

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**Reserved on : 23.03.2021**

**Pronounced on : 29.04.2021**

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

**A.Nos. 2785, 2678, & 3293 of 2020 & 656 of 2021**

**in**

**C.S.(Comm.Div.)No.154 of 2020**

**A.No. 2678 of 2020:**

Kapil Rajeshkumar Wadhwan  
Former Chairman and Managing Director,  
DHFL, at the relevant time, having office at:  
Warden House, 2<sup>nd</sup> Floor, Sir P M Road  
Fort, Mumbai – 400 001

and residing at  
22/23, Sea View Palace, Pali Hill, Bandra (West),  
Mumbai – 400 050.

... Applicant/2<sup>nd</sup> Respondent/ 2<sup>nd</sup> Respondent

**Vs.**

1. 63 Moons Technologies Ltd.,  
(Formerly known as Financial Technologies  
(India) Ltd.,)  
Represented by its Authorised Signatory  
Mr.D.John Dheepak  
having its registered office at Sakthi Tower-1  
7<sup>th</sup> Floor, E-766, Anna Salai,  
Thousand Lights, Chennai – 600 002.

... 1<sup>st</sup> Respondent/Applicant/Plaintiff

2. M/s. Wadhwan Global Capital Ltd.,  
Ground Floor, Madhva Building  
Near Family Court, Bandra (East) Mumbai,  
Mumbai – 400 054.  
Also at, 10<sup>th</sup> Floor, TCG Financial Center,  
BKC Road, Mumbai – 400 098.
3. Dheeraj Rajeshkumar Wadhwan  
Former Director, DHFL, at the relevant  
time, having office at: Warden House, 2<sup>nd</sup> Floor,  
Sir P M Road, Fort, Mumbai – 400 001  
and residing at  
22/23, Sea View Palace, Pali Hill, Bandra  
(West), Mumbai – 400 050.
4. Harshil Mehta  
Former Chief Executive Officer, DHFL  
having office at: Warden House, 2<sup>nd</sup> Floor,  
Sir PM Road, Fort,  
Mumbai – 400 001.
5. Santosh Sharma  
Former Chief Financial Officer, DHFL  
having office at: Warden House, 2<sup>nd</sup> Floor,  
Sir PM Road, Fort,  
Mumbai – 400 001.
6. M/s. Credit Analysis and Research Limited  
No.O-509/C, Spencer Plaza, 5<sup>th</sup> Floor,  
No. 769, Anna Salai, Chennai – 600 002.
7. M/s. Brickwork Ratings India Private Limited,  
2<sup>nd</sup> Floor, B Wing, Swelect House, No.5,  
Sir P.S. Sivasamy Salai, Mylapore,  
Chennai – 600 002.

8. M/s. Chaturvedi and Shah  
Chartered Accountants, A partnership firm  
registered under the provisions of the  
Indian Partnership Act, 1932,  
Having office at 714-715, Tulsiani  
Chambers, 212, Nariman Point,  
Mumbai – 400 021.
  9. M/s. T.R. Chadha & Co. LLP,  
5D, 5<sup>th</sup> Floor, Mount Chambres, 758,  
Anna Salai, Chennai – 600 002.
  10. M/s. Rajendra Neeti & Associates  
A partnership firm registered under the  
provisions of the Indian Partnership Act, 1932  
and having office at 144, Jolly Maker Chamber II,  
Nairmaan Point, Mumbai – 400 021.
  11. M/s. Catalyst Trusteeship Limited  
(Formerly GDA Trusteeship Limited),  
Ganapathy Colony, III Street,  
Teynampet, Chennai – 600 018.
- ... Respondents 2 to 11/Respondents/Defendants

**Prayer:-** This application filed under Order XIV Rule 8 of the O.S Rules read with Section 151 of CPC, praying to revoke the leave granted to the 1<sup>st</sup> respondent/plaintiff by this Hon'ble Court by the order dated 23.06.2020 in A.No. 1425 of 2020 in C.S.No. 154 of 2020.

**A.No. 2785 of 2020:**

M/s. Chaturvedi and Shah  
Chartered Accountants, A partnership firm  
registered under the provisions of the

Indian Partnership Act, 1932,  
Having office at 714-715, Tulsiani  
Chambers, 212, Nariman Point,  
Mumbai – 400 021.

... Applicant/8<sup>th</sup> Defendant

**-Vs-**

1. 63 Moons Technologies Ltd.,  
(Formerly known as Financial Technologies  
(India) Ltd.,)  
Represented by its Authorised Signatory  
Mr.D.John Dheepak  
having its registered office at Sakthi Tower-1  
7<sup>th</sup> Floor, E-766, Anna Salai,  
Thousand Lights, Chennai – 600 002.
2. M/s. Wadhwan Global Capital Ltd.,  
Ground Floor, Madhva Building  
Near Family Court, Bandra (East) Mumbai,  
Mumbai – 400 054.  
Also at, 10<sup>th</sup> Floor, TCG Financial Center,  
BKC Road, Mumbai – 400 098.
3. Kapil Rajeshkumar Wadhwan  
Former Chairman and Managing Director,  
DHFL, at the relevant time, having office at:  
Warden House, 2<sup>nd</sup> Floor, Sir P M Road  
Fort, Mumbai – 400 001 and residing at  
22/23, Sea View Palace, Pali Hill, Bandra (West),  
Mumbai – 400 050.
4. Dheeraj Rajeshkumar Wadhwan  
Former Director, DHFL, at the relevant  
time, having office at: Warden House, 2<sup>nd</sup> Floor,  
Sir P M Road, Fort, Mumbai – 400 001  
and residing at  
22/23, Sea View Palace, Pali Hill, Bandra  
(West), Mumbai – 400 050.

5. Harshil Mehta  
Former Chief Executive Officer, DHFL  
having office at: Warden House, 2<sup>nd</sup> Floor,  
Sir PM Road, Fort,  
Mumbai – 400 001.
6. Santosh Sharma  
Former Chief Financial Officer, DHFL  
having office at: Warden House, 2<sup>nd</sup> Floor,  
Sir PM Road, Fort,  
Mumbai – 400 001.
7. M/s. Credit Analysis and Research Limited  
No.O-509/C, Spencer Plaza, 5<sup>th</sup> Floor,  
No. 769, Anna Salai, Chennai – 600 002.
8. M/s. Brickwork Ratings India Private Limited,  
2<sup>nd</sup> Floor, B Wing, Swelect House, No.5,  
Sir P.S. Sivasamy Salai, Mylapore,  
Chennai – 600 002.
9. M/s. T.R. Chadha & Co. LLP,  
5D, 5<sup>th</sup> Floor, Mount Chambes, 758,  
Anna Salai, Chennai – 600 002.
10. M/s. Rajendra Neeti & Associates  
A partnership firm registered under the  
provisions of the Indian Partnership Act, 1932  
and having office at 144, Jolly Maker Chamber II,  
Nairmaan Point, Mumbai – 400 021.
11. M/s. Catalyst Trusteeship Limited  
(Formerly GDA Trusteeship Limited),  
Ganapathy Colony, III Street,  
Teynampet, Chennai – 600 018.

... Respondents/Defendants

**Prayer:-** This application filed under Order XIV Rule 8 of the O.S Rules read with Clause 12 of the Letter's Patent and Order III Rule 1 of the O.S Rules, praying to revoke the leave granted to the 1<sup>st</sup> respondent/plaintiff herein by order dated 23.06.2020 by this Hon'ble Court to file the suit against the applicant herein.

**A.No. 3293 of 2020:**

M/s. Brickwork Ratings India Private Limited,  
2<sup>nd</sup> Floor, B Wing, Swelect House, No.5,  
Sir P.S. Sivasamy Salai, Mylapore,  
Chennai – 600 002. ... Applicant

**-Vs-**

1. 63 Moons Technologies Ltd.,  
(Formerly known as Financial Technologies  
(India) Ltd.,)  
Represented by its Authorised Signatory  
Mr.D.John Dheepak  
having its registered office at Sakthi Tower-1  
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Mumbai – 400 054.  
Also at, 10<sup>th</sup> Floor, TCG Financial Center,  
BKC Road, Mumbai – 400 098.
3. Kapil Rajeshkumar Wadhwan  
Former Chairman and Managing Director,  
DHFL, at the relevant time, having office at:

Warden House, 2<sup>nd</sup> Floor, Sir P M Road  
Fort, Mumbai – 400 001 and residing at  
22/23, Sea View Palace, Pali Hill, Bandra (West),  
Mumbai – 400 050.

4. Dheeraj Rajeshkumar Wadhwan  
Former Director, DHFL, at the relevant  
time, having office at: Warden House, 2<sup>nd</sup> Floor,  
Sir P M Road, Fort, Mumbai – 400 001  
and residing at  
22/23, Sea View Palace, Pali Hill, Bandra  
(West), Mumbai – 400 050.
5. Harshil Mehta  
Former Chief Executive Officer, DHFL  
having office at: Warden House, 2<sup>nd</sup> Floor,  
Sir PM Road, Fort,  
Mumbai – 400 001.
6. Santosh Sharma  
Former Chief Financial Officer, DHFL  
having office at: Warden House, 2<sup>nd</sup> Floor,  
Sir PM Road, Fort,  
Mumbai – 400 001.
7. M/s. Credit Analysis and Research Limited  
No.O-509/C, Spencer Plaza, 5<sup>th</sup> Floor,  
No. 769, Anna Salai, Chennai – 600 002.
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Indian Partnership Act, 1932,  
Having office at 714-715, Tulsiani  
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Anna Salai, Chennai – 600 002.
10. M/s. Rajendra Neeti & Associates  
A partnership firm registered under the  
provisions of the Indian Partnership Act, 1932  
and having office at 144, Jolly Maker Chamber II,  
Nairmaan Point, Mumbai – 400 021.
11. M/s. Catalyst Trusteeship Limited  
(Formerly GDA Trusteeship Limited),  
Ganapathy Colony, III Street,  
Teynampet, Chennai – 600 018. ... Respondents

**Prayer:-** This application filed under Order XIV Rule 8 of the O.S Rules read with Section 151 CPC, praying to revoke the leave granted by this Hon'ble Court in A.No. 1425 of 2020 to institute the above in C.S.(Comm) No.154 of 2020.

**A.No. 656 of 2021:**

Harshil Mehta  
Former Chief Executive Officer, DHFL  
having office at: Warden House, 2<sup>nd</sup> Floor,  
Sir PM Road, Fort,  
Mumbai – 400 001. ... Applicant/4<sup>th</sup> Defendant

**Vs.**

1. 63 Moons Technologies Ltd.,  
(Formerly known as Financial Technologies  
(India) Ltd.,)

Represented by its Authorised Signatory  
Mr.D.John Dheepak  
having its registered office at Sakthi Tower-1  
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... Respondent/Plaintiff

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Also at, 10<sup>th</sup> Floor, TCG Financial Center,  
BKC Road, Mumbai – 400 098.
3. Kapil Rajeshkumar Wadhwan  
Former Chairman and Managing Director,  
DHFL, at the relevant time, having office at:  
Warden House, 2<sup>nd</sup> Floor, Sir P M Road  
Fort, Mumbai – 400 001  
  
and residing at  
22/23, Sea View Palace, Pali Hill, Bandra (West),  
Mumbai – 400 050.
4. Dheeraj Rajeshkumar Wadhwan  
Former Director, DHFL, at the relevant  
time, having office at: Warden House, 2<sup>nd</sup> Floor,  
Sir P M Road, Fort, Mumbai – 400 001  
and residing at  
22/23, Sea View Palace, Pali Hill, Bandra  
(West), Mumbai – 400 050.
5. Santosh Sharma  
Former Chief Financial Officer, DHFL  
having office at: Warden House, 2<sup>nd</sup> Floor,  
Sir PM Road, Fort,  
Mumbai – 400 001.

6. M/s. Care Ratings Ltd.,  
No. O-509/C, Spencer Plaza, 5<sup>th</sup> Floor, No.769,  
Anna Salai, Chennai – 600 002.
7. M/s. Brickwork Ratings India Private Limited,  
2<sup>nd</sup> Floor, B Wing, Swelect House, No.5,  
Sir P.S. Sivasamy Salai, Mylapore,  
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8. M/s. Chaturvedi and Shah  
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and having office at 144, Jolly Maker Chamber II,  
Nairmaan Point, Mumbai – 400 021.
11. M/s. Catalyst Trusteeship Limited  
(Formerly GDA Trusteeship Limited),  
Ganapathy Colony, III Street,  
Teynampet, Chennai – 600 018.

... Respondents/Defendants

**PRAYER IN A.No. 656/2021:-** This application filed under Order XIV Rule 8 of the O.S Rules read with Order III Rule 1 of OS Rules read with Clause 12 of Letters Patent, praying to pass an order revoking the leave granted by order dated 23 June, 2020 in A.No. 1425 of 2020 by this Hon'ble Court to the plaintiff under Clause 12 of the Letters Patent on the ground that no cause of action has arisen in Chennai.

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For Applicant/2<sup>nd</sup> defendant  
in A.No. 2678 of 2020 : Mr. T.R.Rajagopalan  
for M/s. AAV Partners

For Applicant/4<sup>th</sup> defendant  
in A.No. 656 of 2021 : Mr. Arun C. Mohan

For Applicant/7<sup>th</sup> defendant  
in A.No. 3293 of 2020 : Mr. Rohan K. George

For Applicant/8<sup>th</sup> defendant  
in A.No. 2785 of 2020 : Mr. Anirudh Krishnan

For respondent/Plaintiff  
in all applications : Mr. AL. Somayaji  
Senior Counsel  
Mr. P.S.Raman  
Senior Counsel  
Mr. T.K.Baskar for  
Mr. Nithyaesh Vaibhav

## **COMMON ORDER**

All these applications have been filed by the defendants in the suit.

A.No. 2678 of 2020 had been filed by the 2<sup>nd</sup> defendant in the suit seeking to revoke the leave granted to the plaintiff by order dated 23.06.2020 in A.No. 1425 of 2020 in C.S.No. 154 of 2020.

2. A.No. 2785 of 2020 had also been filed seeking to revoke the leave granted to the plaintiff to institute the suit. This application has been filed by the 8<sup>th</sup> defendant in the suit.

3. A.No. 3293 of 2020 had also been filed seeking a similar relief to revoke the leave granted and this application had been filed by the 7<sup>th</sup> defendant in the suit.

4. A.No. 656 of 2021 is also an application seeking to revoke the leave granted and had been filed by the 4<sup>th</sup> defendant in the suit.

5. Arguments were heard in the above applications along with applications seeking to reject the plaint. Those applications are A.Nos.

2676 of 2020, which had been filed by the 9<sup>th</sup> defendant, A.No. 2786 of 2020 which had been filed by the 8<sup>th</sup> defendant, A.No. 3069 of 2020 which application had been filed by the 7<sup>th</sup> defendant, A.No. 657 of 2021 which application had been filed by the 4<sup>th</sup> defendant, A.No. 658 of 2021 which application had been filed by the 6<sup>th</sup> defendant and A.No. 659 of 2021 which application had also been filed by the 6<sup>th</sup> defendant.

6. It must be mentioned that in A.No. 658 of 2021, the 6<sup>th</sup> defendant had sought to strike off the plaint on the ground of abuse of process and the said application had been filed under Section 151 CPC read with Order 6 Rule 16 CPC. The other applications seeking to reject the plaint had been filed under Order 7 Rule 11 CPC.

7. It is only appropriate that before taking up the applications seeking to revoke the leave for discussion, the averments in the plaint are stated.

8. C.S. (Comm.)No. 154 of 2021 had been filed by the plaintiff, 63 Moons Technologies Ltd., formerly known as Financial

Technologies (India) Limited., a Company incorporated under the provisions of the Companies Act 1956 with registered office at Chennai against the defendants seeking a Judgment and Decree directing the defendants jointly and severally to pay to the plaintiff a sum of Rs.231,60,00,000/- as on 31.05.2020 together with further interest at the rate of 24% p.a, from 01.06.2020 till date of payment. It had been stated that the principal amount was Rs.200,00,00,000/- and the balance represented the interest till 31.05.2020.

9. It had been stated in the plaint that the 1<sup>st</sup> defendant M/s. Wadhwan Global Capital Ltd., is a promoter entity of Dewan Housing Finance Ltd., (DHFL) and was holding 32.84% of the shares of DHFL. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants, Kapil Rajeshkumar Wadhawan and Dheeraj Rajeshkumar Wadhawan, were former Chairman and Managing Director, DHFL and former Director, DHFL respectively and were each said to have been holding 25.56% of shares in DHFL. It was also stated that the 4<sup>th</sup> and 5<sup>th</sup> defendants, namely, Harshil Mehta and Santosh Sharma were former Chief Executive Officers of DHFL and can be termed as persons who held Key Managerial posts involved in managing the day to-day

affairs of DHFL. It was also stated that the 6<sup>th</sup> and 7<sup>th</sup> defendants M/s. Credit Analysis and Research Ltd., and M/s. Brickwork Ratings India Private Ltd., were Credit Rating Agencies who had issued credit ratings for the public issue of 10,00,00,000/ Secured Redeemable Non-Convertible Debentures (NCDs) of face value of Rs.1,000/- each issued by DHFL. It had also been stated that the 8<sup>th</sup> defendant M/s. Chaturvedi and Shah, a Chartered Accountants' Firm was the Statutory Auditor of DHFL for the financial years 2016-2017 to 2018-2019. Similarly, 9<sup>th</sup> defendant M/s. T.R. Chadha & Co. LLP, and the 10<sup>th</sup> defendant M/s. Rajendra Neeti & Associates, both Chartered Accountants' Firms. Statutory Auditors of DHFL for the financial year 2013-2014 to 2015-2016. It was also stated that the 11<sup>th</sup> defendant M/s. Catalyst Trusteeship Limited, formerly known as GDA Trusteeship Limited., a Company incorporated under the provisions of the Companies Act 1956 had been appointed as the Debenture Trustee by DHFL under Debenture Trust Deed dated 06.09.2016.

**10.** It had been further stated in the plaint that DHFL was a non banking Finance Company engaged in the business of providing

financial products and was registered with National Housing Board and listed with Bombay Stock Exchange and National Stock Exchange. They had issued 10,00,00,000/- Secured Redeemable Non-Convertible Debentures (NCDS) of face value of Rs.1,000/- each for an amount of Rs. 2,00,000/- lakhs with an option to retain oversubscription of upto Rs.8,00,000 lakhs aggregating upto Rs.10,00,000/- lakhs as mentioned in the prospectus dated 25.08.2016.

11. In the prospectus, DHFL stated they had issued the said public issue to raise a debt to a extent of Rs.10,000/- crores for onward lending, financing and for repayment of interest and principal of existing borrowings of DHFL under the said prospectus. The 6<sup>th</sup> and 7<sup>th</sup> defendants were said to have given credit ratings of 'Care Triple AAA' and 'BWR AAA, Outlook Stable' respectively to the NCDS which indicated that the NCDS had the highest degree of safety. It was also stated that the 11<sup>th</sup> defendant was under an obligation to protect the interest of the NCD holders in the events of default by DHFL in relation to timely payment of interest and repayment of principal. They were also under an obligation to enforce the security by selling and realising profits

by the trust properties as an obligation to the NCD holders. It had been stated that the prospectus contained a representation that the 11<sup>th</sup> defendant will protect the interest of NCD holders in case of default committed by DHFL. The said prospectus was signed by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants on behalf of DHFL. It had also been stated that the 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> defendants as Statutory Auditors were also under a duty to exercise due care and caution in auditing the accounts of DHFL and in presenting the audit reports. It was also stated that the 1<sup>st</sup> to 5<sup>th</sup> defendants had an obligation to carry on the business of DHFL in line with the values and standards represented by them.

**12.** The plaintiff, relying on the representations contained in the prospectus with respect to the credit ratings given by the 5<sup>th</sup> and 6<sup>th</sup> defendants and the audited financial statements and audited reports issued by the 9<sup>th</sup> and 10<sup>th</sup> defendants and relying on the representations of the 2<sup>nd</sup> and 3<sup>rd</sup> defendants had acquired 20,00,000 number of NCDs to a face value of Rs.200/- Crores. The allotment of the NCDs was on 09.09.2016. They were for a period of 7 years and were redeemable on 09.09.2023. The interest was payable on the said debentures on the 9<sup>th</sup> September of every year from 2017 to 2023.

**13.** The plaintiff further stated that on examining the annual report of DHFL for the financial year 2016-2017 along with audited financial statements and the audited report of 8<sup>th</sup> defendant, the plaintiff found that the financial value of DHFL had improved on a year to year basis. A similar opinion was also formed on the basis of the audited financial statements and audited reports of the 7<sup>th</sup> defendant for the financial year 2017-2018. It had been stated that for the financial year 2018-2019, DHFL had appointed as Statutory Auditors the 8<sup>th</sup> defendant and M/s. Deloitte Haskins & Sells LLP, Chartered Accountants. The plaintiff reliably believed that DHFL was financially very sound and that the money invested by the plaintiff would be secure.

**14.** It had also been stated in the plaint that in or around September 2018, there were reports in the media highlighting liquidity constraints faced by DHFL. The 11<sup>th</sup> defendant, when enquired did not give any satisfactory response. In the last week of January 2019, a news portal, Cobrapost.com revealed that a financial scam had occurred and the 2<sup>nd</sup> and 3<sup>rd</sup> defendants had taken away more than Rs.31,000/- Crores of public money by grant of loans and advances to Shell Companies

related to 2<sup>nd</sup> and 3<sup>rd</sup> defendants. It had been stated that the 2<sup>nd</sup> and 3<sup>rd</sup> defendants created dozens of shell companies with a nominal capital of Rs.1/- lakh with many of them having the same / similar addresses and e-mail addresses and the same set of initial Directors.

15. The details of some of the loans advanced by DHFL as mentioned in Cobrapost.com had also been given in the plaint. The plaintiff relied on the said report and alleged that the 2<sup>nd</sup> and 3<sup>rd</sup> defendants had siphoned off substantial funds from DHFL. It was further stated that the Audit Committee of DHFL appointed M/s. T.P. Ostwal & Associates LLP to review the allegations in Cobrapost.com and give a report to the committee.

16. The statutory Auditors, namely, the 8<sup>th</sup> defendant and M/s.Deloitte also gave their suggestions. However, it is alleged that owing to instructions from the 1<sup>st</sup> to 3<sup>rd</sup> defendants, the suggestions were not taken into consideration. In March 2019 all the members of the Audit Committee of DHFL resigned and it was alleged that it was due to the interference of the 2<sup>nd</sup> to 5<sup>th</sup> defendants.

17. In February 2019, the credit ratings were downgraded by the 6<sup>th</sup> and 7<sup>th</sup> defendants from AAA to AA+ and from BWRAAA to BWRAA- respectively. It was also stated that DHFL intimated the stock exchange that there would be delay in submission of audited financial results for the financial year ending 31.03.2019. There was also further delay in submission of unaudited financial statements for the quarter ending 30.06.2019.

18. The plaintiff by letter dated 11.07.2019 requested the 11<sup>th</sup> defendant to take effective steps that if any amount was repaid by DHFL towards loan to any creditors then proportionate amount in respect of NCDs should also be paid to the plaintiff. There were further exchange of correspondences between the plaintiff and the 11<sup>th</sup> defendant in this regard.

19. In the meanwhile, DHFL committed default in all the NCDs issued by it. The details regarding such default as on 09.09.2019 were also given in the plaint. The plaintiff issued a notice on 12.09.2019 to the 11<sup>th</sup> defendant as well as to DHFL highlighting their concern in the

recovery of the amount invented by them. However, there was no proper or effective response from the 11<sup>th</sup> defendant. The plaintiff also alleged that the 11<sup>th</sup> defendant had failed to protect the interest of the plaintiff and other NCDs holders. It was also alleged that they did not take any legal measures against DHFL.

**20.** Finally, in November 2019, the 11<sup>th</sup> defendant filed an Original Application before the Debt Recovery Tribunal at Mumbai for recovery of Rs.26,861,92,62,415/-.

**21.** It had also been stated that in view of the defaults by DHFL, the Reserve Bank of India superseded the Board of Directors of DHFL including the 2<sup>nd</sup> and 3<sup>rd</sup> defendants and appointed an Administrator to manage the affairs. By order dated 03.12.2019, the National Company Law Tribunal also admitted a Company Petition (I.B.) No. 4258/MB/2019 filed by Reserve Bank of India under Section 227 read with Section 239(2)(zk) of the Insolvency and Bankruptcy Code, 2016 and appointed an Administrator as Interim Resolution Professional of DHFL.

**22.** The plaintiff had already filed a suit in COMSS/1332/2019 before the Bombay High Court for recovery of the amounts invested under the NCDS against DHFL. In view of the orders of the National Company Law Tribunal, the plaintiff could not proceed further with the said suit.

**23.** It was alleged that the 2<sup>nd</sup> to 5<sup>th</sup> defendants did not inform the 11<sup>th</sup> defendant regarding the defaults and had actually provided false information to the stock exchanges. It was also alleged that they also made false entries in the books of accounts and had given misleading financial statements. It was also stated that the 6<sup>th</sup> and 7<sup>th</sup> defendants and also the 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> defendants by their deliberate acts of negligence had permitted the fraud to take place. It was also stated that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants were in collusion with the 4<sup>th</sup> and 5<sup>th</sup> defendants and with the help of the 6<sup>th</sup> to 11<sup>th</sup> defendants used the cloak of corporate veil to perpetrate fraud for their own personal gain.

**24.** It was also stated that the 1<sup>st</sup> defendant is an alter ego of the 2<sup>nd</sup> and 3<sup>rd</sup> defendants just as DHFL is an alter ego of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants.

**25.** The suit had therefore been filed against the 1<sup>st</sup> to 3<sup>rd</sup> defendants in their capacity as Promoters/ Directors of DHFL, against the 4<sup>th</sup> and 5<sup>th</sup> defendants in their capacity as Key Managerial Persons of DHFL and against 6<sup>th</sup> and 7<sup>th</sup> defendants in their capacity as Credit Rating Agencies engaged by DHFL and against 8<sup>th</sup> to 10<sup>th</sup> defendants in their capacity as Statutory Auditors of DHFL and against the 11<sup>th</sup> defendant in their capacity as Debentures Trusteeship to be held jointly and severally liable to the plaintiff with respect to the damages suffered by the plaintiff.

**26.** Further details with respect to the alleged fraud and the actions taken by the Enforcement Directorate were also stated in the plaint. In this regard, it had also been stated that the CBI had also registered a FIR in RC 219 2020 / E0004 dated 07.03.2020.

**27.** The plaintiff relied on Sections 34 to 37 of the Companies Act 2013 to hold the defendants liable for the act of falsely inducing the plaintiff to part with a huge sum of money. It had been stated that as per Section 35 of the Companies Act, 2013, read with Sections 36 & 37, the

Directors and the Key Managerial Persons and the Officers of DHFL, who had knowingly made misstatements regarding the financial projections of DHFL and who according to the plaintiff had also concealed material facts are liable to compensate the plaintiff for the loss which the plaintiff suffered. It had been stated that the cause of action for the suit had first arisen on 16.09.2019 when DHFL did not remit the interest in the bank account of the plaintiff for the NCDs even after 7 days from the date of default and on various subsequent dates when reports were given by the Enforcement Directorate and other Investigating Agencies.

**28.** The plaintiff had also as stated, filed Commercial Summary Suit No. 1332 of 2019 before the Bombay High Court against DHFL for recovery of the amounts under NCDs. However, further continuation of the suit had been prohibited in view of the orders of the National Company Law Tribunal.

**29.** It had been stated that the cause of action for the present suit was different from the cause of action for the said suit in Bombay High Court.

**30.** The 2<sup>nd</sup> and 3<sup>rd</sup> defendants were not defendants in the said suit though reliefs in Interlocutory Applications were sought against them. The 4<sup>th</sup> to 11<sup>th</sup> defendants were not parties to the said suit. The plaintiff also sated that they will give credit of any amount recovered under the commercial suit or under the Insolvency Resolution Process of DHFL or otherwise. The plaintiff further claimed that the present suit is a Commercial Dispute falling under Sections 21(c)(i), 21(c)(xiii), 21 (c) (xviii) and the proviso 1 to Section 7 of the Commercial Courts Act 2015. It was under these circumstances that the suit had been filed invoking the commercial jurisdiction of this Court.

**31.** Along with the suit, the plaintiff had also filed several applications seeking reliefs of injunctions of various nature against the defendants.

**32.** A learned Single Judge had also granted exparte interim injunctions in the applications filed by the plaintiff.

**33.** On receipt of the notice, the defendants entered appearance and filed applications to revoke the leave granted and to reject the plaint and also to vacate the orders of injunction.

**34.** It must be mentioned that while instituting the suit, the plaintiff had also filed A.No. 1425 of 2020 seeking leave to institute the suit as against the 1<sup>st</sup> to 8<sup>th</sup> and 10<sup>th</sup> defendants.

**35.** In the plaint, the plaintiff had, in the cause title claimed that the 6<sup>th</sup>, 7<sup>th</sup>, 9<sup>th</sup> and 11<sup>th</sup> defendants had offices in Chennai. However, the other defendants had offices outside Chennai. Therefore leave to sue was sought under Clause 12 of the Letters Patent. Leave was also granted by a learned Single Judge of this Court by order dated 23.06.2020. Seeking to revoke the said leave, A.Nos. 2678/2020, 2785/2020, 3293/2020, 6566/2021 had been filed by the 2<sup>nd</sup>, 8<sup>th</sup>, 7<sup>th</sup> and 4<sup>th</sup> defendants.

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**36.** As stated, applications have also been filed seeking to reject the plaint under Order 7 Rule 11 CPC and also to strike out the plaint as an abuse of process of Court under Section 151 CPC read with Order 6

Rule 16 CPC. Arguments were advanced with respect to both the sets of applications, namely, to revoke the leave and to reject the plaint.

37. It would be appropriate to take up for discussion the applications seeking to revoke the leave first. Further discussion of the applications seeking to reject the plaint would be undertaken on the answer given to the applications seeking to revoke the leave. If the leave is revoked, then automatically the plaintiff would have to be directed to present the plaint in the Court of competent jurisdiction. If the leave is not revoked, then further discussions would be required to examine the plaint and the documents filed therewith to determine whether the plaint should be rejected or struck off as an abuse of process of Court or to reject the said reliefs sought by the defendants.

38. Heard Arguments advanced by Mr.T.R.Rajagopalan, learned Senior Counsel on behalf of M/s. AAV Partners, who appeared for the applicant/2<sup>nd</sup> defendant in A.No. 2678 of 2020, Mr.Arun C Mohan, learned counsel who appeared for applicant/4<sup>th</sup> defendant in A.No. 656 of 2021, Mr.Rohan K. George, learned counsel who appeared for the

applicant/7<sup>th</sup> defendant in A.No. 3293 of 2020 and Mr. Anirudh Krishnan, learned counsel who appeared for the applicant/8<sup>th</sup> defendant in A.No. 2785 of 2020.

**39.** It must also be mentioned that extensive arguments had also been advanced in the applications filed to reject the plaint and in that connection, also heard arguments advanced by Mr. T.R. Rajagopalan, learned Senior Counsel, Mr. Arun C Mohan, Mr. Rohan K. George and Mr. Anirudh Krishnan, learned counsels, and also by Mr. Rahul Balaji, learned counsel for the 6<sup>th</sup> defendant and Mr. R. Parthasarathy, learned counsel for the 9<sup>th</sup> defendant and Mr. Mohit Sharma, learned counsel for the 11<sup>th</sup> defendant. The 6<sup>th</sup> and 9<sup>th</sup> defendants had filed applications to reject the plaint. The 11<sup>th</sup> defendant did not file any such application.

**40.** Arguments were advanced by Mr. AL. Somayaji, learned Senior Counsel, Mr. P.S.Raman, learned Senior Counsel and Mr. T.K. Baskar, learned counsel, instructed by Mr. Nithyaesh Vaibhav on behalf of the plaintiff, disputing and contesting the arguments put forth on behalf of the defendants.

41. In A.No. 2678 of 2020, the second defendant stated that the leave had been obtained by suppressing material facts particularly that a similar relief had been claimed in Commercial Suit No. 1332 of 2019 filed by the plaintiff against DHFL and pending in the Bombay High Court. It had also been stated that this Court has no territorial jurisdiction to entertain the present suit. It had been stated that the plaintiff had indulged in forum shopping since they did not obtain any orders from the Bombay High Court. It was also stated that since the nature of evidence that would be required with respect to determining the subject matter of the suit are available primarily at Mumbai and since the defendants reside and carrying business outside the jurisdiction of this Court, the balance of convenience requires that the present suit is not entertained by this Court. सत्यमेव जयते

42. It had also been stated that no cause of action had arisen within the jurisdiction of this Court. The plaintiff, by clever drafting had filed the present suit claiming that this Court has jurisdiction. It had been further stated that in the present suit, the plaintiff had claimed that a

substantial part of cause of action had arisen within the jurisdiction of this Court owing to the fact that the 6<sup>th</sup> to 9<sup>th</sup> and 11<sup>th</sup> defendants were having offices in Chennai and that the consequence of monetary loss had been felt within the jurisdiction of this Court and that the plaintiff has a place of business in Chennai and that DHFL has wide presence in Tamil Nadu and that the plaintiff has employees within the jurisdiction of this Court and its registered office is in Chennai and it also files its annual returns with the Registrar of Companies at Chennai. It had been stated that these factors are not material to grant leave.

43. It had also been stated that in the suit at Mumbai, the plaintiff had stated that DHFL has its registered office at Mumbai and that the NCDs were issued in Mumbai and default in payment had been committed in Mumbai and that therefore the cause of action had arisen in Mumbai.

44. It had also been stated that the present suit had been valued at the same value as the suit now pending in Bombay High Court. It had been stated in that in the suit now pending in Mumbai, there had been no averments about monetary loss being allegedly felt in Chennai. It had

also been stated that the 6<sup>th</sup> defendant has its registered office in Mumbai, the 7<sup>th</sup> defendant has its registered office in Bengaluru, the 9<sup>th</sup> respondent has its registered office in Hyderabad and the 10<sup>th</sup> defendant has offices all over the country and the 11<sup>th</sup> defendant has its registered office in Pune. It had been claimed that the address of these defendants as given in the plaint are addresses of only branch offices and they could not be given as a reason for instituting the suit within the jurisdiction of this Court.

45. It had also been stated that the plaintiff had extensively relied on the prospectus issued and that the prospectus had constituted a contract between DHFL and the plaintiff. It had been stated that the NCDS were issued in Mumbai, the default was committed in Mumbai. It was on that basis that the earlier suit was filed in the Bombay High Court.

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46. It had been stated that in A.No. 1425 of 2020, there was no mention that there the fraud alleged spread all over India including within the jurisdiction of this Court. However, that fact was stated to be

a reason in the order granting leave. It had been finally stated that the balance of convenience clearly pointed out that this suit should have been instituted in Bombay High Court, where there is already a suit is pending on the same issue.

47. In the affidavit filed in support of A.No. 656 of 2021, the fourth defendant claimed that the plaint did not disclose the cause of action as against the 4<sup>th</sup> defendant and that he was neither a necessary nor a proper party. It had been stated that the prospectus was issued on 26.08.2016 and at that date the 4<sup>th</sup> defendant was not a Director of DHFL. He was also not named in the prospectus as an authorised person. The 4<sup>th</sup> defendant had also ceased to be in employment of DHFL on the date when the cause of action had first arisen, namely, on 16.09.2019. He had resigned as Joint Managing Director on 13.02.2019. It had also been stated that this Court has no territorial jurisdiction to examine the issues raised. It had been further stated that the plaintiff also has a corporate office in Mumbai but had suppressed that fact before this Court. That the plaintiff has a Corporate Office in Mumbai was however stated in the suit pending before Bombay High Court. The registered office of DHFL was

also at Mumbai. It was therefore stated that no cause of action had arisen within the jurisdiction of this Court. It was stated that only the Bombay High Court has jurisdiction to try the issues and to entertain the suit. It was stated that the jurisdiction of this Court cannot be invoked merely on the basis that a few defendants are claimed to have offices in Chennai. It was therefore stated that the leave granted to institute the suit should be revoked.

**48.** In the affidavit filed in support of A.No. 3293 of 2020, the 7<sup>th</sup> defendant stated that the suit is not maintainable before this Court. It was stated that the 7<sup>th</sup> defendant was a company based out of Bengaluru and having registered office at Bengaluru. It was also stated that no part of cause of action had arisen in Chennai. It was also stated that as per the terms and conditions under which NCDS were issued and as stated in the prospectus, the parties had agreed to oust the jurisdiction of all other Courts and had submitted themselves to the exclusive jurisdiction of the Courts at Mumbai for adjudication of all disputes. It was therefore stated only the Courts in Mumbai would have exclusive jurisdiction and this Court has no jurisdiction to decide the issues raised. It was therefore stated that the leave granted should be revoked.

**49.** In the affidavit filed in support of A.No. 2785 of 2020, the 8<sup>th</sup> defendant stated that no cause of action had arisen within the jurisdiction of this Court. It was stated that the balance of convenience indicated that the Bombay High Court would be the most convenient forum to adjudicate the issues raised. It had been stated that the plaintiff had filed the earlier suit at Mumbai invoking the jurisdiction of the Bombay High Court. The situs of the debentures were at the registered office of DHFL, the issuing company in Mumbai. It was stated that a perusal of the plaint and the plaint documents would clearly indicate that the plaintiff and all the defendants have offices in Mumbai. It had been stated that the addresses of some of the defendants have been given in Chennai only for the purpose of claiming jurisdiction.

**50.** It had been stated that the defendants have offices all over the country. It had been stated that no part of cause of action had arisen within the territorial jurisdiction of this Court. It had been stated that DHFL had not been impleaded as a party to the suit. It had been stated that by clever drafting, the plaintiff had invoked the jurisdiction of this Court. It had also been pointed out that in the Debenture Trust Deed, it

had been stated that in case of disputes, exclusive jurisdiction to examine the disputes had been conferred on the Courts in Mumbai. It had also been stated that this Court is a forum non convenience. It had been stated that the proper Court would be the High Court of Bombay. It had also been stated that the plaintiff had indulged in forum shopping by instituting the suit within this Court. It had been stated that the leave granted should therefore be revoked.

**51.** Counter affidavits have been filed in all the applications and the plaintiff had once again reiterated the averments made by them in the plaint. It had been stated that the cause of action for instituting the present suit was entirely different from the cause of action for instituting the suit in the Bombay High Court. It had been further stated that the suit in the Bombay High Court had been filed owing to the default in the payment of interest by DHFL. That suit had been filed since DHFL has registered office at Mumbai and in accordance with the terms of the contract which had been entered into between the plaintiff and DHFL. That contract provided exclusive jurisdiction to the Courts at Mumbai to examine disputes arising with respect to any matter mentioned in the

prospectus. In the prospectus, it had been stated that interest would be paid on the 9<sup>th</sup> of September every year from 2017 till 2023. Since there was a default in the payment of interest even after seven clear working days, the plaintiff had instituted the suit claiming recovery of the amount invested namely, Rs.200/- Crores together with interest. It had therefore been stated that the suit had been filed only for breach of the terms of the contract. That suit had been rightly instituted at Mumbai as against DHFL alone. None of the defendants in the present suit are parties to the said suit. It had been further stated that the present suit had been filed taking advantage of Sections 35 to 37 of the Companies Act 2013 which provided that in cases of misrepresentations and wrongful statements in a prospectus, which led a party to invest in any of the issues made by the company then the company and the Key Managerial Persons shall be held responsible to pay compensation owing to such misrepresentation. It had been therefore stated that the suit had been filed against the defendants herein who held the Offices of Promoters, Directors, Key Managerial Posts, Statutory Auditors, Credit Rating Agencies and Debentures Trustee. All these defendants had a duty and care to ensure that every statement made in the prospectus was correct and was not a misrepresentation. The plaintiff believed the statements in the prospectus

and had purchased the NCDS. It had been stated that since there had been a default and it had been further found that fraud had been committed, the plaintiff had suffered loss and the impact of loss had been felt at Chennai where the plaintiff has its registered office. The plaintiff also has its duty towards its shareholders. It had been stated that DHFL had not been impleaded as a defendant in view of the prohibition under Section 14(1)(a) of the Insolvency and Banking Code, 2016. It had been further stated that this Court has jurisdiction to examine the issues raised. As a matter of fact, the impact of the damage had been felt at Chennai. Justification to institute the said suit at Chennai had been reiterated and it was stated that since cause of action had arisen within the jurisdiction of this Court, the leave granted should be affirmed and the applications should be dismissed.

**52.** Arguments were first advanced on behalf of the applicants/defendants and thereafter rebuttal arguments were advanced on behalf of the plaintiff.

**53.** Mr. T.R. Rajagopalan, learned Senior Counsel, who argued on behalf of the 2<sup>nd</sup> defendant/applicant in A.No. 2678 of 2020, pointed out that the suit had been based on the Debentures Trust Deed. The learned Senior Counsel stated that in whatever manner the plaintiff projects the cause of action for the case, it will have to revolve around the prospectus and the Debentures Trust Deed. The learned Senior Counsel pointed out that the plaintiff had filed a Commercial Suit before the Bombay High Court claiming breach of contract and default in payment of interest. In the present suit, subsequent interest had been claimed. The learned Senior Counsel also pointed out the terms of the contract and also the terms of the prospectus wherein the parties had agreed to confer exclusive jurisdiction to the Courts at Mumbai. The learned Senior Counsel stated by no stretch of imagination can the suit filed in this Court be permitted to remain on file of this Court.

**54.** The Contract confers jurisdiction only on the Courts in Mumbai. Learned Senior Counsel further stated that the plaintiff also has an office at Mumbai. The suit in Bombay and the present suit would require common evidence to be adduced and common documents to be

examined to determine the issues raised. Therefore, the Bombay High Court alone will have competent jurisdiction to examine the issues raised. The learned Senior Counsel also pointed out the averment in the plaint at paragraph 122 that the plaintiff would give credit to any amount realised from the decree of the Bombay High Court and therefore stated that the present suit has the same cause of action as the suit in Bombay. Even in the statement of calculations in paragraph 126, interest had been calculated till 09.09.2019 in the suit at Bombay and subsequent interest alone has been claimed in the present suit. All the documents which have been filed are on the basis of the contract and the learned Senior Counsel pointed out that if the value under the contract is obtained, then the plaintiff cannot seek damages also. He also pointed out that in A.No. 1435 of 2020, namely, the application seeking leave to institute the suit, the fact that the Bombay High Court has exclusive jurisdiction in terms of the contract had not been stated. Learned Senior Counsel was emphatic in his submission that a second suit on the same cause of action is not maintainable.

**55.** Mr. Arun C Mohan, learned counsel for the 4<sup>th</sup> defendant/applicant in A.No. 656 of 2021 also relied on the arguments advanced by Mr. T.R. Rajagopalan, learned Senior Counsel and also reiterated that the suit in Mumbai and the present suit are based on the same cause of action. He pointed out that in paragraph 62 of the plaint, the date of default had been given as 09.09.2019. He also pointed out that the first cause of action arose when there was default in payment of interest. He pointed out that the suit had been based under Section 35 of the Companies Act 2013 claiming there were misleading statements in the prospectus but however the name of the 4<sup>th</sup> defendant did not find a place in the prospectus and he was also not in employment at the time when the prospectus was issued. The learned counsel pointed out that the Bombay High Court is the most appropriate Court to adjudicate the issues raised.

**56.** Mr. Rohan K. George, learned counsel for the 7<sup>th</sup> defendant / applicant in A.No. 3293 of 2020 stated that the actual basis of the suit is the issue of debentures by DHFL and consequent default in payment of interest by DHFL. The learned counsel pointed out that DHFL had not

been made a party/defendant to the present suit. He pointed out that the issue of debentures took place in Mumbai and also that the Registered Office of DHFL was in Mumbai.

**57.** The learned counsel pointed out that in the prospectus, it had been stated that the Registered Office of the 7<sup>th</sup> defendant was in Bengaluru. The branch office at Chennai did not carry on any substantial trade. He pointed out that in so far as suit transactions are concerned, the 7<sup>th</sup> defendant had acted only out of Bengaluru and Mumbai. He stated that all of the defendants are actually having places of business outside Chennai and therefore, contended that this Court is a Court of non convenience. He also stated that the parties had agreed to confer exclusive jurisdiction on the Courts in Mumbai and therefore, this Court has no jurisdiction to examine the issues raised. The learned counsel therefore stated that the leave granted should be revoked.

**58.** Mr. Anirudh Krishnan, learned counsel for the 8<sup>th</sup> defendant / applicant in A.No. 2785 of 2020 stated that the 8<sup>th</sup> defendant had been impleaded only because the 8<sup>th</sup> defendant was a Statutory Auditor of DHFL. However, it was pointed out that the 8<sup>th</sup> defendant was appointed

as a Statutory Auditor along with M/s. Deloitte and both the 8<sup>th</sup> defendant and M/s. Deloitte had resigned as Statutory Auditors. The plaintiff had not impleaded M/s. Deloitte as a party/defendant. Non impleading of M/s. Deloitte is correct, but at the the same time impleading of the 8<sup>th</sup> defendant is totally non justifiable. The learned counsel pointed out that the 8<sup>th</sup> defendant had issued a disclaimer under Section 143 of the Companies Act 2013 and within a month thereafter, had resigned as Statutory Auditor. It was also pointed out that the 8<sup>th</sup> defendant was appointed just a month before the issue of prospectus. It had therefore been contended that the plaintiff cannot have any cause as against the 8<sup>th</sup> defendant. Learned counsel also stated that the fact that the 8<sup>th</sup> defendant had resigned as Statutory Auditor was not stated in the plaint. He also pointed out that the situs of the suit debentures was only in Mumbai. The learned counsel therefore stated that the leave granted should be revoked.

**59.** While advancing arguments with respect to applications seeking to reject the plaint and to strike off the plaint, Mr. Rahul Balaji and Mr. R.Parthasarathy, also advanced arguments pointing out that the leave granted will have to be revoked.

**60.** Mr. Rahul Balaji, learned counsel, who appeared for the 6<sup>th</sup> defendant pointed out the terms of the Debentures Trust Deed wherein it had been very clearly stated that all dispute shall be adjudicated only in Courts in Mumbai. The learned counsel stated that the plaintiff has involved in forum shopping by filing the suit in Chennai when cause of action had not arisen at all at Chennai.

**61.** Mr. R. Parthasarathy, learned counsel for the 9<sup>th</sup> defendant also pointed out the very same aspects and was very emphatic in his submission that the plaintiff had chosen this Court more as a convenient Court for the plaintiff rather than as a forum convenience for all the parties concerned. The learned counsel pointed out that the suit itself was not maintainable since a suit claiming breach of contract had already been filed and is pending at Bombay and therefore stated that the leave granted should be automatically revoked.

**62.** Mr. Mohit Sharma, learned counsel, who appeared for the 11<sup>th</sup> defendant also argued that the leave granted should be revoked

primarily because the suit is based on a contract which contract provided exclusive jurisdiction of Courts in Mumbai. It is to be pointed out that the 11<sup>th</sup> defendant had not filed any application. However, the learned counsel pointed out that though it had been stated in the plaint that the 11<sup>th</sup> defendant has an office at Chennai, the said office at Chennai did not transact any business with the plaintiff. All correspondences emanated only from office at Mumbai. He also pointed out that the 11<sup>th</sup> defendant had filed an Original Application claiming about 26,000/- crores against DHFL which included the claim of the plaintiff. Learned Counsel stated that the National Company Law Tribunal is yet to decide on the applications pending before it and therefore, it cannot be presumed that there had been negligence on the part of the 11<sup>th</sup> defendant.

**63.** Mr. A.L.Somayaji, learned Senior Counsel for the plaintiff very seriously disputed the arguments advanced on behalf of the defendants. Learned Senior Counsel stated that the suit had been filed invoking Sections 34, 35, 36 and 37 of the Companies Act 2013. The learned Senior Counsel stated that Section 34 of the Companies Act 2013 had been introduced providing civil liability for any mistatement in a

prospectus which is likely to mislead prospective investors. It was very specifically pointed out that under Section 35 any person, namely a Director or anybody who is named in the prospectus or any Promoter or any Authorised Person or even an expert can be may liable to pay compensation if there is any misrepresentation in the prospectus. The learned Senior Counsel stated that the present suit was not based on the contract. It was based purely on the statements made in the prospectus giving an impression that DHFL was a company with sound financial basis and when later it had been found that the entire statements were false to the knowledge of the present defendants, the suit had been instituted. The learned Senior Counsel therefore stated that the suit is maintainable and also pointed out that institution of an earlier suit at Mumbai would not be a ground to contend that this suit should also have been instituted in Mumbai. The learned Senior counsel also pointed out that in this suit, the plaintiff was seeking compensation whereas in the suit at Mumbai, the plaintiff sought recovery of money owing to non payment of interest on the due date. The defendants here are all directly responsible for the statements made in the prospectus. Therefore, this Court has every jurisdiction to examine the issues raised. The plaintiff has its registered office in Chennai. The impact of the damage had been

felt in Chennai. Under Section 19 of the Code of Civil Procedure, 1908, the cause of action had arisen in Chennai and the plaintiff has a right to sue in Chennai. The learned Senior Counsel stated that to substantiate the issue of fraud, particularly with respect to the statements in the prospectus, substantial materials have been provided and they are all subject matter of evidence. The jurisdiction of this Court is not ousted. Moreover, the plaintiff had also given a complaint to the Economic Offences Wing at Chennai wherein a First Information Report had also been registered. Fraud had also been committed in Chennai and documents have also been filed along with the plaint on this aspect. The learned Senior Counsel therefore stated that leave had been granted in accordance with law and there was no case for revocation of the leave. It was pointed out that, it will be sufficient even if a part of the cause of action had arisen in Chennai. Learned Senior Counsel stated that the plaintiff can substantiate the averments made in the plaint only during the course of trial, and the plaintiff had filed necessary documents which will have to be read in conjunction with the averments in the plaint to hold that a prima facie case has been made out with respect to acts of fraud by DHFL and with respect to the misstatements made in the prospectus. It had been therefore contended that the leave granted should be confirmed.

64. Mr. P.S. Raman, learned Senior Counsel also argued on behalf of the plaintiff. The learned Senior Counsel pointed out Section 35 of the Companies Act 2013 and more particularly sub-section (2) of Section 35 wherein it had been stated that the onus was on the defendants to prove that they were not directly involved with the statements made in the prospectus. It would be sufficient for the plaintiff to establish that the statements in the prospectus are fraudulent in nature and that the defendants were responsible at some point or the other for the statements made in the prospectus. The burden then shifts to the defendants to prove that there were not responsible for those statements made in the prospectus. The learned Senior Counsel also pointed out the provision under Section 19 of the Code of Civil Procedure, 1908 and stated that the impact of the fraud had been felt in Chennai. The plaintiff is a company with registered office at Chennai. It has to look after the welfare of its shareholders. In view of the statements made in the prospectus, the plaintiff had invested a substantial sum of Rs.200/- crores by purchasing the NCDS. Subsequently, the plaintiff had suffered a direct loss. The suit in Mumbai was only to recover the money invested. The suit in

Chennai is with respect to fixing liability for the misrepresentations made in the prospectus. Both the suits revolve on different facts and the learned Senior Counsel therefore stated that the suit is maintainable in this Court. The learned Senior Counsel pointed out that if it is to be claimed that the suit should be filed only where the defendants have offices, then the defendants are having offices at various places, in Mumbai, Hyderabad, Bengaluru and in Pune. Therefore, the Court which is convenient to all the parties is this Court in Chennai where the plaintiff has its registered office. The learned Senior Counsel also stated that it would not lie in the mouth of the defendants, who had committed fraud of over 35,000/- crores to state that the Court in Chennai is not to their convenience. They have no right to plead convenience. They only have to explain whether they are responsible for the statements in the prospectus or not. Learned Senior Counsel pointed out that the issue of resignations raised by the 4<sup>th</sup> and the 8<sup>th</sup> defendants can be examined only during the course of trial. The learned Senior Counsel also pointed out that the plaint should read as a whole and if it discloses a cause of action, then leave granted should be confirmed.

65. Mr. T.K.Baskar, learned counsel who also argued on behalf of the plaintiff stated that the cause of action had arisen within Chennai where the impact of the fraud had been directly felt. The learned counsel stated that the suit had been based owing to the misstatements in the prospectus. The learned counsel pointed out that the fraud could not have happened without the co-operation or negligence of all the stakeholders like the Statutory Auditors, the Credit Rating Agencies and the Debentures Trustee, quite apart from the Promoters and the Persons holding Key Managerial Positions. The suit in Mumbai had been filed by the plaintiff in their capacity as a Debenture holder against DHFL for payment of the amount due. The suit before this Court had been instituted on a different cause of action and not for recovery of money. It was a claim for damages. It was a claim which had arisen on account of tort committed which tort has gained statutory recognition in view of Sections 35 and 37 of the Companies Act 2013. The learned counsel stated that the defendants held a statutory duty but had breached that particular duty, some of them fraudulently, some of them negligently. At any rate, the onus was on them to show that they were not directly involved with the statements made in the prospectus. The learned counsel

therefore stated that the suit was very much maintainable within the jurisdiction of this Court.

**66.** All the learned Senior Counsels/ Counsels relied on a series of Judgments which shall be discussed while examining the issues raised.

**67.** I have given my careful consideration to the materials available on record and to the arguments advanced.

**68.** I shall first take up for discussion the applications seeking to revoke the leave granted by order dated 22.06.2020 to the plaintiff in A.No. 1425 of 2020. The applications seeking to revoke the leave had been filed by the 2<sup>nd</sup> defendant in A.No. 2678 of 2020, by the 4<sup>th</sup> defendant in A.No. 656 of 2021, by the 7<sup>th</sup> defendant in A.No. 3293 of 2020 and by the 8<sup>th</sup> defendant in A.No. 2785 of 2020.

**69.** The plaintiff had sought leave to institute the suit within the jurisdiction of this Court under Clause 12 of the Letters Patent against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 8<sup>th</sup> and 10<sup>th</sup> defendants.

70. In the plaint, the plaintiff claimed that the 6<sup>th</sup>, 7<sup>th</sup>, 9<sup>th</sup> and 11<sup>th</sup> defendants have offices within Chennai. The other defendants were said to have offices outside Chennai.

71. The affidavit filed in support of the applications seeking leave to institute the suit in A.No. 1425 of 2020 is an exact replica of the averments made in the plaint.

72. Clause 12 of the Letters Patent, 1865 is as follows:-

***“12. Original Jurisdiction as to suits.-***

*And we do further ordain that the said High Court of Judicature at Madras, in exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try, and determine suits of every description if, in the case of suits for land or other immovable property, such land or property shall be situated, or, in all other cases, if the cause of action shall have arisen, either wholly, or in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the*

*said High Court; or if the defendant at the time of the commencement of the suit shall dwell or carry on business or personally work for gain, within such limits; except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause at Madras, in which the debt or damage, or value of the property sued for does not exceed one hundred rupees.”*

73. It had been stipulated that leave can be granted if the cause of action had arisen either wholly or in case the leave of the Court is obtained in part, within the local limits of the Ordinary Original Jurisdiction of the High Court.

74. In the instant case, the plaint will have to be read as a whole along with the documents filed to examine where and how it had been claimed that the cause of action had arisen either wholly or in part within the jurisdiction of this Court, to order that the defendants who are having offices outside the jurisdiction of this Court, should also subject themselves to the jurisdiction of this Court, to answer the issues raised in the plaint are concerned.

75. Even before examining the facts as stated in the plaint, it would be worthwhile to set out the provisions of law which the plaintiff had relied on as reasons for instituting the suit in the first instance.

76. The plaintiff had taken advantage of primarily Sections 34, 35 and 36 of the Companies Act, 2013 and had filed the suit taking further advantage of Section 37 of the Companies Act, 2013. The said provisions are extracted below for immediate reference.

77. Sections 34, 35, 36 & 37 of the Companies Act, 2013 are as follows:-

**“34. Criminal liability for misstatements in prospectus.—***Where a prospectus, issued, circulated or distributed under this Chapter, includes any statement which is untrue or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead, every person who authorises the issue of such prospectus shall be liable under Section 447:*

*Provided that nothing in this section shall apply to a person if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary.*

**35. Civil liability for misstatements in prospectus.—***(1) Where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person who—*

*(a) is a director of the company at the time of the issue of the prospectus;*

*(b) has authorised himself to be named and is named in the prospectus as a*

*director of the company, or has agreed to become such director, either immediately or after an interval of time;*

*(c) is a **promoter** of the company;*

*(d) has **authorised the issue of the prospectus**; and*

*(e) is an **expert** referred to in sub-section (5) of Section 26,*

*shall, without prejudice to any punishment to which any person may be liable under Section 36, be **liable to pay compensation** to every person who has sustained such loss or damage.*

*(2) **No person shall be liable under sub-section (1), if he proves—***

*(a) that, having consented to become a director of the company, **he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or***

*(b) that the **prospectus was issued without his knowledge** or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.*

*[(c) that, as regards every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by sub-section (5) of Section 26 to the issue of the prospectus and had not withdrawn that consent before [filing of a copy of the prospectus with the Registrar] or, to the defendant's knowledge, before allotment thereunder.]*

**(3) Notwithstanding anything contained in this section, where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person**

*referred to in sub-section (1) shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.*

**36. Punishment for fraudulently inducing persons to invest money.**—Any person who, either knowingly or recklessly makes any statement, promise or forecast which is false, deceptive or misleading, or deliberately conceals any material facts, to induce another person to enter into, or to offer to enter into,—

**(a)** any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting securities; or

**(b)** any agreement, the purpose or the pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or

*(c) any agreement for, or with a view to obtaining credit facilities from any bank or financial institution;  
shall be liable for action under Section 447.*

**37. Action by affected persons.—A suit may be filed or any other action may be taken under Section 34 or Section 35 or Section 36 by any person, group of persons or any association of persons affected by any misleading statement or the inclusion or omission of any matter in the prospectus.”**

*[Emphasis Supplied]*

**78.** Even though in the plaint, there is no specific reference to Section 19 of the Code of Civil Procedure, the learned Senior Counsels on behalf of the plaintiff, while advancing arguments also pointed out the said provision and urged that this Court has to be construed to be the Court of competent jurisdiction to examine the issues raised in the plaint.

**79.** Section 19 of the Code of Civil Procedure, 1908 is as follows:-

***“19. Suits for compensation for wrongs to person or movables.—Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts. ”***

*[Emphasis Supplied]*

**79.** There was yet another reason advanced for not instituting the suit in the Bombay High Court. Reference had been made during the course of arguments by the learned Senior Counsels for the plaintiff to Section 14 of the Insolvency and Bankruptcy Code, 2016. The said provision is extracted below, even though primarily the plaintiff placed reference only to Section 14(1)(a) of the said Code.

**“14. Moratorium:** (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:—

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) .....

**80.** Keeping the above provisions in mind, the facts as stated in the plaint shall be discussed in brief to determine whether this Court is the Court of convenience or the Court of non convenience to adjudicate the issues raised in the plaint. It must be kept in mind that the Court should be adjudged as a Court of convenience primarily by viewing the particular case from the angle of availability of materiel records. Ancillary aspects relating to the convenience of the parties and the witnesses may also examined.

**81.** The plaint had been filed under Order VII Rule 1 of the Code of Civil Procedure. The plaintiff, M/s.63 Moons Technologies Ltd., a company incorporated under the provisions of the Companies Act, 1956, claimed in the plaint that they had examined the annual report of M/s. Dewan Housing Finance Ltd., [DHFL] for the financial year 2014-2015 containing the audit financial statements and audited report issued by the 9<sup>th</sup> and 10<sup>th</sup> defendants, who were the Statutory Auditors for the said financial year. The plaintiff claimed that in the said annual report, the 2<sup>nd</sup> and 3<sup>rd</sup> defendants, in their capacity as Chairman and Managing Director of DHFL and Director of DHFL respectively had held out that DHFL was a leading Housing Finance Company which adhered strictly to regulatory and supervisory norms and focused their activities on affordable housing segment, housing finance companies and had also adopted a code of business ethics and was committed towards maintaining the highest standards of governance and that the assets had increased from Rs.44,678.48 crores in the financial year 2013-2014 to Rs.56,884.41 crores in the financial year 2014-2015, and that the Company has no portfolio disbursed loans and sanctioned loans which also correspondingly increased from the previous financial year and that

the capital adequacy ratio for the previous financial years and also for the financial year 2014-2015 were higher than the minimum prescribed capital adequacy ratio and that gross revenue had consistently increased on a year-on-year basis and finally that no penalties had been levied or punishments imposed on DHFL during the said financial year 2014-2015. The plaintiff claimed they placed reliance and trust on the said statements.

**82.** The plaintiff further claimed that the 9<sup>th</sup> and 10<sup>th</sup> defendants in their capacity as Statutory Auditors of DHFL were aware that the representations made to the public would be relied on while dealing with the NCDS issued by DHFL.

**83.** In the annual report for the financial years 2014-2015, 2015-2016, 2016-2017 and 2017-2018, it had also been represented that the NCDS issue by DHFL were guaranteed by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants through their company, the 1<sup>st</sup> defendant, held approximately 35% shareholding of DHFL. The plaintiff therefore believed that the payment of interest and repayment of NCDS would also

be guaranteed by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants. The plaintiff believed that the 2<sup>nd</sup> and 3<sup>rd</sup> defendants would conduct the affairs of DHFL in a proper bona fide legal manner and in the best interests of all the stakeholders.

**84.** The plaintiff claimed that they also relied on the Credit Ratings given by the 6<sup>th</sup> and 7<sup>th</sup> defendants. The plaintiff also examined the audited reports for the financial year 2015-2016 which reflected that the performance of DHFL was getting better and better on a year-on-year basis. Placing trust on such representations made in the annual reports, the plaintiff acquired 20,00,000 numbers of NCDS to a face value of Rs.200/- crores issued by DHFL which were allotted on 09.09.2016. They were redeemable on 09.09.2023. Interest was payable on the 9<sup>th</sup> of September every year from 2017 to 2018.

**85.** The plaintiff claimed they also examined the annual reports for the financial year 2016-2017 and 2017-2018 and had found that the financial performance of DHFL had increased on a year-on-year basis. The plaintiff believed that their investments were safe and that the 1<sup>st</sup> to 5<sup>th</sup> defendants were managing the affairs of DHFL as per standards

exported of them.

**86.** These representations made by the defendants in the annual report and in the prospectus towards the issue of NCDS had been stated in the plaint and these representations were contrasted with subsequent events which were also stated in the plaint.

**87.** It had been stated that the plaintiff came to know in September 2018 from media reports that there were liquidated constraints faced by DHFL. The News portal Cobra.com revealed a major financial scam had occurred in DHFL and the 2<sup>nd</sup> and 3<sup>rd</sup> defendants had siphoned off more than of Rs.31,000/- crores of public money by grant of loans and advances to shell companies related to them. The plaintiff then realised that the statements made in the Audited Financial Reports and in the prospectus were untrue statements and misrepresentations of the financial status of DHFL. The plaintiff realised that all the statements were false and claimed that they were false to the knowledge of the defendants.

**88.** It must be pointed out that the 2<sup>nd</sup> and 3<sup>rd</sup> defendants, as

stated, where the Chairman and Managing Director of DHFL and Director of DHFL respectively. The first defendant was a major shareholder of DHFL. The 4<sup>th</sup> and 5<sup>th</sup> defendants were the Chief Executive Officer and Chief Financial Officer of DHFL. The 6<sup>th</sup> and 7<sup>th</sup> defendants were Credit Rating Agencies. The 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> defendants were the Statutory Auditors of DHFL. The 11<sup>th</sup> defendant was the Debenture Trustee appointed by DHFL under the Debentures Trust Deed. The plaintiff therefore claimed that each one of the said defendants were either directly or indirectly involved in making the representations in the annual reports and in the prospectus prior to issue of NCDS . The plaintiff relied on those representations and statements in the prospectus and in the annual reports. Placing trust on the said representations/statements, the plaintiff also invested by subscribing to 20,00,000 numbers of NCDS to a total value of Rs.200/- Crores. The interest on the said debentures were payable on the 9<sup>th</sup> of September every year from 2017-2023. DHFL paid the interest on 9<sup>th</sup> of September 2017 and on 9<sup>th</sup> of September 2018. They defaulted in the payment of interest on 9<sup>th</sup> September 2019.

**89.** Claiming breach of agreement and seeking return of the amount invested and pointing out failure in payment of interest as promised, the plaintiff filed Commercial Summary Suit No. 1332 of 2019 before the Bombay High Court against DHFL for recovery of the amounts involved under the NCDS.

**90.** The present suit had been filed taking advantage of Section 37 of the Companies Act 2013 which gave a liberty to any person, who had been misled by statements in the prospectus and who had subscribed securities, or as in this case debentures of a company based on such misrepresentations, to file a suit, if loss or damage had been sustained as a consequents of such misrepresentation.

**91.** It is the claim of the plaintiff therefore that the cause of action for this suit is totally different from the cause of action for the suit instituted at Mumbai. The suit at Mumbai had been filed for breach of contract and the cause of action arose when breach was committed by non payment of interest which fell due on 09.09.2019. The claim for such interest arose from the very subscription of the NCDS and on the

statement made in the prospectus that interest shall be so payable.

**92.** The plaintiff claimed that on the other hand, this suit had been instituted seeking compensation for sustaining loss which loss has occurred owing to the statements/misstatements made in the prospectus and in the audit reports that DHFL had a sound financial structure.

**93.** The defendants on the other hand dispute this claim of the plaintiff that the cause of action for the suit at Mumbai and for the present suit are different. It is the contention of the defendants that the genesis of the entire controversy or dispute arose from the prospectus which had been issued by DHFL. In the prospectus, there was a promise to pay interest and non payment of the interest was the cause of action for filing of the suit at Mumbai. Claiming that the very statements in the prospectus are actually misstatements and misrepresentations, this suit had been filed in this Court. It is therefore claimed that the actual cause of action had arisen only on 09.09.2019 when there was default in the payment of interest. It was only then that the plaintiff apparently came to know that there was a scam involved and therefore had invoked civil

liability referring to Section 35 of the Companies Act, 2013.

**94.** It is thus imperative to examine whether the cause of action for both the suits arose on the same date or on the happening of the same incident or not.

**95.** The defining line between the arguments advanced on behalf of the plaintiff and the defendants is that the plaintiff insists that this suit should be regarded as a stand alone suit and should not be read in conjunction with the suit filed in the Bombay High Court.

**96.** On the other hand, the defendants claim that this suit is actually an extension of the suit at Mumbai and further claim that the relief sought in this suit can very well be sought in the suit at Mumbai. It was also stated that permission under Order 2 Rule 2 of the Code of Civil Procedure had not been obtained before instituting the present suit.

**97.** To this statement of the defendants, it is the contention of

the plaintiff that the defendant in the suit at Mumbai was only DHFL and DHFL is not a party to the present suit. The defendants herein are not parties in the suit at Mumbai. Therefore, it is contended, the very issue of seeking permission under Order 2 Rule 2 of CPC will not at all arise.

**98.** A careful reading of Section 35 of the Companies Act 2013 reveals that where a person, in this case, the plaintiff, has subscribed for securities, in this case, debentures, of a company, in this case DHFL, acting on statements in the prospectus and has sustained loss then the COMPANY AND every person, who was (i) the Director, (ii) named in the prospectus as Director, (iii) the Promoter, (iv) person who authorised the issue of the prospectus and (v) the expert who had given his written consent to the issue of the prospectus, shall be liable to pay compensation to the person in this case, the plaintiff who sustained loss or damage.

**99.** The proviso does not contemplate that the suit should be filed against the company OR any other person, who had been indicated in sub-clause (a) to (e) in sub-clause (1) of Section 35.

**100.** The conjunction used is AND between the words COMPANY / EVERY PERSON. Therefore, the suit should be filed against the company AND every other individual whom the plaintiff claims was responsible for the representations made in the prospectus. I therefore hold that it is thus imperative that the COMPANY is also made a defendant in a suit filed taking advantage of Section 35 of the Companies Act 2013 and as provided under Section 37 of the Companies Act 2013.

**101.** In the instant case, the company DHFL has not been made a party/defendant.

**102.** The reason for the same will have to be explained only by plaintiff. The reasons have not been stated.

**103.** The one explanation which has been stated during the course of arguments is that subsequent to the institution of the suit at Mumbai, proceedings under the Insolvency and Bankruptcy Code, 2016 had been initiated by the Reserve Bank of India and an Administrator had

been appointed superseding the Management of DHFL and more significantly moratorium had been granted under Section 14 of the said Code.

**104.** Section 14 had been extracted above. Under Section 14 (i)(a), the Adjudicating Authority shall, by an order, declare moratorium, thereby prohibiting, very specifically, the institution of suits or even continuation of pending suits, against the Corporate Debtor.

**105.** The Corporate Debtor is DHFL. It is therefore contended by the plaintiff that the continuation of the suit filed at Mumbai had been prohibited by operation of law. The plaintiff was also prohibited by the same operation of law from instituting any suit against DHFL. Therefore, the plaintiff had thought it appropriate to omit DHFL as a defendant in this suit and had filed the suit against the defendants herein claiming compensation by holding out that they are responsible for the misrepresentations made in the prospectus which led, according to the plaintiff, to suffer direct loss.

**106.** The learned Senior Counsels / Counsels for the defendants during the course of their argument pointed out that DHFL had not been made a party to the present suit and had indicated that the role of DHFL, or reference to DHFL, had been mentioned in practically every successive paragraph in the suit.

**107.** However, that DHFL had not been made a party inspite of the statutory requirement to make the company a party to the suit as mandated under Section 35 of the Companies Act, 2013 was not put forth during arguments.

**108.** The learned Senior Counsels /Counsels only stated that DHFL was a necessary party owing to the fact that the plaintiff had referred to DHFL in the body of the plaint at practically every paragraph and all the pages in the plaint but it was not contended that DHFL should be compulsorily made a party/defendant since the plaintiff had invoked the provisions of Section 35 of the Companies Act, 2013. Therefore, while addressing rebuttal arguments, the learned Senior

Counsels/Counsel on behalf of the plaintiff also did not traverse into Section 35 of the Companies Act, 2013 with specific reference to the necessity to make the company a party/defendant. They circumvented the issue and moved on to Section 14 of the Insolvency and Bankruptcy Code, 2016 and stated that they were prohibited from including DHFL as a defendant.

**109.** I would have appreciated if an argument had been put forth that though there is prohibition under Section 14(1)(a) of the Insolvency and Bankruptcy Code, 2016 to institute a suit against the Corporate Debtor, since another statute, namely, the Companies Act 2013 gives a right to a person affected owing to misstatements in a prospectus to institute a suit and such statute makes it mandatory that the company should be made a defendant in the suit, the plaintiff had actually impleaded DHFL as a defendant stating they were under compulsion to include DHFL as a defendant and invited the Court to adjudicate on that issue.

**110.** Both sides did not put forth such an argument and it would

be a meaningless exercise on my part to delve further into that aspect. The fact is DHFL has not been made a party/defendant. If DHFL had been made a party/defendant inspite of the prohibition under Section 14(1)(a) of the Insolvency and Bankruptcy Code, 2016 and reliance had been placed on Section 35 of the Companies Act, 2013, then, the issue of obtaining leave under Order 2 Rule 2 from the Bombay High Court would have arisen. The plaintiff having avoided impleading DHFL as a party/defendant, naturally can claim that leave under Order 2 Rule 2 of CPC need not be obtained and that the said provision would not be directly applicable as a precondition for the institution of the present suit.

**111.** During the course of arguments, reliance had also been placed on Section 19 of the Code of Civil Procedure 1908. In the cause of action paragraph, it had been stated that the impact of the damage had been felt in Chennai and in Tamilnadu and therefore, this Court will have jurisdiction to entertain the suit. Though Section 19 CPC had not been specifically mentioned anywhere in the body of the plaint, a reasonable presumption can be drawn that the plaintiff had not overlooked such provision while instituting the suit in this Court.

**112.** Section 19 relates to suits for compensation for wrongs to a person or movables and it provides that the suit may be instituted within the local limits of the jurisdiction of the Court where the wrong was done or where the defendant resides or carries on business. There was a controversy raised that Section 19 CPC may not be applicable to this Court being a Chartered High Court in view of Section 120 of the Code of Civil Procedure 1908. Section 120 of CPC is as follows:-

*“120. Provisions not applicable to High Court in original civil jurisdiction.—(1) The following provisions shall not apply to the High Court in the exercise of its original civil jurisdiction, namely, Sections 16, 17 and 20. ”*

It is seen that Section 19 CPC is not stated in Section 120 CPC.

**113.** In the instant case, it is the contention of the learned Senior Counsels on behalf of the plaintiff that the wrong had also been done at Chennai. It had been further pointed out by reference to the documents

filed along with the plaint that complaints have been lodged in police stations within the jurisdiction of this Court complaining about fraud committed by the defendants and further, the impact of the loss suffered by the plaintiff had been felt also at Chennai and therefore, the suit is maintainable in this Court.

**114.** Section 19 CPC provides an additional place of Jurisdiction to institute a suit for compensation for wrong done. The additional place of jurisdiction is the place where the wrong was done. Normally a suit should be instituted at the place where the defendant resides or carries on business. It was pointed out that the defendants in the present case have offices at Mumbai, Pune, Hyderabad and Bengaluru and therefore, the plaintiff cannot be expected to institute suits against the defendants seeking compensation for the wrong committed at each of those places. It had therefore been contended that since the plaintiff has its registered office at Chennai, the Madras High Court is the most suitable and competent Court for institution of the present suit.

**115.** I would like to differ.

**116.** Section 19 states that *“if the wrong was done within the local limits of the jurisdiction of one Court”, then “..... the suit may be instituted at the option of the plaintiff in either one of the said Courts”,* the other option was the Court where the defendant resides. It has been contended by the learned Senior Counsels for the plaintiff that the impact of the wrong had been felt at Chennai. But it is the case of all the parties that the wrong was DONE at Mumbai. The prospectus was issued at Mumbai. The NCDS were issued at Mumbai. The default occurred by a company which had its registered Office at Mumbai. Therefore, the place where the wrong was committed was in Mumbai. Viewed from that angle, even though it can be stated that the impact of alleged fraud by the defendants or by their co-collaborators had also been felt at Chennai still the wrong complained, namely, the misrepresentations in the statements in the prospectus took place at Mumbai. The prospectus to repeat was issued in Mumbai. The debentures might have been subscribed by the plaintiff who has its registered office at Chennai but the act of misfeasance, namely, the failure to pay interest was at Mumbai.

**117.** It would have been an appreciable legal stand if the plaintiff

had instituted the suit at Mumbai impleading the DHFL as the first defendant and claiming a right to impead DHFL as a defendant in view of the Section 35 of the Companies Act 2013 and throwing an open challenge to anyone to seek to declare the suit to be held prohibited in view of Section 14(1)(a) of the Insolvency and Bankruptcy Code, 2016 and inviting the Court to give a finding as to whether a statutory right can also be prohibited by the provisions under Section 14(1)(a) of the Insolvency and Bankruptcy Code, 2016.

**118.** The plaintiff had however resorted to a softer option and had consciously omitted DHFL from being shown as a defendant.

**119.** During the course of arguments, I had hoped that this aspect would have been pointed out by anyone of the learned Senior Counsels/ counsels who advanced arguments at length.

**120.** The claim that the suit should move over to Mumbai by the

defendants was based on the fact that the Bombay High Court would be a Court of convenience since the plaintiff had claimed that they would give benefit of credit of any amount received either from the Bombay High Court or through the proceedings instituted by the Reserve Bank of India in NCLT and would adjust that amount with the suit claim in this suit. The matter of adjustment is a private arrangement which the plaintiff may or may not resort to. They are under no such compulsion. That they would so adjust is not a concession required to be stated. It is not based on any legal stipulation rather on a moral stand.

**121.** It must however be pointed out that such a concession is only a statement in the plaint. It is the Court which will have to pass orders recognising or rejecting such a concession. Any such order can be passed only when a Judgment is to be simultaneously passed in both the suits and when the Court is called upon to adjudicate on such a concession. This would naturally require that both the suits are placed before one Board. If the plaintiff, who had expressed such a concession in letters, and really has the spirit to put into effect such a concession or adjustment, then they should voluntarily move the present suit to the

situs of the earlier suit, namely to the Bombay High Court.

**122.** It had been contended on behalf of the defendants that the plaintiff in the suit filed in the Bombay High Court had invoked the jurisdiction of the Bombay High Court only because the prospectus and the debentures had been issued at Mumbai and since the registered office of the first defendant was at Mumbai. They therefore contended that the Bombay High Court was the Court of competent jurisdiction to examine breach of contract. Further the parties had agreed to confer exclusive jurisdiction to Courts at Mumbai to adjudicate any dispute.

**123.** It may be so. But, I would view it from a wider perspective.

**124.** If the suit were to remain as it is, the issues which have to be resolved primarily would be whether the statements made in the prospectus where misrepresentations or representations made with knowledge that they were false.

**125.** Section 19 of the Indian Contract Act 1872 is as follows:-

***“19. Voidability of agreements without free consent.—****When consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. —When consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.” A party to contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.*

*(Exception) —If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence. Explanation.—A fraud or misrepresentation which did not cause the consent to a contract of the party on whom*

*such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable. Illustrations*

*(a) A, intending to deceive B, falsely represents that five hundred maunds of indigo are made annually at A's factory, and thereby induces B to buy the factory. The contract is voidable at the option of B. "*

*(b) A, by a misrepresentation, leads B erroneously to believe that five hundred maunds of indigo are made annually at A's factory. B examines the accounts of the factory, which show that only four hundred maunds of indigo have been made. After this B buys the factory. The contract is not voidable on account of A's misrepresentation.*

*(c) .....*

*(d) .....*

*(e) ..... "*

**126.** It is thus seen that an agreement is voidable at the option of the party whose consent was obtained by fraud or misrepresentation.

**127.** Applying illustration (a) to the facts of this case, then, if the

plaintiff claims is taken that they had subscribed the NCDS based on misrepresentations in the prospectus then the plaintiff has an option to declare the contract voidable and seek to move away from the contract.

**128.** It is by invoking such a stand that they had instituted the suit at Mumbai. This can actually be construed as a sensible approach. It would be advantages to the plaintiff at the earliest point of time to seek to move away from the contract and claim the amount involved which the plaintiff had suffered. That was the amount which they claimed in the suit instituted at Mumbai.

**129.** In *House of Lords in White and Carter (Councils) Ltd., Vs. McGregor* reported in **1962 AC 413**, it had been held as follows:

*“.... It may well be that, if it can be shown that a person has no legitimate interest, financial, or otherwise, in performing the contract rather than claiming damages, he ought not to be allowed to saddle the other party with an additional burden with no benefit to himself. If a party has no interest to enforce a stipulation, he cannot in general enforce it: so it might be said that, if a party has no interest to insist on a particular remedy, he ought not*

*to be allowed to insist on it. And, just as a party is not allowed to enforce a penalty, so he ought not to be allowed to penalize the other party by taking one course when another is equally advantageous to him. If I may revert to the example which I gave of a company engaging an expert to prepare an elaborate report and then repudiating before anything was done, it might be that the company could show that the expert had no substantial or legitimate interest in carrying out the work rather than accepting damages: I would think that the de minimis principle would apply in determining whether his interest was substantial, and that he might have a legitimate interest other than an immediate financial interest. But if the expert had no such interest then that might be regarded as a proper case for the exercise of the general equitable jurisdiction of the court. ....”*

**130.** The plaintiff had realised that it would not be to their advantage by keeping the contract alive since DHFL has for all practical purposes had become a tainted company surrounded and immersed in fraud. If that be the case of the plaintiff, then there is an obligation on the part of the plaintiff to lead evidence with respect to the acts of fraud even before Bombay High Court to sustain their very institution of the suit even during the subsistence of the contract, claiming voidability on the ground of misstatements in the prospectus. They can justify avoiding

the contract only on the plea that there was no possibility of DHFL honouring the terms of the contract by paying interest for the subsequent years, namely, from 09.09.2020 till 09.09.2023 as promised.

**131.** In the instant suit, before this Court, the very basis of the suit was that the statements in the prospectus are misrepresentations or misstatements. Even here, the plaintiff will have to necessarily establish that those statements are misrepresentations because even on the date when the statements were made in the prospectus the company was immersed and submersed in fraud.

**132.** It is the specific case of the plaintiff that the DHFL has drowned in fraud.

**133.** The nature of evidence therefore overlap in both the suits. Then, it would, for all practical purposes be only appropriate that one single judicial mind is applied towards the analysis of such evidence.

**134.** A very embarrassing situation would emerge if a learned

Judge of the Bombay High Court were to be given the privilege and opportunity of analysing the evidence adduced there and another learned Judge of the Madras High Court is also thrust with responsibility to analyse similar evidence. Both would be looking over their respective shoulders seeking out the conclusion reached by the other or at least reaching a conclusion under apprehension that the other might reach a different conclusion. It is always advisable that such a situation is avoided. It would only be appropriate that the evidence let in is analysed by one single judicial mind. The forum convenience would have to be examined and viewed from that context and angle.

**135.** A suit had already been instituted at Mumbai. At this stage, the fate of the suit could neither be perceived nor presumed. No doubt, there are parallel proceedings now pending before the competent authorities under the Insolvency and Bankruptcy Code, 2016. But still the suit is pending. That is a fact. Another suit is now pending before the Madras High Court.

**136.** However, the plaintiff had consciously taken a decision not

to implead DHFL in this suit. They claim that they are prohibited from impleading DHFL in view of Section 14(1)(a) of the Insolvency and Bankruptcy Code, 2016. But they have instituted the suit taking advantage of Section 35 of the Companies Act 2013 which stipulates that the company must be made a party/defendant. This is a dichotomy which the plaintiff alone will have to examine, address and resolve.

**137.** At any rate, the plaintiff seeks answers with respect to the statements /misstatements in the prospectus. Even in the suit at Bombay, the prospectus should be a document to be exhibited as evidence. The defendants herein are said to be responsible for the statements made in the prospectus. If anybody from DHFL is therefore called upon to speak about the statements/misstatements in the prospectus, it would be only one or more of the defendants herein who will be termed to be competent witnesses since it had been alleged that these defendants have been directly or indirectly responsible for the preparation of all or substantial of the statements in the prospectus. Therefore, when the prospectus is introduced as a document and explanations are sought with respect to the statements/misstatements made regarding the financial status of DHFL, it

is only anyone of the defendants in this suit, who will be competent to answer such questions and give necessary explanations for introducing such statements/misstatements in the prospectus. Thus, not only do the documents overlap but even the witnesses required to speak about the crucial document would also be the same, namely, anyone of the defendants in the present suit.

**138.** It is thus seen that even though it is contended by the learned Senior Counsels/ Counsels for the plaintiff that both the suits are running parallel to each other without a point of confluence like a railway track, what they have not taken into consideration is that a railway track will necessarily have to be joined by planks at equal distance which planks also run through the course of the railway track thereby providing a connection between the two tracks. They may be parallel, viewed from a distance, but there is a connecting plank in between them. Similarly, the suit pending at Bombay High Court and the suit now instituted at Madras High Court can be categorised as parallel suits but it cannot be denied or disputed that the evidence, both oral and documentary for both the suits connects both of them and are intricately

interwoven.

**139.** Fraud/misrepresentation leading to frustration of the contract and impossibility of further performance will have to be alleged in the Court at Mumbai. Fraud/misrepresentation is the central allegation in the Court at Chennai. Fraud/misrepresentation will have to be proved in both the Courts during trial. It is not sufficient that the fact that the defendant did not pay interest alone is established in the Court at Mumbai. The reason why the plaintiff instituted the suit was that there was no possibility of the defendant therein, DHFL, ever paying interest in the future in view of the fact that the company was tainted with fraud.

**140.** In the suit in Chennai, the fact that DHFL is tainted with fraud and that facts had been misrepresented in the prospectus will also be the crux of the evidence let in by the plaintiff. Viewed from any angle, evidence overlaps.

**141.** It must also be stated that the plaintiff admittedly is a company heavily focussed on financial investments. They are not a

novice in that field. They claim they examined the books of accounts of DHFL, but were still misled into subscribing for the debentures. The plaintiff, as an expert, should have accumulated the expertise of reading between the lines. Their claim of innocence will certainly have to be put to test by the defendants. If the witness fails to withstand cross examination, then the contract in the context of illustration (b) to Section 19 of the Contract Act, 1872 may not be categorised as voidable by the plaintiff. Thus evidence in both the suits again overlap on very crucial aspects.

142. I hold that whether or not DHFL is made a party/defendant in the suit pending in this Court, it would only be appropriate that this suit is also tried along with the suit now pending in the Bombay High Court.

143. *In (1989) 2 SCC 163 [ A.B.C. Laminart (P) Ltd. V. A.P. Agencies]*, the term cause of action had been explained as follows:-

*“12. A cause of action means every fact, which if traversed, it would be necessary for the*

*plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff. ”*

**144.** It had also been observed by a Division Bench of this Court in 2002 (1) CTC 134 [ Parameswari Veluchamy and Ors. Vs. T.R.Jayaraman and Ors.] as follows:-

*“21. Moreover, considerations of convenience are very germane while determining the question of grant, refusal or revocation of leave.”*

**145.** In a Full Bench Judgment of this Court reported in **2014 5 LW 673 [ M/s. Duro Flex Pvt. Limited., Vs. M/s. Duroflex Sitting Systems and Anr.,]** it had been held as follows:-

*“25. .... Thus, in determining whether a more appropriate forum exists, connecting factors, such as those effecting the convenience of the parties, expenses involved and the law governing the relevant transactions are to be looked into. The mere fact that a part of the cause of action has arisen within the jurisdiction of the Court may itself not be considered to be a determinative factor compelling the court to decide the matter on merits. In determining which of the available forums is the forum convenient in a given matter, the convenience of all the parties had to be*

*seen. ”*

146. Again in paragraph Nos. 57 & 58, it had been held as follows:-

*“57. There is little doubt that the principles of forum conveniens, though not applicable to civil proceedings, have a role to play insofar as the consideration of grant of leave or revocation thereof under Clause 12 of the Letters Patent is concerned. This is irrespective of the fact as to what expression is used. As observed aforesaid, the balance of convenience is also forum conveniens. The test applied is of appropriateness or suitability of the forum which ought to apply, whether it be called forum conveniens or that the jurisdiction of the Court under Section 20 of the Code of Civil Procedure is different from Clause 12 of the Letters Patent (Food Corporation of India case (supra)).*

*58. We are thus of the view that in considering an application for grant of*

*leave or revocation thereof, the appropriateness or suitability of the forum would be material and to that extent, principle akin to forum conveniens would apply. ”*

**147.** It is also seen that the parties had agreed to confer exclusive jurisdiction to the Courts at Mumbai to adjudicate any dispute which arises between them. The statements/misstatements in the prospectus has been the primary cause for institution of the present suit. When there is a specific clause to exclude Courts at other jurisdiction, then it is only expected that such clause is respected and abided by the parties.

**148.** *In (2013) 9 SCC 32 [M/s. Swastic Gases Pvt. Ltd., Vs. Indian Oil Corporation Ltd.,]*, it had been held as follows:-

*“32. The intention of the parties—by having Clause 18 in the agreement—is clear and unambiguous that the courts at Kolkata shall have jurisdiction which means that the courts at Kolkata alone shall have jurisdiction. It is so because for construction of jurisdiction clause, like Clause 18 in the*

*agreement, the maxim expressio unius est exclusio alterius comes into play as there is nothing to indicate to the contrary. This legal maxim means that expression of one is the exclusion of another. By making a provision that the agreement is subject to the jurisdiction of the courts at Kolkata, the parties have impliedly excluded the jurisdiction of other courts. Where the contract specifies the jurisdiction of the courts at a particular place and such courts have jurisdiction to deal with the matter, we think that an inference may be drawn that parties intended to exclude all other courts. A clause like this is not hit by Section 23 of the Contract Act at all. Such clause is neither forbidden by law nor it is against the public policy. It does not offend Section 28 of the Contract Act in any manner. ”*

**149.** In the instant case, it is also seen that the defendants have offices at Mumbai, Bengaluru, Hyderabad and also at Pune. It is claimed by the plaintiff that some of the defendants have offices at Chennai which statement is very seriously disputed by those defendants. I have also held in the course of discussion that application of Section 19 CPC

itself is questionable. The wrong was done at Mumbai where the registered office of DHFL is situated and when DHFL defaulted in the payment of interest. The prospectus was also issued at Mumbai. Therefore, the statements / misstatements in the prospectus can be construed as having emanated from Mumbai. The plaintiff also has a registered office at Mumbai. It has also been held in *M/s. Duro Flex Pvt. Limited.*, supra that forum convenience is an important factor to determine the proper Court of competent jurisdiction.

150. In this case, a suit is already pending before the Bombay High Court. For reasons discussed above, it would only be appropriate that the issues raised in this suit are also determined in the Court at Bombay since as held, evidence overlaps, witness overlaps and documents also overlaps.

151. In *AIR 2019 SC 1413 [Isha Distribution House Pvt. Ltd., Vs. Aditya Birla Nuvo Ltd., and Ors.]*. The Hon'ble Supreme Court had stated that the proper procedure while questioning jurisdiction or seeking revocation should be to file the written statement and raise the same as an

issue. Paragraph 14 to 20 are instructive and are as follows:-

*“14. The question arose as far back as in the year 1932 before the Calcutta High Court in the case of Secretary of State vs. Golabrai Paliram (AIR 1932 Calcutta 146) as to how the Court should approach the application for revocation of leave when it filed in a civil suit.*

*15. Justice Rankin, learned the then Chief Justice, laid down the following principle of law in the case while answering this question in the following words at page 147:*

*“I do really protest against questions of difficulty and importance being dealt with by an application to revoke the leave under clause 12 of the Letters Patent and to take the plaint off the file. Normally it is well settled that the proper way to plead to the jurisdiction of the court is to take the plea in the written statement and as a substantive part of the defence. Except in the clearest cases that should be the course.”*

*16. This question came up for consideration before this Court in **Indian Mineral & Chemicals***

**Co. & Ors. vs. Deutsche Bank [(2004) 12 SCC 376]**. The learned Judge Ruma Paul J. speaking for the Bench in Para 15 approved the law laid down in *Secretary of State (supra)* as laying down the correct principle of law and observed as under:

“15. The observations of Rankin, C.J. In *Secy. of State v. Golabrai Paliram* correctly represents the law as to how the Court should approach an application for revocation of leave: (AIR p. 147) “I do really protest against questions of difficulty and importance being dealt with by an application to revoke the leave under clause 12 of the Letters Patent and to take the plaint off the file. Normally it is well settled that the proper way to plead to the jurisdiction of the court is to take the plea in the written statement and as a substantive part of the defence. Except in the clearest cases that should be the course.”

17. In other words, the law laid down in *Secretary of State (supra)* by the Calcutta High Court is now the law laid down by this Court in view of its affirmation by this Court in *Indian Mineral & Chemicals Co. (supra)*.

*18. Coming now to the facts of this case, since in this case the respondents did not file any written statement and instead raised the plea of territorial jurisdiction by filing the application for revocation of leave, in our view, the High Court should not have entertained the said application and instead should have granted liberty to the respondents(defendants) to file the written statement in the suit and to raise therein a plea of territorial jurisdiction of the Court.*

*19. An issue of such nature, in our view, cannot be tried by filing an application for revocation of leave. Indeed, this is what Rankin, the then CJ., held for the Bench in Secretary of State (supra) and which received approval of this Court in Indian Mineral & Chemicals Co.(supra).*

*20. In our opinion, a plea of territorial jurisdiction is essentially a mixed question of law and fact. It is for this reason, the respondents(defendants) should be allowed to raise such plea in the written statement to enable the Court to try it on its merits in accordance with law in the light of the requirements of Order 14 of the Code of Civil Procedure, 1908 and other relevant provisions governing the issue on merits.”*

**152.** The principle laid down above is that when revocation of leave is sought, the said issue should be examined after filing of written statement as a primary issue. But however, in the instant case, the present suit is not a stand alone, suit as was the situation envisaged when the aforesaid principle was laid down by the Hon'ble Supreme Court. Here there is already a suit pending, instituted by the plaintiff themselves before the Bombay High Court.

**153.** The allegations of fraud are the nucleus to the cause of the plaintiff. Such allegations will have to be established not only in the suit pending at Mumbai but also in the suit before this Court. Therefore, when evidence overlaps, the principle of forum convenience comes into play and as held by the Hon'ble Supreme Court and also by the Full Bench of this Court, a duty is cast to examine the most appropriate Court to adjudicate the issues and viewed from any angle, I hold that the present suit will necessarily have to be tried at Mumbai along with the earlier suit already instituted by the plaintiff.

**154.** In view of all these reasons, the applications are allowed.

No costs.

**155.** The plaint in this suit is directed to be returned to the plaintiff. For the purpose of preserving the proceedings taken in this Court a verified copy of the plaint can be made and filed in place of the original which has to be returned. I accordingly direct the plaint in this case to be returned after a copy of the plaint has been made and filed in place of the original.

**156.** The plaintiff is permitted to present the plaint before the Bombay High Court on or before 31.07.2021.

29.04.2021  
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Index : Yes / No

Internet : Yes / No

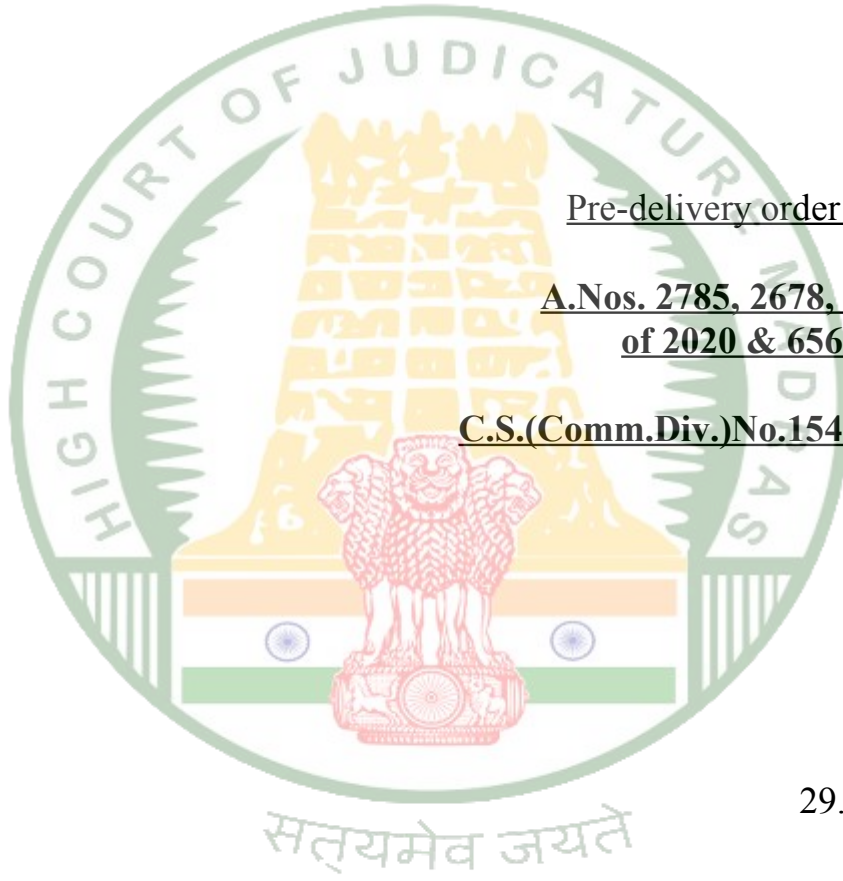
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**C.V.KARTHIKEYAN, J.,**

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Pre-delivery order made in  
A.Nos. 2785, 2678, & 3293  
of 2020 & 656 of 2021  
in  
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29.04.2021

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