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

Date of decision: 13th OCTOBER, 2026

IN THE MATTER OF:

\# **CNR No. DLHC010073262026**

I.A. 9246/2026

IN

\+ **CS(COMM) 197/2026**

THE INDIAN HOTELS COMPANY LIMITED .....Plaintiff

Through: Mr. Saurabh Kirpal, Sr. Advocate with Mr. R. A. Iyer, Ms. Aaliya Waziri, Mr. Rajat Chaudhary, Advs.

versus

NEW DELHI MUNICIPAL COUNCIL .....Defendant

Through: Mr. Saurabh Seth (Standing Counsel for NDMC) with Mr. Sumer Dev Seth, Mr. Abhiroop Rathore, Mr. Kabir Dev, Mr. Sukhvir Singh, Advocates

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

I.A. 9246/2026

1. This is an application on behalf of the Defendant under Order VII Rule 11 of the CPC for rejection of the Plaint on the ground that the same is barred by law.

2. The instant Suit is one for declaration in terms of Clause 15.7 of the Leave and License Agreement dated 11.04.2019 executed between the

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Plaintiff and the Defendant and that the Plaintiff be excused from the payment of Rs.38,35,78,011/- which is the license fee and also for a declaration that in terms of the Clause 15.3 of the said Agreement, the license period of the Agreement stands extended by a period of 272 days.

3. The Plaintiff has also prayed for an order declaring that an amount of Rs.1,24,32,655/- paid for the period between 19.03.2020 and 31.03.2020 by the Plaintiff to the Defendant ought to be adjusted against the future dues payable under the Agreement.

4. Shorn of unnecessary details, the facts of the case leading to the filing of this application are as follows:-

i. The Plaintiff and the Defendant entered into a Leave and License Agreement dated 11.04.2019 for operation, management and maintenance of Hotel known as *Taj Mahal, New Delhi* which is owned by the Defendant situated at 1, Man Singh Road, New Delhi-110001 on "*as is where is basis*".

ii. It is the case of the Plaintiff that under Clause 15 of the said Agreement, the Plaintiff, to whom the license has also been given for another hotel, is excused from performance of its obligations under the Agreement in terms of *force majeure* clause, a term which has been defined under the Agreement.

iii. It is the case of the Plaintiff that between 2020 and 2022, the entire world was affected by the COVID-19 pandemic. It is the case of the Plaintiff that due to the COVID-19 pandemic, various governmental restrictions had been imposed because of which it was impossible for the Plaintiff to operate, run and maintain the Hotel at various times, the Hotel remain closed due to COVID-19

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pandemic and the government restrictions affected the normal operations, as guests were not visiting the Hotel due to the widespread effect of COVID-19 pandemic and fear of likelihood of being affected. Further, there was inadequate labour available which severely impacted the operations and revenues of the Hotel and the Hotel was unable to perform its obligations. It is stated that the government had also brought out several notifications to assuage the people from fulfilling their obligations.

iv. It is the case of the Plaintiff case that the Plaintiff would also be entitled to the benefit of *force majeure* clause and should be excused from performance of its obligations under the Leave and License Agreement dated 11.04.2019.

v. It is stated that the Defendant has not taken note of the adverse circumstances in which the Plaintiff was placed during the COVID-19 period. It is the case of the Plaintiff that the Plaintiff has also taken up this issue with the Defendant-NDMC and meetings took place to discuss the issues for excusing the Plaintiff from performing its obligations on the basis of the circular/instructions issued by the Government of India.

vi. It is stated that the Defendant had taken an untenable stand that the Plaintiff could not be excused from performing its obligation of payment of license fee and further there is no circular/instruction from the Government of India regarding the applicability of the *force majeure* clause regarding the hospitality entities affected during COVID-19 pandemic.

vii. The Plaintiff has therefore instituted the present Suit seeking

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reliefs as stated hereinabove.

5. The plaint was registered as a Suit on 26.02.2026 and summons was issued to the Defendant.

6. The present Application has been filed by the Defendant under Order VII Rule 11 of the CPC for rejecting the plaint on the following grounds:-

i. That no Suit can be instituted against the Defendant in respect of any act done in pursuance of any rule, regulation or bye-law under the New Delhi Municipal Council Act, 1994 (*hereinafter referred to as the* 'NDMC Act'), without giving a notice in writing and until the expiration of two months after notice in writing, which is to be given under Section 385 of the NDMC Act.

ii. It is the contention of the Defendant that a notice under Section 385 of the NDMC Act is a *sine qua non* before instituting a Suit against the NDMC and since notice has not been given to the Defendant under Section 385 of the NDMC Act, the Suit as framed is not maintainable. He further states that a notice under Section 80 of the CPC which was given by the Plaintiff on 14.01.2025 is not a substitute to the notice which has to be given under Section 385 of the NDMC Act.

iii. It is further stated that the Suit is barred by limitation. It is the case of the Defendant that the Plaintiff is seeking a declaration of waiver of license fee from March, 2020. It is the case of the Defendant that the license fee of March, 2020 became payable in April, 2020 and therefore, the cause of action first arose in April, 2020 and the Suit has been instituted in the year 2026, is hit by limitation in terms of Article 58 of the Limitation Act.

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iv. It is the case of the Defendant that the claim of the Plaintiff for waiver of license fee was rejected on 17.11.2022. He states that Section 385 (2) of the NDMC Act warrants that a Suit must be filed within six months from the date of the rejection and therefore the Suit should have been filed by May, 2023. He states that even if Section 385 (2) of the NDMC Act does not apply, then by applying Article 58 of the Limitation Act, the Suit should be filed within three years of the rejection and therefore, the Suit is hit by limitation.

v. It is stated that the Suit is expressly barred by Section 15 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (*hereinafter referred to as the* 'Public Premises Act'). It is the case of the Defendant that a Demand and Eviction Notice has been issued by the Defendant and therefore the Plaintiff is liable to be evicted in terms of the Public Premises Act and since the Plaintiff is to be evicted, the eviction will have to take place only in accordance with the Public Premises Act and the jurisdiction of civil courts is explicitly barred under Section 15 of the Public Premises Act.

vi. It is stated that the present Suit being only one for declaration without any consequential relief, the Suit is hit by the proviso to Section 34 of the Specific Relief Act. It is the case of the Defendant that the dispute, i.e., the license fee of the quantified amount and the failure to seek for injunction restraining the Defendant from recovering the amount renders the Suit as non-maintainable under Section 34 of the Specific Relief Act.

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7. Though the Defendant has also taken one more ground regarding the payment of *ad valorem* court fee, this Court is not delving into that issue at this juncture.

8. It is the case of the Plaintiff that a notice has been sent by the Plaintiff. It is stated that though the notice was one under Section 80 of the CPC, however, since the purport of a notice under Section 80 CPC is also to call upon a party to spell out the dispute by explicitly stating the cause of action, the nature of reliefs sought for and the amount of compensation claimed, which is also the purport of Section 385 of the NDMC Act, it cannot be said that the Plaintiff has not complied with the requirement of law and the notice under Section 80 CPC is a valid notice as required under the law. It is stated that it is not the form but the content of the notice that is important and the label of the notice becomes irrelevant.

9. It is also stated that the present Suit is for performance of contractual obligations of the Defendant and the Suit has been filed for implementation of the terms under the Leave and License Agreement dated 27.07.2018, and consequential reliefs are not necessary.

10. It is contended that the Suit has been filed within the period of limitation. The cause of action also arose in March, 2025 and May, 2025 as the efforts to amicably resolve the matter in terms of the Agreement failed only in May, 2025 when the NDMC on 20.05.2025, for the first time, refused to acknowledge that the Plaintiff is excused from performing its obligations of paying the license under the Agreement during the said period and the Suit has been filed within a period of three years of the final refusal. It is the case of the Plaintiff that the contract specifically provides for a resolution process and Clause 20.3 of the Agreement provides for an

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amicable resolution. Since the effort to amicably resolve the matter came to an end in March/May, 2025, the Suit has been filed in time.

11. The purport of the Suit is to excuse the Plaintiff from performance of its obligations under the Agreement of paying license fee and that the present Suit is not one for eviction proceedings initiated by the NDMC and therefore Section 15 of the Public Premises Act cannot be attracted.

12. Learned Counsel for the Defendant and the Plaintiff have elaborated their respective contentions raised in the application and the reply by referring to various case laws.

13. Learned Counsel for the Defendant has relied on the Judgments of this Court in Aggarwal & Modi Enterprises Private Limited v. New Delhi Municipal Council, **1996 SCC OnLine Del 468**, Ram Pratap Singh Nayyar v. Municipal Corporation of Delhi, **2011 SCC OnLine Del 719** and K. L. Sachdeva v. Municipal Corporation of Delhi,**2013 SCC OnLine Del 1643** to substantiate that the Suit is hit by Section 385 of the NDMC Act. He has also relied on the Judgments passed by this Court in G.C. Sharma v. Municipal Corporation of Delhi, **ILR (1979) II Del 771** and B.L. Gupta v. Municipal Corporation of Delhi, **2005 (79) DRJ 529** to substantiate his case on limitation.

14. Learned Counsel for the Defendant places reliance on the Judgment passed by the Coordinate Bench of this Court in Aggarwal &Modi Enterprises (supra) and Ram Pratap Singh Nayyar (supra) to state that in the absence of any notice under Section 385 of the NDMC Act, the Suit is not maintainable as notice under Section 385 of the NDMC Act is a *sine qua non* before instituting a Suit against the NDMC.

15. Learned Counsel for the Plaintiff has more or less reiterated his

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contentions contending, inter alia, that (a) notice under Section 80 CPC has been given to the Defendant and the notice under Section 80 CPC satisfied the ingredients of a notice under Section 385 of the NDMC Act; (b) Plaintiff is only seeking a declaration that the Plaintiff has claimed licensee fee and that there is no necessity for claiming any injunction and that the Suit for declaration alone is sufficient; (c) the effort to amicably resolve the disputes, as stipulated under the terms of the Agreement, came to an end in May, 2025 only when the NDMC categorically communicated that the Plaintiff is not excused from the obligation of paying the amount as stipulated under the Agreement and that the Suit having been filed within three years from May, 2025 is within the period of limitation.

16. Heard the learned Counsels for the parties and perused the material on record.

17. Section 385 of the NDMC Act reads as under:-

> *"**385**. **Notice to be given of suits.—***
>
> *(1) No suit shall be instituted against the Council or against the Chairperson or against any municipal officer or other municipal employee or against any person acting under the order or direction of the Chairperson or any municipal officer or other municipal employee, in respect of any act done, or purporting to have been done, in pursuance of this Act or any rule, regulation or bye-law made thereunder until the expiration of two months after notice in writing has been delivered at the municipal office and, in the case of such officer, employee or person, unless notice in writing has also been delivered to him at his office or place of residence, and unless such notice states explicitly the cause of action, the nature of the relief sought, the amount of compensation claimed, and*

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the name and place of residence of the intending plaintiff, and unless the plaint contains a statement that such notice has been so left or delivered.

(2) No suit, such as is described in sub-section (1), shall unless it is a suit for the recovery of immovable property or for a declaration of title thereto, be instituted after the expiry of six months from the date on which the cause of action arises.

(3) Nothing in sub-section (1) shall be deemed to apply to a suit in which the only relief claimed is an injunction of which the object would be defeated by the giving of the notice or the postponement of the institution of the suit."

18. A Coordinate Bench of this Court in Aggarwal & Modi Enterprises Private Limited v. New Delhi Municipal Council, **1996 SCC OnLine Del 468** has observed as under:-

*"**9**. Dealing with the mandatory nature of issue of notice under Section 80 of the Civil Procedure Code, the Supreme Court has laid down in the case of GangappaGurupadappaGugwad v. Rachawwa, (1970) 3 SCC 716 : AIR 1971 SC 442. That the provision is mandatory and no suit can be entertained if notice was not issued by the plaintiff and the plaint has to be rejected.*

xxx

***14.** Accordingly, the plaint is rejected. The plaintiff is given liberty to file a fresh suit on the same cause of action after issuing two months notice to the New Delhi Municipal Council under Section 385 of the New Delhi Municipal Council Act, 1994. There shall be no order as to costs."*

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19. The facts of the case reveal that a notice was given by the Plaintiff to the Defendant on 14.11.2025. The entire notice reads as under:-

"14th November 2025

Dy. Director (Estate - I)
Estate – I Department New Delhi Municipal Council,
3rd Floor, Palika Kendra,
Parliament Street, New Delhi - 110001

Dear Sir,

Re: Your letter no. D-683/30(E-I)/2025 dated 11.3.2025

By the captioned letter, you had sent the revised draft of the minutes of the meeting held on 16.1.2025. By the said revised draft, you had inter alia communicated on behalf of NDMC as under:

"Further, Chairperson, NDMC stated that there is no circular / instruction from GoI regarding applicability of Force Majeure clause for the hospitality entities affected even during COVID times. It was also informed that issue has already been examine by NDMC and decision has already conveyed officially to IHCL earlier."

In effect, the NDMC has communicated that it is reiterating its demand for payment of license fee for the period for which IHCL is in law and in fact excused from performing its obligations owing to force majeure and other debilitating circumstances. Therefore, the demand of the NDMC is unsustainable.

In the circumstances, you are requested to kindly reconsider your position and withdraw the demand for license fee.

Please treat the present as a notice under section 80 of

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the Code of Civil Procedure, 1908. The particulars as required by section 80 of the Code are set out below:

1.	*Name, description and address of the Plaintiff*	*The Indian Hotels Company Limited* *A company incorporated under the Indian Companies Act, 1882* *Having its registered address at Mandlik House, Mandlik Road, Mumbai – 400 001*
2.	*Cause of action*	*IHCL has an agreement with the NDMC for operation, management and maintenance of Taj Mahal, New Delhi.* *Inter alia due to the various restrictions imposed owing to the outbreak and continuance of Covid-19 pandemic in 2020 to 2022, IHCL had intimated NDMC in terms of paragraph 15 of the Agreements that the restrictions amount to force majeure and IHCL is excused from performing its obligations under the Agreements to make payment of the license fees.* *However, despite acknowledging that the same amount to force majeure, the NDMC has repeatedly taken the untenable stand that IHCL is not excused from performing its obligations under the Agreement. In view thereof, a meeting for amicable resolution of the issues was held on 16.1.2025 between the representatives of IHCL and the Chairman of the NDMC in terms of paragraph 20.3 of the Agreement.* *Nonetheless, NDMC has, by letter dated 11.3.2025 reiterated its stand that IHCL is not excused from performing its obligations under the Agreement. Hence, on 11.3.2025, the cause of action has arisen against NDMC.*
3.	*Relief claimed*	*A declaration that in terms of paragraph 15 of the Agreement, IHCL is excused from*

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		performing its obligations under the Agreement and shall not be liable to pay license fee for various periods from March 2020 till February 2022 as communicated through various correspondences, and other related reliefs.

Please note that this is without prejudice to our rights and contentions in respect of the dispute."

20. Learned Counsel for the Defendant states that the said notice is one under Section 80 of the CPC and it cannot be construed as notice under Section 385 of the NDMC Act. It is the contention of the learned Counsel for the Defendant that since NDMC is not a government, notice under Section 80 of the CPC cannot be issued to NDMC. He also places reliance on the Judgment of this Court in Ram Pratap Singh Nayyar (supra) to contend that Section 80 of the CPC does not apply to a Corporation or a Council. It is pertinent to mention that the Judgment of Ram Pratap Singh Nayyar (supra) was against the MCD having analogous position. Reliance is placed on Paragraph 6, 7 and 8 of the said Judgment to state that Section 80 of the CPC is inapplicable to the NDMC and that the notice under Section 80 of the CPC would not suffice. Paragraph 6, 7 and 8 of the Judgment passed by this Court in Ram Pratap Singh Nayyar v. Municipal Corporation of Delhi, **2011 SCC OnLine Del 719**, reads as under:-

*"**6.** There is no provision in DMC Act for any exemption from the requirement of serving notice under sub-section (1) of Section 478 of DMC Act. Section 80(2) of the Code of Civil Procedure, to the extent it is relevant provides that a suit to obtain an urgent or immediate relief against the Government or*

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any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by sub-section (1). Since MCD is not Government, the provisions of sub-section (2) of Section 80 of Code of Civil Procedure do not apply to a suit filed against it.

7. *This issue came up for consideration before a Division Bench of this Court in SmtPrindaPunchi v. Municipal Corporation of Delhi 2005 IV AD (Delhi) 639. In that case, an application had been filed by the appellant under Section 80(2) of the Code of Civil Procedure seeking leave to institute the suit without service of statutory notice. Noticing that there is no provision for such a leave under Section 53B of Delhi Development Act, the Court and examining the provisions contained in Section 80(2) of the Code of Civil Procedure, Section 53B of Delhi Development Act and Section 478 of Delhi Municipal Act, the Court inter alia observed as under:*

> *A bare perusal of the statutory provisions shows that the legislature had carefully worded the statutory provisions keeping in view the spirit, indictment and purpose of the discretion conferred to waive the requirement of the statutory notice. Keeping in view the exigencies of the matter, Section 53B of the Delhi Development Act knows of no exemptions or waiver. The aforesaid provision of Section 53B was enacted long after enactment of the provision of sub-section (2) of Section 80 CPC. The legislature was aware of the said provision of sub-section (2) of Section 80 CPC when Section 53B of the Delhi Development Act was enacted. Consciously the legislature did not incorporate in Section 53B of the Delhi Development Act any exception as that of sub-*

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section (2) of Section 80 CPC. therefore, it would not be appropriate to include and add such provision as that of sub-section (2) of Section 80 CPC into the provision of Section 53B of the Delhi Development Act. On the contrary the legislature has consciously referred to a suit for declaration of title in Section 53B(2) of the statute. It is settled law that a statute has to be enforced as it exists. No words can be imported into the specific language used by the legislature.

The law of interpretation of statutes clearly provides that there can be no addition or subtraction to the language of a statute when the same is clear and unambiguous. There is no unambiguity or uncertainty in the language of Section 53B and, therefore, there is no scope of adding any words to the said existing provision in the statute.

Finding that the appellant was disputing title and therefore had to bring a suit for declaration and there being no provision in Section 53B of Delhi Development Act for leave of the Court to bring a suit without any notice like notice under Section 80(2) of the Code of Civil Procedure, it was held that in a suit seeking a decree for declaration as also mandatory injunction a notice had to be given under Section 80 of Code of Civil Procedure as also under Section 53(B) of Delhi Development Act.

8. *Hence, Section 80(2) of Code of Civil Procedure cannot be applied in a suit attracting applicability of Section 478 of DMC Act, 1957 or Section 53B of Delhi Development Act. In any case it cannot be said that the relief of possession and recovery of money sought by the plaintiff are urgent or immediate reliefs. Hence,*

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sub-section (2) of Section 80 of Code of Civil Procedure in any case is not attracted."

21. In the same line, reliance is placed by the learned Counsel for the Defendant on a Judgment passed by this Court in K. L. Sachdeva v. Municipal Corporation of Delhi, **2013 SCC OnLine Del 1643**. The relevant portion of the said Judgment reads as under:-

> *"**17.** Having seen above that the layout plan relating to regularization of the colony was sanctioned in March 1962 and that the suit land forming part of plots described as plots No. 44 and 45, was meant for Public Park, the plaintiff, as discussed above, is left with no legal ownership thereof. The defendant MCD was under an obligation to manage the suit land as a public park.*
>
> ***18.** In view of this, the suit was apparently barred for want of service of mandatory notice upon the defendant MCD as per Section 478 of Delhi Municipal Corporation Act."*

22. The contention of the learned Senior Counsel for the Plaintiff is that it is not the label of the notice but the purport of the notice that is important. It is also contended that Section 385 of the NDMC Act has no application because the case of the Plaintiff is based on the terms of a contract and is not against any acts done by the NDMC in terms of the NDMC Act. This Court is unable to accept the second argument of the learned Senior Counsel for the Plaintiff.

23. Section 142 of the NDMC Act gives the power to the NDMC to enter into a contract and the contract has been entered into by virtue of powers conferred on the NDMC under this Section. The Suit has been filed in

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pursuance to this Act. A notice has been given by the Plaintiff to the NDMC on 14.11.2025. Though it is purportedly a notice under Section 80 of the CPC but it qualifies all the ingredients which are required under Section 385 of the NDMC Act. Had the notice not mentioned Section 80 of the CPC, it could still have been construed as one under Section 385 of the NDMC Act. It is well settled that Courts look at the form and not the label and the courts must not be too technical when the label is wrong and therefore, the entire notice cannot be discarded.

24. It is well settled that it is the substance of the notice that is to be seen and not the label. A reading of the notice brings out all the ingredients which are required under Section 385 of the NDMC Act and therefore this Court is not impressed by the argument of the Defendant that the notice under Section 80 of the CPC is not the one as under Section 385 of the NDMC Act. In any event, reliance placed by the Defendant on the judgment of Ram Pratap Singh Nayyar (supra) is not apt. The discussion in the said case is of dispensing with the notice under Section 80(2) of the CPC because of the urgency for the relief to be sought that is not the question in this case.

25. In the opinion of this Court, the notice that has been given on 14.11.2025, meets all the requirements under Section 385 of the NDMC Act and therefore, this Court is not inclined to return the plaint back to enable the Plaintiff to serve a notice under Section 385 of the NDMC Act to the Defendant and file the Suit afresh.

26. The next argument of the learned Counsel for the Defendant is that since the Suit has not been instituted within six months from the date when the cause of action first arose, the same is barred by law.

27. Clause 20.3 of the Agreement provides for an amicable resolution of

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all the disputes. Clause 20.3 of the agreement reads as under:-

> *"**20.3 Amicable Resolution***
>
> *20.3.1 Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement (the "Dispute") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in Clause 20.3.2 below.*
>
> *20.3.2 Either Party may require such Dispute to be referred to the Chairman of the Licensor and the Person duly authorised by the Board of Directors of the Licencee, for amicable settlement. Upon such reference, the two shall meet at the earliest mutual convenience and in any case within thirty (30) days of such reference to discuss and attempt to amicably resolve the Dispute, as evidenced by the signing of written terms of settlement within thirty (30) days of such meeting or such longer period as may be mutually agreed by the Parties."*

28. No doubt at the time of initial rejection of the case, there was a decision taken by the NDMC in the year 2022 that benefit of the *force majeure* clause ought not to be given to the Plaintiff. However, material on record at this juncture does not indicate that there were no further negotiations between the parties and the last of the rejection was on 20.05.2025. The letter dated 11.03.2025 and 20.05.2025 are reproduced as under:-

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CS(COMM)-197/2026

MANAGING DIRECTOR'S OFFICE
17 MAR 2025

I/145042/2025

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

No. D-683/SO(E-I)/2025
11/03/2025

Dated: 11/03/2025

Shri Puneet Chatwal
Managing Director and CEO
The Indian Hotel Company Limited
9th Floor, Express Towers
Barrister Rajni, Patel Marg, Nariman point
Mumbai, Maharashtra 400021

Subject: Minutes of Meeting(MoM) dated 16th January 2025.

This is with reference to your letter dated January 21, 2025, wherein the Minutes of Meeting (MoM) were conveyed to NDMC regarding the meeting held on January 16, 2025. After conducting an internal review, we have made the necessary corrections to the minutes to accurately reflect the discussions and our perspective during the meeting. Accordingly, we are enclosing the corrected version of the MoM for your reference and records.

This is issued with the approval of Competent Authority.

Yours truly,

Signed by
Himmani Bara
Date: 11-03-2025 10:52:01

Dy. Director(Estate-I)

Encl: Minutes of the Meeting dated 16-01-2025

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Signing Date:15.10.2026 11:03:27

U-43038/9/2021-Estate-I

I/149892/2025

D-778/30(E-I)/2025
Dated. 20/05/2025

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

Dr. Anmol Ahluwalia,
Area Director-Operation & General Manager-Taj Mahal,
Number One, Mansingh Road,
New Delhi.

Sub: Intimation of force majeure as per clause 15.2.1 and claim of excuse from performance obligation as per clause 15.7 from payment of license fee under the leave and license agreement dated 11th April, 2019 ('Agreement') between the New Delhi Municipal Council ("NDMC") and the Indian Hotels Company Ltd. ("IHCL") for Taj Mahal Hotel at No.1, man Singh Road, New Delhi ("Hotel").

Sir,

Please refer to your letter dated 26th December, 2024 and subsequent letter dated 13th January, 2025 on the above subject.

2. In this regard, it is informed that your request has been considered in view of various clauses of License Deed dated 11th April, 2019 executed between NDMC and IHCL , in consulation with Law Department, and it has been decided that "relaxation in license fee on account of implementation of GRAP cannot be acceded to."

3. This issues with prior approval of the Competent Authority, NDMC.

Signed by
Hiramani Bara
Dy. Director (Estate-I) Date: 22-04-2025 12:11:1

Copy to: 1. OSD (Revenue) to Chairperson, NDMC.

29. Whether these two letters give rise to a fresh cause of action or not, would be seen at the stage of trial. It is well settled that limitation is mixed question of law and fact and therefore, this Court at the moment, is not opining one way or the other whether any fresh cause of action has arisen or not.

30. It is pertinent to mention that the present Suit has been filed within six months of the date of notice dated 14.11.2025. The question whether the

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Plaintiff would get the benefit of time under pre-institution mediation under Section 12A of the Commercial Courts Act, 2015, is also a matter to be seen at the trial.

31. The present Suit is one for enforcing the terms of the contract and not for eviction and therefore provisions of the Public Premises Act would not be attracted.

32. The present Suit is one for declaration that the Plaintiff is entitled to the benefit of Clause 15.7 of the Agreement being the *force majeure* clause. If it is declared that the Plaintiff is entitled to the benefit of Clause 15.7 of the Agreement, then as stated by the learned Counsel for the Plaintiff that no demand notice has been sent by the NDMC under the NDMC Act for which a consequential relief is necessary and notice is not required. The amounts are yet to be crystallized after the declaration. No demand notice has been sent by the NDMC under the NDMC Act for which a consequential relief is necessary and therefore the proviso to Section 34 of the Specific Relief Act is not applicable.

33. It is well settled that courts must be very circumspect in rejecting a plaint under Order VII Rule 11 of the CPC and that too only in extraordinary circumstances. The law relating to Order VII Rule 11 of the CPC has now been crystallised by the Apex Court in a number of Judgments.

34. The Apex Court in Popat and Kotecha Property v. State Bank of India Staff Assn., **(2005) 7 SCC 510,** has held as under:

> "*13. Before dealing with the factual scenario, the spectrum of Order 7 Rule 11 in the legal ambit needs to be noted.*
>
> *14. In Saleem Bhai v. State of Maharashtra [(2003) 1*

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SCC 557] it was held with reference to Order 7 Rule 11 of the Code that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power at any stage of the suit — before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Order 7 Rule 11 of the Code, the averments in the plaint are the germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.

15. In I.T.C. Ltd. v. Debts Recovery Appellate Tribunal [(1998) 2 SCC 70] it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.

16. The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code. (See T. Arivandandam v. T.V. Satyapal [(1977) 4 SCC 467] .)

17. It is trite law that not any particular plea has to be considered, and the whole plaint has to be read. As was observed by this Court in Roop Lal Sathi v. Nachhattar Singh Gill [(1982) 3 SCC 487] only a part of the plaint cannot be rejected and if no cause of

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action is disclosed, the plaint as a whole must be rejected.

18. In Raptakos Brett & Co. Ltd. v. Ganesh Property [(1998) 7 SCC 184] it was observed that the averments in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order 7 was applicable.

19. There cannot be any compartmentalisation, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.

20. Keeping in view the aforesaid principles the reliefs sought for in the suit as quoted supra have to be considered. The real object of Order 7 Rule 11 of the Code is to keep out of courts irresponsible law suits. Therefore, Order 10 of the Code is a tool in the hands of the courts by resorting to which and by searching examination of the party in case the court is prima facie of the view that the suit is an abuse of the process of the court in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order 7 Rule 11 of the Code can be exercised."

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35. Applying the law laid down by the Apex Court to the facts of this case, this Court is of the opinion that the notice dated 14.11.2025 is in substance one under Section 385 of the NDMC Act and on that ground alone the plaint cannot be rejected. The question of limitation is a mixed question of law and fact and at this stage it cannot be said with certitude that the Suit is barred by limitation as it is a matter which has to be seen during trial. Resultantly, this Court is not inclined to exercise its jurisdiction under Order VII Rule 11 of the CPC.

36. The Application is rejected in the aforementioned terms.

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37. List before the Roster Bench on 02.11.2026.

SUBRAMONIUM PRASAD, J

OCTOBER 13, 2026
Hsk/KG

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