



2025:DHC:10751-DB



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

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*Judgment reserved on: 20.11.2025*

*Judgment pronounced on: 03.12.2025*

+ FAO (OS) 317/2017 and CM APPL. 45899/2017  
M/S KAPOOR TENT & CATERERS THR. ITS PARTNER,  
SH. VIPIN KAPOOR .....Appellant

Through: Mr. Santosh Kumar, Sr. Adv.  
along with Mr. Ankur Katyal,  
Mr. Harshil Gupta and Mr.  
Taarush Bajaj, Advs.

versus

DELHI TOURISM & TRANSPORTATION DEVELOPMENT  
CORPORATION LTD. ....Respondent

Through: Mr. Sandeep Prakash  
Aggrawal, Sr. Adv. along with  
Ms. Sujata Kashyap, Ms. Tanya  
Chanda and Ms. Ishika Rawat,  
Advocates with Mr. Kapil  
Chaturvedi (Assistant Legal  
Manager)

**CORAM:**

**HON'BLE MR. JUSTICE ANIL KSHETARPAL**

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN  
SHANKAR**

### **J U D G M E N T**

#### **ANIL KSHETARPAL, J.**

1. Through the present Appeal, the Appellant [Petitioner before the learned Single Judge] assails the correctness of Judgment dated 22.02.2017 passed by the learned Single Judge in O.M.P. No. 430/2015, whereby the petition under Section 34 of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as 'AC Act'] filed



by the Appellant, challenging the Arbitral Award dated 20.04.2015 came to be dismissed.

2. The issue that arises for consideration in the present Appeal is whether the learned Single Judge was justified in declining to interfere with the Arbitral Award dated 20.04.2015, and in holding that none of the grounds urged by the Appellant fell within the limited scope of interference permissible under Section 34 of the AC Act, thereby warranting no judicial intervention.

### **FACTUAL MATRIX**

3. The brief facts, leading to filing of the present Appeal, are as follows. The Appellant, M/s Kapoor Tent & Caterers was the licensee engaged in operating specified facilities within the Azad Hind Gram Tourist Complex situated on NH-10, Rohtak Road, Delhi. The Respondent, Delhi Tourism & Transportation Development Corporation Ltd. [D.T.T.D.C], is a public sector undertaking of the Government of NCT of Delhi and was the licensor in respect of the said premises.

4. The Appellant entered into a License Agreement dated 01.10.2004 with the Respondent for running a restaurant, three kiosks, a conference-cum-banquet hall for organising conferences and parties, and an open green area for temporary wedding pandals at Azad Hind Gram Tourist Complex, NH-10, Rohtak Road, Delhi. The License was granted for a period of ten years (5+5), with the Appellant being responsible for maintaining horticulture and upkeep of the premises.



5. The land in question had earlier been allotted on lease to the Respondent by the competent authority: a communication dated 27.12.1996 records allotment/lease of the Gaon Sabha land of Village Tikri Kalan to D.T.T.D.C. on a long-term basis, with conditions restricting use and permitting the lessor to cancel the lease in specified circumstances. The Appellant later contended in these proceedings that the License Agreement dated 01.10.2004 was in conflict with the terms of the said lease deed and was therefore void or unenforceable; the Respondent, however, maintained that the License Agreement was validly executed and binding *inter se* the parties.

6. On 28.05.2009, prior to the expiry of the License Agreement on 14.09.2009, the Appellant requested the Respondent to extend the License for a further period of five years. By a letter dated 07.10.2009, the Respondent extended the License only for three months beyond 14.09.2009. The Appellant, however, continued to deposit the License fee till 2011, relying on verbal assurances from the Respondent that the License would be extended. Thereafter, by a letter dated 27.04.2010, the Respondent purported to terminate the License.

7. The Appellant filed a suit seeking a Mandatory Injunction. During the proceedings, the Respondent invoked Clause 53 of the License Agreement, which provided for arbitration, and filed an application under Section 8 of the AC Act. By an order dated 13.04.2011, the civil court referred the disputes to arbitration.

8. In the arbitral proceedings, the Appellant filed a claim seeking direction to the Respondent to extend the License for a further five



years. The Respondent filed a counter-claim seeking damages for alleged unauthorized occupation, including loss of revenue and penalties imposed by the Municipal Corporation of Delhi (“MCD”). On 26.08.2011, the MCD sealed the premises on the ground that the property could not be lawfully used for running a banquet hall or other commercial activities.

9. During the pendency of arbitration proceedings, the Respondent filed an application under Section 17 of the AC Act seeking possession of the premises. By an interim order dated 03.02.2014, the learned Arbitrator allowed the said application in favour of the Respondent. The Appellant thereafter filed an application on 07.03.2014 seeking recall of the interim order, which came to be dismissed; however, it was directed that upon de-sealing of the premises, the Respondent would ensure that the process takes place in the presence of the Appellant so as to enable the retrieval of its goods.

10. The learned Arbitrator framed the issues for adjudication in respect of the claim and counter-claim, which read as follows:

*“1. Whether the claimant, in terms of the lease agreement dated 01.10.2004 executed between the claimant and the respondent regarding lease of the premises located at Azad Hind Gram Tourist Complex, Rohtak Road, Delhi for a period of 5 years with effect from 15-09-2004 and which period expired on 14.09.2009, is entitled to further extension of lease of the said premises for a period of 5 years?*

*2. If yes, from which date and on what terms and conditions?*

*3. Relief?*

*Counter Claim:*

*1. Whether the respondent is entitled to damages @ Rs.3 lacs per month w.e.f. 14.12.2009, the amount of revenue the premises would fetch at the current market value and damages @ Rs. 20,000/- for the loss of revenue?*



2. *Whether the respondent is entitled to cost/penalty imposed by MCD for desecrating the premises?*
3. *Whether the respondent is entitled to the interest on the above amounts and if yes, for which period and at what rate?*
4. *Relief?"*

11. By the Arbitral Award dated 20.04.2015, the Arbitrator held that there was no obligation on the Respondent to grant a five-year extension of the License. Consequently, the claim of the Appellant for extension of the License was rejected. Regarding the counter-claim, the Arbitrator held that the Respondent had not produced independent evidence on market rental rates. Therefore, the Arbitrator applied the rates mentioned in the License Agreement dated 01.10.2004 and directed the Appellant to pay damages as under:

- i. *Rs. 1,56,250/- plus service tax per month from 15.12.2009 to 14.09.2010;*
- ii. *Rs. 2,25,000/- plus service tax per month from 15.09.2010 to 03.02.2014;*
- iii. *Rs. 3,10,000/- plus service tax per month from 04.02.2014 till the date of handing over possession to the Respondent;*
- iv. *Interest at 9% per annum on amounts not paid within two months of the Award.*

12. Aggrieved by the Arbitral Award dated 20.04.2015, the Appellant approached the learned Single Judge by filing O.M.P. No. 430/2015 under Section 34 of the AC Act, seeking to set aside the Award. The Appellant contended that the Arbitral Award was liable to be interfered with on several grounds, including that the learned Arbitrator acted in excess of jurisdiction, failed to appreciate the distinction between arbitrable and non-arbitrable matters, ignored the express bar under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 [hereinafter referred to as 'PP Act'], and



wrongly awarded license fees and damages for periods when the premises were sealed by the MCD. It was further contended that the License Agreement dated 01.10.2004 was void and unenforceable as being inconsistent with an earlier lease executed in favour of the Respondent, and that the Arbitral Award was contrary to the public policy of India.

13. The learned Single Judge, after consideration, held that the Appellant had not raised any specific objection to the jurisdiction of the Arbitrator under Section 16 of the AC Act during the arbitral proceedings. The vague statement made in the reply to the counter-claim regarding the applicability of the PP Act was not sufficient to challenge jurisdiction. It was further observed that the Appellant had actively participated in the arbitral proceedings and, therefore, could not later contend that the Arbitral Tribunal lacked jurisdiction to entertain the counter-claim.

14. On the merits, the learned Single Judge noted that the claim for extension of the License was rejected by the Arbitrator on the basis that the Respondent was not obliged to grant a five-year extension and that the extended license period had already expired by efflux of time. Regarding the counter-claim, it was held that the Arbitral Tribunal had rightly applied the rates specified in the License Agreement to calculate damages in the absence of independent evidence on market rental rates. The learned Single Judge concluded that the Arbitral Award was neither in violation of the AC Act nor opposed to public policy and that the Appellant had failed to make out any ground under Section 34 to justify interference with the Award. Consequently,



O.M.P. No. 430/2015 was dismissed with no order as to costs.

## **15. CONTENTIONS OF THE APPELLANT**

15.1. Learned senior counsel for the Appellant submitted that the learned Arbitrator exceeded his jurisdiction in entertaining and allowing the counter-claims of the Respondent, which, according to the Appellant, pertained to matters falling within the exclusive domain of the PP Act. It was urged that disputes relating to possession, eviction and recovery of occupation charges from public premises are non-arbitrable, and therefore, the Arbitral Tribunal lacked competence to adjudicate such issues.

15.2. It was contended that the License Agreement entered into between the parties was itself contrary to and in conflict with the Lease Deed dated 27.12.1996 executed by the Gaon Sabha authorities in favour of the Respondent, and therefore, the License Agreement was void, unenforceable and obtained by misrepresentation. On this premise, it was argued that the Arbitral Award, being founded on an illegal and vitiated contract, is liable to be set aside.

15.3. It was further argued that the learned Arbitrator had no authority in law to determine or award compensation or damages, as such determination falls outside the scope of the arbitration clause. It was contended that the Arbitrator could not assume powers that were never conferred under the contract, and therefore the Award travelled beyond the reference and is liable to be annulled.

15.4. Learned senior counsel additionally submitted that the



quantification of amounts under the Award is erroneous, insofar as it includes the period during which the premises stood sealed by the Municipal Corporation of Delhi. It was urged that the sealing occurred due to alleged misuse, and that the Appellant could neither utilise the premises nor conduct business during such period; consequently, no liability to pay licence fee or damages could arise for that duration.

15.5. It was further urged that the Appellant was entitled to an extension of the License, based upon assurances allegedly given by the Respondent, and that the continued payments made by the Appellant were in reliance upon such representations. It was submitted that the Arbitrator failed to consider this aspect and rejected the claim in an arbitrary manner.

15.6. It was also submitted that the Appellant has already paid a sum of Rs. 1.4 crores under the License Agreement, and in any event, the possession of the premises has been handed over to the Respondent, including during proceedings arising out of contempt. Therefore, it was argued that no further financial liability could survive against the Appellant, and the Award directing further payment is inequitable and unsustainable.

15.7. Learned senior counsel for the Appellant also relied on several judicial authorities to contend that the counter-claims were non-arbitrable or that the Arbitrator exceeded jurisdiction. The cases cited include:

- i. ***Indian Trade Promotion Organization v. International***





*Amusement Ltd.*<sup>1</sup>, for the proposition that disputes under the Public Premises Act may fall outside arbitrable domain.

ii. *M/s Fortune Grand Management Pvt Ltd v. Delhi Tourism & Transport Dev. Corp.*<sup>2</sup>, regarding conduct of Estate Officer under the PP Act and limits on arbitration jurisdiction.

iii. *S.S. Con-Build Pvt. Ltd. v. DDA*<sup>3</sup>, on arbitrability of disputes under special statutes

iv. *Kanodia Infratech Ltd. v. Dalmia Cement (Bharat) Ltd.*<sup>4</sup>, concerning jurisdiction of arbitrator to try disputes arising under special statutes or agreements.

v. *M/s C J International Hotels Ltd. v. NDMC*<sup>5</sup>, on the scope of Section 20 of the Arbitration Act in determining matters within reference.

vi. *Gayatri Balasamy v. M/s ISG Novasoft Technologies Ltd.*, on powers of the Court to modify an award under the Arbitration Act and limitation of judicial interference.

The Appellant submitted that, on the basis of these authorities, the counter-claims for arrears of license fees, damages, and occupation charges under the License Agreement were non-arbitrable, or in the alternative, the Arbitrator exceeded jurisdiction, awarded amounts beyond the reference, and thereby violated the public policy of India.

15.8. Lastly, it was argued that the learned Single Judge erred in dismissing the petition under Section 34 of the AC Act, without

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<sup>1</sup> 2007 (142) DLT 342

<sup>2</sup> 2016 4 ARB LR 325

<sup>3</sup> 2023 SCC Online Del 2633

<sup>4</sup> 2021 284 DLT 722

<sup>5</sup> I.A. No. 2957/90 in Suit 1193/90



appreciating that the Award suffers from patent illegality, jurisdictional errors, and violation of public policy, particularly where the dispute pertains to public premises and is alleged to be non-arbitrable.

## **16. CONTENTIONS OF THE RESPONDENT**

16.1 *Per contra*, learned senior counsel for the Respondent submitted that the present Appeal is a meritless attempt to reopen issues that stand conclusively determined by the learned Arbitrator, who acted strictly within the contours of the License Agreement, the pleadings, and the evidentiary record. It was contended that the Award is a reasoned determination based on contractual obligations voluntarily undertaken by the Appellant, and therefore, the scope of challenge is extremely narrow, particularly in an Appeal under Section 37 of the AC Act, where the Court cannot reassess evidence, reinterpret contractual terms, or substitute its own view merely because another view is possible.

16.2 It was submitted that the Appellant has attempted to create a false narrative of lack of jurisdiction, whereas the Appellant not only invoked arbitration but actively participated in the proceedings, filed claims and documents, led evidence, cross-examined witnesses, and never raised a jurisdictional objection under Section 16 of the AC Act. It was argued that having submitted to jurisdiction and contested the matter on merits, the Appellant is estopped from challenging the Arbitrator's competence after an unfavourable Award. Reliance was placed on the principle that jurisdictional objections must be raised at



the earliest and cannot be introduced belatedly as an afterthought.

16.3 The Respondent further submitted that the contention that the dispute falls within the exclusive domain of the PP Act is wholly misconceived. It was argued that the present proceedings did not concern eviction, removal, or recovery of possession under the PP Act, and the Respondent never invoked statutory machinery under the PP Act. Rather, the disputes adjudicated pertained to arrears of licence fee, unpaid contractual dues, damages and occupation charges for continued use, and consequences of overholding after expiry of licence. Such issues, it was submitted, are purely contractual and squarely arbitrable. The Appellant cannot artificially re-characterise the dispute to escape monetary liability.

16.4 It was also contended that the counter-claims adjudicated by the Arbitrator were within the scope of the arbitration clause and arose directly from breaches by the Appellant, including unauthorised commercial exploitation, non-payment of agreed charges, and continued occupation despite expiry of the licence period. The attempt to portray the counter-claims as ultra vires or barred by statute was described as an untenable and legally unsustainable device to deny dues payable under the Agreement.

16.5 The Respondent submitted that the plea relating to sealing of the premises by MCD is factually incorrect and legally irrelevant. It was argued that the sealing arose from unauthorised activities attributable to the Appellant; that the Appellant continued to benefit commercially; that sealing did not extinguish contractual payment



obligations, and that the Arbitrator, after assessing evidence, rejected the sealing-based defence. It was emphasised that the Appellant seeks a re-appreciation of factual findings, which is impermissible under Section 34 of the AC Act and a fortiori under Section 37 of the AC Act.

16.6 It was contended that no contractual or equitable right of extension ever arose, that the licence expired by efflux of time, and that any continuation of possession thereafter was illegal. It was argued that the Appellant continued to operate, earn revenue, and utilise the premises even after expiry, and therefore liability for damages and mesne profits necessarily followed. The Arbitrator's findings on this aspect, being based on documents and conduct, cannot be interfered with.

16.7 It was further submitted that the Appellant has already admitted payments made and possession handed over, which reinforces that the dispute relates to quantification of dues and not to rights in land or eviction proceedings. It was argued that the Appellant cannot rely on partial performance to negate remaining liabilities.

16.8 Learned senior counsel for the Respondent further submitted that reliance placed by the Appellant on non-arbitrability under the PP Act is misconceived. It was contended that the Supreme Court in *Central Warehousing Corporation v. Sidhartha Tiles & Sanitary Pvt. Ltd.*<sup>6</sup> has held that contractual disputes, including issues of renewal and enhanced demands arising during the subsistence of a

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<sup>6</sup> 2024 SCC OnLine SC 2983



contract, are distinct from proceedings under the PP Act, which only governs eviction of unauthorized occupants. Consequently, the dispute in the present case, relating to license fee, overholding, and damages, is squarely arbitrable.

### **ANALYSIS & FINDINGS**

17. This Court has considered the submissions advanced by learned senior counsel for the parties, perused the record, and examined the scope of interference available to this Court in an Appeal under Section 37 of the AC Act. It is well settled that the jurisdiction under Section 37 is even more restricted than that under Section 34, and unless the Appellant demonstrates that the learned Single Judge committed an error in refusing to set aside the Award on grounds of perversity, patent illegality, or conflict with the fundamental policy of Indian law, no interference is warranted.

18. The primary contention of the Appellant that the counter-claims were non-arbitrable on account of the PP Act is devoid of merit. This Court notes that in ***Central Warehousing Corporation*** (supra), the Supreme Court considered whether the Public Premises Act overrides the Arbitration and Conciliation Act, 1996. At paragraph 13, it was observed that disputes arising out of the terms of a contract, including issues of renewal and enhanced demands during the subsistence of the contract, are distinct from the eviction proceedings under the PP Act. The Court held that the Public Premises Act neither bars nor overlaps with the scope of arbitration. The said paragraph 13 reads as under –

*“13. Re: Whether the Public Premises Act, 1971 overrides the Arbitration and Conciliation Act, 1996: This submission has to fail.*



*The reasons are simple and straight forward. The dispute that is raised in the Section 11 application relate to promises and reciprocal promises arising out of the agreement dated 26.09.2012. The right of renewal as well as the legality and propriety of the enhanced demand arose during the subsistence of the agreement. It will be on the interpretation, construction and the obligations arising out of the agreement that the respondent's claim rests. On the other hand, The Public Premises Act authorises the ejectment of a tenant in unauthorised occupation of public premises and for consequential directions. The original lease as it were, validly subsisted till 11.09.2015 and the dispute between the parties related to the period commencing from 12.09.2012 to 11.09.2015, when the lease expired. The Public Premises Act would not even cast a shadow on this period. In so far as the dispute relating to this right of renewal is concerned, it depends on the terms of the agreement. The Public Premises Act neither bars nor overlaps with the scope and ambit of proceedings that were initiated under the Arbitration and Conciliation Act."*

Applying the same principle, the disputes before the Arbitral Tribunal pertained to arrears of licence fees, overholding, damages, and quantification of occupation charges under the License Agreement. No proceedings under the PP Act were invoked by the Respondent, and the issues adjudicated were contractual in nature. Consequently, the plea of non-arbitrability is unsustainable.

19. This Court has also examined the judicial precedents relied upon by the Appellant in support of the plea of non-arbitrability and alleged lack of jurisdiction of the Arbitral Tribunal. The said decisions, in the considered view of this Court, do not advance the case of the Appellant. A careful reading of the relevant paragraphs relied upon reveals that these authorities either (i) pertain to circumstances where statutory proceedings under the PP Act had in fact been initiated; (ii) concern determination of jurisdiction in materially different contractual settings; or (iii) address the scope of interference by the Court in situations where the Award was shown to



be perverse or contrary to the record. None of these decisions lay down any proposition that monetary claims for licence fee, occupation charges, damages for overholding, or quantification of dues arising from continued use of premises after expiry of a licence, fall outside the scope of arbitration. On the contrary, the consistent judicial position, reaffirmed by the Supreme Court in ***Central Warehousing Corporation*** (*supra*), is that such disputes remain purely contractual and are capable of being adjudicated by an Arbitrator. Accordingly, the reliance placed by the Appellant on the aforesaid authorities is misplaced and does not create any ground to interfere with the Award or to fault the conclusion reached by the learned Single Judge.

20. The Appellant's contention that the License Agreement dated 01.10.2004 is void or unenforceable due to alleged conflict with the earlier lease deed executed on 27.12.1996 is wholly unsustainable. The learned Single Judge correctly observed that the Appellant actively participated in the arbitration proceedings and never raised this objection as a specific jurisdictional challenge under Section 16 of the AC Act. Moreover, the Appellant was not a party to the earlier lease deed and cannot rely on a document to which it was a stranger to invalidate a contract it freely executed and performed. The record shows that the Appellant operated the premises, paid licence fees, sought an extension, and invoked arbitration under the License Agreement. A mere assertion of inconsistency, without proof of actual illegality or violation of public policy, is insufficient to impeach the Award. The Arbitral Tribunal, after examining the relevant documents and evidence, found the License Agreement valid and binding, and



there is no basis to disturb this finding. Therefore, the contention that the License Agreement is void on account of conflict with an earlier deed is legally untenable and cannot constitute a ground to interfere with the Award under Section 34, let alone Section 37 of the AC Act. In addition, admittedly the Appellant has successfully carried out his business during the entire period of the lease and 03 months thereafter.

21. The contention that the Arbitrator exceeded the scope of the reference by awarding damages for the period during which the MCD sealed the premises is also without merit. The learned Single Judge rightly noted that the sealing arose on account of alleged unauthorised activities of the Appellant, and that the Appellant never surrendered possession and continued to remain in occupation even during the period of sealing. The determination of quantum of damages for the entire period of overholding falls squarely within the jurisdiction conferred under the arbitration clause. The counter-claims arose directly from the Appellant's continued occupation of the premises after expiry of the licence period and non-payment of agreed dues. Evidence was led on the issue, arguments were addressed by both sides, and the Arbitral Tribunal quantified the liability on the basis of the agreed rates. A plea of "excess of jurisdiction" cannot succeed when the claims fall within the scope of the arbitration clause and were adjudicated on merits. Mere dissatisfaction with the computation cannot constitute a ground for interference under Section 34 or Section 37 of the AC Act.

22. The contention that the Appellant was entitled to an extension of the License based on alleged verbal assurances from the





Respondent is also unsustainable. The record demonstrates that the Appellant requested extension by formal communication on 28.05.2009, and the Respondent granted only a three-month extension. The Arbitral Tribunal examined the conduct of the parties, the License Agreement, and communications exchanged, and held that no contractual or equitable obligation arose in favour of the Appellant for a further five-year extension. Verbal assurances, uncorroborated by any written commitment, cannot override the express terms of a validly executed agreement. The Appellant's reliance on such alleged assurances, therefore, does not provide a ground to interfere with the Award.

23. The Appellant's claim that prior payments aggregating to Rs. 1.4 crores and surrender of possession during the pendency of proceedings extinguished any further liability is also without merit. The Arbitral Tribunal assessed the payments made and possession handed over, and determined the damages and mesne profits due to overholding and continued occupation beyond the licence period. Such quantification is a matter of contractually agreed rates and factual calculation, which falls within the competence of the Arbitral Tribunal. Past payments do not absolve the Appellant of liability for amounts accruing subsequently or for periods not covered by prior settlements.

24. The Appellant's contention that the Arbitral Award violates public policy or suffers from patent illegality is also rejected. The Award is a reasoned decision based on the contractual obligations, evidence led, and issues framed between the parties. There is no



indication that the Arbitrator acted in a manner contrary to law, or disregarded fundamental principles of justice. The challenges raised by the Appellant essentially seek re-appreciation of evidence and reassessment of contractual interpretation, which is impermissible in proceedings under Section 34 or Section 37 of the AC Act.

25. Having regard to the totality of circumstances, this Court finds no error in the judgment of the learned Single Judge in dismissing O.M.P. No. 430/2015. The Arbitral Award dated 20.04.2015 is based on proper construction of the License Agreement, correct assessment of evidence, and falls within the scope of the reference. All contentions of the Appellant, including alleged non-arbitrability, conflict with the earlier lease deed, excess of jurisdiction, claim for extension based on assurances, impact of MCD sealing, prior payments, or violation of public policy, are without merit. Consequently, no interference under Section 37 of the AC Act is warranted.

### **CONCLUSION**

26. In view of the foregoing discussion and findings, the present Appeal, being devoid of merit, is dismissed.

27. The judgment dated 22.02.2017 passed by the learned Single Judge in O.M.P. No. 430/2015 is hereby upheld. The Arbitral Award dated 20.04.2015 passed by the learned Arbitrator in the arbitration proceedings between the parties is confirmed and shall continue to have full force and effect.



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28. The pending application also stands dismissed.

**ANIL KSHETARPAL, J.**

**HARISH VAIDYANATHAN SHANKAR, J.**

**DECEMBER 03, 2025**

*s.godara/pal*