COMAP No. 303 of 2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF NOVEMBER, 2026

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN

COMMERCIAL APPEAL NO. 303 OF 2025

BETWEEN:

1. M/S AIE SOFTWARE INDIA
PRIVATE LIMITED
A COMPANY INCORPORATED
UNDER THE COMPANIES ACT, 2013
FORMERLY HAVING OFFICE AT
"AWFIS", 14TH FLOOR
SKAV 909, LAVELLE ROAD
BENGALURU-560001

NOW HAVING OFFICE AT:

AWFIS SPACE SOLUTIONS
NO.16/2, FIELD MARSHAL
CARIAPPA ROAD
SRINIVAS NAGAR
SHANTHALA NAGAR
ASHOK NAGAR
BENGALURU-560025
(REPRESENTED BY ITS
AUTHORIZED REPRESENTATIVE
ATHRADI SATHEESH HEGDE)

...APPELLANT

Digitally signed by VASANTHA KUMARY B K
Location: HIGH COURT OF KARNATAKA

(BY SRI ADITYA SONDHI, SENIOR COUNSEL FOR
SRI ROHAN VEERANNA TIGADI, ADVOCATE)

AND:

1. M/S SMARTWORKS COWORKING
SPACES PRIVATE LIMITED
HAVING ITS REGISTERED OFFICE AT

UNIT NO.305-310
PLOT NO.9, 10 AND 11
VARDHMAN TRADE CENTRE
NEHRU PLACE
SOUTH DELHI-110019

ALSO HAVING BRANCH OFFICE AT:

SARGOD IMPERIAL, 93
FIELD MARSHAL CARIAPPA ROAD
SHANTHALA NAGAR
ASHOK NAGAR, BENGALURU
(REPRESENTED BY ITS AUTHORIZED
REPRESENTATIVE MR. BASAVRAJ CM)

…RESPONDENT

(BY SRI PRAMOD NAIR, SENIOR COUNSEL FOR
SRI VAMSHI KRISHNA C AND SMT. ANISHA SHERVEGAR,
ADVOCATES)

THIS COMAP IS FILED UNDER SECTION 13(1-A) OF COMMERCIAL COURTS ACT, 2015, PRAYING TO ALLOW THE APPEAL BY SETTING ASIDE THE JUDGMENT AND DECREE DATED 7TH APRIL 2025 PASSED BY THE LXXXVII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, COMMERCIAL COURT, BENGALURU (CCH-88) (ANNEXURE - A AND ANNEXURE - B) IN COMMERCIAL ORIGINAL SUIT NO.622 OF 2021 AND CONSEQUENTLY ALLOW THE COUNTER-CLAIMS TO THE TUNE OF RS.2,41,58,973/- SOUGHT BY THE APPELLANT AND ETC.

THIS COMAP HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 12.10.2026, COMING ON FOR PRONOUNCEMENT THIS DAY, ***HON'BLE MR. JUSTICE D K SINGH*** PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE D K SINGH
and
HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE D K SINGH)

PREFACE:

1. The present commercial appeal has been filed by M/s. AIE Software India Private Limited impugning the judgment and decree dated 07.04.2025 passed by the LXXXVII Additional City Civil and Sessions Judge, Bengaluru in Commercial O.S.No.622/2021.

FACTS OF THE CASE:

2. The respondent-plaintiff, M/s. Smartworks Coworking Spaces Pvt. Ltd., is engaged in the business of providing enterprise services, including co-working spaces and fully operational office facilities. The appellant-defendant, M/s. AIE Software India Pvt. Ltd., is engaged in providing information technology services to its clients. In order to accommodate its growing workforce, the appellant approached the respondent for availing furnished office space along with the requisite infrastructure and allied facilities at the respondent's business centre situated at Sargod Imperial Centre, Bengaluru.

3. Pursuant to negotiations, the parties entered into a Service Agreement dated 08.07.2019, under which the appellant agreed to avail 150 workstations for a monthly service fee at Rs.22,80,000/- for a period of 24 months commencing from 01.09.2019, with a lock-in period of 22 months. The appellant deposited a sum of Rs.68,40,000/- towards the interest-free refundable security deposit (IFRSD). Subsequently, by an Addendum dated 10.09.2019, the appellant opted for an additional 100 workstations at a monthly service fee of Rs.12,00,000/- for a period of 23 months and deposited a further sum of Rs.36,00,000/- towards IFRSD. Thereafter, under a second Addendum dated 08.11.2019, an additional 130 workstations were added at a monthly service fee of Rs.13,20,000/- for a period of 20 months commencing from 01.01.2020, with a lock-in period of 18 months. The appellant deposited a further sum of Rs.39,60,000/- towards IFRSD. Thus, the appellant availed a total of 380 workstations under the three agreements.

4. It is the case of the respondent that, pursuant to the aforesaid agreements, it incurred substantial expenditure towards customising and furnishing the business centre to meet the appellant's requirements. The appellant commenced its

operations from the said premises. However, according to the appellant, certain facilities and amenities were not properly provided and it had experienced difficulties relating to storage space, cafeteria facilities, washroom doors, network connectivity, plug points and other infrastructure. The appellant claims that these deficiencies were brought to the respondent's notice through electronic correspondence.

5. In March 2020, following the outbreak of the COVID-19 pandemic and the consequent lockdown, the appellant, by email dated 30.03.2020, requested the respondent to consider a reduction in the monthly service charges, citing the financial difficulties faced by its business and clients. The respondent informed the appellant that the request would be considered internally. By email dated 07.04.2020, the appellant stated that it had instructed its team to withhold the payment for that month until the discussions were concluded. The respondent thereafter raised an invoice dated 01.04.2020 for Rs.58,31,462/- towards the services for the said month.

6. The respondent, by email dated 17.04.2020, communicated a concession in respect of the lockdown period and requested the appellant to acknowledge the same and clear

the outstanding dues. The precise extent and terms of the concession subsequently became a matter of dispute between the parties. The respondent contends that, despite offering the concession, the appellant failed to clear the outstanding invoices. A further invoice was raised on 01.05.2020 for Rs.57,35,292/-, which also remained unpaid.

7. The respondent alleges that, without clearing the outstanding dues and during the subsistence of the lock-in period, the appellant attempted to remove its furniture, electronic equipment and other articles from the business centre on 06.05.2020 and 07.05.2020. The respondent further claims that it came to the knowledge of the respondent that the appellant had entered into a fresh service agreement with another co-working service provider, AwFIS Space Solutions Private Limited (hereinafter referred to as 'AwFIS'), on 06.05.2020. According to the respondent, the appellant's conduct amounted to premature termination of the agreements, rendering it liable to pay the outstanding invoices and the service charges for the unexpired lock-in period.

8. By its communication dated 09.05.2020, the respondent asserted that the appellant had terminated the agreements,

appropriated the security deposit of Rs.1,44,00,000/- and claimed the service charges for the balance lock-in period. It also informed the appellant that it was no longer entitled to enter the business centre and that its access cards had been deactivated. The appellant, by its reply dated 21.05.2020, denied having terminated the agreements and contended that it was the respondent which had repudiated the contractual arrangement by discontinuing the services, denying access to the premises and appropriating the security deposit.

9. The appellant further contended that, owing to the respondent's conduct, its business operations were disrupted and it was compelled to shift its operations and rebuild its website on cloud platforms. It alleged that the disconnection of its servers affected a business proposal submitted to Ciena and resulted in business and reputation losses. The parties thereafter exchanged further correspondence, including communications dated 03.06.2020 and 16.06.2020, but the dispute could not be resolved.

10. In the above circumstances, the respondent instituted Com.O.S. No.622/2021 before the LXXXVII Additional City Civil and Sessions Judge, Bengaluru, seeking recovery of

Rs.8,45,35,656/- with interest at 24% per annum. The claim comprised Rs.1,15,66,754/- towards the outstanding service charges for April and May 2020, Rs.7,82,19,802/- towards the service charges for the unexpired lock-in period, Rs.96,170/- towards parking charges and Rs.3,35,690/- towards alleged unpaid internet charges.

11. The appellant contested the suit by filing its written statement, disputing its liability and contending that the respondent had first repudiated the agreements. It also questioned the enforceability of the unregistered service agreements on the ground that they created leasehold rights in respect of the premises. By way of counterclaim, the appellant sought refund of Rs.1,44,00,000/- towards the security deposit, Rs.7,58,973/- towards the value of articles and materials allegedly retained by the respondent and Rs.90,00,000/- towards business and reputation losses, aggregating to Rs.2,41,58,973/-, together with interest.

12. The parties examined their respective authorised representatives as P.W.1 and D.W.1 and marked Exs.P.1 to P.81 and Exs.D.1 to D.39. Vide judgment and decree dated 07.04.2025, the suit came to be decreed for Rs.8,45,35,656/-

along with interest at 12% per annum from the date of suit till realization, while the appellant's counterclaim came to be rejected.

13. Aggrieved by the aforesaid judgment and decree, the appellant has preferred the present appeal.

FINDINGS OF THE COMMERCIAL COURT:

14. The Commercial Court, upon consideration of the pleadings, oral and documentary evidence, framed ten issues for consideration. The Issue No.1, concerning the contention that the service agreements created leasehold rights and were inadmissible for want of registration, was held not to arise for consideration, as no burden had been cast upon either party while framing the issue.

15. Issue Nos.2 to 6, relating to the alleged termination of the agreements, outstanding service charges, lock-in-period charges, parking charges and internet charges, were taken up together for consideration. The Commercial Court noted that the execution of the Service Agreement dated 08.07.2019 and the two addendums dated 10.09.2019 and 08.11.2019 was admitted by the appellant. It also noted that the appellant had requested a concession in the monthly service charges on

account of the COVID-19 pandemic and had withheld payment pending discussions with the respondent.

16. On examination of the email correspondence, the Commercial Court noted that by email dated 30.03.2020 (Ex.P.4), the appellant had sought for reduction in the service charges, and that the respondent had initially informed the appellant that the request would be considered. By email dated 07.04.2020 (Ex.P.7), the Appellant had informed the Respondent that payment for that month would be withheld until the discussions were concluded. The Court further noted that, by email dated 17.04.2020 (Ex.P.9), the respondent had offered a 30% discount for the lockdown period on a pro-rata basis, together with an additional discount if the respondent received any concession from its landlord. The appellant, however, did not clear the outstanding invoices.

17. The Commercial Court also took note of the appellant's email dated 07.05.2020 (Ex.P.11), whereby it authorised its representative to remove certain articles from the business centre, and the subsequent email dated 09.05.2020 (Ex.P.13), through which the respondent asserted that the appellant had terminated the agreements and was liable to pay the service

charges for the remaining lock-in period. The respondent also communicated its decision to forfeit the security deposit of Rs.1,44,00,000/-. The appellant, by its reply dated 21.05.2020 (Ex.P.14), denied having terminated the agreements and attributed the cessation of services to the respondent.

18. On appreciation of the evidence of D.W.1, the Commercial Court recorded that the appellant was aware of the lock-in period and had admitted that there was no contractual provision entitling it to withhold the monthly service charges pending negotiations for a concession. D.W.1 had also admitted that the appellant had not made any payment, including part payment, towards the outstanding invoices; that no specific communication had been issued to its employees directing them to work from home during the relevant period; and that the appellant had entered into a fresh service arrangement with AwFIS. The Court further noted that the appellant had not issued any written communication terminating the agreements before 07.05.2020.

19. The Commercial Court rejected the appellant's contention that the respondent had repudiated the agreements. It held that the appellant had not produced any communication issued

by the respondent terminating the Service Agreement or the addendums. On the other hand, the appellant had entered into a fresh arrangement with AwFIS on 06.05.2020 and, thereafter, informed the respondent on 07.05.2020 about the removal of its articles. The Court, therefore, held that the appellant's conduct amounted to unilateral and illegal termination of the agreements.

20. The Commercial Court further held that, although the respondent had offered a concession in the service charges, the appellant had failed to pay even the discounted amount. It consequently held the appellant liable for the outstanding service charges as well as the service charges for the unexpired lock-in period.

21. With regard to the counterclaim, the Commercial Court considered the appellant's claim for refund of the security deposit of Rs.1,44,00,000/-, Rs.7,58,973/- towards the cost of materials and Rs.90,00,000/- towards alleged business and reputation losses. It noted the appellant's allegations concerning deficiencies in the facilities provided by the respondent, including lack of storage space, non-functioning facilities, network disruptions and other alleged shortcomings.

However, the Court held that the appellant had admitted the execution and contents of the Service Agreement and the addendums, including the lock-in period clause, and could not subsequently dispute their enforceability.

22. The Court further observed that the appellant had failed to establish that the respondent had terminated the agreements or that the appellant was compelled to vacate the premises on account of any deficiency in service. It also took note of the admissions of D.W.1 that no detailed statement or supporting documents had been produced to substantiate the alleged business and reputation losses of Rs.90,00,000/-, and that the said amount was merely a rough calculation. In view of the appellant's own conduct in shifting its office during the lock-in period, the Commercial Court rejected the counterclaim in its entirety and held that the Appellant was not entitled to any amount claimed therein.

23. Accordingly, the Commercial Court answered Issues No.2 to 6 partly in the affirmative and Issues No.7 to 9 in the negative. Vide judgment and decree dated 07.04.2025, it partly decreed the suit with costs, directing the appellant to pay the respondent a sum of Rs.8,45,35,656/- together with interest at

12% per annum from the date of the suit until realization, and rejected the Appellant's counterclaim.

SUBMISSIONS ON BEHALF OF THE APPELLANT:

24. Sri. Aditya Sondhi, learned Senior Counsel, assisted by Sri. Rohan Veeranna Tigadi, learned counsel appearing on behalf of the appellant, submits that the impugned judgment and decree are contrary to the pleadings, evidence on record and the contractual terms governing the parties. The Commercial Court failed to appreciate the circumstances in which the appellant was compelled to discontinue the use of the business centre and erroneously fastened liability upon it for the entire claim made by the respondent.

25. The learned Senior Counsel submits that the Service Agreement dated 08.07.2019 and the subsequent addenda, though described as service agreements, in substance conferred upon the appellant rights of ingress, egress and possessory enjoyment over an identified portion of the premises. The agreements, therefore, created rights in immovable property and required compulsory registration under Section 17 of the Registration Act, 1908. In the absence of registration, the respondent could not have enforced the

lock-in obligations under Clause 1.4. The Commercial Court also erred in declining to adjudicate Issue No.1, though the question went to the enforceability of the agreements themselves.

26. It is further submitted that, following the outbreak of the COVID-19 pandemic and the nationwide lockdown, the appellant sought a reduction in the monthly service charges. During the discussions held in April 2020, the respondent had agreed to extend a minimum concession of 30%, but failed to reflect the same in its email dated 17.04.2020 or issue revised invoices despite being called upon to do so. The appellant's employees were unable to access the business centre during the lockdown. The learned Senior Counsel further submits that the appellant had merely shifted certain television sets, laptops and other articles to facilitate work from home. The arrangement entered into with AwFIS on 06.05.2020 was limited to six workstations to accommodate its registered office and could not be construed as a substitute for the 380 workstations availed from the respondent or as an act of abandonment of the existing agreements.

27. The learned Senior Counsel submits that it was the respondent who repudiated the agreements. By its communication dated 09.05.2020 (Ex.P.13), the respondent alleged that the appellant had terminated the agreements, appropriated the security deposit of Rs.1,44,00,000/-, deactivated the access cards and denied further access to the business centre. The respondent also disconnected the appellant's servers and retained its furniture and other articles. The appellant, by its reply dated 21.05.2020 (Ex.P.14), specifically denied having terminated the agreements. It is further submitted that the respondent could not have acted on the alleged payment default without complying with Clause 1.6, which required notice and an opportunity to remedy the breach. Having denied access to the business centre, the respondent could not have continued to claim service charges for the period thereafter.

28. With regard to the outstanding service charges of Rs.1,15,66,754/-, the learned Senior Counsel submits that the respondent was not entitled to recover the entire invoiced amount. The *force majeure* provisions, particularly those relating to disease and quarantine restrictions, exempted the appellant from its obligations to the extent it was prevented

from using the facilities on account of governmental restrictions. In any event, the agreed 30% concession had not been given effect to in the invoices. The Commercial Court failed to consider the lockdown restrictions, the concession and the respondent's denial of access with effect from 09.05.2020. It is also submitted that the GST component could not have been awarded as part of damages for breach of contract.

29. The claim of Rs.7,82,19,802/- towards the unexpired lock-in period is also challenged as unsustainable. Clause 1.4 cannot result in automatic recovery of the entire future service charges, particularly when the respondent had itself repudiated the agreements. Even assuming a breach by the appellant, the respondent was required to establish the loss suffered and demonstrate mitigation. The evidence of P.W.1 indicates that no efforts were made to secure replacement clients until September–October 2021 and that the actual expenditure incurred towards customisation, including the extent to which such expenditure could not be reused, had not been satisfactorily established. The claim is, therefore, contrary to the principles governing compensation under Section 74 of the Indian Contract Act, 1872.

30. The learned Senior Counsel further submits that the claims towards parking charges of Rs.96,170/- and internet charges of Rs.3,35,690/- were not established. The appellant's employees were unable to attend the business centre during the lockdown, and Exs.D.23 and D.24 demonstrate that internet charges for February and March 2020 had already been invoiced and paid. The monthly invoices for April and May 2020 also included internet charges, giving rise to a question of duplication. The Commercial Court awarded these amounts without properly examining the invoices and supporting evidence.

31. On the counterclaim, it is submitted that the appellant is entitled to refund of the security deposit of Rs.1,44,00,000/- with interest at 18% per annum, as the respondent had repudiated the agreements and denied access. The respondent had also retained furniture, equipment and other articles valued at Rs.7,58,973/-, without any contractual or legal justification. Further, the alleged disconnection of servers disrupted the appellant's business and affected its proposal worth USD 300,000 submitted to Ciena on 30.04.2020, resulting in business and reputation losses quantified at Rs.90,00,000/-. Lastly, the award of interest at 12% per annum on the entire

decretal amount of Rs.8,45,35,656/-, which according to the appellant included pre-suit interest, amounts to duplication and is contrary to Section 34 of the Code of Civil Procedure, 1908.

SUBMISSIONS ON BEHALF OF THE RESPONDENT:

32. Sri. Pramod Nair, learned Senior Counsel, assisted by Sri. Vamshi Krishna, learned counsel and Smt. Anisha Shervegar, learned counsel appearing on behalf of the respondent, supports the judgment and decree passed by the Commercial Court. It is submitted that the findings are based on the admitted contractual documents, contemporaneous correspondence and the admissions elicited from D.W.1. Having voluntarily entered into the agreements and addenda for 380 workstations, the appellant was bound by the agreed terms, including the lock-in stipulations and the obligation to pay monthly service charges.

33. The learned Senior Counsel submits that the agreements contemplated the provision of co-working facilities and allied services and did not create any leasehold or possessory interest in the immovable property. The respondent retained control over the business centre and provided furnished workstations, common facilities, internet connectivity, security,

housekeeping, electricity and other services. The appellant was merely permitted to use such facilities in accordance with the agreements. The express exclusion of any landlord-tenant relationship further demonstrates that the agreements did not create a lease and, therefore, did not require compulsory registration.

34. The learned Senior Counsel further submits that the appellant, by email dated 30.03.2020, sought a reduction in the monthly charges and, on 07.04.2020, expressly informed the respondent that payment would be withheld pending discussions. Despite having no contractual obligation to grant any concession, the respondent considered the request and offered at 30% concession for the lockdown period on a pro-rata basis, with the possibility of an additional concession if it received any benefit from its landlord. The appellant could not insist upon a higher concession or withhold the entire contractual payment merely because its request for further reduction had not been accepted.

35. The learned Senior Counsel further submits that D.W.1 admitted that the appellant had no contractual right to withhold service charges pending negotiations, had made no payment or

part payment towards the outstanding invoices and had issued no specific communication directing its employees to work from home during the relevant period. The respondent continued to maintain the business centre and provide the contracted facilities. The appellant was aware of the lock-in period and had consciously undertaken the contractual obligations. Its financial difficulties or non-utilisation of the facilities during the lockdown could not, by themselves, absolve it of the liability to pay the agreed charges.

36. The learned Senior Counsel further submits that the appellant's conduct, viewed cumulatively, established abandonment of the contractual arrangement during the subsistence of the lock-in period. The appellant stopped making payments, ceased sending employees to the business centre, entered into a fresh arrangement with AwFIS on 06.05.2020 and, by its communication dated 07.05.2020, initiated removal of its furniture, television sets, laptops and other articles. It neither issued a written termination notice nor communicated any intention to continue the arrangement for the 380 workstations. The subsequent denial of termination in its communication dated 21.05.2020 could not undo the effect of its prior conduct.

37. With regard to the allegation that the respondent had repudiated the agreements, it is submitted that, Ex.P.13 dated 09.05.2020 was issued only after the appellant had stopped making payments and initiated removal of its articles. The respondent did not terminate the agreements without cause but accepted the appellant's conduct as premature termination during the lock-in period. The deactivation of access cards followed the appellant's own conduct and could not be relied upon to avoid the contractual consequences under Clause 1.4. The Commercial Court, therefore, rightly held that the appellant had terminated the agreements.

38. The learned Senior Counsel submits that the COVID-19 pandemic did not automatically discharge the appellant from its contractual obligations. The *force majeure* provisions, read as a whole, contemplated temporary disruption arising from governmental restrictions and specifically provided that such disruption would not entitle the client to a refund of service charges. The respondent continued to maintain the business centre and its facilities, and the appellant failed to establish that the respondent had wholly ceased providing the contracted services during April and May 2020. Further, Clause 1.4 expressly provided for payment of outstanding dues and

balance service charges for the unexpired lock-in period, without abatement or deduction, in the event of premature termination by the client. The stipulation was a conscious commercial arrangement intended to protect the respondent against premature discontinuance after incurring expenditure towards customisation of the facilities.

39. On the counterclaim, the learned Senior Counsel submits that the appellant failed to establish that the respondent had unlawfully retained articles valued at Rs.7,58,973/-. The invoices produced by the appellant did not establish that all the articles were present at the business centre on the relevant date or that the respondent had confiscated them, resulting in the loss claimed. The appellant also failed to establish that the respondent had disconnected its servers or that any such act had a direct connection with the alleged business and reputation loss of Rs.90,00,000/-. The Commercial Court, having considered the contractual documents, correspondence and oral evidence, rightly decreed the suit for Rs.8,45,35,656/- with interest at 12% per annum from the date of the suit until realization and rejected the counterclaim.

POINTS FOR CONSIDERATION:

40. Having heard submissions of both the parties, the following points arise for our consideration:

> *1. Whether the service agreements created leasehold rights in favour of the appellant and, therefore, could not be relied upon for want of registration?*
>
> *2. Whether the Appellant terminated the service agreements, as alleged by the Respondent in its communication dated 09.05.2020, or whether the Respondent repudiated the agreements?*
>
> *3. Whether the respondent is entitled to recover the amounts claimed towards the outstanding service charges and the unexpired lock-in period, together with applicable taxes and interest, and whether the appellant is entitled to the refund of the security deposit and the amounts claimed under its counterclaim?*

ANALYSIS AND FINDINGS:

41. **Re. Point No.1:** The appellant has assailed the enforceability of the service agreement dated 08.07.2019 and the two addendums dated 10.09.2019 and 08.11.2019 on the ground that the arrangement, though described as a service agreement, in substance created leasehold rights in respect of

the business centre. It is contended that the appellant was placed in exclusive possession of an identified portion of the premises, with access regulated through an access-control system, and that the agreements, having provided for a tenure exceeding one year, required compulsory registration under Section 17 of the Registration Act, 1908. The respondent, on the other hand, maintains that the agreements contemplated provision of serviced workstations and allied facilities and did not create any right, title or interest in the immovable property.

42. The Commercial Court framed Issue No.1 in this regard. However, the said judgment does not contain a determination of the issue on its merits. The question whether the agreements created an interest in immovable property goes to the foundation of the respondent's claim, since the respondent seeks to enforce the payment and termination clauses contained in those very instruments. Admission of execution does not preclude a party from contending that the instrument is legally inadmissible or that its terms cannot be enforced for want of registration. It was, therefore, incumbent upon the Commercial Court to examine the nature of the rights created by the agreements and return a finding thereon.

43. The distinction between a lease and a licence is well settled. Section 105 of the Transfer of Property Act, 1882 defines a lease as a transfer of a right to enjoy immovable property for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised. On the other hand, Section 52 of the Indian Easements Act, 1882 defines a licence as a right granted to do or continue to do something upon the immovable property of the grantor, which would otherwise be unlawful, without thereby creating an easement or an interest in the property.

44. In the case of ***ASSOCIATED HOTELS OF INDIA LTD. vs R.N. KAPOOR*** **[AIR 1959 SC 1262]**, the Supreme Court held that the substance of the document, and not the form or nomenclature adopted by the parties, is decisive. The real test is the intention of the parties, to be gathered from the terms of the document and the surrounding circumstances. Where the instrument creates an interest in the property and transfers the right to enjoy it, the transaction is a lease. Where it merely permits the use of the property for a particular purpose while legal possession and control remain with the owner, the arrangement is a licence. The Supreme Court also clarified that exclusive possession may give rise to a *prima facie* inference of

tenancy, but such inference may be displaced by the other terms and circumstances of the transaction.

45. The same principle was reiterated in the case of ***C.M. BEENA vs P.N. RAMACHANDRA RAO*****[(2004) 3 SCC 595]**, wherein the Supreme Court observed that the use of expressions such as "lease", "licence", "lessor", "licensor", "rent" or "licence fee" is not by itself decisive of the nature of the right created by the document. The Supreme Court must ascertain whether the parties intended to confer exclusive possession coupled with the right to enjoy the property, or merely permitted the use of the premises while retaining possession and control. The conduct of the parties before and after creation of the relationship is also a relevant circumstance.

46. Applying the aforesaid principles, it is necessary to consider the agreements as a whole. The principal agreement is expressly structured as a service arrangement under which the respondent undertook to provide a fully serviced workplace. Clause 1 records that the arrangement would not confer any right, title or interest in the business centre or the immovable property upon the appellant. It further records that control of

the business centre would remain with the respondent and that the arrangement was not intended to create a lease, sub-lease, easement, lien or other proprietary interest in favour of the appellant.

47. The services and facilities contemplated under the agreement are also material. The respondent was required to provide furnished workstations together with reception and guest administration, shared meeting rooms subject to availability and reservation, common areas, kitchen and beverage facilities, security, CCTV surveillance, electricity and power backup, air-conditioning during the prescribed business hours, housekeeping, internet connectivity and other common facilities. The consideration was described as a monthly service fee. The contractual arrangement was thus not confined to the grant of a defined area of immovable property; it included the provision and maintenance of an operational workplace with several ancillary services.

48. Further, Clause 3.1 provides for the appellant's use, agreed number of serviced workstations, while reserving with the respondent to allocate different workstations of reasonably equivalent size. Clause 4.1 permits the respondent to enter the

serviced stations, upon prior intimation and subject to the contractual terms, for inspection, testing, repairs, maintenance and other works. These provisions are relevant indicators that the respondent retained management and operational control over the business centre and that the appellant's entitlement was primarily to use the serviced workstations and facilities made available under the agreement.

49. The appellant, however, relies upon the evidence of P.W.1-Chief Operating Officer of the respondent company to contend that it was placed in exclusive possession of a separately controlled portion of the premises. P.W.1 admitted that one part of the premises was made available to the appellant and that access to the appellant's area was regulated through an access-control system. He further admitted that, without an access card, a person could not enter that area and that access cards were provided to the appellant. This fact cannot be brushed aside. Exclusive possession, where established, is a significant circumstance in determining whether the transaction is a lease.

50. The material question is not whether the appellant could control entry of its employees and visitors, but whether the

respondent had parted with legal possession and control of an identified portion of the immovable property and transferred to the Appellant the right to enjoy that property as a tenant.

51. The appellant's own evidence also requires consideration. D.W.1 admitted that the appellant had approached the respondent for a larger office facility as its workforce expanded, that the business centre was found suitable for its requirements, and that the parties successively increased the number of workstations from 150 to 250 and thereafter to 380. He further admitted that the respondent provided a larger range of facilities than the appellant's earlier service provider and that the facilities were satisfactory by the time the last addendum was executed. Significantly, D.W.1 admitted that the appellant had not insisted upon registration of the agreements during the subsistence of the arrangement. Though the latter admission does not operate as a waiver of a statutory requirement, the overall evidence is consistent with the parties having entered into a managed workplace arrangement rather than a conventional lease of an identified premises.

52. The duration of the agreements, by itself, does not make registration compulsory. Section 17(1)(d) of the Registration

Act requires registration of leases of immovable property from year to year, for any term exceeding one year, or reserving a yearly rent. The requirement arises where the instrument creates a leasehold interest. Similarly, Section 17(1)(b) applies to non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish a right, title or interest in immovable property. If the instrument merely grants a contractual permission to use serviced workstations and facilities without creating an interest in the immovable property, the mere fact that the arrangement extends beyond one year does not attract compulsory registration under these provisions.

53. Conversely, if the substance of the transaction is found to be a lease for a term exceeding one year, the instrument would require registration notwithstanding its description as a service agreement. In that event, the consequences under Section 49 of the Registration Act would follow, subject to the statutory exceptions contained therein. The question must, therefore, be answered by identifying the nature of the right created and not merely by referring to the duration of the agreement.

54. Upon consideration of the terms of the principal agreement and the addenda, the nature of the facilities promised, the respondent's retained management and maintenance obligations, its right to allocate equivalent workstations, and the evidence of the parties, we are of the considered view that the agreements did not transfer to the appellant a leasehold interest in any identified portion of the immovable property. The appellant was granted the right to use the agreed number of serviced workstations within the respondent's managed business centre, together with the allied facilities and services. The access-control arrangement was intended to regulate secure entry into the appellant's working area and, in the facts of the present case, does not establish that legal possession of a demarcated portion of the premises had been transferred to the appellant.

55. The substance of the transaction, therefore, is that of a service arrangement coupled with a licence to use the serviced workstations and common facilities. The agreements did not create an interest in immovable property within the meaning of Section 105 of the Transfer of Property Act. Consequently, the requirement of compulsory registration under Section 17(1)(b) or Section 17(1)(d) of the Registration Act is not attracted.

56. **Re. Point No.2:** The burden of establishing that the appellant had terminated the service agreements rested upon the respondent, since its claim for the balance service charges during the lock-in period is founded principally on the allegation that the appellant had prematurely brought the contractual arrangement to an end. The Commercial Court accepted the respondent's case substantially on the ground that the appellant had withheld payment of the service charges, entered into another service arrangement with AwFIS and initiated removal of certain articles from the business centre. In our considered view, these circumstances, even when taken cumulatively, do not conclusively establish that the appellant had terminated the agreements covering 380 workstations.

57. The correspondence exchanged between the parties assumes significance in this regard. By email dated 30.03.2020, the appellant sought a reduction in the monthly charges in view of the restrictions arising from the COVID-19 pandemic. Thereafter, by email dated 07.04.2020, it informed the respondent that payments would be withheld pending discussions regarding the concession. The respondent, by its email dated 17.04.2020, offered a concession of 30% for the lockdown period on a pro-rata basis, subject to a further

concession if any benefit was obtained from its landlord. The subsequent correspondence does indicate that the parties were unable to arrive at an acceptable arrangement regarding the charges. However, withholding payment, though constituting a breach of the contractual obligation, cannot by itself be treated as an unequivocal declaration by the appellant that it intended to abandon the entire contractual arrangement.

58. In the case of ***STATE OF KERALA vs COCHIN CHEMICAL REFINERIES LTD.*****, [(1968) 3 SCR 556]**, the Supreme Court held that a breach committed by one party does not automatically terminate the obligations under the contract. The party aggrieved by such breach has the option either to treat the contract as subsisting or to regard itself as discharged from further performance. If it accepts the discharge, the contract comes to an end; otherwise, it may insist upon performance. The principle laid down therein makes it clear that the mere occurrence of a breach and the termination of the contractual relationship are distinct matters. Applying the said principle to the present case, the appellant's failure to pay the monthly charges may constitute a contractual default, but that circumstance alone would not establish that it had terminated the agreements.

59. The respondent has placed considerable reliance upon the appellant's email dated 07.05.2020, marked as Ex.P.11, regarding removal of certain articles from the business centre, and the service agreement entered into by the appellant with AwFIS on 06.05.2020, marked as Ex.D.9. However, the said agreement relates only to six workstations which was intended to accommodate its registered office. The nature and limited scope of the arrangement, therefore, do not establish that the appellant had shifted its entire operations from the premises provided by the respondent or intended to bring the existing agreements to an end. Similarly, the communication dated 07.05.2020 informing the respondent about the removal of certain articles from the premises does not, by itself, establish an intention to terminate the agreements. The appellant's case is that, in view of the restrictions imposed during the COVID-19 pandemic and the employees working from home, certain articles were moved from the office to enable them to be used by the employees while discharging their duties remotely. Such removal, in the circumstances then prevailing, cannot automatically be equated with abandonment of the premises or repudiation of the contractual arrangements. These circumstances have to be considered in the context of the

prevailing pandemic situation. Neither the limited arrangement under the agreement with AwFIS nor the removal of certain articles for use by employees working from home establishes that the appellant had renounced its obligations under the agreements or disabled itself from performing them in their entirety.

60. The legal distinction between a breach and repudiation has also been explained by the Supreme Court in the case of ***ANNAMALAI vs VASANTHI*** **[2025 INSC 1267]** wherein it recognised that breach may occur by non-performance or repudiation. Repudiation may arise where a party renounces its contractual liabilities or, by its conduct, makes performance impossible. The Supreme Court further observed that an aggrieved party may accept the breach as termination of the contract and claim damages or, in appropriate circumstances, treat the contract as subsisting. The relevant paragraphs are extracted hereunder:

> *"**26.** A breach of a contract may be by non-performance or by repudiation, or by both. In Anson's Law of Contract (29th Oxford Edn.), under the heading "Forms of Breach Which Justify Discharge", it is stated thus:*

"The right of a party to be treated as discharged from further performance may arise in any one of three ways: the other party to the contract (a) may renounce its liabilities under it; (b) may by its own conduct make it impossible to fulfill them, (c) may fail to perform what it has promised. Of these forms of breach, the first two may take place not only in the course of performance but also while the contract is still wholly executory i.e., before either party is entitled to demand a performance by the other party of the other's promise. In such a case the breach is usually termed an anticipatory breach. The last can only take place at or during the time for performance of the contract."

27. *Ordinarily, for a breach of contract, a party aggrieved by the breach i.e., failure on the part of the other party to perform its part under the contract can claim compensation or damages by accepting the breach as a termination of the contract, or/ and, in certain cases, obtain specific performance by not recognizing the breach as termination of the contract10. In a case where the contract between the parties confers a right on a*

> *party to the contract to unilaterally terminate the contract in certain circumstances, and the contract is terminated exercising that right, a mere suit for specific performance without seeking a declaration that such termination is invalid may not be maintainable. This is so, because a doubt /cloud on subsistence of the contract is created which needs to be cleared before grant of a decree enforcing contractual obligations of the parties to the contract."*

61. Thus, the question whether conduct amounts to repudiation has to be determined from the nature of the obligation, the contractual terms and the conduct of the parties as a whole. In the present case, the conduct relied upon by the respondent establishes non-payment and removal of certain articles, but does not, in our view, establish an unequivocal renunciation by the appellant of all its obligations under the agreements.

62. More importantly, the respondent's own email dated 09.05.2020, marked as Ex.P.13, records its assertion that the appellant had chosen to terminate the agreements and that, consequently, the respondent was entitled to claim the balance

lock-in charges and appropriate the security deposit. In the same communication, the respondent informed the appellant that it was no longer entitled to enter the business centre and that its access cards had been deactivated. The appellant, by its reply dated 21.05.2020, marked as Ex.P.14, specifically denied having terminated the agreements and asserted that the respondent had disabled access to the business centre, appropriated the security deposit and retained its materials. Thus, the correspondence does not establish an admitted or unequivocal termination by the appellant. On the contrary, it discloses a dispute between the parties as to which of them had brought the contractual arrangement to an end.

63. The oral evidence also requires consideration in this context. Although D.W.1 admitted that the appellant had not paid the outstanding service charges and was aware of the lock-in period, those admissions establish the existence of payment defaults and knowledge of the contractual obligations; they do not establish that the appellant had communicated an intention to terminate the agreements. The fact that the appellant did not issue a written termination notice and its specific denial in Ex.P.14 are relevant. Likewise, P.W.1 admitted that the access cards had been deactivated, and Ex.P.13 itself

records the respondent's decision to deny further access to the appellant. These circumstances assume importance while determining whether the subsequent cessation of use of the premises was the consequence of a voluntary abandonment by the appellant or the respondent's decision to treat the agreements as terminated and prevent further access.

64. We also find substance in the appellant's contention that the respondent's conduct has to be examined in the light of Clause 1.6 of the Service Agreement. The said clause prescribes the procedure to be followed by the respondent in the event of specified defaults by the client, including notice and an opportunity to remedy the breach. Clause 1.6 of the agreement dated 08.07.2019 is extracted hereunder:

> "*Ending this Agreement immediately: To the maximum extent permitted by applicable law, the Provider may, put an end to this agreement immediately by giving the Client notice without need to follow any additional procedure if (a) the Client becomes insolvent, bankruptcy, goes into liquidation or becomes unable to pay its debts as they fall due, or a receiver is appointed for a substantial portion of its assets. (b) the Client is in breach of one obligations which cannot be put right or which the Provider have given the Client notice, or set right and which the Client has failed to set right within 30 (Thirty)*

> *days of that notice, or (c) its conduct, or that of someone at the Centre with its permission or invitation incompatible with ordinary office use (in the Provider's opinion) to warrant im termination (d)the agreement is terminated immediate termination (d) the agreement is terminated pursuant to clause 5.2 of this agreement. If the Provider puts an end to this agreement for any of these reasons it does not put an end to any outstanding obligations of the Client to pay, including additional services used, requested or required under the agreement and the monthly office fee for the remainder of the period for which this Agreement would have lasted if the Provider had not ended it. In of the case if the agreement is terminated on account of any of the clauses hereinabove and the termination is within the period of Lock-in, the client shall make payment of the balance Service charges for the remaining period of Lock-in. The Client may terminate the Agreement by giving (Three) months written notice during the post expiry of Lock-in Period*"

65. The record does not disclose that the respondent issued such notice or afforded the opportunity before taking the step of deactivating the access cards and denying further entry. In the case of ***INDIAN OIL CORPORATION LTD. vs AMRITSAR GAS SERVICE*****[(1991) 1 SCC 533]**, the Supreme Court considered the effect of termination of a commercial agreement

in the context of the contractual provisions governing termination. The decision reinforces that the rights and consequences arising from termination must be determined with reference to the terms of the agreement between the parties. In the present case, the respondent's failure to demonstrate compliance with the procedure stipulated under Clause 1.6 assumes significance in assessing the legality of its action dated 09.05.2020.

66. In view thereof, we are unable to sustain the finding of the Commercial Court that the appellant had terminated the Service Agreements merely by withholding payments, entering into an arrangement for six workstations with AwFIS and removing certain articles from the business centre. Those circumstances may be relevant in determining the appellant's contractual defaults and the consequences flowing therefrom, but they do not establish the specific fact of termination as alleged by the respondent. The respondent has, therefore, failed to prove that the appellant has terminated the Service Agreements as alleged in its email dated 09.05.2020.

67. **Re. Point No.3:** The respondent instituted the suit claiming a sum of Rs.1,15,66,754/- towards the outstanding

service charges for the months of April and May 2020 and Rs.7,82,19,802/- towards the unexpired lock-in period, apart from parking charges of Rs.96,170/- and internet charges of Rs.3,35,690/-. The appellant, in its counterclaim, sought refund of the security deposit of Rs.1,44,00,000/-, Rs.7,58,973/- towards the value of articles and materials allegedly retained by the respondent and Rs.90,00,000/- towards business and reputation losses.

68. The first question is with regard to the outstanding service charges. The appellant does not dispute having availed the services under the agreements, nor does it dispute that the invoices for April and May 2020 remained unpaid. D.W.1 admitted that the appellant had not made any payment, including part payment, and that there was no contractual right to withhold the entire service charges pending negotiations for a concession. The appellant, therefore, cannot avoid its liability for the services made available merely on the ground that its employees did not utilise the workstations during the lockdown.

69. The respondent, however, had agreed to extend a concession of 30% in respect of the lockdown period. Having extended the concession, the respondent was required to give

effect to the same while computing the outstanding amount. Consequently, the entire invoiced amount of Rs.1,15,66,754/- could not have been awarded without giving credit for the agreed reduction. The service charges for April 2020 and the period up to 09.05.2020 are, therefore, recoverable only after extending the agreed 30% concession on a pro-rata basis for the lockdown period. The *force majeure* provisions in the agreements do not, by themselves, absolve the appellant of the liability to pay the service charges. In the case of ***ENERGY WATCHDOG vs CENTRAL ELECTRICITY REGULATORY COMMISSION*****[(2017) 14 SCC 80]**, the Supreme Court held that where the contract contains an express *force majeure* provision, the rights and obligations of the parties have to be determined with reference to the contractual stipulation. Clause 6.3 of the present agreements provides that disruption arising from *force majeure* events or governmental restrictions would not entitle the client to a refund of service charges. D.W.1 has admitted that the respondent continued to maintain the business centre and that the appellant's servers remained operational during the said period. The pandemic, therefore, cannot be treated as an automatic waiver of the contractual charges.

70. However, the position stands on a different footing after 09.05.2020. By email dated 09.05.2020 (Ex.P.13), the respondent informed the appellant that it was no longer entitled to enter the business centre and that its access cards had been deactivated. P.W.1 admitted the deactivation of the access cards. Having itself denied further access to the appellant, the respondent cannot claim service charges for the period subsequent thereto as though the contracted facilities continued to remain available. The respondent is, therefore, entitled to recover the outstanding service charges only up to 09.05.2020, subject to the agreed 30% pro-rata concession for the lockdown period.

71. The next question is whether the respondent is entitled to recover Rs.7,82,19,802/- towards the unexpired lock-in period. Clause 1.4 stipulates payment of the balance service charges for the unexpired lock-in period where the client terminates the agreement during the lock-in period. The applicability of the said clause, therefore, depends upon the appellant having brought the agreements to an end prematurely. While considering Point No.2, we have already held that the respondent has failed to establish that the appellant had

terminated the agreements. On the contrary, the respondent, by Ex.P.13, asserted termination, appropriated the security deposit and expressly denied the appellant further access to the business centre. The respondent cannot, having itself brought the arrangement to an end and disabled the appellant from continuing to avail the services, invoke Clause 1.4 as if the appellant had terminated the agreements. The claim of Rs.7,82,19,802/- towards the unexpired lock-in period is consequently unsustainable.

72. The claims towards parking charges of Rs.96,170/- and internet charges of Rs.3,35,690/- also cannot be sustained. The appellant has placed material to show that its employees were not attending the business centre during the lockdown and that the internet charges for the earlier period had already been invoiced and paid under Exs.D.23 and D.24. The respondent itself had also deactivated the access cards and denied entry to the appellant with effect from 09.05.2020. The Commercial Court was, therefore, not justified in including these amounts in the decree.

73. The appellant's claim for refund of the security deposit also requires consideration. Under Clause 7.1 of the

agreements, the security deposit is refundable upon termination or expiry of the contractual arrangement, subject to adjustment of lawful outstanding dues and other amounts payable under the agreement. The respondent, by Ex.P.13, stated that it had appropriated the security deposit of Rs.1,44,00,000/-. In view of our finding that the respondent brought the contractual arrangement to an end, the respondent cannot retain the entire deposit merely describing it as forfeited. It is entitled to adjust only those outstanding amounts which are established as legally recoverable under the agreements. The balance is liable to be refunded to the appellant in terms of Clause 7.1.The appellant would, therefore, be entitled to refund of the amount actually established to have been paid by it as security deposit, and not merely the amount claimed, after giving credit for the outstanding service charges determined hereinabove. Interest on the refundable amount shall be governed by the stipulation contained in Clause 7.1, subject to the date on which the contractual obligation to refund arose.

74. The appellant has also claimed Rs.7,58,973/- towards the value of furniture, equipment and other articles allegedly

retained by the respondent. Though invoices have been produced as Exs.D.12 to D.20, the mere production of purchase invoices does not establish that all the articles covered by them were available at the business centre on the relevant date, that they were unlawfully retained or that the appellant suffered a loss to the extent claimed. It is also to be noted that P.W.1 was not present when the panchnama at Ex.P.34 was prepared and could not confirm the location of the articles as on 09.05.2020. The evidence is, therefore, insufficient to establish the monetary loss claimed under this head.

75. The claim of Rs.90,00,000/- towards business and reputation losses is equally unsupported by cogent evidence. D.W.1 admitted that the amount was only a rough estimate and that no detailed statement or supporting material had been produced to substantiate the alleged loss. Further, Clause 6.4 excludes liability towards indirect and consequential losses, including loss of business and profits. The appellant has, therefore, failed to establish its entitlement to the said amount.

CONCLUSION:

76. For the foregoing reasons, we are of the considered view that the Commercial Court was not justified in holding that the

appellant had terminated the service agreements or in awarding the entire amount claimed towards the unexpired lock-in period. The respondent is entitled to recover only the outstanding service charges, after giving due effect to the agreed 30% concession for the period of lockdown and restricting the claim to the period up to 09.05.2020 which amounts to Rs.52,47,709/-. The appellant is entitled to the adjustment and refund of the security deposit, after accounting for the amounts lawfully payable. The remaining claims raised in the counterclaim have not been substantiated.

77. In view of the above, the impugned judgment and decree dated 07.04.2025 passed by the LXXXVII Additional City Civil and Sessions Judge, Bengaluru in Commercial O.S.No.622/2021 stands modified to the extent that the respondent/plaintiff is entitled to recover Rs.52,47,709/- and refund the balance amount of Rs.91,52,291/- along with interest @ 12% p.a. from 09.06.2020 (i.e. 30 days from the date of termination of the agreement - 09.05.2020) till realization.

78. With the aforesaid modification, the appeal stands disposed of.

79. Let the modified decree be drawn accordingly. No order as to costs.

80. Pending IAs, if any, do not survive for consideration and accordingly, they stand disposed of.

SD/-
(D K SINGH)
JUDGE

SD/-
(H.SHANTHI BHUSHAN)
JUDGE

BKV
CT:SN