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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30<sup>TH</sup> DAY OF SEPTEMBER, 2024

BEFORE

THE HON'BLE Mr. JUSTICE M.G.S. KAMAL

**WRIT PETITION No.8127 OF 2019 (GM-RES)**

**BETWEEN:**

MS (x)

...PETITIONER

(BY SRI. RITHWICK GANESH, ADVOCATE FOR  
SRI. MUNDRA KRITIKA AJAY, ADVOCATE)

**AND:**

- 1 . INTERNAL COMPLAINTS COMMITTEE  
ANI TECHNOLOGIES PRIVATE LIMITED,  
REGENT INSIGNIA NO.414, 3<sup>RD</sup> FLOOR,  
4<sup>TH</sup> BLOCK, 17<sup>TH</sup> MAIN, 10 FEET ROAD,  
KORAMANGALA, BENGALURU-560 034  
REPRESENTED BY ITS CHAIRPERSON.
- 2 . ANI TECHNOLOGIES PRIVATE LIMITED  
A COMPANY REGISTERED UNDER  
THE COMPANIES ACT, 1956  
HAVING ITS REGISTERED OFFICE AT  
REGENT INSIGNIA NO.414, 3<sup>RD</sup> FLOOR,  
4<sup>TH</sup> BLOCK, 17<sup>TH</sup> MAIN, 10 FEET ROAD,  
KORAMANGALA,  
BENGALURU-560 034  
REPRESENTED BY ITS MANAGING DIRECTOR.

- 3 . THE UNION OF INDIA  
MINISTRY OF WOMEN AND CHILD DEVELOPMENT,  
SHASTRI BHAWAN, NEW DELHI-110 001,  
REPRESENTED BY ITS SECRETARY.
  
- 4 . THE KARNATAKA STATE TRANSPORT AUTHORITY  
1<sup>ST</sup> FLOOR, "A" BLOCK,  
TTMC BUILDING, SHANTINAGAR,  
BENGALURU-560 027,  
REPRESENTED BY ITS COMMISSIONER.

...RESPONDENTS

(BY SRI. A. MURALI., ADVOCATE FOR R1;  
SRI. DHYAN CHINNAPPA SR. COUNSEL FOR  
SMT. PRIYANKA PRASAD., ADVOCATE FOR R2;  
SRI. H. MALLAN GOUD CGSC FOR R3;  
SRI. V.G. BHANUPRAKASH., AAG ALONG WITH  
SRI. RAGHAVENDRA S.H., AGA FOR R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE R-1 - THE INTERNAL COMPLAINTS COMMITTEE, AND TECHNOLOGIES PRIVATE LIMITED TO INQUIRE INTO THE PETITIONER'S COMPLAINT DATED:30.09.2018 (AT ANNEXURE-F) IN ACCORDANCE WITH THE PROVISIONS OF THE SEXUAL HARASSMENT OF WOMAN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013;

THIS WRIT PETITION HAVING BEEN RESERVED FOR ORDERS ON 20.08.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, **M.G.S. KAMAL J.**, MADE THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE M.G.S. KAMAL

**CAV ORDER**

*[CURIA ADVISARI VULT-ORDER]*

Petitioner, a victim of sexual harassment at the hands of a driver of OLA Taxi, is before this Court being aggrieved by the inaction on the part of the Internal Complaint Committee (ICC)-respondent No.1 of ANI Technologies Private Limited (OLA)-respondent No.2, in considering her request to enquire into her complaint against the driver under the provisions of The Sexual Harassment of Women at Work place (Prevention, Prohibition and Redressal) Act, 2013 on the purported premise of it lacking jurisdiction to enquire into the complaint, for the said driver not being the 'employee' of OLA, seeking to;

*(a). Issue a writ of mandamus or any other appropriate writ order or direction directing the respondent No.1-The Internal Complaints Committee, ANI Technologies Private Limited to enquire into the petitioner's complaint dated 30th September 2018 produced at Annexure-F in accordance with the provisions of Sexual Harassment of Woman at Workplace (Prevention, Prohibition and Redressal) Act, 2013.*

*(b). Issue a writ of mandamus or any other appropriate writ order or direction directing respondent No.3-the Ministry of Women and Child Development Union of India to ensure that the respondent Nos.1 and 2 strictly comply with the provisions of the Sexual Harassment of Woman at Workplace (Prevention, Prohibition and Redressal) Act, 2013.*

*(c). Issue a writ of mandamus or any other appropriate writ order a direction directing respondent No.4 to issue such rules as may be necessary to protect women and children availing taxi services and ensure their safety and security.*

*(d). Issue a writ of mandamus or any other appropriate writ order or direction directing respondent No.4 to suspend the licence issued to the respondent No.1 under aggregators rule.*

**2. Case of the petitioner is that;**

(a) On 23.08.2018 at around 6:30 a.m. she had requested for a taxi using OLA platform to commute from her residence in Yelahanka to her office in J.P. Nagar, Bangalore. In response, a taxi bearing registration number KA-53-C-9192 (OLA Taxi) along with a suggested driver was allotted to the petitioner by OLA. The petitioner was provided with the name and rating of the suggested driver. Petitioner being a regular user of OLA proceeded to board the OLA Taxi.

(b) During the course of the ride, petitioner noticed that the OLA driver staring at her through a rear view mirror in a manner that made her extremely uncomfortable and scared. While the petitioner continued to struggle and deal with the OLA driver's continuous staring, she was shocked and horrified to realize that the OLA driver was watching pornographic video on his phone and had intentionally held the phone in a manner to ensure that the pornographic video was visible to the petitioner.

Thereafter, petitioner noticed that the said OLA driver was not only watching the video while driving, but was also simultaneously masturbating. Petitioner being extremely frightened, repeatedly requested the driver to stop the vehicle but to no avail, as the driver flatly refused to stop the OLA Taxi and insisted that he would drop the petitioner only at her destination. Petitioner was finally able to exit the OLA taxi close to her workplace.

(c) That upon reaching her office, petitioner lodged a complaint against the driver on the OLA platform. Petitioner then received a phone call from the OLA executive, who stated that the incident would be looked into. Few hours later, petitioner received another call from the OLA informing her that the suggested driver had been 'blacklisted' and would be sent for counselling and training. Petitioner not being satisfied with the response of blacklisting the driver and sending him for counselling and training, made a request to know the details of the purported counselling and training that would be imparted to the driver. Thereafter, petitioner received another call from OLA seeking her permission to close the complaint, despite her

request that the substantive action had to be taken against the driver. In turn OLA attempted to persuade the petitioner not to take any further action by stating that the driver would be compelled to attend the training and counselling course apart from repeatedly requesting the petitioner to close the complaint. In the circumstances, petitioner was constrained to initiate criminal action against the OLA driver and accordingly filed a complaint dated 25.08.2018 before the Cubbon Park Police Station, Bengaluru.

(d) On 07.09.2018, the petitioner and OLA's law enforcement team members were contacted by the Cubbon Park Police Station to identify the OLA driver. The petitioner identified the OLA driver and recorded her statement before the concerned Police. One Mr.Suresh E. Venkataswamy and Mr.Ajinkya from OLA's law enforcement team identified OLA driver and informed that he was not the suggested Driver who was registered with OLA and was scheduled to ride the OLA Taxi. OLA's Authorized Representatives confirmed that it was an incident of drivers being swapped. It was also informed by the OLA that the instances of drivers swapping were common with

the OLA drivers and most of the cases filed against the OLA were of such instances of Sexual Harassments due to such driver swapping.

(e) The petitioner thereafter got issued a legal notice dated 21.09.2018 to OLA calling upon it to proceed against the driver under the Sexual Harassment of Woman at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as "PoSH Act, 2013") and to provide documentary proof of OLA having informed respondent No.4 of the incident as mandated under Rule 10(3) of Karnataka on Demand Transportation Technology Aggregator Rules, 2016 (hereinafter referred to "Aggregator Rules, 2016"). That the OLA did not inform the relevant authorities about the incident.

(f) That by reply dated 27.09.2018, OLA stated that it did not have jurisdiction to take cognizance of the complaint on the ground that as the drivers were not its "employees" but were the "independent contractors".

(g) Petitioner thereafter filed a complaint under section 9 of the PoSH Act 2013 by an e-mail dated 30.09.2018 to the ICC. The said e-mail bounced as the email address provided in

OLA's Policy on Sexual Harassment at workplace did not permit non-employee to file the complaint. Petitioner was therefore constrained to cause issuance of an email dated 01.10.2018 intimating OLA's Chief Executive Officer and the Director of Legal Affairs regarding the failure in reporting the complaint and requested action be taken forthwith. In the meanwhile, the petitioner also issued counter-replies dated 05.10.2018 and 09.10.2018 to OLA's reply dated 27.09.2018, explaining the applicability of the PoSH Act, 2013 and calling upon it to accordingly initiate action against OLA driver in accordance with Section 11 of the PoSH Act, 2013. By an email dated 09.10.2018, the petitioner received a response to her complaint from the ICC stating that prior to initiating the enquiry process under the PoSH Act, 2013 ICC sought preliminary advise and clarity from its external counsel as to whether it had jurisdiction to take cognizance of the complaint and that it was subsequently advised that it did not have jurisdiction to entertain the complaint.

(h) The petitioner received a response dated 11.10.2018 from OLA to the counter-replies stating once again that OLA's



drivers were not its 'employees' but were 'independent contractors' and ICC had no jurisdiction to initiate any enquiry under the PoSH Act, 2013. The petitioner thereafter received yet another e-mail from ICC on 12.10.2018, in response to her email dated 09.10.2018, ICC reiterated its position and claimed that it did not have jurisdiction to proceed with the complaint. Being highly aggrieved by the same petitioner has approached this Court seeking the above reliefs.

***3. The statement of objections by ICC- Respondent No.1:***

ICC in its statement of objections has contended that:

(a) It is an independent body constituted under the PoSH Act, 2013 whereby its jurisdiction is prescribed and is bound by those prescribed limits.

(b) That ICC sympathises with the petitioner for the episode she faced. ICC is committed to redress the complaint raised by the petitioner in exercising of the power vested in it by the PoSH Act, 2013. However, in view of the facts of this case, ICC is restrained from exercising its jurisdiction as vested by the PoSH Act, 2013 inasmuch as the case of the petitioner

falls beyond the prescribed jurisdiction of ICC as such, it is unable to enquire into the complaint of the petitioner.

(c) That despite there being limitations, ICC being committed to its statutory obligation was keen to ascertain if the members could act upon the complaint of the petitioner, as such, it sought the advice from the independent external Counsel to determine whether ICC had jurisdiction to entertain the complaint in the facts of the present case. That the said external counsel categorically stated that since the driver in the complaint was not an 'employee' of the OLA, the jurisdiction of the ICC was not made out. That respondent-ICC could only enquire into the complaints under section 11 of the PoSH Act, 2013 in cases where the respondent was an 'employee' under Section 2(g) of the PoSH Act 2013.

(d) In the present case, the driver was neither an 'employee' nor a 'contractor' of OLA and as the facts indicated the actual perpetrator of the act was an impostor who was unauthorisedly driving the vehicle in which the incident had occurred, ICC could not proceed with the enquiry under the PoSH Act, 2013 against the perpetrator. That the ICC being a

statutory authority had already issued a well-reasoned order as to why it could not entertain the complaint. ICC would have transgressed its jurisdiction, if it had proceeded to hold the enquiry as prescribed under the PoSH Act, 2013.

(e) That the petitioner is not deprived of her right to civil and criminal remedies under the appropriate provisions of law and that in view of the complaint having been filed for the offences punishable under the provisions of the Indian Penal Code, this is not a case for a petition under Article 226 of Constitution of India.

(f) ICC being an independent statutory body is mandated to conduct an enquiry when a complaint is initiated against a 'respondent' who is an 'employee'. OLA onboards its drivers by entering into a Subscription Agreement with them, which explicitly states the Driver Partners would not be construed as employees of the organisation and the relationship is that of principle-to-principle basis. Petitioner filed the complaint against the person driving the vehicle at time of the incident who was neither in the knowledge of the complainant nor in the

knowledge of the OLA that the said person was not the suggested driver. He was an impersonator.

(g) As regards the relief sought against ICC, it is contended that, nature of an enquiry under section 11 of the PoSH Act cannot empower ICC to conduct enquiry by transgressing its prescribed jurisdiction. The guilt of the respondent in the complaint is uncontested at this point. When ICC neither has the jurisdiction nor the requirement to establish the liability of respondent in the complaint, the mandatory nature of section 11 cannot be invoked when there is no possible outcome of such an enquiry.

On these broad grounds, amongst others, the petition is sought to be dismissed.

**4. Statement of objections by ANI Technologies Pvt. Ltd.**

**(OLA)-Respondent No.2:**

OLA in its statement of objections, apart from reiterating the averments made by ICC in its statement of objections, has further contended that:

(a) ANI Technologies Private Limited Company is a Private Limited Company, which is commonly known through its trade mark and brand name 'OLA'. That it is carrying on the business in providing the technology based platform, which facilitates in connecting interested rider-subscriber with the driver-subscribers associated with OLA for the purpose of hiring taxis from point-to-point commute or for time-based use within city limits and also for inter-city travel within India.

(b) that the services provided by OLA is registered with the Ministry of Communication, Information Technology, Government of India, as a technology company. Such registration of OLA is under the other service providers category under the New Telecom Policy, 1999 and the Ministry of Communication and Information Technology has issued all relevant certificates in this regard.

(c) A preliminary objection is also raised with regard to maintainability of the writ petition against the OLA as it is a private limited company registered under the Companies Act, 1956, and did not qualify as an instrumentality of the State, which would be amenable to the writ jurisdiction. It is

contended that OLA is not engaged in the exercise of the public duty or performance of any public function, as such there is no statutory obligation cast upon OLA to provide taxis services.

(d) That, if the writ petition were to be entertained, it is necessary to mention that OLA had complied with all the applicable provisions of the PoSH Act, 2013. It had even duly constituted ICC, which is arrayed as respondent No.1 in the present proceeding. Thus, the relief sought by the petitioner with respect to issuance of direction to OLA regarding compliance with the provisions of the PoSH Act 2013, was of no consequence.

(e) That the driver-subscribers associated with OLA, cannot by any stretch of imagination be construed as its employees and consequently an enquiry under the PoSH Act, 2013 against the driver-subscriber would be dehors the jurisdiction of ICC. Drivers-subscribers associated with OLA do not satisfy the classical factors required to be fulfilled for the purpose of establishing an 'employee-employer' relationship. OLA does not have an exclusive arrangement with its drivers-subscribers, and as such the drivers-subscribers associated with

the platform of the OLA are free to work for competing businesses simultaneously. Entitlement of driver-subscribers to be associated with multiple competing businesses is evident from the fact that most of the driver-subscribers are plying taxis with more than one aggregator platform, which is a leading indicator that the driver-subscribers associated with the OLA are independent contractors and not its employees. As there is no exclusive nature of relationship between OLA and the driver-subscriber, there is no economic dependency of the driver-subscriber and OLA for their continued employment, and the driver-subscriber are fully competent to seek and avail opportunities corresponding to their economic aspirations.

(f) It is further contended that the driver-subscribers associated with OLA are free to determine their working hours and do not have to report at any specific place, time, days or perform any such other acts which may qualify as 'punching the clock'. As such, driver-subscribers are completely free to determine the working hours they wish to be available online at the mobile application of the OLA for the purpose of offering the ride. Therefore, features such as discontinuity, indefinite period

of duration and non-exclusivity in relationship between OLA and driver-subscribers are all indicative of fact that driver-subscribers are not the employees of OLA and are independent contractors associated with OLA platform out of their own free will and the OLA does not have the right to control the manner in which the driver-subscribers operate at its platform.

(g) That the drivers-subscribers operate the taxis with the cars which they own or the cars which they have hired from the third party. In any event, the subject vehicle is not owned by OLA and the driver is an independent contractor on the principle to principle basis. As such, it is evident that the PoSH Act, 2013 has no application whatsoever to the petitioner.

(h) Being responsible corporate it conducts a comprehensive background verification of every driver in the form of Police Verification and Court Record Verification and anyone with criminal background will be 'blacklisted'.

(j) That despite having a robust mechanism for checking the background of potential drivers-subscribers, the unfortunate incident in the fact of the instant case is irrefutably a result of "driver impersonation". As such, OLA has not failed in its



responsibility of verifying the antecedent driver-subscriber for the purpose of ensuring the safety of its passenger. That since it was the original driver-subscriber who had approached the OLA for registration on the OLA platform, OLA conducted a thorough background check-up by way of PVC and CRS.

(k) The issue of driver impersonation is a situation wherein instead of the original drivers-subscribers who is registered with the aggregator platform, another driver is found driving the motor cab at the aggregator's platform impersonating the driver-subscriber as the original driver-subscriber. It is further contended that OLA does not permit such misrepresentation of the driver-subscriber and such misrepresentation is not only in breach of the terms and condition of the agreement under which the driver-subscriber is allowed to operate under the platform, but also regarded as a serious misdemeanor leading to the imposition of a perpetual embargo upon the driver-subscriber from operating on the OLA platform.

(l) OLA has put in place several remedial measures to tackle the threat of driver impersonation. Such as an

intermittent identification check by the requesting drivers-subscribers to provide their selfies and providing enlarged photographs of the drivers-subscribers at the mobile application of OLA to ensure that a passenger can easily identify whether the original driver-subscriber has arrived in the taxi at the time of pick-up.

(m) It is also contended that the feature of providing an enlarged photograph of the drivers-subscribers ensures that a passenger can identify a driver-subscriber easily even before getting inside the taxi and prior to the commencement of the ride. It further provides the passenger with an opportunity to confirm whether the correct driver-subscriber has arrived at the time of pickup. In case the driver-subscriber other than the one displayed in the photograph at the mobile application of the OLA has arrived for pickup, the passenger was entitled to cancel the scheduled ride without incurring any cancellation charges and report the incident of driver swapping or impersonation to OLA.

(n) OLA has an exhaustive grievance redressal mechanism for receiving the passenger's feedback and

grievance, which envisages catering to all possible complaints which a passenger may raise in connection with the operation of OLA. In this regard, it is contended that the OLA mobile application has a dedicated phone number for the purpose of raising any concern relating to safety at any time, which ensures immediate action at the end of OLA. That in addition, the OLA mobile application has an in-built emergency alert mechanism, which can be used by the passenger to raise an alert in case of any threat of safety and emergency, which connects the passenger to the OLA safety response team immediately. The safety response team is available around the clock and takes stock of the ground reality and in cases where it perceives that the passenger is under any kind of imminent threat, it instantly intimates the nearest police station and dispatches its own local team for helping the passenger in any manner whatsoever. OLA also provides a passenger with an option to report any safety issue in relation to a ride taken earlier by the passenger using the Ola platform.

(o) As such, it is contended that the OLA had taken all precautions towards the safety of its passengers. That the

sincerity of the OLA is evident from the fact that the OLA provided full assistance to the Police Authorities in apprehending the original driver-subscriber, which eventually revealed the factum of impersonation or swapping of the driver-subscriber. That the assistance and support provided by OLA is not restricted to apprehending the actual perpetrator and the OLA would provide all assistance.

(p) Thus, on these broad grounds and while denying the averments made in the petition attributing negligence on the part of OLA, sought for dismissal of the petition.

Petitioner has filed the re-joinder to the statement of objections filed by the ICC and OLA .

**5. Objection statement filed by the Karnataka State Transport Authority- Respondent-4:**

Respondent-4 in its statement of objection dated 20.08.2024 has contended that:

(a) The prayer sought against it is for direction to issue rules as may be necessary to protect the women and children availing taxi service and ensure the safety and security and any

necessary direction issued by the Court would be duly complied with.

(b) OLA is an aggregator as per the provisions of the Aggregator Rules, 2016 and that it had been issued licence to provide taxi aggregation service in Karnataka. It is further contended that the owners and drivers of the taxis are registered with the platform and bookings are confirmed subject to passengers and drivers GPS location. That the fact of filing up the complaint was not brought to the notice of respondent No.4 as required under Rule 10(3) of the Aggregator Rules, 2016. That the OLA has not brought its notice regarding the complaint against the driver even after receiving the complaint from the petitioner in this regard. It is further contended that fact of filing the complaint before the Cubbon Park Police Station by the petitioner was also not brought to the notice respondent No.4 by OLA. That the petitioner learnt about filing of the said complaint only when it received summons in this writ petition. That there is a violation of provisions of the Aggregator Rules, 2016 by the OLA in not informing the

respondent No.4 about the incident, enabling the respondent No.4 to take necessary action as contemplated under law.

(c) OLA being Licensee is required to look into the allegation made by the petitioner regarding the heinous act committed by its driver without any violation to the Rule 10(3) of the Aggregators Rules 2016. OLA has deliberately failed to comply with the said provisions only to avoid the consequences of enquiry and action to be taken if violation was proved. It was mandatory for the OLA to have intimated about the incident to the Respondent No.4. No report was received by this respondent from OLA in the matter.

(d) That the petitioner at paragraphs 14 to 29 of the writ petition averred several instances of driver swapping and sexual harassment to female passengers. If such instances were noticed it was the duty of OLA to take action against such violators and report such instance to respondent No.4 under Rule 10(3) enabling it to take action under Rule 11 of the Aggregators Rules 2016. OLA has never brought even one incident of drivers swapping to the notice of the respondent

No.4, thereby has breached the provisions of Aggregator Rules, 2016.

(e) That the respondent No.4 on learning about the said incident has caused the issue of notice dated 16.08.2024, through a registered post acknowledgment due to the OLA seeking to submit explanation within a period of 7 days from the date of receipt of the said notice. Thus, respondent No.4 has taken action as contemplated under law and as such no direction could be issued against the respondent No.4 in this matter. Hence, sought for dismissal of the petition.

**6. Submissions of the learned counsel for the petitioner:**

Learned Counsel for the petitioner reiterating the grounds urged in the memorandum of the petition submitted that;

(a) The writ petition can be maintained against a private entity if such entity is discharging public duties or functions. It is contended that OLA is operating an online platform in its name, which facilitate members of general public to hire taxis. Services of OLA are not offered to certain identified or limited

clientele and it is available to public at large without any distinguishing or pre-requisite criteria. The customers of the OLA are required to have only mobile phone with internet connectivity and open an account. That as per the recent survey there are approximately 800 million users of mobile with internet usage in India and OLA is offering services to all of them if they are in location where the OLA services are offered. That even as per the press release of OLA as on 30.01.2018, it has over 125 million users in India, which includes women and children. That the wide reach of OLA in providing the basic requirement of transportation service is indeed a public function. It is contended that the OLA is providing an essential service to the general public seeking to fulfil the basic need of transportation. That because of the transportation service are accessed by public at large, the aggregators such as OLA are not permitted to offer such services without obtaining a licence from the State authorities. That services provided by OLA is in compliance with the applicable law, rules and regulation providing collective benefit to the public at large.



(b) The role of the OLA providing transportation service has been accepted by members of public to such an extent, the word `OLA' is widely used interchangeably with the word 'taxi' and 'cab'. Thus it is contended there is a public duty to be fulfilled by the OLA to provide safe and secure mode of transport to its large number of users on OLA platform. That, if the OLA is permitted to abdicate this duty, severe harm would be caused to the member public.

(c) Relying upon the Judgment of the Hon'ble Apex Court in the case of ***St. Mary's Education Society Vs Rajendra Prasad Bhargava*** reported in ***(2023) 4 SCC 498*** wherein the Apex Court has affirmed the relief under Article 226 of the Constitution of India may be granted against the bodies which are performing functions of public nature, he submitted the nature of functions being discharged by OLA have to be considered as discharging/performing of public function.

(d) He further relied upon the Judgment of the Hon'ble Apex Court in the case of ***Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and others. Vs. V.R. Rudani and others***

reported in **(1989) 2 SCC 691** to contend that under Article 226 relief must not be denied on mere technicalities and the judicial approach must remain flexible to address the injustice whenever it is found. Thus, he submitted the functions being performed by OLA are in the nature of discharging public functions. As such, OLA is amenable to the jurisdiction of this Court under Article 226 of the Constitution of India.

(e) Referring to the Judgment in the cases of:(i) **INITIATIVES FOR INCLUSION FOUNDATION AND ANOTHER VS. UNION OF INDIA AND OTHERS reported in (2024)1 SCC 779**, (ii) **PROFESSOR GIRIDHAR MADRAS VS. INDIAN INSTITUTE OF SCIENCE REPRESENTED BY ITS CHAIRMAN AND OTHERS reported in 2019 SCC online KAR 3508** and (iii) **KAUSHAL KISHOR VS. STATE OF UTTAR PRADESH AND OTHERS reported in (2023) 4 SCC 1**, he submitted that sexual harassment constitutes violation of various fundamental rights of women guaranteed under Articles 14, 15, 19(1)(g) and 21 of the constitution of India which may be enforced against private persons. That PoSH Act, 2013 imposes a public duty on OLA to ensure prevention, prohibition and redressal of sexual harassment.

(f) Referring to the notification dated 02.04.2016 by which the State Government has published Aggregator Rules, 2016 he submitted unless and until OLA is registered and issued the licence as contemplated therein, the OLA would not be able to discharge the functions of providing taxi services sufficient enough to hold that the OLA is indeed discharging the public function.

(g) Responding to contention raised by OLA that the driver-subscriber was not its employee learned counsel for the petitioner referred to definition of 'employee' as provided under Section 2(f) of the PoSH Act 2013 and contends that the said definition has wide ambit and must be interpreted to include drivers using OLA platform. Referring to clauses in Subscription Agreement which is produced as Annexure- R1 along with the statement of objections filed by ICC learned counsel for the petitioner submitted that the perusal of these clauses would leave no doubt that the OLA is having complete control and authority over the driver-subscriber, including termination of services of the Driver if found to be violating the terms of the said agreement. Thus, he submitted that the bare reading of

the clauses of the agreement would qualify the driver to be termed as an 'employee' under the PoSH Act, 2013. He also referred to foreign case laws namely *(i). UBER BV AND ORS VS. ASLAM AND ORS reported in UKSC/0002/2021 UKSC DATED:19.02.2021, (ii). UBER TECHNOLOGIES INC., A DELAWARE CORPORATION VS. BARBARA BERWICK, Inc., case No.11-46739 EX, (iii). RUCHIKA SINGH CHHABRA VS. M/S AIR FRANCE INDIA AND ANOTHER reported in 2018 SCC online DEL 9340*, to contend that issue regarding the status of drivers of similar taxi service providers has already been decided to hold them as 'workers' under such taxi service providers.

(h) He also brought to the attention of this Court Annexure-R4 which is produced along with the statement of objections in that it is contended that the subject taxi bearing registration No. KA-53-C-9192 belonged to "**OLA Fleet Technologies Pvt Ltd**", which is a subsidiary/associate company of the OLA. Thus, he submitted there is material enough to indicate that the OLA had complete control not only over the driver but also over the vehicles. Thus, he submitted

that there is a breach of statutory obligation on the part of the OLA requiring cognizance at the hands of this court.

(j) He also referred to reply which was issued by OLA, in response to the legal notice that was issued by the petitioner on 21.09.2018. In the said reply at paragraphs 5 and 6, OLA has admitted about its responsibility of checking the antecedent of its drivers. He further referred to terms and conditions of OLA Cab in which the terms of the payment to be made to the drivers, refund policy etc., which provides for the control of the OLA over its driver, he further submitted without OLA's intervention, there is no way one can get in touch with the driver-subscriber. Thus, he submitted that the ICC and OLA could not shy away from the responsibility of discharging the statutory obligation of conducting the enquiry upon the complaint filed by the petitioner.

(k) That since the OLA drivers are the employees within the meaning of Section 2(f) of PoSH Act, 2013 in terms of Section 9 of the PoSH Act 2013 the ICC of OLA was required to receive the complaint of sexual harassment faced by petitioner at the hands of OLA's employee.

(l) That, in terms of Section 11 of the Act, ICC shall enquire into any complaint that may be filed before it. The enquiry was mandatory under the scheme of the Act. That since the complaint sent by the petitioner through e-mail was bounced by an email addressed by OLA contending that the policy of sexual harassment at the workplace did not permit non-employees to file a complaint there was violation of Rule 13 of the PoSH Rules, 2013.

(m) That ICC, being an independent statutory and quasi-judicial body, is mandatorily required to inquire into any complaint before entering into any finding on jurisdiction and such enquiry must be in accordance with the principles of natural justice. That ICC, despite being an independent body constituted pursuant to the statute, appears to be acting under the directions of OLA. Thus, it is contended that there was inaction on the part of the ICC in discharging its statutory obligation.

### **7. Submissions on behalf of ICC:**

Sri.Murali, learned counsel for the respondent No.1 submitted that;

(a) ICC is vested with certain powers, functions, and jurisdiction under the PoSH Act, 2013 which are required to be performed within the limitations prescribed under the statute and cannot exceed its powers so prescribed. The ICC is required to enquire into complaints under Section 11 of the PoSH Act, 2013 only when the respondent in the said complaint is an 'employee' within the definition of Section 2(f) of the PoSH Act, 2013. Since in the present case, respondent in the complaint filed by the petitioner before the ICC was neither an 'employee' nor 'contractor' of OLA and was an impostor who was unauthorisedly driving the vehicle, at the time of incident, the ICC did not proceed with the inquiry or issue any direction under the PoSH Act, 2013 against such a person.

(b) That petitioner is entitled to seek remedies provided under the criminal justice system. That since the petitioner has already set the criminal proceedings in motion by filing the complaint before the jurisdictional police, who have already filed a charge sheet against the impostor the writ petition seeking relief of this nature is not maintainable.

(c) That the driver-Subscriber is not the 'employee' within the meaning of the definition 'employee' provided under the PoSH Act, 2013. That OLA onboard drivers have entered into a Subscription Agreement in terms of which the driver partners would not be construed as employees of OLA organization. There is no relationship of 'employer' and 'employee'. On the other hand, the relationship between the parties will be on principle to principle basis.

(d) That upon the receipt of complaint and emails by the petitioner, the ICC had sought the advice of their external legal counsel, who had advised the ICC that it cannot conduct the enquiry due to lack of jurisdiction. As such the relief sought for by the petitioner seeking direction to the ICC to enquire into the petitioner's complaint cannot be granted. Even if such an inquiry was conducted, no consequence would follow as contemplated under Section 13 of the PoSH Act, 2013. Therefore, seeks for dismissal of the petition.



8. **Submissions on behalf of ANI Techonologies**

**Pvt. Ltd., (OLA)-respondent No.2:**

Sri.Dhyan Chinappa, learned Senior counsel appearing on behalf of learned counsel appearing for OLA submitted:

(a) That OLA is a Private Limited Company which is not involved in performing any sovereign function does not qualify as a State or its agency or its instrumentality within the meaning of Article 12 of the Constitution of India. OLA is simply engaged in a commercial activity without any element of performing a public function or discharging any public duty. Business of offering a technology based platform to rider-subscribers and driver-subscribers for hiring of taxis with a commercial motive cannot be held to be a public function or a public duty. There is no statutory obligation upon OLA to provide such a platform. Hence, writ does not lie against it. In this regard he relied upon the judgments in the cases of ***(i) Federal Bank Limited. vs. Sagar, Thomas and others reported in 2003. 10 SCC. 733, (ii) R.S.Madireddy and another vs. Union of India and others reported in 2024. SCC Online SC 965, (iii) Smita Arora vs. Chief Executive***

***Officer Vs Nokia Corporation Pvt. Ltd. in  
W.P.No.23713/2016.***

b) That the driver- subscribers are not employees of OLA. That there is no relationship of 'employer' and 'employee' between OLA and the driver-subscribers. That under Section 11 of PoSH Act, 2013 respondent in a complaint of sexual harassment has to be an 'employee' for the Internal Complaints Committee to conduct an enquiry into the complaint of an 'aggrieved woman'. In the present case, offender accused person was not even the original driver-subscriber who had registered with OLA and it is a case of driver impersonation wherein an individual other than the original driver-subscriber was found driving the taxi on aggregators platform.

(c) That the definition of 'employee' under PoSH Act, 2013 is not applicable to the facts of the present case. There is no scope for any individual to be associated as a driver-subscriber with the platform without the knowledge of the OLA. There are no terms of employment either expressed or implied and the offender accused person was driving the taxi belonging to the driver-subscriber without having any association with

OLA. As such offender accused person cannot under any stretch of imagination, be deemed to be employed with the OLA either directly or indirectly through an agent or contractor.

(d) Driver-subscribers associated with the technology platform of OLA are free to operate on competing business platforms simultaneously. There is no economic dependence. The drivers-subscribers are free to determine their own working hours. They do not have to report to any specific place, time or days or perform any other act.

(e) Taxis used for providing transport services by driver-subscribers are not owned by OLA and are either owned by driver-subscribers themselves or taken on hire from third parties, as such applying test of 'ownership of instrumentalities' shows that the driver-subscribers are not employees of OLA. In support of these contentions he relied upon the Judgments in the cases of **(i). Indian Overseas Bank vs. Workmen reported in 2006 3 SCC 729, (ii). Shankar Balaji, Waje vs. State of Maharashtra, reported in AIR 1962 SC 517, (iii). Silver Jubilee Tailoring House and Others vs. Chief**

***Inspector of Shops and Establishments and Another reported in 19743 SCC 498.***

(f) That the Delhi High Court in the case of ***ANI Technologies Private Limited versus Rajdhani Tourist Driver Union and others*** has already observed that the driver- subscriber associated with the platform of OLA have purely a contractual relationship with the OLA and cannot make any demands from aggregators. That the said Observation of the Delhi High Court recognises that there exists no relationship of 'employer' and 'employee' between driver-subscriber and OLA.

(g) Scheme of Posh Act 2013 does not envisage conducting an inquiry or acting against individual who is not associated with the employer in any manner whatsoever. Even if such an inquiry is conducted, ICC could not have recommended any penal consequences as provided under Section 13(3) of PoSH Act, 2013.

(h) That OLA is merely an 'Intermediary' as defined under the provisions of Information Technology Act, 2000 which has no role to play in any of the acts or omission either on the part

of driver-subscriber or the rider-subscriber except storing and sharing their data. It neither controls nor regulates the business terms between the driver-subscriber and the rider-subscriber. User of OLA service is free, without any compulsion, to utilise its services, like the user has an option to utilise similar services offered by any other platform or even by any other normal and ordinary means of transport service. He drew an analogy with the On-line business pattern being followed by Amazon, Flipkart etc., and an analogy of various malls in the present day to submit the OLA has merely created a platform as that of these business modules available for anyone and everyone to use. Thus he submitted that except providing a platform, OLA has no control of any nature whatsoever over the business activities.

(j) That OLA carries out intermittent identification check of drivers-subscribers by requesting them to provide selfies to ensure that the driver subscribers registered with the platform is providing transport service. Dedicated phone number for raising any safety concern are provided and in addition to such number Mobile application has an inbuilt emergency alert mechanism which can be used by a rider subscriber to raise

alert in case of any threat. With the safety response team, OLA takes its responsibility towards safety of rider-subscriber very seriously and does not attempt to absolve itself of such responsibility even after completion of ride.

(k) OLA has not violated Rule 7 of the Aggregators Rule 2016. OLA has not caused or allowed a taxi to be used in any manner which may not be authorised by permit or any prohibition mentioned therein which may make OLA jointly and severally liable along with the driver-subscriber. As such, it is not in violation of Rule 10. That the petitioner has an alternate remedy under Rule 11 of the Aggregators Rules, 2016.

(l) As far as its prayer regarding direction to respondent No.4, Karnataka State Transport Authority to suspend the licence of OLA is concerned it is contended that the Division Bench of this Court in W.A.No.4789 of 2016, by its order dated 07.12.2016, has directed authorities not to take any coercive action against appellants therein for violation of rules during the pendency of appeal. The said order is extended from time to time. As such, the respondent No. 4 cannot take any coercive

action against the respondent No.2 during the pendency of said writ appeal. Hence sought for dismissal of writ petition.

**9. Submissions on behalf of the Karnataka State Transport Authority -Respondent No. 4:**

(a) Learned AGA submitted that since a prayer is sought against the respondent No.4 to frame rules necessary to protect the women and children who avail taxi services ensuring, their safety and security, any direction given to be duly complied by the respondent No.4 in the interest of safety of women and children.

(b) It is submitted that, respondent No.4 was not aware of petitioner filing a complaint before the Cubbon Park Police Station which was learnt only after filing the present writ petition.

(c) OLA has been issued with Licence under Aggregators Rule 2016. The OLA has deliberately failed to comply the said Rule to avoid consequences of inquiry and the action that would be taken, if violation was proved, in accordance with law. It was the duty of OLA to have brought to the notice of the concerned authority. The averments made in the statement of

objections more particularly, admitting the incidents of driver-swapping and sexual harassment to the female passengers would reveal that the OLA has not complied with the Aggregators Rule, 2016. That after learning about the facts of the present case the respondent No.4 has issued notice dated 16.08.2024 calling upon explanation from OLA within 7 days from the date of receipt of the notice. Thus respondent No.4 has taken necessary action against the OLA and would ensure compliance with the required Rules, 2016. Hence seeks for dismissal of the petition.

**ANALYSIS AND DISCUSSION:**

10. Facts of the case having been narrated in detail as above, require no further repetition except to state that the petitioner was admittedly subjected to sexual harassment by OLA taxi driver, albeit, allegedly an impersonator. Complaint lodged by the petitioner before the ICC constituted by OLA seeking enquiry as required under the PoSH Act 2013, has met with refusal and denial on the premise of ICC not having the jurisdiction in the matter, for want of relationship of 'employer' and 'employee' between OLA and the accused driver-



subscriber/impersonator which is a *sine-qua non* to subject itself the provisions of PoSH Act, 2013.

11. While the petitioner in this petition seeking enforcement of her constitutional and statutory rights, ICC and OLA on the other hand strenuously defend her claim, questioning the very maintainability of the writ petition against them on the premise of they being private entities not amenable to the writ jurisdiction. Besides, contending that the OLA is merely an 'Intermediary' providing technology based platform for driver-subscribers and the rider-subscribers without having control of any nature whatsoever over either them.

12. The above assertion by the petitioner and denial by the ICC and OLA needs to be adjudicated in the light of provisions of the PoSH Act, 2013 and the law enunciated by the Apex Court relevant for the purpose of facts and circumstances of the case at hand. Thus on consideration of the averments made in the writ petition, objection statements and re-joinder

and on consideration of submissions made by the learned counsel for the parties, following points arise for consideration;

1. Whether in the facts and circumstance of the case ICC- the respondent No.1 and ANI Technologies Pvt. Ltd.,(OLA)-the respondent No.2 respectively, are amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India?
2. Whether in the facts and circumstance of the case driver-subscriber is an 'employee' of ANI Technologies Pvt. Ltd.,(OLA)-the respondent No.2 as defined under Section 2(f) of the PoSH Act, 2013?
3. Whether in the facts and circumstances of the case ANI Technologies Pvt. Ltd.,(OLA)-the respondent No.2 can be construed only as an 'Intermediary' as contended?
4. Whether the ICC-respondent No.1 and ANI Technologies Pvt. Ltd.,(OLA)-the respondent No.2 respectively have committed breach of their statutory obligation as alleged by the Petitioner?
5. Whether the petitioner is entitled for the reliefs as sought for in the petition?

**POSITION OF LAW BEFORE AND AFTER PoSH ACT, 2013:**

13. Considering points involved in the matter apposite hereto refer to the Judgments of the Apex Court prior to and subsequent to the promulgation of the PoSH Act 2013. The

Hon'ble Apex Court in the case of ***Vishaka and others Vs. State of Rajasthan and others*** reported in **(1997) 6 SCC 241** involving an incident of brutal gang rape of a social worker in a village of Rajasthan, recognising the eminent requirement of providing protection and enforcement of fundamental and human rights of working women, in the absence of suitable legislation, while laying down certain guidelines at paragraph No.3 of the said Judgment has observed as under:

*" 3. Each such incident results in violation of the fundamental rights of 'Gender Equality' and the 'Right of Life and Liberty'. It is clear violation of the rights under Articles 14, 15 and 21 of Constitution. One of the logical consequences of such an incident is also the violation of the victim's fundamental right under Article 19(1)(g) 'to practice any profession or to carry out any occupation, trade or business'. Such violations, therefore, attract the remedy under Article 32 for the enforcement of these fundamental rights of women. This class action under Article 32 of the Constitution is for this reason. A writ of mandamus in such a situation, if it is to be effective, needs to be accompanied by directions for prevention; as the violation of fundamental rights of this kind is a recurring phenomenon. The fundamental right to carry on any occupation, trade or profession depends on the availability of a "safe" working environment. Right to life means life with dignity. The primary responsibility for ensuring such safety and dignity through suitable legislation, and the creation of a mechanism for its enforcement, is of the legislature and the executive. When, however, instances of sexual harassment resulting in violation of fundamental rights of women workers under Articles 14, 19 and 21 are brought before us for redress under Article 32, an effective redressal requires that some guidelines should be laid down for the protection of these rights to fill the legislative vacuum.*

14. Then came a self contained code by way of The Sexual Harassment at Workplace (Prevention, Prohibition and

Redressal) Act, 2013 and The Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (PoSH Act and Rules, 2013) to remedy the mischief. It is premised on Article 11 of the International Convention on Elimination of All Forms of Discrimination Against Women to which India is a party, requiring State Parties to take all appropriate measures to eliminate discrimination against women in the field of employment as well as on the grand concept of 'Right to live with dignity' enshrined under Article 21 of the Constitution of India. However there remained challenges in effective implementation of the provisions of the said Act and Rules requiring the Apex Court, in the case of ***Aureliano Fernandis Vs. State of Goa reported in (2024) 1 SCC 632***, to issue following directions:

*"87. To fulfill the promise that the PoSH Act holds out to working women all over the country, it is deemed appropriate to issue the following directions :*

*87.1 The Union of India, all State Governments and Union Territories are directed to undertake a time bound exercise to verify as to whether all the concerned Ministries, Departments, Government organizations, authorities, Public Sector Undertakings, institutions, bodies, etc. have constituted ICCs/LCs/ICs, as the case may be and that the composition of the said Committees are strictly in terms of the provisions of the PoSH Act.*

*87.2 It shall be ensured that necessary information regarding the constitution and composition of the ICCs/LCs/ICs, details of the e-mail IDs and contact numbers of the designated person(s), the procedure prescribed for submitting an online complaint, as also the relevant rules, regulations and internal policies are made readily available on the website of the concerned*

*Authority/Functionary/ Organisation/ Institution/Body, as the case may be. The information furnished shall also be updated from time to time.*

*87.3 A similar exercise shall be undertaken by all the Statutory bodies of professionals at the Apex level and the State level (including those regulating doctors, lawyers, architects, chartered accountants, cost accountants, engineers, bankers and other professionals), by Universities, colleges, Training Centres and educational institutions and by government and private hospitals/nursing homes.*

*87.4 Immediate and effective steps shall be taken by the authorities/ managements/employers to familiarize members of the ICCs/LCs/ICs with their duties and the manner in which an inquiry ought to be conducted on receiving a complaint of sexual harassment at the workplace, from the point when the complaint is received, till the inquiry is finally concluded and the Report submitted.*

*87.5 The authorities/management/employers shall regularly conduct orientation programmes, workshops, seminars and awareness programmes to upskill members of the ICCs/LCs/ICs and to educate women employees and women's groups about the provisions of the Act, the Rules and relevant regulations.*

*87.6 The National Legal Services Authority(NALSA) and the State Legal Services Authorities(SLSAs) shall develop modules to conduct workshops and organize awareness programmes to sensitize authorities/managements/employers, employees and adolescent groups with the provisions of the Act, which shall be included in their annual calendar.*

*87.7 The National Judicial Academy and the State Judicial Academies shall include in their annual calendars, orientation programmes, seminars and workshops for capacity building of members of the ICCs/LCs/ICs established in the High Courts and District Courts and for drafting Standard Operating Procedures (SOPs) to conduct an inquiry under the Act and Rules.*

*87.8 A copy of this judgment shall be transmitted to the Secretaries of all the Ministries, Government of India who shall ensure implementation of the directions by all the concerned Departments, Statutory Authorities, Institutions, Organisations etc. under the control of the respective Ministries. A copy of the judgment shall also be transmitted to the Chief Secretaries of all the States and Union Territories who shall ensure strict compliance of these directions by all the concerned Departments. It shall be the responsibility of the Secretaries of the Ministries, Government of India and the Chief Secretaries of every State/Union Territory to ensure implementation of the directions issued.*

*87.9 The Registry of the Supreme Court of India shall transmit a copy of this judgment to the Director, National Judicial Academy, Member Secretary, NALSA, Chairperson, Bar Council of India and the Registrar Generals of all the High Courts. The Registry shall also*

*transmit a copy of this judgment to the Medical Council of India, Council of Architecture, Institute of Chartered Accountants, Institute of Company Secretaries and the Engineering Council of India for implementing the directions issued.*

*87.10 Member-Secretary, NALSA is requested to transmit a copy of this judgment to the Member Secretaries of all the State Legal Services Authorities. Similarly, the Registrar Generals of the State High Courts shall transmit a copy of this judgment to the Directors of the State Judicial Academies and the Principal District Judges/District Judges of their respective States.*

*87.11 The Chairperson, Bar Council of India and the Apex Bodies mentioned in sub-para (ix) above, shall in turn, transmit a copy of this judgment to all the State Bar Councils and the State Level Councils, as the case may be.*

*87.12 The Union of India and all States/UTs are directed to file their affidavits within eight weeks for reporting compliances. List after eight weeks.*

15. Thereafter, in the case of **INITIATIVES FOR INCLUSION FOUNDATION AND OTHERS VS. UNION OF INDIA and Others 2024 1 SCC 779** issued additional directions which are as under:

*"25. Having regard to the above discussion, it is appropriate for this Court to issue the following directions (under the relevant heads) to ensure the effective implementation of the PoSH Act, and render it workable:*

**A. Coordination between Union Government and State/UT Governments**

*(1) The Women and Child Development Ministry of every State/UT, through its Principal Secretary, should consider identifying a "nodal person" within the Department, to oversee and aid in coordination as contemplated under the PoSH Act. This person would also be able to coordinate with the Union Government on matters relating to this Act and its implementation.*

*(ii) Each State/UT Government is to submit a consolidated report of its compliance with the below directions to the Union Government within 8 weeks. The latter is hereby directed to consolidate the various reports, identify any lapses in the compliance by the State and try to remedy it, before filing a consolidated affidavit of compliance- detailing the States' compliance, and the Union Government's action taken in regard to the direction within 12 weeks from the date of this judgment.*

**B. Appointment of public authorities**

*(iii) The Principal Secretary concerned of the State/UT Ministry of Women and Child [or any other Department, subject to amendment of the Rules as per Direction (vii) below] will personally ensure appointment of a District Officer in each district within their territorial jurisdiction, as contemplated under Section 5 within four weeks from the date of this Judgment."*

*iv. Thereafter, each appointed district officer*

*(a) must in compliance of Section 6(2) appoint nodal officers in every block, taluka and tehsil in rural or tribal area and ward or municipality in the urban area;*

*(b) must constitute a LC, as contemplated under Section 6 and 7 of the Act; and (c) ensure the contact details of these nodal officers, and LCs, shall be forwarded to the nodal person within the State Government, Ministry of Women and Child Development within 6 weeks from the date of this judgment.*

*v. Thereafter, a circular/bulletin containing names of all district officers, and their contact details (phone, address, and email), along with a district wise chart of the various nodal officers and their contact details, must be uploaded on the department's website (or in the absence of one, on the main State government website) in a conspicuous location, along with a compiled version of the Act, Rules, and simple charts/explainers on the basics of the Act, within 6 weeks from the date of this judgment.*

**C. Amendments and gaps in Rules that State must fill**

*vi. The Union Government ought to consider amending the Rules, so as to operationalise Section 26 of the Act, by recognising a reporting authority, and/or a fine collecting authority. This direction must be read in light of the discussion in paragraph 9 (role of district officer with regards to annual compliance reports) and paragraph 24 (on the penalty regime contemplated in the Act and resulting lacunae in the Rules) above.*

*vii. The Union Government may also consider amending the Rules so as to identify one Department (preferably the Women and Child Department), and creating a 'nodal person' post within the said Department to be responsible for the coordination required in the implementation of the Act [see direction (i)]. This will ensure greater uniformity in the implementation of the Act across the country.*

**D. Training and capacity building**

*viii. The District Officers and LCs should be mandatorily trained regarding their important responsibilities. Given their position in the redressal framework contemplated in the Act, they must first be sensitised to the nature of sexual harassment, the gendered*

*interactions that occur in the workspace, etc. The State Governments, must organise periodic, and regular training sessions at the District level which are to be attended by the District Officer, members of the LC, and nodal officers [ref: Section 24(b)].*

#### **E. Larger efforts towards awareness**

*ix. In furtherance of Section 24, the State/UT Governments, and Union Government are hereby directed to set out the financial resources allocated and/or needed, to developing educational, communication and training material for spreading awareness of the provisions of this Act to the public, and formulate orientation and training programmes as elaborated in direction (viii) above. This plan of action, must form part of the compliance affidavit filed by each State. The discussion in paragraph 19 is to be read along with this direction.*

*x. The District Officers, once nominated by the State are hereby directed to identify the non-governmental organisations working with women and their protection within the district, and take action pursuant to their duty under Section 20(b) for creation of awareness.*

*xi. The appropriate government or district officers in question, must also undertake effort to spread awareness on the existence of LCs, and make them approachable for the unorganized sector - thus operationalizing the horizontal import of this Act.*

*xii. The directions 87.4 and 87.5 passed in Aureliano Fernandes v. State of Goa & Ors.28 (supra) cover specifically the direction to authorities, management and employers to familiarize the members of the ICCs and LCs of their duties and detailed step-wise manner in which an enquiry ought to be conducted on receiving a complaint of sexual harassment; conduct orientation programmes, workshops, seminars, awareness programmes, etc. and to educate women employees and women groups about the Act, Rules, and regulations are reiterated. The modules prepared by NALSA [as per direction 87.6 in Aureliano Fernandes] to conduct workshops and organize awareness programmes to sensitise authorities, managements, employers could be used in this regard.*

*xiii. It is relevant to add here that the Ministry of Women and Child Development, Government of India, has prepared a Handbook for implementation of POSH Act, which serves as a useful guide for not just employees seeking information, but also more pertinently those who are nominated or appointed as members of the ICs (by the employer) or LCs (by the District Officer). It is hereby directed that a targeted effort be made to share this information with each District Officer, who may in turn disseminate it to their respective LCs, the nodal officers appointed under Section 6(2), and employers who constitute their own ICCs.*

#### **F. Annual Compliance Reports**

*xiv. Due compliance with Section 21(1) and (2), and Section 22, must be undertaken by each District Officer, of the State - including collecting the reports from the IC/employers (or information where no report is available), and from the LC, and preparation of a brief report*



to be shared with the State government. The State/UT Governments is hereby directed to create a Standard Operating Procedure (SOP) including the procedure, and timelines for this process, so as to enable it to, in turn, comply with Section 23 of the Act, i.e., monitoring implementation and maintaining data. This direction may be read in light of the discussion contained in paragraph 21 above.

**G. Monitoring of ICs and compliance by employers**

xv. The directions passed in *Aureliano Fernandes v. State of Goa & Ors.* (*supra*) address most specifically, the constitution of ICs - in public establishments [falling broadly within Section 2(o)(i)] and some private establishments - such as bodies governing professional associations, etc.; those directions are hereby reiterated, to avoid multiplicity or overlap of efforts. It is however further, directed that efforts made must be in line with the scheme of the Act, and through the authorities so designated for the various roles.

xvi. Similarly, directions are hereby made to hospitals, nursing homes, sports institutes, stadiums, sports complex, or competition or games venues [as defined in Section 2(o)(iii) and (iv)] to establish ICs, and report compliance as per the duties under this Act.

xvii. The District Officer must be supplied a list of establishments (compiled by the relevant departments of the State/UT Government) that fall within the scope of Section 2(o), so that they may write to them and ensure that they are well versed with the provisions relating to employers, and their duties (including constitution of ICC under Section 4, duties under Section 19, etc.) and are implementing them in letter and spirit. This will also enable collection of annual reports, as contemplated under Section 21. The consequent direction to all private sector workplaces under Section 2(o)(ii) can be passed once the District Officer is able to discern an exhaustive list of entities.

16. The aforesaid guidelines issued by the Hon'ble Apex Court in the case of ***Vishaka (Supra)***, consequent promulgation of PoSH Act, 2013 and Rules 2013 though considered to be 'self contained code', required further impetus in the nature of issuing 'directions' and 'further directions' by the Apex Court as extracted hereinabove to ensure effective implementation, enforcement and workability of the PoSH Act

2013 and Rules 2013. Present case puts in issue yet another challenge when it is to be implemented in the private sectors as in the case at hand. It is in this background the points raised in the present case requires to be answered.

**REG: POINT NO.1:**

17. Petitioner in her first prayer has sought direction to ICC to enquire into her complaint dated 30.09.2018 produced at Annexure-F in accordance with the provisions of the PoSH Act, 2013 which is resisted by ICC and OLA by questioning the very maintainability of the writ petition against them.

18. Apex Court in the case of ***St.Mary's Education Society and Others (Supra)*** at paragraph No.75.1 has held as under:

*"75.1. An application under Article 226 of the Constitution is maintainable against a person or a body discharging public duties or public functions. The public duty cast may be either statutory or otherwise and where it is otherwise, the body or the person must be shown to owe that duty or obligation to the public involving the public law element. Similarly, for ascertaining the discharge of public function, it must be established that the body or the person was seeking to achieve the same for the collective benefit of the public or a section of it and the authority to do so must be accepted by the public."*

and in the case of ***Andi Muktha Sadhguru Shree Mukta Vs. V.R.Rudani and others (Supra)*** at paragraph No.20 held as under:

*"20. The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. **The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very relevant . What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected person. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied.**"*

*( Emphasis added)*

19. The above enunciation of law by the Apex Court makes it clear that writ petition against private entities is maintainable if it is shown that it owe a duty and obligation to public involving the public law element and such authority is accepted by public at large. Broadly, public law refers to a law governing relationship between the State and its subjects as well as their conduct concerning the society. In this regard it is relevant at this juncture to refer to Sections 4, 9, 11, 13 of the PoSH Act, 2013 which vest and impose authority and obligation,

having public law element, in the person/body as that of ICC and OLA, which reads as under:

**4. Constitution of Internal Complaints Committee. —**

*(1) Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the "Internal Complaints Committee":*

*Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.*

*(2) The Internal Committees shall consist of the following members to be nominated by the employer, namely: —*

*(a) a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees: Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section(1): Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organisation;*

*(b) not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;*

*(c) one member from amongst non-governmental organizations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment: Provided that at least one-half of the total Members so nominated shall be women.*

*(3) The Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer.*

*(4) The Member appointed from amongst the non-governmental organisations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the employer, as may be prescribed.*

*(5) Where the Presiding Officer or any Member of the Internal Committee, —*

*(a) contravenes the provisions of section 16; or*

*(b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or*

*(c) he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or*

*(d) has so abused his position as to render his continuance in office prejudicial to the public interest, such Presiding Officer or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.*

**9. Complaint of sexual harassment.**—(1) *Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident: Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing: Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.*

*(2) Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section."*

**11. Inquiry into complaint.**— (1) *Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code (45 of 1860), and any other relevant provisions of the said Code where applicable:*

*Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police: Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.*

*(2) Notwithstanding anything contained in section 509 of the Indian Penal Code (45 of 1860), the court may, when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of section 15.*

*(3) For the purpose of making an inquiry under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall have the same powers as are vested in a civil court the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of the following matters, namely:—*

*(a) summoning and enforcing the attendance of any person and examining him on oath;*

*(b) requiring the discovery and production of documents; and*

*(c) any other matter which may be prescribed.*

*(4) The inquiry under sub-section (1) shall be completed within a period of ninety days.*

**13. Inquiry report.**—*(1) On the completion of an inquiry under this Act, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.*

*(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.*

*(3) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall*

*recommend to the employer or the District Officer, as the case may be—*

*(i) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;*

*(ii) to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of section 15:*

*Provided that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman:*

*Provided further that in case the respondent fails to pay the sum referred to in clause(ii), the Internal Committee or as, the case may be, the Local Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.*

*(4) The employer or the District Officer shall act upon the recommendation within sixty days of its receipt by him."*

20. Thus under Section 4 of PoSH Act, 2013 OLA being an employer of workplace is obligated to by an order in writing to constitute Internal Complaints Committee which is a duty cast on OLA under the statute which it owes to public at large. There is no dispute that ICC has been constituted by OLA in furtherance to statutory obligation imposed in terms of the Section 4 of provisions of the PoSH Act, 2013, to receive the complaints of sexual harassment from the aggrieved women, to enquire into the said complaints and to carry out and discharge the obligations contemplated under sections 9, 11 and 13 of

the PoSH Act, 2013 extracted hereinabove. In fact, it is the specific case of the ICC and OLA that they are in complete compliance with the aforesaid provisions of the PoSH Act, 2013. Needless to emphasise the very object of the PoSH Act, 2013 is to ensure safety and security of the women at workplace which is recognised as their statutory and fundamental rights. Employers like that of OLA and their internal complaint committee as that of ICC are thus have a corresponding '*public duty and obligation*' which is undoubtedly involving a '*public law element*' and existence of '*such authority is accepted by public at large*'.

21. Another aspect of the matter is that Government of Karnataka in exercise of its powers conferred under Sections 93, 95(1) and 96(1) read with Section 212 of Motor Vehicles Act, 1988, framed and by notification dated 02.04.2016 published Aggregators Rules, 2016. This is also in furtherance to the advisory that was issued by the Central Government to all the State Governments. The purpose of framing such rules as stated in the notification reads thus:

*"Whereas it is necessary to promote and ensure the compliance with law and safety of passengers who use I.T.*



*based on demand transportation technology aggregator platforms within a particular jurisdiction and to ensure a greater integrity of process and operation of the on demand transportation technology aggregator platforms."*

22. Statutory obligations are also imposed on the OLA, which is admittedly an 'Aggregator' as defined under the Aggregators Rules 2016, having been issued with licence and thus being a 'Licencee' thereunder. Appropriate here to extract relevant provisions of Aggregators Rules, 2016 which has been published as required under (1) of 212 of Motor Vehicle Act, 1988 which are as under:

2(2) "Aggregator" means a person who is an aggregator or operator or an intermediary/market place who canvasses or solicits or facilitates passengers for travel by a taxi and who connects the passenger/intending passenger to a driver of a taxi through phone calls, internet, web-based services or GPS/GPRS based services whether or not any fare, fee, commission, brokerage or other charges are collected for providing such services.

"(4) "Licence" means a Licence issued to an aggregator under these Rules.

(5) "Licencee" means an aggregator who holds licence issued under these Rules.

(6) **Conditions for grant or renewal of a licence.**- The applicant for a licence shall satisfy that

(a) he has a fleet of minimum 100 taxies either owned or through an agreement with individual Taxi permit holders.

(b) he has facilities for monitoring the movement of taxies with the help of GPS, GPRS, along with a control room facility.

7. **Vehicle Profile.**- Every taxi, for the purpose of inclusion in a licence, shall,-

(a) be covered with a contract carriage permit issued under section 74 or under sub section of Section 88 of the Act.

(b) have a display board inside the Taxi containing vehicle permit and the driver's details such as photograph, name, Driving licence and badge particulars and ID card issued by police authorities. The display board shall be clearly visible to the passengers in the taxi.

(c) be capable of being tracked continuously with GPS/GPRS facility with a provision of a panic button for the use of the passengers, capable of alerting the control room of aggregator as well as local Police without any hindrance or interference by the driver.

(d) be fitted with single integrated GPS / GPRS capable vehicle tracking unit with Printer, display panel and digital fare meter, as per the specifications detailed in Appendix-II, capable of generating a printed receipt to be given to the passengers.

(e) be fitted with an yellow coloured display board with words "Taxi" visible both from the front and the rear. The board shall be capable of being illuminated during the night hours.

#### **8. Driver's qualifications.**

(1) Driver of a Taxi shall have the following qualifications.-

(a) He shall be holder of a licence to drive light motor vehicles (transport) and the holder of a badge to drive motor cabs.

(b) He shall have a minimum driving experience of 2 years.

(c) He shall be a resident of Karnataka for a minimum period of two years.

(d) He shall have a working knowledge of Kannada and any one other language, preferably English.

(e) He shall be of a good moral character without any criminal record.

(f) He shall be a holder of KYC compliance bank account in accordance with the norms prescribed by Reserve Bank of India.

(2) The driver of a Taxi shall behave in a civil and orderly manner with the passengers or intending passengers and shall not give room for any complaints from them and shall not indulge in any touting activities or force or compel customers to use his services.

(3) The driver of a taxi shall not have been convicted within the past seven years, for the offence of driving under the influence of drugs or alcohol, or any cognizable offence under the Criminal Procedure Code, 1973, including fraud, sexual offences, use of a motor vehicle to commit a cognizable offence, a crime involving property damage or theft, acts of violence, or acts of terror.

**10. General Conditions to be observed by a licensee.-**

(a) provide an address within the area of operation in the jurisdiction of the Licensing Authority along with details of the person-in-charge of the affairs.

(b) neither shift his place of business, nor any of his branches as mentioned in the licence or open a new branch without a written permission from the licensing authority.

(c) maintain records, in digital form of all the taxis at his control, indicating on a day to day basis, the trips operated by each vehicle, details of passengers who travelled in the vehicle, origin and destination of the journey and the fare collected. The records so maintained shall be open for inspection by an officer nominated by the licensing authority at any time.

(d) provide a list of drivers, their Licence numbers, the vehicle registration numbers and the chassis and engine numbers and permit details of Taxis operated by him to the licensing Authority on a quarterly basis.

(e) maintain the copies of following up-dated records relating to the drivers (after verification with the originals):

- i) a photograph of the driver;
- ii) driving Licence;
- iii) Present home address with proof of residential address;
- iv) RBI compliance KYC bank account details;
- v) Self-attested copies of EPIC card and PAN card.

vi) Contact details and addresses of two family members.

f) maintain the copies of the following up-dated records relating to the driver's vehicle (after verification with the originals):

- i) Certificate of Registration;
- ii) Certificate of Fitness;
- iii) Permit of the vehicle;
- iv) Chassis and engine numbers and
- v) Commercial insurance policy covering for third party risks as prescribed in the Act.
- vi) Pollution under control certificate.
- g) implement a zero tolerance policy on the use of drugs or alcohol applicable to any driver, provide notice of the zero tolerance policy on its website, as well as the procedure to report a complaint about a

*driver when a passenger reasonably suspects that the driver was under the influence of drugs or alcohol during the course of the ride. The licensee shall immediately deactivate or suspend such driver's access to the platform upon receipt of a passenger's complaint alleging violation of the zero tolerance policy. The suspension shall last or continue during the period of investigation by the licensee.*

*h) ensure that the antecedents of every driver of a Taxi is verified by the police authorities before the driver is allowed to use the licensee's platform.*

*i) arrange at least once in a year structured refresher training programme for the drivers not only for safe driving skills but also for gender sensitization and etiquette towards passengers etc. Conduct of all such training programmes shall be documented and preserved at least for one year. The driver shall not be allowed to work beyond the maximum number of hours as stipulated under Motor Transport Workers Act 1961.(Central Act No 27 of 1961)*

*j) periodically check and maintain a register regarding the details of all the documents of all taxies at his command.*

*k) ensure that all the taxies at his command maintain uninterrupted contact with the control room. The control room shall be in a position to monitor the movements of all the vehicles at his command.*

*l) ensure adequate mechanism for receiving passengers feedback and grievances. This may be ensured through feedback register kept in the taxi, easily accessible to the passengers always and also by providing toll free phone numbers.*

*m) ensure that the grievances or complaints of passengers or any other persons received by him shall be attended by the grievance officer appointed by him and they must be made available to the inspecting authorities on demand.*

*n) provide the taxies covered with a permit issued under section 74 or under sub-section (8) of section 88 of the Act as per the requirement of the passengers.*

*o) ensure that the vehicles entered in his licence do not operate independently or accept bookings directly.*

*p) give liberty to the permit holder who is in operation under his company to operate his vehicle simultaneously with any other aggregator as per his discretion.*

*q) ensure that the Taxi service is available all the time 24 X 7 without any interruption.*

*r) on termination or end of the agreement with permit holder, remove all the equipments or brand stickers and confiscate the identity card or authorization issued to the driver.*

s) maintain a web portal containing all details regarding the owners of the vehicles, services offered, fare structure, insurance liabilities, control room number, name and contact details of a duly appointed grievance redressal officer.

t) send photo of the driver along with vehicle registration number and other details of the driver to the customer's mobile before boarding.

u) publish beforehand its policy on taxi fare, registration of taxis and drivers with its platform or app, sharing of fares with taxi owners and/or drivers, safety of passengers, grievance redressal mechanism for passengers etc.

v) store datas of all passengers and drivers travelled in their vehicles upto one year and make them available to the inspecting authorities on demand.

(2) If the licensee uses or causes or allows a Taxi to be used in any manner not authorized by the permit or provisions mentioned herein, the licensee and the driver shall be jointly and severally responsible for such defaults and for payment of penalty under the provisions of the Act and Rules.

(3) If any untoward incident occurs during the course of a ride, the licensee shall inform the same to the licensing authority as well as to the jurisdictional police immediately.

(4) The licensing authority may, after notice of not less than 30 days to the licensee, vary any conditions or may add fresh conditions.

**11. Power of the licensing authority to suspend or cancel the Licence.-** (1) The licensing authority may, after giving an opportunity of being heard to the licensee, suspend the licence for a period which shall not be less than 30 days and which shall not exceed 6 months at a time or may cancel the licence, if,-

a. the licensee fails to comply with any of the requirements or conditions of these rules, or

b. any Taxi operated by the licensee fails to comply with any of the requirements or conditions of these rules, or

c. any driver of a Taxi operated by him violates any requirements or conditions of these rules, or

d. a passenger's complaint of misbehaviour or misdemeanour on the part of the driver or the licensee or any of his employees is found to be correct after enquiry or

e. a criminal complaint is filed against the licensee or his employee or the driver.

(2) Where a licence is suspended or cancelled, the licensee shall surrender the licence to the licensing authority within three days of

*receipt of order of suspension or cancellation and shall immediately stop all operations under the licence.*

*(3) Where the licence is liable to be suspended or cancelled and the licensing authority is of the opinion that it would be expedient to impose a fine on the licensee in lieu of suspending or cancelling the licence, the licensing authority may require the licensee to pay a fine which shall not be less than Rs. 5,000 but not exceeding Rs. 10,000.*

*(4) Without prejudice to an order of suspension or cancellation passed by the licensing authority, the security provided by way of bank guarantee may also be forfeited either in part or in full, depending upon the gravity of the violation.*

*(5) The licensee may, at any time, voluntarily surrender the licence for cancellation. On such surrender of the licence, the security by way of bank guarantee if any shall be returned to the licensee after the payment of outstanding dues if any.*

23. Reading of the aforesaid Aggregators Rules, 2016 in the light of the objects and purpose of the PoSH Act, 2013 indicate that OLA being the 'Aggregator' and the 'Licencee' as defined under the Aggregators Rules 2016 has been imposed with additional statutory obligation of ensuring safety of the passengers by further ensuring proper use of the Taxi/vehicle and to inform occurrence of any untoward incident to the Licencing Authority and to the jurisdictional police, failure of which entails the Authorities concerned to revoke the licence in the manner enumerated thereunder.

24. Admittedly in the instant case neither the ICC nor the OLA have discharged the obligation imposed on them under

the Aggregators Rules 2016. However relying upon a letter dated 26.08.2017 produced at Annexure R4 produced along with the statement of objection by the ICC it is contended that it has rendered and willing to render all required assistance and co-operation before the jurisdictional police in the process of investigation. Except that no material is placed on record regarding their statutory compliance in the matter. This aspect of the matter is further dealt with while answering Point.No.3.

25. Though it is vehemently urged on behalf of Petitioner that since the OLA is into the business of providing transport service of such a huge magnitude across the country it partakes the character of it discharging a public function, which is denied with equal vehemence by the learned counsel for the ICC and OLA, this court is of the considered view that, in the light of statutory obligations cast on OLA of constituting the Internal Complaint Committee for enquiring into the complaints of sexual harassment and taking further actions under the provisions of the PoSH Act, 2013 referred to hereinabove as well the obligations imposed under Rules 2016 which is undoubtedly a duty and obligation which it owe towards the

public at large, ICC and OLA cannot be heard to say that they are not discharging any 'public duty' involving 'public law element' making them amenable to Article 226 of the Constitution of India. It is now well settled that sexual harassment constitutes violation of various fundamental rights of women guaranteed under Articles 14, 15, 19(1)(g) and 21 of the Constitution of India which may be enforced against private persons with corresponding duty imposed by a statute.

26. Reliance placed on by learned Senior counsel appearing for the OLA on the judgments in the case of;

- a) ***Sanchit Gupta Vs Union of India and anr*** (supra) is of no avail to the facts of the present case as the respondent X-Corp in the said case against whom the said writ was filed alleging violation of constitutional rights, was found to have been operating privately without specific Governmental delegation or statutory obligations to perform any public duty (para 10 of the said Judgment).



b) As regards to the principles of law laid down in the cases of **Zee Telefilms, Andi Mukta Sadguru, Basireddy, R.S.Madireddy and Federal Bank** (Supra) there cannot be any other contrary view or opinion. However, in the light of specific provisions made under the PoSH Act, 2013 mandating OLA- the employer to constitute the ICC which is a statutory obligation of discharging public duty involving public law element as already noted above, OLA may not draw much help from the said Judgments. In fact, the law laid down in the said Judgments would support the case of the petitioner than the OLA on the point being discussed regarding maintainability of the writ petition.

c) In the case of **Smitha Arora** (supra) what was being considered was a challenge to the order of termination of service of petitioner by a private entity as well as a challenge to the report of Internal Complaint Committee of certain M/s.Alcatel Lucent India Ltd. There has been no question raised or view

taken as to whether ICC therein was discharging a public duty involving public law element. All that was adverted to was the nature of business being carried on by the private entities named therein. Further petitioner in the said case herself being an employee and aggrieved person was held to have had an alternate remedy of preferring an appeal. Thus, facts and issues involved in the said case are different and distinct from the one which are at hand.

27. For the above reasons and for the purpose and to the extent mentioned above this Court is of considered view that the writ petition under Article 226 is maintainable. Point No.1 is answered accordingly.

**Point Nos.2 and 3:**

28. One of the main contentions vehemently urged on behalf of ICC and OLA is want of relationship of 'employer' and 'employee' between the OLA, driver-subscriber and the impersonator, enabling the ICC to initiate enquiry upon the complaint filed by the petitioner. This calls for a close scrutiny of the terms of Subscription Agreement which is admittedly

entered into between OLA and the Transport Provider and Driver-subscriber in the light of statement of objects and reasons which the PoSH Act 2013 seeks to achieve. The definition of the term `employee' as provided under Section 2(f) of the POSH Act, 2013 reads as under:

*"(f) "employee" means a person employed at a workplace for any work on regular, temporary, adhoc or daily wage basis, either directly or through an agent, including a contractor, with or, without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name;"*

29. It is also relevant to refer to the definition of term 'employer' as defined under Section 2(g) of the POSH Act, 2013 which reads as under:

*"Employer has been defined to mean any person responsible for the management, supervision and control of the workplace and management includes the person or board or committee responsible for formulation and administration of policies for such organisation."*

30. For better understanding the definition of the term `employee' its components are encapsulated as under:

- `Employee' means -
- (i) a person employed at a work place,
  - (ii) for any work
  - (iii) on regular, temporary, adhoc or
  - (iv) daily wage basis
  - (v) either directly or through an agent,
  - (vi) including a contractor
  - (vii) with or without knowledge of principal employer

- (viii) whether for a remuneration or not,
- (ix) or working on a voluntary basis or otherwise,
- (x) whether the terms of employment are express or implied
- xi) and includes a co-worker,
- xii) a contract worker,
- xiii) probationer, trainee, apprentice or
- xiv) called by any other such name.

31. Similarly the components of term 'Employer' can be encapsulated as under;

*'Employer' means:*

- i) any person responsible for the*
- ii) management,*
- iii) supervision and*
- iv) control of*
- v) the workplace and*
- vi) management includes the person or board or committee*
- vii) responsible for formulation and administration of policies for such organisation.*

32. The above definitions of 'Employee' and 'Employer' as read in their plain and simple language clearly and without any ambiguity indicate that they intend to cover all possible means and modes of engagement of a person as an 'Employee' by the 'Employer' at his/its work place, for and in furtherance to his/its business and other objectives. The definitions also suggest the vast scope of their applicability in that one can adopt various legally recognised modes, means, methods of working

arrangements, contractual or otherwise, for any duration, with or without any remuneration or on voluntary basis or otherwise directly or indirectly, with or without knowledge, with whomsoever he/it wants for the purpose of his/its domestic, business, commercial and other entrepreneurial activities, completely under the responsibility, control, supervision and management of such employer.

33. Appropriate here also to extract definition of the terms 'aggrieved women' and 'work place' as defined under Section 2(a) and 2(o) which reads as under:

a) "aggrieved woman" means-

(i) in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent;

(ii) in relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house;

(o) "workplace" includes -

*(i) any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society;*

*(ii) any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;*

*(iii) hospitals or nursing homes;*

*(iv) any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;*

*(v) any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey.*

*(vi) a dwelling place or a house;*

34. There is no dispute to the fact that in the instant case petitioner is an 'aggrieved women'. 'Work Place' on the other hand being an inclusive definition includes 'transportation' as well.

35. Learned Senior Counsel for OLA however referring to the word 'employed' used in the above definition of 'Employee' emphatically insisted that unless the term 'employed' is established in relation to OLA and its drivers, the remaining part of the definition cannot be thrust upon OLA. It is further vehemently contended even if such attempt is made it would lead to disastrous results across the country as the OLA has millions of driver-subscribers, leading to extremely anomalous situation which is neither the intent of the PoSH Act 2013 nor is it desirable to give such a construction.

36. Though at the first blush there appears to be considerable force in the said submissions being made, however before accepting the same, the context and purpose for which the present legislation namely PoSH Act, 2013 has been promulgated needs to be kept in mind. The mischief which this legislation seeks to remedy is to provide protection to women against sexual harassment, which is recognised as her fundamental right guaranteed under the Constitution of India with an international obligation on the member States to the Convention on Elimination of All Forms of Discrimination Against Women to take appropriate measures, with a corresponding duty on the employers to ensure her safety at domestic and non domestic work places in organised as well as unorganised sectors.

37. There is no denial that OLA is an 'Employer' within the meaning of the definition provided under the PoSH Act 2013. There is no dispute that the OLA is into profit making commercial activity of providing varied technology based and other services in transportation sector which is being used by general public. There is also no dispute that it has its intent,

purpose and object of earning profits from its business. By its own declaration on its website OLA has displayed information that apart from its core business of offering mobility platform it extends its consumer offerings like micro-insurance and credit led payments through Ola Financial Services and a range of owned food brands through India's largest network of kitchens under its Food business.

38. Following is the information regarding the business network of OLA as made available on its Website:

*Ola is India's largest mobility platform and one of the world's largest ride-hailing companies, serving 250+ cities across India, Australia, New Zealand, and the UK. The Ola app offers mobility solutions by connecting customers to drivers and a wide range of vehicles across bikes, auto-rickshaws, metered taxis, and cabs, enabling convenience and transparency for hundreds of millions of consumers and over 1.5 million driver-partners.*

*Ola's core mobility offering in India is supplemented by its electric-vehicle arm, Ola Electric; India's largest fleet management business, Ola Fleet Technologies and Ola Skilling, that aims to enable millions of livelihood opportunities for India's youth. With its acquisition of ridlr, India's leading public transportation app and investment in Vogo, a dockless scooter sharing solution, Ola is looking to build mobility for the next billion Indians. Ola also extends its consumer offerings like micro-insurance and credit led payments through Ola Financial Services and a range of owned food brands through India's largest network of kitchens under its Food business.*

39. It cannot therefore be heard to say that the OLA would be able to run its vast business across the globe on its own without assistance, association or involvement of the driver-subscribers howsoever far remotely connected. Usage of



the terms/language such as 'driver-partner', 'driver-subscriber', 'independent contractor', 'principle-to-principle basis' may be a façade which requires to be lifted and pierced. Ingenious drafting of deeds and documents as that of Subscription Agreement at hand may also have to be viewed in the light of object of the PoSH Act 2013. The purpose of such an effort is only to advance the object of the PoSH Act, 2013. Though grave apprehensions of such an effort giving rise to purported absurd and anomalous results are sought to be insisted upon, it is however not made clear as to what are those absurd and anomalous results which are apprehended of?. Nonetheless such apprehensions, even if any, alone shall not be the reason to scuttle and shut the avenues for effective implementation of the provisions of the PoSH Act, 2013 and provide a safe passage to find excuses from discharging the Public Duty. It is in this background the terms of Subscription Agreement require a close scrutiny.

40. Before undertaking the exercise of scrutinising the Subscription Agreement, it may also be relevant at this juncture to keep in mind the emphatic submissions made by the learned

Senior counsel for OLA contending that OLA is merely an 'Intermediary' which is not having any control over either the driver-subscriber or rider-subscriber except providing technology based platform for both to come together. It is also his contention that there is no factor of 'ownership of instrumentalities' present in the matter to determine the 'employee' and 'employer' relationship. In other words, it does not own or possess the OLA taxi as driver-subscribers get connected to OLA platform either with their own vehicle or the vehicle which they have hired from third party. It is relevant to note the definition of 'Intermediary' as provided under Section 2(w) of the Information Technology Act, 2000 which is as under:

"Intermediary", with respect to any particular electronic records, means any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online-market places and cyber cafes."

41. It is also necessary to extract provisions of Section 79 of the Information Technology Act, 2000 which reads as under:

"79. Exemption from liability of intermediary in certain cases - (1) Notwithstanding anything contained in any law for the time being in force but subject to the provisions of sub-sections (2) and (3), an

intermediary shall not be liable for any third party information, data, or communication link made available or hosted by him.

(2) The provisions of sub-section (1) shall apply if –

(a) the function of the intermediary is limited to providing access to a communication system over which information made available by third parties is transmitted or temporarily stored or hosted; or

(b) the intermediary does not –

- (i) initiate the transmission,
- (ii) select the receiver of the transmission, and
- (iii) select or modify the information contained in the transmission;

(c) the intermediary observes due diligence while discharging his duties under this Act and also observes such other guidelines as the Central Government may prescribe in this behalf.

(3) The provisions of sub-section (1) shall not apply if -

(a) the intermediary has conspired or abetted or aided or induced, whether by threats or promise or otherwise in the commission of the unlawful act;

(b) upon receiving actual knowledge, or on being notified by the appropriate Government or its agency that any information, data or communication link residing in or connected to a computer resource, controlled by the intermediary is being used to commit the unlawful act, the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner."

42. Questions as to Whether there exists 'Employer' and 'Employee' relationship between OLA and Driver-subscriber?; whether OLA is merely an 'Intermediary' with its functions limited to providing access to a communication system over which information made available by third parties is transmitted or temporarily stored or hosted?; and whether OLA is having no say or control in and over the manner of service that is to be provided by the Transport Service provider and or the driver-

subscriber for the purpose of the PoSH Act 2013, or otherwise?, need to be answered with reference to the terms and conditions of the Subscription Agreement which is entered into between OLA and the Transport Service Provider who is a Taxi operator or a driver, as found at Annexure-R1 to the statement of objections filed by the ICC.

43. Relevant Recitals of the said agreement are as under:

*WHEREAS, OLA owns and operates an online market place called "OLA CABS" an online booking platform and any upgrades from time to time and any other software that enables the use application are such other URL as may be specifically provided by OLA ("portal") that lists and aggregates the cab service provider and motor cab registered with it.*

*And whereas, on the basis of the representation and warranties provided by the transport service provider, OLA had agreed to list the transport service provider and the vehicle(s) on the portal (Service Provider App) to enable the transport service provider to provide transport services (transport services) through service provider app in accordance with terms and conditions hereinafter provided.*

NOW THEREFORE THE PARTIES HERETO AGREE AS FOLLOWS:

#### I Scope and Obligations:

1. The execution of this agreement and providing the details in Exhibit A (hereinafter referred to as "Registration Data") shall effect in the registration of Cab Service Provider and Vehicle(S) with OLA and shall make the Cab Service Provider eligible for an online account on the Service Providers App ("Account") for providing Transport Services through the Service Provider's App.

2. The Transport Service Provider and vehicle(s) registration with OLA shall at all times be subject to compliance with the requirements set out in Exhibit-D and Exhibit B respectively. The Transport Service Provider and the vehicle(s) registration with OLA shall further be subject to such other details and documents in respect of the Transport Service Provider and the vehicle(s) as is morefully described in Exhibit-A. The Transport Service Provider

hereby understands and consents to the collection, storage and sharing of Aadhar Card and any information extracted therefrom with third party vendors and/or Government authorities, for the process of on boarding and background verification.

3. The Transport Service Provider acknowledges and agrees that all rights, obligations and liabilities of the Transport Service Provider and OLA shall be governed in accordance with this agreement and the Transport Service Provider terms and conditions available at the office of OLA ("Transport Service Provider T & C" ) and, copy of which is annexed as Exhibit B to this agreement. The Transport Service Provider hereby represents that the Transport Service Provider has read and understood this agreement and the Transport Service Provider T & C fully and the terms contained therein are agreeable to the Transport Service Provider.

44. The above recitals of the agreement give broad indication of OLA providing "technology based Online Booking Platform". The agreement then proceeds to provide details of OLA and Non-OLA Device which is an essential and integral part of the whole business module which is as under:

## *II. Device*

*For registration on the Service Provider App, the device of such model and functionality as may be specified and notified by OLA to the Transport Service Provider, more specifically set out under the Commercial Term Segment in Exhibit C, may be either provided by OLA or the Transport Service Provider may bring his own device. The Transport Service Provider hereby agrees that OLA Device or Non-OLA Device (both the terms defined hereunder), as the case may be, shall be switched on during the performance of the Service without being any exceptions whatsoever. The provisions relating to OLA Device / Non-OLA Device shall be as set out below-*

*1. Non-OLA Device: For registration on the Service Provider App, the Transport Service Provider may bring his own Non-OLA Device, of such model and functionality as may be specified and notified by OLA to the Driver ("Non-OLA Device"). In such event OLA will assist the Transport Service Provider in installing the Service Provider App in the Non-OLA, Device brought by the Transport Service Provider after OLA verifies that the Non-OLA Device meets the requirements and specifications as required by OLA. OLA shall also instruct the Transport Service Provider in the use of the Non-OLA Device in respect of the Service Provider App and Portal, if required. If the Non-OLA Device is stolen, the Transport Service Provider shall ensure that the Service Provider App and his Account is immediately blocked, suspended or deactivated. In*

*such event, the Transport Service Provider shall approach OLA's designated offices with a new Non-OLA Device for installation of the Service Provider App in the new Non-OLA Device and charge such fee as may be determined by OLA under clause II(4) of this Agreement.*

*2. The Transport Service Provider shall not use the Non-OLA Device for any illegal or unlawful purposes and shall use the Non-OLA Device solely in accordance with the terms of this Agreement. The Transport Service Provider shall solely be responsible and liable for any violations of law committed by the Transport Service Provider, misuse of the Non-OLA Device and misuse of the sim card used in the Non-OLA Device.*

*3. In the event the Service Provider App is not functioning properly on the Non-OLA Device, the Transport Service Provider shall immediately deposit the Non-OLA Device only at OLA's designated offices for any malfunctions with the Service Provider App and compatibility of the Non-OLA Device with the Service Provider App.*

*4. If the Non-OLA Device is damaged and is not repairable due to any act or omission of the Transport Service Provider, the Transport Service Provider shall immediately approach only OLA's designated offices with a new Non-OLA Device for installation of the Service Provider App on the new Non-OLA Device. In this connection, OLA may charge such fees as may be determined by OLA for re-installation of the Service Provider App in the Non-OLA Device. Additionally, the Transport Service Provider may also request OLA to provide an OLA Device, as set out in clause II(5) below. If the Transport Service Provider is unable to bring a new Non-OLA Device or obtain an OLA Device in accordance with clause II(5) below, OLA shall be entitled to terminate this Agreement along with the Exhibits with immediate effect.*

*"5. OLA Device: For registration on the Service Provider App, if the Transport Service Provider does not have a Non-OLA Device, OLA will provide a device, of such model and functionality as may be required by OLA. Further, OLA may provide other additional devices to the Transport Service Provider including but not limited to devices for 'OLA Play', the usage and purposes of which will be determined and notified by OLA to the Transport Service Provider from time to time. All the devices provided by OLA to the Transport Service Provider shall be collectively referred to as "OLA Device(s)". "OLA Play' means a proprietary in-car and cloud technology platform owned and operated by OLA, which is intended to provide a fully connected interactive experience to the Customer.*

*6. OLA will assist the Transport Service Provider in installing the Service Provider App and other programs including but not limited to software, application, and content, as may be solely determined by OLA, in the OLA Device(s) provided by OLA. OLA will instruct and train the Transport Service Provider for use of the OLA Device(s), if required.*

7. The Transport Service Provider shall not use the OLA Device(s) for any illegal or unlawful purposes including but not limited to playing/ watching pornographic content on the OLA Device and shall use the OLA Device(s) solely for purpose determined by OLA and strictly in accordance with this Agreement. The Transport Service Provider shall solely be responsible and liable for any violations of law committed by the Transport Service Provider, misuse of the OLA Device(s) and misuse of the sim card provided, if any, with the OLA Device(s).

8. The Transport Service Provider shall ensure that the OLA Device(s) is maintained in his possession in a proper manner. OLA may, at its sole discretion, charge such amounts as may be determined by OLA, as a non-interest bearing security, for the OLA Device(s) provided to the Transport Service Provider. Further, OLA may, at its discretion, return the security amount to the Transport Service Provider at the expiration or termination of this Agreement.

9. In the event the OLA Device(s) is not functioning properly or if there is any technical or safety issue in relation to the OLA Device(s), the Transport Service Provider shall immediately deposit the OLA Device(s) only at OLA's designated office for checking the OLA Device(s) for any malfunctions. If the OLA Device(s) is damaged and is not repairable due to any act or omission of the Transport Service Provider, the Transport Service Provider shall pay to OLA amounts, as may be determined by OLA. In order to resolve whether the OLA Device(s) is damaged due to any act or omission of the Transport Service Provider, OLA will enquire and investigate the matter in the manner determined by OLA and in this connection, OLA's decision shall be final and binding. Upon payment of the foregoing amount, OLA shall provide the Transport Service Provider with a new OLA Device(s). If the Transport Service Provider is unable to pay such amount as specified above, the Transport Service Provider shall return the damaged OLA Device(s) and OLA shall be entitled to terminate the Agreement with immediate effect.

10. In the event the OLA Device(s) is misplaced by the Transport Service Provider or if it is stolen from Transport Service Provider's Vehicle, the Transport Service Provider shall promptly notify OLA in writing and immediately proceed to file an FIR in the police station within the jurisdiction. Once FIR is filed, Transport Service Provider shall submit the FIR copy along with amounts, as may be determined by OLA. The Transport Service Provider shall fully cooperate with OLA and the authorities during investigation process in relation to the misplaced or stolen OLA Device(s). In the event Transport Service Provider fails to file an FIR for loss of OLA Device(s) or if in OLA's opinion, fails to cooperate with OLA and authorities, OLA shall be entitled to terminate the Agreement with immediate effect, without prejudice to OLA's rights under this Agreement and under applicable law.

45. Aforesaid clauses in the Agreement speak about the indispensable requirement of having a "Device" for the purpose of the service intended to be provided. Be it "OLA Device" or "Non-OLA Device", from its installation, to maintenance, to repair, to lost complaint and all incidental and ancillary matters, it is OLA which has the final say indicating its complete control. Consequence of failure in adhering to the terms would result in termination of agreement with immediate effect. Reasons for this are not far to seek. Its only this device which enables the transport business to run and continue. One of the conditions for grant of or renewal of a licence under Rule 6 of the Aggregators Rules, 2016 as noted above is OLA having facilities for monitoring movement of Taxis with the help of GPS, GPRS along with a control room facility. Thus, in its absence there cannot be any possibility of this module of business to operate.

46. Though in the entire Agreement there is reference to the 'Transport Service Provider' which makes one to think whether a driver-subscriber would fit into the said terms?, the



said question is answered in Exhibit B annexed to the Agreement, relevant portions of which read as under ;

*EXIHIBIT -B*

*TRANSPORT SERVICE PROVIDER TERMS AND CONDITIONS  
DRIVERS TERMS AND CONDITIONS*

*1. These Terms and Conditions (as defined) shall be applicable as set out below-*

*1. If the Transport Service Provider (as defined in the Subscription Agreement) is an Operator providing Services to the Customers through the Drivers employed by the Operator, these Terms and Conditions shall be interpreted in the manner so as to apply to the Operator as well as to the Drivers employed by the Operator; and*

*2. If the Transport Service Provider is an individual providing Services to the Customers directly, these Terms and Conditions shall be interpreted in the manner so as to apply to an individual Transport Service Provider Operator.*

*DEFINITIONS:*

*All of the defined and capitalized terms in these Driver T&C will have the meaning assigned to them herein below. Any term not defined here shall have the meaning assigned to it in the Subscription Agreement.*

*"Acceptance" means your affirmative action of clicking on the box against the words "ACCEPT & CONTINUE" provided at the end of these Driver T&C, by which action, you unequivocally accept the Driver T&C and any modifications thereof.*

*"Account" refers to the account created by OLA at its sole discretion, for the Driver subsequent to the Driver submitting and OLA verifying the Registration Data.*

*"Applicable Laws" shall mean and include all applicable statutes, enactments, acts of the legislature or the Parliament, laws, ordinances, rules, by-laws, regulations, notifications, guidelines, policies, directions, directives and orders of any Governmental authority, tribunal, board, or a court, in India.*

*"Booking" shall mean the allotted Service Request.*

*"Business Day" means a day on which banks are open for business in the City of Operation.*

*"Cancellation Fee" shall mean the fare payable by the Customer towards cancellation of a Booking made by a Customer.*

*"City of Operation" shall mean the city in which the Subscription Agreement is executed by and between the Driver and OLA.*

*"Commercial Term Segment" shall mean Exhibit C of the Subscription Agreement, which contains the commercial terms for Service provided by the Drivers.*

*"Content" shall have the meaning given to it in 7.1. "Convenience Fee" shall mean the fee payable by the Customer for availing the technology services offered by OLA. Convenience Fee will be charged for each Service Request placed by the Customer on the Portal.*

*"Customer" shall mean such person, who places a Service Request on the Portal and has accepted the Customer Terms of Use and Privacy Policy of the Portals (as applicable).*

*"Customer's Terms of Use" shall mean the Customer Terms and Conditions as provided on the OLA Portal for availing the Service.*

*"Device" shall mean OLA Device or Non-OLA Device, as the case may be, used for performance of the Services.*

*"Driver" or "You" or "Your" or "Yourself" shall mean an individual, who has an Account with OLA and in the event of Operator Drivers, shall include the operator, drivers for purposes of compliance with these terms and conditions.*

*OLA and in the event of Operator Drivers, shall include the Operator Drivers for purposes of compliance with these Terms and Conditions.*

*"Driver App" means the electronic interface on the OLA Portal from where the Driver's Account is accessible to the Driver. Login credentials (User ID and Password) for the Driver App shall be provided by OLA.*

*"Driver Proceeds" shall mean the net amount receivable by the Driver after deduction of OLA's commission and such*

*other amounts as may be provided in the Commercial Terms Segment or notified otherwise.*

*"Fare" shall mean the Fare payable to the Transport Service Provider as is also reflected on the Device after completion of the Service. The Driver permits OLA to review and revise the Fare as per the market conditions.*

*"Force Majeure" shall have the meaning given to in Clause 16.4.*

*"Information" shall mean the details furnished by the Driver at the time of signing the Subscription Agreement and/or otherwise during and after the Drivers registration on the Driver App on the Portal and successful creation of an Account.*

*"OLA" or "We" or "Us" or "Our" shall mean ANI Technologies Private Limited, a company incorporated under the Companies Act 1956, and having its registered office at Regent Insignia, #414, 3rd Floor, 4th Block, 17th Main, 100 Feet Road, Koramangala, Bangalore 560 034, India, which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include all its successors, affiliates and permitted assigns.*

*"OLA Play" shall mean a proprietary in-car and cloud technology platform owned and operated by OLA, which is intended to provide a fully connected interactive experience to the Customer.*

*"Operator" shall mean a transport service provider who has listed himself / itself and his/its fleet of vehicles on the Portal to provide Services to the Customers through the Drivers employed by the Operator.*

*"Operator Drivers" shall mean the Drivers employed by the Operator for providing Services to the Customers.*

*Parties" shall mean, collectively, the Driver and OLA and "Party" shall refer to any one of them.*

*"Portal" shall mean such features of the OLA mobile application or other programs, software, mobile applications including but not limited to OLA Play, OLA Tunes and Driver App, owned by, licensed to and controlled by OLA, and other URLs as may be specified by OLA from time to time.*

*"Posted Content" shall have the meaning given to in Clause 7.4.*

*"Service" means the service of picking a Customer from the pick-up point as prompted on the Device and dropping the Customer at the drop point entered by the Customer at the time of placing his/her Service Request and accepted by the Driver.*

*"Total Ride Fee" shall include the Fare, the Convenience Fee, Additional Fee (if any) and the*

*Cancellation Fee (if any), reflected on the Device and such other fee, as may be applicable.*

*"Service Request" means a request placed by the Customer on the Portal to avail the Service offered by the Driver.*

*"Subscription Agreement" shall mean the agreement entered into between OLA and the Driver / Operator pursuant to which the Driver/Operator has agreed to provide transport Services in accordance with these Driver T&C, as amended from time to time.*

*"Subscription Amount" shall mean the amount paid by the Driver at the time of subscription to Portal of OLA, if any.*

*"OLA Policies" means the "Privacy Policy", Zero Tolerance Policy & such other policies (including any amendments thereof), which OLA may issue and make applicable to Driver from time to time and make available to the Driver on the Driver's request.*

*"Term" means the period commencing from the date of acceptance of the Driver T&C by the Driver up to the date of termination of the Subscription Agreement and/or these Driver T&C.*

*"Terms and Conditions" or "Driver T&C" refers to these Driver T&C which are available at the Portal, as may be amended from time to time.*

*"Vehicle" shall mean 'Motorcabs' as defined under the Motor Vehicles Act, 1988.*

*"Wallet" shall mean the prepaid payment instruments available for payments in the OLA Portal.*

*"Zero Tolerance Policy" shall mean the policy of OLA as detailed under the Annexure to these Driver T&C, as may be amended from time to time.*

#### 1. APPLICABILITY OF DRIVER T&C

These Driver T&C together with the Subscription Agreement, Commercial Term Segment, Zero Tolerance Policy, OLA Policies, shall be deemed to be incorporated by reference into these Driver T&C and shall form the complete understanding between the Parties. By accepting the Driver T&C, You acknowledge and agree to the Subscription Agreement and various Exhibits to the Subscription Agreement, OLA Policies and any other policy that OLA makes applicable to You from time to time, to the fullest extent possible. Additionally, you hereby understand and consent to the collection, storage and sharing of Aadhaar card and any information extracted therefrom with Third Party Vendors and/or Government Authorities, for the process of on boarding and background verification.

47. Thus by virtue of the above definitions and clauses, the provisions of the Subscription Agreement are extended to govern the relationship between OLA and DRIVER-SUBSCRIBER. The Agreement further proceeds to record the scope of service, manner and method to be adopted by the Driver while rendering the service, as under;

#### 2. SCOPE OF SERVICES

2.1. You agree that OLA's role is limited to being a market place solely for managing and operating the Portal for the display of the Service in the manner decided by OLA unilaterally, payment collection through cash, or Wallet to facilitate the transactions between You and the Customers. Accordingly, OLA is merely an intermediary providing online marketplace services and the Portal is only a platform where You shall offer Service to the Customers. The contract for availing the Service shall be a contract solely between You and the Customer. At no time shall OLA have any obligations or liabilities in respect of such contract.

2.2 The Driver confirms and undertakes that OLA does not own or in any way control the Vehicle used by a Driver rendering the said Service to the Customer. OLA shall not be held liable or responsible in any manner whatsoever for any insufficiency or deficiency of the Service rendered by the Driver to the customer. OLA does not make any representations or warranties regarding the quality of the Service provided by you.

### 3. SERVICE REQUESTS

3.1 On receipt of a Service Request, Booking will be allotted to the Driver on the Device or in such other manner as may be agreed between the Driver and OLA from time to time.

3.2 The Driver shall duly complete all Bookings allotted in connection with the Services and promptly notify OLA immediately by means of short message service/ telephonic calls of any changes/deviations to the Booking, which may affect the provision of the Service.

3.3 In the event the Driver requires any assistance in connection with the Portal, Service Requests, Service etc. therein, he / she should contact the OLA call centre. If the assistance pertains specifically to the Device, Driver App, Portal or anything therein, then such issue may be directed to the call centres of OLA.

3.4 Upon a Service Request being allotted to the Driver on the Driver App, OLA may provide to the Customer, the picture of the Driver, details of the Vehicle including vehicle number and model, mobile phone number of the driver and such other information as required under applicable Laws or as OLA may deem fit, as the case may be, required by the Customer to identify the Driver and Vehicle.

3.5 Once a Booking is allotted, OLA will provide the Driver with the necessary Customer information in order to enable the Driver to satisfactorily provide the Service. Such information shall be treated as confidential information in terms of Clause 13 below.

3.6 In the event, the Driver is a female; the Driver shall not accept Service Requests from 20:00 hours in the evening to 08:00 hours in the morning.

### 4. COMMUNICATION

4.1 When You use the Driver App on OLA's Portal or send emails or other data, information or communication to OLA, You agree and understand that You are communicating with OLA through electronic records and You consent to receive communications via electronic records from OLA periodically and as and when required. OLA may communicate with You by email or by such other mode of communications, electronic or otherwise.

4.2 You hereby expressly consent to receive communication from OLA through Your registered phone number and/or e-mail id. You consent to be contacted by OLA via phone calls/ SMS notifications. You agree that any communication so received by You from OLA will

not amount to spam, unsolicited communication or a violation of Your registration on the 'national do not call registry'.

4.3 By registering with OLA, You hereby agree to (i) provide Information that OLA has a legal duty to request from a Driver on account of the Know Your Customer norms under Applicable Laws including without limitation your Permanent Account Number (PAN); and (ii) undertake due diligence and update Yourself on Applicable Laws that may have implications on Your liability as a Driver.

4.4 You acknowledge and agree that Your Information may be transferred or stored in a Server outside India or the country where You are located in order to perform OLA's obligations under these Driver T&C.

#### 5. OBLIGATIONS OF THE DRIVER

5.1 The Driver shall ensure and confirm that he understands the language of the Driver App/ Portal and shall ensure that he/she chooses the language that he bests understands from amongst the languages that the Driver App/Portal supports.

5.2 The Service provided through the Portal by the Driver shall be of the highest quality as per industry standards and in accordance with the oral and written requirements of OLA. The Driver shall be liable for any loss caused to OLA and/or the Customer due to negligence of the Driver in the performance of the Service.

5.3 The Driver be deemed to be informed and shall also strive to stay informed about conditions such as bandhs, strikes, curfews, traffic disruptions, weather conditions and the like that could affect the Service. The Driver shall, immediately intimate OLA, and disclose any such aforesaid calamity that he may become aware of.

5.4 The Driver shall provide the Service to the Customers in a courteous, effective and timely manner.

5.5 The Driver shall ensure registration of Vehicle at all times and shall hold and keep updated/renewed all licenses, insurance and permits necessary for the use of Vehicle on the Portals.

5.6 The Driver shall not undertake or assist in any unlawful or illegal activity while performing Services.

5.7 The Driver, or any Transport Service Provider shall not allow unauthorized persons to drive the Vehicle. OLA reserves the right to take any action at its sole discretion for any violation by the Driver or the Transport Service Provider, which may extend to but not limited to termination an/or other legal action.

5.8 The Driver or any Transport Service Provider shall ensure the safety and security of the Customers, his own self and that of the vehicle at all times.

The Driver shall immediately bring to the notice of OLA any deviation from the provision of the Service/s as required under the terms of these Driver T&C, including but not limited to any accidents, damage to life or property.

5.9 The Driver agrees that any breach of the Subscription Agreement or these Driver T&C by him/her is likely to cause OLA substantial and irreparable damage and therefore, in the event of any such breach, in addition to such other remedies which may be available OLA shall have the right to specific performance and injunctive relief.

5.10 The Driver shall ensure comprehensive insurance including without limitation third party Insurance of Vehicles and such other insurance as may be required by Applicable Law is obtained and always maintained, and the Customer and/or OLA shall not be liable for taking insurance or paying premium thereof in respect of the Vehicle or any liability arising out of plying of such Vehicle.

5.16 In the event any Customer leaves his/her property in the Vehicle, the same shall not be pilfered or tampered with by the Driver and shall be reported immediately by the Driver directly to OLA. In the event the Driver pilfers or tampers with the property of the Customer, the Driver shall be solely liable for any damages claimed by the Customer and OLA may at its sole discretion terminate the Driver's registration and disable the Driver's access to the Portal. OLA shall in no event be liable for loss of or damage caused to the property of the Customer.

5.17 Driver hereby acknowledges and agrees that OLA shall alone be responsible for settling any payment related issues between Customer and Driver. In case of any conflict, the Driver shall seek instructions from OLA. The Driver agrees that the decision taken by OLA shall be final and binding on the Driver in the aforesaid case.

5.18 The Driver shall make himself/ herself available for such trainings as OLA may be required to organize pursuant to Applicable Law or as OLA may deem necessary from time to time.

5.19 The Vehicle shall be the sole responsibility of the Drivers and the Driver shall be liable or responsible for any loss or damage to the Vehicle caused by a Customer or any other third party for any reason whatsoever.

5.21 Any cancellation of the allotted Booking is prohibited except in exceptional circumstances based on a justifiable explanation provided by the Driver. The Driver shall immediately inform OLA in case of any cancellation or refusal of allotted Booking. Further, the Driver hereby agrees such cancellation or refusal to provide Service may, lead to a deduction in form of withholding of part or whole of the Driver Proceeds.

5.22. The Driver agrees that the costs associated with the maintenance of the Vehicle shall be borne by the Driver.



5.23. The Driver shall be solely responsible for:

- i. any failure to complete a Service Request accepted by the Driver;
- ii. any failure to pick up Customer(s) at the allotted time and/or place;
- iii. any act or commission on the part of its Drivers including any rash and negligent driving, verbal, physical or harassment of any nature;
- iv. any violation or non-adherence to the Applicable Law by it;
- v. any nuisance or damage caused to the property of OLA by the Driver or any misbehaviour causing physical harm and making indecent gestures;
- vi. any physical an/or mortal danger caused to the Customers whilst using or in connection with the services;
- vii. any delay of more than 10 (ten) minutes caused to the Customer(s); and
- viii. charging excess Total Fee from the Customer or charging the Customer more than what is displayed on the meter; and

5.24. The Driver, shall not either directly or indirectly:

- i. engage in any conduct that damages the reputation or causes inconvenience in any manner, to OLA; or
- ii. be the reasons for OLA to be a part of any negative publicity.

5.26 Driver will maintain all relevant books, records and accounts relating to the Services provided by Driver and payments collected. Upon reasonable notice, Ola may audit, or may appoint a qualified independent auditor to audit, the books and records of the Driver to verify the accuracy of the amount of payments collected by the Driver. If such audit reveals any discrepancies with respect to the payment collected and submitted to Ola, then in addition to Ola retaining the right to exercise other remedies, may require the Driver to promptly pay Ola an amount equal to the discrepancy and may ask for an additional amount as fine from the Driver. The audits will be conducted at Ola's expense; provided, however, that if the audit reveals an underpayment by the Driver with respect to collection and submission of payments to Ola in excess of 5% (five percent), then Driver, in addition to payment obligations described above, will promptly reimburse Ola for all reasonable, third party audit fees

5.27. OLA may require the Driver to affix OLA brand including but not limited to its logo/ sticker on the Vehicle. In such event, Driver shall extend all necessary support and assistance to OLA for affixing OLA brand on the Vehicle. It is hereby clarified that Driver will not be entitled for any additional payments for the OLA logo/ sticker affixed on the Vehicle, if any. OLA logo/ sticker/brand will be affixed subject to the provisions of Clause 14.4(v) of these Driver T & C.

In Addition to the above clause 7 of the Agreement imposes conditions and restrictions on the Driver with regard to usage and maintenance and upkeep of all and every possible contents on the portal/Drivers App.

Under Clause 9 OLA retains all control over the information of the Driver, sharing and disclosing to the authorities and to its group companies at its absolute discretion.

Clause 13 makes Driver liable for all losses, damages, liabilities, claims, costs, penalty and expenses incurred by reasons of any breach on his part in performance of his terms of the contract.

Clause 14 provides for termination of driver's registration by OLA without assigning any reasons.

Clause 15 provides for arbitration for dispute resolution.

Under its ZERO TOLERANCE POLICY as provided under the agreement, OLA has enlisted as many as 32

items requiring the Driver to strictly follow them, in that following few amongst others require mention in the context;

3. Personal hygiene:

Driver shall wear neat Ola cabs uniform & badge (if provided by ANI Technologies Private Limited) at all times during duty hour. Driver shall maintain personal hygiene.

12. Driver should keep his mobile 'ON' while he is logged into OLA Portal and he should receive every call of the customer. Driver should not make any deliberate attempt to park the vehicle in 'non-network' areas while a Customer is away for his /her personal work

13. Vehicle Branding:

Ola Sticker, if any, on the Vehicle Should not be removed till Vehicle is active on the Platform.

14. Rude behavior with female customer:

Driver Shall not under any circumstance argue with the customer etc.,

15. Mobile Phone usage;

Driver shall not use the mobile Phone while driving with Exception to the calls from OLA representatives and Customer.

16. Reporting to OLA:

Driver shall not lie about Vehicle's position to the OLA representative. Driver shall not report meter readings incorrectly. Driver shall provide opening and closing readings of the odometer on time as and when such reading is required to be provided by the Ola representatives.

17. Rash Driving:

Driver shall not exceed the speed limit of:

- (i) 50 Kms per hour within the city;
- (ii) 60 Kms per hour on state highways; and
- (iii) 80 Kms per hour on National highways.

If any other speed limits prescribed for any road which is lower than the speed limits specified in (i), (ii) and (iii) above, the Driver shall follow the said prescribed lower speed limits. Driver should not apply sudden breaks and should not take sharp turns that may cause inconvenience to the Customer. "

However the contract also includes a clause defining its limited role as under;

16.2 Independent Contractor Status: The relationship created by Driver T&C is that of independent contractors, and not partners, franchisees or joint ventures. No employees, consultants, sub-contractors or agents of one party is or will be deemed to be employees, consultants, contractors or agents of the other party, nor do they have any authority to bind the other party by contract or otherwise to any obligation, except as expressly set forth herein. The Driver shall not be deemed for any purpose to be an employee of OLA or any of its Affiliates. OLA shall not be responsible to the Driver or any governing body for any payroll-related taxes related to the performance of Services hereunder, including but not limited to, withholding or other taxes related to central or state income tax, social security benefits or unemployment compensation.

48. Aforesaid terms and conditions as detailed in Exhibit-B annexed to the Subscription Agreement governing relationship between OLA and its Drivers elaborately set out management, supervision and control which OLA has over the manner, method and mode of rendering services by the driver and also the consequence of breach of these terms by the driver. It covers and restricts driver from having any option or liberty of whatsoever in booking, deciding the route, having any conversation or discussion with the user, to the extent restricting his own mobile usage while rendering the service etc. Though clauses in the nature of so called 'limited role of OLA' as sought to be introduced including declaring the relationship/status of

OLA and the Driver as that of 'INDEPENDENT CONTRACTORS', same in the considered opinion of this Court cannot take the status of 'Driver' found in the Agreement away from the definition of 'Employee' under PoSH Act, 2013. This is for the reason that the said definition also includes employing some one on CONTRACT BASIS, and/or a CONTRACT WORKER.

49. Clause V of the Agreement contains important aspect of Agreement namely the 'consideration' part and the understanding regarding the revenue sharing which is as under:

V. Payment Terms

In consideration of OLA providing the Transport Service Provider's and the Vehicle's information on the Portal, and for enabling the Transport Service Provider to provide Transport Services through Service Provider App on the Portal, various payments, more particularly set out in the Commercial Terms Segment annexed hereto as Exhibit C, between the Transport Service Provider and OLA ("Fees") shall be settled in the manner set out and paid in the manner set out in the Commercial Terms Segment annexed hereto as Exhibit C.

50. Thus payment of Fee to OLA is not just for hosting information on its Portal but for enabling the service to be provided through the service provider App on the Portal which can be done only through the 'Device' referred to above. Exhibit-C of the Agreement referred to in the aforesaid clause "Payment Issues" is extracted which read as under:

*EXHIBIT-C  
COMMERCIAL TERMS SEGMENT*

*Details of the following commercial terms will be informed by Ola from time to time:*

*Description of Commercial Terms*

- 1. Transport Service Provider Device Model & Serial No.*
- 2. Platform Subscription Fees for the use of OLA technology platform (Rs.)*
- 3. Incentives*
- 4. Commission Payable to OLA (Percentage) [Ola Cabs]*
- 5 Commission Payable to OLA (Percentage) for Ola Share Rides (if applicable)*
- 6. Security Deposit for OLA Device*

*Details:*

*To be informed by OLA from time to time.*

*Key Terms:*

*(i) All payments due to the Transport Service Provider shall be made through NEFT/RTGS etc., as mutually agreed from time to time.*

*(ii) Incentive (if any) may be given to the Transport Service Provider by OLA from time to time. The Incentives shall be determined after taking into consideration all dues, fines, charges, interest, claims, costs, expenses etc. For the sake of clarity, both the parties acknowledge and agree that the foregoing amounts are only for limited purposes of arriving at the value of Incentives.*

*(iii) You authorize OLA to make deductions from the Transport Service Provider Proceeds which includes the following:*

- (a) Tax Deduction at Source (TDS) as per the Income Tax Act, 1961, where applicable;*
- (b) service tax and other applicable taxes; and*
- (c) and any other amounts due and payable by the Transport Service Provider to OLA as per applicable law.*

*(iv) The terms in this Commercial Terms Segment is subject to change and will be communicated to the Transport Service Provider via SMS/call to registered mobile number.*

*(v) The Transport Service Provider hereby agrees that discounts given to the users of the Portal, if any, will be decided by OLA on a case-to-case basis which shall be informed to the Transport Service Provider by OLA, and the Fee finally appearing on the Device configured by OLA for settlement between the Transport Service Provider and OLA shall be final and binding on the Transport Service Provider. The Transport Service Provider shall agree to the same without demur or protest.*

(vi) OLA reserves the right to change the rates and payment terms between the Transport Service Provider and OLA mentioned in the Commercial Term Segment at any given point in time, which shall be notified to the Transport Service Provider.

(vii) Notwithstanding anything contained in this Agreement, where OLA has reason to believe that any charges/debits in respect of the Fee have been fraudulently incurred ("Suspect Charge"), OLA will always be entitled to deduct an amount equivalent to Suspect Charge from the Subscription Amount or in the event of insufficient Subscription Amount, OLA will be entitled to require the Transport Service Provider to remit the Suspect Charge in cash with OLA.

(viii) Credit Limit: The Transport Service Provider shall be allowed an amount of Rs. 2,000 as the Credit Limit for each vehicle registered to operator on Ola platform. "Credit Limit" means allowable outstanding receivables of OLA from the Transport Service Provider. The Transport Service Provider shall ensure that the Credit Limit shall not exceed Rs 2.000 at any point in time. However, OLA shall at its sole discretion change the allowable Credit Limit for the Transport Service Providers from time to time and shall notify the same to the Transport Service provider.

(ix) OLA shall notify the Transport Service Provider as soon as the Credit Limit is reached. Once, the Credit Limit exceeds the above specified limit, the Account will become inactive without any further notification. The Vehicle(s) will not be allotted any further bookings till the Transport Service Provider pays the outstanding amount exceeding the specified credit limit. The Transport Service Provider can pay the outstanding amount via cash, cheque or NEFT.

(x) Settlement: Pursuant to any settlement ("Settlement") that the Transport Service Provider is required to make with OLA, under the terms of this Agreement and/or these the Transport Service Provider T&C, whether for a breach of this Agreement and/or the Transport Service Provider T&C or otherwise, OLA shall send a report of the Settlement by short message service (SMS)/email/post, giving full details of the amounts and reasons thereof, forming part of the Settlement, to the Transport Service Provider. The Transport Service Provider shall make payment of the amounts mentioned in the Settlement to OLA within 7 (seven) days from the date of receipt of such Settlement details. If the Transport Service Provider fails or refuses to make payment in respect of such Settlement within such seven 7 (seven) days, OLA shall have the right thereafter without any reference to the Transport Service Provider, to deduct the amounts mentioned in the Settlement details from the Subscription Amount. If the Subscription Amount is insufficient to meet the Settlement amount, then the balance shall be recoverable forthwith from the Transport Service Provider by OLA".

51. Bare perusal of the above commercial terms indicate that whole and entire control of revenue being generated from

the business is absolutely vested with OLA. From fixing the ride rates, payment/receipts, commission sharing, deduction, enhancement, change in rates, payment of statutory dues, to determination, resolution and settlement of any disputes including execution and implementation of outcome of such determination is at the sole discretion of the OLA. One important aspect of this segment requiring highlight is payment of incentives by OLA to the Transport Service Provider, yet again at the sole discretion of OLA.

52. The aforesaid 'commercial term segment' which is integral and essential part of the subscription agreement makes it abundantly clear that the service offered by the respondent No.2 and the arrangement arrived at between the respondent No.2 and the transport service provider/ driver-subscriber is not only usage of its portal as 'intermediary' but has a whole lot of active role to play in the process of management, supervision and control of entire business. The clause providing for payment of incentives over and above the charges payable as agreed hereinabove further establish beyond any doubt that OLA has



indeed employed the transport service provider/ driver-subscriber for its commercial activity.

53. Having agreed and provided in the agreement as above, following clause defining the *inter se* relationship of the Parties, which is heavily relied upon by ICC and OLA in their defence requires to be taken note of, which is as under;

XIII. Relationship between Parties

i. During the Term of this Agreement, the Transport Service Provider shall operate as and have the status of an independent contractor and shall not act as, be or construed to be an agent or employee of OLA. The relationship between the Parties is on a principal-to-principal basis, and none of the provisions of this Agreement shall be interpreted as creating the relationship of employer and employee between the Transport Service Provider and OLA at any time, under any circumstances or for any purpose. Therefore, the Transport Service Provider will not be entitled to any employee benefits, statutory or otherwise, offered by OLA to its employees including but not limited to wages, vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, or employee benefits of any kind. The Transport Service Provider shall be responsible for the payment of all applicable taxes to which he may be subject as an independent contractor.

ii. The Transport Service Provider agrees not to assume or create any obligation or responsibility, express or implied, on behalf of or in the name of OLA. The Transport Service Provider does not have the authority to create, modify or terminate a contractual relationship(s) between OLA and any third party or act for or bind OLA in any respect. Any act of the Transport, Service Provider on behalf of OLA which may be regarded as over and above the duties and responsibilities as provided in this Agreement, shall be deemed to be unauthorized, unlawful and the Transport Service Provider shall be personally liable for the same.

54. The above clause though attempts to describe Transfer Service Provider as an Independent Contractor, he hardly has any independent discretion in the matter once he

subscribes to the terms of the Subscription Agreement. In any event the said clause cannot be read in isolation to the other clauses and terms of Agreement to construe lack of relationship of `employer and employee' or OLA not having any control over the business as sought to be made out by ICC and OLA.

55. In the light of the aforesaid commercial terms of the agreement the OLA cannot contend that it has no control of any nature over the transport service provider/driver-subscriber which even according to OLA is criteria *sine qua non* to govern the relationship of `employer' and `employee'.

56. Yet another important aspect of the matter at hand is that the vehicle in question involved in the incident bearing registration No.KA 53 C 9192 admittedly belongs to `**OLA Fleet Technologies Private Ltd**, an admitted subsidiary of OLA. A letter correspondence which is produced by respondent No.1 at Annexure-R-4 reads as under:

OLA  
Date: 26.08.2017

To,

The Station House Officer,  
Cubbon Park Police Station,  
Bangalore.

Dear Sir,

Subject: Details with reference to the vehicle number KA53C9192 in reference of FIR number 157/2018,

We would like to bring in your kind notice that, at the outset the cab bearing number KA53C9192 is originally owned by OLA Fleet Technologies Pvt. Ltd..

Further, by the virtue of the said ownership, the OLA Fleet Technologies Pvt. Ltd have leased out the cab bearing number KA53C9192 to one Mr. Deepak Garg on 01.07.2018 vide a lease agreement and introduced the driver Mr. Dev Samoliya. The lessee of the cab is independent and to abide by certain terms and conditions to use company cabs and the execution of the work according to his or her/lessee's own processes and methods; the lessee is not subject to another control. Further, the lessee has subscribe ANI Technologies Pvt. Ltd. (Ola cabs) software in order to accept booking request form Ola's rider/customer. The cab is question was leased the lessee and the company has no liabilities on lessee's act.

As per the process, we have also obtained the driving license of the said Mr. Deeps along with all other required documents.

**Details of Mr. Deepak Garg**

Lease holder name	Mr. Deepak Garg
Address	#36, Room No.306, Narendra Comfort Pg, Vaibhavi complex, N.S. Palya, 4 <sup>th</sup> Main, BTM 2 <sup>nd</sup> Stage, Bannerghatta Road Bangalore, Bangalore - 560 076.
Mobile number	9731242819

**Details of Mr. Dev Samoliya**

Driver name	Mr. Dev Samoliya
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Address	#3, Electronic city Main Road, Bettadasanapura, Begur Hobli, Bangalore South, Bangalore - 560 068
Mobile number	8105286684

*Kindly find the below given attachment for your further assistance.*

*a) ANNEXURE A-Driving license of lessee with license bearing number MP0720080105538.*

*b) ANNEXURE B-Aadhar card of lessee with Aadhar bearing number 3577 3177 9083.*

*c) ANNEXURE C-Driving license of driver with license bearing number MP0720140000135.*

*d) ANNEXURE D-Aadhar card of driver with Aadhar bearing number 4650 6205 3756.*

*e) ANNEXURE E-RC of the vehicle bearing number KA53C9192*

*Please allow us to assist you with any further information as you may require in respect of the alleged offence.*

Thanking you,

Sd/-  
Iktear Uddin Anik  
Associate Director &  
Head-Law Enforcement and Compliances  
OLACABS

57. In view of this admitted position the averments made in the statement of objections filed by ICC and OLA that the taxi in question was hired by the Driver through a third party is incorrect. Nothing prevented the ICC and OLA to disclose its

business relation with OLA FLEET TECHNOLOGIES PVT LTD, which owned the vehicle.

58. Term 'Employee' defined under the PoSH Act, 2013 has a specific object to achieve. It is with this intent and purpose seek to cover every kind of relationship which the employer has with another in connection to his/its business activities. Thus in the light of the aforesaid clauses of the Subscription Agreement and the admitted position of the fact that the vehicle which was used at the time of incident was belonging to the group companies of the OLA, this Court is convinced that for the purpose of the implementation of the provisions of the PoSH Act, 2013 driver-subscriber be construed as an 'employee' of OLA.

59. Relevant here to refer a few case laws rendered by the Apex Court interpreting the terms 'Employee' and 'Workman' by applying various tests, under some of the labour law statutes. In the case of **Silver Jubilee Tailoring House and others Vs Chief Inspector of Shops and Establishments and anr reported in (1974) 3 SCC 498** referring to its various earlier judgments in the case of Dhrangadhara Chemicals Works Ltd., Vs State of Saurashtra (1957) SCR 152, Birdhichand Sharma Vs

I Civil Judge, Nagpur and others (1964) 3 SCR D.C.Diwan Mohinuddin Saheb and sons Vs industrial Tribunal, Madras (1964) 7 SCR, Shankar Balaji Waje Vs State of Maharashtra (1962) Supp 1 SCR 249 etc. at paragraphs 27, 28, 29, 30, 32 to 37 has held as under:

"27. It is, therefore, not surprising that in recent years the control test as traditionally formulated has not been treated as an exclusive test.

28. It is exceedingly doubtful today whether the search for a formula in the nature of a single test to tell a contract of service from a contract for service will serve any useful purpose. The most that profitably can be done is to examine all the factors that have been referred to in the cases on the topic. Clearly, not all of these factors would be relevant in all these cases or have the same weight in all cases. It is equally clear that no magic formula can be propounded, which factors should in any case be treated as determining ones. The plain fact is that in a large number of cases, the Court can only perform a balancing operation weighing up the factors which point in one direction and balancing them against those pointing in the opposite direction.

29. During the last two decades the emphasis in the field has shifted and no longer rests so strongly upon the question of control. Control is obviously an important factor and in many cases it may still be the decisive factor. But it is wrong to say that in every case it is decisive. It is now no more than a factor, although an important one.

30. The fact that generally the workers attend the shop which belongs to the employer and work there, on the machines, also belonging to him, is a relevant factor. When the services are performed generally in the employer's premises, this is some indication that the contract is a contract of service. It is possible that this is another facet of the incidental feature of employment. This is the sort of situation in which a court may well feel inclined to apply the 'organisation' test suggested by Denning, L.J. in *Stevenson Jordan and Harrison v. Macdonald and Evans*.

32. That the workers work on the machines supplied by the proprietor of the shop is an important consideration in determining the nature of the relationship. If the employer provides the equipment, this is some indication that the contract is a contract of service, whereas if the other party provides the equipment, this is some evidence that he is an independent contractor. It seems that this is not based on the theory that if the employer provides the equipment he retains some greater degree of control, for, as already seen, where the control arises only from the need to protect one's own property, little significance can attach to the power of control for this purpose. It

seems, therefore, that the importance of the provision of equipment lies in the simple fact that, in most circumstances, where a person hires out a piece of work to an independent contractor, he expects the contractor to provide all the necessary tools and equipment, whereas if he employs a servant he expect to provide them himself. It follows from this that no sensible inference can be drawn from this factor in circumstances where it is customary for servants to provide their own equipment. (15)

33. Section 220(2) of the American Restatement, Agency 2d. includes among the relevant factors:

"(e) Whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work."

The comment on the first part of this paragraph is in these words:

["Ownership of instrumentalities. The ownership of the instrumentalities and tools used in the work is of importance. The fact that a worker supplies his own tools is some evidence that he is not a servant. On the other hand, if the worker is using his employer's tools or instrumentalities, especially if they are of substantial value, it is normally understood that he will follow the directions of the owner in their use, and this indicates that the owner is a master. This fact is, however, only of evidential value."]

It might be that little weight can today be put upon the provisions of tools of minor character as opposed to plant and equipment on a large scale. But so far as tailoring is concerned, I think the fact that sewing machines on which the workers do the work generally belong to the employer is an important consideration for deciding that the relationship is that of master and servant.

34. Quite apart from all these circumstances, as the employer has the right to reject the end product if it does not conform to the instruction of the employer and direct the worker to restitch it, the element of control and supervision as formulated in the decisions of this Court is also present.

35. The reputation of a tailoring establishment depends not only on the cutter but also upon the tailors. In a many cases, stitching is a delicate operation when the cloth upon which it is to be carried on is expensive. The defect in stitching might mar the appearance not only of the garment but also of its wearer. So when the tailor returns a garment, the proprietor has got to inspect it to see that it is perfect. He has to keep his customers pleased and he has also to be punctual, which means that the stitching must be done according to the instruction of the employer and within the time specified. The degree of control and supervision would be different in different types of business. If an ultimate authority over the worker in the performance of his work resided in the employer so that he was subject to the latter's direction, that would be sufficient. In *Humberstone v. Norther Timber Mills* (16), Dixon, J. said:

"The question is not whether in practice the work was in fact done subject to a direction and control exercised by an actual supervision or whether an actual supervision was possible but whether ultimate authority over the man in the performance of his work resided in the employer so that he was subject to the latter's order and directions."

36. That some of the employees take up the work from other tailoring establishments and do that work also in the shop in which they generally attend for work, as spoken to by the proprietor in his evidence, would not in any way militate against their being employees of the proprietor of the shop where they attend for work. A person can be a servant of more than one employer. A servant need not be under the exclusive control of one master. He can be employed under more than one employer.

37. That the workers are not obliged to work for the whole day in the shop is not very material. There is of course no reason why a person who is only employed part time, should not be a servant and it is doubtful whether regular part time service can be considered even prima facie to suggest anything other than a contract of service. According to the definition in Section 2(14) of the Act, even if a person is not wholly employed, if he is principally employed in connection with the business of the shop, he will be a 'person employed within the meaning of the sub-section. Therefore, even if he accepts some work from other tailoring establishments or does not work whole time in a particular establishment, that would not in any way derogate from his being employed in the shop where he is principally employed".

60. In the case of ***Royal Talkies Hyderabad and others Vs Employees State Insurance Corporation*** reported in **(1978) 4 SCC 204** while dealing with the definition of "employee" provided under the Employees State Insurance Act 1948 Apex Court at paragraphs 11 to 18 has further elaborated the process of the term "employed" which is extracted here under:

*11. Before us counsel have mainly focussed on the definition of "employee" since the short proposition which creates or absolves liability of the appellants depends on the canteen workers and the cycle stand attendants being 'employees' vis-a-vis the theatre owners. There is no doubt that a cinema theatre is an 'establishment' and that*



*the appellants, as theatre owners, are principal employers, being persons responsible for the supervision and control of the establishment. Admittedly, the canteens and cycle stands are within the theatre premises. Within this factual matrix let us see if the definition in S. 2(9) will fit.*

*12. We may read the definition of "employee" once again before analysing the components thereof - 2(9) "employee" means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies, and*

*(i) who is directly employed by the principal employer or any work of, or incidental or preliminary to or connected with the work, of the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere; or*

*(ii) who is employed by or through an immediate employer on the premises of the factory of establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment, or*

*(iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service; and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of the products of, the factory or establishment; but does not include:-*

*(a) any member of the Indian naval, military or air forces;  
or*

*(b) any person so employed whose wages (excluding remuneration for overtime work) exceed five hundred rupees a month:-*

*Provided that an employee whose wages (excluding remuneration for overtime work) exceed five-hundred rupees a month at any time after and not before, the beginning of the contribution period, shall continue to be an employee until the end of that period.*

*13. The reach and range of the definition is apparently wide and deliberately transcends pure contractual relationships. We are in the field of labour jurisprudence, welfare legislation and statutory construction which must have due regard to Part IV of the Constitution. A teleological approach and social perspective must play upon the interpretative process.*

*14. Now here is a break-up of Sec. 2(9). The clause contains two substantive parts. Unless the person employed qualifies under both he is not an 'employee'. Firstly he must be employed "in or in connection with the work of an establishment. The expression "in connection with the work of an establishment" ropes in a wide variety of workmen who may not be employed in the establishment but may be engaged only*

*in connection with the work of the establishment. Some nexus must exist between the establishment and the work of the employee but it may be a loose connection. 'in connection with the work of an establishment' only postulates some connection between what the employee does and the work of the establishment. He may not do anything directly for the establishment; he may not do anything statutorily obligatory in the establishment; he may not even do any thing which is primary or necessary for the survival or smooth running of the establishment or integral to the adventure. It is enough if the employee does some work which is ancillary, incidental or has relevance to or link with the object of the establishment. Surely, an amenity or facility for the customers who frequent the establishment has connection with the work of the establishment. The question is not whether without that amenity or facility the establishment cannot be carried on but whether such amenity or facility, even peripheral may be, has not a link with the establishment. Illustrations may not be exhaustive but may be informative. Taking the present case, an establishment like a cinema theatre is not bound to run a canteen or keep a cycle stand (in Andhra Pradesh) but no one will deny that a canteen service, a toilet service, a car park or cycle stand, a booth foresail of catchy film literature on actors, song hits and the like, surely have connection with the cinema theatre and even further the venture. On the other hand, a book-stall where scientific works or tools are A sold or stall where religious propaganda is done, may not have anything to do with the cinema establishment and may, therefore, be excluded on the score that the employees do not do any work in connection with the establishment, that is, the theatre. In the case of a five- star hotel, for instance, a barber shop or an arcade, massage parlour, foreign exchange counter or tourist assistance counter may be run by some one other than the owner of the establishment but the employees so engaged do work in connection With the establishment or the hotel even though there is no obligation for a hotel to, maintain such an ancillary attraction. By contrast, not a lawyer's chamber or architect's consultancy. Nor indeed, is it a legal ingredient that such adjunct should be exclusively for the establishment, if it is mainly its ancillary.*

15. *The primary test in the substantive clause being thus wide, the employees of the canteen and the cycle stand may be correctly described as employed in connection with the work of the establishment. A narrower construction may be possible but a larger ambit is clearly imported by a purpose-oriented interpretation. The whole goal of the statute is to make the principal employer primarily liable for the insurance of kindred kinds of employees on the premises, whether they are there in the work or are merely in connection with the work of the establishment.*

16. *Merely being employed in connection with the work of an establishment, in itself, does not entitle a person to be 'employee'. He must not only be employed in connection with the work of the establishment but also be shown to be employed in one or other of the three categories mentioned in Sec. 2(9).*

17. *Sec. 2(9) (i) covers only employees who are directly employed by the principal employer. Even here, there are expressions which take*

*in a wider group of employees than traditionally so regarded, but it is imperative that any employee who is not directly employed by the principal employer cannot be eligible under Sec. 2(9) (i) . In the present case, the employees concerned are admittedly not directly employed by the cinema proprietors.*

*18. Therefore, we move down to Sec. 2(9) (ii). Here again, the language used is extensive and diffusive imaginatively embracing all Possible alternatives of employment by or through all independent employer. In such cases, the 'principal employer' has no direct employment relationship since the 'immediate employer' of the employee, concerned is some one else. Even so, such an employee, if he works (a) on the premises of the establishment, or (b) under the supervision of the Principal employer or his agent ``on work which is ordinarily part of the work of the establishment or which is preliminary to the work carried on in or incidental to the purpose of the establishment'', qualifies under Sec. 2(9) (ii). The plurality of persons engaged in various activities who are brought into the definitional net is wide and considerable; and all that is necessary is that the employee be on the premises or be under the supervision of the principal employer or his agent. Assuming that the last part of Sec. 2(9) (ii) qualifies both these categories, all that is needed to satisfy that requirement is that the work done by the employee must be (a) such as is ordinarily (not necessarily nor statutorily) part of the work of the establishment, or (b) which is merely preliminary to the work carried on in the establishment, or (c) is just incidental to the purpose of the establishment. No one can seriously say that a canteen or cycle stand or cinema magazine booth is not even incidental to the purpose of the theatre. The cinema goers ordinarily find such work an advantage, a facility an amenity and some times a necessity. All that the statute requires is that the work should not be irrelevant to the purpose of the establishment. It is sufficient if it is incidental to it. A thing is incidental to another if it merely appertains to something else as primary. Surely, such work should not be extraneous or contrary to the purpose of the establishment but need not be integral to it either. Much depends on time and place, habits and appetites, ordinary expectations and social circumstances. In our view, clearly the two operations in the present case, namely, keeping a cycle stand and running canteen are incidental or adjuncts to the primary purpose of the theatre."*

61. Even in the instant case as noted above, OLA Device is supplied by OLA. Even the non-OLA device has to be to its specification. Installation of such device and its maintenance by driver-subscriber is in furtherance to the business activities of

the OLA. OLA has retained its power and control with regard to information regarding name, contact details, intended destination of the passenger. It has retained power to negotiate the fares. It is only the OLA which has the discretion to allot the bookings for the customers or to the drivers and the drivers have no choice either in choosing the customer, their location or the fares payable. The driver is required to complete all bookings allotted by OLA. They are prohibited from cancelling the booking allotted to them except under such circumstances based on explanation. If the cancellation is without explanation OLA would withhold part or the entire proceeds payable to the driver. The driver is also required to notify OLA in the event of he deviating or changing the routes. The driver is required to keep the OLA device in the switch on mode while performing the services of OLA at all times. That apart from these aspects of the agreement providing control of manner of rendering service, the OLA has also mandated speed at which the vehicle should be driven by the driver.

62. The Judgment relied upon in the case of **Indian Overseas Bank** (supra) was with respect to claim of certain

persons who were rendering their service as 'Jewel appraisers for loans' in its branches at different States claiming their rights as part time workers. The Apex Court at paragraph 17 while taking note of the principles laid down in its earlier Judgments has in fact observed that "*where the contractors were substantially responsible for the main and sole business, they would be treated as Workers*" and further at paragraph 18 while listing out the distinctions between 'Jewel appraisers' and 'regular employees' of the bank has held that they were not the employees of the bank. Judgments in the case of **Shankar Balaji Waje** and **Silver Jubilee Tailoring house and others** lay down the principle which supports the case of the petitioner as noted hereinabove.

63. Thus from the analysis of terms of the Subscription Agreement which is admittedly entered into between OLA and Transport Service Provider and the driver- subscriber read in the light of the enunciation of law by the Apex Court as extracted hereinabove it is clear that the definition of term 'employee' provided under section 2(f) of PoSH Act, 2013 embraces all possible connection which employer would have

with the employee. In the instant case the components of the definition `employee' which is encapsulated hereinabove leaves no doubt that the driver-subscriber is rendering his services directly in connection with the commercial activity of OLA for which it is established. In that view of the matter and more particularly for purposes advancement of the intent and object of the PoSH Act, 2013 it is necessary and compelling that the meaning of the term `employee' be extended to cover the persons like driver-subscriber. Anything short of this would result in rendering the purpose, intent and object of the PoSH Act, 2013 ineffective in the vast private sector of this nature.

**Position of International Law on the subject:**

64. Learned counsel for the petitioner has placed reliance on some of the decisions rendered by the Courts at United Kingdom, State of California and France. In that, Supreme Court of United Kingdom in an identical fact situation of the matter in the case of ***Uber BV and others Vs Aslam and others*** reported in **(2021) UKSC5** involving a question as to whether employment status of people who work on contract basis would qualify for the national minimum wages, paid

annual leave, and other workers right, and while considering the contention of Uber that the drivers do not have these rights because they work for themselves as independent contractors performing services under contracts made with the passengers through Uber as the booking agent (as contended in the instant case by ICC and OLA), on analysing the terms of agreement that was entered into between the Uber and the drivers thereunder has held that the services offered by the drivers were controlled and defined by the Uber and that the drivers would therefore qualify as workers employed by Uber.

65. Similar conclusion has been arrived at by the ***Commissioner of State of California in Barbara Berwick Vs Uber technologies*** case No.11-46739 EX. wherein it has been held that a driver would qualify as an employee under Uber. This conclusion has been arrived at by the Labour Commissioner on the basis of the terms of the agreement under which Uber retains power to monitor and control the services offered by its driver and also has retained power to terminate the driver's access to platform if the driver's customer rating fell below certain level.

66. In another matter in the case of **Uber France Vs Mr.A.X** Court of Cassation in France case No.ECLI:FR:CCAS:2020:SO 00374 has held drivers using Uber platform are the employees of Uber. The Court arrived at such conclusion based on the relationship that existed between Uber and its drivers due to the fact that the terms and conditions governing the arrangement placed the driver in a permanent legal subordination to the Uber.

**Contract which is entered between OLA and its customers like that of the petitioner:**

67. Learned counsel for the petitioner furnished a copy of Terms and Conditions (OLAcabs India) which is admittedly updated by OLA on its website effective from 08.11.2022. These electronically generated terms and conditions are required to be accepted by any person intending to use OLA services by clicking 'I ACCEPT' button or by using OLA services indicating acknowledgement and consent to use the OLA services which would then form into a binding agreement between the OLA and the user. The relevant portion of the said agreement are extracted hereunder to analyse the extent of



management, supervision, control and involvement of the OLA  
in the process of providing its services:

*Terms and Conditions (Olacabs India)*

*OLA/ ANI Technologies Private Limited/ Ola Cabs*

*Updated effective from 08th November, 2022*

*This Site/ Application/ Services is/are operated /provided by ANI Technologies Private Limited ("Ola").*

*These terms and conditions ("User Terms") apply to Your visit to and use of the Site whether through a computer or a mobile phone, the Service and the Application, as well as to all information, recommendations and or services provided to You on or through the Site, and the Application. This document is an electronic record in terms of Information Technology Act, 2000 and rules thereunder as applicable and the provisions pertaining to electronic records in various statutes as amended by the Information Technology Act, 2000. This electronic record is generated by a computer system and does not require any physical or digital signatures.*

*By clicking on the "I ACCEPT" button or by using Ola's services, You are acknowledging and consenting to be bound by these User Terms. PLEASE ENSURE THAT YOU READ AND UNDERSTAND ALL THESE USER TERMS BEFORE YOU USE THE SITE. If You do not wish to accept any of the User Terms, then please do not use the Site or avail any of the services being provided therein. YOUR AGREEMENT TO THESE USER TERMS SHALL OPERATE AS A BINDING AGREEMENT BETWEEN YOU AND OLA IN RESPECT OF THE USE AND SERVICES OF THE SITE. Your access and use of the Services constitutes your agreement to be bound by these Terms, which establishes a contractual relationship between you and OLA. These Terms expressly supersede prior agreements or arrangements with you. OLA may immediately terminate these Terms or any Services with respect to you, or generally cease offering or deny access to the Services or any portion thereof, at any time for any reason. Supplemental terms may apply to certain Services, such as policies for a particular event, activity or promotion, and such supplemental terms will be disclosed to you in connection with the applicable Services. Supplemental terms are in addition to, and shall be deemed a part of, the Terms for the purposes of the applicable Services.*

*Your acceptance of the User Terms shall be deemed to include your acceptance of the privacy policy available at <https://www.olacabs.com/info/faqs/#privacyPolicy>. By accepting these User Terms, You also allow Ola to send you promotional emails and SMS alerts from time to time.*

*IT IS HEREBY EXPRESSLY CLARIFIED THAT THESE USER TERMS WILL NOT APPLY TO CORPORATE ENTITIES WHO ARE GOVERNED BY THE OLA CORPORATE TERMS OF USE. HOWEVER, ALL AUTHORIZED USERS TAKING 'OLA CORPORATE RIDES' I.E., FOR CUSTOMERS WHO ARE*

AVAILING RIDES UNDER THE DIRECT ARRANGEMENTS BETWEEN CORPORATE ENTITIES AND OLA SHALL ALSO BE GOVERNED BY THESE USER TERMS.

1. DEFINITIONS

All of the defined and capitalized terms in these User Terms will have the meaning assigned to them here below:

(i) "Account" shall mean the account created by the Customer on the Application for availing the Services provided by Ola.

(ii) "Additional Fee" shall mean any toll, duty, inter-state taxes, etc. that may have been incurred in providing the Services and payable to any third party/ government authorities for undertaking the Ride under Applicable Law.

(iv) "Application" shall mean the mobile application "Ola Cabs" updated by Ola from time to time.

(v) "Convenience Fee"/" Access Fee" shall mean the fee payable by the Customer to Ola for the Service i.e., for availing value added services including but not limited to technology services, door to door service, customer support and cashless payment options. Convenience Fee may also include any such fee that may be charged by third parties towards providing access to a particular location such as airports, railway stations etc.

(vi) "Cancellation Fee" shall mean a fee payable by You, towards cancellation of a Ride or a booking as detailed in Clause 7 of these User Terms and the Cancellation policy.

(viii) "Customer/ You" means a person who has an Account on the Application.

(ix) "Driver" shall mean and include such individuals as may be evaluated, appointed and trained by an operator associated with us to provide the transportation services and persons who are registered with Ola and own such Vehicles with necessary city taxi permits and other applicable transport vehicle permits and licenses to provide transportation services within the City of Operation.

(x) "E-Wallet" shall mean a pre-paid instrument, which can be used to make payments.

(xi) "Fare" shall mean such amount payable by You in Indian Rupees, which is reflected on the Application, as the fare payable towards the distance traveled and time taken for the specific Ride. Fare may depend on several factors such as the availability of the Driver(s) on the platform at the time, city and may also reflect the fares that may have been stipulated by the respective Governments from time to time. It may include components to reflect any promotions carried out by Ola.

(xii) "Force Majeure Event" shall mean any event arising due to any cause beyond the reasonable control of Ola.

(xiii) "Ola" or "us" or "we" or "our" shall mean ANI Technologies Private Limited, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at Regent Insignia, #414, 3rd Floor, 4th Block, 17th Main, 100 Feet Road, Koramangala, Bangalore - 560 034 India, which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include all its successors, affiliates and permitted assigns.

(xiv) "Registration Data" shall mean and may include the present, valid, true and accurate name, email ID, phone number and such other information as may be required by Ola from the Customer from time to time for registration on the Application.

(xv) "Ride" shall mean the travel in the Vehicle by the Customer facilitated through the Site.

(xvi) "Service(s)" means the facilitation of the services by Ola through the Application or via a telephone request at the call centre of Ola, or booking on the Site.

(xviii) "Substitute Vehicle" shall mean another vehicle arranged for transporting the Customers to his/her destination, in the event of a Vehicle breakdown.

(xix) "Peak charge" shall mean additional charge applied in the situation where the demand is more than the available supply.

(xx) "Total Ride Fee" may comprise one or more of the following components that shall be levied to the ride based on various parameters including but not limited to distance travelled, time taken for the ride, city in which the ride is hailed, time of the day, availability of drivers nearby -

- Minimum fare
- Base fare
- Per kilometer fare (based on the total distance of the ride)
- Per minute charges (based on the time taken to complete the ride)
- Pre-wait charges (if any)
- Third party charges like insurance premium (if applicable)
- peak charges (when applicable)\*
- Past dues (if any); and
- Applicable taxes.

\*Both fares and peak charges may vary on the basis of various market dynamics such as cost of living, fuel pricing, vehicle maintenance costs, interest rates, demand and supply situation, etc

### 3. REGISTRATION AND ACCOUNT

3.1 You understand and acknowledge that You can register on the Site only after complying with the requirements of this Clause 3 and by entering Your Registration Data.

3.2 You shall ensure that the Registration Data provided by You is accurate, complete, valid, true and is updated from time to time. We shall bear no liability for false, incomplete, old or incorrect Registration Data provided by You.

3.3 You are solely responsible for maintaining the confidentiality of Your Registration Data and will be liable for all activities and transactions that occur through Your Account, whether initiated by You or any third party. Your Account cannot be transferred, assigned or sold to a third party. We shall not be liable for any loss that You may incur as a result of someone else using Your password or Account, either with or without Your knowledge.

3.4 We reserve the right to suspend or terminate Your Account with immediate effect and for an indefinite period, if We have a reason to believe that the Registration Data or any other data provided by You is incorrect or false, or that the security of Your Account has been compromised in any way, or for any other reason We may find just or equitable.

3.5 Except for the Registration Data or any other data submitted by You during the use of any other service offered through Site ("Permitted Information"), Ola does not want You to, and You should not, send any confidential or proprietary information to Ola on the Site or otherwise, unless otherwise is required by Applicable Laws. In accepting these User Terms You agree that any information or materials that You or individuals acting on Your behalf provide to Ola other than the Permitted Information will not be considered confidential or proprietary.

### 4. SERVICES

The Services constitute a technology platform that enables users of OLA's mobile applications or websites provided as part of the Services (each, an "Application") to arrange and schedule transportation and/or logistics services with independent third party providers of such services, including independent third party transportation providers and independent third party logistics providers under agreement with OLA ("Third Party Providers"). YOU ACKNOWLEDGE THAT OLA DOES NOT PROVIDE TRANSPORTATION OR LOGISTICS SERVICES OR FUNCTION AS A TRANSPORTATION CARRIER AND THAT ALL SUCH TRANSPORTATION OR LOGISTICS SERVICES ARE PROVIDED BY INDEPENDENT THIRD PARTY CONTRACTORS WHO ARE NOT EMPLOYED BY OLA OR ANY OF ITS AFFILIATES.

4.1. The Services allows You to send a request through Ola to a Driver on the Ola network. The Driver has sole and complete discretion to accept or reject each request for Service. If the Driver accepts a request,

Ola notifies You and provides information regarding the Driver-including Driver name, Vehicle license number, telephone contact details of the Driver and such other details as Ola may determine.

4.2. Ola shall procure reasonable efforts to bring You into contact with a Driver, subject to the availability of Driver in or around Your location at the moment of Your request for such services.

4.3. By using the Application or the Service, You further agree that: (i) You will only use the Service or download the Application for Your sole, personal use and will not resell or assign it to a third party; (ii) You will not use an account that is subject to any rights of a person other than You without appropriate authorization; (iii) You will not use the Service or Site for unlawful purposes; (iv) You will not try to harm the Service, Site or our network in any way whatsoever; (v) You will provide Ola with such information and documents which Ola may reasonably request; (vi) You will only use an authorized network to avail the Service; (vii) You are aware that when requesting Services, whether by message, via Site or calling the call center of Ola, standard messaging charges, data charges, voice charges, as applicable, of the Your and Our phone network service providers, will apply; (viii) You will comply with all Applicable Law from Your country of domicile and residence and the country, state and/or city in which You are present while using the Site or Service; and (ix) You are aware of and shall comply with the Information Technology Act, 2000 and the rules, regulations and guidelines noted thereunder.

4.4. Ola reserves the right to immediately terminate the Service and the use of the Application in the event of non-compliance with any of the above requirements. Further, Ola will store the information provided by You or record your calls for contacting You for all Service related matters. You shall promptly inform Ola on any change in the information provided by You.

4.5. Ola or an authorized representative of Ola, shall provide information regarding services, discounts and promotions provided by Ola or a TPSP to You on the Ola App or by way of an SMS or email to Your registered mobile number/registered email ID. You also have the option to discontinue receiving such information at any point of time. To discontinue receiving such information, You may at any point of time visit the specific link provided in the Site to discontinue the same.

4.6. OLA WILL BE ENTITLED TO PROCESS AND TRANSFER YOUR INFORMATION AS AND WHEN IT DEEMS FIT AND IT MAY STORE OR TRANSFER YOUR INFORMATION IN A SERVER OUTSIDE INDIA OR THE COUNTRY WHERE YOU ARE LOCATED IN ORDER TO PERFORM OLA'S OBLIGATIONS UNDER THESE CUSTOMER T&C.

4.7. You agree to grant Ola a non-exclusive, worldwide, perpetual, irrevocable, royalty free, sub-licensable (through multiple tiers) right to exercise the copyright, publicity, database rights or any other rights You have in your information, in any media now known or not currently known, with respect to Your information. YOU AGREE AND PERMIT OLA TO SHARE YOUR INFORMATION AND/OR PERMITTED INFORMATION, WITH THIRD PARTIES.

4.8. You agree and permit Ola to share any information provided by You with third parties in order to facilitate provision of certain value-added services offered by such third parties to You and/or to provide certain value-added services to You by Ola. You hereby expressly consent to receive communications from Ola/ third parties offering value-added services to You through Your registered phone number and/or e-mail id and/or the Site. You agree that

You will not hold Ola responsible for any such communications received from third parties, nor will any such communication amount to spam, unsolicited communication or a violation of Your registration on the national do not call registry.

4.9. Ola will be entitled to enter into any tie-up in terms of joint-venture or otherwise with any other institution engaged in the business of providing services analogous and/or similar to those herein contained. In such case, depending upon the modality and the mechanism as may be devised, You will be provided with the services by Ola jointly and/or severally with the party/ies in joint venture. You hereby give Your irrevocable consent and permission to such a tie-up. In the event of such a tie-up, the terms and conditions herein contained will, *mutatis mutandis*, become applicable in respect of such tie-up arrangement also.

4.10. In the event Ola provides You any device as a part of the Services including but not limited to OLA Play ("OLA Device"), You shall comply with the following. 'OLA Play' means a connected car platform using multiple devices in-car and cloud technology platform owned and operated by Ola, which endeavours to provide an interactive experience to You - (i) You shall not tamper, pilfer or misuse the OLA Device(s) or allow, induce or assist a third party to indulge in such activity. (ii) You shall not transcribe, distribute, download, store, duplicate and reproduce the content forming part of the OLA Device(s) ("Content"), in whole or in part, through any medium including, but not limited to, tape, disc, hard disk, computer system, or other electronic recording or transmission device. (iii) You shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party, in any way, the OLA Device(s) and/or any Content; (ii) modify or make derivative works from the Content; (iii) create Internet "links" to the Content or "frame" or "mirror" any Content on any other server or wireless or internet based device; (iv) reverse engineer or access the OLA Device(s) and/or Content in order to

(a) design or build a competitive product or service, (b) design or build a product using similar ideas, features, functions or graphics of the OLA Device(s) and/or Content, or (c) copy any ideas, features, functions or graphics of the OLA Device(s) and/or Content, or (v) launch an automated program or script, including, but not limited to, web spiders, web crawlers, web robots, web ants, web indexers, bots, viruses or worms, or any program which may make multiple server requests per second, or unduly burdens or hinders the operation and/or performance of the OLA Device and/or Content (iv) You shall not use the OLA Device(s) for any illegal or unlawful purposes including but not limited to playing / watching pornographic content on the OLA Device and shall use the OLA Device(s) solely for purposes determined by Ola and strictly in

accordance with these User Terms. You shall solely be responsible and liable for any violations of law committed by You and misuse of the OLA Device(s), if any, with the OLA Device(s). (v) You shall ensure that the OLA Device(s) is maintained in Your possession in a proper manner. Ola may, at its sole discretion, charge such amounts from You as may be determined by Ola for use of the OLA Device(s) by You.

(vi) In the event the OLA Device(s) is not functioning properly or if there is any technical or safety issue in relation to the OLA Device(s), You shall immediately inform the Driver about any such issue. (vii) You shall use the OLA Device(s) with due care and caution and not do anything or permit anything to be done that may cause damage to the OLA Device(s). If the OLA Device(s) is damaged and is not repairable due to any act of You, You shall pay amounts to Ola, as may be determined by Ola. If You fail or are unable to pay the amounts determined by Ola, Ola shall be entitled to suspend / terminate Your Account with Ola without prejudice to Ola's rights under these User Terms and under Applicable Laws.

4.11. In the event Ola provides You any Vehicle for testing as a part of the Services including but not limited to OLA CARS ("OLA CARS"), You shall comply with the following: (i) You will ensure no damage is caused to the Vehicle in the course of your use/ testing the same and the same is returned in good condition; (ii) You agree that Ola can charge you for any such damage caused to the Vehicle while being used by You; (iii) You will not use the test Vehicle only for the purpose of testing and shall not exceed the predetermined time/ distance.

4.12. In the event of breakdown of the Vehicle, which is beyond repair, before completion of the Ride, Ola on a best effort basis and at its sole discretion may arrange for a Substitute Vehicle for completion of Your Ride to Your destination. However, the arrangement of Substitute Vehicle shall be subject to its availability.

4.13. You acknowledge and agree that Substitute Vehicle may not be necessarily of the same type as the original Vehicle booked by You from the Site.

4.14. Ola bears no responsibility and liability for delays and losses suffered by You or caused to You as a consequence of the breakdown of the Vehicle or the Substitute Vehicle.

## 5. CONFIRMATION OF BOOKING

5.1. Ola shall, upon receiving the booking request from You in the manner set out above, proceed to confirm or decline the booking based on the availability of Vehicles at the pickup time and location, which shall be informed to You vide the application or SMS or email. In the event the booking is confirmed, You shall check the booking details including but not limited to pick up time and pick up place, and if there is incorrect detail, the same needs to be informed to us immediately by calling our call center.

5.2. Upon confirmation of booking, a One Time Pin (OTP) shall be provided on the Application which shall be further shared by the

*Customer with the Driver. In the event that the Customer does not provide OTP to the Driver, Driver shall not be responsible for not starting on the services.*

*5.3. You shall bear the consequences and damages for any delay that may be caused to You due to Your failure to check the confirmation message via the application, SMS or email or failure to inform Ola of the incorrect details immediately.*

*5.4. Certain selective customers will be eligible to avail the Service under a 'Guest Booking' feature, provided by Ola. Such customers will also be bound by the terms and conditions set out herein.*

## **6. PAYMENT**

*6.1. Ola shall provide an estimate of the Total Ride Fee to You at the beginning of every Ride. Such an estimate provided by Ola shall be subject to change on account of several factors and shall be different to the actual Total Ride Fee levied at the end of ride. The Customer shall pay the actual Total Ride fee shown at the end of the ride in accordance with terms mentioned herein.*

*6.2. You understand and accept that the Total Ride Fee, including the applicable taxes, shall be payable by You to Ola immediately upon completion of the Ride. Any difference arising at the end of the ride from the estimate shall be payable by You to Ola immediately upon completion of the Ride.*

*Convenience Fee / Access Fee charged by Ola towards the value added services provided by Ola, as part of the Ride or otherwise, shall be determined and amended at the sole and absolute discretion of Ola.*

*6.3. You understand and agree to pay such Additional Fee, which will form part of the receipt of the Total Ride Fee.*

*6.4. You shall be required to pay such Cancellation Fee in terms of Clause 7, which will form part of the receipt of the Total Ride Fee.*

*6.5. Ola shall provide a receipt of the Total Ride Fee payable by You at the end of the Ride, however, invoices from Ola, Driver or TPSP shall be provided to You on request. You may raise a request for a copy of the invoices from our Site.*

*6.6. You understand and agree to pay all applicable taxes included as part of the Total Ride Fee.*

*6.7. You shall choose to pay the Total Ride Fee by the modes of payment available to You by Ola on the Site, in addition to Cash payment to the Driver after the completion of the Ride.*

*6.8. You may choose to pay the Total Ride Fee payable by You, in cash directly to the Driver upon completion of the Ride, only if the chosen method of payment is Cash or in such other case the Application may permit you to pay Cash.*



6.9. You will be required to provide relevant payment details including Credit Card / Debit Card/Net Banking details ("Card Details") to process payment of the Total Ride Fee and You authorize Ola and an entity authorized by Ola for providing payment gateway/processor services ("Payment Processor") to access the Card details for processing the payment of Total Ride Fee. In this respect, it is clarified that the Payment Processor whose services are utilized for the purposes of the Site and/or Application and/or Services shall be compliant with PCI-DSS (Payment Card Industry Data Security Standard) or such other standard notified by the relevant authority from time to time. By using the services of the Payment Processor, You understand and agree to the Terms and Conditions of the Payment Processor as may be issued by the Payment Processor from time to time. Your authorization-permits Ola and the Payment Processor to debit or credit the bank account or debit/credit card account associated with Your payment details;

- permits Ola and the Payment Processor to use Your Card Details for the processing of transactions initiated by You by accessing you account;

subject to the prevalent laws, will remain in effect as long as You maintain an Account (and if You delete Your Card Details or Account, OLA or the Payment Processor will not be able to process any further transactions initiated by You); and is subject to any other terms and conditions of the Payment Processor specified through the Application, SMS or other methods from time to time.

6.10. Ola offers You the facility of making an online payment through an E-Wallet powered by a third party payment processor ("Wallet Service Provider"). E-Wallet money will not be applicable on bookings made through the phone or while the user is not logged into his/her Account on the Site. The processing of payments, in connection with Your use of the E- Wallet will be subject to the terms, conditions, and privacy policies of the Wallet Service Provider that Ola engages for the purpose. Ola will not be responsible for any errors by the Wallet Service Provider in any manner and any dispute arising out of such errors shall be directly settled between You and the Wallet Service Provider. Further, even in cases of E Wallet payments, all Additional Fee (defined below) shall have to be paid by You in cash, to the authority or person concerned or if already paid by the Driver, to the Driver. When You choose to make an E-Wallet payment, Ola shall collect the Total Ride Fare or any part of the Total Ride Fare on behalf of the Driver/ TPSP who will be responsible for providing the such Services.

6.11. Payment for the Total Ride Fee can be made to Ola on credit subject to the terms provided at Ola Credit TNC, Further, even in cases of Ola Credit payments, all Additional Fee shall have to be paid by You in cash, to the authority or person concerned or if already paid by the Driver, to the Driver. When You choose to make an Ola Credit payment, Ola shall collect the Fare on behalf of the Driver/ TPSP who will be responsible for providing the transportation services.

6.12. Any payment related issue, except when such issue is due to an error or fault in the Site, shall be resolved between You and the Payment Processor. Ola shall not be responsible for any unauthorized use of Your E-Wallet during or after availing the Services on the Site.

6.13. Subject to these Customer Terms, the Total Ride Fee paid by You is final and non-refundable, unless otherwise determined by OLA. If any amount paid by You is fully or partially refundable for any reason, such amounts will be refunded to You by OLA to the same account from which the payment was made or if the same could not be processed successfully then as vouchers to be used in the Application. You may contact OLA and/or its Affiliates for any issues arising therefrom.

6.14. Any payment processing-related issue not caused by an error or fault with the Application must be resolved by You and the relevant Payment Processor.

6.15. You agree that use of certain Promo Codes/ Vouchers may result in different charges for the same services and shall not have a bearing on charges applied to You unless the Promo Codes have been specifically made available to You.

6.16. In the event of a default or failure to pay the Total Ride Fee for any reason by You: (i) OLA may restrict You from booking a new Ride through the Application until the outstanding Total Ride Fee in respect of the previous Ride(s) has been paid by You; (ii) You agree and acknowledge that OLA shall recover any outstanding monies payable by You for Ride(s) in respect of which Total Ride Fee has not been paid; and (iii) You will be responsible, and must pay, for all costs incurred by OLA (including costs for which OLA may be contingently liable) in any attempt to collect any monies owed by You to OLA's Drivers under these Customer Terms including debt collection agent costs, repossession costs, location search costs, process server costs and solicitor costs on a solicitor/client basis.

## 7. CANCELLATION POLICY

7.1. Ola will notify on the Application a Cancellation fee upon cancellation of a Ride. You agree and acknowledge that You may cancel Your request for Services at any point of time subject to a Cancellation Fee which is explained at <https://www.olacabs.com/info/faqs/Cancellations>. You shall be notified of the applicable Cancellation Fee in advance whenever You attempt to cancel a booking/service request. The notification shall be on the Application and/or the Site. You understand and agree to pay such Cancellation Fee as per the payment terms in Clause 6 of these Terms as part of the Total Ride Fee of the subsequent Ride or pay such outstanding Cancellation Fee before availing the subsequent Ride.

7.2. Ola shall provide a receipt of the Cancellation Fee, if any, payable by You for every cancellation in terms of the table above for such cancellations, however, separate invoices raised by the TPSPs for the Cancellation Fee, and Ola for the Convenience Fee on cancellations shall be provided to You on request. You may raise a request for a copy of the invoices from the Support page.

7.3. The Cancellation Fee shall be payable by You immediately upon levy. However, Ola may, at its sole discretion, include such Cancellation

*Fee payable by You as part of the Total Ride Fee payable from Your subsequent Ride.*

*7.4. The mode of payment of the Cancellation Fee shall be in terms of Clause 6 of these User Terms.*

*7.5. This Clause 7 shall not apply to corporate rides availed pursuant to the terms and conditions.*

#### **8. USER VIOLATION OF USER TERMS**

*8.1. You shall not smoke, drink or carry any contraband substances in the Vehicles or misbehave with the Driver or distract the Driver or act in violation of Applicable Law. In the event You are found to be involved in the activities set out above. You shall be liable to pay a fine to us and we shall also have the right to terminate the Ride. In the event You fail to pay fine after the completion of the Ride, we may at our discretion, take such steps as may be available to us under Applicable Law. You shall also be blacklisted as a result of non-payment of the fine or misbehaving as the case may be, and in such event, Your Account may be terminated by Ola.*

#### **9. CUSTOMER RELATIONSHIP MANAGEMENT**

*9.1. All issues, opinions, suggestions, questions and feedback while availing our Services can be communicated to us via several modes such as self serve app or website or email. After completion of the ride, you are entitled to give a suitable rating for the service and ride. You agree to be fair, accurate and non-disparaging while leaving comment, feedbacks, testimonials or reviews on or about the Rides or Services.*

*9.2. Reporting of any issue needs to be within 30 (thirty) days of the happening of the issue, failing which, such issue will not be addressed.*

*9.3. Any issue reported on channels other than the above may be addressed by Ola only on a best-effort basis. Ola takes no liability for inability to get back on other channels.*

*9.4. Ola shall endeavor to respond to Your issues within 2 (two) working days of Your reporting the same and endeavor to resolve it at the earliest possible. It is hereby clarified that issues are resolved on severity basis.*

#### **10. EMERGENCY SERVICES TO CUSTOMER**

*10.1 By accepting these User Terms and on pressing the SOS button on the Ola App, You consent to Ola using its best endeavors to provide You with assistance during a safety incident, emergencies or distress, as per Ola's internal policies on emergency response. Ola may undertake remedial action(s), including, but not limited to the following:*

*10.1.1 When you press the SOS button and report a safety incident, the Ola representative may escalate the incident internally or liaise with any third party security service providers to assist You and/or deploy response teams to Your location.*

10.1.2 *Ola may inform any government authorities, such as the concerned police station, about the incident and seek their assistance; Ola may also provide such authority(ies) with your personal information including but not limited to your exact GPS location, your registered email ID and mobile number to enable them to take appropriate steps to assist You.*

10.1.3 *Ola may engage third party security providers to assist You and Ola in addressing the incident. For this purpose, Ola may share your personal information, including but not limited to, your exact GPS location, your registered email ID and mobile number with third parties such as a security services provider, to enable them to take appropriate steps to assist You and solely to resolve the incident.*

10.1.4 *Further to the above, You may receive telephone calls from an Ola representative and/or the relevant response team at the time of pressing the SOS button and in the duration that the incident is being resolved, and the same shall not be construed as breach of TRAI guidelines, in as much as these would be made for Your security and safety purposes.*

10.2 *Under this clause. You give Your express consent to permit Ola to undertake the above along with any ancillary actions that may be required to facilitate an effective emergency response.*

10.3 *Ola will not be liable for any deficiency of service, provided to You under this clause on a best efforts basis, and this clause does not, in any manner, restrain You from seeking any other form of assistance from any other party.*

#### 11. FORCE MAJEURE

11.1 *We shall not be liable for any failure to perform any obligations under this User Terms, if the performance is prevented, hindered or delayed by a Force Majeure Event and in such case our obligations under this User Terms shall be suspended for so long as the Force Majeure Event continues.*

#### 12. INDEMNIFICATION

12.1 *By accepting these User Terms and using the Service, You agree that You shall defend, indemnify and hold Ola, its affiliates, their licensors, and each of its officers, directors, other users, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (a) Your violation or breach of any term of these User Terms or any Applicable Law or regulation, whether or not referenced herein; (b) Your violation of any rights of any third party, including the TPSPs or (c) Your use or misuse of the Application or Service.*

#### 13. LIABILITY

13.1. *The information, recommendations and/or Services provided to You on or through the Site, the Application and Ola call center are for general information purposes only and do not constitute advice. Ola will reasonably keep the Site and its contents correct and up to date but does not guarantee that (the contents of) the Site is free of errors, defects, malware and viruses or that the Site is correct, up to date and accurate.*

13.2. *Ola shall not be liable for You missing trains/flights/events or delays etc. as the Service is dependent on many factors not in Ola's control. You must book Your Ride after taking into account the check-in time, traffic and weather conditions, political rallies, natural calamities, traffic barricades, car breakdowns and other unexpected delays.*

13.3. *In the event, there is a delay by the Vehicle in reaching the pickup location beyond 30 (thirty) minutes of the pickup time, Ola shall only endeavour to get You in touch with the Driver assigned for Your Ride.*

13.4. *Ola shall not be liable for any damages resulting from the use of or inability to use the Site, including damages caused by wrong usage of the Site, error in call center number, network issues, malware, viruses or any incorrectness or incompleteness of the Information or the or Application.*

13.5. *You shall take full responsibility of Your items and luggage. In case of lost items inside the Vehicle during the journey, Ola will try to locate the items on a "best-effort" basis but is not responsible for the same in case of loss or damage to the same. If You leave any goods in the Vehicle or have any complaint in respect of the Services or the use of the Vehicle, You have to inform Ola of the same in writing within 24 (twenty four) hours of using the Vehicle or the Services of Ola.*

13.6. *Ola shall not be responsible for any loss of communication / information of status update and benefits. All this information will be sent on mobile number and/or email ID registered with Ola. Ola will not be responsible for appropriateness of mobile or email or any other communication medium. You shall be responsible for immediately reporting the errors, if any, occurred in the information sent to You regarding booking confirmation.*

13.7. *IN NO EVENT SHALL OLA BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR FOR ANY DAMAGES WHATSOEVER, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF OLA HAS BEEN ADVISED OF THE POSSIBILITY THEREOF.*

13.8. *IN ADDITION, AND WITHOUT LIMITING THE FOREGOING, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL OLA'S AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THESE USER TERMS OR THE SERVICES RENDERED HEREUNDER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE, PRODUCT LIABILITY, OR OTHER THEORY), WARRANTY, OR OTHERWISE, EXCEED THE AMOUNT OF Rs. 1000/- (Rupees One Thousand only).*

*13.9. If Applicable Law does not permit the exclusion of certain warranties or the limitation or exclusion of liability, the scope and duration of such warranty exclusions and the extent of the liability of Ola shall be the minimum permitted under Applicable Law.*

#### 18. TERM AND TERMINATION OF LICENSE AGREEMENT

*18.1. Unless terminated explicitly, the agreement between Ola and You is perpetual in nature upon downloading the Application and for each Service booked through the Site.*

*18.2. You are entitled to terminate the agreement at all times by deletion of Your Account, thus disabling the use by You of the Site. You can close Your Account at any time by following the instructions on the Site.*

*18.3. Ola is entitled to terminate the agreement at all times and with immediate effect (by disabling Your use of the Site and the Service) if You: (a) violate or breach any term of these User Terms, or (b) in the opinion of Ola, misuse the Application or the Service. Ola is not obliged to give notice of the termination of the agreement in advance. After termination Ola will give notice thereof in accordance with these User Terms.*

*18.4. Termination of this agreement will not prejudice accrued rights of either Ola or You.*

*18.5. Clauses 11 (Indemnification), 12 (Liability), 13 (Application License), 14 (Contents posted on Site/ Application), 15 (Intellectual Property Ownership), 17 (Term and Termination), 22 (Notice) and 24 (Applicable Law and Dispute Resolution) and such other provisions which are intended to survive the termination, shall survive the expiry/termination of these User Terms in accordance with their terms.*

#### 19. INVALIDITY OF ONE OR MORE PROVISIONS

*19.1. The invalidity of any term of these User Terms shall not affect the validity of the other provisions of these User Terms. If and to the extent that any provision of these User Terms is invalid, or is unacceptable in the given circumstances, a provision shall apply between the parties instead that is acceptable considering all the circumstances, taking into account the content and the purpose of these User Terms.*

#### 20. CONFLICT

*In the event of any contradiction or inconsistency between this User Terms and any other agreement executed between You and Ola, the terms of the User Terms shall prevail unless the exception has been expressly agreed to in writing by making reference to the relevant Clause sought to be modified under this User Terms.*

#### 21. DISCLAIMER

21.1. You agree that Ola is merely an electronic platform to facilitate aggregation of Vehicles and does not in any manner provide transportation services. Ola does not endorse, advertise, advise or recommend You to avail the Services of any Driver. Ola also does not guarantee or provide assurance in respect of the behaviour, actions or data of the users posted on the Site.

21.2. We do not authorize anyone to make a warranty on Our behalf and You shall not rely on any statement of warranty as a warranty by Us.

21.3. Ola and their representatives, officers, employees, agents and contractors shall not be liable for any loss, damage, claim, expense, cost (including legal costs) or liability arising directly or indirectly from Your use or non-use of the Service or the Site, or Your reliance upon the Service or the information contained upon the Site (whether arising from Ola or any other person's negligence or otherwise).

21.4. This Site, Application and all content on the Site and the Application are provided on an "as is" basis without warranties of any kind, either express or implied, including without limitation warranties of title or implied warranties of merchantability or fitness for a particular purpose. You acknowledge, by Your access of the Site and/or Application, that Your access of the Site and/or Application and availing of Services is at Your sole risk, that You assume full responsibility for Your access and use of the Site and/or Application, and that Ola shall not be liable for any damages of any kind related to Your access and use of this Site and/or Application.

21.5. All images, audio, video and text in the Site and/or Application are only for illustrative purposes. None of the models, actors or products in the images, if any is endorsing the Services in any manner. Any resemblance of any matter to anybody or anything is purely unintentional and/or coincidental.

21.6. Ola is not engaged in the insurance business and does not provide any insurance services. Ola has facilitated provision of insurance services for the benefit of Customers, under group travel insurance policies availed from insurance companies, whereby Ola is acting as the group manager of the policy. Ola does not guarantee or make any promise in relation to the insurance policy/ insurance company, including but not limited to any benefits from use of the insurance services provided by the insurance companies, such as coverage, claims and settlements. Any claim or servicing of insurance policies, raised through the Application, remains a matter between the Customer and the insurance company, and Ola shall not be responsible for the actions of the insurance company or the Customer. It is to be noted that the insurance policy number, claim certificate, invoice for the insurance premium/ fee collected from the Customer is not be issued by Ola, but will be issued by the respective insurance company. Any issues in receiving tax invoices or issues faced in claiming the insurance are not the responsibility of Ola. Ola disclaims all and all liability in relation to the services of the insurance company. Please reach out to the insurance company in case of any questions/ issues.

## 22. MODIFICATION OF THE SERVICE AND USER TERMS

22.1. Ola reserves the right, at its sole discretion, to modify or replace, in part or full, any of these User Terms, or change, suspend, block, discontinue or restrict your use to all or any feature of the Service or Application at any time.

22.2. Ola shall not be required to notify You of any changes made to these User Terms. The revised User Terms shall be made available on the Site. You are requested to regularly visit the Site to view the most current User Terms. You can determine when Ola last modified the User Terms by referring to the "Last Updated" legend above. It shall be Your responsibility to check these User Terms periodically for changes. Ola may require You to provide Your consent to the updated User Terms in a specified manner prior to any further use of the Site and the Services. If no such separate consent is sought. Your continued use of the Site, following the changes to the User Terms, will constitute Your acceptance of those changes. Your use of the Site and the Services is subject to the most current version of the User Terms made available on the Site at the time of such use.

## 23. NOTICE

23.1. Ola may give notice by means of a general notice on the Service or Application, or by electronic mail to Your email address or a message on Your registered mobile number, or by written communication sent by regular mail to Your address on record in Ola's account information.

23.2. In case any query or complaint is unresolved or if you did not receive a satisfactory response from the 24\*7 support, you can escalate the matter to our

Grievance Officer by sharing the details of the complaint ticket created:

Details of the Grievance officer Jagadishwar Subramani Prestige Startech, Block C, Ola Campus, Hosur Rd, Koramangala Industrial Layout, Koramangala, Bengaluru, Karnataka-560095 email id: [grievance@olacabs.com](mailto:grievance@olacabs.com) Phone: 080 3710 1828

## 24. ASSIGNMENT

Details of the Nodal officer Pradeesh U R

Prestige Startech, Block C, Ola Campus, Hosur Rd. Koramangala Industrial Layout, Koramangala, Bengaluru, Karnataka-560095 email id: [nodal.officer@olacabs.com](mailto:nodal.officer@olacabs.com) Phone: 080 3710 1828

24.1. You shall not assign Your rights under these User Terms without prior written approval of Ola. Ola can assign its rights under the User Terms to any affiliate.

## 25. APPLICABLE LAW AND DISPUTE RESOLUTION



*These User Terms are subject to the laws of India. Any dispute, claim or controversy arising out of or relating to these User Terms or the breach, termination, enforcement, interpretation or validity thereof or the use of the Site, the Service or the Application (collectively, "Disputes") the parties shall attempt to settle the same amicably, through negotiation and consultation at such offices of Ola as Ola may designate. In the event the dispute is not resolved internally between after at least 30 (thirty) days of negotiation, in good faith, the same shall be subject to binding and final arbitration in accordance with the Arbitration and Conciliation Act, 1996 as amended from time to time or in case the Arbitration and Conciliation Act, 1996 is no longer in force, as per any law relating to arbitration in force at the time of such reference. The reference shall be made to a sole arbitrator mutually appointed by Ola and You. The place of the arbitration shall be Bengaluru, Karnataka, unless otherwise mutually agreed by Ola and You in writing. Subject to the above, any Dispute will be subject to the exclusive jurisdiction of courts in Bangalore, India.*

68. From a conjoint reading of terms and conditions of the Subscription Agreement and the terms of the Agreement between OLA and the rider-subscriber, and in light of the analysis of the same as made above it cannot be said that OLA is just in the business of receiving, storing or transmitting the electronic records on behalf of another or providing service only with respect to that record which includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online-market places and cyber cafes as envisaged in the definition of the term "Intermediary", as defined under the Information Technology Act, 2000. OLA is also not merely discharging the function of

an intermediary limited to providing the access to a communication system over which information made available by third parties is transmitted or temporarily stored or hosted as envisaged under clause (a) of sub-section (2) of Section 79 of the said Act. Though a disclaimer is given at clause 21 of the agreement stating that

*'OLA is merely an electronic platform to facilitate aggregation of vehicles and does not in any manner provide transportation services and it does not endorse, advertise or recommend to avail service of any driver and that it does not guarantee or provide assurance in respect of the behaviour, action, data of users etc.'*

the contents of forgoing clauses of the agreements extracted hereinabove would abundantly make clear that OLA is not just an 'Intermediary' as sought to be canvassed.

69. On other hand unbridled and unilateral power and control which is retained exclusively by the OLA and which it wields over the Driver-Subscriber and the rider-subscriber with regard to every aspect of the contract terms including but not limited to determining rates of various fees, charges for the ride contemplated under the aforesaid agreements, nature, extent and manner of service offered, usage, maintenance of devices provided by OLA during the service as well as power and control with regard to receiving and declining the bookings,

payments of the consideration, manner and method of payment, cancellation policies, emergency service offer to the customers, disclaimers, indemnifications, applicable laws in the event of disputes and the saving clauses in the aforesaid agreement would manifestly indicate that the OLA is in complete control of the entire business of providing transportation though it claims that it is only providing a technology platform to arrange and schedule the transportation. There is hardly any bargaining power or option left either with the rider-subscriber or with the driver-subscriber in the matter of drafting the terms of those Agreements. The only option is to accept the whole contract as it is and there is no other, however fair or unfair may be the terms.

70. Another aspect which cannot be lost sight of is the competency and ability of a common rider-subscriber and driver-subscriber to understand the language, purport, terms and effects of these contracts, which are being entered into and becoming a 'BINDING CONTRACT' by mere click of a button even as indicated by OLA. Argument canvassed on

behalf of OLA is that there is no compulsion to utilise its service and one is free and at liberty to choose or not to choose. True it is, that though such an option is available same cannot be used as an excuse not to adhere to the statutes and directives, as held by the Apex Court in the case of **LIC OF INDIA AND ANOTHER VS. COMSUMER EDUCATION AND RESEARCH CENTRE AND OTHERS (1995) 5 SCC 482** at paragraph 49 of the said judgment which reads as under ;

*'The authorities or private persons or industry are bound by the directives contained in Part IV, Part III and Preamble of the Constitution. It would thus be clear that the right to carry on trade is subject to directives containing the Constitution, the Universal Declaration of Human Rights and Convention on Right to Development for Socio-Economic Justice. Social security is a facet of socio-economic justice to the people and means to livelihood'*

71. For forging reasons and analysis this court is of the considered view that for the purpose of PoSH Act 2013 the Driver-Subscriber is an 'Employee' of the OLA and OLA is not merely an 'Intermediary' as contended. Point Nos.2 and 3 are answered accordingly.

**POINT NO.4**

72. 'Gender' as generally understood and represented, refers to socio-culturally defined roles, relationships,

responsibilities, expectations, privileges, behaviours and characteristics including dress codes and attitudes attributable to girls and boys, women and men which are susceptible of evolution and changes.

73. 'Gender Sensitization' is a process which involves, amongst other, bringing awareness of gender sensitivity in the society and to encourage its members to recognise, acknowledge, accommodate, respect and treat everyone equally and honourably irrespective of their differences and diversities which are largely due to their socio-cultural backgrounds.

74. Process of gender sensitization especially with regard to equality, respect, honour and dignity of women and with regard to protection and prevention of women against sexual harassment requires an absolute indiscriminate and unbiased approach and conviction by one and all, to condemn and eradicate the evil, wherever and whenever it is found to exist. Lest, it encourages and emboldens the evil monger, who is out there to seize every opportunity to achieve the devilish desire. Virtuous and righteous sensitivity of a Society is essential for creation of an inclusive and a healthy living space. Gender

sensitivity would remain incomplete if sense of protection, equality and safety is not pervading at every space and walk of life.

75. 'Zero Tolerance Policy' means an absolute and total refusal to accept any conduct or behaviour, by anyone whatsoever and for any reason whatsoever, which is contrary to the law especially governing protection and safety of women and children. It should not only mean that the perpetrator of the offence alone, if found guilty, be deprived of any leniency except as permissible under law, but it should also mean that those persons, institutions and bodies which are vested by a statute with a duty and responsibility of implementation of its provisions, specially enacted to protect and preserve the human dignity of women and children, be subjected to the 'zero tolerance policy' and held accountable in the event of their proven deliberate failure, to uphold the purity and sanctity of the duty cast on them.

76. No doubt despite there being numerous statutes, guidelines, advisories, instructions and awareness programmes

with regard to gender sensitization, implementation of the concept of 'zero tolerance policy' is still a distant dream. Perhaps this is for the reason that the 'zero tolerance policy' is being focused only against the perpetrators of the offence and there is hardly and or no accountability at all of the people at the helm of affairs. Necessary that all the stakeholders be made accountable, should there be any deliberate laxity on their part in implementation of provisions of the PoSH Act 2013. In fact sub section (1) of Section 26 of the PoSH Act 2013 provides for imposition of penalty on the employer failing to constitute Internal Complaint Committee (ICC) under Section 4, or to conduct enquiries under Sections 13 and 14 and to submit annual compliance report under Section 22 or contravenes or attempts to contravene or abets contravention of any other provisions of the Act or Rules made thereunder. The penalty prescribed is Rs.50,000/-. Further Aggregator Rules 2016 provides for actions for their breach including cancellation of licence issued in favour of Aggregators thereunder.

77. Following are the instances of non compliance and contravention by ICC and OLA not only of the provisions of the

PoSH Act 2013 and Aggregators Rules 2016 but also their own 'zero tolerance policy' which finds mention in the terms and conditions applicable to the driver-subscribers under the Subscription Agreement;

(a) First of all ICC distanced itself from even accepting the complaint and conducting inquiry on the premise of there being no 'employer' and 'employee relationship' between the driver-subscriber and OLA;

(b) Without even adverting to complaint filed by the petitioner, ICC takes up the plea of it lacking jurisdiction to conduct the enquiry purportedly on the advise of its external counsel. Seeking such an opinion and closing the complaint based on such advise is neither permissible nor contemplated under the PoSH Act 2013;

(c) In the statement of objections ICC has referred to a letter correspondence issued by it purportedly assisting the jurisdiction police in conducting the investigation pursuant to the complaint lodged by the petitioner. In the said letter it is contended that Ola Fleet Technologies Private Limited, which admittedly one of the group companies of OLA, was the owner of the vehicle bearing number No.KA-53-C-9192 involved at the



time of incident. ICC was least expected to examine and inform the complainant that the vehicle was owned by the subsidiary of OLA and ought to have examined the liability of OLA Fleet Technologies Private Limited and its Driver in the matter, instead of flatly denying and refusing on the premise of both the vehicle and the driver being complete strangers;

(d) Perusal of notices and email correspondence produced by the petitioner on the other hand reveal that; by notice dated 21.09.2018 petitioner through her counsel had called upon OLA seeking confirmation of compliance with the requirements of Motor Vehicles Act, 1988 and the Rules framed thereunder including Aggregators Rules, 2016. She had called upon to furnish the steps which OLA had taken to support the safety of women and to initiate sexual harassment proceedings under the PoSH Act, 2013. In the reply dated 27.09.2018 OLA had stated that since the driver partner was not an 'employee' of OLA and was an independent contractor, PoSH Act, 2013 was not applicable and even any complaint was filed before ICC of OLA the same could not be proceeded with as it lacked jurisdiction. It is further stated that OLA did not have power to take

disciplinary action against driver except blacklisting/terminate the driver partner and co-operate with the authorities of OLA diligently. Petitioner by e-mail dated 30.09.2018 had sought to submit the complaint to ICC through mail which was bounced. The reply mail stated that the group which the petitioner was trying to contact was not existing or the petitioner may not have permission to post the message to the group. The said reply mail has asked the petitioner to seek answers to the questions on any other Google group or visit the help centre at [https://support.google.com/a/olacabs.com/bin/topic.py?.](https://support.google.com/a/olacabs.com/bin/topic.py?)

78. Following the same petitioner caused issue of another notice on 05.10.2018 requesting OLA to initiate the proceedings on the complaint under the PoSH Act, 2013. Since there was no response to the same, petitioner caused issue yet another communication in the nature of reminder to OLA on 09.10.2018. An email dated 09.10.2018 has been forwarded to the petitioner by ICC stating that external legal counsel of ICC had advised that ICC had no jurisdiction to take up the complaint and that the OLA had been taking few steps to assist the criminal investigation which they will continue to assist;

(a) The aforesaid exchange of notices and email correspondences indicate that repeated demands and requests being made by the petitioner to furnish the details of the compliance made by OLA with relevant provisions of law imploring to enquire into the complaint which has been refused and declined for the reasons of offender being an impersonator;

(b) Rules 7, 8, and 10 of the Aggregators Rules, 2016 imposes statutory obligation on OLA to ensure compliance with the conditions enumerated thereunder;

(c) Rule 10(2) mandates that if the licensee uses or causes or allows a taxi to be used in any manner not authorised by the permit or provisions mentioned therein, the licensee and driver shall be jointly and severally responsible for such defaults and for payment of penalty under the provisions of the Act and Rules;

(d) Rule 10(3) further provides that any untoward incident occurring during the course of a ride, licensee shall

inform the same to the licensing authority as well as to the jurisdictional police immediately;

(e) Failure to comply with the Aggregators Rules, 2016 would result in suspension or cancellation of licence. Admittedly, OLA being an aggregator and licensee under Rule 2016 has not placed material as to compliance made with respect to the aforementioned rules;

79. From the aforesaid instances it is clear that there is a complete and deliberate lack of exhibition of sensitivity, seriousness or the urgency on the part of both ICC and OLA in addressing the repeated pleas and requests of the petitioner under the garb of a pre-concluded notion of its driver - partners not being the employees, even without there being a formal enquiry.

80. It may be necessary to note nowhere in the Subscription Agreement or in the customers agreement available on the website of OLA, is there any categorical mention that OLA would not take any complaint or be responsible with regard to any untoward incident during the ride as its `driver

partner' were not its employees. On the other hand repeated assurances/representations made by the OLA in the agreements namely clause No.10 under the heading 'Emergency Services of the Customer' which is extracted hereinabove, OLA has held itself out that it is its responsibility to provide for and ensure safety and security of the customers with absolute 'zero tolerance policy'. Reading of the definition of the 'Driver' who is the only person which the rider with whom the rider will be in contact indicate that the said drivers are the individuals evaluated, appointed and trained by the operator associated with OLA. Relevant also at this juncture also to note that in the reply notice dated 27.09.2018 that was issued on behalf of OLA in response to the legal notice dated 21.09.2018 that was caused issued by the petitioner, at paragraphs 5 and 6 following is stated:

*"5. We, at Ola, carryout sanity checks of our driver partners at the time of engaging such individuals or transport service provider followed by PVC/CRC (ie., Police Verification Check and Court records check.) Upon receiving any complaint in relation to safety incidents our customer care personnel and safety response team conduct thorough detailed investigation while fully co-operating with law enforcement agencies.*

*6. Consist with our objective to curb and nullify threats against our women passengers, and being responsible corporate having utmost concern for the safety of its women passengers, Ola has implemented a robust safety mechanism to check cases of harassment and misdemeanour to women. To address your concern relating to our commitment to ensure women's safety, various steps implemented by us till date in this regard, are enumerated herein below:*

a) Gender Sensitization:

*i At the time of commencement of operation with Ola, each driver-partner undergoes a formal training which tackles many behavioural aspects, especially with respect to women customers. This training covers aspects such as avoiding unnecessary conversation, avoid staring at women passengers, being cautious to avoid physical contact even while exchanging currency amongst other issues.*

*ii Further, we are also in talks with industry experts in gender sensitization to provide on going digital training for all active driver-partners on our platform."*

81. The aforesaid contents of the reply notice makes it clear that OLA has indeed given the petitioner to understand that it has taken the responsibility of providing necessary training as above, to its 'driver partners' and it is safe to use its services. But now it transpires that these assurances have remained only on its portal without there being any action on the ground except expressing sympathies. These assurances and representations made by OLA without any intention or actions to implement, as is evident in this case, are nothing short of inducing customers to opt for the travel using its services on empty assurance of OLA owning complete responsibility of safety and security of the customer, only to remain non-communicado and non-responsive when it matters the most. Material produced by the petitioner with regard to similar incidents occurring elsewhere not denied by the OLA and

its acceptance of Driver Swapping incidents being a common phenomenon and OLA admittedly neither taking any steps to curb the same nor bothering to bring the same notice of the authorities would further indicate that OLA has least priority in the matter.

82. The horrific and inexplicable ordeal which the petitioner has undergone has its own telling on the person's psychology and personality. Situation of a person as that of the petitioner who was seized and captivated in a moving vehicle with a person, unauthorised/impersonator, having devilish intent, motive and design cannot even be comprehended. Any vulnerable person could have been in that position. Petitioner who opted OLA ride acting upon the promise and assurance of safety and protection offered by OLA having withstood this dangerously treacherous moments sought to register her complaint and intervention of ICC only in furtherance to her fundamental, statutory and contractual rights which she was entitled to having entered into an agreement with OLA while downloading OLAcab app, which has been brazenly and without any scant regards breached and violated by ICC and OLA. The

facts and circumstances of the case therefore warrants petitioner be suitably compensated for the trauma she has undergone.

83. Also requires to be noted that though the Aggregators Rules 2016 more particularly Rule 10 (2) and (3) impose obligation on the OLA not to allow or cause to allow the taxi to be used in any manner not authorised by permit or provisions mentioned thereunder and to inform the licensing authority regarding any untoward incident, Respondent No.4 being the licensing authority in the instant case has taken no steps in the matter though it is vested with the power and responsibility of enquiring into the matter and passing orders including suspending and cancellation of the licence. The grounds urged for inaction by the authority is OLA not informing it about the incident.

84. This petition was filed on 14.02.2019. Notice of this petition has been accepted by a counsel on behalf of the respondent No. 4 on 06.03.2019. Respondent No.4 did not even bother to file its version even after lapse of five years. Its only when this court by order dated 09.08.2024 directed learned



Additional Government Advocate to furnish the details of the officers/authorities who are in-charge and responsible to ensure the compliance of the Aggregators Rules 2016, the officers concerned woke up from their deep slumber. On the direction of this court, the names of the officers who were holding the position at the relevant period, that is, between 09.08.2018 and 01.07.2024 is furnished by learned Additional Government Advocate.

85. Thereafter, on 13.08.2024 affidavit of officer currently in charge has been filed offering explanation and stating about the promulgation of Aggregators Rules, 2016 and the amendment brought to Rule 130 (A) of the Karnataka Motor Vehicle Rules providing of disabling the child lock in the motorcabs vide notification dated 14.12.2018. In the statement of objections filed on 20.08.2024, that is on the last date of hearing of the matter respondent No.4 has attempted to salvage itself of its inaction by producing a copy of notice dated 16.08.2024. In the said notice it is stated that OLA had applied for licence under the Aggregators Rules 2016 and was granted the same for a period of 5 years and the said period of 5 years

has expired and its renewal application is still pending before the respondent No.4 for its consideration and that since OLA had not complied with the Rule 10(3) of the Aggregators Rules, 2016 it has called upon the respondent No.2 to submit the explanation within seven days. The contents of the said notice are even more shocking. In that now it is revealed that the OLA is operating even without renewal of its licence as mandatorily required under Aggregators Rules, 2016. Respondent No.4 before whom the alleged application for renewal of licence is pending has done nothing in furtherance to its statutory obligations and duties imposed under the Motor Vehicles Act and Rules, 1988 and Aggregators Rules, 2016. Nothing much to state about the readiness and willingness of the State, its functionaries and instrumentalities to uphold and implement, amongst other, the law relating to prevention and prohibition of sexual harassment of women.

86. It is inexplicable as to how OLA is operating its vast business even without possessing a valid Licence as mandatorily required under the Aggregators Rule 2016. The

issuance of Notice dated 16.08.2024 by respondent No.4 under the circumstances referred to above is nothing but an eyewash.

87. Respondent No.4 and the officers in-charge are equally guilty of deliberate inaction and negligence in discharging their statutory obligations. The guilt of inaction equally lies at the threshold of the respondent No.4 and the officers who are expected to discharge the obligations and the public trust reposed in them, requiring to be mulcted with costs.

88. Now it is well settled that under Article 226 of the Constitution of India, High Courts can mould the relief granting compensation to the victim of the injuries caused on account of negligence, inaction and indifference of public functionaries or for proven violation of fundamental rights.**(Rudul Shah vs. State of Bihar (1983) 4 SCC 141. Delhi Domestic Working Women Forum vs. Union of India (1995) 1 SCC 14, D.K.Basu Vs. State of West Bengal (1997) 1 SCC 416 Common Cause, a registered Society vs. Union of India (1999) 6 SCC 667 , Chairman , Railway Board vs. Chandrima Das (2000)2 SCC 465).**

89. Sexual harassment has been defined under Section 2(n) of the PoSH Act, 2013 which is as under;

" 2(n) "sexual harassment" includes any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely:—  
(i) physical contact and advances; or  
(ii) a demand or request for sexual favours; or  
(iii) making sexually coloured remarks; or  
(iv) showing pornography; or  
(v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;"

90. Admittedly petitioner has been subjected to the sexual harassment falling within the components of the aforesaid definition resulting in violation of her fundamental, statutory and contractual right to safety, protection, preservation of her dignity.

91. Observations of Apex Court that "*Under Our Constitutional Scheme the State is not merely under an obligation to respect fundamental rights guaranteed by Part III but under an equal obligation to ensure conditions in which those rights can be meaningfully and effectively enjoyed by one and all* [**Secretary, Ministry of Information and Broadcasting, Government of India and others Vs Cricket Association of Bengal and others (1995) 2 SCC 616**] and "*The requirement of efficiency is an overriding mandate of the*

*constitution and inefficient administration betrays the present as well as future of the nation." (Indra Sawhney Vs Union of India and others -AIR 1992 SC 477)* as aptly applicable to the facts and circumstance of the instant case.

92. ICC and OLA who are guilty of deliberate negligence and inaction in the matter as narrated above are bound to compensate the petitioner apart from they being liable to be subjected for prosecution under the provisions of PoSH Act, 2013. The compensation being awarded is not in commensuration to the hardship, agony and mental trauma which the petitioner has undergone. It is only in recognition of breach and violation of her fundamental rights on account of inaction on the part of ICC and OLA as noted hereinabove. In addition, petitioner is at liberty to seek redressal of her civil rights before appropriate forum as may be permissible under law if so advised.

Point No.4 is answered accordingly.

**POINT No.5:**

93. In the light of the aforesaid analysis and discussion it is clear that the writ petition as filed by the petitioner against

ICC and OLA for the reliefs as sought against them is maintainable under Article 226 of the Constitution of India.

94. That ICC being under statutory obligation to accept the complaint filed by the petitioner, to enquire into allegations of sexual harassment against her by the driver of OLA taxi has failed in discharging its statutory obligation on the erroneous premise of it lacking jurisdiction in the matter.

95. Petitioner is entitled for the reliefs sought in the writ petition for the reasons and with necessary modifications as indicated hereunder:

- a) As regards the relief sought for by the petitioner in the nature of issuance of writ of mandamus directing ICC to enquire into the complaint of the petitioner dated 30.09.2018 as per Annexure-F in accordance with the provisions of PoSH Act, 2013, since this Court has come to the conclusion that there exists relationship of 'employer' and 'employee' between OLA and the driver and also for the reason of the taxi admittedly belonging to 'OLA Fleet Technologies Pvt. Ltd.' a subsidiary of OLA, ICC is required to conduct the enquiry as the offender is ascertainable and the

criminal proceedings against the said impersonator is still pending consideration. Besides, as already noted above the definition of the term 'employee' includes person employed on contract with or without the knowledge of the principal employer, the impersonator in the instant case who was admittedly allowed to operate the OLA taxi by the driver-subscriber contrary to the terms of Subscription Agreement and the Aggregators Rules 2016 cannot be allowed to go scot free merely because ICC and OLA contend that they have no control either over the driver-subscriber or the impersonator, which is contrary to material on records. The facts and circumstances of the case analyzed and discussed hereinabove would not allow but to grant the relief as sought for in this regard by the petitioner.

- b) As regards the second relief directing respondent No.3 as the Ministry, Women and Child Development Union of India to ensure strict compliance with the provisions of PoSH Act, 2013 by ICC and OLA and direction to respondent No.4 to issue such rules as may be necessary to protect women and children availing taxi service and to ensure their safety and security is concerned, it is necessary to note that the Apex Court in the cases of **AURELIANO FERNANDIS VS. STATE OF GOA** reported in **(2024) 1 SCC 632** and **INITIATIVES FOR INCLUSION FOUNDATION AND**

***ANOTHER VS. UNION OF INDIA AND OTHERS***

reported in **(2024)1 SCC 779** has issued several directions under various requirements. The said directions cover governmental and non-governmental organizations and also a few private establishments such as bodies governing professionals enumerated thereunder. The Apex Court in its direction at paragraph 25.G.(xvii) issued in the case of ***Initiatives for Inclusion Foundation(supra)*** has already indicated that ***"consequent directions to all the private sector workplaces under Section 2(o)(ii) can be passed once the District Officer is able to discern an exhaustive list of entities."*** Since the matter is seized before the Apex Court no directions in this regard are required.

- c) As regards relief in the nature of direction to the respondent No.4 to suspend the licence issued to the respondent No.2 under the Aggregator Rules, 2016 respondent No.4 in its statement of objections stated that it has issued a notice on 16.08.2024 seeking explanation within a period of seven days. Though OLA at present does not possess valid licence mandatorily required under the Aggregators Rules, 2016, the respondent No.4 shall proceed with the matter taking into consideration the observation made herein above and shall complete the process within an outer limit of



90 (ninety) days from the date of receipt of certified copy of this order.

96. Accordingly, the following;

ORDER

Writ petition is partly allowed.

- I. Internal Complaint Committee- the respondent No.1 of ANI Technologies Pvt. Ltd., (OLA)-the respondent No.2 shall hold an enquiry into the complaint of the petitioner dated 30.09.2018 as per Annexure-F in accordance with the provisions of PoSH Act, 2013 and complete the process as expeditiously as possible within an outer limit of 90 (ninety) days from the date of receipt of certified copy of this order as per Section 11 of the PoSH Act, 2013 and submit the report to the District Officer as provided thereunder.
- II. No directions are required to be issued to Respondent No.3 with regard to prayer No.(b) for the reasons recorded at paragraph 95(b) hereinabove.
- III. Karnataka State Transport Authority-Respondent No.4 which has already issued the Notice dated 16.08.2024 seeking explanation from ANI Technologies Pvt. Ltd., (OLA)-the Respondent No. 2, shall proceed with the matter taking into consideration the observation made

herein above and shall complete the process in accordance with law after affording sufficient opportunity to the ANI Technologies Pvt. Ltd., (OLA)- the Respondent No. 2 within an outer limit of 90 (ninety) days from the date of receipt of certified copy of this order. It is made clear that before initiating any consequent action pursuant to the out come of such proceeding it shall bring to the notice of the Division Bench of this Court which is seized of the matter in writ appeal in W.A.No.4789/2016.

- IV. For the reasons recorded while answering point No.4 Internal Complaint Committee-the respondent No.1 and ANI Technologies Pvt. Ltd., (OLA)- the Respondent No. 2 are hereby directed to pay a sum of Rs.5,00,000/- to the Petitioner towards compensation and an additional sum of Rs.50,000/- towards litigation expenses within 30 (thirty) days from the date of receipt of certified copy of this Order;
- V. For the reasons recorded while answering point No.4 the concerned of the Additional Commissioner for Transport and Secretary of Respondent No.4 Authority shall personally pay a sum of Rs.1,00,000/- payable to the Karnataka Legal Service Authority within 30 (thirty) days from the date of receipt of certified copy of this Order;

- VI. Respondents and all concerned are directed to ensure compliance of provisions of Section 16 of the PoSH Act, 2013 in not publishing the identity and addresses of the persons involved in the matter.

Copy of this order be communicated to Respondent No.3 and concerned Chief Secretary, Government of Karnataka for necessary action.

The assistance rendered by Kum. Subiya Tasneem, Law Clerk cum Research Assistant is appreciated and placed on record.

**Sd/-  
(M.G.S. KAMAL)  
JUDGE**

SBN/RU/RL