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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 11th September, 2025

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W.P.(C) 17894/2024, CM APPL. 76150/2024, 1930/2025, 4042/2025, 4081/2025 and 4082/2025

DELHI INTERNATIONAL AIRPORT LTD.

.....Petitioner

Through: Mr. Rajiv Nayar, Senior Advocate with Ms. Anuradha Dutt, Mr. Anish Kapur, Ms. Suman Yadav, Mr. Raghav Dutt and Mr. Gurudas Khurana, Advocates.

versus

MUNICIPAL CORPORATION OF DELHI

.....Respondent

Through: Mr. Sanjay Jain and Ms. Malvika Trivedi, Senior Advocates with Mr. Tushar Sannu, Standing Counsel, Mr. Priyankar Tiwari, Mr. Shivam, Ms. Palak Jain, Mr. Nishank Tripathi and Mr. Shailendra Salaria, Advocates for Respondent/ MCD along with Mr. Sang Priya Shakya and Mr. Ravi, Ex. Engineer.

Mr. Kaushal Kapoor, Advocate for applicant in CM APPL. 1930/2025.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J.**

1. Petitioner/Delhi International Airport Ltd. ('DIAL') has filed this petition under Article 226 of the Constitution of India for a direction to Municipal Corporation of Delhi ('MCD') to exclude the Airport Zone from its Tender Notice dated 28.11.2024, whereby MCD invited tenders for setting up Material Recovery Facility ('MRF') for management of dry solid waste in Najafgarh Zone on Public Private Partnership ('PPP') on Design, Build, Finance, Operate and Transfer Basis.



2. Case of DIAL, as set out in the petition is that MCD issued a Tender Notice on 28.11.2024 for setting up MRF for temporary storage, segregation, sorting and recovery of recyclables/non-recyclables/RDF (refused derived fuel)/inert from Municipal Solid Waste ('MSW')/dry waste in Najafgarh Zone and further sale/disposal as per terms and conditions of the Concession Agreement, to be entered into by and between MCD and the successful bidder. The area for the Project, as described in the Tender Notice, is Dwarka Sector-29 in Najafgarh Zone.

3. Airports Authority of India ('AAI') is an Authority established under The Airports Authority of India Act, 1994 ('AAI Act'). Under Section 12 of AAI Act, it is AAI's function to manage the Airports, the civil enclaves and the aeronautical communication stations efficiently and it is duty bound to provide air traffic and air transport services at any Airport and civil enclaves. Sub-Section (3) of Section 12 enumerates other functions of AAI, without prejudice to the general provisions contained in Sub-Sections (1) and (2), which include development, construction and maintenance of runways, taxiways etc., at the Airports and civil enclaves as also establishment and maintenance of hotels, restaurants and restrooms at or near the Airports.

4. In order to seek substantial private participation for development and upgradation of the Airports in the country, which entailed huge amount of investment and expertise, AAI Act was amended by Act No. 43/2003 providing for establishment and operation of private Airports in India. By this amendment, Section 12A was inserted, empowering AAI to lease the Airport premises, including buildings and structures thereon and appertaining thereto, to carry out some of its functions under Section 12, in public interest or in the interest of better management of Airports,



notwithstanding anything contained in the said Act. By virtue of Section 12A(4), the lessee, who is assigned any function of AAI under sub-Section (1) shall have all powers of the Authority necessary for performance of such function, in terms of the lease.

5. It is averred in the petition that DIAL is a Joint Venture, formed as a consortium between GMR Airports Limited, AAI and Fraport AG Frankfurt Airport Services Worldwide and was established for the sole purpose of exercising rights and authority as well as carrying out obligations to undertake operation, maintenance, development, design, construction, upgradation, modernization, finance and management of Delhi Airport under the Operation Management and Development Agreement ('OMDA'), executed between AAI and DIAL on 04.04.2006. 'Airport Site' is defined under OMDA to mean underlying land forming part of Demised Premises (as defined in the Lease Deed) agreed to be demised by AAI in pursuance of OMDA and all land (including Excluded Premises) acquired or leased by JVC during the term under the Lease Deed or otherwise. It comprises of 4799 acres of land parcels, which are demised to DIAL under Lease Deed dated 25.04.2006 and includes buildings, constructions and immovable assets etc., thereon. DIAL avers that Airport Site includes Airport terminals, passengers as well as cargo, in-flight catering/kitchen, administrative facilities, like ATC, Government and security offices, airside and cityside etc. and Aerocity.

6. It is averred that Clause 2.1.1 of OMDA vests in DIAL exclusive rights and obligations to perform services and activities constituting 'Aeronautical Services' and 'Non-Aeronautical Services' at the Airport, in accordance with terms and conditions of OMDA. Schedule 5 of OMDA details the aeronautical services and includes at Item 50 '*waste and refuse*



treatment and disposal'. Clause 2.2.3 obligates DIAL to provide aeronautical services at the Airport Site. Basis this exclusivity granted to DIAL, it has been successfully performing all its functions and services till date and has deployed significant resources to carry out the desired objectives.

7. It is averred that upon notification of the Solid Waste Management Rules, 2016 ('2016 Rules') by Ministry of Environment and Forests and the Solid Waste Management Byelaws, 2017 ('2017 Byelaws'), notified by Government of NCT of Delhi ('GNCTD'), relating to management and disposal of bulk waste, MCD issued directions to DIAL on 03.07.2017 to comply with 2016 Rules and 2017 Byelaws in recognition of DIAL's exclusive rights and obligations in respect of the Airport Zone. In due compliance with OMDA and 2016 Rules as also directions of MCD, DIAL entered into a Service Agreement dated 04.03.2022 ('Service Agreement') with an expert agency in the field of bulk waste management viz., JK Contractors for management of solid waste generated in the Airport Zone, including collection of waste from Delhi Airport premises, such as passenger terminals, in-flight catering, cargos, Aerocity etc. and segregating the waste into various categories. Pursuant to the Service Agreement, JK Contractors invested over Rs. 10 crores on the MRF and equipment, employing over 120 employees to provide services under the contract.

8. It is stated that on 17.01.2023, MCD wrote to DIAL to comply with 2016 Rules and 2017 Byelaws and also sought information in this regard, to which DIAL responded on 09.02.2023 intimating MCD of the appointment of the contractor as also about its objective of 'zero waste to landfill' and that the solid waste generated at IGI Airport ('IGIA') premises is being segregated and stored into different streams as required by MCD.



9. It is stated that pursuant to MCD's mandate, DIAL also established an MRF as per Rule 3(31) of 2016 Rules at IGIA premises with covers and netting and adequate arrangements to prevent attraction of birds and animals. Due intimation in this regard was sent to Directorate General of Civil Aviation ('DGCA'), the regulatory body in the field of civil aviation. DGCA was informed of establishment of MRF for storage, segregation, sorting and recovery of recyclables from municipal solid waste generated at Delhi Airport and permission was sought under Rule 91 of Aircraft Rules, 1937. DGCA granted permission vide letter dated 12.05.2023.

10. It is stated that through several communications, such as letters dated 02.11.2023, 11.01.2024, DIAL informed MCD that the entire Airport Zone falls in the exclusive domain of DIAL with respect to functions and obligations under OMDA and 2016 Rules and also requested for assistance to prevent any unauthorized agency from collecting solid waste from Airport Zone. Despite being aware of the fact that DIAL was the exclusive custodian of the Airport Site for purposes of obligations under OMDA, including solid waste management, MCD issued the impugned Tender Notice, purely for commercial reasons, to unlawfully select an agency for setting up MRF so as to manage dry solid waste in Najafgarh Zone. The '*Scope of Work*' as per Tender Notice, which overlapped with the functions of DIAL, were as follows:-

"7. Scope of Work

5. The Concessionaire shall tie up with BWGs (includes Hotels, Markets, Hospitals, Malls, Metro, Railways, Airport, Aerocity etc.) under the MCD jurisdiction and shall deploy required vehicles and manpower to collect dry waste from the above sources and transport the same to the MRF facility."



11. Upon getting to know of the impugned Tender Notice, DIAL wrote to MCD on 10.12.2024 regarding the unlawful inclusion of the Airport Zone in the Project area and highlighted that DIAL had been fully compliant with the 2016 Rules and 2017 Byelaws in managing solid waste with an in-house mechanism and an MRF, including through a Service Agreement with a third agency. It was emphasized in the letter that under Clause 2.1.1 of OMDA read with Schedule 5, it was the obligation of DIAL to carry out waste and refuse treatment and disposal and hence, the Airport and Aerocity be excluded from the Scope of work in the Tender Notice. However, there was no response and DIAL filed the present petition, in which interim order was granted by the Court restraining MCD to proceed with the tender process to the extent it included the disputed areas in the Scope of Work.

SUBMISSIONS ON BEHALF OF DIAL:

12. Exercising power under Section 12A of AAI Act, AAI executed OMDA dated 04.04.2006 with DIAL for operation, management and development of IGIA and leased 4799 acres of land parcel along with buildings, constructions etc. thereon, by way of Lease Deed dated 25.04.2006. 'Airport Site' includes Airport terminals, passengers as well as cargo, in-flight catering/kitchen services, administrative facilities, such as ATC, Government and Security Agency offices, Airside and Cityside and Aerocity etc. Under OMDA, DIAL as the custodian of the Airport Site has been granted exclusive rights and obligations in respect of aeronautical and non-aeronautical services in the Airport Zone. DIAL is also under an obligation to carry out aeronautical services, enumerated in Schedule 5 thereof, which include waste and refuse treatment and disposal. Pertinently, DIAL has also been managing other facilities, such as maintenance of internal roads, street lighting, horticulture, building approvals etc., since



2007 at the Airport Site. Recognising the rights of DIAL under 2016 Rules and 2017 Byelaws, MCD issued directions vide letter dated 03.07.2017 to comply with Rules and to carry out this objective, DIAL engaged JK Contractors for 10 years, which in turn invested over Rs. 10 crores on setting up the facility and buying equipment as also employing 120 employees. On 17.01.2023, MCD again wrote to DIAL to comply with the 2016 Rules and 2017 Byelaws, in response to which on 09.02.2023, DIAL informed MCD that it was totally compliant with the Rules and was segregating and storing the solid waste, generated at the Airport Site. DIAL also established an MRF under Rule 3(31) of 2016 Rules with adequate measures and precautions required as per DGCA norms, with the approval and permission of DGCA. The correspondence exchanged between MCD and DIAL over the years reflects that MCD was completely cognizant that solid waste management at Airport Site was the function and obligation of DIAL and the municipality could not take over this function.

13. MCD cannot eviscerate DIAL's rights under OMDA by unlawfully floating the impugned tender. Under OMDA, DIAL has exclusive rights and obligations to undertake functions of operation, maintenance, development, design, construction, upgradation, modernisation and management of Delhi Airport and perform services and activities constituting aeronautical and non-aeronautical services, which include waste and refuse treatment and disposal. There cannot be any tortuous interference by MCD in DIAL's legally valid and binding Service Agreement with JK Contractors. Article 2.1 of OMDA relates to 'Grant of Function' under which DIAL has been given exclusive right and authority during the term of OMDA to take over some of the functions as AAI, as detailed therein by Clause 2.1.1. Conjoint reading of Articles 2.1.2, 2.2.3 and 2.2.4 of OMDA leaves little doubt



that when it comes to solid waste management at Airport Site, it is the exclusive domain of DIAL. Relevant provisions relied upon by DIAL are as follows:-

“2.1 Grant of Function

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

2.1.2 Without prejudice to the aforesaid, AAI recognizes the exclusive right of the JVC during the Term, in accordance with the terms and conditions of this Agreement, to:

- (i) develop, finance, design, construct, modernize, operate, maintain, use and regulate the use by third parties of the Airport;*
- (ii) enjoy complete and uninterrupted possession and control of the Airport Site and the Existing Assets for the purpose of providing Aeronautical Services and Non-Aeronautical Services;*
- (iii) determine, demand, collect, retain and appropriate charges from the users of the Airport in accordance with Article 12 hereto; and*
- (iv) Contract and/or sub contract with third parties to undertake functions on behalf of the JVC, and sub-lease and/or license the Demised Premises in accordance with Article 8.5.7.*

2.2 Sole Purpose of the JVC

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2.2.3 Aeronautical Services, Non-Aeronautical Services and Essential Services

Subject to the foregoing and to Applicable Law, JVC shall undertake/provide Aeronautical Services and Essential Services at the Airport Site. JVC may seek to undertake/provide Non-Aeronautical Services at the Airport Site by including them in the proposed (draft) Master Plan, provided however, if the same form a part of the (final)



Master Plan then the same shall be undertaken as provided in this Agreement. JVC and AAI shall upon mutual agreement between the Parties update the list of Non-Aeronautical Services to include such other activities, as requested by AAI or JVC.

Notwithstanding anything contained in this Agreement, the JVC shall not undertake any activities at the Airport Site other than Aeronautical Services, Non-Aeronautical Services and Essential Services.

2.2.4 It is expressly understood by the Parties that JVC shall provide Non-Aeronautical Services at the Airport as above, provided however that the land area utilized for provision of Non- Transfer Assets shall not exceed five percent (or such different percentage as set forth in the master plan norms of the competent local authority of Delhi, as the same may change from time to time) of the total land area constituting the Demised Premises. Provided however that the Non-Transfer Assets, if any, that form part of the Carved-Out Assets and/or situated upon the Existing Leases shall be taken into account while calculating the percentage of total land area utilized for provision of Non-Transfer Assets.”

14. MCD's Tender Notice is in the teeth of the judgment of this Court in ***Pixie Enterprises Private Limited v. Delhi International Airport Limited and Others, 2021 SCC OnLine Del 4768***, in which a finding was returned that DIAL has an exclusive right under OMDA to operate, develop, manage and maintain the Delhi Airport i.e. the Airport Zone *albeit* in the context of operating liquor vends at the domestic wing of IGIA. Contrary to the judgment, MCD has included Airport Site in the Scope of Work in the impugned tender, without any consultation or 'No Objection' from DIAL and has intruded into the exclusive domain of DIAL over the bulk waste generated from the Airport Zone, a valuable asset of DIAL, which is wholly unlawful and unsustainable.

15. MCD was completely aware that the Airport Zone is in the exclusive domain of DIAL and no third party can operate in the said area without consent and No Objection from DIAL and yet issued the Tender Notice. This position is apparent from MCD's response to pre-bid queries dated 13.12.2024 in relation to Tender Notice, wherein it categorically washed its



hands off from any obligation in procuring DIAL's consent/No Objection and left it entirely to the successful bidder to tie-up with the bulk waste generator i.e. DIAL. Moreover, the Tender Notice is contrary to 2016 Rules, which cast a duty on bulk waste generators to ensure segregation of waste at source, facilitate collection of segregated waste in separate streams and handover of recyclable material to either the authorized waste pickers or authorized recyclers. The bio-degradable waste is to be processed, treated and disposed of through composting or bio-methanation within the premises as far as possible and the residual waste is to be given to the waste collector or agency, as directed by the local body. Hence, MCD cannot appoint a third party and grant rights which accrued in favour of DIAL, thereby obstructing DIAL from undertaking and performing its obligations.

16. MCD has for the first time in the short affidavit filed before this Court challenged the area under the Airport Site and Master Plan prepared pursuant to OMDA, an assertion patently misconceived and false. Broadly, MCD contends that the land demised to DIAL i.e. the Airport Site, does not include Aerocity and therefore MCD is within its right to include Aerocity in the Scope of Work of the impugned Tender Notice. MCD's contention that definition of Demised Premises in OMDA and Lease Deed is vague and the description of the Demised Premises in Schedule 1 of the Lease Deed is missing, is without any basis. MCD has not carried out solid waste management at the Airport Site in the last two decades and it is not known on what legal basis, the right is being asserted for the first time through the Tender Notice. Aerocity is part of IGIA's commercial zone, reflected at Serial No. 13 in light blue colour in the Master Plan, 2016 of IGIA. Aerocity was conceived and developed by DIAL on execution of OMDA as also looking to the functions of AAI under Section



12(3)(f) of the AAI Act, vested in DIAL under Serial No. 18 of Schedule 6 of OMDA.

17. OMDA is a complete and comprehensive contract in itself, wherein Clause 1.1 defines the term ‘Airport’ to mean ‘*the Indira Gandhi International Airport, as located on the Airport Site*’. ‘Airport Site’ is defined to mean ‘*The underlying land forming part of the Demised Premises (as defined in the Lease Deed) agreed to be demised by AAI in pursuance of this Agreement under the Lease Deed and all land (including Excluded Premises) acquired or leased by the JVC during the Term in pursuance of this Agreement under the Lease Deed or otherwise*’. Further, ‘Master Plan’ is defined as “*the master plan for the development of the Airport, evolved and prepared by the JVC in the manner set forth in the State Support Agreement, which sets out the plans for the staged development of the full Airport area, covering Aeronautical Services and Non-Aeronautical Services, and which is for a twenty (20) year time horizon and which is updated and each such updation is subject to review/ observations of and interaction with the GOI in the manner described in the State Support Agreement*”. Pertinently, Article 8.3.1(c) of OMDA provides that JVC shall prepare a Master Plan for the Airport, setting out the proposed development for the entire Airport, planned over a 20 year time horizon. The Master Plan for the Aerocity and its renewals from time to time prepared by DIAL clearly evidence that Aerocity is a part of the Airport Site. Master Plan has been approved by AAI and Delhi Urban Arts Commission (‘DUAC’) vide letters dated 31.07.2008, 18.02.2009, 11.08.2011 and 08.03.2018 and no further approval is required.

18. The fact that Aerocity is part of the Airport Site, flows the judgments passed by this Court in ***Pixie Enterprises (supra)*** and ***Bird Airport Hotel***



Pvt. Ltd. and Others v. Union of India and Others, 2023 SCC OnLine Del 2304. Development Agreements between DIAL and Project Proponents in Aerocity, evidence that DIAL has been managing solid waste at the Airport Site which includes Aerocity. Significantly, environmental clearances/permissions given by State Level Environment Assessment Authority, Delhi Office of the Delhi Pollution Control Committee, to the Project Proponents or hotels in the Aerocity also recognize that DIAL is the custodian of the Airport Site including Aerocity land. In fact, as part of conditions for according environment clearances to the Project Proponents in the Aerocity, DPCC imposed specific conditions in relation to the operation phases of the Hotels, as follows:-

“iv. DIAL should examine the feasibility of setting up of common solid waste collection facility for future projects in the Aerocity and convert it into biogas/energy.

v. DIAL should also set up Environment Management Cell for the whole Aerocity and continuous ambient air and noise monitoring station within the Aerocity site and monitoring reports should be submitted to Delhi Pollution Control Committee.”

19. Stand of AAI in this regard is also crucial. Since MCD disputed that Aerocity was a part of the Airport Site in these proceedings, DIAL approached AAI for confirmation vide letter dated 07.03.2025 and in response thereto, AAI vide letter dated 07.04.2025 confirmed that the land parcel at Serial No. 13 in the approved Master Plan of IGIA, earmarked as commercial zone, is a part of Airport land demised to DIAL as per OMDA. MCD itself acknowledges that DIAL is the custodian of the Airport Site and entitled to and obliged to manage the solid waste in its letters dated 03.07.2017 and 17.01.2023, directing DIAL to comply with 2016 Rules and 2017 Byelaws. MCD's letter dated 16.03.2023 acknowledges that DIAL and Aerocity hotels are free to engage agencies of their choice for solid waste



management.

20. Owing to rights flowing from OMDA, even prior to notification of 2016 Rules and 2017 Byelaws, DIAL entered into several Agreements in relation to *inter alia* development, operation and management of various facilities at the Airport Site including hotels etc. at Aerocity. Under these Development Agreements and Infrastructure Development Service Agreements entered into between DIAL and Project Proponents, the obligation of solid waste management and disposal is on DIAL. The bad faith conduct of MCD is *ex facie* evident from concealment of its own letter dated 16.03.2023 reflecting meetings held on 16.02.2023 and 03.03.2023 between MCD, DIAL and representatives of various hotels in the Aerocity area regarding complaints of dumping of waste in the Rangpuri Pahadi Area, near Mahipalpur. The meetings were called at the instance of DIAL as the area falls in the funnel zone of runways and dumping of waste was posing a hazard and a risk to aircrafts. In its letter dated 16.03.2023, MCD has admitted that the waste dumped illegally at Rangpuri Site is neither from the Airport nor from the hotels at Aerocity since they have hired various waste management agencies and are following the 2016 Rules. MCD also acknowledged that DIAL has engaged JK Contractors for waste management and disposal and set up a solid waste management centre at the Airport premises for segregation and processing of MSW as biogas/compost to cater to overall Airport requirements i.e. Aerocity and Flight Catering Facilities as per MSW Rules, 2016. The letter makes it clear that as far as the Airport and the Aerocity are concerned, DIAL is obliged to give only the 'residual waste' to waste collectors/ agencies working with MCD and named in the letter i.e. Delhi Waste Management Najafgarh Private Limited and United Nations Development Programme. Residual waste is defined in Rule



3(39) of 2016 Rules to mean and include *‘the waste and rejects from the solid waste processing facilities which are not suitable for recycling or further processing’*.

21. Graveman of MCD’s case is that solid waste management is a municipal function/obligation and hence, MCD is the only Authority that has exclusive power/function to undertake the same in Delhi. The very basis of this contention is fallacious and contrary to Sections 11, 12 and 12A of AAI Act as also 2016 Rules and OMDA. For the first time, MCD has taken this misplaced stand after issuance of impugned Tender Notice and more than 9 years post notification of 2016 Rules, but is unable to substantiate the exclusivity claimed through any statute or even Rules/Byelaws, having force of law. *Per contra*, source of power of DIAL to manage solid waste at Airport Site comes from AAI Act, which is a Central Act relatable to Entry 29 of List I of the Seventh Schedule of the Constitution of India, dealing with civil aviation and operation of Airports, which reads as follows:-

“Airways; aircraft and air navigation: provision of aerodromes; regulation and organisation of air traffic and of aerodromes: provision for aeronautical education and training and regulation of such education and training provided by States and other agencies.”

22. All activities connected with and/or ancillary to airways, aircrafts and air navigation are thus within the exclusive jurisdiction of the Central Government. AAI, constituted for better administration and cohesive management of Airports and civil enclaves is in turn vested with powers to carry out these functions under Section 12 of the AAI Act. Exercising power under Section 12A, AAI executed OMDA with DIAL and delegated some functions to DIAL, which find mention in Schedules 5 and 6 of OMDA. MCD’s contention that it is the sole repository to manage solid waste in



Delhi Municipal area, including Airport Site, by virtue of Article 243W read with Entry 6 of Schedule 12 of Constitution of India; Entry No. 6 of State List under 7th Schedule of Constitution and Sections 42 and 43 of the DMC Act, is misplaced as none of these provisions vest a right in MCD to manage solid waste, to the exclusion of any other entity.

23. Article 243W is merely an enabling provision which empowers the State to make laws regarding a municipal corporation so as to vest it with powers and authority to carry out responsibilities enumerated in 12th Schedule of the Constitution. If a State Legislature and/or Parliament does not enact a Law constituting municipal corporation or giving such powers as laid down in the Constitution, neither the corporation will be constituted nor it will assume functions and therefore, MCD is merely a creature of the Statute and can only perform functions vested in it by the DMC Act. Entry No. 6 relating to '*Public Health and Sanitation*', does not bestow powers on MCD more than those emanating from the DMC Act. Article 246 of the Constitution provides for separation of powers between the Parliament and State Legislatures to make laws in respect of subject matters mentioned in List I (Union List), List II (State List) and List III (Concurrent List). These entries are only a source of power to legislate. MCD is unable to show any State Legislation vesting in it the function of solid waste management, much less, to the exclusion of all other bodies/entities.

24. Insofar as provisions of DMC Act are concerned, they do not endow any power on MCD to manage solid waste. *Albeit* Section 2(44A) inserted vide Delhi Act 6 of 2003 defines 'public utilities' to include '*water-supply, sewerage and drainage solid waste management...*', however, there is no other provision in the DMC Act which links public utilities to obligatory or a discretionary function of MCD. Obligations of MCD, stipulated in



Sections 42 and 43 of DMC Act do not include the obligation to manage solid waste. In a desperate but unsuccessful attempt, MCD has sought to bring its case within Section 42(c) and (x) of DMC Act. Section 42(c) enumerates MCD's functions relating to scavenging, removal and disposal of filth, rubbish and other obnoxious or polluted matters and from its plain language, it is not difficult to see that this provision only enables MCD to remove and dispose of waste discarded by a waste generator. Moreover, by their very definition, 'filth' in Section 2(18) and 'rubbish' in Section 2(50) cannot be equated with 'solid waste'. Section 42(x) is a residuary provision which provides for *'the fulfilment of any other obligation imposed by or under this Act or any other law for the time being in force'* and casts no obligation of solid waste management. The expression 'any other law for the time being in force' will mean the 2016 Rules in the instant case, which do not envisage that management and disposal of solid waste is the exclusive function/obligation of MCD and to contrary, categorically entitle and obligate other entities mentioned in Rule 2 to manage and dispose solid waste in the area under their control. Needless to state function of solid waste management cannot be implied when Sections 42 and 43 clearly demarcate and lay down powers/responsibilities of MCD with no carve outs. Significantly, unlike the DMC Act, wherever intended, Municipal Corporation Acts, specifically incorporate provisions vesting the Municipal Authorities with specific functions relating to solid waste management such as Section 252A read with Section 461 (ee) of the Mumbai Municipal Corporation Act, 1888; Section 415 read with Schedule 11 of the Chennai City Municipal Corporation Act, 1919; and Section 13I(i) read with Section 423(30) of the Karnataka Municipal Corporation Act, 1976.



25. 2016 Rules were notified on 08.04.2016 in supersession of Municipal Solid Waste (Management & Handling) Rules, 2000 ('2000 Rules'). The 2000 Rules were dealing only with municipal waste and were applicable to municipal authorities alone. 2016 Rules were notified to overcome this lacuna and place these obligations upon *inter alia* bulk waste generators also, as the case may be. The difference in the language of 2000 and 2016 Rules, is significant. Rule 2 of 2000 Rules shows that the Rules were applicable to every municipal authority responsible for collection, segregation, storage, transportation, processing and disposal of municipal solid wastes, while Rule 2 of 2016 Rules provides that the Rules shall apply to every Urban Local Body ('ULB'), outgrowths in urban agglomerations, census towns, notified areas, notified industrial townships etc. and to every domestic, institutional, commercial or any other non-residential solid waste generator situated in the areas, except cases of industrial waste, hazardous waste, hazardous chemicals, bio medical wastes, e-waste, lead acid batteries and radioactive waste which are covered under separate rules framed under the Environment (Protection) Act, 1986 ('Environment Act'). Rule 4 of 2000 Rules lays down responsibility of Municipal Authority and stipulates that every municipal authority shall, within the territorial area of the municipality, be responsible for the implementation of the provisions of the Rules and any infrastructure development for collection, storage, segregation, transportation, processing and disposal of municipal solid wastes, whereas Rule 4 of 2016 Rules lays down the duties of different categories of waste generators. Comparative analysis of relevant Rules is as follows:-



2000 Rules	SWM Rules 2016
<p>2. Application: <i>These rules shall apply to every municipal authority responsible for collection, segregation, storage, transportation, processing and disposal of municipal solid wastes</i></p>	<p>2. Application: <i>These rules shall apply to every urban local body, outgrowths in urban agglomerations, census towns as declared by the Registrar General and Census Commissioner of India, notified areas, notified industrial townships, areas under the control of Indian Railways, airports, airbases, Ports and harbours, defence establishments, special economic zones, State and Central government organisations, places of pilgrims, religious and historical importance as may be notified by respective State government from time to time and to every domestic, institutional, commercial and any other non residential solid waste generator situated in the areas except industrial waste, hazardous waste, hazardous chemicals, bio medical wastes, e-waste, lead acid batteries and radio-active waste, that are covered under separate rules framed under the Environment (Protection) Act, 1986.</i></p>
<p>4. Responsibility of Municipal Authority:</p> <p><i>1. Every municipal authority shall, within the territorial area of the municipality, be responsible for the implementation of the provisions of these rules, and for any infrastructure development for collection, storage, segregation, transportation, processing and disposal of municipal solid wastes.</i></p>	<p>4. Duties of Waste Generators: <i>(7) All gated communities and institutions with more than 5,000 sqm area shall, within one year from the date of notification of these rules and in partnership with the local body, ensure segregation of waste at source by the generators as prescribed in these rules, facilitate collection of segregated waste in separate streams, handover recyclable material to either the authorized waste pickers or the authorized recyclers. The biodegradable waste shall be processed, treated and disposed off through composting or bio-methanation within the premises as</i></p>



	<i>far as possible. The residual waste shall be given to the waste collectors or agency as directed by the local body.</i>
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26. 2016 Rules were notified in exercise of powers under Sections 3, 6 and 25 of Environment Act with the objective of protecting and improving quality of environment and preventing, controlling and abating the environmental pollution as also placing several obligations upon entities other than the local bodies for solid waste management in areas under their control. Rule 3(46) defines ‘solid waste’ to mean and include solid and semi-solid domestic waste, sanitary waste, commercial waste etc. generated in the area under the local authorities and other entities mentioned in Rule 2. Clearly, 2016 Rules make a distinction between areas under the control of the local body and areas under the control of other entities mentioned in Rule 2 as also solid waste generated in the area under the local body and that generated in the area under control of the other entities. If the exclusive function/obligation of solid waste management in Delhi was that of MCD, as asserted, there was no need for the framers of the Rules to make these fine and nuanced distinctions. The significant departure in the 2016 Rules is highlighted and corroborated by the other provisions, which refer to and obligate/entitle other entities mentioned in Rule 2, to manage solid waste, such as Rule 3(31) which defines ‘MRF’ and Rule 3(54) which entitles not only the local body but also other entities to impose User Fee. Even otherwise, by a Cabinet Decision taken on 29.12.1997, AAI was designated as the local body/authority for the Airport Site and not MCD. Pursuant to OMDA, DIAL has stepped into shoes of AAI and thus exercises power as the local body/authority in respect of the Airport Site. It is for this reason that DIAL grants approvals for construction activities in the Airport Site



with approval from DUAC and not MCD. Importantly, all other public utilities and services within the Airport Site such as maintenance of internal roads, street lighting, parking etc. have been regulated by DIAL for years, with no involvement of MCD.

27. MCD calls upon this Court to read 2016 Rules as exclusively entitling MCD to manage solid waste in Aerocity, pitching its case on Rule 4(1) but overlooking Rule 4(7), which applies to institutions having more than 5000 sq. mtrs. such as DIAL. Bare reading of the Rules shows that Rule 4(1) applies to individual houses, residential buildings and small waste generators, while sub-Rules (6), (7) and (8) of Rule 4 apply to other species of bulk waste generators and provide for separate obligations. Rule 4(1)(a) requires the waste generator to segregate the waste in three separate streams and hand over the same to authorized waste pickers or waste collectors as per directions or notifications issued by the local authorities, from time to time. Contrary thereto, obligations detailed under Rule 4(7) are in three parts viz. (a) collection of segregated waste in separate streams and handing over of recyclable materials to authorized waste pickers/recyclers; (b) composting or bio-methanation of biodegradable waste at the premises as far as possible; and (c) handing over of residual waste to the authorized waste collector or agency as directed by the local body. Rule 4(1) and 4(7) are mutually exclusive and a waste generator which falls in Rule 4(1) cannot fall under sub-Rules (6), (7) and (8) of Rule 4 and *vice versa*.

28. MCD is aware that DIAL, as custodian of the Airport Site, has been exclusively managing the solid waste at the Airport Site since 2007 through waste management agencies and is currently doing so through JK Contractors, who has in turn established infrastructure for the said purpose, including an MRF at the Airport Site for segregating and sorting solid waste



in accordance with Rule 4(7). First part of Rule 4(7) entitles the waste generator to recover recyclable material and give them to authorized waste pickers or recyclers, which is not envisaged in Rule 4(1). At the MRF, contractor recovers the recyclable materials such as paper, plastic, aluminium etc. from the solid waste, which are then compressed into cubes and handed over to authorized recyclers viz. Greentree Recyclers Ltd. and Baglamukhi Industries and Castings Ltd., as evident from the receipts of payments placed on record by DIAL. Unlike Rule 4(1), which requires the waste generator to handover the segregated waste to authorized waste pickers/collectors as per direction/notification by local authorities, Rule 4(7) entitles the bulk waste generators to handover recyclable material but the requirement of any authorization, direction or notification of the local authority in this regard is conspicuous by its absence in first part of Rule 4(7). MCD's contention that as per Rule 4 only MCD can authorize the recycler or a waste picker is contrary not only to plain language of Rule 4(7) but Rule 3(3) also, which defines 'authorization' as the '*permission given by the State Pollution Control Board or Pollution Control Committee, as the case may be, to the operator of a facility or urban local authority, or any other agency responsible for processing and disposal of solid waste*' and therefore Rule 4(7) does not envisage authorization by MCD.

29. Rule 4(1) is even otherwise applicable to pre-MRF activities and its inapplicability to DIAL is acknowledged by MCD in its letter dated 03.07.2017, directing DIAL to comply with Rule 4(6), 4(7) and 4(8). DIAL has established an MRF for sorting and recovery of recyclable materials from the segregated waste at the IGIA and Rule 4(1) is wholly inapplicable. Obligations delineated under second part of Rule 4(7) to process, treat and dispose of biodegradable waste through composting/bio-methanation within



the premises as far as possible, is also conspicuous by its absence in Rule 4(1). The biodegradable waste is processed, treated and disposed of through composting or bio-methanation within the IGIA premises and used for horticulture and landscaping activities under the aegis of DIAL. Third part of Rule 4(7) mandates the bulk waste generator to hand over residual waste to the waste collectors or agency as directed by the local body. Notably, this relates only to residual waste i.e. the inert waste that remains after recovery of recyclables and not the segregated waste. In compliance with the provision, DIAL has been duly handing over the residual waste to DWMN which under MoU dated 24.05.2023 and subsequent, MoU dated 11.01.2025, collects the residual waste from the gate of the MRF as a concessionaire of MCD, in accordance with Clause 2.2 of MoU dated 25.05.2023 and as consideration for the services, as per Clause 2.7 of MoU, DIAL pays User Fee of Rs.5,000/- per month to MCD. MCD asserts that it has been managing solid waste at the Aerocity, but is unable to place single document to substantiate this false stand or to controvert DIAL's stand that MCD's role has always been restricted to collection of residual waste, against charging of User Fee.

30. MCD's reliance on the opening part of Rule 4(7), more particularly, the expression '*partnership with a local body*' itself militates against the case of the MCD that it has exclusive domain over solid waste management at the Airport Site. The word 'partnership' can never mean exclusive function. This plea also defeats the objective of 2016 Rules, which is scientific management of solid waste to protect and improve quality of environment and prevent and control pollution. 2016 Rules clearly obligate municipal authorities to render assistance to the bulk waste generators, wherever required, to further the common objective and goal of environment



protection and the partnership envisaged cannot negate DIAL's rights to recover and sell recyclables, which emanate from the said Rules. The 2017 Byelaws were notified by GNCTD on 15.01.2018 in exercise of powers under Rule 15(e), (f) and (zf) of 2016 Rules. These Rules were framed for implementing 2016 Rules and cannot be in derogation thereof or confer any power in excess of those vested in MCD under the 2016 Rules, contrary to the claim of MCD. Even otherwise, 2017 Byelaws do not mention Airports and thus operate in a separate field.

31. The 2016 Rules were promulgated in exercise of powers under Sections 3, 6 and 25 of the Environment Act, which is a Central Act and has an overriding effect, as evident from Sections 5 and 24 of the said Act. *Albeit* there is no inconsistency or conflict between Environment Act and DMC Act, but assuming that there is any, Environment Act being a special legislation and a subsequent enactment, will prevail over the DMC Act. AAI Act has been enacted under Article 246(1) of the Constitution read with Seventh Schedule of the Union List under Entry 29 and relates to 'Airways, aircraft and air navigation'. Conjoint reading of Section 12(3)(r) read with Section 12(3)(f) and 12(3)(j), leaves no doubt that solid waste management is a commercial function of DIAL within its area and to the exclusion of MCD and clearly, there is no conflict on this aspect between AAI Act and DMC Act. However, assuming a conflict, as per law laid down by the Supreme Court in *Solidaire India Ltd. v. Fairgrowth Financial Services Ltd. and Others, (2001) 3 SCC 71*, AAI Act being a special Statute will override the DMC Act, which is a general Statute.

32. Falsity of MCD's stand is also evident from the fact that in a matter before Real Estate Regulatory Authority ('RERA'), pertaining to the issue of plotting done by DIAL and AAI in Aerocity for commercial purposes, a



statement was made on 08.10.2024 by the concerned AE(B), Najafgarh Zone appearing on behalf of MCD, that Aerocity area does not fall under jurisdiction of MCD and a report was submitted to support this stand.

SUBMISSIONS ON BEHALF OF MCD:

33. In exercise of powers conferred Sections 3, 6 and 25 of the Environment Act and in supersession of 2000 Rules, Central Government made rules for management of solid waste i.e., 2016 Rules. Pursuant to several orders of this Court in different writ petitions and in exercise of powers conferred under Section 5 of the Environment Act and Rule 4(5) of Environment Protection Rules, 1986 ('1986 Rules') read with Notification dated 10.09.1992, the Hon'ble Lieutenant Governor of GNCTD directed SDMC to give effect to bye-laws for management of Solid Waste in its jurisdiction, as framed by SDMC, in exercise of powers under Rule 15(e), (f) and (zf) of 2016 Rules. The 2017 Byelaws came to be notified in the Delhi Gazette on 15.01.2018 and are being implemented in letter and spirit.

34. As per Rule 2 of 2016 Rules, the Rules are applicable to all areas under control of Indian Railways, Airports, Airbases, Ports and Harbours, Defence Establishments etc. Rule 4 enumerates the mandatory duties of Waste Generators which include segregation and storing of the waste generated by them in three separate streams, namely, biodegradable, non-biodegradable and domestic hazardous wastes in suitable bins and handing over the segregated waste to authorized waste pickers or waste collectors as per direction or notification by Local Authorities, from time to time. The term 'Local Body' is defined under Rule 3(30) of 2016 Rules as the Municipal Corporation, Nagar Nigam, Municipal Council, Nagarpalika,



Nagarpalika Parishad, Municipal Board, Nagar Panchayat and Town Panchayat and Census Towns, notified areas and notified industrial townships, with whatever name they are called in different States and Union Territories in India. Therefore, on a conjoint reading of Rules 3(30) and 4 of 2016 Rules, waste is to be handed over by waste generators to authorized waste pickers or waste collectors and the Local Authority to regulate this regime is MCD in municipal areas of Delhi as defined under the DMC Act.

35. Ministry of Housing and Urban Affairs in November, 2017 released a Guidance Book for Urban Local Bodies on Bulk Solid Waste Generators' compliance with SWM Rules, 2016, laying down roles and responsibilities of bulk waste generators and providing handholding for Urban Local Bodies ('ULB') to give effect to the Rules. Bulk generators contribute substantial amount of waste, which is nearly 30 to 40% of the daily waste. As per the handbook, ULBs are required to identify the bulk waste generators, prepare and notify Bye-laws, impose user fees and penalties etc.

36. A 'Bulk Waste Generator' as per Rule 3(8) of 2016 Rules means and includes buildings occupied by the Central Government Departments/Undertakings, State Government Departments/Undertakings, local bodies, Public Sector Undertakings, private companies, hospitals, schools, colleges, hostels, commercial establishments, markets, places of worship, stadia, sports complex etc., having an average waste generation rate exceeding 100 kg per day. DIAL is admittedly, a bulk waste generator and as per 2016 Rules, responsibility of managing wet waste lies with the bulk waste generator, such as the Airport. However, as per Rule 4(8), dry waste is to be handed over to the authorized agency and beyond a doubt, MCD is the designated ULB responsible for management of dry waste in the city, including waste generated by the Delhi Airport.



37. ‘Solid Waste Management’ is a municipal function/obligation to be carried out by a municipal authority in the ordinary course of its statutory obligation as mandated by Article 243W of the Constitution of India read with Entry 6 of Schedule 12 thereof. MCD is the concerned municipal authority in this regard. Delhi, is a Union Territory as per Article 1 read with Schedule 1 of the Constitution and thus, Parliament is empowered under Article 246 of the Constitution to pass any law. DMC Act was enacted for municipal area of Delhi and Section 1 thereof read with Section 2(10) defines ‘Municipal Area’ as covering the whole of Delhi, except that falling in the jurisdiction of New Delhi Municipal Council (‘NDMC’) and Delhi Cantonment Board (‘DCB’). Section 42 of DMC Act enlists the obligatory functions of MCD but the list is not exhaustive and hence MCD carries out several obligations/functions beyond those specifically detailed in Section 42. This position is amplified by sub-Sections (c) and (x) of Section 42 which include in their ambit the obligation to manage solid waste. This legal position is discernible from the expression ‘*other obligation imposed by or under this Act or any other law for the time being in force*’ in sub-Section (x) of Section 42. Needless to say, any other law for the time being in force will include 2016 Rules framed under Sections 3, 6 and 25 of Environment Act.

38. Even prior to insertion of Article 243W by 74th Amendment, DMC Act existed and was a complete regime in respect of obligations pertaining to solid waste management and therefore, there was no requirement of passing a fresh law on this aspect. DMC Act is comprehensively equipped to deal with obligations of solid waste management. Delhi being a large urban area is entitled to have a municipal corporation as per Article 243P and 243Q of the Constitution, which fall under Part IX-A containing



series of Articles providing for municipalities as an independent self-governing model. Major part of IGIA area falls under the jurisdiction of MCD and therefore Aerocity cannot be excluded from ‘municipal area’ of Delhi, by its very definition and description.

39. The 2000 Rules specifically and separately define ‘collection’, ‘segregation’, ‘storage’, ‘transportation’, ‘processing’ and ‘disposal’ by municipal authority or any other local body and it is clear that ‘solid waste’ was distinctly identified as a municipal function, which is further fortified by Rule 4(1) prescribing that every municipal authority shall within its municipal area be responsible for collection, storage, segregation, transportation, processing and disposal of municipal solid waste. By the regime of 2016 Rules, MCD brought its own Byelaws to address its obligation as regards solid waste management. The Byelaws were framed in exercise of powers conferred on municipal authorities under Section 5 of Environment Act and Rule 4(5) of the Environment Protection Rules, 1986 read with Notification dated 10.09.1992 and were meant to be implemented by MCD in alignment with Rule 15(e), 15(f) and 15(zf) of 2016 Rules. The collective import of this legal regime is that responsibility for solid waste management in the municipal area of Delhi, except to the extent the applicable Rules require individuals and entities other than municipal authority to carry out segregation of the solid waste by segregating dry from wet waste and hazardous waste, is the sole and exclusive responsibility of MCD and no other entity, private or Government, can by any agreement or law, perform the said function. In light of this strict statutory regime, there cannot be any presumption of abrogation of exclusive rights of MCD in relation to management of solid waste right from the stage of collection of segregated dry waste from bulk waste generators as well as non-bulk waste



generators, till the eventual disposal as per Rules and surely, DIAL cannot interfere in this regime taking shelter under AAI Act, OMDA or the Lease Deed. In fact, the upshot of this is that overarching Scheme to deal with solid waste management is not confined to metropolitan cities but its applicability extends pan-India.

40. Pivotal to the aforesaid submission is Section 42(c) of DMC Act which enlists '*removal and disposal of filth, rubbish, rubber and other noxious or polluted matters*' as a bouquet of multiple obligatory functions of MCD. Section 2(50) of the Act defines '*rubbish*' as a material which includes various types of 'refuse', which would not qualify as 'filth'. By its very nature, rubbish is a solid waste and thus ticks the mandate of Article 243W and Entry 6 of Schedule 12 of the Constitution. 'Refuse' which is an ingredient of rubbish, in its own right also qualifies as solid waste and this is evident from byelaws called '*Corporation of Chennai Solid Waste Management Byelaws, 2019*' framed in exercise of powers conferred under Chennai City Municipal Corporation Act, 1919 and Rule 15 of 2016 Rules. In Clause 3(55) of the said Byelaws, refuse is defined to include 'any waste matter generated out of different activities and processes, either biodegradable/non-biodegradable/recyclable in nature, in either solid or semi-solid form, which cannot be consumed, used or processed by the generator in its existing form. Collective import of these provisions is that for 'solid waste management' in municipal area of Delhi, MCD is the sole repository to the exclusion of all other entities, Government/PSU or private.

41. DIAL predicates its case entirely on AAI Act, OMDA and Lease Deed, which is misconceived, inherently flawed and contrary to the legal regime as regards solid waste management. AAI Act defines functions of AAI under Section 12, which are not inconsistent with DMC Act and



therefore, DIAL who claims to be performing some functions under Section 12 of AAI Act cannot usurp powers akin to a municipal authority on an erroneous hypothesis that AAI Act has an overriding effect over DMC Act. Both Acts are special Acts and do not have any overlapping field of operation merely because AAI is empowered to undertake certain amount of construction activity. Functions relating to developing Airports, civil enclaves and aeronautical communication stations do not bestow powers on AAI to perform municipal functions as no part of Section 12 confers authority akin to the authority of a municipality under DMC Act. Since there is no inconsistency in the two special Acts, this Court need not delve into examining the question raised by DIAL as to which of the two Acts will have an overriding effect. Once AAI is not empowered to perform municipal functions, DIAL who claims to have stepped into the shoes of AAI by virtue of OMDA, cannot take unto itself the municipal functions. OMDA will have to be read, construed and understood within the legislative regime of Section 12 of AAI Act inasmuch as Section 12(5)(a) prohibits AAI from acting in derogation of any other law for the time being in force, which would include provisions of the Constitution of India and the Environment Act. Thus, DIAL can assert no right to manage solid waste in Aerocity, which is a municipal area.

42. The highlight of DIAL's argument is the OMDA, executed with AAI. OMDA is only a private contract between two parties and moreover, it does not contain any provision empowering DIAL to perform obligations which are otherwise vested in MCD by virtue of Constitutional provisions and DMC Act. In any event, AAI cannot enter into any agreement in derogation of the law which vests exclusive power, authority and responsibility of solid waste management on MCD and to that extent any or all covenants in



OMDA will be *non-est* and severable on the Doctrine of Severability. While DIAL laboured hard to trace the source of its authority akin to a municipal function to Entry 50 in Schedule 5 to OMDA, which otherwise relates to ‘aeronautical services’, it has been unsuccessful in pointing out any such responsibility or obligation relates to solid waste management. Aeronautical services by their very nature and as per the definition can be performed only in the secured and regulated area of the Airport and thus, the only meaning which can be ascribed to Entry 50, which merely deals with ‘*waste and refuse treatment and disposal*’, is that AAI wanted to ensure that the area engaging aeronautical services be regulated and DIAL should have a system in place to ensure that the premises are not littered with waste and refuse. As a matter of fact, DIAL is contractually bound under OMDA to ensure that not only the Schedule 5 premises but all those covered under all other Schedules of OMDA remain clean. DIAL overlooks that when OMDA was executed in 2006, the 2000 Rules were already in place. Therefore, the entry in OMDA has no connection with solid waste management in respect of municipal area falling in municipal wards of Mahipalpur and Dwarka C, falling in Najafgarh Zone, in respect of which impugned Tender Notice was floated. By a misplaced interpretation of Entry 50, DIAL has successfully stalled the tender without any legal basis to do so.

43. The words ‘waste’ and ‘refuse’ used in Entry 50 are confined to aeronautical services and a similar expression close to genre of ‘solid waste’ is absent in the remaining part of OMDA. DIAL has erroneously sought to project as if these expressions vest municipal power on DIAL in derogation of the DMC Act, which is wholly incorrect. Moreover, OMDA has many Schedules appended to it and Point 10 of Schedule 1 requires DIAL to adhere to all conditions, regulations, measures of whatever kind, imposed by



local Bye-laws and other applicable Central, State and Local Government laws. DIAL misreads Clause 2.2.3 of OMDA as supporting its claim to interdict the tender process. Read simply, this clause merely enables DIAL to perform its obligations under the applicable Rules in its capacity of a ‘Bulk Waste Generator’ under Rule 3(8) of 2016 Rules, which requires DIAL to segregate non-biodegradable waste (dry waste) from biodegradable waste (wet waste) and hazardous waste by making necessary arrangements to deal with the scale and quantity of bulk waste generated by it and further to undertake the process of handing over the dry waste to the municipal authority and no more. DIAL is a ‘Bulk Waste Generator’ and the obligations and protocols laid down for Bulk Waste Generators in Rule 4 of 2016 Rules are indicative of the nature of steps that are required to be undertaken by them, within the premises at the source, where such waste is generated. It is provided in the applicable Rules that insofar as ‘*wet waste*’ is concerned, it needs to be processed at the source itself and ‘*segregated dry waste*’ is to be handed over to the municipal authority. Thus, reliance on OMDA cannot aid DIAL.

44. DIAL’s assertion that Aerocity falls within ‘Airport Site’ as defined under OMDA, which in turn refers to ‘Demised Premises’ as mentioned in Clause 2.1 of Lease Deed dated 25.04.2006 is misconceived. Clause 2.1 spreads over 18 lines but is conspicuous by its silence in describing the ‘*Demised Premises*’ and from the entire narrative of Clause 2.1, it is not discernible as to what this expression means and connotes. Even if one was to trace the identification of Demised Premises to Schedule 1 of the Lease Deed, it is an admitted position that the document is ‘BLANK’ and the only explanation offered on behalf of DIAL, in the course of arguments, was that relevant details were to be filled later. This is nothing but a cover up



explanation and blank documents cannot support the case of DIAL. In the absence of a clear description of the Demised Premises in the Lease Deed, one cannot hazard a guess by simply reading the development plan stated to be prepared by DIAL, in compliance with Clause 8.3 of OMDA.

45. It is always open to DIAL to make any plan for the Airport or the area in its vicinity, however, *ipso facto*, the area included in the plan will not become Demised Premises by mere inference or assumption. Clearly, DIAL has failed to show that the area in dispute and subject matter of the impugned Tender Notice, falls in the Demised Premises and this is sufficient to dismiss this petition. In its desperate attempt to overcome this lacuna, DIAL relied on the judgment of this Court in *Pixie Enterprises (supra)*, however, this judgment will not come to DIAL's aid in the present case *albeit* there is a reference to area of the Airport Site spanning over 4,799 acres. This measurement appears to be collated from a License Agreement between DIAL and its vendor at the Domestic Airport and it needs no emphasis that a recital in a private agreement will not vest any right on DIAL, in derogation of municipal rights of MCD under the DMC Act.

46. Reference to Clause 8.3 of OMDA is also misplaced inasmuch as this is only an enabling provision, authorizing DIAL to prepare an overarching plan for the Airport and no more. Expression 'Master Plan' used in OMDA is merely a misnomer for the reason that the Master Plan is a statutory concept and can only be prepared by the Central Government/DDA under Chapter III of Delhi Development Act, 1957. Be that as it may, impugned tender does not come in the way of DIAL's obligations under OMDA to prepare a suitable plan for purposes mentioned in Clause 8.3 of OMDA and discharge its obligations as a developer. Moreover, any plan under Clause 8.3 of OMDA, which is a bilateral agreement between AAI and DIAL



cannot obliterate, tweak, reduce, alter or rewrite statutory provisions of DMC Act or the Constitution. It thus emerges that neither the 'area' of MCD nor 'power, authority and responsibilities' of MCD can be curtailed or taken away by any in-house area plan.

47. Contention of DIAL that MCD has admitted before RERA that Aerocity area does not fall under the jurisdiction of MCD is misconceived. In the affidavit filed on 22.05.2025 before this Court, the Executive Engineer (Building) has clarified that the statement made before the Authority on 08.10.2024 was in the context of denying the role or liability of MCD in carrying out plotting in Aerocity area for the reason that plotting or making layout plan is not the obligatory function of MCD under Section 42 of DMC Act. Furthermore, it is an undisputed fact that all buildings/establishments in Aerocity area are taking health and trade licences from MCD and are also paying advertisement fee for the hoardings to MCD, besides property tax. The intent of the report was not to convey that MCD has no jurisdiction in the Aerocity area.

ANALYSIS AND FINDINGS:

48. By this writ petition, DIAL seeks quashing of Tender Notice dated 28.11.2024 issued by MCD. It is pertinent to mention at this stage that vide order dated 24.12.2024, Court had restrained MCD from processing the impugned Tender Notice to the extent it concerned the area which fell within the Airport under the Master Plan, leaving it open to MCD to proceed with the tender for the rest of Najafgarh Zone, if considered appropriate. During the course of hearing, Court was apprised that since it was unworkable to process the tender piecemeal, MCD took a conscious decision not to proceed with the tender for the entire area in question, including the Airport Zone till the final decision in this petition.



49. Genesis of this writ petition is a Tender Notice issued by MCD on 28.11.2024 inviting bids *'for Selection of Agency for Setting up of Material Recovery Facility (MRF) for management of dry solid waste in Najafgarh Zone on Public Private Partnership (PPP) on Design, Build, Finance, Operate and Transfer Basis'*. The area for the Project, as described in the Tender Notice, is Dwarka Sector-29 in Najafgarh Zone.

50. DIAL is a Joint Venture formed as a Consortium between GMR Airports Limited, AAI and Fraport AG Frankfurt Airport Services Worldwide, established solely for the purpose of exercising rights and performing obligations under OMDA, under an assignment by AAI. AAI Act is a Central Act relatable to Entry 29 of List I of Seventh Schedule of the Constitution of India dealing with civil aviation and operation of Airports. Entry 29 reads as follows:-

"29. Airways; aircraft and air navigation; provision of aerodromes; regulation and organisation of air traffic and of aerodromes; provision for aeronautical education and training and regulation of such education and training provided by States and other agencies."

51. For better administration and cohesive management of Airports and civil enclaves in India, AAI performs several functions which are delineated in Section 12 of AAI Act and include:-

"a. The Airports Authority of India is an authority established under the Airports Authority of India Act, 1994, which is responsible for the development, operation, management and maintenance of airports in India. AAI's functions are set out in Section 12 of the AAI Act which inter alia, include:

(i) Establishment and maintenance of hotels, restaurants and restrooms at or near the airport;

(ii) Establishment of warehouses and cargo complexes at the airports for storage and processing of goods;

(iii) Making appropriate arrangements for watch and ward at the airports and civil enclaves;

(iv) Regulating and controlling plying of vehicles and the entry and exit



of passengers and visitors in the airports and civil enclaves with due regard to the security and protocol functions of the Government of India;

(v) Developing and providing consultancy, construction or management services and undertaking operations in India and abroad in relation to airports, air-navigation services, ground aids and safety services or any facilities thereat; and

(vi) Any other activity at the airports and the civil enclaves in the best commercial interests of the Airport Authority including cargo handling, setting up of joint ventures for the discharge of any function assigned to the Authority.”

52. In order to seek substantial private participation for development and upgradation of the Airports in India, which entailed huge investment and expertise, AAI Act was amended by Act 43 of 2003, by which for the first time, establishment and operation of private Airports in the country was provided and Section 12A was inserted, which is extracted hereunder, for ease of reference:-

“12A. Lease by the Authority.—(1) *Notwithstanding anything contained in this Act, the Authority may, in the public interest or in the interest of better management of airports, make a lease of the premises of an airport (including buildings and structures thereon and appertaining thereto) to carry out some of its functions under section 12 as the Authority may deem fit: Provided that such lease shall not affect the functions of the Authority under section 12 which relates to air traffic service or watch and ward at airports and civil enclaves.*

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

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

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

53. Section 12A empowers AAI to lease the premises of an Airport, including buildings and structures thereon and appertaining thereto, to a



lessee in public interest or in the interest of better management of Airports to carry out some of its functions under Section 12 of the AAI Act *albeit* with the previous approval of the Central Government and provided that such lease does not affect functions of AAI under Section 12 which relate to air traffic service or watch and ward at Airports and civil enclaves. By virtue of Section 12A(4), the lessee gets all powers of AAI necessary for performance of the functions in terms of the lease, which means that lessee steps into the shoes of AAI.

54. Exercising power under Section 12A of the AAI Act, AAI executed OMDA with DIAL on 04.04.2006, granting exclusive rights and authority to as also imposing obligations on DIAL to undertake functions relating to operation, maintenance, development, design, construction, upgradation, modernisation, finance and management of Delhi Airport and render services and carry out activities constituting aeronautical and non-aeronautical services by virtue of Clause 2.1.1 of OMDA. Schedule 5 of OMDA details the aeronautical services which include in Entry 50 ‘*waste and refuse treatment and disposal*’. Clause 2.2.3 makes it obligatory for DIAL to provide aeronautical services at the Airport Site. Schedule 5 with Entry 50 is extracted hereunder, for ready reference:-

“SCHEDULE 5

AERONAUTICAL SERVICES

“Aeronautical Services” means the provision of the following facilities and services:

xxx

50. Waste and refuse treatment and disposal

xxx”

55. OMDA is an agreement between AAI and DIAL as a JVC. ‘*Airport Site*’ has been defined in Article 1.1 of OMDA to mean the underlying land



forming part of demised premises as defined in the Lease Deed and agreed to be demised by AAI and all land acquired or leased by the JVC during the term of the Deed. ‘*Aeronautical Services*’ are defined to mean services assigned in Schedule 5. ‘*Airport Services*’ are services constituting Aeronautical and Non-Aeronautical Services. Clause 2.2.1 of OMDA highlights that the JVC will exercise rights as also perform obligations under OMDA. Clause 2.2.3 provides that JVC shall undertake/provide Aeronautical Services and Essential Services at the Airport Site.

56. Chapter VIII of OMDA deals with ‘*Construction/Development, Operation & Management*’. Article 8.1 lays down the general obligations of DIAL to comply with applicable laws at all times in the operation, maintenance, management, development etc. of the Airport. Article 8.3 pertains to ‘*Master Plan*’ and Clause 8.3.1 provides that JVC shall prepare a Master Plan for the Airport setting out the proposed development for the entire Airport, planned over a 20 year time horizon and shall include traffic forecasts for this period. The requirements of the Master Plan and its adherences to the terms of the agreement are detailed in the said Clause. Read together, Sections 12 and 12A of AAI Act as also OMDA, leave no doubt that DIAL is an exclusive custodian of the Airport Site *inter alia* to provide Aeronautical and Non-Aeronautical Services enumerated in Schedules 5 and 6 of OMDA, respectively, in addition to other functions and obligations.

57. The next question is whether Aerocity, which indisputably falls in Najafgarh Zone, falls within the Airport Site. DIAL contends that Aerocity is part of Airport’s commercial zone reflected at Serial No. 13 of Master Plan, 2016 and was conceived and developed by DIAL after OMDA was executed and in furtherance of the objective to carry out the functions of

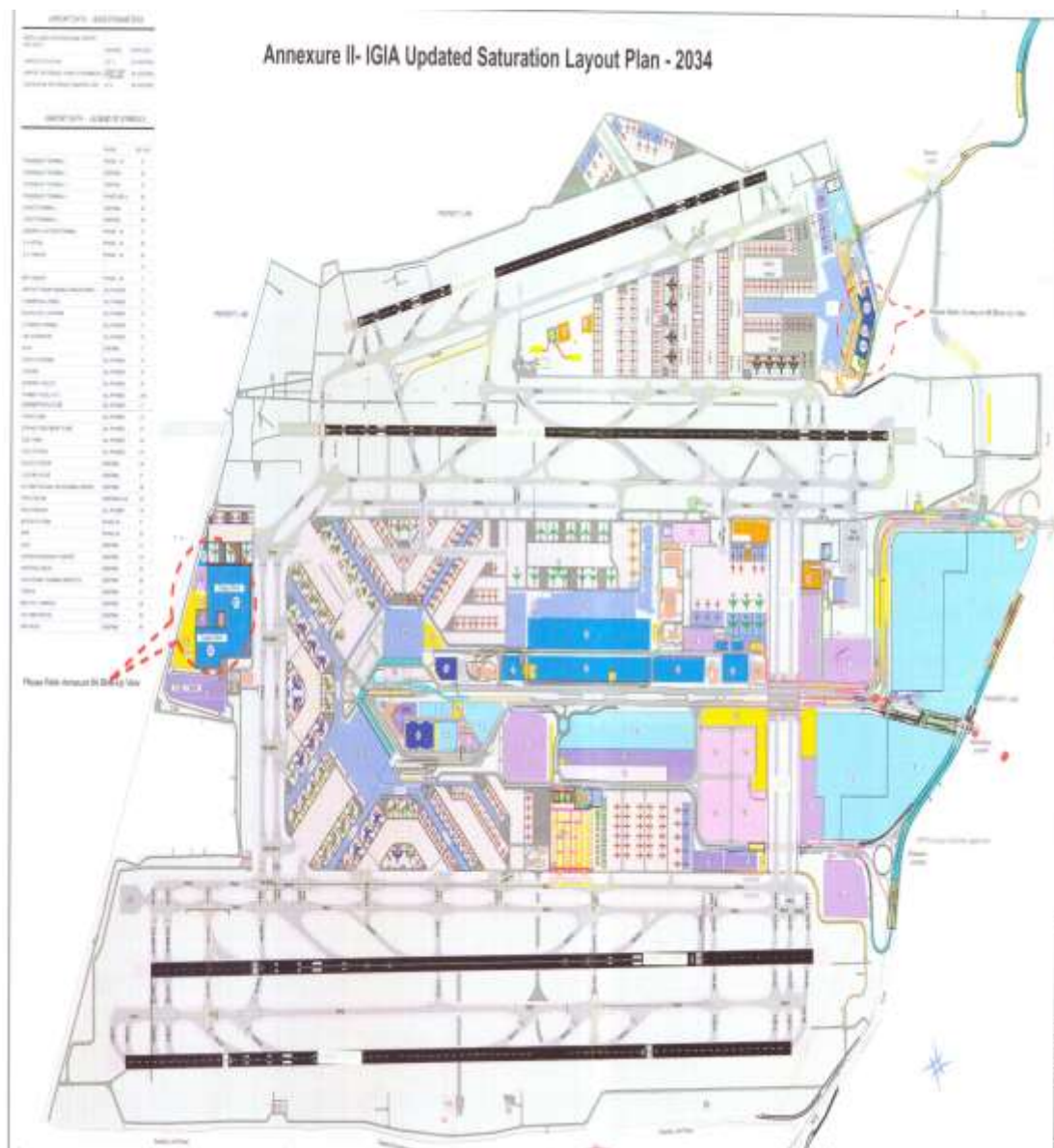


AAI vested in DIAL under serial 18 of Schedule 6 of OMDA. MCD takes a position that land demised to DIAL by AAI does not include Aerocity and has been rightly included in the Scope of Work of the impugned Tender Notice. MCD claims jurisdiction, basis the definition of ‘municipal area’ under the DMC Act and asserts that municipal functions cannot be taken over by DIAL. MCD also questions the very concept of ‘Demised Premises’ mentioned in Clause 2.1 of the Lease Deed, in the absence of any description of the premises and highlights that Schedule 1, which could have shed light on the span and description of the demised premises is blank, with no plausible explanation from DIAL on this aspect.

58. On a careful examination of the documents and relevant provisions, this Court finds merit in the stand of DIAL. Demonstrably, Aerocity is a part of IGIA’s Commercial Zone reflected at Serial No. 13 in light blue colour in the Master Plan, 2016 prepared for IGIA. Article 8.3.1 of OMDA provides that the JVC shall prepare a Master Plan for the Airport setting out the proposed development for the entire Airport, planned over a 20 year time horizon. Acting under this provision, DIAL prepared the Master Plan for Aerocity and its renewals have been approved from time to time by AAI and DUAC. Letters dated 31.07.2008, 18.02.2009, 11.08.2011 and 08.03.2018 substantiating this position are on record. Letter dated 11.08.2011 sent by DUAC to AAI reflects its approval in supersession of the earlier approval dated 24.03.2009, in respect of revised layout plan/Master Plan. Prior thereto, vide letter dated 31.07.2008, AAI had written to DIAL conveying its approval to the proposed layout in respect of commercial development coming up in the Hospitality District in the first phase at IGIA. DIAL was directed to ensure that the successful developer brings commercial development consisting of hotels, offices and retail outlets, as permitted



under OMDA, within the parameters specified in DIAL's letter dated 29.07.2008. The Master Plan, scanned and placed below reflects that Aerocity is a part of the Airport Site:-



59. DIAL is correct that there is judicial recognition of the fact that Aerocity is a part of Airport Site. In *Bird Airport Hotel (supra)*, this Court has rendered a finding that Aerocity Project was part of the land leased by AAI in favour of DIAL. In *Pixie Enterprises (supra)*, Petitioner sought a



writ quashing letter dated 17.08.2021 issued by DIAL refusing to grant No Objection Certificate to operate liquor vends at the domestic wing of IGIA. The petition was opposed by DIAL on the ground that it was DIAL which had exclusive right under OMDA to manage the Airports and this was backed by statutory sanction under Sections 11, 12 and 12A of AAI Act, which is a Central Act relatable to Entry 29 of List I of Seventh Schedule of the Constitution, dealing with Civil Aviation and Operations of Airports. Reference was made to Section 12(3) of AAI Act to argue that the provision clearly contemplated that AAI shall among other functions, undertake any other activity at the Airports and the civil enclaves in the best commercial interests of AAI and once DIAL has stepped into the shoes of AAI, for exercising these rights by way of OMDA, it had the exclusive right to take decisions and no one could compel DIAL to enter into any contract for allotment of any space at the Airport. This argument was upheld by the Court observing that looking at the functions discharged by DIAL under OMDA, Court had no hesitation in agreeing that DIAL was basically performing functions which AAI is supposed to and is authorized to perform under AAI Act. In a nutshell, Court recognized the right of DIAL under OMDA to operate and *inter alia* lease spaces to operate various stores etc. at the Airport.

60. During the course of hearing, DIAL has also placed on record a letter dated 07.04.2025 by AAI confirming that land parcel at Serial No. 13 in the approved Master Plan of IGIA, earmarked as commercial zone, is part of Airport land, demised to DIAL as per OMDA. The Master Plan for Airport Site constitutes a land parcel of 4799 acres and includes airport terminals, cargo terminals, administrative buildings, kitchen and Aerocity etc. MCD has in Clause 1.3.3 of the Zonal Development Plan filed with short affidavit



has acknowledged that Airport Area is approximately 2260 hectares, which is equivalent to 5584.8 acres and this fits in with the stand taken by DIAL. The Master Plan for the Hospitality District i.e. Aerocity is an asset layout plan and as per letter dated 31.07.2008 issued by AAI, requires no approval from MCD. MCD has attempted to cast doubt on the veracity of the Master Plan on the ground that it is not the function of AAI to make or to approve Master Plans as also that the same is not vetted by any Local Body. This submission is incorrect. Through OMDA, AAI has empowered DIAL to prepare the Master Plan for Airport Site and indisputably, after the Plan was prepared the same was approved by AAI and DUAC. In any event, MCD has placed no material on record to show that any objection has been raised by DDA or any other agency over the last many years with respect to this Master Plan of Aerocity. DIAL has substantiated that being the custodian of the Airport Site, as per the Master Plan and OMDA/Lease Deed, it has been managing all facilities in Aerocity, such as maintenance of internal roads, street lighting, horticulture, building construction approvals etc., including solid waste management and MCD was not involved in these activities.

61. DIAL has demonstrated through documents, such as letter dated 06.06.2011 issued by DPCC, that environment clearances/permissions have been given by State Level Environment Assessment Authority, Delhi office of Delhi Pollution Control Committee to the project proponents for hotels at the Aerocity, with a pre-condition that DIAL will examine the feasibility of setting up of common solid waste collection facility for future projects in the Aerocity and convert the same into biogas/energy as also set up an Environment Management Cell. There is thus merit in the submission of DIAL that Aerocity is a part of Airport Site and significantly, MCD has not placed any material to dent this position.



62. At the heart of the dispute lies the next and the only other question as to who is responsible for solid waste management at the Airport Site. Before proceeding further, it would be pertinent to look at the regulatory regime in respect of solid waste management. Formal Rules were first notified in this regard by Ministry of Environment and Forests on 25.09.2000, in exercise of powers conferred by Sections 3, 6 and 25 of Environment Act. Rule 2 thereof provided that the Rules shall apply to every Municipal Authority responsible for collection, segregation, storage, transportation, processing and disposal of municipal solid wastes. As per Rule 2, it was the Municipal Authority which was responsible for each of the functions referred therein. On 08.04.2016 the 2016 Rules were notified and in supersession of 2000 Rules and in stark contrast to Rule 2 of 2000 Rules, pertaining to ‘applicability’, Rule 2 of 2016 Rules provided that these Rules shall apply to every urban local body, outgrowths in urban agglomerations, census towns as declared by Registrar General and Census Commissioner of India, notified areas, notified industrial townships, areas under the control of Indian Railways, Airports, airbases, Ports and harbours, defence establishments, special economic zones etc. It is thus clear that 2016 Rules contemplate application to urban local bodies and entities other than municipal authority. Distinction is also carved out in the areas under their control for the purpose of solid waste management. This fact is strengthened by Rule 3(46) which defines ‘Solid Waste’ to mean and include solid and semi-solid domestic waste, sanitary waste, commercial waste etc. *‘generated in the area under Local Authorities and other entities mentioned in Rule 2’*. Seen in this light, the stand of MCD that solid waste management is the exclusive function/obligation of MCD, militates against Rule 2 of 2016 Rules.



63. DIAL is right that this distinction in the Rules is fortified by other provisions of 2016 Rules. Rule 3(31) defines MRF *‘as a facility where non-compostable solid waste can be temporarily stored by the local body or any other entity mentioned in rule 2 or any person or agency authorized by any of them to facilitate segregation, sorting and recovery of recyclables from various components of waste by authorized informal sector of waste pickers, informal recyclers or any other work force engaged by the local body or entity mentioned in rule 2 for the purpose before the waste is delivered or taken up for its processing or disposal’*. Rule 3(54) entitles not only the local body but also other entities in Rule 2 to impose User Fee on the waste generator *‘to cover full or part cost of providing solid waste collection, transportation, processing and disposal services’*. Arguendo, even if solid waste management is the obligation of a Local Body, by a Cabinet Decision taken in a meeting held on 29.12.1997, AAI was designated as a Local Body for the Airport Site and by virtue of OMDA, DIAL has stepped into the shoes of AAI and is empowered to manage solid waste at the Airport Site.

64. There is another important aspect of the matter. Rule 4 of 2016 Rules deals specifically with the obligations and functions of solid waste management. MCD attempts to draw strength from Rule 4 of 2016 Rules to urge that solid waste management is the sole obligation and function of the municipality and cannot be taken over by DIAL. As per DIAL, MCD’s reading of Rule 4 is narrow and restricted to Rule 4(1), overlooking sub-Rules (6), (7) and (8) of Rule 4. For ready reference, Rule 4 is extracted hereunder:-

“4. Duties of waste generators.- (1) Every waste generator shall,-

(a) *segregate and store the waste generated by them in three separate streams namely bio-degradable, non biodegradable and domestic hazardous wastes in suitable bins and handover segregated wastes to*



authorised waste pickers or waste collectors as per the direction or notification by the local authorities from time to time;

(b) wrap securely the used sanitary waste like diapers, sanitary pads etc., in the pouches provided by the manufacturers or brand owners of these products or in a suitable wrapping material as instructed by the local authorities and shall place the same in the bin meant for dry waste or non-bio-degradable waste;

(c) store separately construction and demolition waste, as and when generated, in his own premises and shall dispose off as per the Construction and Demolition Waste Management Rules, 2016; and

(d) store horticulture waste and garden waste generated from his premises separately in his own premises and dispose of as per the directions of the local body from time to time.

(2) No waste generator shall throw, burn or burry the solid waste generated by him, on streets, open public spaces outside his premises or in the drain or water bodies.

(3) All waste generators shall pay such user fee for solid waste management, as specified in the bye-laws of the local bodies.

(4) No person shall organise an event or gathering of more than one hundred persons at any unlicensed place without intimating the local body, at least three working days in advance and such person or the organiser of such event shall ensure segregation of waste at source and handing over of segregated waste to waste collector or agency as specified by the local body.

(5) Every street vendor shall keep suitable containers for storage of waste generated during the course of his activity such as food waste, disposable plates, cups, cans, wrappers, coconut shells, leftover food, vegetables, fruits, etc., and shall deposit such waste at waste storage depot or container or vehicle as notified by the local body.

(6) All resident welfare and market associations shall, within one year from the date of notification of these rules and in partnership with the local body ensure segregation of waste at source by the generators as prescribed in these rules, facilitate collection of segregated waste in separate streams, handover recyclable material to either the authorised waste pickers or the authorised recyclers. The bio-degradable waste shall be processed, treated and disposed off through composting or bio-methanation within the premises as far as possible. The residual waste shall be given to the waste collectors or agency as directed by the local body.

(7) All gated communities and institutions with more than 5,000 sqm area shall, within one year from the date of notification of these rules and in partnership with the local body, ensure segregation of waste at source by the generators as prescribed in these rules, facilitate collection of



segregated waste in separate streams, handover recyclable material to either the authorised waste pickers or the authorized recyclers. The bio-degradable waste shall be processed, treated and disposed off through composting or bio-methanation within the premises as far as possible. The residual waste shall be given to the waste collectors or agency as directed by the local body.

(8) All hotels and restaurants shall, within one year from the date of notification of these rules and in partnership with the local body ensure segregation of waste at source as prescribed in these rules, facilitate collection of segregated waste in separate streams, handover recyclable material to either the authorised waste pickers or the authorised recyclers. The bio-degradable waste shall be processed, treated and disposed off through composting or bio-methanation within the premises as far as possible. The residual waste shall be given to the waste collectors or agency as directed by the local body.”

65. Rule 4 provides duties of waste generators. Process of waste generation includes segregation and storage of the waste generated in three separate streams namely, biodegradable, non-biodegradable and domestic hazardous waste in suitable bins and handing over segregated waste to authorized waste pickers or waste collectors as per directions or notifications by local authorities, issued from time to time. Sub-Rules (1) to (5) of Rule 4, apply to individual houses, residential buildings and small waste generators. Opposed to this, sub-Rule (6) refers to Resident Welfare and Market Associations while sub-Rule (7) refers to Gated Communities and Institutions with more than 5,000 sq. m. area and it is obvious that these generators fall in the category of ‘Bulk Waste Generators’. As per Rule 4(7) solid waste management is a three-step process viz: (a) collection of segregated waste in separate streams and handing over of recyclable materials to authorized waste pickers/recyclers; (b) composting or bio-methanation of biodegradable waste at the premises, to the extent possible; and (c) handing over the residual waste to authorized waste collector or agency as per direction of the local body. The difference in the language of



Rule 4(1) and Rule 4(6) and (7), shows that they operate in different fields and apply to distinct categories of waste generators with separate obligations and clearly, Rule 4(1) and Rule 4(7) are mutually exclusive.

66. DIAL is correct that the distinction in the sub-Rules is fortified by the fact that unlike Rule 4(1), which requires the waste generator to hand over segregated waste to authorized waste pickers/waste collectors as per direction of local authority, Rule 4(7) entitles bulk waste generator to hand over recyclable material to either the authorized waste picker or an authorized recycler and the requirement of any authorization/direction/notification of the local authority is conspicuously absent. The assertion of MCD that only MCD can authorize a recycler or a waste picker is misconceived and is against plain language of Rule 4(7) and Rule 3(3). Rule 3(3) of 2016 Rules defines 'authorization' as permission given by the State Pollution Control Board or Pollution Control Committee, as the case may be, to the operator of the facility or urban local authority or any other agency responsible for processing and disposal of solid waste and in keeping with this Rule, authorization to waste picker or recycler mentioned in Rule 4(7) is by the Pollution Control Board/Committee and not MCD. From a conjoint reading of Articles 2.1.2, 2.2.3 and 2.2.4 of OMDA with Rule 4 (7) of 2016 Rules, it is clear that when it comes to solid waste management at Airport Site, it is the exclusive domain of DIAL.

67. It is also brought forth by DIAL that MCD vide its letter dated 03.07.2017 had directed the AAI to put in house mechanism for segregation of municipal solid waste at source and to process, treat and dispose of the biodegradable waste through composting or bio-methanation within the premises as far as possible and while doing so, reference in the letter was made to Rules 4(6), (7) and (8) of 2016 Rules as also direction of National



Green Tribunal in the matter of *Almitra H. Patel & Cap. J.S. Velu v. Union of India* and Section 15 of Environment Act. On 17.01.2023, MCD again wrote to DIAL to comply with the 2016 Rules and 2017 Byelaws, in response to which on 09.02.2023, DIAL informed MCD that it was totally compliant with the Rules and was segregating and storing the solid waste, generated at the Airport Site. This shows that MCD was clear that segregation of MSW at source as also processing of biodegradable waste was being performed by DIAL and that it was authorised to do so at the Airport Site.

68. It is not without significance that Rule 4(7) refers to the obligation to process, treat and dispose of biodegradable waste to the extent possible but this obligation is conspicuously missing in Rule 4(1), which applies to entities other than bulk waste generators. There is also merit in the submission of DIAL that Rule 4(1)(a) relates to pre-MRF activities since it provides for segregated waste to be handed over to MCD's agencies and is inapplicable to DIAL, which has an established MRF in consonance with Rule 4(7), being a bulk waste generator and importantly, it has been undertaking the entire process from segregation of waste at source to processing, treating and disposing off the biodegradable waste, handing over recyclable material to either the authorized waste pickers/recyclers and finally, giving the residual waste to the waste collectors/agencies as directed by MCD and with the approval of DGCA.

69. Rule 4(7) also mandates that a bulk waste generator will hand over the 'residual waste' to the waste collectors/agencies as directed by the local body. Therefore, it is only at this third stage of handing over the residual waste i.e. inert waste that remains after recovery of recyclables and not segregated waste, that MCD comes into picture at the Airport Site. DIAL

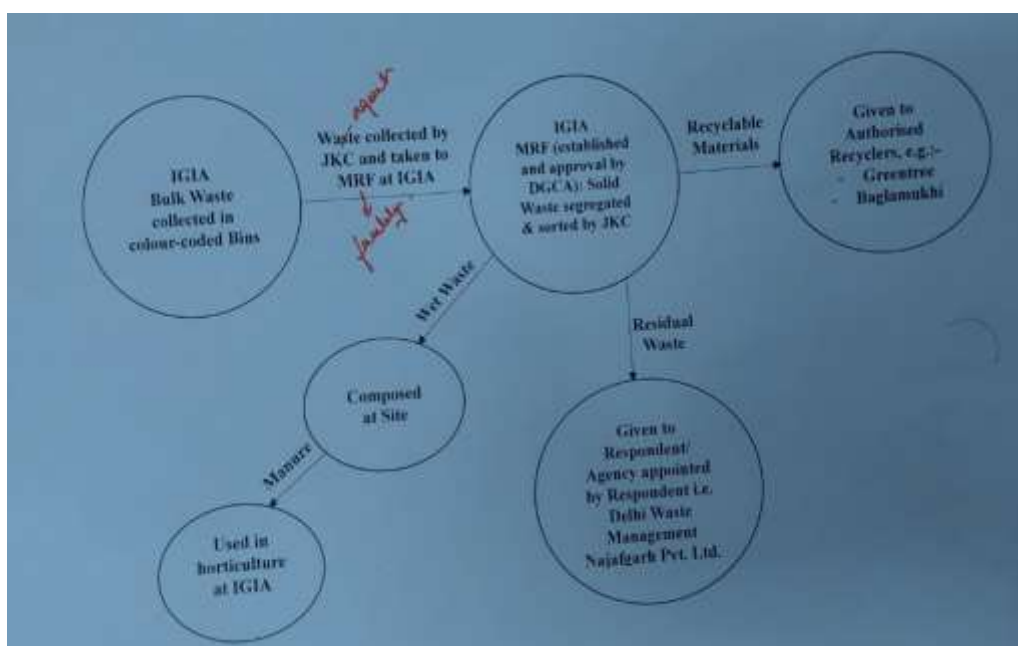


claimed and demonstrated that it has been handing over the residual waste to Delhi Waste Management Najafgarh Pvt. Ltd. ('DWMN'), a concessionaire of MCD under Memorandum of Understanding dated 24.05.2023, followed by MoU dated 11.01.2025. MCD does not dispute the position that till date its concessionaire has been collecting the residual waste from the gate of MRF set up by DIAL at the IGIA for necessary disposal, in consonance with Clause 2.2 of MoU dated 24.05.2023. DIAL has also placed on record receipts showing User Fees paid by JK Contractors, hired by DIAL under a Service Agreement dated 04.03.2022 to DWMN at the rate of Rs.5,000/- per month by 7th of every calendar month in consonance with Clauses 2.7 and 2.8 of MoU dated 24.05.2023 and the User Fees is deposited in favour of Commissioner, MCD. 'User Fee' is defined in 2016 Rules as a fee imposed by the local body and any entity mentioned in rule 2 on the waste generator to cover full or part cost of providing solid waste collection, transportation, processing and disposal services.

70. DIAL has shown that pursuant to a direction issued by MCD vide letter dated 03.07.2017 and pursuant to Agreement dated 04.03.2022 between DIAL and J.K. Contractors, a Materials Recovery Facility (MRF) has been set up at the Airport Site for segregating and sorting solid waste in accordance with Rule 4(7). 'MRF' is defined under Rule 3(31) of 2016 Rules, to mean a facility where non-compostable solid waste can be temporarily stored by the local body or any other entity or any person or agency authorized by any of them to facilitate segregation, sorting and recovery of recyclables from various components of waste by authorized informal sector of waste pickers, informal recyclers or any other work force engaged by the local body or entity mentioned in rule 2 for the purpose, before the waste is delivered or taken up for its processing or disposal.



71. At the MRF, J.K. Contractors recovers recyclable materials such as paper, plastic, aluminium etc. from the solid waste, which are then compressed into cubes and handed over to authorized recyclers such as Greentree Recyclers Pvt. Ltd. and Baglamukhi Industries and Castings Ltd. A flow chart has been placed on record to explain the mechanism of solid waste management adopted and followed by DIAL and the same is scanned and placed below, for better appreciation of the process:-



72. DIAL has also rightly flagged that while MCD claims to be managing the solid waste in entire municipal area of Delhi including Airport Site, both prior and post 2016, not a shred of material is placed on record to support this position and on the contrary, DIAL has placed plethora of documents such as: Agreement with Subhash Projects & Marketing Limited, from 2007 to 2013; Agreement dated 26.02.2015 with Delhi Waste Management Limited; Agreement dated 28.04.2017 between DIAL and Sharda Enterprises for years 2017 to 2022; and Agreement dated 04.03.2022 with JK Contractor from the year 2022 onwards, to show that DIAL has been



managing solid waste at the Airport Site since 2007 by entering into contracts with specialized waste management agencies. MCD's role on the other hand was restricted to collecting residual waste from the Airport Site against charge of User Fee and MCD has placed no material on record which even remotely suggests that prior to the impugned NIT, it was collecting solid waste from the Airport Site. To my mind, the objective of 2016 Rules was not to create any monopoly in the MCD but to scientifically manage solid waste in order to protect and improve the quality of environment as also control environment pollution.

73. Learned Senior Counsel for MCD, placed reliance on several provisions of the Constitution of India as also DMC Act and 2000/2016 Rules and 2017 Byelaws to support and further MCD's stand that solid waste management is an exclusive function of MCD in municipal areas to the exclusion of other entities. First and foremost, reliance was placed on Article 243W read with Entry 6 of Schedule 12 of the Constitution of India. Article 243W deals with powers, authority and responsibilities of Municipalities, etc. and provides as follows:-

"243W. Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow—

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to—

(i) the preparation of plans for economic development and social justice;

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule."



74. From a plain reading of Article 243W, it is clear that it is merely an enabling provision to enable the State to make laws regarding a municipal corporation and to bestow powers and authorities on it to carry out responsibilities enumerated in Twelfth Schedule of Constitution. At the highest, this implies that if the State makes laws vesting powers in a municipal corporation, it can carry out the responsibilities ordained on it but if the State Legislature and/or Parliament does not enact a law or a Statute giving such powers as laid down in the Constitution, the municipality will not be in a position to carry out the responsibilities and the functions. Therefore, this Article only enables the State Legislature to endow powers and authority on municipalities and cannot be read to mean that only MCD can carry out the function of solid waste management, to the exclusion of all others.

75. MCD also asserted that 'Public Health and Sanitation' falls under Entry No. 6 of State List under Seventh Schedule of the Constitution and by virtue of this provision in the Constitution, MCD is the sole authority for solid waste management in municipal area of Delhi. To my mind, this argument has no legs to stand. Article 246 falls in Chapter I of Part XI of the Constitution and relates to separation of legislative powers. It provides that Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule i.e. the Union List, while Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II i.e. State List. Subject to Clauses (1) and (2) and notwithstanding anything in Clause (3), Parliament and, subject to Clause (1), Legislature of any State, also have the power to make laws with respect to any of the matters in List III of the Seventh Schedule i.e. Concurrent List. Under the



Constitution, there is a distribution of legislative power between the Union and the States. The words '*notwithstanding anything contained in Clauses (2) and (3)*' in Article 246(1) and the words '*subject to Clauses (1) and (2)*' in Article 246(3) evidence the principle of federal supremacy which means that in case of inevitable conflict between Union and State powers, the Union power in List I shall prevail over State power in Lists II and III and in case of an overlap between Lists II and III, the latter shall prevail. It is true that 'Public Health and Sanitation' is a State subject and State has exclusive power to make laws for matters enumerated in List II i.e., State List, however, this argument is wholly irrelevant to the present controversy since there is no State Legislation in the present case on which reliance is placed by MCD. On the other hand, DIAL's source of authority to manage solid waste at the Airport Site emanates from Sections 12 and 12A of AAI Act, which is a Central Legislation under Entry 29 of Union List for '*Airways, Aircraft and air navigation*'.

76. The third argument of MCD on this aspect was that Section 42 of DMC Act enlists the obligatory functions of MCD and while the list is not exhaustive and MCD has various obligations outside Section 42, nonetheless sub-Section (c) and (x) include within their ambit obligations as regards solid waste management. It was also asserted that Legislature has carefully used the words '*any other law for the time being in force*', which would include 2016 Rules framed under the Environment Act. In particular, it was highlighted that Section 42(c) enlists '*removal and disposal of filth, rubbish and other noxious or polluted matters*' as a bouquet of multiple obligatory functions of MCD. Section 2(50) defines 'rubbish' to include ashes, broken bricks, broken glass, dust, *malba*, mortar and refuse of any kind which is not filth. By its very nature, it was argued, rubbish is a solid waste and thus ticks



the mandate of Article 243W and Entry 6 of Schedule 12 of the Constitution. Refuse is also a solid waste which is evident from the Bye-laws of Chennai Municipality framed under Chennai City Municipal Corporation Act, 1919 and Rule 15 of 2016 Rules. It was highlighted that refuse has been defined in Clause 3(55) of the Chennai Byelaws to include any waste matter generated from different activities, processes either biodegradable/recyclable in nature in either solid or semi-solid form, which cannot be consumed, used or processed by the generator in its existing form. It was urged that expression ‘solid waste management’, as defined in Section 2(44A) of DMC Act is a ‘public utility’.

77. It is true that Section 2(44A) of DMC Act inserted vide Delhi Act 6 of 2003 defines ‘public utility’ to include water supply, sewerage and drainage solid waste management etc., but this can be of no avail to MCD for two reasons. Firstly, the definition itself is qualified by the words ‘*whether managed by Government or otherwise*’ and the word ‘otherwise’ would obviously include non-governmental entities, which could be Corporation, Council or even a private entity and moreover, there is no provision in the DMC Act, which links ‘public utilities’ to a municipal function. Secondly and more importantly, the obligatory functions of MCD are provided in Section 42 of DMC Act and these do not include solid waste management. In fact, management of solid waste does not even find mention in Section 43, which provides the discretionary functions of MCD. As rightly pointed out on behalf of DIAL, conscious of this legal position, MCD attempted to bring its case within Section 42(c) and (x) of DMC Act.

78. Having given thoughtful consideration to this argument of MCD, in my view, the same also merits rejection. Section 42(c) deals with ‘*the*



scavenging, removal and disposal of filth, rubbish and other obnoxious or polluted matters’ and on the face of it does not include ‘solid waste’. Clearly, this provision relates to MCD’s obligatory function to remove and dispose waste discarded by a waste generator. Going a step further, ‘filth’ is defined in Section 2(18) to include ‘*offensive matter and sewage*’ and ‘rubbish’ as defined in Section 2(50) includes ‘*ashes, broken bricks, broken glass, dust, malba, mortar and refuse of any kind which is not filth*’ and have no connection with solid waste. Section 42(x) is a residuary provision and provides for ‘*the fulfilment of any other obligation imposed by or under this Act or any other law for the time being in force*’. As noted above, solid waste management is not provided under the obligatory or discretionary obligations of MCD under Sections 42 and 43 of DMC Act. No other law for the time being in force has been shown on behalf of MCD, which suggests that solid waste management is the exclusive domain and function of MCD. Even assuming that solid waste management is a residual function, it cannot be heard to say that it is an exclusive right so as to oust all other bodies/entities to perform this function, when entitled under other statutory regimes. Thus the inevitable conclusion is that while MCD may be performing the function of solid waste management in the municipal area, as defined in the DMC Act and may continue to do so, but in so far as the Airport Site is concerned, MCD cannot assert its right to manage the solid waste.

79. Learned Senior Counsel for MCD placed reliance on definition of ‘refuse’ in the Corporation of Chennai Solid Waste Management Bye-laws, 2019 to argue that ‘refuse’ includes solid waste and since ‘refuse’ is part of ‘rubbish’ as defined in Section 2(50) of DMC Act, management of solid waste comes within the obligatory functions of MCD. In my view, reliance



on Chennai Bye-laws, 2019 is misplaced. It is not open to MCD to import definitions from other Bye-laws into DMC Act, which is a Central Legislation and even otherwise, as rightly flagged by DIAL, Chennai Bye-laws have been framed under The Chennai City Municipal Corporation Act, 1919, which contains Section 415 dealing with powers, authority and responsibilities of the Municipal Corporation etc. and provides as follows:-

“415. Powers, authority and responsibilities of the Municipal Corporation, standing committees etc.-- Save as otherwise provided In this Act, the State Government may, be notification, and subject to such conditions, and restrictions, as may be specified therein, entrust to the corporation, the, standing committees, wards committees or any other committee constituted under this Act with such powers and responsibilities with respect to the preparation of plans for economic development and social justice and also with such powers ad authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in Schedule XI.”

80. Schedule XI to Section 415 includes at Serial No. 4 ‘public health, sanitation, conservancy and solid waste management’. Therefore, there is a specific endowment of function of solid waste management on the Municipal Corporation in Chennai with an equivalent function/responsibility missing in the DMC Act. It also merits consideration that wherever the Legislature intended specific powers, authority, responsibility, functions being bestowed on the municipalities, the concerned legislations have so provided and illustratively on this aspect, I may refer to The Mumbai Municipal Corporation Act, 1888 and The Karnataka Municipal Corporations Act, 1976, where there are statutory provisions dealing with collection, removal and disposal of solid waste in Sections 461 and 131 respectively.



81. Another contention of the MCD was that jurisdiction and domain of MCD to carry out municipal functions, including solid waste management extends to whole of Delhi, as defined in Section 2(10) of DMC Act, which reads as *'the entire area of the Union Territory of Delhi except New Delhi and Delhi Cantonment'* and since Aerocity falls in Najafgarh Zone, which is neither Cantonment nor NDMC area, only MCD can carry out the function of solid waste management at the Aerocity. This contention is without merit. No doubt, going by the definition of 'Delhi', Najafgarh Zone falls within MCD's jurisdiction, however, this argument cannot further the case of MCD. DIAL is carrying out the function of solid waste management at Airport Site under Rule 4(7) of 2016 Rules read with OMDA, executed by AAI exercising power under Sections 12 and 12A of AAI Act and in the absence of a specific provision under DMC Act vesting this function and obligation exclusively in MCD, it is legally impermissible for MCD to include any part of Airport Site including Aerocity in the impugned Tender Notice for solid waste management of 'Project Area'. If the plea of MCD is accepted, the purpose of framing Rule 4(7) of 2016 Rules, will be defeated. It is a common case of the parties that the AAI Act and DMC Act are separate legislations and operate in different fields, with no conflict. Be it noted that there was some dispute on the challans issued by MCD, but Court is not delving into the same being wholly irrelevant to the legal issues involved.

82. For all the aforesaid reasons, the writ petition is allowed and the impugned Tender Notice dated 28.11.2024 is quashed to the extent its Scope of Work includes Aerocity and the interim order dated 24.12.2024 is made absolute, leaving it open to MCD to proceed with the Tender Notice for the remaining Project Area.



2025:DHC:7949



83. Pending applications also stand disposed of.

SEPTEMBER 11, 2025/S.Sharma/Shivam

JYOTI SINGH, J