises of reception and waiting area lobby on Ground floor along with cabins. Further, it may be mentioned that during our site inspection we observed that based on the nomenclature of rooms there were 103 doors found for the rooms. However, as per the building plan provided to us by the NDMC there are 85 rooms, further as advised by the NDMC we have considered the total number of rooms as 85 for the purpose of license fee estimation. This valuation is carried out considering the details as mentioned in the copy of building plan provided to us. Further, we have adopted the area of the 9

shops and one office space with cabins on second floor as per building plan provided to us by NDMC.

5.5 Details of the total number of rooms, office space and shops

No. of Rooms as per plan	
Standard	80
Suites	5
Total	85

Details of room floor wise as mentioned in plan

Second Floor (4 Standard Room)	4
Third Floor (18 Standard + 1 Suite)	19
Fourth Floor (18 Standard + 1 Suite)	19
Fifth Floor (18 Standard + 1 Suite)	19
Sixth Floor (18 Standard + 1 Suite)	19
Sevenths Floor (4 Standard + 1 Suite)	5
Total Rooms	85

Area Details of Shops and Office Space

Area Details of Shops and Office Space	Carpet Area (SFT)	Built up Area (SFT)
8 Shops of 67.25 SFT each on Ground Floor	538.00	759.28
1 large shop on Ground Floor	152.25	
1 Office space with 4 cabins on second floor	2284.55	2513
Total Area in SFT	2974.8	3272.28

It may be noted that generally the ratio of carpet to built up is approx. 1 : 1.10, we have therefore derived built up area by considering a loading of 10% on carpet area as mentioned in the copy of plan provided to us.

5.6 Built up area details of the property

S. No	Description of Floor	Built up area (SMT)	Built up area (SFT)
1	Basement#	1358.26	14620.31
2	Ground Floor	987.67	10631.28
3	First Floor	407.08	4381.81
4	Second Floor	689.29	7419.52
5	Third Floor	611.77	6585.09
6	Fourth Floor	611.77	6585.09
7	Fifth Floor	611.77	6585.09
8	Sixth Floor	611.77	6585.09

9	Seventh Floor	245.64	2644.07
10	Terrace Floor#	130.014	1399.47
	Total Area	6265.034	67436.83

Plot area is 2740.1227 SMT as per copy of plan. Further, consumed FAR of the property is 174.32 with 36% ground coverage calculated on a built up area of 4776.76 SMT (Excluding basement and terrace area).

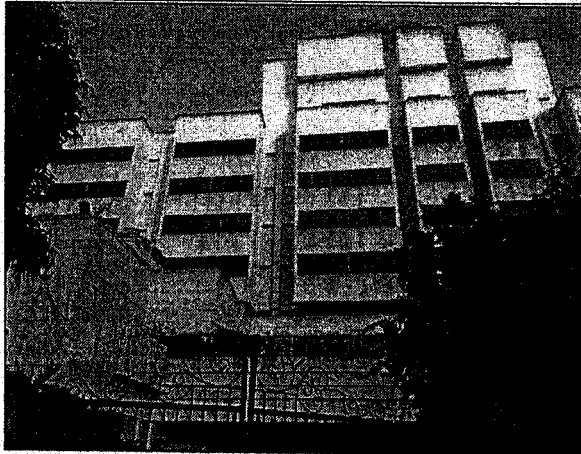
Basement and terrace (utility and services) area has been excluded for FAR calculation.

5.7 Details of area considered for valuation

Total built up area as per plan is 6265.034 SMT or 67,436.83 SFT, further the net area considered for valuation is excluding the terrace area of 130.014 SMT or 1399.47 SFT. Therefore, net built up area considered for valuation is 66,037.36 SFT. The break-up of the built up area pertaining to hotel, office and shops is mentioned hereunder:-

66037.36 SFT	Total
759.28 SFT	Retail
2513 SFT	Office
62765.08 SFT	Hotel

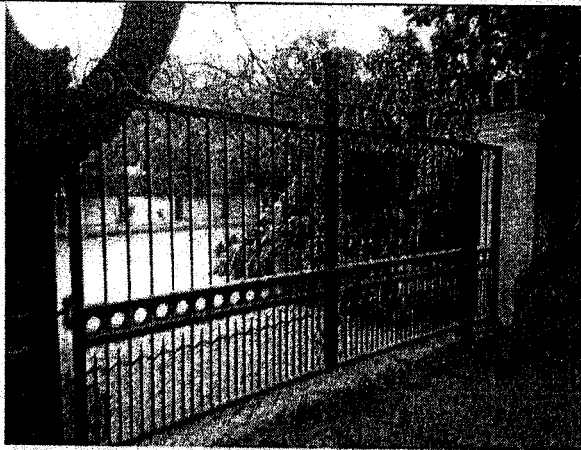
5.8 Photographs of the Property:



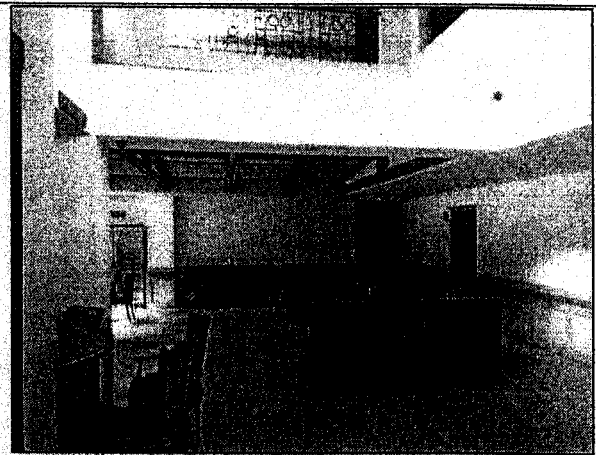
Front Elevation



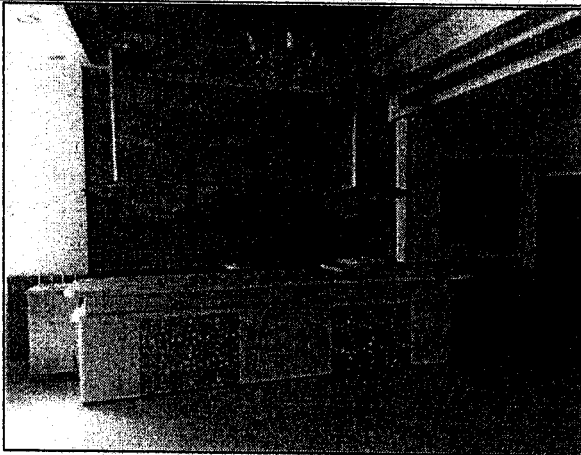
Main Entrance



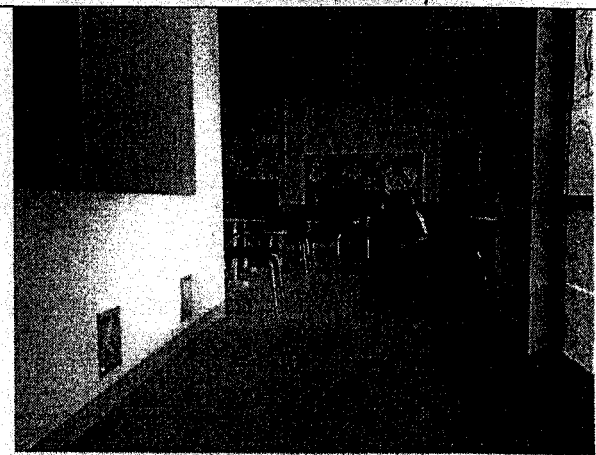
View of Exit Gate



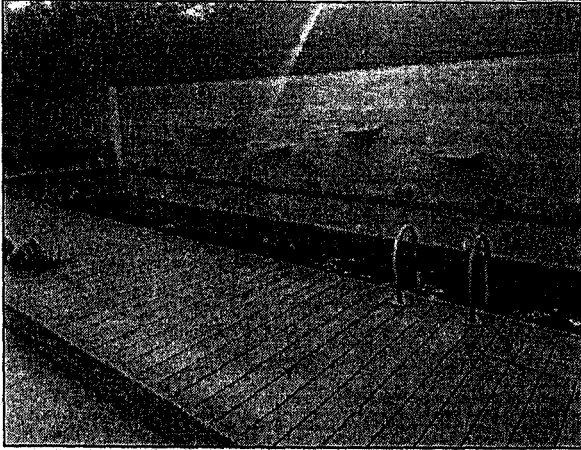
View of Guest Lobby



View of Banquet



View of Bar



View of Swimming Pool



View of Staircase to Basement



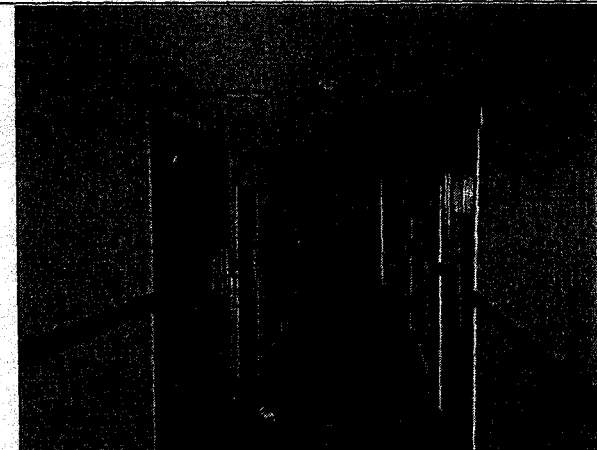
View of Banquet on First Floor



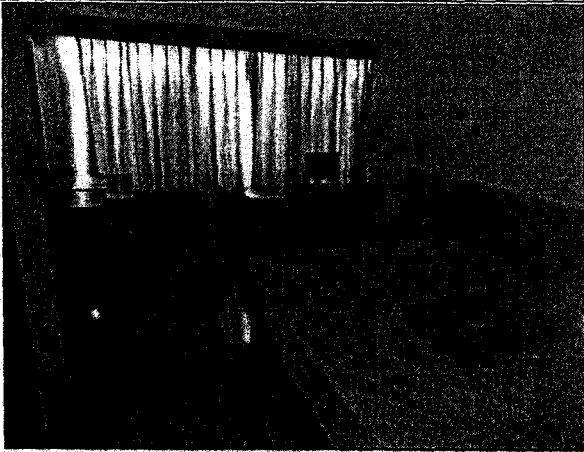
View of Terrace along Banquet on First Floor



View of Shivaji Stadium from Hotel



View of Corridor



Internal View of Room

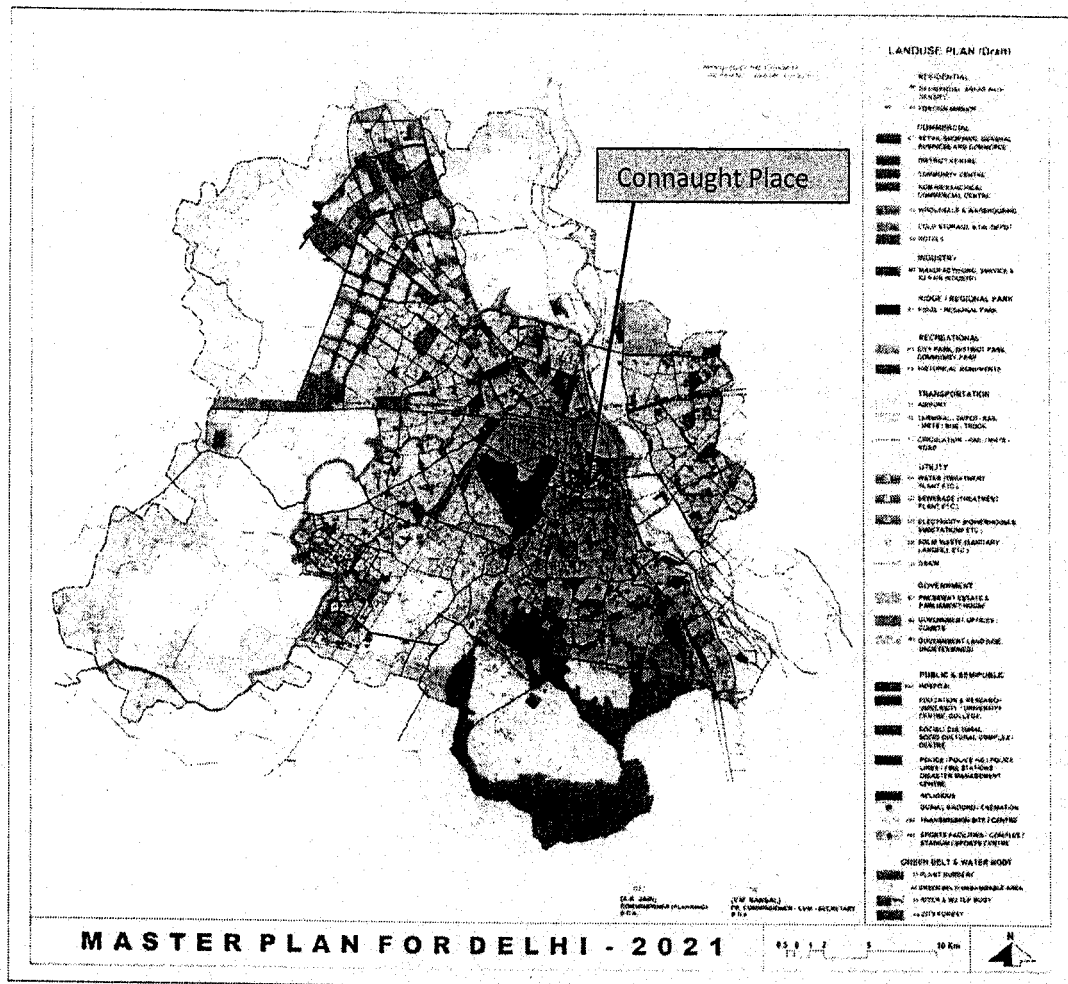


View of Approach Road

6.0 Development Control Regulation / Building By-laws

6.1 Land Use Zoning

6.2.1 The subject property is located at 37, Shaheed Bhagat Singh Marg, Connaught Place, New Delhi – 110 001, India. As per the zoning regulation, it falls under DDA Master Plan - 2021.



6.2 FSI / Height / Density Regulations

FAR: Details are not mentioned in the copy of an approved building plan further as per plan Plot area is 2740.1227 SMT and total built up area including basement and terrace is 6265.034 SMT. Further, consumed FAR of the property is 174.32 with 36% ground coverage calculated on a built up area of 4776.76 SMT (Excluding basement and terrace area). Details of the permissible FAR and ground coverage are not available with us.

7.0 Basis and Methodology of Valuation

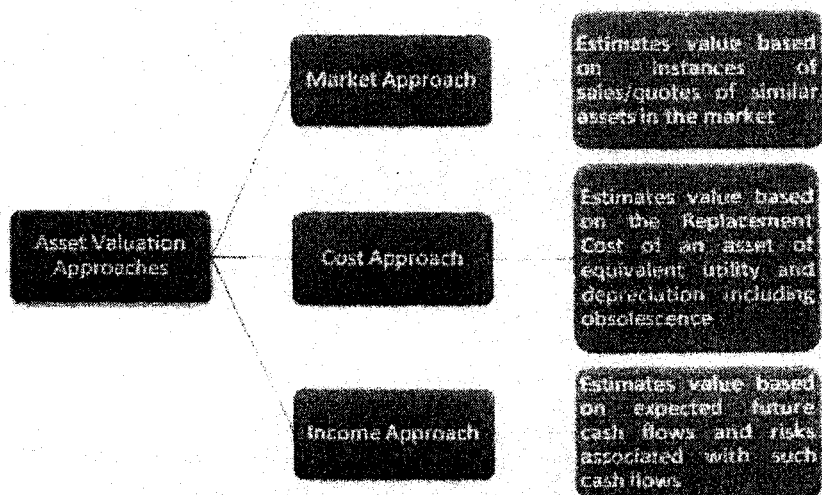
7.1 Basis of Valuation

7.2.1 Definition of Market Rent

As per International Valuation Standards, the Market Rent is defined as below:

"The estimated amount for which a property would be leased on the valuation date between a willing lessor and a willing lessee on appropriate lease terms in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion".

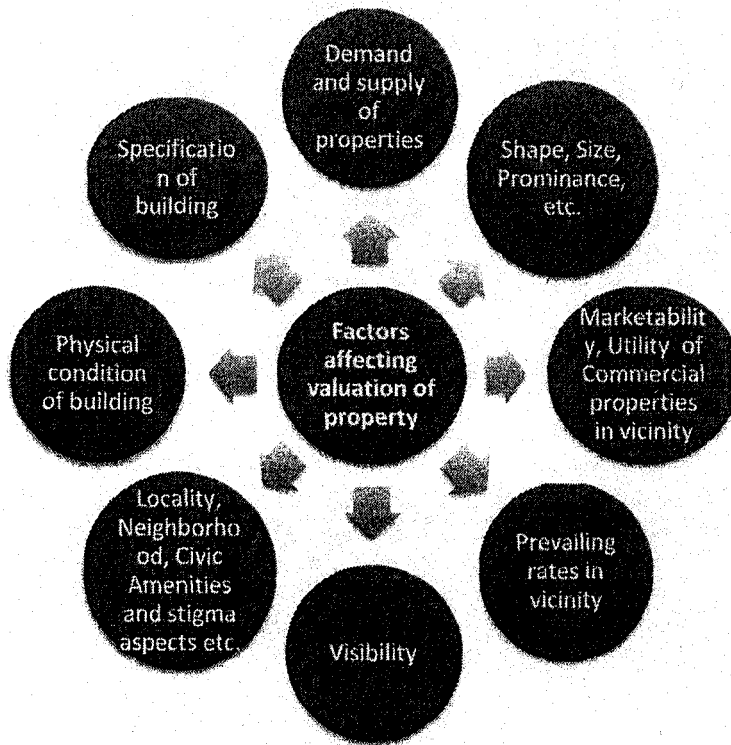
7.2 Approach and Methodology of Valuation



- It may be noted that Cost Approach is not considered since the same is not applicable for this exercise. The valuation for estimation of market rentals has been carried out by market approach and income approach only.

Method 1: Estimation of Market Rent of property by Sales Comparison Method (Market approach)

This exercise is carried out by Market Approach using Sales Comparison Method wherein comparable properties available for rent are identified by conducting a market survey and appropriate adjustments are made for different factors by assigning weightages. Various factors considered in the process are:



- a. Right to sell /transfer / lease the property
- b. Marketability, demand & supply of similar properties in the surrounding area.
- c. Location, accessibility and infrastructure facility
- d. Size, shape, orientation, floor level
- e. Utility and Development control/building regulations
- f. The property rates prevailing in nearby areas and as evident from the available/rental instances of comparable properties found upon market enquiry.
- g. Design of building structures and quality of utility services
- h. Physical Condition; State of repairs and maintenance.
- i. Type of construction and specifications
- j. Age, balance economic life of the structures

Method 2: Valuation of property by Discounted Cash Flow (DCF)

Under a DCF approach, forecasted cash flows are discounted back to the present date, generating a net present value for the cash flow stream of the business.

8.0 Observations, Assumptions and Limiting Conditions

The following Observations, assumptions and limiting conditions also form the basis of this valuation exercise.

- 8.1 The Real Estate market in India lacks transparency; the market is largely fragmented with limited availability of authentic, credible and reliable data with respect to market transactions. The actual transaction value may be significantly different from the value that is documented in official transactions. We believe that the market survey amongst actual lessors, brokers, developers and other market participants would give a fair representation of market trends. This valuation is therefore based on our verbal market survey of the real estate market in the subject area.
- 8.2 For the purpose of this valuation exercise, we have assumed that the subject property has a clear and marketable title and is free from any legal and physical encumbrances, disputes, claims and other statutory liabilities. Further, we have assumed that the subject property has received requisite planning approvals and clearances from appropriate local authorities and complies with local development control regulations.
- 8.3 Any matters related to legal title and ownership are outside the purview and scope of this Valuation exercise. Further, no legal advice regarding the title and ownership of the subject property has been obtained while conducting this valuation exercise. The NDMC is hereby advised to take an appropriate legal opinion on the matter while taking any decision on the basis of this report.
- 8.4 Valuation may be significantly influenced by adverse legal, title or ownership, encumbrance issues; we reserve our right to alter the conclusions should any such issues are brought to our knowledge at a later date.
- 8.5 In the course of this exercise we have relied upon the hardcopy, softcopy, email, documentary and verbal information provided by the NDMC without further verification. We have assumed that the information provided to us is reliable, accurate and complete in all respects. We reserve our right to alter our conclusions at a later date, if it is found that the data provided to us by NDMC was not - reliable, accurate or complete.

-
- 8.6 Transaction Costs like Stamp Duty, Registration Charges, Brokerage etc., pertaining to the sale/purchase of this property have not been considered while estimating the Market Rentals.
- 8.7 The subject valuation exercise is based on prevailing market dynamics as on the date of the valuation and does not take into account any unforeseeable developments which could impact the same in the future.
- 8.8 The actual age is based on information made available to us at the time of inspection. The remaining economic life is approximate in nature, and is based on our professional judgment.
- 8.9 This valuation is valid only for the purposes mentioned in this report. It is neither intended nor valid to be used for any other purposes. This report shall not be provided to any third party or external party without our written consent. In no event, regardless of whether consent has been provided, shall we assume any responsibility to any third party or external party to whom the report is disclosed or otherwise made available.
- 8.10 Possession of this report or any copy thereof does not carry with it right of publication. No portion of this report shall be disseminated to third parties through prospectus, advertising, public relations, news or any other means of communication without the written consent and approval of RBSA.
- 8.11 Any environmental due diligence or study is outside the scope of this Engagement; therefore no such due diligence or study has been carried out by RBSA. We have assumed that the subject asset complies with all environmental laws and regulations, and that there are no substances, environmental or pollution related encumbrances / issues which may adversely affect its value, utility or marketability. We have not carried out any due diligence with respect to any asset retirement obligations (ARO). Any such liability would have to be adjusted against the valuation.
- 8.12 No soil analysis or geological or other technical studies were made in conjunction with the report, nor was any water, oil, gas or other subsurface mineral and use rights or conditions investigated.
- 8.13 The inspection, due diligence and condition assessment of the asset was made by individuals generally familiar with valuation assessment of such assets. However, we

do not opine on, nor are we responsible for its conformity to any health, safety, environmental or any other regulatory requirements that were not readily apparent to our team of experts during their inspection.

- 8.14 Other observations, assumptions and limiting conditions, as appropriate, are also mentioned in respective sections of this report and annexure.
- 8.15 This report is further governed by our standard terms and conditions of professional engagement offer or contract.
- 8.16 As per the copy of site layout plan provided to us land area of the subject property is 2740.1227 SMT.

9.0 Valuation Analysis

9.1 VALUATION BY METHOD 1- SALES COMPARISON METHOD

9.1.1 Area Verification:

As per the copy of layout plan provided to us, land area of the subject property is 2740.1227 SMT. We have therefore considered land area i.e. 2740.1227 SMT as mentioned in site layout plan for purpose of this valuation exercise.

9.1.2 The instances of comparable hotel properties available for lease in the vicinity of the subject property are identified as follows:

Sr. No.	Description and Location of Property	Area in SFT	Final Negotiated consideration in INR per month	Final Leasable Area Rate (INR/SFT) per month
R1	A fully furnished hotel is available for lease at Green Park Extension, New Delhi. The hotel features 16 rooms with attached bathroom and fully furnished with AC, TV and intercom along with running water 24 hours a day, there is also a power backup of 62.5 kw.	6,000	5,52,500	92
R2	A fully furnished hotel is available for lease at Kalkaji, New Delhi. The hotel features 33 rooms with attached bathroom and fully furnished with AC, TV and intercom along with running water 24 hours a day, there is also a 24 hours power backup.	22,500	13,50,000	60
R3	A fully furnished hotel is available for lease at Kalkaji, New Delhi. The hotel features 36 rooms with attached bathroom and fully furnished with AC, TV and intercom along with running water 24 hours a day, there is also a 24 hours power backup.	22,500	14,40,000	64
R4	A fully furnished hotel on lease is available at Safdarjung Development area, New Delhi. The hotel features 42 rooms. It is two sided open property with basement and four upper floors and a restaurant with 2 banquet halls.	36,000	25,50,000	71

9.1.3 COMPARABLE RENT ANALYSIS

a. Details of Comparable properties available:

ELEMENT	SUBJECT PROPERTY	R1	R2	R3	R4
Name of the property	The Connaught	Hotel	Hotel	Hotel	Hotel
Location and Description of Property	37, Shaheed Bhagat Singh Marg, Connaught Place, New Delhi - 110 001	A fully furnished hotel is available for lease at Green Park Extension, New Delhi. The hotel features 16 rooms with attached bathroom and fully furnished with AC, TV and intercom along with running water 24 hours a day, there is also a power backup of 62.5 kw.	A fully furnished hotel is available for lease at Kalkaji, New Delhi. The hotel features 33 rooms with attached bathroom and fully furnished with AC, TV and intercom along with running water 24 hours a day, there is also a 24 hours power backup.	A fully furnished hotel is available for lease at Kalkaji, New Delhi. The hotel features 36 rooms with attached bathroom and fully furnished with AC, TV and intercom along with running water 24 hours a day, there is also a 24 hours power backup.	A fully furnished hotel on lease is available at Safdarjung Development area, New Delhi. The hotel features 42 rooms. It is two sided open property with basement and four upper floors and a restaurant with 2 banquet halls.
Negotiated Price in INR per SFT		92	60	64	71
Property Rights	Leasehold	Freehold	Freehold	Freehold	Freehold
Zone	Commercial	Commercial	Commercial	Commercial	Commercial
PHYSICAL SITE INFORMATION					
Present use	Vacant	Vacant	Vacant	Vacant	Vacant
Amenities of site	Good	Good	Good	Good	Good
Frontage (Width/Depth)	Excellent	Excellent	Good	Good	Excellent
Access - Type	Primary	Primary	Primary	Primary	Primary
Leasable Area - SFT	62,765.08	6,000	22,500	22,500	36,000
Topography	Levelled	Levelled	Levelled	Levelled	Levelled
Visibility	Good	Good	Good	Good	Good
Availability of Utilities Services	Available	Available	Available	Available	Available

b. Data adjustment chart for property available for rent:

COMPARISON ELEMENTS	R1	R2	R3	R4
Negotiated Price per SFT in INR	92	60	64	71
Location and Physical Adjustments:				
Location	0%	10%	10%	0%
Utility of Space	-3%	-3%	-3%	-3%
Frontage /Depth	0%	0%	0%	0%
Shape of the site	0%	0%	0%	0%
Amenities	0%	0%	0%	0%
Site Size	-25%	-10%	-10%	-5%
Access	0%	0%	0%	0%
Availability of Utilities Services	0%	0%	0%	0%
Visibility	0%	0%	0%	0%
Final Adjusted Price per SFT	66	58	62	65
For Reconciliation Purposes:				
Final Adjusted Price	66	58	62	65
Net Adjustment	-28%	-3%	-3%	-8%
Gross Adjustment	28%	23%	23%	8%
Weighting	30%	20%	20%	30%
Weighted Reconciliation	20	12	12	20
Total of Weighted Reconciliation			64	
			Or Say INR. 64/-per SFT	

**The approximate discount of 3% on account of utility of space has been calculated as a percentage of net built up area of second floor after excluding area of (office space with 4 cabins and 4 guest rooms and 2 sps's on second floor as mentioned in the plan) of the total built up area of the property.*

Therefore, fair market rental for hotel area is as follows;

Market Rent of Subject Property/Month = Market Rate (In INR/SFT/Month) X Area in SFT

= 64 X 62,765.08

=INR 40,16,965/-

Or Say INR. 40.17 Lacs/Month.....(1)

9.1.4 The instances of comparable Retail (Shops) properties available for lease in the vicinity of the subject property are identified as follows:

Sr. No.	Description and Location of Property	Leasable Area in SFT	Negotiated consideration (INR) per month	Final Leasable Area Rate (INR/SFT) per month
---------	--------------------------------------	----------------------	--	--

A : Instances available for Lease

S1	A Commercial Shop is available for lease in Gole Market. It is approx. 550 mts from the subject property.	250	43,000	170
S2	A Commercial Shop is available for lease in Gole Market. It is approx. 550 mts from the subject property.	225	29,000	130

9.1.5 COMPARABLE RENT ANALYSIS

c. Details of Comparable properties available:

ELEMENT	SUBJECT PROPERTY	S1	S2
Name of the property	The Connaught	Retail	Retail
Location and Description of Property	37, Shaheed Bhagat Singh Marg, Connaught Place, New Delhi – 110 001	A Commercial Shop is available for lease in Gole Market. It is approx. 550 mts from the subject property.	A Commercial Shop is available for lease in Gole Market. It is approx. 550 mts from the subject property.
Negotiated Price in INR per SFT		170	130
Property Rights	Leasehold	Freehold	Freehold
Zone	Commercial	Commercial	Commercial
PHYSICAL SITE INFORMATION			
Present use	Vacant	Vacant	Vacant
Amenities of site	Good	Good	Good
Frontage (Width/Depth)	Excellent	Excellent	Good
Floor	Ground Floor	Ground Floor	Ground Floor
Leasable Area – SFT	759.28	250	225
Topography	Levelled	Levelled	Levelled
Visibility	Good	Good	Good
Availability of Utilities Services	Available	Available	Available

d. Data adjustment chart for property available for rent:

COMPARISON ELEMENTS	S1	S2
Negotiated Price per SFT in INR	170	130
Location and Physical Adjustments:		
Location	0%	20%
Marketability	0%	0%
Frontage /Depth	0%	0%
Shape of the site	0%	0%
Amenities	0%	0%
Site Size	10%	10%
Floor Level	0%	0%
Availability of Utilities Services	0%	0%
Visibility	0%	0%
Final Adjusted Price per SFT	187	169
For Reconciliation Purposes:		
Final Adjusted Price	187	169
Net Adjustment	10%	30%
Gross Adjustment	10%	30%
Weighting	60%	40%
Weighted Reconciliation	112	68
Total of Weighted Reconciliation		180
		Or Say INR. 180/-per SFT

Therefore, fair market rental for Retail shops is as follows;

Market Rent of Subject Property/Month = Market Rate (In INR/SFT/Month) X Area in SFT

= 180 X 759.28

=INR 1,36,670/-

Or Say INR. 1.37 Lacs/Month.....(2)

9.1.6 The instances of comparable Office Spaces available for lease in the vicinity of the subject property are identified as follows:

Sr. No.	Description and Location of Property	Leasable Area in SFT	Negotiated consideration (INR) per month	Final Leasable Area Rate (INR/SFT) per month
---------	--------------------------------------	----------------------	--	--

A : Instances available for Lease

01	An office space on 5th floor is available for lease in Ansal Bhawan. It is approx. 1.6 kms from the subject property.	1,040	1,75,000	170
02	An office space on 12th floor is available for lease in Naurang House. It is approx. 1.3 kms from the subject property.	1,700	2,99,115	180
03	An office space on 6th floor is available for lease in Hansalaya Building. It is approx. 1.6 kms from the subject property.	1,530	2,85,039	190
04	An office space on 1st floor is available for lease in Statesman House. It is approx. 1.4 kms from the subject property.	1,650	4,30,650	260

9.1.7 COMPARABLE RENT ANALYSIS

e. Details of Comparable properties available:

ELEMENT	SUBJECT PROPERTY	01	02	03	04
Name of the property	The Connaught	Office Space	Office Space	Office Space	Office Space
Location and Description of Property	37, Shaheed Bhagat Singh Marg, Connaught Place, New Delhi - 110 001	An office space on 5th floor is available for lease in Ansal Bhawan. It is approx. 1.6 kms from the subject property.	An office space on 12th floor is available for lease in Naurang House. It is approx. 1.3 kms from the subject property.	An office space on 6th floor is available for lease in Hansalaya Building. It is approx. 1.6 kms from the subject property.	An office space on 1st floor is available for lease in Statesman House. It is approx. 1.4 kms from the subject property.
Negotiated Price in INR per SFT		170	180	190	260
Property Rights	Leasehold	Freehold	Leasehold	Leasehold	Leasehold
Zone	Commercial	Commercial	Commercial	Commercial	Commercial

PHYSICAL SITE INFORMATION

Present use	Vacant	Vacant	Vacant	Vacant	Vacant
Amenities of site	Good	Good	Good	Good	Good
Frontage (Width/Depth)	Good	Good	Good	Good	Good
Floor	2nd Floor	5th Floor	12th Floor	6th Floor	1st Floor
Leasable Area – SFT	2,513	1,040	1,700	1,530	1,650
Topography	Levelled	Levelled	Levelled	Levelled	Levelled
Visibility	Good	Good	Good	Good	Good
Availability of Utilities Services	Available	Available	Available	Available	Available

f. Data adjustment chart for property available for rent:

COMPARISON ELEMENTS	01	02	03	04
Negotiated Price per SFT in INR	170	180	190	260
Location and Physical Adjustments:				
Location	-10%	-10%	-10%	-10%
Furnished/Unfurnished	0%	0%	0%	-10%
Marketability	0%	0%	0%	0%
Frontage /Depth	0%	0%	0%	0%
Shape of the site	0%	0%	0%	0%
Age of Building/Condition	0%	0%	0%	-10%
Amenities	0%	0%	0%	0%
Site Size	-5%	-5%	-5%	-5%
Floor Level	0%	0%	0%	0%
Availability of Utilities Services	0%	0%	0%	0%
Visibility	0%	0%	0%	0%
Final Adjusted Price per SFT	145	153	162	169
For Reconciliation Purposes:				
Final Adjusted Price	145	153	162	169
Net Adjustment	-15%	-15%	-15%	-15%
Gross Adjustment	15%	15%	15%	15%
Weighting	25%	25%	25%	25%
Weighted Reconciliation	36	38	41	42
Total of Weighted Reconciliation			157	

Or Say INR. 157/-per SFT

Therefore, fair market rental for Office Space is as follows;

Market Rent of Subject Property/Month = Market Rate (In INR/SFT/Month) X Area in SFT

= 157 X 2513

=INR 3,94,541/-

Or Say INR. 3.95 Lakhs/Month.....(3)

Therefore, Total Market Rent of Property/ Month = (1) + (2) + (3)

= INR 40.17 Lacs + INR 1.37 Lacs + INR 3.95 Lacs

= INR 45.49 Lacs

OR Say INR 45.50 Lacs/month

9.2 VALUATION BY METHOD 2- DISCOUNTED CASH FLOW METHOD

9.2.1 Under a DCF approach, forecasted cash flows are discounted back to the present date, generating a net present value for the cash flow stream of the business. Cash Flow for 30-year lease period as told by NDMC is considered while deriving the lease rental under this method.

9.2.2 Initial Capital Expenditure of INR 5 Crores is considered for of which INR 2 Crores is for Interiors, Furniture & Fixture, INR 1 Crore is for Exteriors, INR 1 Crore is for Kitchen Furniture and balance INR 1 Crore is for Kitchen equipment's. Date of Operations start is considered as 1st April 2017 and accordingly FY 2018 shall be first financial year. The free cash flows to the firm are a function of the year on year profit after tax that the firm generates.

The below table shows the forecasted financial statement of the property for initial years:

Particulars	Projected (INR in Lacs)					
	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Revenue from operations	382.81	1,738.83	1,935.92	2,074.08	2,212.09	2,356.57
Total Revenue	382.81	1,738.83	1,935.92	2,074.08	2,212.09	2,356.57
YOY Growth	-	354.2%	11.3%	7.1%	6.7%	6.5%
Direct Costs	93.58	427.25	477.52	511.14	546.34	583.19
Indirect costs	124.52	529.74	581.00	620.10	659.70	701.26
Total Expenditure	218.10	957.00	1,058.53	1,131.24	1,206.04	1,284.45
EBITDA	164.72	781.83	877.39	942.84	1,006.05	1,072.12
EBIDTA Margin	43.0%	45.0%	45.3%	45.5%	45.5%	45.5%
Depreciation expense	16.67	16.67	16.67	16.67	16.67	16.67
EBIT	148.05	765.17	860.72	926.17	989.38	1,055.46
Taxes Paid	48.94	252.96	284.56	306.19	327.09	348.93
Profit	99.10	512.20	576.17	619.98	662.29	706.52
PAT Margin	25.9%	29.5%	29.8%	29.9%	29.9%	30.0%

9.2.3 Total revenue of the company is expected to increase from INR 3.83 Crores in FY 2018 to INR 23.57 Crores in FY 2023 at a CAGR of 9 per cent. The growth in revenue is primarily driven by the expected growth in room rent and income from sale of food and beverages.

9.2.4 Average daily room rate (ADRR) in the base year is assumed at INR 6,000/- for FY 2018, with average occupancy at 50% in FY 2018 considering the fact that it will take initial 9 months in getting the hotel fit for starting operations and only 3 months' operations will happen.

Occupancy is expected to increase by 5% for the next two years and 2.5% from FY 2021 YoY while reaching at the top of 70% in FY 2024. Growth in ADR is assumed at 3% YoY from FY 2019.

9.2.5 The table below shows the detailed assumption for Revenue, Direct Cost and Indirect Cost:

Statement showing Assumptions	
Particulars	
General Assumptions	
Date of valuation	01-04-2017
Cost of Equity	16%
Tax Rate	33.06%
YoY Inflation	5.70%
Revenue Assumptions	
F&B Revenue as % of Room Revenue	30.0%
Banquet revenue as % of Room Revenue	20.0%
Other Income as a % of Room Revenue	8.0%
Direct Cost Assumptions	
Direct Room Cost as % of Room Revenue	15.0%
F&B Cost as % of F&B Revenue	45.0%
Banquet cost as % of banquet revenue	35.0%
Other Cost as % of Other Revenue	60.0%
Indirect Cost Assumptions	
Administrative & General	9.0%
Sales & Marketing (% of Revenue)	5.0%
Property Maintenance	5.0%
Insurance & Property tax	0.5%
F&FE Reserve (% of Revenue)	2.5%
Power & Fuel (% of Revenue)	9.0%

9.2.6 Food and Beverage revenue is considered at a rate of 30% of the room revenue.

9.2.7 The Hotel has 3 banquets, revenue of which is considered at a rate of 20% of the room revenue.

9.2.8 Other income like laundry, telephone, spa etc. is considered at a rate of 8% of the room revenue.

9.2.9 Direct room cost is assumed at 15% of the room revenue.

9.2.10 Food & Beverage cost is considered at a rate of 45% of the F&B revenue.

9.2.11 Banquet cost is considered at a rate of 35% of the revenue from Banquets.

9.2.12 Other cost relating to other revenue is considered at a rate of 60%.

9.2.13 Administrative and General expenditure is considered at a rate of 9% of revenue for FY 2018. From FY 2019 onwards, we have converted the FY

2018 cost for a full year of operation and increased the same at a rate of 5.70% YoY.

9.2.14 Sales & Marketing expense is considered at a rate of 5% YoY of revenue.

9.2.15 Property maintenance cost is considered at a rate of 5% of revenue.

9.2.16 Insurance & Property tax for the FY 2018 has been assumed at 0.5% of full years' revenue. From FY 2019 onwards, the same has been increased at a rate of 5.70% YoY.

9.2.17 F & FE reserve and Power & Fuel cost have been assumed at a rate of 2.5% and 9% respectively of revenue.

9.2.18 We have considered an EBITDA margin of approximately 45% during the forecasted period, and PAT margin in the vicinity of 29% as per industry standards.

9.2.19 The rate at which the future cash flows are discounted ("the discount rate") should reflect not only the time value of money, but also the risk associated with the business future operations. The discount rate most generally employed is Weighted Average Cost of Capital ("WACC"). We have assumed a discount rate of 16% for cash flows from the subject property. Below table shows the detailed working of WACC calculation:

Hotel Connaught		
Weighted Average Cost of Capital		
Required Return on Equity		
Modified Capital Asset Pricing Model		
1 Risk-Free Rate of Return [a]		6.41%
2 Long-Term Market Equity Risk Premium [b]	9.71%	
3 Selected Equity Beta	0.8	7.67%
4 Company Specific Risk Premium		1.50%
5 Concluded Required Return on Equity (Ke)		16.00%
Cost of Debt		
Long-Term Cost of Debt		
6 Cost of Debt		12.00%
7 Less: Income Tax Factor	34.61%	
8 Concluded Cost of Debt		7.85%
Weighted Average Cost of Capital		
10 Equity Allocation of Capital Structure	100.00%	16.00%
11 Debt Allocation of Capital Structure	0.00%	0.00%
12 Weighted Average Cost of Capital(Rounded)		16.00%
[a] http://www.tradingeconomics.com/india/government-bond-yield		
[b] From Damodaran study		

9.2.20 The table below shows the present value of the free cash flow to the firm for initial years (INR in Lacs).

Particulars	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
PAT	99.10	512.20	576.17	619.98	662.29	706.52	771.08	789.62
Add: Depreciation	16.67	16.67	16.67	16.67	16.67	16.67	16.67	16.67
Less: Capex	(500.00)	-	-	-	-	-	-	-
FCFF	(384.23)	528.87	592.84	636.65	678.96	723.19	787.75	806.29
Time to Midpoint	0.50	1.50	2.50	3.50	4.50	5.50	6.50	7.50
Discount Rate @ 16%	0.93	0.80	0.69	0.59	0.51	0.44	0.38	0.33
Discounted Cashflow	(356.75)	423.31	409.06	378.70	348.16	319.69	300.20	264.88

Net Present Value in Lacs	3,955.31
Cap. Rate	13.00%
Yearly rental (absolute)	5,14,19,023
Monthly rental	42,84,918.61
or Say	42,84,920.00

9.2.21 Capitalization Rate:

The capitalization rate considered for this analysis is 13%. The market trend of the capitalization rate for such commercial properties is in the range of 10% to 13%. Considering the locational advantage of the property (The property being centrally located in Connaught Place Area which is amongst the posh areas of Delhi and considering its connectivity and proximity to New Delhi Railway Station as well as Delhi Railway Station and its proximity to Rajeev Chowk Metro Station which is a major junction for metro connectivity connecting majority of the lines of metro) we are of the opinion that the capitalization rate of 13% is fair and justified.

Note: In our calculations, we have assumed that the NDMC itself will operate the hotel and there is no third party operator.

RBSA

10.0 Conclusion



The Market Rental of Hotel Building Space proposed to be auctioned by 'NDMC' on license fee basis situated at 37, Shaheed Bhagat Singh Marg, Connaught Place, New Delhi – 110 001, India as on 1st December, 2016 is estimated as INR 45.50 Lacs/Month (Indian Rupees Forty-Five Lacs Fifty Thousand per month only) by method 1 and as on 1st April, 2017 is INR 42.85 Lacs/Month (Indian Rupees Forty-Two Lacs Eighty-Five Thousand per month only) by Method 2.

For RBSA Valuation Advisors LLP

For RBSA Valuation Advisors LLP

For RBSA Valuation Advisors LLP

Arpit Sharma

Vice President

Karan Sachdeva

Sr. Associate (FAS)

Agam Bhargadwaj

Sr. Manager (Valuation)

Date: 24th February, 2017

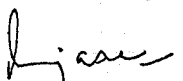
Place: New Delhi


Annexure-I

ESTATE-I DEPARTMENT
NEW DELHI MUNICIPAL COUNCIL
PALIKA KENDRA : NEW DELHI

TERMS & CONDITIONS FOR AUCTION OF LICENCE IN RESPECT
OF HOTEL PREMISES SITUATED AT 37, SHAHEED BHAGAT SINGH
MARG, NEW DELHI EARLIER KNOWN AS HOTEL 'THE
CONNAUGHT'.

1. The Licensor [i.e. New Delhi Municipal Council (NDMC)] reserves the right to reject any or all the e-bidders / bids without assigning any reasons.
2. The e-bidder shall furnish an earnest money of the amount equivalent to three times of reserve price for a month (i.e. EMD equal to Rs. _____ in the form of Demand Draft or Bankers Cheque in favour of Secretary, NDMC payable at New Delhi / Delhi.
3. The e-bidder should furnish details regarding financial soundness and credit worthiness of him duly certified by a CA firm which is empanelled with CAG in case of individual bidder. For others, balance sheet duly certified by Auditors is to be submitted.
4. The allotment will be made to the highest e-bidder in e-auction on licence fee payment basis.
5. The earnest money shall be forfeited in favour of the NDMC in case the applicant after participating in auction becomes successful e-bidder withdraws the offer or makes modifications therein or on acceptance of his application fails to complete any of the formalities of the licence within the period stipulated in conditions 6 and 7, and the allotment in such case shall be deemed terminated.
6. The successful e-bidder will be required to deposit equal to six (6) months licence fee as interest free security deposit alongwith; (i) three months' advance licence fee to NDMC, and (ii) three months' Bank Buarantee. The interest free security deposit and three months' advance licence fee shall be accepted only in the form of Demand Draft or Bankers Cheque in favour of Secretary, NDMC payable at New Delhi / Delhi, within a period of 15 days of the receipt of the intimation of acceptance of his offer towards the fulfillment of the contractual obligations. The earnest money deposited by the successful e-bidder alongwith the bid will be adjusted towards the security deposited.

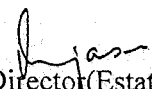

Director(Estate-I)



Financial Advisor

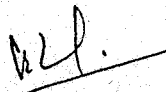

Secretary

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7. The successful e-bidder will execute a licence deed on a non-judicial stamp paper within a period of 15 days from the date of depositing the security deposit alongwith two months advance licence fee to Licensor, in the proforma prescribed by the Licensor.
8. The terms and conditions of the licence are given in the attached licence deed in detail, and it is the responsibility of the e-bidder to go through such terms and conditions before participating in this e-auction process. In case of any discrepancy in documents related to the e-auction, the terms and conditions mentioned in the Licence Deed shall have superseding effect.
9. The licence fee will be increased at the rate of ten per cent (10%) every three (3) years, on compounding basis.
10. The hotel premises will be licensed for 30 years from the date of commencement of licence deed i.e. the date of taking of possession of building on 'AS IS WHERE IS BASIS' by the licensee from licensor.
11. No renewal after expiry of license period of thirty (30) years shall be granted. After the expiry of the licence period of thirty (30) years or its sooner determination, the license shall be deemed as terminated.
12. In case of termination, Licensor shall enter into the premises, and in the event of the Licensee not surrendering the vacant possession of the premises within the stipulated period under this deed in a peaceful manner, the licensee shall render himself/herself/themselves liable for action for eviction under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, recovery of dues as arrears of tax under section 102 of NDMC Act read with section 363 of the Act, disconnection of electricity, water and other utilities/services, and any other action(s) as deemed fit by the licensor.
13. At the time of commencement of licence deed, the licence fee deposited in advance will be adjusted towards the monthly licence fee and after adjustment of the said licence fee, the licensee shall pay the licence fee in advance by the 10th of each English Calendar month at the latest.
14. Non-payment of the licence fee within the prescribed period will constitute breach of the terms of licence and shall render the licence liable to be terminated. In the event of the licensee committing default in the payment of the licence fee for any reason, what-so-ever, shall be liable to pay to the licensor monthly compounding interest for the period of default at a rate of 15% per annum on the amount of licence fee and any other dues including interests, the payment of which has been so defaulted. The interest on defaulted amounts shall be payable for full month irrespective of the fact whether default so committed is for the part of the month.

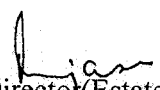

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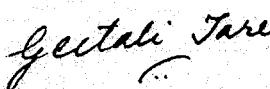

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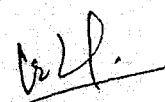

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15. The hotel premises will be licensed on "AS IS WHERE IS BASIS" and the licensee after taking formal occupation of the licensed premises shall not contest thereafter that the licensed premises is not complete in any respect whatsoever. If any change, additions/alterations are necessary, the licensee shall do the same at his own cost after obtaining prior written permission of the licensor and the liabilities for the payment of licence fee shall not be affected.
16. There shall be a moratorium period for payment of license fee for a period of three months from the date of signing of the licence deed for the purpose of refurbishment and during such three months periods no licence fee will be charged from the licensee.
17. The licensee shall use the licensed premises for the purposes of running "hotel" of acceptable standard together with related facilities and business appurtenant thereto, which complies with the terms and conditions of the licence, and applicable Master Plan of Delhi and Building Bye-Laws, for the convenience and benefit of the tourist occupants of the Hotel. The basement shall be used by the licensee for storage purposes only, and keeping machineries related with utilities like electricity, water supply etc. The Electric sub-station to be run in the basement shall remain in occupation of the licensor. The licensee shall not use the said hotel premises for any other purpose whatsoever except what has been detailed in this para, and permissible under Master Plan of Delhi and Building Bye-Laws, as amended from time to time.
18. Preparation of articles of food would be done in kitchen area only after getting a health license from the competent authority, and dish washing would be done only in the kitchen area & nowhere else.
19. The licensee shall run the hotel himself. However, the licensee may run the shops, restaurants, limited open space car/two-wheeler parking, earmarked for such purposes as mentioned in Para 17 above, himself or allow temporarily such sub-licensee for a period terminating with the period of the licence deed or its termination at any stage, or any period earlier. Trades in the shops shall be the trades as may be permitted by the licensor. The licensee shall be further responsible for the conduct of the various sub-licensees and observance of rules and regulations etc. The licensees shall be further responsible to answer that the sub-licensees quit the premises on the expiry or sooner termination of the licence that may be accorded. The sub-licensees shall not get any right over and above the rights and privileges of the licence. The licensee shall furnish to the licensor the names of sub-licensees in the hotel premises from time to time & the terms of licence of sub-licensees shall be got approved from the licensor in writing before executing the same.

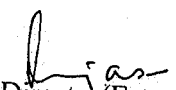

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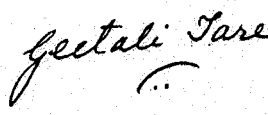

Financial Advisor

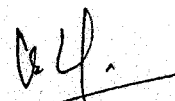

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20. Save as provided in the preceding paras, the licensee during the tenure of this license shall not sublet/transfer/ assign or part with the building or any portion thereof permanently or temporarily to anybody else nor shall be allowed to take any person/persons to occupy the premises or to use any part thereof save with the prior permission in writing of the licensor.
21. The licensee shall be bound to abide by all applicable statutes, laws, by-laws, rules, regulations, orders, ordinances, protocols, codes, guidelines, policies, notices, directions, judgments, decrees or other requirements or official directive of any governmental authority or court or other law, rule or regulation approval from the relevant governmental authority, government resolution, directive, or other government restriction or any similar form of decision of, or determination by, or any interpretation or adjudication having the force of law in India, including the provisions of the New Delhi Municipal Council Act, 1994 (44 of 1994) and the rules, regulations, bye-laws, orders, etc. made under them, as amended from time to time.
22. Any individual partnership firm and company registered under Companies Act, 1965 or Companies Act, 2013 are eligible to participate in the e-Auction. Regarding partnership and Company, they should be subsisting for the last 3 years prior to the date of auction.
23. The prospective e-Auctioneers/bidders should not be debarred/blacklisted by any Government/Public sector undertaking/ Local Bodies or any other statutory authority.
24. The participants should also furnish Income Tax returns for the last 3 financial years.
25. The participants should have at least average turnover of Rs.15 Crores in the last three years.


Director (Estate-I)


Financial Advisor


Secretary

ESTATE-I DEPARTMENT
NEW DELHI MUNICIPAL COUNCIL
PALIKA KENDRA : NEW DELHI

CHAPTER: 1

License Deed

License Deed No. _____ of Year _____

This License Deed is made and entered into on this _____ day of _____ at New Delhi between:

New Delhi Municipal Council (NDMC), established under the NDMC Act 1994, having its office at Palika Kendra, Sansad Marg, New Delhi-110 001 (hereinafter called the 'licensor' which expression shall, unless repugnant to the context or meaning thereof, mean and include all its successors, assignees and nominees), being party of the **First Part**.

AND

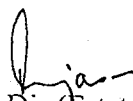
_____ (hereinafter called the 'licensee' which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its executives, successors, administrative assignees through its Authorized Signatory _____, who is/are duly authorized to execute this deed) being party of the **Second Part**.

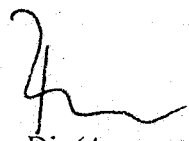
WHEREAS


The Licensor owns and is in possession of a seven storied hotel premises earlier known as 'The Connaught' comprising of basement, ground and seven floors constructed on a plot of land situated at 37, Shaheed Bhagat Singh Marg, New Delhi (hereinafter called the 'hotel').

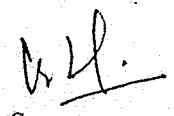
Licensor has agreed to provide to the Licensee, the Licensing Rights of said premises (pre identified by NDMC on the basis of highest bid received through e-auction) on "**AS IS WHERE IS BASIS**", on payment of License Fee and other charges to NDMC on the terms and conditions hereunder contained in this License Deed.

The NDMC has agreed to grant License for use of hotel with covered area measuring _____ sq. ft. () at Rs. _____ per month to the licensee at 37, Shaheed Bhagat Singh Marg, New Delhi to the Licensee particularly described in the first schedule annexed to the license deed alongwith the fitting and fixtures therein for a period of thirty years w.e.f. _____ (date of possession), for running a hotel.


Dir.(Estate-I)


Dir.(Accounts)


Financial Advisor


Secretary

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NOW THEREFORE, in lieu of the mutual promise and consideration set out herein Licensor/NDMC and the Licensee (hereinafter collectively called "Parties") witnessed and hereby agree as follows:

The Licensee hereby covenants as follows: -

- i) Licensee irrevocably agrees to make all payments including License Fee as per this licence deed every month in advance, without delay or demur, without waiting for any formal advice from NDMC in this regard.
- ii) The Licensee confirms having examined the licensed premises and fully understands and comprehends the requirements of the hotel being taken on license. The Licensee also confirms full satisfaction as to the viability of licensing the hotel and hereby voluntarily and unequivocally agrees not to seek any claim, damages, compensation or any other consideration, whatsoever on this account. The Licensee also confirms having made independent assessment of taking the said premises on License and no future claim what so ever regarding change in market circumstances shall be used by it as an alibi or excuse for non-payment of License Fee and other amounts due to NDMC under this licence deed.

That LICENSOR and LICENSEE represent and warrant that they are empowered, authorized and able enter into this license deed which comprises of ten chapters and three annexures.

In witness whereof the parties hereto have caused this license deed to be signed in their respective hands as of the day and year first before written.

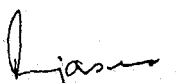
This license deed has 10 chapters, dealing with Definitions (Chapter: 2); Grant of License (Chapter: 3); Addition/Alternation to the Hotel (Chapter: 4); Licensee's Obligations (Chapter: 5); Indemnity and Insurance (Chapter: 6); Force Majeure (Chapter: 7); Breaches/Surrender/Termination of License Deed (Chapter: 8); Representations and Warranties (Chapter: 9); Miscellaneous (Chapter: 10) and 3 Annexures dealing with the details of Hotel proposed for leasing (Annexure-I); Handing over Note (Annexure-II) and Taking over Note (Annexure-III).


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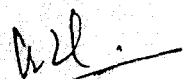
(.....)
FOR AND ON BEHALF OF LICENSOR
(NEW DELHI MUNICIPAL COUNCIL)

(.....)
Authorized Signatory
FOR AND ON BEHALF OF LICENSEE


Dir. (Estate-I)


Dir. (Accounts)


Financial Advisor

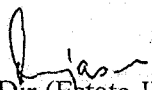

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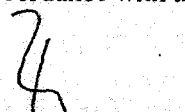
DEFINITIONS

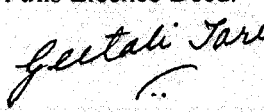
- i) "Licence Deed"/Indenture means the Licence Deed dated _____ executed between NDMC and the _____ in the format approved by NDMC on the terms and conditions mutually agreed to by both the parties and includes any amendments, annexure hereto made in accordance with the provisions hereof.
- ii) "Applicable Laws" means all laws, brought into force and effect by Government of India, State Governments, local bodies and statutory agencies and rules, bye-laws, regulations, notifications, orders, ordinances, protocols, codes, guidelines, policies, notices, directions, judgments, decrees or other requirements or official directive of any governmental authority or court or other law, rule or regulation approval from the relevant governmental authority, government resolution, directive, or other government restriction or any similar form of decision of, or determination by, or any interpretation or adjudication having the force of law in India, issued by them from time to time.
- iii) "Applicable Permits" means all clearances, permits, authorizations, consents and approvals required to be obtained or maintained under Applicable Law, in connection with the "hotel" during the subsistence of this Licence Deed.
- iv) "**AS IS WHERE IS BASIS**" means LICENSEE shall be licensed the said hotel, equipments, installations, fittings and fixtures on "as is where is basis" and the LICENSEE shall not make any additions or alterations in the hotel, installations including electric installations and wiring without the prior permission of NDMC in writing and when permitted by the LICENSOR the said additions and alterations shall be carried out by the LICENSEE at their own cost. They shall not be entitled to any compensation for any additions carried out by them in the hotel rather LICENSEE shall be required to hand over the hotel in original condition at the end of license period.
- v) "Change in Law" means the occurrence or coming into force of any of the following after the date of signing this Licence Deed:
- a) The enactment of any new Indian law;
 - b) The repeal, modification or re-enactment of any existing Indian law;
 - c) Any change in the rate of any Tax;

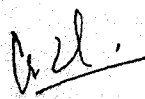
Provided that Change in Law shall not include:

- i. Coming into effect after the date of signing this Licence Deed of any provision of a statute which is already in place as of the date of signing this Licence Deed;(or)
 - ii. Any new law or any change in existing law under the active consideration of or in the contemplation of any Government as of the date of signing this Licence Deed, which is a matter of public knowledge.
- vi) "Commencement Date or Handover Date" means the date on which the hotel is handed over by NDMC to the Selected Bidder, in accordance with the terms of this Licence Deed.


Dir. (Estate-I)

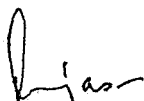

Dir. (Accounts)


Financial Advisor



Secretary

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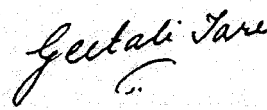
- vii) "Damages" shall mean any claim of NDMC against the Licensee for breach of this Licence Deed, including but not limited to, losses, dues, arrears etc. against which NDMC shall be entitled to claim and adjust the interest free Security Deposit.
- viii) "NDMC" means New Delhi Municipal Council established under the New Delhi Municipal Council Act 1994.
- ix) "Interest Free Security Deposit" means interest free amount to be deposited by the Licensee with NDMC as per terms and conditions of License Deed as a security against observance of License Deed and the payment of all dues as per terms and conditions of the License Deed.
- x) "License" means the licensing rights granted by Licensor/NDMC to the _____ for use of licensed premises as hotel (excluding banned list of usage of premises inside the hotel), based on the terms and conditions of the License Deed.
- xi) "Licensee" means the _____, who has executed the license deed with NDMC for use of the said premises as hotel (excluding banned list of usage of premises inside the hotel), based on the terms and conditions of the License Deed.
- xii) "License Fee" means the monthly amount payable by the licensee to NDMC as per rates decided by the NDMC, the Licensor and agreed to by _____, the Licensee, for use of the said premises as hotel, as per the terms and conditions of the License Deed.
- xiii) "License Period" means the period beginning from the Commencement Date and ending on the Termination Date by efflux of time or sooner determination in accordance with the date of this Licence Deed.
- xiv) "Hotel" means the specified premises earlier commonly known as 'The Connaught' situated at 37, Shaheed Bhagat Singh Marg, New Delhi handed over by NDMC to the licensee for use as hotel, under and in accordance with this License Deed.
- xv) "Licensor" means the New Delhi Municipal Council (NDMC)
- xvi) "Permits" shall mean and include all applicable statutory, environmental or regulatory licenses, authorization, permits, consents, approvals, registrations and franchises from concerned authorities.
- xvii) "Tax" means and includes all taxes, fee, cesses, levies that may be payable by the Licensee under the Applicable Law to the Government or any of its agencies.
- xviii) "Termination" means termination of this Licence Deed by efflux of time or sooner determination in accordance with the provisions of this License Deed.
- xix) "Termination Date" means the end of the License period or date of sooner determination of the License period in accordance with the terms of this Licence Deed whichever is earlier.
- xx) "Terms and conditions" :- The terms and condition of the auction and the same shall form **part** of this license deed as applicable.



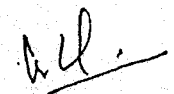
Dir. (State-I)



Dir. (Accounts)



Financial Advisor



Secretary

GRANT OF LICENSE

3.1 There is a hotel with a total area of _____ sq.ft. earlier commonly known as 'The Connaught' situated at 37, Shaheed Bhagat Singh Marg, New Delhi i which has been provided for licensing rights as detailed in Annexure-I.

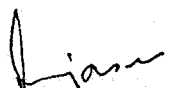
3.2 The vacant hotel , as mentioned in Annexure-I, has been/shall be handed over within 7 days from the date of receipt of full payment as stipulated in Letter of Acceptance.


3.3 Area of hotel specified in Annexure-I are approximate. Actual hotel area handed over subsequent to issue of Letter of Acceptance shall be final.

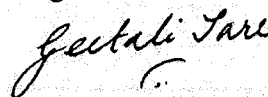
TERMS AND CONDITIONS OF LICENSE DEED.

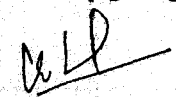
3.4 Now this deed witnesseth that the Licensor in consideration of the aforesaid License do hereby allot the Licensee the said premises as hotel for the period ending _____ on the following terms & conditions:

- i) That the license shall be for a period of 30(Thirty) financial years and the licence fee will be increased at the rate of ten per cent (10%) every three (3) years, on compounding basis. No renewal after expiry of license period of thirty (30) years shall be granted. After the expiry of the licence period of thirty (30) years or its sooner determination, the license shall be deemed as terminated. In case of termination, Licensor shall enter into the premises, and in the event of the Licensee not surrendering the vacant possession of the premises within the stipulated period under this deed, the licensee shall render himself/herself/themselves liable for action for eviction under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, recovery of dues as arrears of tax under section 102 of NDMC Act read with section 363 of the Act, disconnection of electricity, water and other utilities/services supply, and any other action(s) as deemed fit by the licensor.
- ii) That the advance licence fee of two months deposited by the licensee in pursuant to clause 3.16 will be adjusted towards the monthly licence fee and adjustment of the advance licence fee, the licensee will pay the license fee in advance by the 10th of each English Calendar month at the latest. Non-payment of license within the prescribed date will constitute breach of the terms of the license and shall render the license liable to be revoked. Besides, the licensee shall pay monthly compounding interest @ 15% per annum on the amounts of license fee and other dues payable remaining outstanding beyond the due date. Interest shall continue to accrue till the license fee amount is finally squared up. Such interest shall be charged for the full month if the payment of license fee is not made by the due date with arrears, if any.
- iii) If the license fee hereby reserved or any part thereof shall at any time be in arrears or remain unpaid after the due date or if the licensee at any time fail or neglect to perform or observe any of the terms and conditions herein contained and on their part to be observed and performed then in that event the licensor may without prejudice to his general right of revocation of license as a licensor by giving 10


Dir.(Estate-I)

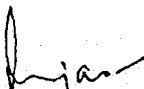

Dir.(Accounts)



Financial Advisor


Secretary

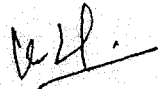
days notice in writing to the licensee determine the license, and re-enter upon the premises in question or any part thereof and the licensee shall upon such determination peacefully give up possession of the premises in question without any right to compensation whatsoever and thereupon this license shall absolutely determine without prejudice to any right to action or remedy of the licensor in respect of any antecedent breach of terms and conditions and covenants on the part of the licensee. That in case license fee, electric charges & maintenance charges, if any, be in arrears shall be recovered as arrears of tax under section 102 of New Delhi Municipal Council Act 1994 read with section 363 of the Act.

- iv) That save as otherwise provided in clause no. 3.4(vi) and without prejudice to the rights and privileges of the licensor, licensee during the tenure of this license shall not sub-let, transfer, assign or part with the hotel or any portion thereof permanently or temporarily to anybody else and shall not introduce any partner and shall not carry on the business in the premises with any other person or assign, transfer, change or otherwise alienate its interest in the premises, and shall not be allowed to take any person to share the accommodation except as hotel, without the prior written permission of the licensor, nor shall they be entitled to allow any person to occupy the licensed premises or to use any part thereof save with the prior permission in writing of the licensor.
- v) That the licensee shall use _____ floors of the licensed premises for the purposes of running "hotel" of acceptable standard together with related facilities and business appurtenant thereto, which complies with the terms and conditions of the licence, and applicable Master Plan of Delhi and Building Bye-Laws, for the convenience and benefit of the tourist occupants of the hotel. **The First Floor of the Hotel Building shall be used for running restaurants only. The Ground Floor of the Hotel building shall be used for running shops for the trades other than dangerous & offensive trades, and limited open space for car/two-wheeler parking for users of the Hotel Building. The basement shall be used by the licensee for storage purposes only, and keeping machineries related with utilities like water supply etc. The Electric sub-station to be run in the basement shall remain in occupation of the licensor. The licensee shall not use the said Hotel for any other purpose whatsoever except what has been detailed in this clause, and permissible under Master Plan of Delhi and Building Bye-Laws, as amended from time to time.**
- vi) The licensee shall run the hotel himself. However, the licensee may run the shops, restaurants, limited open space car/two-wheeler parking, earmarked for such purposes as mentioned in clause 3.4(v) above, himself or allow temporarily such sub-licensee for a period terminating with the period of the licence deed or its termination at any stage, or any period earlier. Trades in the shops shall be the trades as may be permitted by the licensor. The licensee shall be further responsible for the conduct of the various sub-licensees and observance of rules and regulations etc. The licensees shall be further responsible to answer that the sub-licensees quit the premises on the expiry or sooner termination of the licence that may be accorded. The sub-licensees shall not get any right over and above the rights and privileges of the licence. The licensee shall furnish to the licensor the names of sub-licensees in the hotel Building from time to time & the terms of licence of sub-licensees shall be got approved from the licensor in writing before executing the same.
- vii) That the licensed premises shall not be used by the licensee for any other purpose except for the purpose of hotel for which it is licensed and the licensee shall not be entitled to put up any canteen, shop, stall, counter or any such structure on the hotel.

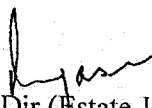

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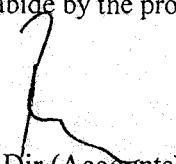

Dir. (Accounts)



Financial Advisor


Secretary

- viii) That the license is revocable for genuine cause at the will of the licensor and does not create or vested any interest of the licensee in the licensed premises. In case the license is revoked before the expiry of the term of license in that event the licensee shall not remove from the licensed premises the furnishings, fittings and fixtures etc. belonging to the licensee of the type removal of which is likely to cause damage to the building and the same shall belong to the licensor on such terms as may be agreed upon between the parties. In case of the fittings/furnishings, the licensee shall remove the same peacefully and restore the hotel to the original condition at their own cost.
- ix) That the overall ownership, control and supervision of the premises, alongwith all fittings, fixtures and other installations of immovable type or of the type of removable which is likely to cause damage to the premises, shall at all times remain vested in the licensor and the licensor through its authorized representatives will have the right to inspect the whole or /part of the licensed premises as and when considered necessary, with respect to its bonafide use and in connection with fulfillment of the other terms and conditions of the license .
- x) That the licensed premises have been provided with the electrical, sanitary and water supply fittings and the same shall be handed over on 'AS IS WHERE IS BASIS'. The licensee will have to obtain electric and water connections and would get the load for light and power sanctioned in its name after completing all formalities like deposits of the new connections fee etc. and the security and will bear the electric and water consumption charges by itself. The licensee shall not exceed the sanctioned electric load and if any additional load is required by the licensee over and above that what is installed, the same would be sanctioned subject to its feasibility on receipt of such a request and the work of laying cable etc., if necessary, would be got done at their own cost to the satisfaction of the licensor.
- xi) Preparation of articles of food would be done only after getting a health license from the licensor, and dish washing would be done only in the kitchen area & nowhere else.
- xii) The licensee shall not employ or permit to be employed or allow or to enter into or remain in the said premises any person suffering from any contagious, loathsome or infectious disease.
- xiii) That the licensee shall maintain environmental hygiene and proper sanitation of the licensed premises including water closet, toilet etc. during all working hours. In this regard, the decision of the Medical Officer of Health, Licensor NDMC shall be final and binding on the licensee.
- xiv) That the effective day to day maintenance, watch and ward sanitation of licensed premises including attending to no current complaints from meter onward and routine and periodical maintenance of electrical and other installations will be responsibility of the licensee. The licensee shall have to engage adequate number of technicians for effective maintenance. In the event of the failure of the licensee to carry out effective day to day maintenance of the premises to the satisfaction of the licensor or any repair which the licensor may consider should be carried out without delay or loss of time to avoid wastage of water/electricity and damage to the Municipal Property, the responsibility of which is otherwise that of the licensee, the licensor may get the work done on behalf of the licensee and in that event the licensee shall pay to the licensor the cost including departmental charges incurred in this behalf. The licensee shall maintain the electrical installations as per Indian Elect. Rules and shall abide by the provisions of the Electricity Control Act(s) enforced from time to time.

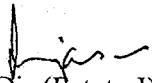

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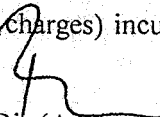

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Financial Advisor

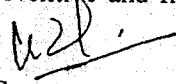

Secretary

- xv) That the Licensee shall furnish/refurbish and equip the hotel at his own cost for the purpose for which it has been licensed according to a reasonable high standard in all respects to run it efficiently and in a businesslike manner.
- xvi) The licensee shall be responsible for running, operation and maintenance of lift, horticulture work and other utilities like water pumping set installed in the hotel at his own cost.
- xvii) All other charges in context with regard to the running of hotel, including water consumption bills, electricity bills, fees in respect of lift etc. installed in the said hotel, etc., shall be payable by the licensee from the date from which the licensee is to be in occupation of the hotel till the vacation of the premises.
- xviii) No encroachment of any type on space other than the hotel shall be permitted / tolerated, and such activity, if proved, shall be treated as Licensee's Event of Default.
- xix) The licensee shall not do anything in or outside the premises which may be nuisance or may cause annoyance to the neighbours.
- xx) That in the event of the license having been terminated earlier in terms of the relevant clause of the license deed or on expiry, the licensee shall vacate the premises under license in a peaceful manner. The licensee shall also be responsible for making good for damages, losses etc. to the licensed premises, fittings and fixtures noticed by the licensor at the time of vacating the licensed premises by the licensee, except for depreciation arising out of normal wear, tear and usage. The decision of the licensor as to the extent of damages within 30 days of the notice of revocation of the license by the licensor and shall not claim any compensation for any resultant injury thereof.
- xxi) That in case the license is cancelled by the licensor, and/or on expiry of license period, the unauthorized occupant of the premises viz., erstwhile licensee together with all other unauthorized occupants, if any, shall be liable to pay the damages at the rates as may be determined by the licensor. Besides, a monthly compounding interest at the rate of @ 15% per annum shall be payable on the sum calculated as damages, if damage charges as determined by the licensor are not deposited in the Mpl. Treasury by the 10th of each Calendar Month.
- xxii) That any communication or notice on behalf of the licensor in relation to the license may be issued to the licensee by an officer of the licensor and all such communications and notices may be served on the licensee either by registered post/ Speed Post or under certificate of posting or by ordinary post or by hand delivery at the last known address of the licensee or by pasting the same at the conspicuous part of the licensed premises shall be deemed to be due service on the licensee even if the said communication is received back undelivered/unserved on any ground whatsoever.
- xxiii) That the licensee shall obtain information and make all arrangements/provisions necessary for fire prevention and fire safety arrangements as may be prescribed by the Chief Fire Officer or any other code/~~standard practice or any~~ other competent authority in this behalf at his own cost. The licensee shall carry out the work of providing the fire prevention and fire safety measures to the full satisfaction of the Chief Fire Officer, Delhi or any other competent authority in this respect. In the event of the failure of the licensee to do the needful, the licensor may get the work done for and on behalf of the licensee and in that event the licensee shall pay to the licensor the entire costs (including the departmental charges) incurred in this behalf. After installation of the fire preventive and fire


Dir. (Estate-I)


Dir. (Accounts)

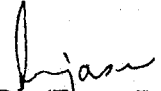

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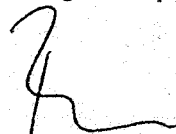

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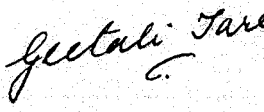
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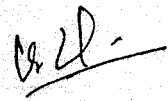
safety equipments in the premises as per the requirements of the Chief Fire Officer, or any other competent authority in this respect, the licensor shall maintain and operate the fire prevention and fire safety arrangements/system in the building. The licensee shall pay the service charges for the services rendered by the licensor for operation and maintenance of the fire prevention and fire safety arrangements on proportionate area basis in addition to the license fee determined for the premises. The non-payment of the service charges on this account shall be treated as breach of terms and conditions of license and shall render the license liable to be revoked/cancelled.

- xxiv) That the licensee shall be bound to abide by all Applicable Laws, including all the provisions of the New Delhi Municipal Council Act, 1994 and rules, regulations, bye-laws made thereunder, from time to time existing or hereafter made or to be enacted or introduced hereafter.
- xxv) Notwithstanding anything contained in any clause heretofore mentioned, the licensor shall have the absolute right at all times to undertake any additional construction to ensure better utilization of the building and to improve its revenue, and the licensor shall not be required to obtain any type of permission, whatsoever, from the licensee for such construction, and the licensee shall not claim any reduction in agreed license fee on this account.
- xxvi) That breach of any of the condition if this Licence Deed will make the license liable to cancellation with immediate effect notwithstanding the provisions contained in condition No. 3.4(i) hereof and eviction of the licensee besides forfeiture of interest free security deposit on revocation/cancellation of the license. It shall be the duty of the licensee to quit the licensed premises within the time given in the communication issued by the licensor in this respect. In case, the licensee fails to vacate the premises within the stipulated period, the licensor shall be entitled to charge/recover damages at the rates as may be determined by the licensor. In the event of the licensee desirous of surrendering the hotel before the expiry of the term of the license, they can do so by giving three months notice in writing terminating their liability on the date of expiry of the said notice or on the date of handing over (as per Annexure-II) the possession of the licensed premises whichever is later, provided the outgoing licensee before handing over the possession clear all the Municipal dues including damages charges, if any. Clearance of the dues will be essential condition for acceptance of the notice. In the event of non-payment of the dues before the date of expiry of notice period, the time taken in clearing the municipal dues will automatically postpone the date of notice period and the period of license in that event will expire on the date of clearing the dues.
- xxvii) That the court of Estate Officer, NDMC, New Delhi, only shall have jurisdiction to entertain any application in respect of any proceedings under this license deed to entertain any suit in connection with this Licence Deed and no other court of any other place shall have jurisdiction to entertain any such application or any suit.
- xxviii) That the licensee shall not call in question or raise any dispute regarding quantum of license fee as agreed to either before the Council or before any Court of law. If the licensee raises such dispute, he shall render his license to be cancelled forthwith.
- xxix) That the breach of any of these conditions will entitle the licensor to cancel the allotment besides forfeiture of security deposited by the licensee and disconnection of electricity and /or water connection and sealing of the premises.


Dir.(Estate-I)


Dir.(Accounts)


Financial Advisor


Secretary

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TENURE OF LICENSE

3.5 Tenure of License Deed shall be for a period of Thirty (30) years w.e.f. _____, unless otherwise terminated by NDMC or surrendered by the Licensee, in term of provisions of this Licence Deed. The tenure of License Deed shall commence from the date of handing over of hotel.

3.6 If the Licensee is desirous of terminating the license hereby created before expiry of the tenure of Thirty (30) years, the License Deed shall deemed to be terminated on the date mentioned in termination/surrender notice in accordance with the conditions mentioned in this licence deed, subject to confirmation by NDMC. In such a case, the balance Interest Free Security Deposit shall be forfeited in favour of NDMC after adjustment of outstanding dues, if any, payable to NDMC. No grace period shall be provided to Licensee in such a case. NDMC may also recover the balance outstanding dues, if are more than Interest Free Security Deposit, from the other contracts of Licensee in NDMC. Balance outstanding dues, if are more than Interest Free Security Deposit, shall be recoverable from the Licensee before Licensee is permitted to remove their establishment(s) or else NDMC will seize their property/goods. NDMC shall be free to dispose-off the property / goods in whatsoever manner as it deems fit. Licensee shall have no claim for compensation or consideration / damages.

3.7 No partial surrender of the hotel which has been handed over to the Licensee by NDMC shall be permissible to the Licensee during the currency of License Deed.

3.8 At the end of License period or determination of this Licence Deed prior to tenure of license period, for any reason whatsoever, all rights given under this License Deed shall cease to have effect and the premises shall revert to NDMC, without any obligation to NDMC to pay or adjust any consideration or other payment to the Licensee.

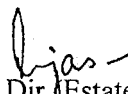
3.9 On completion/ termination of License Deed, the Licensee shall hand over the hotel with normal wear & tears. The Licensee shall be allowed to remove their movable assets like furniture, almirahs, air-conditioners, DG sets, equipments, etc. without causing damage to the existing structure. However, the Licensee shall not be allowed to remove any facility, equipment, fixture, etc. which has become an integral part of the development plan of the hotel.

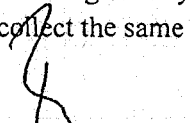
LICENSE FEE

3.10 The license fee for the hotel situated at 37, Shaheed Bhagat Singh Marg, New Delhi measuring _____sq.ft. shall be paid by the Licensee to the NDMC @Rs. _____ per month as license fee, inclusive of maintenance charges. Service Tax, and other Central, State and Municipal Taxes, if applicable, as applicable from time to time shall be payable extra by the licensee. Enhancement of license fee at the rate of ten per cent (10%) every three (3) years on compounding basis, will be applicable as provided under clause 3.4(i), for use of the said premises as hotel w.e.f. _____(date of possession), for a period of thirty years up to the period ending _____.

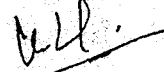
3.11 The said license fee have been agreed to by both the parties to be increased at the rate of ten per cent (10%) every three (3) years on compounding basis, which shall be final and binding upon the licensee.

3.12 That the Licensee agrees voluntarily and unequivocally to make all payments to NDMC as may be due before the due date, without waiting for any formal bill/advice from NDMC. In the events of non-receipt of any bill, the Licensee agreed to collect the same from the office of authorized representative of the Licensor.


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3.13 The account of payment of license fee by Licensee shall be regularly reconciled by NDMC on annual basis.

3.14 Licensee shall periodically advise the details of payment deposited with NDMC. In the case of non-submission of such details, initially Third Party dues i.e. statutory dues/ liabilities shall be settled (mandatory liabilities of NDMC), then others dues/ liabilities like electricity, etc. and lastly License fee shall be accounted for.

3.15 The Licensee should preferably make payment of advance monthly license fee etc. to NDMC by NEFT procedure of online banking, as per details printed on monthly License Fee bill raised by the Licensor.

Interest Free Security Deposit.

3.16 Licensee shall pay (i) Interest Free Security Deposit equal to six (6) months of license fee; (ii) Three months advance licence fee, to NDMC and three months Bank Guarantee. The Interest Free Security Deposit and three months' advance licence fee shall be accepted only in the form of Bank Draft / Pay Order. The Bank Draft / Pay Order issued against Interest Free Security Deposit and three months' advance licence fee shall be in favour of Secretary, NDMC payable at New Delhi from a Nationalized Bank or Scheduled Commercial Bank based in India.

3.17 In case of successful completion of the full term of the License period i.e. Thirty (30) years from commencement date of License Deed, Interest Free Security Deposit shall be refunded without accruing any interest on it and after adjusting the outstanding dues subjected to fulfillment of all handover requirements by the Licensee up to the satisfaction of NDMC.

3.18 NDMC shall reserve the right for deduction of NDMC dues from Licensee's Interest Free Security Deposit at any stage of Deed i.e. currency/ completion/ termination/ surrender, against –

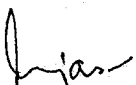
- a) Any amount imposed as a penalty and adjustment for all losses/damages suffered by NDMC for any non-conformity with the Licence Deed's terms & conditions by the Licensee.
- b) Any amount which NDMC becomes liable to the Government/Third party due to any default of the Licensee or any of its servant/ agent.
- c) Any payment/ fine made under the order/judgment of any court/consumer forum or law enforcing agency or any person working on their behalf.
- d) Any other outstanding NDMC's dues/ claims, which remain outstanding after completing the course of action as per this License Deed.


3.19 Once an amount is debited from the Interest Free Security Deposit the Licensee shall replenish the Interest Free Security Deposit to the extent the amount is debited, within 15 days period failing which it shall be treated as a Licensee's event of default and in such case the licence may be revoked/ cancelled by the licensor.

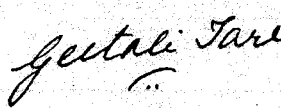
TAXES AND OTHER STATUTORY DUES

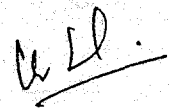
3.20 All other statutory taxes, statutory dues, local levies, Service tax, etc. as applicable shall be charged extra and shall have to be remitted along with the License Fee for onward remittance to the Government. The Licensee indemnifies NDMC from any claims that may arise from the statutory authorities in connection with this License. Stamp duty for execution & registration of License Deed shall solely be borne by the Licensee.

3.21 The property tax, if applicable on the property of NDMC, shall be borne by NDMC.


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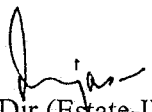

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Addition /Alteration to the hotel:

4.1 Licensee shall be permitted to carry out addition & alteration to the hotel, renovate the partitions, interior design works along with utilities like power supply, water supply, toilets, drainage system, fire protection system, telecommunication system, etc. of hotel provided that:

- a) The modification duly adheres to the provision of all Applicable Laws including and in particular the prevalent Master Plan of Delhi and Building Bye Laws and specified guideline/requirements of other competent authorities.
- b) The design and construction work strictly conform to relevant Standard Building Codes and good industry practice.
- c) Any kind of alteration in existing structure which is offered in during auction including creation of wall / glass façade for outer periphery shall be strictly inside the hotel.
- d) It shall be the Licensee's sole responsibility to obtain all necessary clearance/approval/sanction from NDMC and other competent authorities for modifications, fire protection system, etc. NDMC shall only provide assistance wherever possible on the best effort basis without any legal and binding obligations to facilitate the process.
- e) Licensee shall ensure that no structural damage is caused to the existing building and other permanent structure as a result of its activities.
- f) Licensee shall be responsible for safety, soundness and durability of the work undertaken by the Licensee including other structures forming part thereof.
- g) The facilities and works if undertaken or installed, shall not in any manner affect, hinder or interfere with the free movement of the other users. No surplus construction machinery and material, including any hazardous material and wastes shall be left at any place in the site.
- h) No material shall be stored or kept outside the site or in common area meant for movement of persons. Any special cleaning or drain clearance necessary as a result of the alteration works shall be carried out by Licensee at its own cost.
- i) The Licensee shall strictly comply with the safety procedure, measurement, specification & guidelines for execution of electrical works, approved list of materials. If it is noticed at any stage that licensee has compromised with the safety procedure, measurements, specifications, guidelines and quality of materials as laid down in the Licence Deed, the penalty per instance as decided by the Licensor shall be imposed upon the Licensee.
- j) The Licensee may deploy security staff at its own cost for the safety of hotel.
- k) Licensee shall bear all risk & cost and consequences of refurbishing and renovation without altering structure of the building work in hotel.


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l) On completion of augmentation work, the Licensee shall furnish "As Built Drawings" of the premises including details of modified services along with all permissions/approvals taken from the concerned departments.

m) The Licensee is expected to apply & obtain all necessary approvals/ permissions and timely to complete all augmentation activities within specified fitment period from taking over (as per Annexure-III) the site. For any delay in completion of work, NDMC shall not be responsible. Three (3) months moratorium period for payment of licence fee will be allowed for refurbishment of the Hotel. The License Fee shall become chargeable after three months from the date of taking over the possession.

4.2 Operation & Maintenance of Hotel:

a) Permissible Usage of hotel: Licensed Building cannot be put for any activity, except for establishing the hotel and activities connected thereto permissible under the Master Plan of Delhi and Building Bye-Laws, as applicable from time to time.

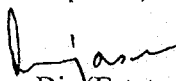
b) Licensee shall be responsible to keep and maintain the said hotel building and the entire premises together with fittings, fixture and other installations, including lifts, pumping set and other assets belonging to the licensor in a befitting manner. Licensee shall keep and maintain the hotel in neat & clean, safe & sound by maintaining it properly at its own cost during the License Period. Licensee shall bear the cost of day-to-day repairs, annual refurbishing and routine special repairs required due to normal wear & tear with the efflux of time or due to planning/constructional defects remained during augmentation of the hotel, except Electric Sub-station situated at basement of the Hotel. Any defective, weak or corroded structure should be replaced immediately with new proper structure after due certification from reputed agency without violating the plan/bye-laws. Electric sub-station located in the basement shall be maintained and operated by the licensor or its officer/officers, who shall at all time have access to the sub-station without any obstruction or hindrance and the licensee shall not claim any compensation from the licensor for the space occupied for running the sub-stations. The licensor shall be responsible for the maintenance of all Electric installations and appliances upto meter boards.


c) Licensee shall ensure that all electrical wiring, power outlets and gadgets used are maintained properly, guarded against short circuits / fires. The instructions of NDMC electrical inspector/ Engineers authorized representative shall be complied with by the licensee at its own cost.

d) Licensee shall ensure that fire detection and suppression measures installed inside their premises are kept in good working condition at all times. The Fire extinguishers must be regularly checked & refilled and must be visible & easily accessible at all times of emergency. The Licensee's staff must be capable of addressing the safety issues during any emergency including operation of fire extinguisher.

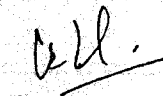
e) In case of accident caused due to negligence of the Licensee resulting into injury/ death to employees/ other users/ any person or loss to NDMC's/others property, Licensee shall compensate the loss(es), without prejudice to other actions under this Licence Deed at the sole discretion of NDMC, including termination of Licence Deed.

f) The Licensee voluntarily and unequivocally agrees not to seek any claims, damages, compensation or any other consideration whatsoever because of implementing the instruction issued by NDMC Fire Officer, electrical inspector, Chief Security Officer or their authorized representatives from time to time.


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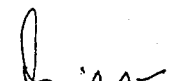

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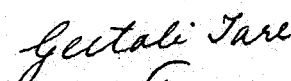

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- g) The overall control and supervision of the premises shall remain vested with NDMC who shall have right to inspect the whole or part of the hotel as and when considered necessary, with respect to its bonafide use, and in connection with fulfillment of the other terms and conditions of the license deed.
- h) The option to impose fine, penalty, etc. under this License Deed shall be exercised by NDMC official not below the rank of Secretary, NDMC.
- i) It shall be sole responsibility of the Licensee to maintain law and order in its licensed premises. NDMC shall, in no way, will be responsible / accountable of any mishappening in the premises given on license basis to Licensee.


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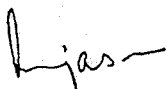

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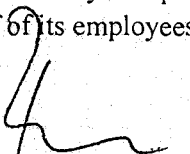
RIGHTS AND OBLIGATIONS5.1 Licensee's Obligations:

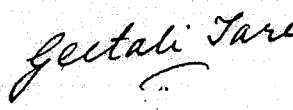
The Licensee's Responsibilities and Duties shall include the following, in addition to and without prejudice to other obligations under this License Deed:

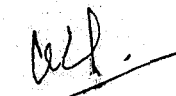
- a) to obtain all Applicable Permits, necessary approvals, clearances and sanctions from the competent authorities for all activities or infrastructure facilities including interior decoration, power, water supply, drainage & sewerage, firefighting, telecommunication, etc.;
- b) to operate and maintain the hotel at all times in conformity with this Licence Deed;
- c) to furnish "As Built Drawings" of the premises with 30 days of completion of augmentation work and get the same approved from Chief Architect, NDMC.
- d) to ensure that no structural damage is caused to the existing buildings and other permanent structures at the station as a result of his activities or any of its agents, contractors etc.;
- e) to take all reasonable steps to protect the environment (both on and off the Licensed structure and to limit damage and nuisance to people and property resulting from construction and operations, within guidelines specified as per Applicable Laws and Applicable Permits;
- f) to duly supervise, monitor and control the activities of contractors, agents etc., if any, under their respective License Deeds as may be necessary;
- g) to take all responsible precautions for the prevention of accidents on or about the site and provide all reasonable assistance and emergency medical aid to accident victims;
- h) not to permit any person, claiming through or under the Licensee, to create or place any encumbrance or security interest over whole or any part of hotel or its assets, or on any rights of the Licensee therein or under this Licence Deed, save and except as expressly permitted in this Licence Deed;
- i) to keep the hotel free from all unnecessary obstruction during execution of works and store the equipment or surplus materials, dispose of such equipment or surplus materials in a manner that causes least inconvenience to user of the licensed premises.
- j) at all times, to afford access to the hotel to the authorised representatives of NDMC, other persons duly authorised by any Governmental Agency having jurisdiction over the business of hotel, to inspect the hotel and to investigate any matter within their authority and upon reasonable notice; and
- k) to comply with the divestment requirements and hand over the hotel to NDMC upon Termination of the Licence Deed;

5.2 The Licensee shall be solely and primarily responsible to NDMC for observance of all the provisions of this License Deed on behalf of its employees and representatives.


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5.3 The Licensee shall comply with all rules and regulations under the NDMC Act, 1994, regulations/rules framed thereunder and its amendments from time to time.

5.4 No tenancy/sub-tenancy is being created by NDMC in favour of Licensee under or in pursuance of this Licence Deed and it is distinctly & clearly understood, agreed and declared by/ between the parties hereto that:

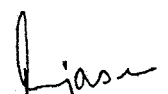
- i) The Licensee shall not have or claim any interest in the said premises as a tenant/sub-tenant or otherwise.
- ii) The rights, which Licensee shall have in relation to the said premises, are only those set out in this Licence Deed.
- iii) The relationship between NDMC and Licensee under and/or in pursuance of this License Deed is as between Grantor and Grantee. Consequently, neither party shall be entitled to represent the other and/or make any commitment on behalf of and/or with any other party.

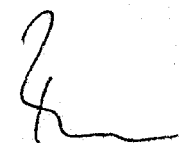
5.5 Solid Waste:

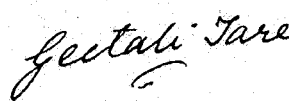
The Licensee shall have to make its own arrangements for daily disposal of solid waste out of licensed premises at the dumping sites approved by the NDMC to ensure perfect cleanliness. If any solid waste is found disposed off on NDMC land or premises a penalty/fine of Rs.2000/-, as amended from time to time by the Council, shall be imposed by NDMC for each occasion.

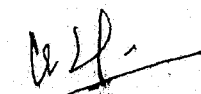
5.6 Telephone/Communication Equipments:

NDMC may give permission for installation of cables for telephone/telecommunication equipment subject to technical feasibility. The instrument, cables and connection shall be obtained by the Licensee from the telephone company at their own cost.


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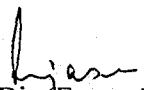

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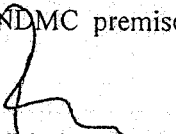

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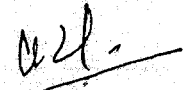
INDEMNITY AND INSURANCE

- 6.1 The Licensee hereby undertakes to indemnify and hold NDMC harmless against all costs, damages, liabilities, expenses arising out of any third party claims relating to non-completion of the Fit-out; quality of the Fit-out and the construction/ construction activities, or any other liability arisen due to this licence deed.
- 6.2 The Licensee hereby undertakes to indemnify NDMC against all losses and claims in respect of death or injury to any person or loss or damage to any property which may arise out of or in consequence of the execution and completion of works and remedying defects therein and against all claims, proceedings, damages, costs charges and expenses whatsoever in respect thereof or in relation thereto.
- 6.3 The Licensee hereby undertakes that NDMC shall not be liable for or in respect of any damages or compensation payable to any workman or other person in the employment of Licensee or any of their contractors/ sub-contractors. The Licensee shall indemnify and keep indemnified NDMC against all such damages and compensation; all claims proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.
- 6.4 The Licensee hereby indemnifies NDMC against any loss, damage or liabilities arising as a result of any act of omission or commission on part of Licensee or on part of its personnel or in respect of non-observance of any statutory requirements or legal dues of any nature.
- 6.5 The Licensee hereby undertakes to discharge all statutory obligations and liabilities in connection with employment of its personnel in the said premises. Licensee hereby indemnifies NDMC against any liability arising in connection with the employment of its personnel in the said premises by Licensor. Licensee hereby undertakes to carry out police verification of its employees and submit the copy of same to NDMC in accordance with its extant policies.
- 6.6 The Licensee shall indemnify NDMC from any claims that may arise from the statutory authorities against any statutory taxes, statutory dues, local levies, etc. in connection with this License.
- 6.7 The Licensee shall indemnify NDMC from any serious accident caused due to negligence of the Licensee, resulting in injury, death to commuters or employees or loss to NDMC property.
- 6.8 The Licensee shall be liable for and shall indemnify, protect, defend and hold harmless NDMC, NDMC's officers, employees and agents from and against any and all demands, claims, suits and causes of action and any and all liability, costs, expenses, settlements and judgments arising out of the failure of the Licensee to discharge its obligations under this clause and to comply with the provisions of Applicable laws and Applicable Permits.
- 6.9 The Licensee shall indemnify and keep indemnified NDMC for any losses/ penalties on this account levied by any judicial/statutory authorities/courts on the Licensee.
- 6.10 Insurance and Waiver of Liability: The Licensee shall bear the cost, throughout the term of the License, for a comprehensive general liability insurance covering injury to or death of any person(s) while working in NDMC premises, including death or injury caused by the sole negligence of the


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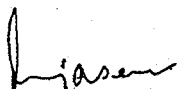

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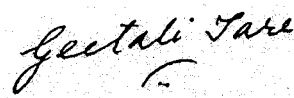

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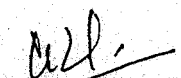
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Licensee or the Licensee's failure to perform its obligations under the Licence Deed. Upon NDMC's request, the Licensee shall submit to NDMC, suitable evidence that the foregoing policy or policies are in effect. In the event of the default i.e. avoiding the insurance cover, the Licensee agrees and undertakes to indemnify and hold the licensor harmless against any and all liabilities, losses, damages, claims, expenses suffered by the licensor as a result of such default by the Licensor.


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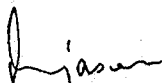
FORCE MAJEURE

7.1 Neither NDMC nor Licensee shall be liable for any inability to fulfill their commitments and obligations hereunder occasioned in whole or in part by Force Majeure. Any of the following events resulting in material adverse effect, shall constitute force majeure events:

- a) Earthquake, Flood, Inundation, Landslide.
- b) Storm, Tempest, Hurricane, Cyclone, Lighting, Thunder or other extreme atmospheric disturbances.
- c) Acts of terrorism
- d) War, hostilities (Whether war be declared or not), invasion, act of foreign enemy, rebellion, riots, weapon conflict or military action or civil war.
- e) Strikes or boycotts, other than those involving the Licensor, its contractors, or their employees, agents etc.

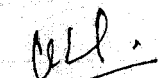
7.2 The License fee for the portion affected due to Force Majeure shall be exempted for the affected period if the force majeure condition persists for more than 7 days.

7.3 Occurrence of any Force Majeure shall be notified to the other party within 7 days of such.


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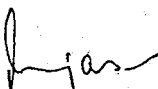

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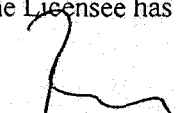
BREACHES/SURRENDER/TERMINATION OF LICENSE DEED**Surrender of License Deed:**

8.1 No partial surrender of hotel or part of the hotel which has been handed over to the Licensee by NDMC shall be permissible during the currency of the License Deed.

8.2 Following shall be considered as Material Breach of the License Deed by Licensee resulting in Licensee's Events of Default:

- a) If the Licensee has failed to perform or discharge any of its obligations in accordance with the provisions of License Deed, unless such event has occurred because of a Force Majeure Event, or due to reasons solely attributable to NDMC without any contributory factor of the Licensee.
- b) If the Licensee fails to pay License Fee, utility charges, penalty or Damages herein specified or any other due to be paid by the Licensee to NDMC by the stipulated date.
- c) If the Licensee is in persistent non-compliance of the written instructions of a NDMC officials.
- d) If the Licensee or any of its representatives cause an incident or accident that results in injury or death to NDMC employees/ commuters or loss to NDMC property.
- e) If the Licensee is in violation of any of the other Clauses of License Deed and after two written notices (unless otherwise specifically mentioned therein) from NDMC fails to cure the Default to the satisfaction of NDMC.
- f) If any representation made or warranties given by the Licensee under this Licence Deed is found to be false or misleading.
- g) If the Licensee engaging or knowingly has allowed any of its employees, agents, to engage in any activity prohibited by law or which constitutes a breach of or an offence under any law, in the course of any activity undertaken pursuant to this Licence Deed.
- h) If the Licensee has created any encumbrance, charges or lien in favour of any person or agency, over the hotel.
- i) If any petition for winding up of the Licensee has been admitted and liquidator or provisional liquidator has been appointed or the Licensee has been ordered to wind up by Court of competent jurisdiction, except for the purpose of amalgamation or reconstruction with the prior consent of NDMC, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Licensee under this Licence Deed.
- j) If the Licensee has abandoned the hotel.


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k) After six months from the date of possession of the hotel, non-usage of the premises for the purpose of hotel for a consecutive period of thirty days without any prior written intimation to the NDMC.

Termination of License Deed by NDMC

8.3 Provided that in the event of application of clauses 8.2 (a), (b) and (k) above, NDMC shall give to the Licensee 15 (fifteen) days time to cure the default prior to considering the events specified therein as Licensee's events of default and in the event the Licensee remedies the default to the satisfaction of the NDMC within the cure period, the event shall not be considered as a Licensee Event of Default. In case the licensee fails to remedies the default to the satisfaction of the NDMC within the cure period, then NDMC shall be within its rights to disconnect the utility services, including electricity and water supply & terminate the License Deed. The Licensee voluntarily agrees not to seek any claim, compensation, damages or any other consideration whatsoever on any ground in this regard.

8.4 If the Licensee fails to pay or partly pay the license fee and other dues required to be paid as per terms and condition of License Deed by the due date, a 15 (fifteen) days Cure Notice shall be issued to pay the outstanding license fee and other dues along with an interest of 15% (fifteen percent) per annum on the amount of license fee payable and other dues remaining outstanding beyond the due date and falling in arrears:

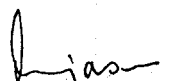
- a) If the Licensee failing to deposit the outstanding License Fee and other dues within 15 (fifteen) days' Cure notice, NDMC shall issue a Termination notice to make payment of outstanding License Fee and other dues within next thirty (30) days.
- b) In the event of Licensee failing to deposit the outstanding License Fee and other dues within fifteen (15) days from the date of issue of termination notice, NDMC shall disconnect all utilities, including electricity and water supply, provided to the Licensee.
- c) In the event of Licensee failing to deposit the dues within thirty (30) days from the date of issue of termination notice, it shall constitute Material Breach of terms of Licence Deed and Licensee's Event of Default under this Licence Deed and shall entitle NDMC to terminate the License Deed as per provisions stipulated in this Chapter.

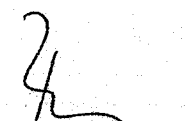
8.5 On Operational Grounds: NDMC reserves the right to terminate the License Deed by giving three months advance notice on operational grounds. The License Deed shall stand terminated after expiry of three months notice and the Security Deposit be refunded after adjusting outstanding dues, if any, payable by the Licensee. The Licensee voluntarily agrees not to seek any claim, compensation, damages or any other consideration whatsoever on any ground in this regard.

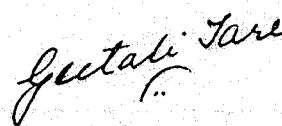
8.6 Termination for Force Majeure: The License Deed may be terminated for Force Majeure Reasons as specified in Chapter-7.

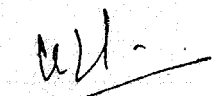
Other Terms & Conditions:

8.7 On termination of License Deed:


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Dir. (Accounts)


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Secretary

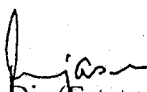
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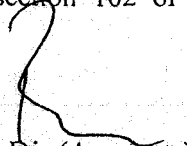
- a) All third party agreements, entered by the Licensee, shall stand terminated with immediate effect;
- b) In case of termination of Licence Deed on account of Licensee's Events of Default, the interest free Security Deposit shall be forfeited in favour of NDMC. Any outstanding dues payable to NDMC shall be adjusted/ recovered from the forfeited interest free Security Deposit. Balance outstanding dues, if remaining after adjustment of outstanding dues from the interest free Security Deposit / Performance Security, shall be recovered from the licensee.
- c) All utilities, including electricity and water supply, shall be disconnected with immediate effect, unless otherwise specified elsewhere, and
- d) A notice of vacation shall be issued to the Licensee to vacate the premises within 30 days.

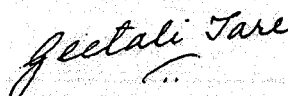
8.8 On termination of the license deed, the Licensee shall handover the vacant possession of premises to authorized representative of NDMC within 30 days from the date of termination of License Deed, after removal of plants, equipments, furniture, fixtures, etc. installed by the Licensee at its own cost, without causing damage to NDMC structures. The Licensee shall be allowed to remove their movable assets like furniture, almirahs, air-conditioners, DG sets, equipments, etc without causing damage to the structure. However, the Licensee shall not be allowed to remove any facility, equipment, fixture, etc. which has become an integral part of the development plan of the hotel. The Licensee agrees voluntarily and unequivocally not to seek any claim, damages, compensation or any other consideration whatsoever on this account. If the premise is not handed over in good condition as required under this clause, NDMC reserves the right to deduct/ recover damage charges.

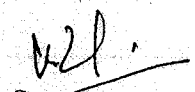
8.9 If the Licensee fails to vacate the premises as above, NDMC shall be free to take any/all of the following action(s) as deemed fit to it.

- (a) NDMC shall levy penal charges at twice the rate of License Fee prevailing on the date of termination of License Deed, after unauthorized occupation beyond the 30 days grace period, to be calculated from the date of termination of the licence deed upto the date of vacation of the premises. Such penal charges shall be paid by the 10th of each Calendar month. Such penal charges will be increased at the rate of ten (10) percent every year on compounding basis. A monthly compounding interest @ 15% per annum on the amounts of such penal charges remaining outstanding beyond the due date, and such interest shall continue to accrue till the license fee amount is finally squared up. Such interest shall be charged for the full month if the payment of license fee is not made by the due date with arrears, if any.
- (b) After lapse of this 30 days grace period, NDMC shall take over the goods / property treating at NIL value, even if the premises of goods/property is/are under lock & key; and shall be free to dispose-off these goods/property in whatsoever manner as it deems fit. Licensee shall have no claim for compensation or consideration / damages after completion of grace period. If licensee fails to pay the penalty, applicable in case of non-vacation of premises, the same shall be adjusted from the Interest Free Security Deposit available with NDMC.
- (c) Licensee shall render himself/herself/themselves liable for action for eviction under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, recovery of dues as arrears of tax under section 102 of NDMC Act read with section 363 of the Act, disconnection of


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electricity, water and /or other utility services and any other action(s) as deemed fit by the licensor.

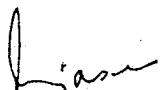
8.10 After vacating the premises, the Licensee shall submit a vacation certificate from the NDMC's authorized representative as a proof of Licensee having vacated the site. Licensee's statement regarding vacation, without a vacation certificate from the NDMC's authorized representative, shall not be accepted.


8.11 The termination of this Licence Deed shall not relieve either party from its obligation to pay any sums then owing to the other party nor from the obligation to perform or discharge any liability that had been incurred prior thereto. The Licensee shall be liable to pay all dues outstanding to NDMC including electricity and other utility charges under this Licence Deed without prejudice to rights and remedies applicable under the law. The final settlement of dues shall take place after submission of vacation certificate from the NDMC's authorized representative subsequent to termination of License Deed.

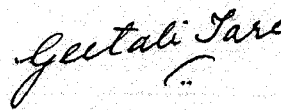
8.12 Rights of NDMC on Termination: NDMC shall not have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Licensee in connection with the hotel.

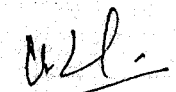
8.13 On termination of Licence Deed, NDMC shall have rights to re-market or to seal/ lock the hotel, or to use it as per its requirements.

8.14 In any case, if any of the powers to terminate the licence shall have become exercisable but the same is for any reason not exercised by the Licensor, non-exercise thereof by the Licensor shall not constitute a waiver of any of the conditions and its powers hereof and such powers shall be exercisable in the event of any of the conditions and the power hereof shall be exercisable in the event of any future case of default and the liability of the licensee for past and future defaults shall remain unaffected besides other rights and remedies of the licensor.


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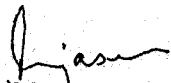

Secretary

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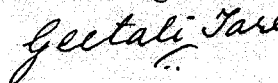
REPRESENTATIONS AND WARRANTIES

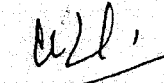
9.1 The Licensee represents and warrants to NDMC that -

- a) It is duly organized, validly existing and in good standing under the laws of India;
- b) It has full power and authority to execute, deliver and perform its obligations under this Licence Deed and to carry out the transactions contemplated hereby;
- c) It has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Licence Deed;
- d) It has the financial standing and capacity to undertake the commercial utilization of hotel.
- e) This Licence Deed constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- f) There are no actions, suits, proceedings or investigations pending or to the Licensee's knowledge threatened against the Licensee at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may constitute the Licensee Event of Default or which individually or in the aggregate may result in Breach of the License Deed;
- g) It has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any government authority which may result in Breach of the License Deed;
- h) It has complied with all applicable law and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Breach of the License Deed;
- i) No representation or warranty by the Licensee contained herein or in any other document furnished by the Licensee to NDMC or to any government authority in relation to Applicable Permits contains or shall contain any untrue statement of material fact or omits or shall omit to state a material fact necessary to make such representation or warranty not misleading;
- j) The Licensee also acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that NDMC shall not be liable for the same in any manner whatsoever to the Licensee.
- k) ~~The Licensee~~ The Licensee shall make its own arrangements in engagement of its staff and labour and shall at no point represent to or claim that the staff, labour is being recruited for and on behalf of NDMC. The Licensee shall at all times comply and represent to the staff and labour employed/ engaged by them the requirement for complying with Applicable Laws and applicable Permits, particularly in relation to safety and environmental regulations.


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CHAPTER: 10**MISCELLANEOUS**

10.1 Licensee shall comply with all Applicable Laws. NDMC shall not be held liable for any change/modification in these laws which adversely affect this deed. Licensee shall have no right/ claim in this regard, whatsoever the reason may be.

10.2 The licensee may name the hotel after obtaining prior written approval of the licensor.

10.3 Signage:

- (a) The Licensee shall have the right to display signage(s) of suitable size for displaying its generic name of each Space. The signage should need to confirm to all Applicable Laws. The Licensee shall need to obtain a written approval from NDMC before putting up any form of signage and NDMC reserves the right to refuse or to suggest an alternation to the same. The size, shape, location, etc. of signage are subject to architectural controls to be issued by NDMC. However, separate space for generic signage may be provided at ground level subject to feasibility. The licensee shall have to display at least one board in Hindi language in front of the hotel after obtaining prior written approval from NDMC.
- (b) No advertisement in any format shall be permitted in the hotel.

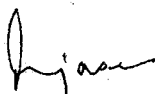
10.4 That the licensee/licensees shall be required to install CCTV/Web cam at strategic location(s) within his/her/their licensed unit, with recording facility of at least 15 days. It will be the responsibility of the licensee/licensees to ensure proper operation and maintenance of the equipment so installed, which will be open for inspection by NDMC authorities and shall be to the satisfaction of such authority as may be intimated.

10.5 **Notices:** NDMC and Licensee voluntarily and unequivocally agrees—

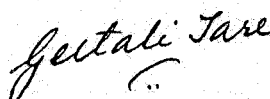
- a) That any notice to be served upon NDMC shall be sufficiently served and given if delivered to—

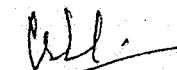
The Secretary,
New Delhi Municipal Council,
3rd Floor, Palika Kendra,
Sansad Marg,
New Delhi-110 102

- b) That any communication or notice which may be required to be served upon the Licensee under the terms of this License shall be in writing and shall be served and given if delivered by registered post/ Speed Post or under certificate of posting or by ordinary post or by hand delivery at the last known address of the licensee and/or hotel or by pasting the same at the conspicuous part of the hotel. The communication or notice shall be deemed to be duly served on the licensee even if such notice or communication is received back unserved / undelivered by the India Posts on any ground whatsoever.
- c) No instruction/ notice of any party if not communicated in writing, shall be entertained by the other party.


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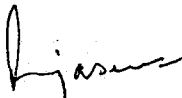

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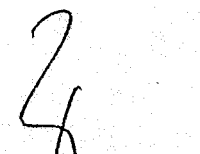
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9.2 Obligation to notify change: In the event that any of the representations or warranties made given by the Licensee ceases to be true or stands changed, it shall promptly notify NDMC of the same.

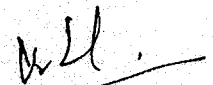
9.3 NDMC covenants:

- a) NDMC covenants and represents that it has good and marketable title to the said premise, free and clear of all liens, claims, mortgages or deeds of trust affecting the Licensee's possession of the Licensed Premises, Licensee's use of the premises, or the rights granted to the Licensee hereunder.
- b) NDMC covenants and represents that it has full and complete authority to enter into a license deed under all terms, conditions and provisions set forth in the Licence Deed, and so long as the Licensee keeps and substantially performs each and every term, provision and condition contained in the Licence Deed, the Licensee shall peacefully and quietly enjoy the premises without hindrance or disturbance by NDMC or by any other person(s) claiming by, through or under or in trust for NDMC.
- c) On paying the License fee, Licensee hereby reserved and observing & performing the several covenants and stipulations on its part and the conditions herein contained, shall peacefully hold and enjoy the hotel throughout the said term without any interruptions by the NDMC or by any person claiming by, through, under or in trust for NDMC.
- d) NDMC shall provide necessary documents pertaining to the property, if required by Licensee for seeking any permission pertaining to various activities from any Government Agency.


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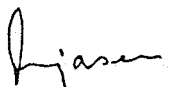
Annexure-I


Details of hotel provided for Licensing:

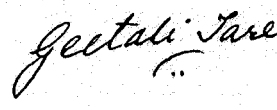
Note-1: Areas indicated are approximate. Actual area measured at the time of handing over (as per Annexure-II) shall be final.

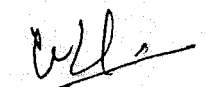
Note-2: Hotel offered for the purpose of Hotel only on license basis and is available on "as is where is basis".

Note-3: Hotel can be utilized for any activity except the activities specified in banned list as detailed in Annexure-II.


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Dir. (Accounts)


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Annexure-II

Handing Over Note

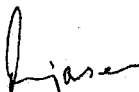

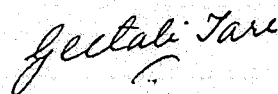
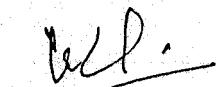
Date: ____ 201...

Hotel premises situated at 37, Bhagat Singh Marg, New Delhi particularly described in the first schedule annexed _____ measuring _____ sq. ft., is handed over to the Licensee, _____ through Sh./Smt./Ms. _____ of M/s. _____ office at _____ on _____ (date) _____ at _____ (time), in the presence of _____ representatives. Licensee hereby acknowledge the receipt and assumes all responsibility of the above described premises, as provided in the License Deed, from the date and time stated above.

Licensee_____
Licensor

()

on behalf


Dir. (Estate-I)
Dir. (Accounts)
Financial Advisor
Secretary

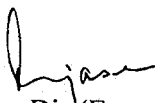
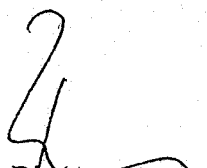
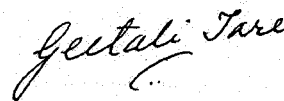
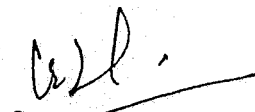
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Annexure-III

Taking Over Note

Date:2016

Vacant possession of the Hotel premises situated at 37, Shaheed Bhagat Singh Marg, New Delhi particularly described in the first schedule annexed _____ measuring _____ sq.ft., is taken by the NDMC's Authorized representative on _____ (Date) _____ (Time) from the Licensee Through Sh./Smt./Ms. of M/s. office at in the presence of _____

Licensee_____
Licensor
Dir. (Estate-I)
Dir. (Accounts)
Geetali Tare
Financial Advisor
Secretary

Annexure-I

ESTATE-I DEPARTMENT
NEW DELHI MUNICIPAL COUNCIL
PALIKA KENDRA : NEW DELHI

**TERMS & CONDITIONS FOR AUCTION OF LICENCE IN RESPECT
OF HOTEL PREMISES SITUATED AT 37, SHAHEED BHAGAT SINGH
MARG, NEW DELHI EARLIER KNOWN AS HOTEL 'THE
CONNAUGHT'.**

1. The Licensor [i.e. New Delhi Municipal Council (NDMC)] reserves the right to reject any or all the e-bidders / bids without assigning any reasons.
2. The e-bidder shall furnish an earnest money of the amount equivalent to three times of reserve price for a month (i.e. EMD equal to Rs. _____ in the form of Demand Draft or Bankers Cheque in favour of Secretary, NDMC payable at New Delhi / Delhi.
3. The e-bidder should furnish details regarding financial soundness and credit worthiness of him duly certified by a CA firm which is empanelled with CAG in case of individual bidder. For others, balance sheet duly certified by Auditors is to be submitted.
4. The allotment will be made to the highest e-bidder in e-auction on licence fee payment basis.
5. The earnest money shall be forfeited in favour of the NDMC in case the applicant after participating in auction becomes successful e-bidder withdraws the offer or makes modifications therein or on acceptance of his application fails to complete any of the formalities of the licence within the period stipulated in conditions 6 and 7, and the allotment in such case shall be deemed terminated.
6. The successful e-bidder will be required to deposit equal to six (6) months licence fee as interest free security deposit alongwith; (i) three months' advance licence fee to NDMC, and (ii) three months' Bank Buarantee. The interest free security deposit and three months' advance licence fee shall be accepted only in the form of Demand Draft or Bankers Cheque in favour of Secretary, NDMC payable at New Delhi / Delhi, within a period of 15 days of the receipt of the intimation of acceptance of his offer towards the fulfillment of the contractual obligations. The earnest money deposited by the successful e-bidder alongwith the bid will be adjusted towards the security deposited.

Director(Estate-I)

Financial Advisor

Secretary

7. The successful e-bidder will execute a licence deed on a non-judicial stamp paper within a period of 15 days from the date of depositing the security deposit alongwith two months advance licence fee to Licensor, in the proforma prescribed by the Licensor.
8. The terms and conditions of the licence are given in the attached licence deed in detail, and it is the responsibility of the e-bidder to go through such terms and conditions before participating in this e-auction process. In case of any discrepancy in documents related to the e-auction, the terms and conditions mentioned in the Licence Deed shall have superseding effect.
9. The licence fee will be increased at the rate of ten per cent (10%) every three (3) years, on compounding basis.
10. The hotel premises will be licensed for 30 years from the date of commencement of licence deed i.e. the date of taking of possession of building on 'AS IS WHERE IS BASIS' by the licensee from licensor.
11. No renewal after expiry of license period of thirty (30) years shall be granted. After the expiry of the licence period of thirty (30) years or its sooner determination, the license shall be deemed as terminated.
12. In case of termination, Licensor shall enter into the premises, and in the event of the Licensee not surrendering the vacant possession of the premises within the stipulated period under this deed in a peaceful manner, the licensee shall render himself/herself/themselves liable for action for eviction under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, recovery of dues as arrears of tax under section 102 of NDMC Act read with section 363 of the Act, disconnection of electricity, water and other utilities/services, and any other action(s) as deemed fit by the licensor.
13. At the time of commencement of licence deed, the licence fee deposited in advance will be adjusted towards the monthly licence fee and after adjustment of the said licence fee, the licensee shall pay the licence fee in advance by the 10th of each English Calendar month at the latest.
14. Non-payment of the licence fee within the prescribed period will constitute breach of the terms of licence and shall render the licence liable to be terminated. In the event of the licensee committing default in the payment of the licence fee for any reason, what-so-ever, shall be liable to pay to the licensor monthly compounding interest for the period of default at a rate of 15% per annum on the amount of licence fee and any other dues including interests, the payment of which has been so defaulted. The interest on defaulted amounts shall be payable for full month irrespective of the fact whether default so committed is for the part of the month.

15. The hotel premises will be licensed on "AS IS WHERE IS BASIS" and the licensee after taking formal occupation of the licensed premises shall not contest thereafter that the licensed premises is not complete in any respect whatsoever. If any change, additions/alterations are necessary, the licensee shall do the same at his own cost after obtaining prior written permission of the licensor and the liabilities for the payment of licence fee shall not be affected.
16. There shall be a moratorium period for payment of license fee for a period of three months from the date of signing of the licence deed for the purpose of refurbishment and during such three months periods no licence fee will be charged from the licensee.
17. The licensee shall use the licensed premises for the purposes of running "hotel" of acceptable standard together with related facilities and business appurtenant thereto, which complies with the terms and conditions of the licence, and applicable Master Plan of Delhi and Building Bye-Laws, for the convenience and benefit of the tourist occupants of the Tourist Lodge. The basement shall be used by the licensee for storage purposes only, and keeping machineries related with utilities like electricity, water supply etc. The Electric sub-station to be run in the basement shall remain in occupation of the licensor. The licensee shall not use the said hotel premises for any other purpose whatsoever except what has been detailed in this para, and permissible under Master Plan of Delhi and Building Bye-Laws, as amended from time to time.
18. Preparation of articles of food would be done in kitchen area only after getting a health license from the competent authority, and dish washing would be done only in the kitchen area & nowhere else.
19. The licensee shall run the hotel himself. However, the licensee may run the shops, restaurants, limited open space car/two-wheeler parking, earmarked for such purposes as mentioned in Para 17 above, himself or allow temporarily such sub-licensee for a period terminating with the period of the licence deed or its termination at any stage, or any period earlier. Trades in the shops shall be the trades as may be permitted by the licensor. The licensee shall be further responsible for the conduct of the various sub-licensees and observance of rules and regulations etc. The licensees shall be further responsible to answer that the sub-licensees quit the premises on the expiry or sooner termination of the licence that may be accorded. The sub-licensees shall not get any right over and above the rights and privileges of the licence. The licensee shall furnish to the licensor the names of sub-licensees in the hotel premises from time to time & the terms of licence of sub-licensees shall be got approved from the licensor in writing before executing the same.

Director(Estate-I)

Financial Advisor

Secretary

20. Save as provided in the preceding paras, the licensee during the tenure of this license shall not sublet/transfer/ assign or part with the building or any portion thereof permanently or temporarily to anybody else nor shall be allowed to take any person/persons to occupy the premises or to use any part thereof save with the prior permission in writing of the licensor.
21. The licensee shall be bound to abide by all applicable statutes, laws, by-laws, rules, regulations, orders, ordinances, protocols, codes, guidelines, policies, notices, directions, judgments, decrees or other requirements or official directive of any governmental authority or court or other law, rule or regulation approval from the relevant governmental authority, government resolution, directive, or other government restriction or any similar form of decision of, or determination by, or any interpretation or adjudication having the force of law in India, including the provisions of the New Delhi Municipal Council Act, 1994 (44 of 1994) and the rules, regulations, bye-laws, orders, etc. made under them, as amended from time to time.
22. Any individual partnership firm and company registered under Companies Act, 1965 or Companies Act, 2013 are eligible to participate in the e-Auction. Regarding partnership and Company, they should be subsisting for the last 3 years prior to the date of auction.
23. The prospective e-Auctioneers/bidders should not be debarred/blacklisted by any Government/Public sector undertaking/ Local Bodies or any other statutory authority.
24. The participants should also furnish Income Tax returns for the last 3 financial years.
25. The participants should have at least average turnover of Rs.6 Crores in the last three years.
26. The recommended reserve price is Rs. 47.25 lakhs.
27. The refurbishment period is 9 months from the date of execution of the licence agreement.
28. Bid Security amount/EMD is Rs.47.25 lakh , which can be in the form of Bank Guarantee with validity of 3 months from the date of declaration of successful bidder.

Director(Estate-I)

Financial Advisor

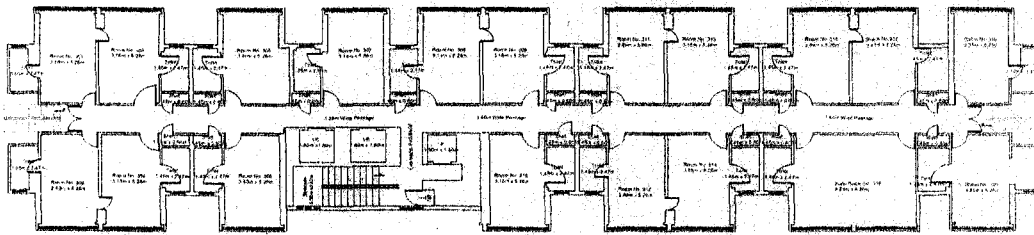
Secretary

29. Performance Security amount may be equivalent to one year's licence fee. The exact amount of the performance security will depend on the winning bid submitted by the successful bidder. The performance security can be in the form of bank guarantee which will remain valid from commencing of the licence term until 6 months after the expiry of the licence term. The bank guarantee should always be renewed one month prior to its expiry and should always be renewed one month prior to its expiry and should be appropriate amount to cover the licence fee payable over the next 12 months.
30. The entire area was surveyed and vetted by Architect Department and copies of layout plan is enclosed.
31. The area will be as per layout plan enclosed and the successful bidder shall confirm to use of this property as per approved building bye-laws, Master Plan etc. in this regard.

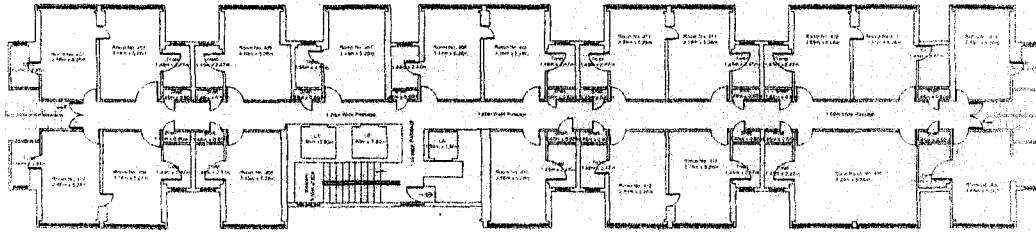
Director(Estate-I)

Financial Advisor

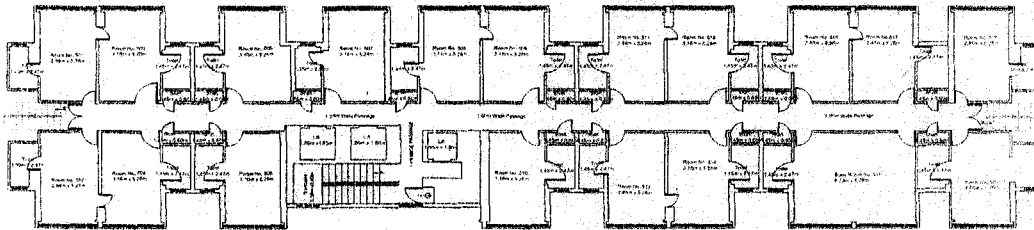
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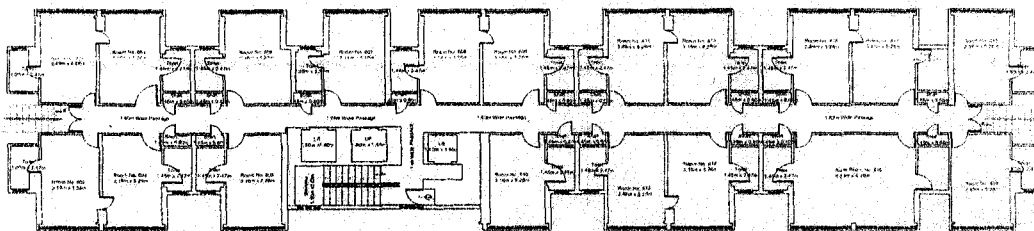
Third Floor



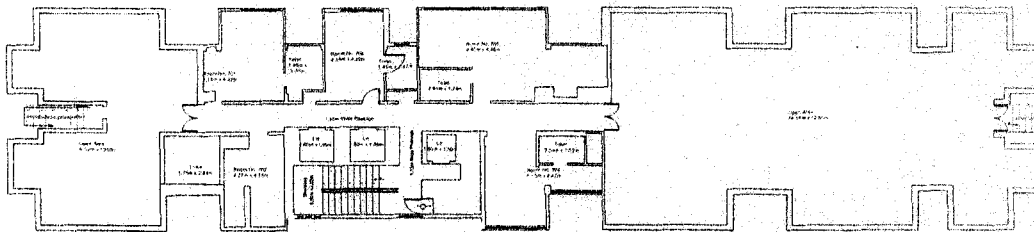
Fourth Floor



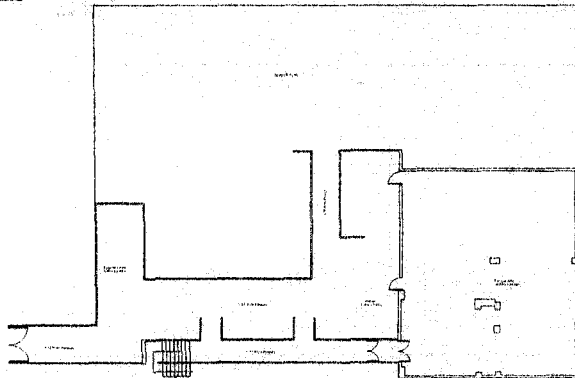
Fifth Floor



Sixth Floor



Seventh Floor



Basement Floor

Magnetic North



Notes:

1. All dimensions are in feet and inches.

2. All areas are in square feet.

3. All areas are rounded to the nearest square foot.

4. All areas are based on the finished floor.

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COVERED AREA

Third Floor - 611,778.00
Fourth Floor - 611,778.00
Fifth Floor - 611,778.00
Sixth Floor - 611,778.00
Seventh Floor - 611,778.00
Basement Floor - 611,778.00
Total Area - 4,283,334.00

OPEN AREA

Seventh Floor - 152,334.00

Handwritten signature and notes.

Room No.	Room Name	Area (sq. ft.)
301	Room 301	100.00
302	Room 302	100.00
303	Room 303	100.00
304	Room 304	100.00
305	Room 305	100.00
306	Room 306	100.00
307	Room 307	100.00
308	Room 308	100.00
309	Room 309	100.00
310	Room 310	100.00
311	Room 311	100.00
312	Room 312	100.00
313	Room 313	100.00
314	Room 314	100.00
315	Room 315	100.00
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317	Room 317	100.00
318	Room 318	100.00
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400	Room 400	100.00

THE COMPANY

Inter-Continental Surveyors, Inc.

1000 North Main Street, Suite 1000
New York, New York 10001

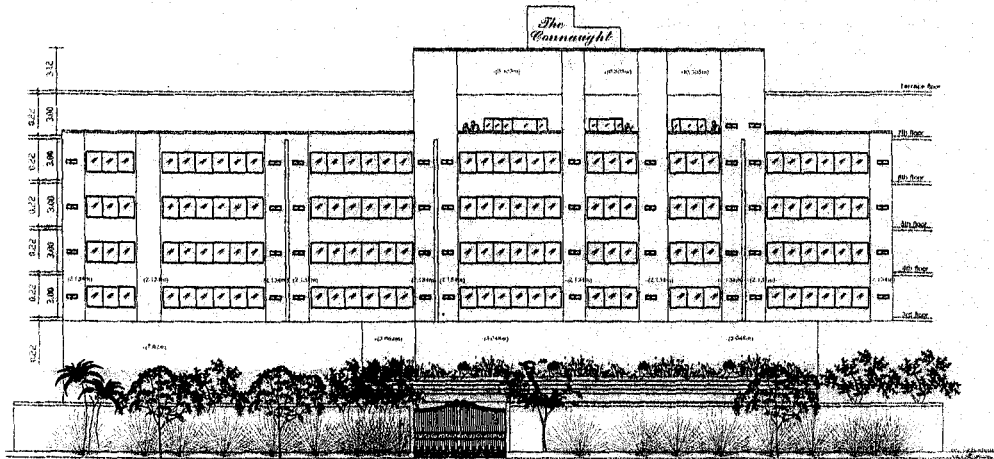
Phone: (212) 512-1000
Telex: 512100

Fax: (212) 512-1000

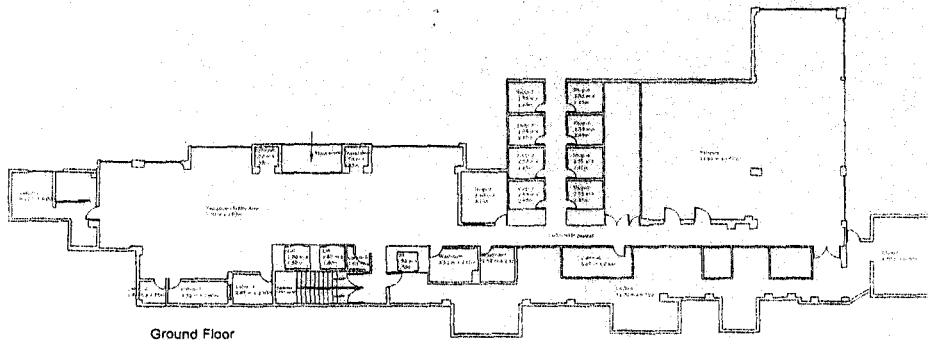
Website: www.icsny.com

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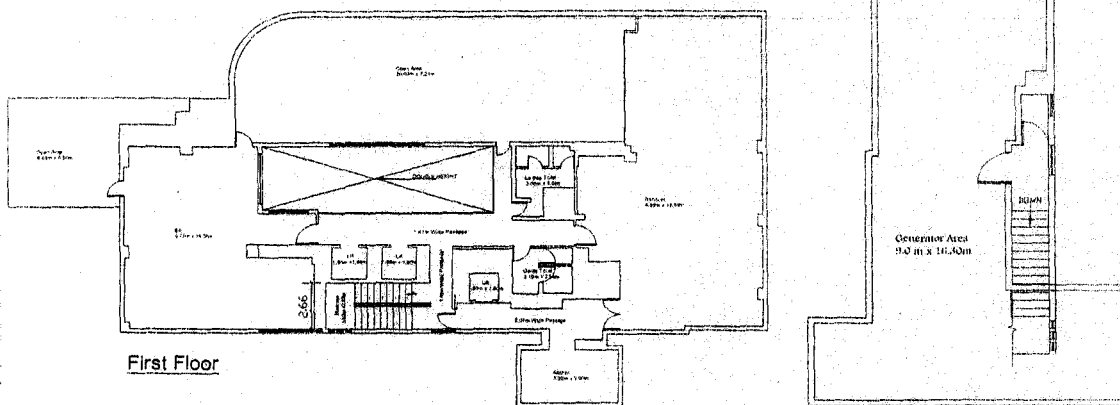




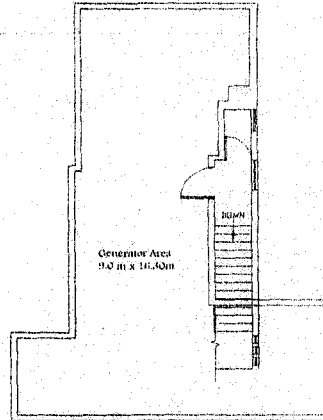
FRONT ELEVATION



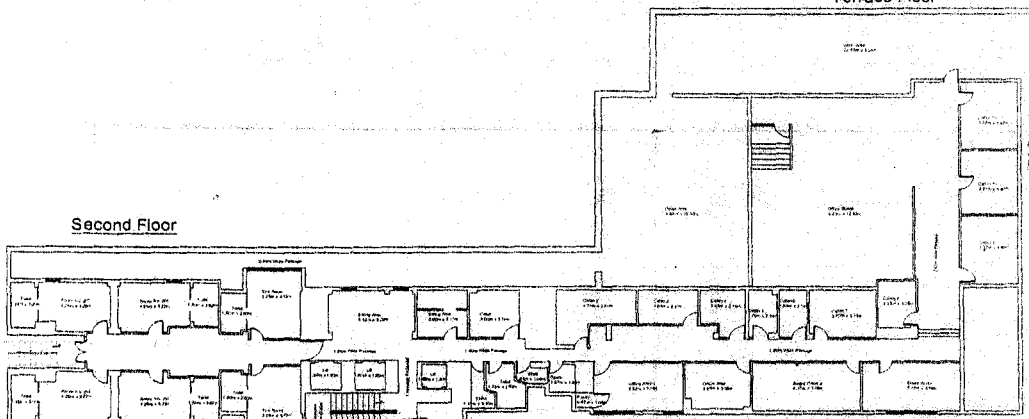
Ground Floor



First Floor



Terrace Floor



Second Floor

Magnetic North



Notes

1. All dimensions are in feet and inches.
2. All dimensions are to the center of the wall.

Legend

Area Details

COVERED AREA

Ground Floor = 98,767 SQ. FT.
First Floor = 407,087 SQ. FT.
Second Floor = 689,294 SQ. FT.
Terrace Floor = 130,614 SQ. FT.
Total area = 2084,044 SQ. FT.

OPEN AREA

First Floor = 198,777 SQ. FT.
Second Floor = 343,200 SQ. FT.
Total area = 541,977 SQ. FT.

NOTE:
ALL THE USAGE OF VARIOUS SPACE ARE SHOWN AS EXISTING ON SITE. THE MEASUREMENT OF THE SPACES ARE SHOWN AS THE EXISTING BUILDING.

Room No.	Room Name	Area (SQ. FT.)
101	Reception	1,200
102	Waiting Room	2,500
103	Office	1,500
104	Office	1,500
105	Office	1,500
106	Office	1,500
107	Office	1,500
108	Office	1,500
109	Office	1,500
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113	Office	1,500
114	Office	1,500
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199	Office	1,500
200	Office	1,500

Engineering Services
THE CONNAUGHT

Existing Layout Plan

Inter Continental Surveyors Limited
100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200

06-03-2017

ITEM NO. 28 (V-04)

1. **Name of the Subject:**
Information about the two incidents of building roof collapse at C- Block and L-Block in Connaught Place. New Delhi.
2. **Name of the Department:**
Chief Architect & E-BR Departments, New Delhi Municipal Council.
3. **Brief history of the subject:**
 - 3.1 Two incidents of roof collapsed happened in Connaught Place in the month of February 2017.
 - 3.2 The first incident took place on 2.2.2017 in the early morning at 2.10 a.m. as per the reports at C-Block where the roof and the front walls of first floor & mezzanine of premises No. C-33, on 4th Radial, collapsed and debris fell down on the roofs of the ground floor shops and some malba also fell on the ground. The affected area of roof collapsed was 110 sq. mt. and the fallen wall was about 33 ft. in length. It was reported that the premises were unoccupied for sometime. No one was hurt in the incident.
 - 3.3 The second incident of roof collapse occurred on 11.2.2017 at about 9.15 p.m. at the premises of L-23/7, a single story building in the name of Odeon Sweet/Unplugged Courtyard Restaurants. The roof that collapsed measured about 15x22ft. in size. The roof top was earlier being used as Restaurant in the name of Unplugged Courtyard Restaurant which was sealed on 4.2.2017 by the Architect Department, NDMC in a joint action with EBR and Public Health Department on account of misuse. No one was hurt in this incident.
 - 3.4 Information about the incident of roof collapse of C-33 was sent to the Police Station, Connaught Place vide letter No. D-31-44/Dir. (EBR)/17 dated 2.2.2017 requesting for immediately cordoning off the area and premises not to be occupied till clearance given by NDMC and it was also requested to lodge a report in the matter and initiate investigation to rule out any sabotage/mischief in the incident. Copy of the letter dated 2.2.2017 Annexure-'A' (See pages 895 – 896).
 - 3.5 In respect of L-23/7 the information was sent to the Police Station Connaught Place vide letter No. D-48/Dir. (EBR)/2017 dated 12.2.2017 mentioning there that the affected areas are not to be occupied and not to be used for any business activity and also to lodge a report and initiate further investigation in the matter. Copy of the letter dated 12.2.2017 is placed at Annexure- 'B', (See page 897).
 - 3.6 An FIR No. 23/17 under Section 336 of IPC dated 2.2.2017 was registered by the Police Station Connaught Place in r/o Premises No. C-33 at C-Block Connaught Place.
 - 3.7 An FIR was also registered on 12.2.2017 by the Police Station, Connaught Place in r/o the incident of roof collapse of premises No. L-23/7 vide FIR No. 33/2017 under Section 288/336 IPC.
4. **Action taken by NDMC:**
 - 4.1 Soon after the incident, a preliminary report in the roof collapse of C-33 was submitted having following members:
 1. Er. Anant Kumr, CE(C-I)
 2. Er. S.K. Jha, CE(C-II)
 3. Sh. Neeraj Bharati, Dir. (E-BR)
 4. Sh. R.K. Goyal, Dy. Chief Architect
 5. Er. T.R. Meena, SE (Roads)
 6. Sh. Ajay Kumar, CSO
 - 4.2 In the preliminary report it was observed that the immediate cause of collapse of roof slab might be due to heavy slab load itself, aging and total discontinuity between the roof slabs and supporting walls, It was observed that the reinforced bars are practically nil in the slab which are required for supporting such type of

- heavy structure. However, only few bars seen in reinforced (brick) concrete slab which are badly rusted/corroded.
- 4.3 The Committee did not observe any evidence of fresh construction at the site. However, the staircase portion, walls and roofs were seen cracked and it was observed that some repairs had been carried out in the past. The copy of the preliminary report dated 2.2.2017 is placed at Annexure-'C' (See pages 898 – 899).
- 4.4 The Chairman, NDMC ordered an inquiry into the two incidents of roof collapse of premises at C-33 & and also of premise at L-23/7 Connaught Place by the team of following officials vide Office Order No. D-17/2017/Secy. dated 7.2.2017 and No. 22/PS/Secy./D/2017 dated 14.2.2017 respectively:-
- i. Director (EBR), NDMC
 - ii. SDM, (Chanakya Puri)
 - iii. Chief Engineer (Civil-II) NDMC
 - iv. One representative from the CPWD of rank not below the Superintending Engr.
 - v. One Structural Engineer expert from IIT Delhi
 - vi. Chief Architect, NDMC, Convener

Following are the terms of reference for the Committee:

- i. Find out the cause of such collapse of the said premises.
- ii. Fix up the responsibility of official, if any, and
- iii. Give recommendations to avoid recurrence of such incidence in future.

The committee was to give its report within three weeks of the issuance of orders. Copies of the Office order for conducting enquiry are placed at Annexure 'D-1& 'D-2' (See pages 900 – 901).

The Members of the Committee so far had held two meetings on 13.2.2017 and 21.2.2017. The Committee members have visited the collapsed building roof sites for observation/examination. The samples of debris/bricks/steel have been taken for Lab test required, if any.

- 4.5 The Chief Architect, NDMC issued show cause notices under Section 258 and 259 of NDMC Act 1994 to the occupant of C-33 and also to occupants of other 10 affected premises abutting the collapsed building informing the occupant/owner that the building is not safe for use in the present condition and the rehabilitation/retrofitting of the building is required and were asked to furnish structural safety certificate of the premises issued by qualified structural engineer or from a reputed institute/organization within 7 days of the issuance of the notice. Copies of the order for issuance of the notice is placed at Annexure 'E & F' (See pages 902 – 903).

Further the Director (EBR) vide letter No. D-44/EBR/2017 dated 7.2.2017 informed to the SHO, Connaught Place, that the occupants of the affected premises to use the premises for business activities only after the structural safety certificate has been obtained by them and the copy of the same also submitted to the Chief Architect, NDMC. Copy of letter at Annexure 'G' (See page 904).

- 4.6 In r/o premises at L-23/7 L-Block, Connaught Place, It is informed that the then Junior Engineer of the EBR Department had issued the Stoppage Notices u/s 248 of the NDMC Act 1994 on 27.1.2017 on noticing unauthorized construction activities of dismantling of internal wall partition and erecting MS girders below the existing roof and erecting wooden false ceiling below the roof in the premises. It has been reported that during the inspection conducted on 9.2.2017 by the then J.E. and A.E. no work was going on at the said premises.
- 4.7 It is informed that earlier the roof of the premises- L-23/7 at L Block was sealed by the CA Department on 4/2/2017 in a joint action by the CA, EBR and Health Department on the reports of misuse of the premises informed by the EBR Department in the month of December 2016 along with 20 premises where roof tops were being misused for running restaurant activities.

5. Details about the Pre-emptive Actions initiated by NDMC to avoid such incidents:

- 5.1 The Chairman, NDMC held meetings with the occupants and members of the Traders Associations and Restaurant Associations of Khan Market and Connaught Place soon after the incident of roof collapse of C-33 at CP wherein it was inter-alia decided that the occupant/owners are to immediately submit the Structural Safety Certificate in r/o the premises at CP Block and Khan Market as the buildings are very old and some buildings are showing signs of stress/degradation. The internal changes and re-orientation of original supporting structures by the occupants/owners have also apparently resulted into structural safety concerns.
- 5.2 The CA Department had issued 902 notices to the occupants/owners of premises at CP from 13th to 15th February 2017 and 222 notices to the occupants/owners of premises at Khan Market on 20.2.2017 under Section 258(1) of the NDMC Act 1994 for submitting a Structural Safety Certificate in r/o their premises issued by a qualified structural engineer as defined in National Building Code (NBC) (Section 'A'-2.3) in the format annexed to the notice.
- 5.3 The copies of the specimen said notices with annexures for structural safety is at Annexure 'H-1 & H-2' (See pages 905 – 910).
- 5.4 The time period for submission of structural safety certificate in r/o CP has been given till 27.2.2017 and for the Khan Market occupants the time has been given till 6.3.2017 for submission of the structural safety certificate.
- 5.5 The occupants/owners have started submitting to the CA Department structural safety certificates. Specimen copies of the certificate received are placed at Annexure I-(1) and I-(2) (See pages 911 – 915).

6 Short Term Action Plan to arrest building degradation and ensure structural safety at CP and Khan Market:

- 6.1 As a step for ensuring the structural safety of the premises at CP, NDMC officials carried out the visual inspections while serving notices u/s 258(1) of NDMC Act 1994 to owners/occupants of premises of 15 CP Blocks and noted the signs of stress in the buildings structure, seepage/leakages/cracks in the walls/roofs, unauthorized construction, excess load in the form of Water Storage Tanks, Mobile Towers, DG Sets, AC Plants etc. in some buildings. Total 15 teams were constituted under the supervision of SEs & EEs under overall supervision of CE- C-I and CE-C-II and Director (Transport), to serve the notices and conduct visual inspection. Copy of the order No. 19/PS/Secy./D/2017 dated 13.2.2017 is placed at Annexure- 'J' (See pages 916 – 918).
- 6.2 The IT department, NDMC had compiled the visual inspection data in r/o 1239 premises situated at CP Blocks submitted by the Inspecting Teams along with the photographs wherever taken.
- 6.3 The details of the findings and the actionable points in respect of the premises inspected at CP during 13th February to 15 February 2017 has been categorized into various observations/actionable points requiring immediate action for removal/rectification/repair. The report is placed at Annexure 'K' (See pages 919 – 923).
- 6.4 The following are the Main Findings that emerged from the Visual Inspection of 1239 premises located at Fifteen CP Blocks:
 - a. 314 building premises have excess Dead Load on roofs/Terraces on account of installations DG sets, water storage tanks, AC Plants, mobile towers RO plants, heavy duty inverters, malba stacks etc.
 - b. 166 of building premises requires immediate action for ensuring structural safety including repairs/ strengthening on account of visible stress signs relating to rusting of steel bars, plaster peeling off, trees growing in cracks, wall/roof/ceiling damages and cracks in walls noticed.
 - c. 82 building premises buildings reported to have seepage problem which might lead to weakening of the RBC structure and endangering the structural safety.

- d. 121 Building premises were reported to have a false ceiling which could conceal the stress signs/modifications on the ceiling/roof slabs and hence need to be immediately examined by the owner/ occupants.
- e. At 49 premises, unauthorized construction reported.
- f. 144 premises were reported locked and not accessible/traceable.
- 6.5 It is informed that premises at CP are owned by people and hence owners themselves are responsible to maintain and upkeep the premises and to ensure structural safety of their premises. The CP buildings were constructed during the period 1929 to 1936. The building are load bearing structures and roofs are mainly of re-enforced brick concrete (RBC) with integrated structures of pillars and archers for support and strength. The roof of buildings are very thick of about 50 to 65 cm. and the internal walls are also about 2-2-1/2 ft. in width. Tinkering/removing/re-shaping and non-maintenance of these structures could apparently lead to further weakening of the buildings.
- 6.6 It is pertinent to mention in r/o premises at CP Blocks, that permission from Heritage Conservation Committee (HCC) is required as structures falls under heritage buildings under Grade-II as per the notification of 2009 by the Govt. of NCT of Delhi and requires prior permission from the Heritage Conservation Committee (HCC) through NDMC for any repair/renovation activities.
- 6.7 To make owner/occupant to urgently attend to the structural safety issues associated with the buildings at CP, the CA Department of NDMC shall be taking action under Section 258/any other relevant provisions of the NDMC Act 1994 directing the occupants to undertake immediate action on the condition noted in the visual survey and to take accordingly the repair/strengthening/retrofitting works of existing structure, if required.
- 6.8 The owners/ occupants will be asked under section 258/relevant provisions of the NDMC Act 1994 to remove inter-alia the following:
 - a. Remove excess dead- load from the rooftops and terraces in the form of water storage tanks/ RO plants/ AC plants/ DG sets/mobile towers/unauthorized construction on terraces/roofs, etc.
 - b. Undertake immediate steps to detect any seepage and undertake required repair immediately.
 - c. Undertake repairs/ retrofitting action for any signs of stress in the building such as wall cracks/damages roof/ wall/ceiling tree growing etc.
 - d. Remove immediately any malba /debris from the building premises including that from terraces and the Roofs.
 - e. Carry out any repair/retrofitting/strengthening/any construction activities/ works only with the recommendations and under supervision of qualified structural engineer and architect and to take prior approval from NDMC and Heritage Conservation Committee (HCC) before undertaking any construction activities.
 - f. Remove false ceiling to check for any stress/cracks in the roof and ensure structural safety of the premises.
 - g. All occupants/owners to visit and inspect the premises presently not occupied / not in use / locked / sealed by immediately approaching to the person/agency concerned for structural safety assessment.
- 6.9 The owner/occupant is required to submit the building repair/strengthening/reconstruction activities proposal along with the existing sanctioned plan, and the actual (as built) site plan along with the recommendation of the proposal by the qualified registered Architect and Structural Engineer. The draft notice to this effect is placed at Annexure-'L' (See pages 924 – 926) with Check List.
- 6.10 To facilitate the hassle free submission and processing of permission sought, the proposal shall be submitted by an applicant to a Designated Officer in the Special Cell created for this purpose in the CA Department where the designated officer will receive the application/proposals for repair/retrofitting of the premises. The applicant shall collect on the spot acknowledgment of submission and for deficiency notice (If information/document found deficient in the application), from the designated official of NDMC. In case the proposal is incomplete, the designated officer will return the same with specific comments,

then and there. Only complete proposals would be received and acknowledged. The Architect Department will also assist the applicant in making available original sanctioned plan to the possible extent.

The approval / permission shall be informed to the applicant on their email-ID and each application status shall be displayed on the NDMC website i.e. www.ndmc.gov.in. It will be endeavored by NDMC that the permission is granted and intimated to the applicant within 21 days of the submission of application.

- 6.11 As per the said draft notice, the work of repair/retrofitting shall only commence and will be carried out under the guidance of the qualified structural engineer after the approval of NDMC and HCC and the work shall be completed within the period specified by NDMC in the permission/approval letter. After the completion of the permitted works a structural safety certificate by the structural engineer who has supervised the repair/retrofitting works shall be submitted along with structural drawing.
- 6.12 Further to stop any unauthorized activities and any other activities that affect the structural safety of a premises, the Departments concerned will take following actions:
 - a. The Health Licenses of the restaurants found operating on the roof top / terraces will be revoked for violations of the terms and conditions and misuse of premises. Once licenses cancelled, no fresh application would be entertained in that premises at least for a period of one year.
 - b. The EBR Department and the Chief Architect Department to carry out comprehensive inspections of the premises vis a vis the standard plan and the sanctioned plan for detecting and removing any unauthorized construction both at CP & Khan Market on priority basis.
 - c. The Chief Architect Department is collecting the original plan/drawings from L&DO/ CPWD, for records and comparisons of the existing structure and detecting any deviations/ unauthorized construction which shall be made available to owner of premises.
 - d. The sanctioned/ approved building plans scanned digital copies have been put on the NDMC intra-net and access given to the Departments concerned, to quickly act on the matters of unauthorized construction activities/ misuse cases of the premises.
 - e. Business/restaurant activities on roof tops/ terraces shall not be allowed in view of being old structure, and unauthorized construction reported and detected by EBR Department on terraces/roofs of 21 restaurants have been sealed which may be de-sealed if undertaking is given that terraces will not be used for commercial purpose. If such misuse is found in future, Health Licenses will be cancelled henceforth and neither will be renewed or fresh issued in that premises.
- 6.13 Similar actions shall also be undertaken in r/o Khan Market premises.

7. Other mitigation plan for ensuring structural safety for Connaught Place Buildings and Khan market:

- a. NDMC shall be taking immediate steps to facilitate the dead-load reduction on the roof tops/terraces by implementing the 24x7 water supply to reduce any need for storage on the rooftops/terraces and to implement the automatic switch-over for un-interrupted power supply at Connaught Place and also at Khan Market and complete it in four months' time.
- b. There is a need for special regulation and guidelines for maintenance and up keep of Heritage Structures at Connaught Place. The matter has been taken up with the Ministry of Urban Development (MoUD) vide letter dated: 17-02-2017, wherein request has been made that HCC may undertake the task of framing of special regulation/guidelines for Heritage Precincts, need special treatment and maintenance, as per terms of reference no. (iv) of the HCC as mentioned in Building Bye-laws No. 1.15 of Annexure-II of the UBBL 2016. Alternatively, a committee of technical experts consisting of members from DDA, DUAC and Municipal Bodies under the supervision of HCC may be constituted for purpose. Copy of the letter at Annexure-'M' (See pages 927 - 928).

- c. Further as per the Master Plan Delhi-2021, Connaught Place has been designated as the Metropolitan City Center (MCC) which is highest category under the five-tier system of commercial areas classification. As per the Master Plan-2021 provision mentioned in Chapter-5, para-5.3.1, the development of Connaught Place as the Metropolitan City Center has to be in harmony with the existing urban form of the classical Connaught Circus and multi-storied buildings in its extension, so as to bring in visual integration in the overall urban form. The Master Plan Delhi-2021 envisages preparation of guidelines for development, re-development, alteration, repair, renovation and re-use of Heritage Buildings as per the urban design parameters mentioned in the MPD-2021.

The work of development and integration with the overall urban form shall be undertaken by NDMC in consultation with DDA and Heritage Conservation Committee (HCC). A consultant/consulting agency will be hired through tender process for this purpose.

Accordingly the matter is placed before the Council for consideration.

COUNCIL'S DECISION

The Council resolved that the convener of the Committees made vide Office Orders dated 07.02.2017 and 14.02.2017 be directed to furnish reports by 20.03.2017, which should be brought before the Council in its forthcoming meeting along with recommendations of the Department.

The Council took note of the findings of the Department as mentioned in Para 6.4 of the Preamble, and resolved to direct the concerned Departments to take appropriate action, including action as proposed in para 6.8 of the preamble.

The Council observed that certain individuals / market associations raised the issue of providing structural safety certificate as sought by the NDMC, raising the issue of ownerships of the floors and not of the complete premises structure, and resolved that the concerned Department should extend all support to the Structural Engineers in collaboration of market associations / owners / occupiers to undertake the survey for furnishing the structural safety certificate in the format provided by the NDMC.

The Council further resolved that:

- (a) all building sanction plans, including applications for repair/retrofitting of the premises, be received only through online system;
- (b) the concerned Department should raise deficiencies, if any, within two working days of receipt of such plans/ applications;
- (c) a Special Cell be created by concerned Department to help the applicants to remove the deficiencies, if any;
- (d) application for sanction of building plan/repair/retrofitting be sent to the Heritage Conservation Committee within seven days of receipt of complete application;
- (e) the concerned Department should endeavour that necessary permission be granted and intimated to the applicant within 21 days of the submission of complete application;
- (f) after the completion of the permitted works a structural safety certificate by the structural engineer shall be submitted along with structural drawing to the NDMC.

The Council considered the requirement of special regulation and guidelines for maintenance and up-keep of Heritage Structures in NDMC area, and in light of the communication received from that Heritage Conservation Committee w.r.t framing of special regulation/guidelines for Heritage Precincts, the Council resolved to empower Chairperson, NDMC in consultation with DUAC, DDA, HCC to constitute a multi-disciplinary, multi-organizational Committee to frame draft special regulation/guidelines for Heritage Precincts in NDMC area after considering the provisions of the Unified Building Bye-Laws, 2016.

The Council further resolved that no commercial activity (by whatsoever name) be allowed on the rooftops/ terraces in the Connaught Place and Khan Market area till the special regulation/guidelines for Heritage Precincts in NDMC area be come into force. In case any business activity, including restaurant activities, be observed on the rooftops/terraces, then appropriate action including cancellation of health licenses,

sealing of such premises be undertaken, and once health licence revoked/ premises sealed, no application for health licence / desealing of the premises should be entertained till the special regulation/guidelines for Heritage Precincts in NDMC area as mentioned above comes into force.

The concerned Department shall take immediate steps to facilitate the reduction of dead-load on the roof tops/terraces by implementing the following in a time-bound manner:

- (a) 24x7 water supply in Connaught Place to reduce any need for storage on the rooftops/terraces;
- (b) automatic switch-over for un-interrupted power supply at Connaught Place and Khan Market; and
- (c) 'unauthorized construction' and 'misuse' on rooftops/ terraces be removed/stopped.

It was also resolved by the Council that the department may initiate further necessary action in anticipation of confirmation of the minutes of the Council.

K. Sharma
For Secretary
New Delhi Municipal Council
Vaidika Nodra, New Delhi

A/HK

2/17

3/2/17

MOST URGENT

OFFICE OF THE E-BR DEPARTMENT
NEW DELHI MUNICIPAL COUNCIL
PALIKA KENDRA: NEW DELHI

No. D-31-41/Dir (E.B.R.) 2017

Dated: 2/2/2017

The S.H.O.
Connaught Police Station, Delhi police,
BKS Marg, New Delhi

Subject:- Cordoning of the site of building roof collapse of Flat No C-33 at C-Block on radial-four, Connaught Place and investigation for sabotage/mischief if any

Sir,

It is to inform that the building roof and wall of first floor and Mezzanine floor of Shop/Flat NO. 33, C-Block, on fourth radial, facing B-Block, on the inner circle at Connaught Place has collapsed in the night hours at about 2.10 a.m. on 2.2.2017 as per the report from the NDMC control room.

As per the inspection of the site, the malba of the collapsed roof, wall and pillar of the above said premises has fallen on the ground and some of the malba of collapsed slabs and pillars is lying dangerously on the roofs of the ground floor shops namely: Looks, Zodiac, Hush Puppies, New Delhi Stationery on about 33 ft. length area and lying on the ground in front of these shops.

From the preliminary inspection conducted at the site, it appears that the shops existing below the collapsed floor and adjoining shops may be dangerous to occupy till a thorough assessment regarding safety of shops below and adjoining premises is completed by Structural Engineers.

In view of the above, you are requested to immediately cordon of the area and ensure that the general public do not gather around the site as well as the shops/offices on the entire 'C' Block on the 4th radial from inner circle to middle circle (i.e. from Jain Book Depot till City Bank premises) and these are also not occupied for any business till clearance is given by the NDMC.

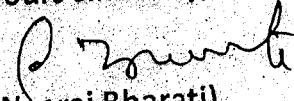
You are requested to lodge a report in this regard and initiate investigation for ruling out any sabotage/mischief angle in the incident of roof/wall collapse of the above mentioned premises.

Contd. - page-2/

DMC shall be informing about the assessment of structural stability/safety as soon as completed, till then the premises as described above should not be allowed to be occupied by the shop owners and to be visited by the public.

Photographs (2 in number) of the site taken at about 10 o'clock on 2.2.2017 are enclosed.

Yours sincerely,


(Neeraj Bharati)

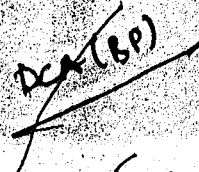
Director (EBR)/ IT

2/2/2017

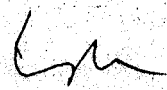
Copy to:

1. DCP, New Delhi District,, Delhi Police, Parliament Street, New Delhi,
2. Deputy Commissioner, Revenue Department, New Delhi District, Jam Nagar House, New Delhi, for information and necessary action by the District Disaster Management Unit
3. ACP, Connaught Place, Delhi Police, Baba Kharak Singh Marg, New Delhi
4. Chief Architect, NDMC, for necessary Action
5. Chief Engineer, CE-C-II (Building Maintenance), NDMC, for necessary action
6. Chief Engineer, C-1, NDMC, for necessary action
7. Chief Engineer, Electrical-II, NDMC, for necessary action in respect to Electrical Safety at site
8. PS to Chairman, NDMC, for information of the Chairman, NDMC
9. PS to Secretary, NDMC for information of the Secretary, NDMC

7 n/a as decided at site


DCP (BP)
En En

2/2/17



ANNEX 'B'

NEW DELHI MUNICIPAL COUNCIL
(EBR DEPARTMENT)
PALIKA KENDRA, 7TH FLOOR,
PARLIAMENT STREET, NEW DELHI

NO...../EBR/2017

Dated: 12.02.2017

The S.H.O.
Connaught Place Police Station,
Delhi Police, BKS Marg, New Delhi.

SUB: Cordoning off the site of building roof collapse of Shop (Odeon Sweet Shop / Restaurant Unplugged Courtyard – located at L-23/7, at Middle Circle, L -Block, Connaught Place and investigation into this Roof Collapse matter.

Sir,

This is to inform that the roof of the subject building- Shop (reported as Odeon Sweet Shop) / Restaurant Unplugged Courtyard – located at L-23/7, at Middle Circle, L -Block, Connaught Place has collapsed at about 9.15 PM on 11.2.2017 as per the reports.

2. As per inspection of the site, the roof has collapsed inside the said shop. Some malba /debris also fell into the courtyard behind the shop. No causality has been reported so far. The collapsed roof top area is about 15X22 feet in size. The roof top was earlier being used as restaurant and the same was sealed on 04.02.2017 by the NDMC. It is also informed that the occupant /owner was also served a Stoppage Notice dated 27.1.2017 under section 248 of the NDMC Act 1994 by the EBR Department of NDMC.

3. It is also informed that recently another incident of roof collapse had happened on 02.02.2017 at premise No C-33, Connaught Place, New Delhi, information about which was sent to the PS Connaught Place vide letters Nos D/31-41/ Dir/ EBR dated 2.2.2017 and D/44 EBR/2017 dated 7.2.2017

4. In view of the above, it is requested that the said shop/ restaurant and other nearby affected building area be immediately cordoned off to ensure that the general public do not gather around the site.

5. Further, the affected premises are not to be occupied and not to be used for any business activity. However the access to the affected premises may be allowed to the owner/occupant along with their associated structural consultants / engineers for the assessment of the safety issues in order to obtain structural safety/ stability certificates at their own risk and cost without any liability on the part of NDMC.

6. It is therefore requested to lodge a report in this regard and initiate further investigation in the matter. Photographs of the site, taken today (on 12.02.2017) along with the site sketch plan are enclosed for perusal and ready reference.

(Neeraj Bharati)
Director (EBR)

Copy to:

1. DCP, New Delhi District, Delhi Police, Parliament Street, New Delhi.
2. Deputy Commissioner, Revenue Department, New Delhi District, Jam Nagar House, New Delhi.
3. ACP, Connaught Place, Delhi Police, Baba Kharak Singh Marg, New Delhi.
4. PS to Chairman, NDMC for information to the Chairman, NDMC.
5. Ps to Secretary, NDMC for information to the Secretary, NDMC.
6. Chief Engineer (C-I), NDMC
7. Chief Engineer (C-II), NDMC,
8. Chief Engineer (Electrical-II), NDMC,
9. Chief Architect, NDMC,
10. CSO, NDMC

AS/K/12
12/02/17

Sub : Preliminary Report regarding Structure failure i.e. Collapse
of roof / terrace of 1st floor shops located at C-Block,
Premises No.33, Connaught Place, New Delhi

In pursuance of the directions given by Chairman, NDMC and the information shared on HODs Group of whatsapp, the team consisting of the following officials inspected the above mentioned site on 2.2.2017 between 9.30 AM to 11 AM.

1. Er. Anant Kumar (CE(C-I))
2. Er. S.K. Jha, CE(C-II)
3. Shri Neeraj Bharti, Director (EBR)
4. Shri R.K. Goyal, Dy. Chief Architect
5. Er. T.R. Meena, SE(Road)
6. Er. C.L. Meena, EE(EBR)
7. Sh. Ajay Kumar, Chief Security Officer

2. The committee members inspected the site and observed that the terrace of the shops at 1st floor of premises No.33, C Block, Connaught Place, New Delhi has collapsed. The outer wall of 1st floor at Radial Road has tilted and some portion fell down on the road. The fallen wall (i.e. 1st floor façade) is about 33 ft. in length.
3. The ground floor passage / circulation area is having arch roof with wide cracks visible on it. The terrace / roof of shops at 1st floor above is seen totally collapsed. The affected area is approximately 100-110sq.m. The shops located at the ground floor are Zodiac, Hush Puppies and New Delhi Stationery Mart.
4. It is noticed that three sides of roof slabs are seen sheared and have fallen down on the roof of ground floor shops. It is observed that the structure is very old and as informed it was constructed during Nineteen thirties.
5. It is further submitted that very heavy dead load is seen in the form of various layers of brick slabs of the roof, plain cement concrete, lime terracing, brick tiles, etc which is about 2' thick and there may be possibility that the said slab collapsed due to its self heavy load. There is no connectivity between slabs and walls.
6. As per the preliminary inspection of the site, there appeared no fresh construction activity noticed at the site and the premises No.33, 1st floor, appeared unoccupied / vacant. In the malba / debris, no fresh construction material or machinery used was seen.

Contd...2/-

2/2/2017

2/2/17


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7. It is pertinent to mention here that the reinforced bars are practically nil in the slab which are required for supporting such type of heavy structure. However only few bars seen in reinforced concrete slab which are badly rusted / corroded.
8. In view of above, it is observed that the immediate cause of this collapse of slab might be due to heavy slab load itself, aging and total discontinuity between the roof slabs and supporting walls.
9. In stair case portion, walls and roofs are seen cracked and it is observed that some repairs had been carried out in the past. The exact cause of the collapse can only be known after the detailed scientific investigation.

In view of above, the following steps may be taken on priority.

1. Informing to the SHO, Connaught Place PS, and other police officials
2. Obtain report of a structural engineer/expert from IIT Delhi to know the cause of collapse
3. Closing the affected shops below and adjoining the collapsed premises
4. Removal of debris/ malba lying over the top of slab of ground floor.
5. Taking further safety measures at the premises as deemed fit

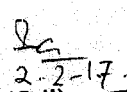
Submitted for kind information of the Chairman.


Dy. CA 2/2/17


Director (EBR) 2/2/2017


CSO 02-2-2017


CE(C-I) 2/2/17


CE(C-II) 2-2-17

NEW DELHI MUNICIPAL COUNCIL
PALIKA KENDRA : NEW DELHI

No.: D- 17/2017/Secy

Dated 07.02.2017

OFFICE ORDER

As decided in the Meeting held on 02.02.2017 regarding Collapse of a Premises situated in Flat No. 33 (First Floor & Mezzanine Floor), C-Block, Connaught Place, New Delhi on the intervening night of 01-02 February, 2017, the Committee of following officials is constituted to enquire upon the following:-

- (i) Find out the Cause of such collapse of the said premises,
- (ii) Fix up the responsibility of officials, if any, and
- (iii) Give recommendations to avoid recurrence of such incidents in future

CONSTITUTION OF COMMITTEE:

1. Director (EBR), NDMC
2. S.D.M. (Chanakya Puri)
3. Chief Engineer (Civil-II), NDMC
4. One representative from the CPWD of rank not below the Superintending Engineer
5. One Structural Engineer expert from IIT Delhi
6. Chief Architect, NDMCConvenor

The Committee should furnish its report within three weeks from the date of issuance of this order.


(CHANCHAL YADAV)
SECRETARY

Copy to:-

1. Director General, CPWD, Nirman Bhawan, New Delhi – with a request to depute an representative.
2. Director, I.I.T., Delhi, Hauz Khas, New Delhi – with a request to depute an representative
3. S.D.M. (Chanakya Puri), Jam Nagar House, New Delhi
4. Director (EBR), NDMC
5. Chief Engineer (Civil-II), NDMC
6. Chief Architect, NDMC with a direction to co-ordinate for Sl.No.4 and 5 also.
7. P.S. to Chairperson, NDMC for information of Chairperson, please.

OK

NEW DELHI MUNICIPAL COUNCIL
PALIKA KENDRA : NEW DELHI.

No. 20 /PS/Secy./D/2017.

Dated: 14-2-2017

OFFICE ORDER

In continuation of office order No. D-17/2017/Secy. dated 07.02.2017 and with approval of competent authority, the Committee of following officials is constituted to enquire upon the following (with respect to roof collapse of Unplugged Courtyard, L-Block):-

- (i) Find out the cause of such collapse of the said premises.
- (ii) Fix up the responsibility of officials, if any, and;
- (iii) Give recommendations to avoid recurrence of such incidents in future.

CONSTITUTION OF COMMITTEE:

1. Director (EBR), NDMC
2. S.D.M. (Chanakyapuri)
3. Chief Engineer (Civil-II), NDMC
4. One representative from the CPWD of rank not below the Superintending Engineer.
5. One Structural Engineer expert from IIT Delhi.
6. Chief Architect, NDMC....Convenor.

The Committee should furnish its report within three weeks from the date of issuance of this order.


(Chanchal Yadav)
SECRETAR

Copy to:

1. Director General, CPWD, Mirman Bhawan, New Delhi – with a request to depute representative.
2. Director, I.I.T., Delhi, Hauz Khas, New Delhi – with a request to depute representative.
3. S.D.M. (Chanakyapuri), Jam Nagar House, New Delhi.
- ✓ 4. Director (EBR), NDMC.
5. Chief Engineer (Civil-II), NDMC.
6. Chief Architect, NDMC – with a direction to coordinate for SI. No.4 and 5 also.
7. PS to Chairperson, NDMC for information of Chairperson, please.

1489/Dig. (EBR)

Sign 14/2/2017
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DEPARTMENT OF ARCHITECTURE & ENVIRONMENT
NEW DELHI MUNICIPAL COUNCIL
PALIKA KENDRA : NEW DELHI

Annex E

Sub: Minutes of the meeting held on 02.02.2017 in light of collapse of premises situated in Flat No. 33 (First Floor and Mezz. Floor), C-Block Connaught Place in the intervening night of 01-02 February, 2017.

S.H.: SHOW CAUSE NOTICE U/S. 258 OF N.D.M.C. ACT, 1994

In pursuance of Minutes of the aforesaid meeting, the inspection to see the impact on the neighbourhood properties of the aforesaid premises was carried out by the undersigned and in the first instance it has been visually observed that the following neighbourhood properties seems to be dangerous:-

S.NO.	PREMISES
1	ZODIAC Clothing Co. Ltd., (Occupant), C-6, Ground Floor, Connaught Place, New Delhi.
2	M/s. Hush Puppies (Occupant), C-7, Ground Floor, Connaught Place, New Delhi.
3	M/s. Kapoor Watch Co. (P) Ltd., (Occupant), C-10, Ground Floor, Connaught Place, New Delhi.
4	M/s. Jain Book Agency, (Occupant), C-9, Ground Floor, Connaught Place, New Delhi.
5	M/s. New Delhi Stationery Mart, (Occupant), C-8, Ground Floor, Connaught Place, New Delhi.
6	M/s. Looks Unisex Salon (Occupant), C-33, (Mezz./ First Floor - Part), Inner Circle, Connaught Place, New Delhi.
7	M/s. Basecamp, (Occupant), C-10, Ground Floor, Connaught Place, New Delhi.
8	M/s. Litolier (Occupant), Ground & Mezz. Floor, (Adj. Stair Case leading to C-33, C-Block, Connaught Place, New Delhi.
9	M/s. Airliner Express (Occupant), C-33, (First Floor - Part), C-Block, Connaught Place, New Delhi.
10	Owner/Occupier, (First Floor in the stair case leading to C-33), C-Block, Connaught Place, New Delhi.
11	Owner/Occupier, C-32 (Part) (Attached to the stair case leading to C-33), C-Block, Connaught Place, New Delhi.

Therefore, as decided, a Show Cause Notices u/s. 258 of NDMC Act for the above mentioned premises have been prepared and is placed below for approval, signature and issuance, please.

Sadhvir Singh
3/2/17
(SADVIR SINGH)
J.E.(BP) NORTH

A.A.(BP)N

D.A.(BP)N

E.E.(BP)

D.C.A.(BP)

C.A.

Dupatch.

JE(BP)N

S. 1956, 57, 58, 59,
60, 66, 67, 68, 69,
70 + 1971 / CA/SP

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AP.
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On leave

Sum
3/2/2017

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3/2

K. Rao
3/2/17

Sub: Minutes of the meeting held on 02.02.2017 in light of collapse of premises situated in Flat No. 33 (First Floor and Mezz. Floor), C-Block Connaught Place in the intervening night of 01-02 February, 2017.

S.H.: SHOW CAUSE NOTICE U/S. 259 OF N.D.M.C. ACT, 1994

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4	M/s. Jain Book Agency, (Occupant), C-9, Ground Floor, Connaught Place, New Delhi.
5	M/s. New Delhi Stationery Mart, (Occupant), C-8, Ground Floor, Connaught Place, New Delhi.
6	M/s. Looks Unisex Salon (Occupant), C-33, (Mezz./ First Floor - Part), Inner Circle, Connaught Place, New Delhi.
7	M/s. Basecamp, (Occupant), C-10, Ground Floor, Connaught Place, New Delhi.
8	M/s. Litolier (Occupant), Ground & Mezz. Floor, (Adj. Stair Case leading to C-33, C-Block, Connaught Place, New Delhi.
9	M/s. Airliner Express (Occupant), C-33, (First Floor - Part), C-Block, Connaught Place, New Delhi.
10	Owner/Occupier, (First Floor in the stair case leading to C-33), C-Block, Connaught Place, New Delhi.
11	Owner/Occupier, C-32 (Part) (Attached to the stair case leading to C-33), C-Block, Connaught Place, New Delhi.

Therefore, as decided, a Show Cause Notice u/s. 259 of NDMC Act has been prepared and is placed below for approval, signature and issuance, please.

Sadvir Singh
(SADVIR SINGH)
J.E.(BP) NORTH

A.A.(BP)N

D.A.(BP)N

E.E.(BP)

D.C.A.(BP)

C.A.

SECRETARY

May kindly be approved to serve
notice to above mentioned premises.
By *Sadvir Singh* 3/2/2017

-904-

EBR DEPARTMENT
NEW DELHI MUNICIPAL COUNCIL (NDMC)
PALIKA KENDRA, NEW DELHI

08/2/17
9/2/17
Dated: 07.02.2017/10/2/

ANNEX - G

D/44/EBR/2017

The S.H.O.

Connaught Place Police Station,
Delhi Police,
BKS Marg, New Delhi.

SUB: Allowing the access to the occupants of the premises at 'C' Block, Connaught Place to whom notices dated 03.02.2017 under Section 258 & 259 of the NDMC Act 1994 was issued by Chief Architect, NDMC.

Sir,

Please refer to this office letter No. D-31-41/Dir.(EBR)/2017 dated 02.02.2017 vide which it was requested for cordoning off the site of building roof collapse of Flat No. C-33, C-Block on radial-4, Connaught Place which happened on the intervening night of 1-2 February 2017 and investigation for sabotage/mischief, if any. (copy of the letter enclosed for ready reference)

2. In this regard, it is informed that the Department of Architecture & Environs (CA Deptt. NDMC) has issued notices dated 03.02.2017 (copies enclosed) under Section 258 & 259 of NDMC Act 1994 in r/o 11 premises as per the list attached.
3. As per the notices under Section 258 & 259 of NDMC Act 1994 as served/mentioned above (copy enclosed), the owners/occupants have been directed to furnish a Structural Safety Certificate about the structural safety of their premises issued by a qualified Structural Engineer or from a reputed Institute/Organization within 7 days of issuance of this notice and till then the building shall not be occupied and kept cordoned off to ward off any incident.
4. Further as per notice under Section 259 of the NDMC Act 1994, the affected occupants were also requested to take all precautionary measures to avoid any mishap and vacate the premises immediately as the building is not safe for use in present condition till the structural safety is assessed.
5. In view of the above facts and circumstances, it is impressed upon that the affected occupants as mentioned above (as per the list) may kindly be allowed/permitted to have access to their premises alongwith their associated structural consultants/engineers for assessment of the safety issues, for the purpose of obtaining structural stability certificate at their own risk and cost without any liability on the part of NDMC. However during this interim period premises in question may not be allowed to be used for business activities.
6. The occupants may use the premises for business activities only after the structural safety certificate has been obtained by them and the copy of the same also submitted to Chief Architect, NDMC.

This is for your kind information and further necessary action at your end.

Copy to:

1. DCP, New Delhi District, Delhi Police, Parliament Street, New Delhi,
2. Deputy Commissioner, Revenue Department, New Delhi District, Jam Nagar House, New Delhi
3. ACP, Connaught Place, Delhi Police, Baba Kharak Singh Marg, New Delhi
4. Chief Architect, NDMC
5. Chief Engineer, C-I, NDMC
6. Chief Engineer, C-II, NDMC
7. Chief Engineer, Electrical-II, NDMC
8. PS to Chairman, NDMC, for information of the Chairman, NDMC
9. PS to Secretary, NDMC for information of the Secretary, NDMC
10. All owners/occupants concerned.
11. Copy also to Executive Engineer, EBR (North)

(Neeraj Bharati)
Director (EBR)
Director (M) EBR
New Delhi Municipal Council
New Delhi
7/4/2017
DCA (ISP)
Exp
AE (BP) N
9/2/17
OK
50/2

- 905 - 902

H-1
CP

**DEPARTMENT OF ARCHITECTURE & ENVIRONS
NEW DELHI MUNICIPAL COUNCIL
PALIKA KENDRA : NEW DELHI**

No.: Notices/CA/BP/0301/2017

Dated the 13th February, 2017

To,

THE OWNER C/O SMT MEENA RASTOGI
(OWNERS/OCCUPANTS)
50% SHARE OF F.F. AND S.F. AT F-12-13,
F BLOCK, CONNAUGHT PLACE, NEW DELHI.

Subject: Notice under section 258(1) of the NDMC Act, 1994

WHEREAS, a premises situated at No. 33 (First Floor and Mezzanine Floor), C Block, Connaught Place, New Delhi collapsed in the intervening night of 01-02 February, 2017;

AND WHEREAS, a roof of a shop reported to be as 'Odeon Sweet Shop' in the premises of 'Unplugged Courtyard' restaurant at L-23/7, Middle Circle, L-Block, Connaught Place, New Delhi collapsed in the late evening of 11th February, 2017;

AND WHEREAS, it is observed that construction of Connaught Place, New Delhi is of more than 80 years old as it was completed in the year 1933;

AND WHEREAS, as per the provisions of Master Plan of Delhi, 2021 (MPD, 2021), the Connaught Place area has been classified as Metropolitan City Centre, and the MPD 2021 envisage the structural safety of the buildings;

AND WHEREAS, Connaught Place/Connaught Circus including Middle Circle has been notified as Heritage Grade-II buildings by the Heritage Conservation Committee;

AND WHEREAS, the Central Government vide notification F.No.-K-12016/1/2017-DD-I dated 07.02.2017, published in the Gazette of NCT of Delhi vide F. No. 13(126)/UD/MB/2014/730 dated 09.02.2017, made the Unified Building Bye Laws for Delhi 2016, as amended from time to time, applicable in the New Delhi Municipal Council (NDMC) area, *mutatis mutandis*;

AND WHEREAS, specific provisions have been enacted for structural safety, natural disaster, fire and building services in Chapter Nine of the Unified Building Bye Laws for Delhi, 2016;

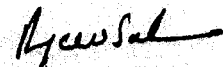
AND WHEREAS, a large number of people, including tourists, visit Connaught Place, New Delhi area for official, personal and recreational purposes;

AND WHEREAS, sub-section (1) of section 258 of the NDMC Act, 1994 *inter-alia* provides that if it appears to the Chairperson, NDMC at any time that any building is in any way dangerous to any person occupying, resorting to or passing by such building or any other building or place in the neighbourhood of such building, the Chairperson may require the owner or occupier of such building to secure such building within such period as may be specified, so as to prevent all cause of danger therefrom;

THEREFORE, in exercise of the powers conferred under sub-section (1) of section 258 of the NDMC Act, 1994, you are hereby called upon with the prior approval of Chairperson-NDMC, to submit a structural stability certificate of your building issued by a qualified Structural Engineer (as defined in National Building Code i.e. section A-2.3). Such structural stability certificate shall be issued after taking into consideration:

- (i) the National Building Code of India, including the structural design of foundation, masonry, timber, plain concrete, reinforced concrete, pre-stressed concrete and structural steel in accordance with Part-VI structural design, section-1 loads, section-2 foundation, section-3 wood, section-4 masonry, section-5 concrete and section-6 steel of National Building Code; and
- (ii) all relevant standards prescribed by Bureau of Indian Standards including the standard given in IS-Code 13920-1993, 4326-1993, 13828-1993, 13827-1993, 13935-1993, 456:2000, 800-1984, 801-1975, 875 (Part 2):1987, 875 (Part 3):1987, 875 (Part 4):1987, 875 (Part 5):1987, 883:1966, 1904:1987, 1905:1987, 2911 (Part 1): Section 1: 1979, 1893-2002 for general structural safety, cyclone/ wind protection, earthquake protection,

and the above structural stability certificate shall be submitted to the undersigned in the format given at Annexure to this notice, within fourteen days of issuance of this notice i.e. by 27.02.2017. Non-compliance of this notice will lead to initiation of necessary action, as deemed necessary in accordance with law against you, including action in terms of sections 258(2), 258(3), 258(4) and 258(5) of the NDMC Act, 1994.


(RAJEEV SOOD)
CHIEF ARCHITECT

Encl.: Annexure (1 Page)

Copy for information to:

- (i) Chairperson, NDMC.
- (ii) Secretary, NDMC.
- (iii) CVO, NDMC.
- (iv) Dir. (EBR), NDMC.

ANNEXURE

CERTIFICATE OF STRUCTURAL SAFETY

[To be jointly submitted by Structural Engineer (as defined in the National Building and Owner of the building)

The following certificate is submitted after site visit and proper investigations for Building No. _____ situated at Block No. _____ of _____ Circle of Connaught Place, New Delhi.

- (i) Certified that this structural stability certificate has been issued after taking into consideration:
- (a) the National Building Code of India, including the structural design of foundation, masonry, timber, plain concrete, reinforced concrete, pre-stressed concrete and structural steel shall be carried out in accordance with Part-VI structural design, section-1 loads, section-2 foundation, section-3 wood, section-4 masonry, section-5 concrete and section-6 steel of National Building Code; and
 - (b) all relevant standards prescribed by Bureau of Indian Standards including the standard given in IS-Code 13920-1993, 4326-1993, 13828-1993, 13827-1993, 13935-1993, 456:2000, 800-1984, 801-1975, 875 (Part 2):1987, 875 (Part 3):1987, 875 (Part 4):1987, 875 (Part 5):1987, 883:1966, 1904:1987, 1905:1987, 2911 (Part 1): Section 1: 1979, 1893-2002 for general structural safety, cyclone/ wind protection, earthquake protection.
- (ii) Certified that the above-mentioned building [including tangible items on its rooftops, such as Telecom Tower(s), DG sets, Water storage capacity, Air conditioning units, etc.] as exists as on date, fulfills all the structural safety and safety requirements.

SIGNED BY:

Signature of Structural Engg. _____
 Name of Structural Engg. _____
 Address of Structural Engg. _____
 Date _____

COUNTER SIGNED BY:

Signature of Owner(s) _____
 Name of Owner(s) _____
 Address of Owner(s) _____
 Date _____

In addition to the certification given at Sl. No. (i) and (ii) above, it is also certified that:

- (iii) the above-mentioned building (as exists as on date) does not has any deviation from the sanctioned building plan.
- (iv) the above-mentioned building (as exists as on date), in whole or in any part, does not has any misuse of any kind as permitted in the sanctioned building plan, or subsequent permitted change in use by the Competent Authority as per law.
- (v) any tangible item on the rooftop of the above-mentioned building (as exists as on date), such as Telecom Tower(s), DG sets, Water storage capacity, Air conditioning units, etc., are in accordance with the necessary permissions / clearances such as sanction building plan, fire clearance, pollution clearance, etc.
- (vi) the owner(s) of the above-mentioned building shall be liable for all criminal and/or civil liability(s) arising out of non-adherence to the statutory compliances, including structural safety of the building.

SIGNED BY

Signature of Owner(s) _____
 Name of Owner(s) _____
 Address of Owner(s) _____
 Date _____

DEPARTMENT OF ARCHITECTURE & ENVIRONS
NEW DELHI MUNICIPAL COUNCIL
PALIKA KENDRA : NEW DELHI.

ANNEX - H-2

No.: Notices/CA/BP/0903/2017

Dated the 20th February, 2017

To,

THE OWNER / OCCUPANT
SHOP NO. 1A, KHAN MARKET,
NEW DELHI.

Subject: Notice under section 258(1) of the NDMC Act, 1994

WHEREAS, a premises situated at No. 33 (First Floor and Mezzanine Floor), C Block, Connaught Place, New Delhi collapsed in the intervening night of 01-02 February, 2017;

AND WHEREAS, a roof of a shop reported to be as 'Odeon Sweet Shop' in the premises of 'Unplugged Courtyard' restaurant at L-23/7, Middle Circle, L-Block, Connaught Place, New Delhi collapsed in the late evening of 11th February, 2017;

AND WHEREAS, it is observed that construction of Khan Market, New Delhi is of more than 60 years old as it was completed and allotted between the year 1952 to 1962;

AND WHEREAS, as per the provisions of Master Plan of Delhi, 2021 (MPD, 2021), the Khan Market area has been classified as Community Centre, and the MPD 2021 envisages the structural safety of all the buildings;

AND WHEREAS, the Central Government vide notification F.No.-K-12016/1/2017-DD-I dated 07.02.2017, published in the Gazette of NCT of Delhi vide F. No. 13(126)/UD/MB/2014/730 dated 09.02.2017, made the Unified Building Bye Laws for Delhi 2016, as amended from time to time, applicable in the New Delhi Municipal Council (NDMC) area, *mutatis mutandis*;

AND WHEREAS, specific provisions have been enacted for structural safety, natural disaster, fire and building services in Chapter Nine of the Unified Building Bye Laws for Delhi, 2016;

11. bind all these ^{no} ~~not~~ ^{and} ~~and~~ ^{keep} ~~keep~~ ^{on} ~~on~~ ^{ready} ~~ready~~
in two volumes. ^{21/2}
Sd/- 21/2

2-2054/D.A. (EBR)
21/2/17

0903 to 124-Notices
Rec. total
212

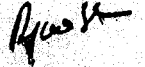
AND WHEREAS, a large number of people, including tourists, visit Khan Market, New Delhi area for official, personal and recreational purposes;

AND WHEREAS, sub-section (1) of section 258 of the NDMC Act, 1994 *inter-alia* provides that if it appears to the Chairperson, NDMC at any time that any building is in any way dangerous to any person occupying, resorting to or passing by such building or any other building or place in the neighbourhood of such building, the Chairperson may require the owner or occupier of such building to secure such building within such period as may be specified, so as to prevent all cause of danger therefrom;

THEREFORE, in exercise of the powers conferred under sub-section (1) of section 258 of the NDMC Act, 1994, you are hereby called upon with the prior approval of Chairperson-NDMC, to submit a structural stability certificate of your building issued by a qualified Structural Engineer (as defined in National Building Code i.e. section A-2.3). Such structural stability certificate shall be issued after taking into consideration:

- (i) the National Building Code of India, including the structural design of foundation, masonry, timber, plain concrete, reinforced concrete, pre-stressed concrete and structural steel in accordance with Part-VI structural design, section-1 loads, section-2 foundation, section-3 wood, section-4 masonry, section-5 concrete and section-6 steel of National Building Code; and
- (ii) all relevant standards prescribed by Bureau of Indian Standards including the standard given in IS-Code 13920-1993, 4326-1993, 13828-1993, 13827-1993, 13935-1993, 456:2000, 800-1984, 801-1975, 875 (Part 2):1987, 875 (Part 3):1987, 875 (Part 4):1987, 875 (Part 5):1987, 883:1966, 1904:1987, 1905:1987, 2911 (Part 1): Section 1: 1979, 1893-2002 for general structural safety, cyclone/ wind protection, earthquake protection,

and the above structural stability certificate shall be submitted to the undersigned in the format given at Annexure to this notice, within fourteen days of issuance of this notice i.e. by 06.03.2017. Non-compliance of this notice will lead to initiation of necessary action, as deemed necessary in accordance with law against you, including action in terms of sections 258(2), 258(3), 258(4) and 258(5) of the NDMC Act, 1994.


(RAJEEV SOOD)
CHIEF ARCHITECT

Encl.: Annexure (1 Page)

Copy for information to:

- (i) Chairperson, NDMC.
- (ii) Secretary, NDMC.
- (iii) CVO, NDMC.
- (iv) Dir. (EBR), NDMC.

ANNEXURE**CERTIFICATE OF STRUCTURAL SAFETY**

[To be jointly submitted by Structural Engineer (as defined in the National Building and Owner of the building)

The following certificate is submitted after site visit and proper investigations for Building No. _____ situated at Khan Market, New Delhi.

- (i) Certified that this structural stability certificate has been issued after taking into consideration:
- (a) the National Building Code of India, including the structural design of foundation, masonry, timber, plain concrete, reinforced concrete, pre-stressed concrete and structural steel shall be carried out in accordance with Part-VI structural design, section-1 loads, section-2 foundation, section-3 wood, section-4 masonry, section-5 concrete and section-6 steel of National Building Code; and
 - (b) all relevant standards prescribed by Bureau of Indian Standards including the standard given in IS-Code 13920-1993, 4326-1993, 13828-1993, 13827-1993, 13935-1993, 456:2000, 800-1984, 801-1975, 875 (Part 2):1987, 875 (Part 3):1987, 875 (Part 4):1987, 875 (Part 5):1987, 883:1966, 1904:1987, 1905:1987, 2911 (Part 1): Section 1: 1979, 1893-2002 for general structural safety, cyclone/ wind protection, earthquake protection.
- (ii) Certified that the above-mentioned building [including tangible items on its rooftops, such as Telecom Tower(s), DG sets, Water storage capacity, Air conditioning units, etc.] as exists as on date, fulfills all the structural safety and safety requirements.

SIGNED BY:

Signature of Structural Engg. _____
 Name of Structural Engg. _____
 Address of Structural Engg. _____
 Date _____

COUNTER SIGNED BY:

Signature of Owner(s) _____
 Name of Owner(s) _____
 Address of Owner(s) _____
 Date _____

In addition to the certification given at Sl. No. (i) and (ii) above, it is also certified that:

- (iii) the above-mentioned building (as exists as on date) does not has any deviation from the sanctioned building plan.
- (iv) the above-mentioned building (as exists as on date), in whole or in any part, does not has any misuse of any kind as permitted in the sanctioned building plan, or subsequent permitted change in use by the Competent Authority as per law.
- (v) any tangible item on the rooftop of the above-mentioned building (as exists as on date), such as Telecom Tower(s), DG sets, Water storage capacity, Air conditioning units, etc., are in accordance with the necessary permissions / clearances such as sanction building plan, fire clearance, pollution clearance, etc.
- (vi) the owner(s) of the above-mentioned building shall be liable for all criminal and/or civil liability(s) arising out of non-adherence to the statutory compliances, including structural safety of the building.

SIGNED BY

Signature of Owner(s) _____
 Name of Owner(s) _____
 Address of Owner(s) _____
 Date _____

E-mail

mahatta@gmail.com

- 911 -

908

ANNEX - I - 5

41517220

Phones: 41517220

23414139

Fax: 23416670

Annexure - I 1

Mahatta & Co.

59, M-BLOCK, CON PLACE, NEW DELHI-1

Canon
AGENTS

BEST EQUIPPED COLOUR AND B & W LABORATORY
LARGEST PHOTOGRAPHIC STORE IN THE CAPITAL

484/CA/17
20/2/17
21/2/17
22/2/17

20-02-2017

To
Chief Architect
Department : Architectural and Environ
New Delhi Municipal Council
Palika Kendra
New Delhi-110001

20/2/17

20/2/17

Submission of Structural Safety Certificate

Dear Sir

This is in reference to the notice no CA/BP/0623/2017 regarding the submission of certificate of structural safety of our premises as per your annexure, we hereby are duly submitting the certificate given by a reputed structural engineer Mr Akhilesh Singh (Code no. B.E. CIVIL, MCD L.no. SE/0241).

Regards
For Mahatta & Co.

Partner

MAHATTA & CO.
59, M-Block, Con. Circus,
New Delhi-110001 (India)

Attached : Relevant Documents

Notary & put up TOCA

20/2/17

H.A.

21/2

5/2/17

21/2

JB BPN II

23/2



ANNEXURE**CERTIFICATE OF STRUCTURAL SAFETY**

[To be jointly submitted by Structural Engineer (as defined in the National Building Code of India) and Owner of the building]

The following certificate is submitted after site visit and proper investigations for Building No. 58-59 situated at Block No. M of Rajiv Circle of Connaught Place, New Delhi.

- (i) Certified that this structural stability certificate has been issued after taking into consideration:
- the National Building Code of India, including the structural design of foundation, masonry, timber, plain concrete, reinforced concrete, pre-stressed concrete and structural steel shall be carried out in accordance with Part-VI structural design, section-1 loads, section-2 foundation, section-3 wood, section-4 masonry, section-5 concrete and section-6 steel of National Building Code; and
 - all relevant standards prescribed by Bureau of Indian Standards including the standard given in IS-Code 13920-1993, 4326-1993, 13828-1993, 13827-1993, 13935-1993, 456:2000, 800-1984, 801-1975, 875 (Part 2):1987, 875 (Part 3):1987, 875 (Part 4):1987, 875 (Part 5):1987, 883:1966, 1904:1987, 1905:1987, 2911 (Part 1): Section 1: 1979, 1893-2002 for general structural safety, cyclone/ wind protection, earthquake protection.
- (ii) Certified that the above-mentioned building [including tangible items on its rooftops, such as Telecom Tower(s), DG sets, Water storage capacity, Air conditioning units, etc.] as exists as on date, fulfills all the structural safety and safety requirements.

SIGNED BY:

Signature of Structural Engg. Akhil SinghName of Structural Engg. AKHIL SINGHAddress of Structural Engg. AKHIL SINGHDate 12/04/17 B.E. Civil M.C.B. Lin 28/04/17245, Pocket 3, Sector 28

COUNTER SIGNED BY:

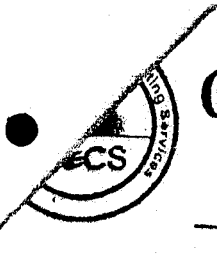
Signature of Owner(s) MAHATTA & CO.Name of Owner(s) MAHATTA & CO.Address of Owner(s) 59, M-Block, Con. Circus,Date 12/04/17 New Delhi-110001(India)

In addition to the certification given at SI. No. 58-59 (i) and (ii) above, it is also certified that:

- the above-mentioned building (as exists as on date) does not has any deviation from the sanctioned building plan.
- the above-mentioned building (as exists as on date), in whole or in any part, does not has any misuse of any kind as permitted in the sanctioned building plan, or subsequent permitted change in use by the Competent Authority as per law.
- any tangible item on the rooftop of the above-mentioned building (as exists as on date), such as Telecom Tower(s), DG sets, Water storage capacity, Air conditioning units, etc., are in accordance with the necessary permissions / clearances such as sanction building plan, fire clearance, pollution clearance, etc.
- the owner(s) of the above-mentioned building shall be liable for all criminal and/or civil liability(s) arising out of non-adherence to the statutory compliances, including structural safety of the building.

SIGNED BY OccupantSignature of Owner(s) MAHATTA & CO.Name of Owner(s) MAHATTA & CO.Address of Owner(s) 59, M-Block, Con. Circus,Date 12/04/17

MAHATTA & CO.
59, M-Block, Con. Circus,
New Delhi-110001(India)



COMBINED ENGINEERING & CONSULTING SERVICES

Add.:- Plot No.-245, Pkt.-8, Sector-23, Rohini, New Delhi-110085

Phone:- 011- 27045717, 09312888125

Email:- akhi.cecs@gmail.com

TO WHOM IT MAY CONCERN

This is certify that the structure of shop no- M-58 and M-59, block M, Connaught place, New delhi belongs to MR. Pawan Mahatta . We have personally inspected the site on 10-02-2017& 11-02-2017, found that building structure was designed as load bearing brick wall, brick columns where as requirement for resting the RCC Beam and slab. After detailed inspection of the building we have come to conclusion that all the floor are structurally safe, the building has been designed & constructed according to provision of NBC code and relevant IS code that included the requirement from natural hazards like earthquake.

It's further certified that internal changes may be allowed without disturbing the structural member for the commercial uses as per the requirement of the client.

Thanking you

Akhilesh singh

(Structural engineer)

EC AKHILESH SINGH
R.E. No. HCD-2/No SE/0241
245, Pkt-8, Sector-23
Rohini, Delhi-110085

For MAHATTA & CO.

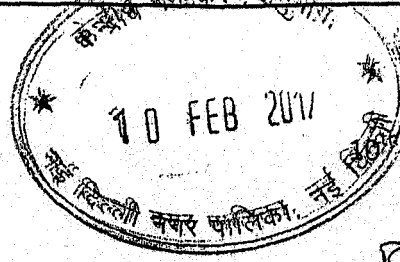
Partner

MAHATTA & CO.
59, M-Block, Con. Circus,
New Delhi-110001 (India)

-914-
GYAN C. JAIN

ANNEX-I-2

6/6 Rishi Apartments, 4 Battery Lane, Civil Lines, Delhi - 110 054



February, 2017

384/CA/HA

13/2/17

4/2/17

Mr. Rajeev Sood,
Chief Architect,
Dept. of Architecture & Environs,
New Delhi Municipal Council,
Palika Kendra, New Delhi-110001.

EE/601

24/2/17

AE/BLN 88
19/2

E/40381/2017/
13/2/17

SUBJECT: Reply to notices dated 03.02.2017 and 04.02.2017 under Sections 258 and 259 respectively of the NDMC Act, 1994.

Dear Sir,

We Gyan Chand Jain, Rajiv Jain, Mrs. Rippan Jain, Mrs. Swaraj Rani Jain are the owners of the premises bearing No. C-7, Connaught Place, New Delhi and M/s. Zodiac are the Occupants. We are in receipt of your above referred notices. In compliance therewith, I am enclosing the desired structural safety certificate of a qualified structural engineer.

GYAN CHAND JAIN

6/6 Rishi Apartments,
4 Battery Lane,
Civil Lines,
DELHI -110 054
Mob: 98 100 25133
Email: manish@bpbonline.com

-915-
-912



JAITLY ASSOCIATES

Consulting Engineers

E-60, 2nd Floor

Masjid Moth

Greater Kailash-III

New Delhi-110048

Tel. 011-4056-9877

E-mail : njaitly49@gmail.com

njaitly49@yahoo.com

08.02.2017

Structural Safety Certificate

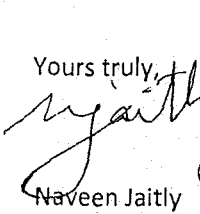
To Whom It May Concern

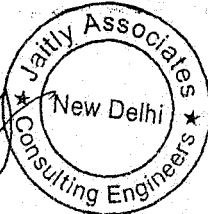
Sub: Shop No. C-6 (Zodiac) Belonging To Mr. Manish Jain in Building at redial Road of C- Block,
Connaught Place, New Delhi -110001

We, M/s. Jaitly Associates, have been appointed as structural consultants by the owner/ occupant of the shop of the building located at the redial road of C block, Connaught Place, New Delhi. The roof of a portion of the first floor collapsed and the first floor slab suffered the impact of the debris that fell on it. All shops adjacent to and below the damaged area were immediately instructed to be closed by NDMC due to safety reasons until a structural investigation was done.

We as structural consultants visited the site on 06.02.2017 on the behest of the shop owner. A detailed visual inspection was carried out in the shop which comprises of ground floor and mezzanine floor to check for any structural cracks in the walls or floor slabs. It was observed that the structural status of the above shop is in a very sound condition and that there were no signs of any structural distress. The structural status of the shop below the affected area is still the same as before and therefore, the building is safe.

Yours truly,


Naveen Jaitly



(For Jaitly Associates)

ANNEX - J

**NEW DELHI MUNICIPAL COUNCIL
PALIKA KENDRA : NEW DELHI.**

No.19/PS/Secy./D/2017.

ORDER

Dated:13.02.2017

With the approval of Competent Authority following teams are hereby constituted for the purpose of serving notice under section 258 (1) of the NDMC Act, 1994 and preliminary assessment of the buildings of Connaught Place. The teams shall submit their report within 48 hours:

Overall Supervisor	Team no	Team Member 1 [Civil Engg.]	Team Member 2 [Civil Engg.]	Team Member 3 [Civil Engg.]	Team Member 4 [Architect Deptt.]	Team Member 5	Block assigned
1. CEC-I CMO- N Architect- Rajeev Gupta Lalit Toppo, EE	1.	T R Meena, SE	Jai Prakash, AE	Yashpal, JE	SushilDhingra	A N Gaur JD	A
	2.	H P Singh, SE	Manjeet Singh, AE	Ravi Malik, JE	Vivekgarg	Anita Dayal JD	B
	3.	Ajay Gupta, SE	R.C. Sharma, AE	Bhushan, JE	Ashok Singh	Sanjay Surya JD	C
	4.	G S Aggarwal, SE	S.K.Jha, AE	Anirudha Sharma, JE	Nagender Singh	Neelam V JD	D
	5.	K R Tyagi, SE	R.P.Awast, AE	Kapil Kumar, JE	A P Tigga	Sharad Kumar JD	E
2. CE CH CMO- S Architect - G K Rao Sajjan Singh, JE	6.	Sher Singh, SE	V.K.Gupta	Vishu Bansal, JE	RashmiGarg	A P Singh JD	F
	7.	S A Khan, SE	Rajan Tyagi, AE	Madhusudan, JE	Nutan	Pushkar Sharma DD	G
	8.	Ashok Kumar, SE	P.K.Jindal, AE	N.K.Arora, JE	Rita Sethi	N L Chawla DD	H
	9.	S.K. Singh, SE	Brij Kumar, EE	Pramod Karrija, AE	Kamlesh	Ram Rattan DD	K

3.	Dir. (Tpt.) CMO- Project Architect- Poonam Aidhi Gautam, JE	10.	A K Aggarwal, EE	S.K.Garg, AE	Sudhir, JE	RenuVerma	Dharam Veer DD	L
		11.	R A Bharti, EE	Vinod Meena, AE	Danish Ahmed, JE	RenuWasandhi	Kamal Rai DD	M
		12.	Harkesh Meena, EE	N.K.Gupta, AE	Amit Sharma, JE	AnjuBhatnagar	PremLata DD	N
		13.	Krishna Mohan, EE	R.K. Sharma, AE	Vikas Singhmar, JE	Sadvir Singh	Dharamveer Singh DD	P
		14.	Mamu Khan, EE	Sanjay Singhal, AE	Pratap Singh, JE	Rajpal Singh	Ram Kishan DD	Scindhia Building
		15.	William Parashar, EE	Satbir Singh, AE	Feroze Khan, JE	M S Negi	Rakesh Chhabra	Regal Building

Terms of reference for the visit: The team shall

1. Serve the notice under section 258 (1) of NDMC Act 1994 upon the owner/occupier of the premises.
2. Carry out visual inspection of the building to identify structural stress if any.
3. Inspect the rooftop/terrace of each premises, list out utilities like water storage (capacity), generator, other stacked material. A tentative estimate of load on each premises may be calculated along with photographs. Signs of seepage or other factors leading to structural deterioration may specifically be listed out.
4. Present use of premises.

The report may be furnished in format attached at annexure 'A'.

(Chanchal Yadav)
SECRETARY

Annexure A

S. No	Address	Name of Owner	Name of occupier	Notice served upon (Name/ Phone no.)	Condition of building as per visual inspection	Details of structure at rooftop/Terrace	Present use of premises

The Finding & Actionable point of Visual Inspection conducted by NDMC official for the premises
located at Connaught Place

S.No	BUILDING CONDITION AS PER VISUAL INSPECTION	COUNT
1	Heavy Plant Pots on the Roof / Terracs	2
2	Solar Panel	2
3	Steel Girdle Support	2
4	Vacant	3
5	General Structural Stress	3
6	Electrical Panel	4
7	Bad Condition Building	4
8	Occupier Refuse Notice	4
9	Tree Growing	4
10	Roof Damaged	5
11	Heavy Duty Stabilizer	6
12	Corrsion/ Rusitng	7
13	RO Plant	8
14	Mobile Tower	11
15	Peeling of Plaster	12
16	Malba/Waste	13
17	Ceiling Damaged	14
18	Wall Damaged	30
19	Premise not Traceable	33
20	AC Unit/Plant	47
21	Unauthorized Construction	49
22	Seepage in the Building	82
23	High Capacity DG Set	85
24	Cracks in Building / Building Walis	85
25	Premise Found Locked / Sealed	111
26	False Ceiling	121
27	Excess Water Storage	136
28	Good Condition	356

Total Records

1,239

The Finding & Actionable point of Visual Inspection conducted by NDMC official for the premises located at Connaught Place

S.No	BLOCK	BUILDING CONDITION AS PER VISUAL INSPECTION	COUNT
1	A-BLOCK	AC Unit/Plant	7
2	A-BLOCK	Cracks in Building / Building Walls	12
3	A-BLOCK	Excess Water Storage	39
4	A-BLOCK	False Ceiling	7
5	A-BLOCK	General Structural Stress	2
6	A-BLOCK	Good Condition	39
7	A-BLOCK	Heavy Duty Stabilizer	6
8	A-BLOCK	High Capacity DG Set	15
9	A-BLOCK	Malba/Waste	2
10	A-BLOCK	Mobile Tower	3
11	A-BLOCK	Occupier Refuse Notice	1
12	A-BLOCK	Peeling of Plaster	1
13	A-BLOCK	Premise Found Locked / Sealed	7
14	A-BLOCK	RO Plant	6
15	A-BLOCK	Seepage in the Building	4
16	A-BLOCK	Tree Growing	1
17	A-BLOCK	Unauthorized Construction	7
18	A-BLOCK	Vacant	1
19	A-BLOCK	Wall Damaged	4
20	B-Block	Cracks in Building / Building Walls	6
21	B-Block	Excess Water Storage	12
22	B-Block	General Structural Stress	1
23	B-Block	Good Condition	20
24	B-Block	High Capacity DG Set	14
25	B-Block	Premise Found Locked / Sealed	3
26	B-Block	Seepage in the Building	11
27	C-BLOCK	Corrsion/ Rusitng	1
28	C-BLOCK	Cracks in Building / Building Walls	1
29	C-BLOCK	False Ceiling	9
30	C-BLOCK	Seepage in the Building	4
31	C-BLOCK	Steel Girdle Support	1
32	C-BLOCK	Unauthorized Construction	1
33	C-Block	AC Unit/Plant	6
34	C-Block	Corrsion/ Rusitng	6
35	C-Block	Cracks in Building / Building Walls	10
36	C-Block	Excess Water Storage	8
37	C-Block	False Ceiling	38
38	C-Block	Good Condition	5
39	C-Block	High Capacity DG Set	6
40	C-Block	Mobile Tower	1
41	C-Block	Peeling of Plaster	1
42	C-Block	Premise Found Locked / Sealed	6
43	C-Block	Roof Damaged	1
44	C-Block	Seepage in the Building	10
45	C-Block	Unauthorized Construction	6
46	D-Block	Ceiling Damaged	1
47	D-Block	Excess Water Storage	1
48	D-Block	False Ceiling	11
49	D-Block	Heavy Plant Pots on the Roof / Terracs	1
50	D-Block	Premise Found Locked / Sealed	2
51	D-Block	Unauthorized Construction	2
52	E-Block	AC Unit/Plant	5
53	E-Block	Cracks in Building / Building Walls	7
54	E-Block	Excess Water Storage	10
55	E-Block	False Ceiling	3
56	E-Block	Good Condition	64
57	E-Block	High Capacity DG Set	4
58	E-Block	Malba/Waste	3

59	E-Block	Occupier Refuse Notice	918	1
60	E-Block	Premise Found Locked / Sealed		21
61	E-Block	Premise not Traceable		2
62	E-Block	Seepage in the Building		1
63	E-Block	Solar Panel		1
64	E-Block	Unauthorized Construction		6
65	E-Block	Wall Damaged		5
66	F-BLOCK	Bad Condition Building		2
67	F-BLOCK	Cracks in Building / Building Walls		3
68	F-BLOCK	Good Condition		108
69	F-BLOCK	Premise Found Locked / Sealed		16
70	F-BLOCK	Premise not Traceable		3
71	F-BLOCK	Seepage in the Building		1
72	G-Block	AC Unit/Plant		5
73	G-Block	Ceiling Damaged		3
74	G-Block	Cracks in Building / Building Walls		10
75	G-Block	Excess Water Storage		7
76	G-Block	Good Condition		50
77	G-Block	Heavy Plant Pots on the Roof / Terracs		1
78	G-Block	High Capacity DG Set		6
79	G-Block	Malba/Waste		7
80	G-Block	Mobile Tower		3
81	G-Block	Peeling of Plaster		3
82	G-Block	Premise Found Locked / Sealed		16
83	G-Block	Roof Damaged		1
84	G-Block	Seepage in the Building		8
85	G-Block	Solar Panel		1
86	G-Block	Tree Growing		3
87	G-Block	Unauthorized Construction		1
88	G-Block	Wall Damaged		2
89	H-BLOCK	AC Unit/Plant		5
90	H-BLOCK	Ceiling Damaged		2
91	H-BLOCK	Excess Water Storage		7
92	H-BLOCK	False Ceiling		13
93	H-BLOCK	High Capacity DG Set		9
94	H-BLOCK	Peeling of Plaster		2
95	H-BLOCK	Seepage in the Building		1
96	H-BLOCK	Unauthorized Construction		3
97	H-BLOCK	Wall Damaged		1
98	K-BLOCK	AC Unit/Plant		2
99	K-BLOCK	Cracks in Building / Building Walls		12
100	K-BLOCK	Excess Water Storage		9
101	K-BLOCK	False Ceiling		11
102	K-BLOCK	Good Condition		1
103	K-BLOCK	High Capacity DG Set		5
104	K-BLOCK	Peeling of Plaster		1
105	K-BLOCK	Premise Found Locked / Sealed		7
106	K-BLOCK	Premise not Traceable		3
107	K-BLOCK	RO Plant		1
108	K-BLOCK	Roof Damaged		1
109	K-BLOCK	Seepage in the Building		9
110	K-BLOCK	Unauthorized Construction		1
111	K-BLOCK	Wall Damaged		4
112	L-BLOCK	AC Unit/Plant		3
113	L-BLOCK	Bad Condition Building		1
114	L-BLOCK	Cracks in Building / Building Walls		4
115	L-BLOCK	Excess Water Storage		3
116	L-BLOCK	False Ceiling		28
117	L-BLOCK	Good Condition		1
118	L-BLOCK	High Capacity DG Set		1
119	L-BLOCK	Peeling of Plaster		1

120	L-BLOCK	Premise Found Locked / Sealed	5
121	L-BLOCK	Seepage in the Building	4
122	L-BLOCK	Steel Girdle Support	1
123	L-BLOCK	Wall Damaged	2
124	M-BLOCK	AC Unit/Plant	1
125	M-BLOCK	Cracks in Building / Building Walls	1
126	M-BLOCK	Excess Water Storage	1
127	M-BLOCK	High Capacity DG Set	2
128	M-BLOCK	Malba/Waste	1
129	M-BLOCK	Premise Found Locked / Sealed	1
130	M-BLOCK	Premise not Traceable	8
131	M-BLOCK	Seepage in the Building	1
132	M-BLOCK	Vacant	1
133	N-BLOCK	AC Unit/Plant	6
134	N-BLOCK	Ceiling Damaged	4
135	N-BLOCK	Cracks in Building / Building Walls	10
136	N-BLOCK	Electrical Panel	1
137	N-BLOCK	Excess Water Storage	18
138	N-BLOCK	False Ceiling	1
139	N-BLOCK	Good Condition	6
140	N-BLOCK	High Capacity DG Set	8
141	N-BLOCK	Mobile Tower	1
142	N-BLOCK	Peeling of Plaster	1
143	N-BLOCK	Premise Found Locked / Sealed	2
144	N-BLOCK	Premise not Traceable	4
145	N-BLOCK	RO Plant	1
146	N-BLOCK	Seepage in the Building	16
147	N-BLOCK	Unauthorized Construction	15
148	N-BLOCK	Wall Damaged	4
149	P-Block	AC Unit/Plant	1
150	P-Block	Cracks in Building / Building Walls	5
151	P-Block	Electrical Panel	1
152	P-Block	Excess Water Storage	13
153	P-Block	High Capacity DG Set	10
154	P-Block	Mobile Tower	1
155	P-Block	Premise Found Locked / Sealed	1
156	P-Block	Premise not Traceable	1
157	P-Block	Roof Damaged	1
158	P-Block	Seepage in the Building	4
159	P-Block	Unauthorized Construction	1
160	REGAL BUILDING	AC Unit/Plant	5
161	REGAL BUILDING	Bad Condition Building	1
162	REGAL BUILDING	Ceiling Damaged	4
163	REGAL BUILDING	Cracks in Building / Building Walls	4
164	REGAL BUILDING	Electrical Panel	2
165	REGAL BUILDING	Excess Water Storage	5
166	REGAL BUILDING	Good Condition	62
167	REGAL BUILDING	High Capacity DG Set	5
168	REGAL BUILDING	Mobile Tower	2
169	REGAL BUILDING	Occupier Refuse Notice	2
170	REGAL BUILDING	Peeling of Plaster	2
171	REGAL BUILDING	Premise Found Locked / Sealed	23
172	REGAL BUILDING	Premise not Traceable	12
173	REGAL BUILDING	Roof Damaged	1
174	REGAL BUILDING	Seepage in the Building	8
175	REGAL BUILDING	Unauthorized Construction	2
176	REGAL BUILDING	Vacant	1
177	REGAL BUILDING	Wall Damaged	2
178	Scindia House	AC Unit/Plant	1
179	Scindia House	Excess Water Storage	3
180	Scindia House	Premise Found Locked / Sealed	1

181	Scindia House	Unauthorized Construction	4
182	Scindia House	Wall Damaged 938	6
Total Records			1,239

ANNEX K
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-924- ANNEX 'L'

DEPARTMENT OF ARCHITECTURE & ENVIRONS
NEW DELHI MUNICIPAL COUNCIL
PALIKA KENDRA: NEW DELHI

No. _____

Dated: 24/02/2017

To,

The Occupant / Owner-----

___ Block, Connaught Place

New Delhi, 110001

Subject: Notice under section 258(1) of the NDMC Act, 1994

WHEREAS, two premises situated at No. 33 (First Floor and Mezzanine Floor), C Block, and another premise at L-23/7 at Connaught Place, New Delhi collapsed on 02-02-2017 and on 11-02-2017 respectively.

AND WHEREAS, it is observed that construction of Connaught Place, New Delhi is of more than 80 years old as it was completed in the year 1933;

AND WHEREAS, as per the provisions of Master Plan of Delhi, 2021 (MPD, 2021), the Connaught Place area has been classified as Metropolitan City Centre, and the MPD 2021 envisage the structural safety of the buildings;

AND WHEREAS, Connaught Place/Connaught Circus including Middle Circle has been notified as Heritage Grade-II buildings by the Heritage Conservation Committee;

AND WHEREAS, specific provisions have been enacted for structural safety, natural disaster, fire and building services in Chapter Nine of the Unified Building Bye Laws for Delhi, 2016;

AND WHEREAS, a notice dated 13-02-2017 under sub-section (1) of section 258 of the NDMC Act, 1994 was served upon to the owner/occupants of the above mentioned premises by the Chief Architect, NDMC for submitting a structural stability certificate in respect of your building premises issued by a qualified Structural Engineer (as defined in National Building Code i.e. section A-2.3) in the format given at **Annexure** to the said notice, within fourteen days of issuance of this notice i.e. by 27.02.2017.

AND WHEREAS, the team of NDMC officials also conducted a visual inspection of the said premises at the time of serving the said notice and the findings about the premises structural related conditions and safety are as under:

Condition of Building as per Visual Inspection:-	Seepage noticed at mummy Longitudinal cracks noticed at wall surface (mummy)
Details of Structure Rooftop / Terrace:-	Terrace of building known as Onkar Deep Building (A-19) Over head RCC water storage tank of size 3.8 m x 4.5 m x 2.1 m 1 no. Cellular tower existed at lift machine room roof shared by idea, Vodafone, Aircel & Airtel DG set (25 KVA) on heavy duty MS frame structure 2 WC size 4'x4' Mobile tower shelter / room size 4.5 x 3.00 (App.) The space below machine room of size 8.1m x 4.5m used for habitable purpose as well as the machine room use for habitable purpose. Tentative over burden load due to above = 40 (T)

AND WHEREAS, sub-section (1) of section 258 of the NDMC Act, 1994 *inter-alia* provides that if it appears to the Chairperson, NDMC at any time that any building is in any way dangerous to any person occupying, resorting to or passing by such building or any other building or place in the neighborhood of such building, the Chairperson may require the owner or occupier of such building to repair such building or do one or more of such things within such period as may be specified, so as to prevent all cause of danger therefrom;

THEREFORE, in exercise of the powers conferred under sub-section (1) of section 258 of the NDMC Act, 1994, you are hereby called upon with the prior approval of Chairperson-NDMC, to carry out the following works to ensure the building safety:

Inspection
Description

Recommended Action

-922 925-

Seepage in the Building	Detect the source of seepage and rectify them immediately.
High Capacity DG Set	Remove all DG Set from the building roof/terrace and submit Structural Safety Certificate in respect of the building.
Mobile Tower	Remove immediately if unauthorized mobile tower is installed. If permission is taken then submit structural safety certificate of the building.
Excess Water Storage	Remove Water Storage tanks in excess of the 1000 Ltr. per premise. Check also the leakage of the water tank / water pipes and take corrective and preventive measures for any leakage / seepage.
Cracks in Building / Building Walls	Consult Structural Engineer and take immediate steps for repairs under the guidance of Structural Engineer and submit Structural Safety Certificate in respect of the building.

The repair or the strengthening/retrofitting works of existing structures as mentioned above shall be carried out only after obtaining the prior approval of NDMC and HCC for which the owner/occupant is required to submit the detailed building repair/strengthening proposal along with the existing sanctioned plan, and the actual (as built) site plan along with the recommendation of the said proposal by the qualified registered architect and structural engineer.

The proposal in all respect shall be submitted to Shri/Smt. _____, Dy. CA, Office of the Chief Architect, NDMC Room No. 1201, 12th Floor, Palika Kendra, Parliament Street, New Delhi between 10:00 AM to 05:00 PM on any working day latest by 15.03.2017. The applicant shall collect on the spot the acknowledgment of submission/any deficiency notice from the designated official of NDMC. The approval / permission shall be informed to the applicant on the email ID of the applicant and application status shall be displayed on the NDMC website i.e. www.ndmc.gov.in.

The work of repair/retrofitting shall only commence and to be carried out under the guidance of the qualified structural engineer after the approval of NDMC and HCC and the work shall be completed within the period specified by NDMC in the permission/approval letter.

and after the completion of the permitted works a structural safety certificate by the structural engineer who has supervised the work shall be submitted along with structural drawing.

Non-compliance of this notice will lead to initiation of necessary action, as deemed necessary in accordance with law against you, including action in terms of sections 258(2), 258(3), 258(4) and 258(5) of the NDMC Act, 1994.

RAJEEV SOOD
Chief Architect, NDMC

Encl.:

Annexure (1 Page of the checklist of documents and information to be submitted along with proposal for strengthening/retrofitting)

Copy for information to:

- i. Chairperson, NDMC
- ii. Secretary, NDMC
- iii. CVO, NDMC
- iv. Dir. (E-BR), NDMC

The checklist of documents and information to be submitted by the applicant along with proposal for repairs/strengthening/retrofitting:

The applicant to tick the relevant document/information

Sr. No.	Document/Information	Whether Submitted along with Proposal Application	
		Yes	No
01	Premise No.		
02	Owner's Name		
03	Occupant's name		
04	Phone no. of the occupant and email-ID		
05	Authorized representative		
06	Contact details of Authorized representative and email-ID		
07	Present use of the premises along with photographs		
08	Area of the premises in sq. mtrs.		
09	Floor of the premises		
10	Proof of occupancy – • Rent Agreement copy • Lease Deed		
11	Original Sanctioned Plan of the premises		
12	Existing built up plan of the premises		
13	Copy of the Proposed repair plan / retrofitting / strengthening plan submitted along with application		
14	Recommendation document by the structural engineer submitted with the proposal		
15	Name of the structural engineer, agency, phone number and email ID		
16	Name of Architect along with copy of registration with Council of Architecture, phone number and email ID		
17	Indemnity Bond, Indemnifying NDMC against any litigation/claim for any loss of life/property arising on account of repair/retrofitting or any litigation with any individual or agency		
18	Undertaking mentioning that UBBL 2016 and Bureau of Indian Standards (BIS) shall be followed		
19	No. of drawings submitted		
20	Copy of recently obtained from qualified and registered structural engineer with agencies name		

For Applicant	For NDMC Official
(Signature of the Applicant)	Date of Receipt in NDMC: _____
(Name of the Applicant)	Any deficiency memo for documents /information handed over to the applicant (Yes / No)
(Date of submission by the applicant)	(Signature of the Receiving officer of NDMC)
Place:	(Name of the Receiving officer of NDMC)

Note:

Copy of this Annexure signed by the receiving officer of NDMC to be handed over to the applicant along with memo of deficiencies, if any, at the time of submission of proposal/application.



नरेश कुमार, आइ.ए.एस.

अध्यक्ष

Naresh Kumar, IAS
Chairman

-924-

ANEX-M

नई दिल्ली नगरपालिका परिषद्
NEW DELHI MUNICIPAL COUNCIL

पालिका केन्द्र, संसद मार्ग, नई दिल्ली-110001
Palika Kendra, Sansad Marg, New Delhi- 110001

D.O.No. 78/PS/CP/17

February 17, 2017

Dear

Reference is invited to the meeting taken by Hon'ble Lieutenant Governor of Delhi at 03:45pm on 16.02.2017 regarding action plan for making the buildings in Delhi compliant with structural safety requirements as per Seismic Zone IV, wherein, inter-alia, the issue of recent collapse of two premises in the Connaught Place, New Delhi area was discussed. It was also decided in the meeting to frame special separate building regulation for Heritage precincts.

2 In this regard, your kind attention is invited to provision of Building Bye-Laws No. 7.26 of the Unified Building Bye-Laws for Delhi, 2016 (UBBL 2016), which provides that provisions for Conservation of Heritage Sites including Heritage Buildings, Heritage Precincts and Natural Feature Areas shall be as per Annexure II to the UBBL 2016.

3 Further, Building Bye-Laws No. 1.7 of Annexure II of the UBBL 2016 provides that in case of streets, precincts, areas and, (where deemed necessary by the Heritage Conservation Committee) natural feature areas notified as per the provisions of Building Bye-Laws No. 1.5 of Annexure II of the UBBL 2016, development permissions shall be granted in accordance with the special separate regulation prescribed for respective streets, precincts/natural feature areas which shall be framed by the Commissioner, MCD/ Vice-Chairman DDA/Chairman NDMC on the advice of the Heritage Conservation Committee.

4 In view of the provisions of the UBBL, 2016 and as per discussions held in the meeting taken by the Hon'ble LG, it is requested that the Heritage Conservation Committee (HCC) may undertake the task of framing of special regulations/guidelines for heritage precincts, which is necessary as many heritage areas such as Connaught Place, need special treatment and maintenance, as per terms of reference number (iv) of the HCC as mentioned in Building Bye-Laws No. 1.15 of Annexure II of the UBBL, 2016. Alternatively, a Committee of technical experts consisting of members from DDA, DUAC, and Municipal Bodies under the supervision of HCC may be constituted for this purpose.

5 You are requested to kindly take necessary action in this regard at the earliest.

With

Yours sincerely,

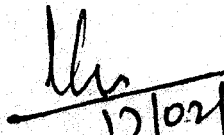
Sd/-

(Naresh Kumar)

Shri Durga Shankar Mishra
Additional Secretary, Govt. of India,
Ministry of Urban Development
Nirman Bhawan
New Delhi-110011

Copy for information to:

- (i) Shri Uday Pratap Singh, Vice-Chairperson, Delhi Development Authority, Vikas Sadan, INA, New Delhi - 110 023.
- ✓ (ii) Secretary, Delhi Urban Art Commission, Core-6A, UG & First Floor, India Habitat Centre, Lodhi Road, New Delhi-110 003
- (iii) Sh. Vijay Kumar, Secretary to Hon'ble LG, Delhi.


17/02/12
(Naresh Kumar)

ITEM NO. 29 (L-34)

1. **Name of the Subject:**
Revision of licence fee in respect of shops that have to shifted from Central Market East Kidwai Nagar, Vegetable Stall, Mini South Market, South Market East Kidwai Nagar, Suvidha Market and Nauroji Nagar Market to newly constructed NBCC Social Infrastructure Complex at East Kidwai Nagar.
2. **Name of the Department:**
Estate Department-I
3. **Brief History**
 - 3.1 Different markets of Kiwai Nagar i.e. Central Market East Kidwai Nagar, Vegetable stall, Mini South Market, South Market East Kidwai Nagar, Suvidha Market and Nauroji Nagar Market is housing 174 licensed shops, Stalls and Pan Tharas. The redevelopment of East Kidwai Nagar is being carried out by NBCC on behalf of MOUD, Govt. of India. As part of redevelopment, all these markets have to be shifted to the NBCC Local Shopping Complex at East Kidwai Nagar.
 - 3.2 The detailed proposal for shifting of these shops was placed before the Council vide Item No. 26(L-23) in its meeting held on 03.11.2016. A copy of the agenda item alongwith Resolution of the Council is placed at Annexure-I (See pages 932 - 935). Vide Resolution dated 03.11.2016, the Council resolved as under:
" The Council resolved to:
 - (i) accord administrative approval for shifting shops from Central Market, Kidwai Nagar, Vegetable Stall, Central Market East Kidwai Nagar, Mini South Market, South Market East Kidwai Nagar, Suvidha Market and Nauroji Nagar to newly constructed NBCC Social Infrastructure Complex at East Kidwai Nagar.
 - (ii) administrative approval for allocation of these shops on lottery basis in functional clusters.
 - (iii) administrative approval for revision of rates for licence fee on the basis of FR 45(b) taking 40% of land rates(current DDA rates) and comprehensive 10% annual rent and maintenance on combined land and construction cost. [reference Council Agenda No.18(A-11) revised licence rates - Rs.878/- per sq.meter per month= Rs.81/- per sq.ft. per month].

Sl. No.	Area of shop in sq. meters.	Revised licence fee Rs.878 per sq.m per month
1	34.30 (9.1 x 3.77)	30115
2	29.29(7.77 x 3.77)	25716
3	19.79 (5.25 x 3.77)	17375
4	14.20 (3.77 x 3.77)	12467

"It was further resolved that as the complex is recently constructed and development of nearby areas may take some time which may have bearing on business of these markets, therefore, it is decided to levy 50% of the licence fee as approved by the Council for two years (since date of occupation may vary therefore a cut off date of 31.12.2018 is decided for uniformity). Thereafter i.e.from 01.1.2019 enhanced fee as approved by the Council shall be levied.

"It was also resolved by the Council that the department may initiate further necessary action in anticipation of confirmation of the minutes of the Council."

- 3.3 After the Council decision, a draw of lots was held on 23.12.2016. Copy of the draw of lots is annexed as Annexure-II (See pages 936 - 951).
- 3.4 Subsequent to this, members of the NDMC Markets Federation vide their letter dated 14.2.2017 requested for revision of licence fee and suggested the following formula for revision of the same (Annexure-III, See pages 952 - 953):

" SUGGESTED FORMULA FOR SHIFTING OF KIDWAI NAGAR AND OTHER MARKETS

1. Present Licence Fee

----- X New Area
Present Carpet Area
Plus 10% of the Extra New Area, if any

A. Example: Present Licence Fee = 1000
Present Area = 150 sq.ft.
Rates Per Sq.ft. = 1000
$$\frac{1000}{150} = \text{Rs.6.666 per sq.ft.}$$

B. New Area Say 240 sq.ft.
240-150 = 90 sq.ft.
90x6.66=Rs.599.40say Rs.600.00
10% of Rs.600.00 60.00

Licence Fee for the new shop should be:

A+B

Rs. 1000+660= Rs.1660.00"

4. Recommendations:

In the representation submitted by the Market Federation, they have pointed out that shopkeepers have suffered during the last 5 years without any business and they are likely to suffer after shifting also for few more years. Besides this, shifting will involve lot of expenditure and it will be difficult for them to cope up unless the licence fee is reduced. In this connection, the Council may take a view keeping in view the policy of the Council and grievances of the shopkeepers. The licence fee that is being paid by various licensees is placed at Annexure-IV (See

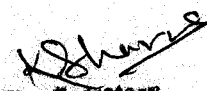
pages 954 - 956). Meanwhile, NDMC has issued a letter to the NDMC Market Federation requesting the successful allottees to shift to the newly constructed NBCC Tower subject to the final decision of the Council on revised licence fee (Annexure-V, See page 957).

COUNCIL'S DECISION

The Council observed that businesses of these shops have been adversely affected during the last few years due to redevelopment of the area. After considering the representation of the Market Federation, the Council resolved that the existing licence fee may be continued for two years i.e. upto 31.03.2019.

The Council further resolved that wherever the area of the shop is more or less, the licence fee be revised on proportionate basis for the period upto 31.03.2019.

The Council also resolved that the revision of rates as decided vide resolution No. 26(L-23) dated 03.11.2016 not be made applicable, and the concerned Department should bring a proposal w.r.t. revision of licence fee to be made applicable w.e.f. 01.04.2019 before the Council at an appropriate time before 31.03.2019.


 Secretary
 New Delhi Municipal Council
 Patna Bendra, New Delhi

ITEM NO. 26 (L-23)

1. Name of the Subject:

Shifting of shops from Central Market East Kidwai Nagar, Vegetable Stall, Central Market East Kidwai Nagar, Mini South Market, South Market East Kidwai Nagar, Suvidha Market and Nauroji Nagar to newly constructed NBCC Social Infrastructure Complex at East Kidwai Nagar.

2. Name of the Department:

Estate Department-I

3. Brief History

Different markets of Central Market East Kidwai Nagar, Vegetable stall, Central Market East Kidwai Nagar, Mini South Market, South Market east Kidwai Nagar, Suvidha Market and Nauroji Nagar's housing 174 licensed shops, Stalls and Pan Tharas. The redevelopment of East Kidwai Nagar is being carried out by NBCC on behalf of MOUD, Govt. of India. As part of redevelopment, all these markets have to be shifted to the NBCC Local Shopping Complex at East Kidwai Nagar.

In this context, NBCC vide letter dated 15.12.2015 had requested NDMC to process the takeover of shops that were constructed by NBCC. Instructions from MOUD, Govt. of India and NBCC vide various letters is placed at Annexure as follows:-

- (i) Letter from NBCC dated 15.12.2015(Annexure-I See page 393-394)
- (ii) Letter from MoUD dated 15.6.2016(Annexure-II See pages 395)
- (ii) Letter from MoUD dated 01.9.2016(Annexure-III See page 396 - 401)
- (iii) Letter from NBCC dated 07.10.2016(Annexure-IV See page 402 - 408)

In this context, licensed shops in the East Kidwai Nagar and Nauroji Nagar along with their details of the shops are as under:-

Sl no	Market Name	No of Shops	Average Area of existing shops
1	Central Market East Kidwai Nagar	52	12.38 sq.m.
2	Vegetable Stall Central Mkt East Kidwai Nagar	08	11.1 sq.m.
3	Mini South Market	12	6.53 sq.m.
4	A-Block shops (Suvidha Market)	12	12.26 sq.m.
5	South Market East Kidwai Nagar	52	13 sq.m.
6	Nauroji Nagar	34	12.15 sq.m.
7	Fuel Depot, Central Market	04	167.225sq.m.
	Total	174	

As per the details given by NBCC (Annexure-V, See page 409), the total shops along with sizes both ground and first floor is as under:-

Details of shops to be Handed over to NDMC at Newly Constructed Local Shopping Centre						
Local Shopping Centre(Ground + 2 Floors), Size: 110m x 52.50m						
For shifting of existing/locally shifted service buildings(Mixed Use)						
Description	Length (m)	Breadth (m)	Area (each)	Nos	Total Area (Sqm)	Earmarked
<u>Group Floor</u>						
Shops	7.77	3.77	29.29	44	1288.89	NDMC Shops (Total 136 nos.), Total area provided 3067 Sqm.
Shops	3.77	3.77	14.21	20	284.25	
Shops	5.44	3.77	20.51	8	164.07	
Shops	5.04	3.77	19.00	20	380.02	
Shops	5.15	3.77	19.43	8	155.47	
Shops	9.14	3.77	34.46	4	137.83	
Shops	4.45	3.77	16.80	8	134.36	
Total Area Ground Floor				112	2544.90	
<u>First Floor</u>						
Shops	7.77	3.77	29.29	30	878.70	
Shops	3.77	3.77	14.21	28	397.88	
Shops	5.44	3.77	20.50	2	41.02	
				60	1317.60	
Grand Total				174	3862.50	

The Layout Plan of 174 shops as submitted by NBCC is placed at Annexure-VI, (See pages 410 - 413)

4. Recommendations:-

The case is placed before the council for according approval for the following:-

1. Administrative approval for shifting shops from Central Market East Kidwai Nagar, Vegetable stall, Central Market East Kidwai Nagar, Mini South Market, South Market east Kidwai Nagar, Suvidha Market and Nauroji Nagar to newly constructed NBCC Social Infrastructure Complex at East Kidwai Nagar.
2. Administrative approval for allocation of these shops on lottery basis in functional clusters.
3. Administrative approval for revision of rates for license fees on the basis of FR 45(B) taking 40% of land rates (current DDA rates) and comprehensive 10% annual rent and maintenance on combined land and construction cost. (Reference Council agenda item no-18(A-11)).

<p>Cost of land= rate x (12 times 10%) x 40% = A Cost of Construction = B Total = (A+B) Annual rent = 10% of total (A+B) Monthly = Annual rent/12</p>	
<p>112049 x (12 times 10%) x 40% = (+) Construction Cost = Per Sq.mtr = 10% of 105463= Per month 10546/12=</p>	<p>53783/- (A) 51680/- (B) 105463/-(A+B) 10546/-(Annual) 878 per sq.mtr.(monthly) = 81 per sq.foot per month</p>

S. No.	Area	Revised licence fees (Rs.878/sqm/month)
1	34.30 (9.1x3.77)	30115
2	29.29 (7.77x3.77)	25716
3	19.79 (5.25x3.77)	17375
4	14.20 (3.77x3.77)	12467

*Land rate/DDA rate = 112049 per sq.mtr
Construction cost = 51680 per sq.mtr.

For land rates, prevailing DDA rates are considered and for development charges NBCC's construction cost including one underground parking slot per shop is considered. (Annexure -VII, See page 414).

4. After lottery, these shops shall be handed over by NDMC/NBCC after duly checking the records of licensee, and the licensee shall shift within one week after notifying the lottery/receipt of letter. Following Committee may be formed to monitor the entire process of lottery, allotment and shifting:
- Member, NDMC
 - Director- Estate-I
 - Director Estate-II
 - Chief Engineer(Civil-II)
7. Decision of the Council
To be decided by the Council.

COUNCIL'S DECISION

The Council resolved to:

- accord administrative approval for shifting shops from Central Market Kidwai Nagar, Vegetable Stall, Central Market East Kidwai Nagar, Mini South Market, South Market East Kidwai Nagar, Suvidha Market and Nauroji Nagar to newly constructed NBCC social infrastructure complex at East Kidwai Nagar.
- administrative approval for allocation of these shops on lottery basis in functional clusters.
- administrative approval for revision of rates for licence fees on the basis of FR 45(b) taking 40% of land rates (current DDA rates) and comprehensive 10% annual rent and maintenance on combined land and construction cost [reference Council Agenda No. 18 (A-11) revised licence rates - Rs.878 per sq. meter per month = Rs.81 per sq. feet per month]

Sl. No.	Area of shop in sq. meters	Revised licence fees Rs. 878 per sq. m. per month
1.	34.30 (9.1 x 3.77)	30115
2.	29.29 (7.77 x 3.77)	25716
3.	19.79 (5.25 x 3.77)	17375
4.	14.20 (3.77 x 3.77)	12467

It was further resolved that as the complex is recently constructed and development of nearby areas may take some time which may have bearing on business of these markets, Therefore, it is decided to levy 50% of the license fees as approved by the council for two years (since date of occupation may vary therefore a cutoff date of 31.12.2018 is decided for uniformity). Thereafter i.e. from 01.01.2019 enhanced fees as approved by the council shall be levied.

It was also resolved by the Council that the department may initiate further necessary action in anticipation of confirmation of the minutes of the Council.

Draw of Lot -936-
Held on 23.12.2016
At

Annexure - II

Auditorium, Convention Centre, NDCC-II

I Category "B" Result
(Cat. I Restaurants/Hotels)

Sl. No.	Market	Existing Shop No.	New Shop No. allotted	Signature of Allottee
1	Central Market, Kidwai Nagar	Shop No. 25	11	<i>[Signature]</i>
2	South Market, Kidwai Nagar	Shop No. 1	9	<i>[Signature]</i>
3	South Market, Kidwai Nagar	Shop No. 29	12	<i>[Signature]</i>
4	South Market, Kidwai Nagar	Shop No. 37	07	<i>[Signature]</i>
5	A-Block Market, Kidwai Nagar	Shop No. 8	10	<i>[Signature]</i>
6	Nauroji Nagar Market	Shop No. 1A	06	<i>[Signature]</i>
7	Nauroji Nagar Market	Shop No. 2A	13	<i>[Signature]</i>
8	Nauroji Nagar Market	Shop No. 2B	08	<i>[Signature]</i>

[Signature]
23/12/16
(Smt. Chanchal Yadav)
Secy.

[Signature]
23/12/16
(NIBCC)
A.K. Sharma
(Comm. Sharma)

[Signature]
23/12/16
(M.K. Gupta)

Draw of Lot
Held on 23.12.2016 -937-

At

Auditorium, Convention Centre, NDCC-II

Category "K" Result (D)

(9 Water Cooking Plant)

Sl. No.	Market	Existing Shop No.	New Shop No. allotted	Signature of Allottee
1	Vegetable Market, Kidwai Nagar	Shop No. 1	15	Anita Arora
2	Vegetable Market, Kidwai Nagar	Shop No. 2	21	Anita Arora
3	Vegetable Market, Kidwai Nagar	Shop No. 3	14	Anita Arora
4	Vegetable Market, Kidwai Nagar	Shop No. 7	22	[Signature]
5	Vegetable Market, Kidwai Nagar	Shop No. 8	16	[Signature]

[Signature]
23/12

[Signature]
23/12/16
(NBCC)
A.K. Sharma

[Signature]
23/12/16

Draw of Lot
Held on 23.12.2016 - 938 -

At

Auditorium, Convention Centre, NDCC-II

Category "L" Result

(3) Dairy product / Bakery

Sl. No.	Market	Existing Shop No.	New Shop No. allotted	Signature of Allottee
1	Central Market, Kidwai Nagar	Shop No. 50A	05	Rajendra Singh
2	South Market, Kidwai Nagar	Shop No. 34	01	Manoj
3	A-Block Market, Kidwai Nagar	Shop No. 5	03	Darshan Singh
4	A-Block Market, Kidwai Nagar	Shop No. 6	04	Satish S. S.
5	A-Block Market, Kidwai Nagar	Shop No. 10	02	Rishi Singh

for
23/12

Bhe
23/12/16
(NBCC)
A.K. Sharma

no
23/12/16

Draw of Lot
Held on 23.12.2016 -939-



At

Auditorium, Convention Centre, NDCC-II

Category "M" Result

(4 Non-Veg / Vegetable)

Sl. No.	Market	Existing Shop No.	New Shop No. allotted	Signature of Allottee
1	South Market, Kidwai Nagar	Shop No. 50A	18	
2	A-Block Market, Kidwai Nagar	Shop No. 2	19	
3	Nauroji Nagar Market	Shop No. 21	17	

23/12

23/12/16
(NBCC)
A.K. Sharma

23/12/16

Draw of Lot
Held on 23.12.2016 - 940 -

At
Auditorium, Convention Centre, NDCC-II
Category "A" Result

Sl. No.	Market	Existing Shop No.	New Shop No. allotted	Signature of Allottee
1	Central Market, Kidwai Nagar	Shop No. 14	F 62	h2/cn
2	Central Market, Kidwai Nagar	Shop No. 15	F 24	Sharma
3	Central Market, Kidwai Nagar	Shop No. 16	F 26	Sharma
4	Central Market, Kidwai Nagar	Shop No. 19	32	Sharma
5	Central Market, Kidwai Nagar	Shop No. 33	71	Sharma
6	Central Market, Kidwai Nagar	Shop No. 34	F-55	Sharma
7	Central Market, Kidwai Nagar	Shop No. 39	26	Sharma
8	Central Market, Kidwai Nagar	Shop No. 41	25	Sharma
9	Central Market, Kidwai Nagar	Shop No. 43	47	Sharma
10	South Market, Kidwai Nagar	Shop No. 47	83	Sharma
11	Vegetable Market, Kidwai Nagar	Shop No. 5	75	Sharma
12	Stall, Kidwai Nagar	Shop No. 6	F 59	Sharma
13	A-Block Market, Kidwai Nagar	Shop No. 11	49	Sharma
14	Fuel Depot, Kidwai Nagar	Shop No. 2	F 12	Sharma
15	Fuel Depot, Kidwai Nagar	Shop No. 3	F-57	Sharma
16	Nauroji Nagar Market	Shop No. 27	92	Sharma

23/12/16

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23/12/16
A.K. Sharm
NBCC

Draw of Lot
Held on 23.12.2016 -941-

At
Auditorium, Convention Centre, NDCC-II
Category "C" Result

Sl. No.	Market	Existing Shop No.	New Shop No. allotted	Signature of Allottee
1	Central Market, Kidwai Nagar	Shop No. 4	41	
2	Central Market, Kidwai Nagar	Shop No. 13	94	
3	Central Market, Kidwai Nagar	Shop No. 22	F-8	
4	Central Market, Kidwai Nagar	Shop No. 24	110	
5	Central Market, Kidwai Nagar	Shop No. 26	112	
6	Central Market, Kidwai Nagar	Shop No. 29	F-11	
7	Central Market, Kidwai Nagar	Shop No. 30	F-66	
8	Central Market, Kidwai Nagar	Shop No. 32	F-13	
9	Central Market, Kidwai Nagar	Shop No. 44	80	
10	Central Market, Kidwai Nagar	Shop No. 48	F-5	
11	Central Market, Kidwai Nagar	Shop No. 49A	F-65	
12	South Market, Kidwai Nagar	Shop No. 4	20	
13	South Market, Kidwai Nagar	Shop No. 9	105	
14	South Market, Kidwai Nagar	Shop No. 16	F-14	
15	South Market, Kidwai Nagar	Shop No. 19	F-25	
16	South Market, Kidwai Nagar	Shop No. 22	96	
17	South Market, Kidwai Nagar	Shop No. 23	F-60	
18	South Market, Kidwai Nagar	Shop No. 24	95	
19	South Market, Kidwai Nagar	Shop No. 25	64	
20	South Market, Kidwai Nagar	Shop No. 26	F-36	

23/12/16

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23/12
LA. K. Sharma
NBCC

-942-

21	South Market, Kidwai Nagar	Shop No. 30	35	North Market
22	South Market, Kidwai Nagar	Shop No. 35	24	15/12/16
23	South Market, Kidwai Nagar	Shop No. 38	84	...
24	South Market, Kidwai Nagar	Shop No. 39	39	(Tender)
25	South Market, Kidwai Nagar	Shop No. 40	F 33	Korwar
26	South Market, Kidwai Nagar	Shop No. 46	54	Sanjay
27	South Market, Kidwai Nagar	Shop No. 50B	F-01	15/12/16
28	A-Block Market, Kidwai Nagar	Shop No. 1	66	15/12/16
29	A-Block Market, Kidwai Nagar	Shop No. 3	56	15/12/16
30	A-Block Market, Kidwai Nagar	Shop No. 4	103	15/12/16
31	A-Block Market, Kidwai Nagar	Shop No. 7	86	15/12/16
32	A-Block Market, Kidwai Nagar	Shop No. 12	76	15/12/16
33	Fuel Depot, Kidwai Nagar	Shop No. 1	72	15/12/16
34	Fuel Depot, Kidwai Nagar	Shop No. 4	91	15/12/16
35	Stall, Kidwai Nagar	Shop No. 1	100	15/12/16
36	Stall, Kidwai Nagar	Shop No. 2	F 34	15/12/16
37	Stall, Kidwai Nagar	Shop No. 5	77	15/12/16
38	Stall, Kidwai Nagar	Shop No. 7	F 18	15/12/16
39	Stall, Kidwai Nagar	Shop No. 8	F 42	15/12/16
40	Stall, Kidwai Nagar	Shop No. 9	69	15/12/16
41	Nauroji Nagar Market	Shop No. 23	34	15/12/16
42	Nauroji Nagar Market	Shop No. 1B	59	15/12/16
43	Nauroji Nagar Market	Shop No. 4	65	15/12/16
44	Nauroji Nagar Market	Shop No. 5	F-38	15/12/16
45	Nauroji Nagar Market	Shop No. 5A	98	15/12/16

23/12/16

23/12

23/12/16
(A.K. Sham
NBCC

15	Nauroji Nagar Market	Shop No. 7	F-21	Subla
47	Nauroji Nagar Market	Shop No. 9	F-28	Tribhuvan K...
48	Nauroji Nagar Market	Shop No. 10	48	Handwritten
49	Nauroji Nagar Market	Shop No. 11	F-50	Handwritten
50	Nauroji Nagar Market	Shop No. 12	46	Handwritten
51	Nauroji Nagar Market	Shop No. 13	F-20	Handwritten
52	Nauroji Nagar Market	Shop No. 13A	38	Handwritten
53	Nauroji Nagar Market	Shop No. 13B	F-54	Handwritten
54	Nauroji Nagar Market	Shop No. 18	70	Handwritten
55	Nauroji Nagar Market	Shop No. 19	F-63	Handwritten
56	Nauroji Nagar Market	Shop No. 20	67	Handwritten
57	Nauroji Nagar Market	Shop No. 22	81	Handwritten
58	Nauroji Nagar Market	Shop No. 24	F-56	Handwritten
59	Nauroji Nagar Market	Shop No. 25	29	Handwritten
60	Nauroji Nagar Market	Shop No. 26	F-41	Handwritten

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23/12/16

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23/12

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23/12/16
(A.K. Sham)
NBCI

Draw of Lot - 944 -
Held on 23.12.2016

At
Auditorium, Convention Centre, NDCC-II
Category "D" Result

Sl. No.	Market	Existing Shop No.	New Shop No. allotted	Signature of Allottee
1	Central Market, Kidwai Nagar	Shop No. 11	45	AK
2	South Market, Kidwai Nagar	Shop No. 17	87	23/12/16
3	South Market, Kidwai Nagar	Shop No. 36	60	Sumit
4	South Market, Kidwai Nagar	Shop No. 45	99	Nishant
5	Stall, Kidwai Nagar	Shop No. 10	82	Sumit
6	Stall, Kidwai Nagar	Shop No. 11	88	23/12/16
7	Stall, Kidwai Nagar	Shop No. 12	23	23/12/16
8	Nauroji Nagar Market	Shop No. 15B	63	23/12/16

23/12/16

23/12

23/12/16
(A.K. Sharma)
NBCC

Draw of Lot
Held on 23.12.2016

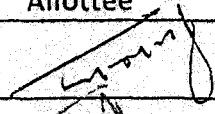
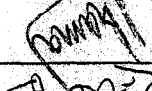
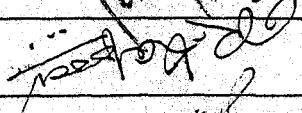
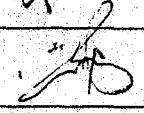
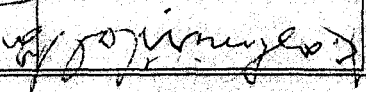
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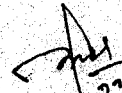
At


Auditorium, Convention Centre, NDCC-II

Category "E" Result

Sl. No.	Market	Existing Shop No.	New Shop No. allotted	Signature of Allottee
1	Central Market, Kidwai Nagar	Shop No. 1	F-6	
2	Central Market, Kidwai Nagar	Shop No. 5	90	
3	Central Market, Kidwai Nagar	Shop No. 6	F 51	
4	Central Market, Kidwai Nagar	Shop No. 7	F 61	
5	Central Market, Kidwai Nagar	Shop No. 8	73	


23/12/14

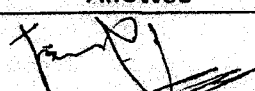

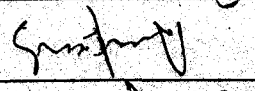
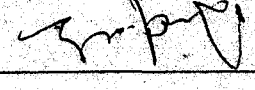
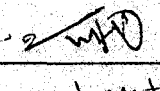
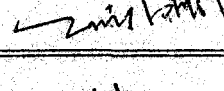

23/12

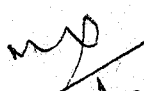

23/12/16
(A.K. Sharma
NBCC

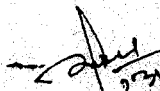
Draw of Lot - 946 -
Held on 23.12.2016


~~23.12.2016~~

At
Auditorium, Convention Centre, NDCC-II
Category "F" Result

Sl. No.	Market	Existing Shop No.	New Shop No. allotted	Signature of Allottee
1	Central Market, Kidwai Nagar	Shop No. 3	50	
2	Central Market, Kidwai Nagar	Shop No. 27	F 52	
3	Central Market, Kidwai Nagar	Shop No. 28	93	
4	Central Market, Kidwai Nagar	Shop No. 37	104	
5	South Market, Kidwai Nagar	Shop No. 27	89	
6	South Market, Kidwai Nagar	Shop No. 28	F 67	


23/12/16


23/12


23/12/16
(A.K. Sharma)
NBCC

Draw of Lot
Held on 23.12.2016

-947-

At

Auditorium, Convention Centre, NDCC-II

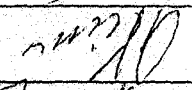
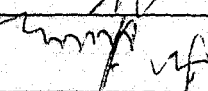
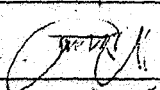
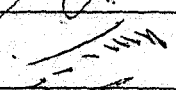
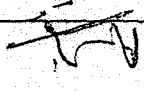
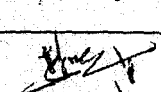
Category "G" Result

Sl. No.	Market	Existing Shop No.	New Shop No. allotted	Signature of Allottee
1	Central Market, Kidwai Nagar	Shop No. 10	F 2	
2	Central Market, Kidwai Nagar	Shop No. 23	F 19 (19)	
3	Central Market, Kidwai Nagar	Shop No. 31	31	
4	Central Market, Kidwai Nagar	Shop No. 35	F-64	
5	Central Market, Kidwai Nagar	Shop No. 36	74	
6	Central Market, Kidwai Nagar	Shop No. 36A	97	
7	Central Market, Kidwai Nagar	Shop No. 40	79	
8	Central Market, Kidwai Nagar	Shop No. 42	51	
9	Central Market, Kidwai Nagar	Shop No. 45	F 52	
10	Central Market, Kidwai Nagar	Shop No. 47	F-16	
11	Central Market, Kidwai Nagar	Shop No. 49B	78	
12	South Market, Kidwai Nagar	Shop No. 3	F-7	
13	South Market, Kidwai Nagar	Shop No. 7	F-44	
14	South Market, Kidwai Nagar	Shop No. 8	37	
15	South Market, Kidwai Nagar	Shop No. 10	F 22	
16	South Market, Kidwai Nagar	Shop No. 12	107	
17	South Market, Kidwai Nagar	Shop No. 13	F 32	
18	South Market, Kidwai Nagar	Shop No. 14	106	
19	South Market, Kidwai Nagar	Shop No. 20	27	

23/12/16

23/12

23/12/16
LA. K. Sharma
NBCC

20	South Market, Kidwai Nagar	Shop No. 21	F-9	
	Stall, Kidwai Nagar	Shop No. 3	SS-37	
22	Nauroji Nagar Market	Shop No. 3	F-37	
23	Nauroji Nagar Market	Shop No. 6	102	
24	Nauroji Nagar Market	Shop No. 14	F-3	
25	Nauroji Nagar Market	Shop No. 16	F-53	

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(A.K. Sharm
NBC

Draw of Lot
Held on 23.12.2016

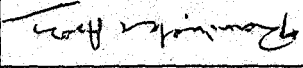
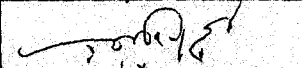
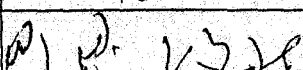
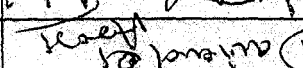
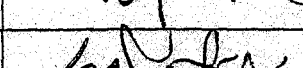

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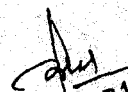
At


Auditorium, Convention Centre, NDCC-II

Category "H" Result

Sl. No.	Market	Existing Shop No.	New Shop No. allotted	Signature of Allottee
1	Central Market, Kidwai Nagar	Shop No. 9	33	
2	Central Market, Kidwai Nagar	Shop No. 18	F-15	
3	Central Market, Kidwai Nagar	Shop No. 21	F-31	
4	Vegetable Market, Kidwai Nagar	Shop No. 4	F-4	
5	South Market, Kidwai Nagar	Shop No. 41	30	
6	Nauroji Nagar Market	Shop No. 17	57	


23/12/16


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23/12/16
CA. K. Shan
NBCC

Draw of Lot
Held on 23.12.2016

-950-

At

Auditorium, Convention Centre, NDCC-II
Category "I" Result

Sl. No.	Market	Existing Shop No.	New Shop No. allotted	Signature of Allottee
1	Central Market, Kidwai Nagar	Shop No. 12	28	
2	South Market, Kidwai Nagar	Shop No. 15	36	
3	South Market, Kidwai Nagar	Shop No. 43	108	
4	South Market, Kidwai Nagar	Shop No. 44	58	
5	South Market, Kidwai Nagar	Shop No. 49	111	
6	South Market, Kidwai Nagar	Shop No. 49A	F-23	
7	Stall, Kidwai Nagar	Shop No. 4	92	
8	A-Block Market, Kidwai Nagar	Shop No. 9	F-35	
9	Nauroji Nagar Market	Shop No. 8	F-10	

23/12/16

23/12

23/12/16
CA. K. Sharma
MBCC

Draw of Lot
Held on 23.12.2016

-951-

At
Auditorium, Convention Centre, NDCC-II
Category "J" Result

Sl. No.	Market	Existing Shop No.	New Shop No. allotted	Signature of Allottee
1	Central Market, Kidwai Nagar	Shop No. 2	53	
2	Central Market, Kidwai Nagar	Shop No. 17	F 27	
3	Central Market, Kidwai Nagar	Shop No. 20	F-17	
4	Central Market, Kidwai Nagar	Shop No. 38	40	
5	Central Market, Kidwai Nagar	Shop No. 46	43	
6	South Market, Kidwai Nagar	Shop No. 2	68	
7	South Market, Kidwai Nagar	Shop No. 5	52	
8	South Market, Kidwai Nagar	Shop No. 11	62	
9	South Market, Kidwai Nagar	Shop No. 18	F 45	
10	South Market, Kidwai Nagar	Shop No. 31	61	
11	South Market, Kidwai Nagar	Shop No. 32	101	
12	South Market, Kidwai Nagar	Shop No. 48	44	
13	Vegetable Market, Kidwai Nagar	Shop No. 6	108	
14	Nauroji Nagar Market	Shop No. 14C	85	

23/12/16

23/12

23/12/16
(A.K. Sharma)
NBCC

-952-

● N.D.M.C. Markets Federation, New Delhi

6, Prithviraj Market, New Delhi-110003, Ph: 011 24611486, 24634956

Annexure - III

President

Inder Narula

President

Prithviraj Market

Ph: 24611486

M: 9971974715

General Secretary

Vinod Gulati

President

Pandara Road Market

Ph: 2338836, 39

M: 9810290952

Vice President

Manohar Chadha

President

Basurkar Market

Moti Bagh

Ph: 24101953

M: 9810046307

Convenor & Vice President

Jagjit Singh Chadha

Begum Zaidi Market

Ph: 24675189

M: 9350993661

Joint Secretary

Rakesh Dhingra

President

Laxmi Bai Nagar Market

M: 9810103200

Executive Members:

Manish Aggarwal

President

Begum Zaidi Market

M: 9811217273

Amit Malik

President

Central Market Kidwai Nagar

M: 9871166116

Vijay Kumar Raji

President

South Market Kidwai Nagar

M: 9873372757

Vipin Munjal

President

Netaji Nagar Market

M: 9910040608

Kewal Khanna (Nitu)

Nauroji Nagar Market

M: 9811073569

**Shri Naresh Kumar, IAS,
Chairman NDMC,
New Delhi.**

14th February, 2017

Respected Sir,

Sub: Shifting of Kidwai Nagar and other Markets.

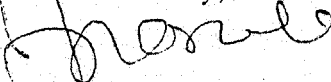
We wish to submit as under:

1. We have been doing peaceful business for the last 60 years and there has been no complaint against us by NDMC authorities and we have been fully cooperating with the NDMC on all matters.
2. We have been asked by NDMC to shift to the new market developed by NBCC under NDMC at Kidwai Nagar.
3. Sir, as you are aware we are suffering for the last about four years ever since NBCC started re-development work at Kidwai Nagar, since then our business is getting from bad to worse day by day and it will take another four years to complete the work and we shall be suffering all these years.
4. We now understand that NDMC is going to enhance licence fee for the new shops.
5. Sir, during our last personal submissions you have been very kind to understand our difficulties and agreed to the formula suggested by us (copy of the formula is enclosed herewith).
6. Sir, we should be treated at par as per existing policy of the NDMC for the displaced / refugees person, prior to 3.11.2015

Keeping in view the above we request your honour to please re-consider enhancement of licence fee for new shop and charge us as per formula submitted by us.

Thanking you and with kind regards,

Yours sincerely,



(INDER NARULA)

President,

NDMC Markets Federation

SUGGESTED FORMULA FOR SHIFTING OF KIDWAI NAGAR AND OTHER MARKETS

$$1 \quad \frac{\text{Present Licence Fee}}{\text{Present Carpet Area}} \times \text{New Area}$$

Plus 10% of the Extra New Area, if any

A. Example:

Present Licence Fee	=	1000
Present Area		150 sq. ft.
Rate per Sq. Ft.		$\frac{1000}{150} = \text{Rs. } 6.66 \text{ per sq.ft.}$

B. New Area Say 240 sq. ft.

240-150	=	90 sq.ft.
		$90 \times 6.66 = \text{Rs. } 599.40 \text{ say Rs. } 600.00$
10% of Rs. 600.00		60.00

Licence Fee for the new shop should be:

A + B

Rs. 1000 + 660	=	Rs. 1660.00
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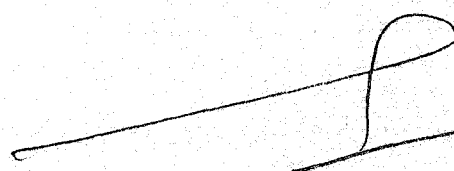
Annexure - IV

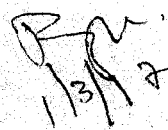
Annexure - IV

-954-

LIST OF ALL SHOPS IN KIDWAI NAGAR

Ep Id	Alottee Name	Seat	Category	Current License Fee	Previous License Fee on 31/3/14	Difference
1598	SH. K. L. ANEJA	VI	LICENCE	642	589	53
1599	SH MOHINDER LAL	VI	LICENCE	379	348	31
1600	SMT SUSHILA DEVI	VI	DAMAGE	292	268	24
1601	SH DEEPAK MARWAH	VI	LICENCE	1675	1537	138
1602	SH KAMAL KAPOOR	VI	LICENCE	1533	1406	127
1603	SH TILAK RAJ KAPOOR	VI	LICENCE	661	606	55
1604	SMT LAJWANTI	VI	LICENCE	543	498	45
1605	SH KASHMIRI LAL ANEJA	VI	LICENCE	1127	1034	93
1606	SH RAVINDER ARORA	VI	LICENCE	371	271	100
1607	SH SUKHVINDER KAUR	VI	DAMAGE	2252	2066	186
1608	SH ACHINTYA RISHI	VI	LICENCE	1040	954	86
1609	SH MOHD ZAKIR	VI	LICENCE	722	662	60
1610	SMT. KAMLA VERMA	VI	LICENCE	3325	3050	275
1611	Sh. Jagroop Meena	VI	LICENCE	2578	2365	213
1612	SH Navneet Kuar	VI	LICENCE	1634	1499	135
1613	SH Tara Chand Gupta	VI	LICENCE	484	444	40
1614	SMT PREMWTI, SH M.R. GUPTA	VI	LICENCE	413	379	34
1615	SH SHAFIQ AHMAD	VI	LICENCE	1942	1782	160
1616	SH JASPAL SINGH	VI	LICENCE	979	898	81
1617	SH GYAN SINGH	VI	LICENCE	6203	5691	512
1618	SH CHHOTY LAL	VI	DAMAGE	124	114	10
1619	SH DARSHAN LAL	VI	LICENCE	265	243	22
1620	SH ARJUN SINGH	VI	DAMAGE	4183	3838	345
1621	SH SURESH GROVER	VI	LICENCE	7450	6835	615
1622	S/SH SUSHIL KUMAR & RAJINDER	VI	LICENCE	2550	2038	512
1623	SH AMARJEET SINGH	VI	LICENCE	540	495	45
1624	SH POORAN CHAND	VI	DAMAGE	702	644	58
1625	SH SUSHIL MALIK	VI	LICENCE	1420	1303	117
1626	SH HARBANS SINGH	VI	LICENCE	582	534	48
1627	Sh. Paramjeet Singh	VI	DAMAGE	1488	1365	123
1628	SH POORAN CHAND	VI	DAMAGE	4373	4012	361
1629	SH MEHTAB SINGH	VI	DAMAGE	814	747	67
1630	SH MAN BHADUR	VI	LICENCE	1704	1563	141
1631	SH SHAN E ILAHAI	VI	LICENCE	1028	943	85
1632	Sh. Shiva Sharma	VI	LICENCE	1579	1449	130
1633	SH MUKESH KR. SHARMA	VI	LICENCE	1087	997	90
1634	SH H.K.SURI	VI	DAMAGE	766	703	63
1635	SH AMAR SINGH, SH SUKINDER SINGH, SH AJMER SINGH	VI	DAMAGE	591	542	49
1636	SH V.K. BHATIA	VI	LICENCE	1308	1200	108





1637	SH VINAY KUMAR MALHOTRA	VI	LICENCE	1530	1404	126
1638	SH NIRMAL GAUBA	VI	LICENCE	2749	2522	227
1639	SH MOHD. NASIR, MOHD SHAKIR	VI	LICENCE	1495	1372	123
1640	SMT. SHASHI JARIAL	VI	LICENCE	1052	965	87
1641	SH. ISMAIL SALEEM	VI	DAMAGE	999	756	243
1642	SH. KEWEL RAM GARG	VI	DAMAGE	1565	1436	129
1643	SMT. BALA DEVI	VI	DAMAGE	595	546	49
1644	SH. DHYAN SINGH BHANDARI	VI	LICENCE	393	361	32
1645	SH. T.R. KAPOOR	VI	LICENCE	1409	1293	116
1646	SH. SURESH KUMAR, RAVINDER KUMAR	VI	DAMAGE	6404	5875	529
1647	S/SH. JAGGUMAL, VED PARKASH	VI	DAMAGE	4817	4419	398
1648	SH. VED PARKASH	VI	LICENCE	1026	941	85
1649	SH. RAJAN SINGH	VI	LICENCE	5338	4897	441
1650	SMT VEERA DEVI	VI	LICENCE	1623	1489	134
1651	SH KUNDAN LAL	VI	LICENCE	269	247	22
1652	SH K.S. RAUTTA	VI	DAMAGE	937	860	77
1653	SH TIRLOK SINGH	VI	DAMAGE	265	243	22
1654	SH LEELA DHAR	VI	DAMAGE	1059	972	87
1656	SH JASBIR SINGH	VI	DAMAGE	1720	1720	23
1657	SH MARU RAM	VI	DAMAGE	281	258	23
1658	SMT PREM LATA & SH CHANDER KANT GANDHI	VI	LICENCE	276	253	23
1659	SH S.KARTAR SINGH & SMT.GURPREET	VI	LICENCE	1700	1560	140
1660	SH NAND KISHORE	VI	DAMAGE	1672	1534	138
1661	SH KISHAN LAL	VI	DAMAGE	1453	1333	120
1662	SH GOPAL SINGH	VI	DAMAGE	1039	953	86
1663	SH KISHAN LAL	VI	DAMAGE	421	386	35
1664	SH SURJEET SINGH	VI	DAMAGE	3116	2859	257
1665	SH. HARJEET SINGH	VI	LICENCE	4503	4131	372
1666	SH PARSO JETHANI	VI	DAMAGE	1171	1074	97
1667	SH RADHEY SHYAM SEHGAL	VI	LICENCE	2252	2066	186
1668	SMT VIJAY LAXMI	VI	LICENCE	621	570	51
1669	SH SUKHBIR SINGH	VI	LICENCE	1981	1817	164
1670	SMT SANGEETA WAHAI	VI	DAMAGE	646	593	53
1671	SH ASHOK KUMAR AGGARWAL	VI	DAMAGE	2778	2549	229
1672	SMT GIAN WATI	VI	LICENCE	1265	1161	104
1673	SH SHAM SINGH	VI	LICENCE	576	528	48
1674	SH OM PARKASH	VI	LICENCE	2414	1797	617
1675	SH. ANKIT PRUTHI	VI	LICENCE	3908	3585	323
1676	SH ASHOK KUMAR	VI	DAMAGE	637	584	53
1677	SH MOHINDER PAL, SH NIHAL CHAND	VI	DAMAGE	2425	2225	200
1678	SH NARESH KUMAR & SMT SAROJ	VI	LICENCE	1127	1034	93
1679	SH TRILOKI NATH DHIR	VI	LICENCE	45148	41420	3728
1680	SH YOGESH GUPTA	VI	LICENCE	523	480	43

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 1/3/17

1681	SUPDT. POST OFFICE	VI	DAMAGE	737	676	61
1682	SH MANOJ KUMAR	VI	DAMAGE	4699	4311	388
1683	SH HARI OM	VI	LICENCE	1277	1172	105
1684	SMT SUNITA DEVI	VI	DAMAGE	4231	3882	349
1685	SH RANI GUPTA	VI	LICENCE	819	751	68
1686	SH PRITAM SINGH	VI	DAMAGE	670	615	55
1687	SMT GURPREET KAUR	VI	DAMAGE	3557	3263	294
1688	SH PAWAN KUMAR GUPTA, SH KESAR	VI	LICENCE	1516	1391	125
1689	SH VIJAY KUMAR	VI	LICENCE	996	914	82
1691	SH BHAGWAN DASS, SH KRISHAN KUMAR CHANDEL	VI	DAMAGE	322	295	27
1692	SMT BHARTO DEVI	VI	DAMAGE	794	728	66
1693	SH NITIN BAIJAL	VI	LICENCE	30825	28023	2802
1694	SH JHAMAN DASS	VI	DAMAGE	219	201	18
1695	SMT TULSO DEVI	VI	DAMAGE	393	361	32
1696	SH SOM DUTT CHIBBER & SUNIL DUTT CHIBBER	VI	LICENCE	785	720	65
1697	SH. MULK RAJ, SH. VIJAY	VI	DAMAGE	1219	1118	101
1698	SMT GULSHAN GULATI & SH AJAY	VI	DAMAGE	472	433	39
1699	SH NANDI CHAND	VI	DAMAGE	70	64	6
1700	SH NACHATTER SINGH	VI	LICENCE	656	602	54
1722	SMT DAVI BAI	VI	DAMAGE	534	490	44
1723	SH SIYA RAM	VI	DAMAGE	491	450	41
1724	SMT PRAKSH WATI, SH SURENDER	VI	LICENCE	797	731	66
1725	SH SANJAY KR.	VI	LICENCE	524	481	43
1876	SH. ANITA ARORA	VI	LICENCE	1368	1255	113
1877	SH. DAVINDER KUMAR	VI	LICENCE	426	391	35
1878	SH. OM PARKASH	VI	DAMAGE	578	530	48
1879	SH. SANDEEP BHATIA	VI	DAMAGE	437	401	36
1880	SH RAMESH CHANDER ARORA, SH SUNIL KR ARORA, SMT ANITA ARORA	VI	LICENCE	591	542	49
1881	SMT KIRSHNA MALIK	VI	DAMAGE	421	386	35
					TOTAL FINANCIAL IMPLICATION	650021

18/12/17 11/3/17

ESTATE-I DEPARTMENT
NEW DELHI MUNICIPAL COUNCIL
PALIKA KENDRA: NEW DELHI

No. D- 25 /SO (Estate-I)/2017

Dated 28/2/17

Sh. Inder Narula,
President,
NDMC Markets Federation,
6, Prithviraj Market,
New Delhi-110 023.

**Subject:- Shifting of Kidwai Nagar and Nauroji Nagar Shops/Stalls in the
NBCC Tower, Kidwai Nagar, New Delhi.**


This is with reference to your representation dated 14th February 2017 submitted to NDMC and discussion held with team of NDMC, headed by Chairman, NDMC on 14.0.2017 at 4:30 P.M. in the Council Room, NDMC.

While taking into the cognizance of difficulties and as expressed by you with respect to shopkeepers of Kidwai Nagar and Nauroji Nagar Market, it has decided that the matter will again be placed before the Council for reconsideration of the licence fee along with your representation.

As discussed in the above mentioned meeting that decision of the Council may take 2 to 4 week's time and till the matter is considered by the Council, the shifting of the shops should not be stopped.

In view of above, all the allottees may be requested to shift to the newly constructed NBCC Tower **subject to decision of the Council on the revised licence fee.**

The allotment letters being issued by the Estate-I Department be received by the respective allottee and copy of the possession slip be submitted after shifting in **the newly constructed NBCC Tower, Kidwai Nagar as per the result of draw of lots held on 23.12.2016.**


(TANVIR AHMAD)
DY. DIRECTOR (ESTATE-I)

Copy to :-

1. PS to Chairman, NDMC:-for information please.
2. Director (Estate-I):- for information please.
3. Director (Vigilance):- for information please.

ITEM NO. 30 (H-11)

1.	Name of the subject/project	Guidelines for engaging eligible dependents of deceased employees of the Public Health Department.
2.	Name of the department/departments concerned.	Personnel Department
3.	Brief history of the subject/project	<p>After enactment of the New Delhi Municipal Council Act, 1994. The New Delhi Municipal Council (NDMC) has been following guidelines issued by the DoPT on service matter. The DoPT vide OM No. 14014/6/94-Estt.(D) dated 09.10.1998 mentioned that compassionate appointments can be made upto a maximum of 5% of vacancies falling under direct recruitment quota in any Group 'C' or 'D' post.</p> <p>Subsequent to issuance of instructions vide DoPT's OM No.14014/6/94-Estt.(D) dated 09.10.1998, a number of instructions on Compassionate instructions have been issued, which have been consolidated by the DoPT vide its OM No.14014/02/2012-Estt.(D) dated 16.01.2013 for the facility of reference and guidance, and modified vide OM No. 14014/02/2012-Estt.(D) dated 07.10.2014.</p> <p>Further, DoPT vide its OM No. 14014/02/2012-Estt.(D) dated 30.05.2013 issued detailed FAQ in the matter of Compassionate Appointment, which has been modified vide OM No. 14014/02/2012-Estt.(D) dated 05.09.2016.</p> <p>Council vide its resolution No.16 (K-06) dated 29.01.2014 has approved in-principal, appointment of all eligible applicants under the compassionate appointment category as Casual workers/Daily wages for a period of 239 days, subject to certain conditions.</p> <p>The safai-karamcharis working in the Public Health Department are handling the municipal waste, and are prone to health diseases. Considering this aspect, annual health check-ups of safai-karamchrais having age of 40 years or older, has been started. This would help in early detections of diseases, which will help in preventive/timely action, and will improve the overall quality of life of these employees.</p> <p>Further, to ensure further transparency in case of compassionate appointment of dependent in case of such deceased safai-karamcharis, it is felt to bring in a policy to handle applications for compassionate appointments in case of death of safai-karamcharis of Public Health Department, NDMC.</p>
4.	Detailed proposal on the subject.	4.1 The following policy Guidelines for engaging (a) eligible dependents of deceased employees of the Public Health Department, and (b) Temporary Muster Roll in the Public Health Department, are proposed

		<p>for consideration of the Council.</p> <p>(i) Personnel Department shall undertake the following exercise twice every year at an interval of every six months regularly.</p> <p>(ii) Personnel Department shall access the regular vacancies of safai-karamcharis in the Public Health Department in the first week of month in which such exercise will be taken. Public Health Department shall place its requisition, mentioning number of Temporary Muster Roll (TMR) required in the Public Health Department during the next six months to the Personnel Department (CGIT Cell).</p> <p>(iii) All the candidates for appointment on compassionate ground would be asked to apply in the form for seeking compassionate³ appointment as provided in Annexure to the DoPT's OM No.14014/02/2012-Estt.(D) dated 16.01.2013.</p> <p>(iv) All the candidates who have either applied or applying for appointment on compassionate ground would be asked to submit an undertaking on a non-judicial stamp paper of Rs.10/- alongwith their application that:</p> <p>(a) The facts given by him/her are, to the best of his/her knowledge, correct, and if any of the facts are found to be incorrect or false at a future date, his/her services may be terminated, and in such case he/she will also liable to return all the money paid by NDMC to him/her in any form/name/manner in lieu of his/her appointment/remuneration, and</p> <p>(b) He/she will maintain properly the other family members who were dependent on the Government servant in question and in case it is proved subsequently (at any time) that the family members are being neglected or are not being maintained properly by him/her, his/her appointment may be terminated forthwith.</p> <p>Note: Personnel Department should ask all the candidates, whose applications are pending with it, to furnish such undertaking, and shall only consider such application after receiving undertaking as mentioned above.</p> <p>(v) after verification, all the applications received for appointment on compassionate ground would be assessed by Personnel Department on the criteria given in the Annexure (See pages 963 – 964).</p> <p>(vi) A merit list to be prepared by the Personnel Department on the basis of marks out of total 100 marks received by such candidates in descending order.</p> <p>(vii) Personnel Department shall convene a meeting of the Screening Committee for considering cases of appointment on compassionate ground against the regular vacancies identified to be filled under Direct</p>
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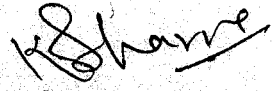
		<p>Recruitment in category 'C' and 'D'.</p> <p>(viii) First 5% regular vacancies to be filled as per policy of Government of India, Department of Personnel and Training (DoPT) w.r.t. compassionate appointment, as amended from time to time, after following due procedures.</p> <p>(ix) In case, the number of candidates is less than the number of regular vacancies to be filled under compassionate appointment, then in such case, process of filling such excess regular vacancies should be dealt as per DoPT rules/regulations/guidelines.</p> <p>(x) In case, number of candidates for compassionate appointment is more than number of regular vacancies to be filled under compassionate appointment, remaining candidates after para (viii) above will be dealt in the following manner:</p> <ol style="list-style-type: none"> on the basis of seniority in merit list mentioned in para (vi) above, such remaining candidates equal to <u>number of TMR requirement raised by MoH in pursuance to para (ii) above</u>, should be offered by the Personnel Department to get engaged as TMR, and if he/she interested, for a period of 178 days in two cycles of 89 days each with break of one week. In any case, not more than 178 days engagement shall be allowed to such candidate in a year; all the candidates who join as TMR will be asked to report to the Public Health Department; such candidates, irrespective of whether he/she gets engaged as TMR or not in pursuant to offer mentioned at (x)(a) above should apply afresh in the next cycle for compassionate appointment. However, the candidates who have been offered TMR status in the immediate preceding cycle for compassionate appointment shall not be considered for engagement as TMR and will only be considered for regular vacancies, and such candidate would be considered for TMR as well as regular vacancies in the next cycle. the requirement of remaining TMRs of Public Health Department will be fulfilled by Personnel Department by inviting applications on NDMC's website from the persons interested for the same. A list will be prepared by Personnel Department from the applications received in lieu of invitations sought on website, on the basis of number of days in descending order for which such applicant had worked earlier in NDMC's Public Health Department as TMR, and such applicants will be engaged by Personnel Department, in such number to match the remaining requirement of TMR in Public Health Department in pursuance to para (ii) above,
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		<p>and such TMRs after their joining will be asked to report to the Public Health Department.</p> <p>(xi) Requests for engagement on TMR basis would be considered only in those cases where the death of NDMC employees has occurred in last five year i.e. after 01.01.2012.</p> <p>(xii) All Muster Roll engagement to be done through Personnel Department (CGIT Cell) only.</p> <p>(xiii) The following shall be completed within three months from the date of confirmation of minutes of the meeting of approval of the Council in the matter:</p> <p>(A) The following record of Muster Roll employees is to be updated and made online by CGIT Cell</p> <ol style="list-style-type: none"> Name Father's Name AADHAR No. Whether belongs to SC/ST/OBC Educational Qualification Address Permanent Address <p>(B) Payment of wages to the Muster Roll Employees to be lined to AADHAR.</p> <p>(C) Salary disbursal of Muster Roll persons to be linked with biometric attendance.</p> <p>(D) Service record of each existing Muster Roll person to be verified and concrete steps should be taken by CGIT cell to remove persons who have gained Muster Roll engagement on the basis of false record.</p> <p>(xiv) Compassionate Appointments and engagement of TMRs in all Departments of NDMC shall follow the above procedure.</p> <p>(xv) Expenditure on payment of wages to Muster Roll Persons to be booked under project/maintenance head of respective Department.</p>
5.	Financial implications of the proposed project/subject.	Financial implication will be to the extent that such candidates will be appointed on regular sanctioned posts on compassionate appointment ground as per Government of India's guidelines and marking criteria mentioned in Annexure, and remaining candidates will be taken on TMR on requirement basis and expenditure on payment of such candidates to be booked under project/maintenance head of respective Department.
6.	Implementation schedule with timeliness for each stage including internal processing.	Immediate after Council approval.
7.	Comments of the Finance Department on the subject	Comments placed at Annexure – 'A'. (See pages 965 - 967)
8.	Legal implication of the	No legal implication involved.

	subject/project.	
9.	Details of previous Council Resolutions, existing law of Parliament and Assembly on the subject.	Resolution No.16 (K-06) dated 29.01.2014.
10.	Comments of the Law Department on the subject/project.	
11.	Certification by the Department that all Central Vigilance Commission (CVC) guidelines have been followed while processing the case.	Not applicable being purely an administrative matter.
12.	Recommendation	Approval of the Council is requested for proposal mentioned in para 4 above.
13.	Draft Resolution	The Council resolved to approve the proposal mentioned in para 4 of the Preamble.

COUNCIL'S DECISION

The Council resolved to accord in-principle approval to offer Temporary Muster Roll work of maximum 239 days in a preceding year to one of the eligible dependent of deceased NDMC's employee of all NDMC's Departments as a welfare measure, subject to the requirements of muster roll workers. Detailed procedure as mentioned in Para 4 of the preamble be finalized by the Committee made under section 9 of the NDMC Act, 1994 to deal with the matter of Temporary Muster Roll employees vide Agenda item No. 17(H-06) dated 15.12.2015.


Secretary
 New Delhi Municipal Council
 Palka Kendra, New Delhi

ANNEXURE

**CRITERIA FOR EVALUATION OF CLAIM OF DEPENDENT OF DECEASED
NDMC EMPLOYEES FOR GRANT OF ENGAGEMENT ON MUSTER ROLL BASIS.**

(a) FAMILY PENSION (BASIC, EXCLUDING DA & ALLOWANCES)

S.No.	Points	Proposed slab for Department of Posts (in Rs.)
1.	20	Upto 5000
2.	18	5001-8000
3.	16	8001-11000
4.	14	11001-14000
5.	12	14001-17000
6.	10	17001-20000
7.	8	20001-23000
8.	6	Above 23000

**(B) TERMINAL BENEFITS (DCRG, GPF, CGEGIS, LEAVE ENCASHMENT &
PENSION COMMUTATION)**

S.No.	Points	Proposed slab for Department of Posts (in Rs.)
1	10	Upto 1,40,000
2.	9	140001-168000
3.	8	168001-196000
4.	7	196001-224000
5.	6	224001-252000
6.	5	252001-280000
7.	4	280001-308000
8.	3	308001-336000
9.	2	336001-364000
10	1	364001-420000
11	0	4,20,001 & Above

**(c) MONTHLY INCOME OF EARNING MEMBERS AND INCOME FROM
PROPERTY**

S.No.	Points	Proposed slab for Department of Posts (in Rs.)
1	5	No income
2.	4	2500 or less
3.	3	2501-3500
4.	2	3501-4500
5.	1	4501-5500
6.	0	5501 & Above

(d) MOVEABLE / IMMOVABLE PROPERTY

Sl. No.	Points	Proposed slab for Department of Posts
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		(in Rs.)
1	10	Nil
2.	8	Upto 1,50,000
3.	6	150001-300000
4.	3	300001-600000
5.	1	600001-1000000
6.	0	Above 10,00,000

(e) NO. OF DEPENDENTS [other than those at S.No. (f) and (g)]

S. No.	No. of Dependents	Points
1	3 and above	15
2.	2	10
3.	1	5

(f) No. OF UNMARRIED DAUGHTERS:

S. No.	NO. OF UNMARRIED DAUGHTERS	Points
1	3 and above	15
2.	2	10
3.	1	5
4.	None	0

(g) NO. OF MINOR CHILDREN

S.No.	NO. OF MINOR CHILDREN	Points
1	3 and above	15
2.	2	10
3.	1	5
4.	None	0

Note: Unmarried girl child of age less than eighteen years shall get marks in both (f) and (g) above.

(H) LEFT OVER SERVICE (as on date of consideration)

S.No.	LEFT OVER SERVICE	Points
1	Over 20 years	10
2.	Over 15 & upto 20 years	8
3.	Over 10 & upto 15 years	6
4.	Over 5 & upto 10 years	4
5.	0-5 years	2

NEW DELHI MUNICIPAL COUNCIL
PERSONNEL DEPARTMENT

AGENDA

ITEM NO. _____

1.	Name of the subject/project	Guidelines for engaging eligible dependents of deceased employees of the Public Health Department.
2	Name of the department/departments concerned	Personnel Department
7.	Comments of the Finance Department on the subject	As per Annexure - A.

FINANCE DEPARTMENT

Subject: Comments of Finance Department on Note for consideration of the Council for grant of TMR engagement to the dependents of deceased NDMC employees.

1. The draft agendum has been received in FD on 2.03.2017 with a view to be placed as Table Agenda before the Council meeting dated 2.03.2017 and as such seen in the given time.
2. The Draft Agendum has been examined and it has been seen that the department has stated that there are no legal implications. FD views that wherever any engagement is made there is a legal implications with respect to terms and condition of engagement. The department is accordingly advised to look into this and frame terms and conditions of engagement in consultation with Law Department.
3. Vide Council Agenda Item No. 16(K-06) dated 29.01.2014, the Council had resolved to approve in principle appointment of all eligible applicants under the compassionate appointment category as casual workers/daily wages. The department may bring out as to how many cases has been covered vide this resolution.
4. Vide Agenda Item No. 06 (H-01) dated 28.08.2015 this item was deferred with directions that all details of persons engaged on temporary muster roll, compassionate cases and details of all pending request for muster roll engagement on compassionate ground, year-wise, be brought before the Council in the next meeting. The Department may apprise the Council accordingly.
5. In pursuance of Council's Resolution No. 37 (H-06) dated 25.07.2016 the department has issued an office order No. SO(E)/542/SA-III dated 06.02.2017 wherein vide para (I) d states that "In case, vacancy for compassionate appointments are not available, and a dependent (spouse, son, unmarried/divorced daughter) of such deceased regular employee applies for engagement as temporary engagement roll, subject to NOC from all other dependents (spouse, son, unmarried/divorced daughter), then as an immediate relief such dependent shall be engaged on regular muster roll, till such dependent will be considered for compassionate appointment. The Department may apprise the Council accordingly.
6. Resolution No. 06(H-01) dated 28.08.2015 and Resolution No.16 (K-06) dated 29.01.2014 of Personnel Department show that the NDMC follows the guidelines of DOPT in respect of compassionate appointments. As such the department may ensure that the proposal is as per DOP&T guidelines.
7. Department has referred various DOPTs OM's on compassionate appointment which has not been placed alongwith Agenda. This may be placed before the Council alongwith the Agenda.
8. Department has mentioned the cut off date, i.e., 01.01.2012 at para 4-11(x). Department is advised to prepare the list of available candidates after 01.01.2012 and apprise the same in the next Council Meeting.

9. Resolution No. 16 (K-06) dated 29.01.2014 appointment is to be made for 230 days while in the instant Agendum para 4-10, the period has been mentioned as 178 days in two cycles of 89 days each with break of one week. This aspect may be looked by the department.
10. The Department has proposed at para 5 that the expenditure on remaining candidates (after appointment against regular sanctioned post) shall be charged to respective project of the maintenance heads of the department. It may be ensured that sufficient funds are available for incurring such expenditure.
11. Being an Administrative Policy Matter, FD has no objection for placing the same before the Council for consideration.

ITEM NO. 31 (M-10)

Copy of Reso. No. 31 (M-10)
of
Council's Ordinary Meeting
Dated 06/03/2017

1. Name of the Subject/ Project

Uniform Subsidy to students of class Nursery to XII of NDMC Schools, NDMC Aided Schools, Aanchal and Balwari as per policy prevailing in Education Deptt. NDMC for the Academic Session 2016-17.

2. Name of the Department : Education Department, NDMC**3. Brief History of the Subject/ Project:**

The Education Department NDMC was earlier providing unstitched clothes uniforms to the students. However, since 2006-07, cash disbursement in lieu of uniform is being provided.

4. The Council vide Reso. No.10(M-6) Dated 21-12-2009, resolved to provide Uniform Subsidy @ Rs.500/- per annum per student of class Nursery to XII of NDMC schools and NDMC Aided Schools for the Academic year 2008-09 and 2009-10 as prevailing in the Directorate of Education, GNCT of Delhi. The same was enhanced @Rs.700/- per annum in case of students of class VI to XII vide Council Reso. No. 08 (M-02) dated 21-07-2010. In the year 2011-12 the Education Deptt. proposed the rates of cash Uniform Subsidy .at par with GNCT Delhi Rs.500/- for Nursery & Primary, Rs.700/- for Middle & Rs.900/- for Secondary & Senior Secondary classes, but the Council in its meeting vide Resolution No.09 (M-03) dated 29-06-2011 resolved that the rate of Uniform Subsidy be Rs.700/- for Nursery & Primary classes Rs.900/- for Middle classes Rs.1000/- for Secondary & Sr. Secondary classes for the students of NDMC/NDMC Aided, Balwari and Aanchal Schools. Again for the Academic Session 2012-13) Education Deptt. GNCT vide Circular No.F.N.DE.18-12 (3)/2003 PLG/436-442 dt. 15-06-2011 maintained the same rates for 2012-13. However, NDMC approved rates higher than Delhi Govt. during 2011-12 and 2012-13.

5. During 2013-14 it was proposed to enhance the amount to double the capacity and the matter was discussed in the Deptt. However, it was decided that the single uniform subsidy be provided to the students for the Academic Year 2013-14. However from the year 2014-15 with approval of the council double capacity Uniform Subsidy @ Rs.1400/- to Nursery to Primary, @ Rs. 1800/- to the students of VI to VIII, and Rs. 2000/- to the students of IX to XII is being given.

6. Detailed Proposal on the Subject/ Project :

During the Current Year 2016-17, it is proposed that the amount of the practice of double capacity Uniform Subsidy be continued as approved by the Chairperson,

NDMC, for Academic Session 2014-15. It is also proposed that the rate of two sets of Uniform Subsidy which was followed during 2015-16 i.e. @ Rs. 1400/- for Nursery to Primary students, @ Rs.1800/- for VI to VIII and @ Rs.2000/- for IX to XII students may continue during the current year 2016-17.

7. Financial Implication of the Project :-

Last year 2015-16 an expenditure sanction of Rs. 3,82,00,000/- was obtained. This year the expenditure sanction is required for Rs. 3,74,92,350/- as per detail given below:-

2015-16				2016-17		
Level	Rate	No. of Students	Amount of Uniform Subsidy	Rate	No. of Students	Amount of Uniform Subsidy
Nursery to V	1400	13569	1,89,96,600/-	1400	11986	1,67,80,400/-
Middle	1800	4590	82,62,000/-	1800	4537	81,66,600/-
Secondary & Sr. Sec.	2000	5432	1,08,64,000/-	2000	5380	1,07,60,000/-
Total		23591	3,81,22,600/-		21903	3,57,07,000/-
Enhancing 5% of 35707000/- i.e. 17,85,350/- taking into consideration of RTE act 2009, admissions in the schools are allowed throughout the year.						3,74,92,350/-

8. Implementation Schedule with time limits for each stage including internal processing: - One month

9. Comments of Finance Department:- At page 329/N

- 1) In Principal Approval of Chairman at Page 328/N accorded.
- 2) Finance Department has concurred the proposal at NP-329/N if the Department process the case to the competent authority, i.e. Council for A/A & E/S amounting to Rs. 3,74,92,350/- and draft agenda for cash disbursement of Uniform Subsidy in double capacity to the students of Class Nursery to XII of NDMC Schools, Aided Schools, Aanchal and Balwaris for 2016-17 as per the approved rates. Before submitting the case to the competent authority, the Department may ensure the following:-
 1. An updated status of subsidy amount kept with Axis Bank for financial year 2015-16 be brought on record and confirmed that unutilized amount has been refunded to NDMC's account.
 2. A policy on modus operandi to be followed for disbursal of uniform subsidy be framed and got approved from competent authority.
 3. A time frame for disbursement be worked out and return of unutilized fund on this account to NDMC account should be part of policy document so as to ensure that funds do not lie unattended for months.
 4. Availability of funds.
 5. Correctness of data, information and computations.
 6. The draft agenda be got signed from all concerned.
 7. The same may also be vetted from Law Department in the light of NDMC Act, 1994.

8. The nomenclature of the proposal may be suitably changed from "Cash Disbursement" to Disbursement through E-mode" in view of the GOI instructions on cashless transaction.

10. Comments of the Education Department on the comments of the Finance Department:-

In view of the above observations, the point wise replies are as under:-

1. An amount of Rs. 3,21,55,000/- on account of Uniform subsidy to NDMC students had been disbursed for the year-2015-16 through Axis Bank and out of Rs.3,21,55,000/- an amount of Rs. 3,07,19,800/- has been disbursed successfully to NDMC students through ECS.
2. In this regard it is stated that the department had already framed the policy and disbursed the double capacity uniform subsidy in the year 2014-15 and 2015-16 with the approval of Council minutes 13(M-06) dated 11.02.2015 and 05(M-04) 02/03/2016 respectively.
3. A time framed policy had already worked out by the Education Department for disbursement and return of unutilized fund on this account to NDMC account should be part of policy document so as to ensure that funds do not lie unattended for months.
4. Sufficient Funds are available under HOA; 82- 2308009-Free Uniform subsidy for the year-2016-17.
5. It is certified and ensured of Correctness of data, information and computations.
6. Needful has been done.

11. Legal implication of the subject/ Project: -

Law Deptt. has stated that there is no legal issue at this stage at Pg.-331/N.

12. Details of previous council resolutions, existing law of parliament & assembly on the subject are as under:-

- i) Council's Reso. 12 (M-2) dated 17-05-06
- ii) Council's Reso. 31 (M-4) dated 17-10-07
- iii) Council's Reso. 14 (M-1) dated 21-05-08
- iv) Council's Reso. 10 (M-6) dated 21-01-09
- v) Council's Reso. 08 (M-02) dated 21-07-10
- vi) Council's Reso. 09 (M-03) dated 29-06-11
- vii) Council's Reso. 06 (M-04) dated 30-10-12
- viii) Council's Reso. 26(M-05) dated 30-01-2015
- ix) Council's Reso. 13 (M-06) dated 11-02-2015
- x) Council's Reso. 05 (M-04) dated 02-03-2016

13. Comments of the department on the comments of the Law Department:-

- NA-

14. Certificate that all CVC Guidelines on the subject have been followed:-

Followed.

15. Recommendations:-

Following proposals are submitted for soliciting the approval of the council:-

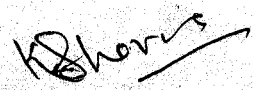
- i. Providing Uniform Subsidy (double capacity) for the students of classes IX to XII @ Rs.2000/-, for the students of classes VI to VIII @ Rs.1800/- and for the students of classes Nursery to V @ Rs.1400/- per child per annum of NDMC/ NDMC's Aided Schools, Balwaris and Aanchal Schools for an amount of Rs.3,74,92,350/- for the Academic year 2016-17.
- ii. To accord Administrative approval and expenditure sanction of Rs.3,74,92,350/- chargeable to the head of A/c "(82) 2308009. Free Uniform" wherein a budget provision exists for the financial year 2016-17.

COUNCIL'S DECISION

The Council resolved to accord approval to the proposal of the Department.

The Council further advised the concerned department to request Khadi and Village Industries Corporation (KVIC) to provide stitched uniforms for the year 2018-19.

The Council also directed the department to ensure that not more than two children of a family will be entitled for this benefit.


Secretary
New Delhi Municipal Council
Palika Kendra, New Delhi

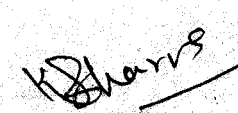
Copy of Reso. No. 32 (C-34)
of
Council's Ordinary Meeting
Dated 06/03/2017

ITEM NO. 32 (C-34)

Confirmation and signing of the minutes of the Council's Meeting No.14/2016-17 held on 02.03.2017 w.r.t. item No. 25(L-31) regarding decision in the matter of property situated at 1, Man Singh Road, commonly known as Hotel Taj Man Singh in light of the MHA's directions dated 01.01.2015 and 23.02.2017, and Hon'ble Supreme Court's directions dated 12.01.2017 in SLP (Civil) No. 33397 of 2016. (See pages 973 - 976).

COUNCIL'S DECISION

Minutes confirmed.


For Secretary
New Delhi Municipal Council
Palika Bhandra, New Delhi

**NEW DELHI MUNICIPAL COUNCIL
PALIKA KENDRA: NEW DELHI**

**MINUTES W.R.T. ITEM NO. ITEM 25 (I-31) OF THE COUNCIL'S
MEETING NO. 14/2016-17 HELD ON 02.03.2017 AT 12-30 P.M. IN THE
COUNCIL ROOM, PALIKA KENDRA, NEW DELHI.**

SPECIAL MEETING NO.	:	14/2016-17
DATE	:	02.03.2017
TIME	:	12-30 P.M.
PLACE	:	PALIKA KENDRA, NEW DELHI

PRESENT:

8. Sh. Arvind Kejriwal	-	Presiding Officer
9. Sh. Naresh Kumar	-	Chairperson
10. Sh. Karan Singh Tanwar	-	Vice Chairperson
11. Sh. Surender Singh	-	Member
12. Sh. Abdul Rasheed Ansari	-	Member
13. Dr. Anita Arya	-	Member
14. Sh. B. S. Bhati	-	Member
15. Sh. Puneet Kumar Goel	-	Member
16. Smt. Chanchal Yadav	-	Secretary

The following is the minutes w.r.t. the agenda item No. 25(L-31), and the minutes of the rest of the agenda items will be approved separately.

ITEM NO.	SUBJECT	DECISION
25 (L-31)	Decision in the matter of property situated at 1, Man Singh Road, commonly known as Hotel Taj Man Singh in light of the MHA's directions dated 01.01.2015 and 23.02.2017, and Hon'ble Supreme Court's directions dated 12.01.2017 in SLP (Civil) No. 33397 of 2016.	<p>Whereas, the Council vide resolution dated 27.09.2012 resolved to accord approval for public auction of property situated at 1, Man Singh Road, commonly known as Hotel Taj Man Singh, situated with First Right of Refusal to Indian Hotels Company Limited (IHCL); and</p> <p>Whereas, both Ld. Solicitor General of India as well as Ld. Attorney General of India vide their opinions dated 19th April, 2014 and 20th August, 2014 respectively, opined that public auction with right of first refusal is impractical and would never yield a correct and fair price; and</p> <p>Whereas, Ld. Solicitor General of India vide his opinion dated 19th April, 2014 opined that the option to renew the licence in favour of IHCL provided that a fair, market value is arrived at, the New Delhi Municipal Council's decision cannot be termed as unfair and would be well within the requirements of statutory and constitutional parameters; and</p>

Whereas, while agreeing to the opinion of Ld. Solicitor General, Ld. Attorney General for India vide his opinion dated 20.08.2014 opined that public auction should be resorted to if IHCL is not ready to give market value in terms of licence fee for renewed period; and

Whereas, Ministry of Home Affairs, Government of India (MHA) vide letter dated 01.01.2015 directed NDMC, by virtue of power vested in Central Government in terms of section 396 of the New Delhi Municipal Council (NDMC) Act 1994, to resort to public auction and find best bidder in respect of the property situated at 1, Man Singh Road, New Delhi; and

Whereas, the Council vide its resolution item no. 04 (L-10) dated 29.01.2016 resolved to approve the letter to IHCL to withdraw First Right of Refusal to IHCL given vide Council's resolution dated 27.09.2012, and to ask IHCL to handover the possession of Hotel Taj Man Singh by 29.02.2016; and

Whereas, the MHA vide letter dated 23.02.2017 informed NDMC, which reads as under:

"...when the Competent Authority in the Central Government had taken a decision under section 396 of NDMC Act 1994, which was intimated to the NDMC on 01.01.2015, the opinions of Ld. AG for India and Ld. SG of India were taken into account. Therefore this aspect may be clarified before the Hon'ble Court. The relevant extracts of the opinion of Ld. AGI is as under:

"...

12 The notes in the file indicate that one option is outright auction while another option is public auction with a right of first refusal to IHCL and the third is negotiation between the parties which yields the same consideration as would be available in "normal and fair competition".

13 In my view public auction with a right of first refusal to IHCL is impractical and would never yield a correct and fair price. The real choice is between negotiating for renewal or an outright public auction.

14 I agree with the opinion of the then Solicitor General that it will not be illegal for the NDMC to conduct mutual negotiations to arrive at a figure which would represent market value. This can be done through an expert in the field. M/s E&Y have already been given a report. Fresh reports can be asked to determine the market value. After market value is agreed to be paid by

IHCL then that mode can be followed as suggested by the then Solicitor General.

15 If IHCL is not ready to give market value in terms of license for the renewed period then obviously public auction should be resorted to."

As per the opinion of Ld. AG, the real choice was between negotiating for renewal or an outright public auction. Referring to the opinion of Ld. SG, it was stated in the opinion that the negotiation would not be illegal. However, outright public auction was also stated as the other option and auction with Right of First Refusal was clearly ruled out.

Accordingly, MHA took a decision to go for public auction to ensure highest level of transparency and to avoid any subjectivity in the course of negotiation. Thus the order vide memo dated 01.01.2015 in effect rendered the NDMC decision dated 27.09.2012 ineffective.

Therefore Ld. ASG, who is appearing for NDMC may be requested to apprise the Hon'ble Court with regard to the above."; and

In view of the above, and after taking into consideration (a) the opinion of Ld. Solicitor General of India dated 19.04.2014 and Ld. Attorney General for India dated 20.08.2014 in the matter, and (b) the Central Government directions to NDMC under section 396 of the NDMC Act, 1994 vide letters dated 01.01.2015 and 23.02.2017 to go for outright auction in the matter, and by taking holistic view in the matter, the Council resolved that:

- (v) the best available method to NDMC, which is a public authority and custodian of public property, to obtain the fair market value of rental of the said property in a fair, reasonable, non-discriminatory, transparent, non-capricious, unbiased, without favouritism or nepotism, in pursuit of promotion of healthy competition and equitable treatment, and to sub-serve the common good, is to opt for e-auction of the said premises;
- (vi) the right of first refusal to IHCL for the premises situated at 1, Man Singh Road, commonly known as Hotel Taj Man Singh, would not be in public interest being impracticable and would not yield a correct and fair price;
- (vii) the premises situated at 1, Man Singh Road, commonly known as Hotel Taj Man Singh, should be put to e-auction; and

		<p>(viii) Hon'ble Supreme Court should be apprised in compliance of its order dated 12.01.2017 accordingly.</p> <p>It was further resolved by the Council that the department may initiate further necessary action in anticipation of confirmation of the minutes of the Council.</p>
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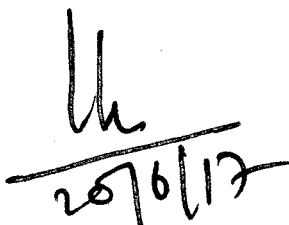
ITEM NO. 33 (C-35)

Confirmation and signing of the minutes of the Council's Meeting No.14/2016-17 held on 02.03.2017 w.r.t. item No. 26(L-32) regarding termination of license and initiating of eviction proceedings under Sections 5 & 7 of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 against CJ International Hotels Limited (hereinafter referred as "CJ International") for non-payment of outstanding license fee.

COUNCIL'S DECISION

Minutes confirmed.


(CHANCHAL YADAV)
SECRETARY


(NARESH KUMAR)
CHAIRPERSON


(ARVIND KEHRIWAL)
PRESIDING OFFICER

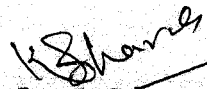
Copy of Reso. No. 33 C-35
of
Council's Ordinary Meeting
Dated 06/03/2017

ITEM NO. 33 (C-35)

Confirmation and signing of the minutes of the Council's Meeting No.14/2016-17 held on 02.03.2017 w.r.t. item No. 26(L-32) regarding termination of license and initiating of eviction proceedings under Sections 5 & 7 of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 against CJ International Hotels Limited (hereinafter referred as "CJ International") for non-payment of outstanding license fee.

COUNCIL'S DECISION

Minutes confirmed.


For Secretary
New Delhi Municipal Council
Patla Boudra, New Delhi

NEW DELHI MUNICIPAL COUNCIL
PALIKA KENDRA: NEW DELHI

**MINUTES OF THE COUNCIL'S MEETING NO. 14/2016-17 HELD ON 02.03.2017 AT 12-30 P.M.
 IN THE COUNCIL ROOM, PALIKA KENDRA, NEW DELHI.**

MEETING NO.	:	14/2016-17
DATE	:	02.03.2017
TIME	:	12-30 P.M.
PLACE	:	PALIKA KENDRA, NEW DELHI

PRESENT:

1. Shri Arvind Kejriwal	-	Presiding Officer
2. Shri Naresh Kumar	-	Chairperson
3. Sh. Karan Singh Tanwar	-	Vice Chairperson
4. Sh. Surender Singh	-	Member
5. Sh. Abdul Rasheed Ansari	-	Member
6. Dr. Anita Arya	-	Member
7. Sh. B. S. Bhati	-	Member
8. Dr. Puneet Kumar Goel	-	Member
9. Smt. Chanchal Yadav	-	Secretary

The following is the minutes w.r.t. all agenda items, except agenda item No. 25(L-31) minutes of which has been approved separately.

Item No.	Subject	Decision
25 (L-31)	Decision in the matter of property situated at 1, Man Singh Road, commonly known as Hotel Taj Man Singh in light of the MHA's directions dated 01.01.2015 and 23.02.2017, and Hon'ble Supreme Court's directions dated 12.01.2017 in SLP (Civil) No. 33397 of 2016.	Minutes has been approved separately.
26 (L-32)	Regarding termination of license and initiating of eviction proceedings under Sections 5 & 7 of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 against CJ International Hotels Limited (hereinafter referred as "CJ International") for non-payment of outstanding license fee.	The Council resolved to accord approval to the proposal of the concerned Department mentioned in Para 5(i) to 5(v) of the Preamble. It was also resolved by the Council that the department may initiate further necessary action in anticipation of confirmation of the minutes of the Council.

All other agenda items	All other agenda items	Deferred. The next Council meeting is scheduled at 09:30 a.m. on 06.03.2017.
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