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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2716 OF 2019

1. Moorgate Industries India Private Limited
(formerly Stemcor India Private Limited), a company
Incorporated under the Companies Act, 1956, having
Its registered office at We Work, 3rd Floor, 3A-109 & 3A-110,
C-20, G Block, Main Road, Opposite MCA, Bandra Kurla
Complex, Bandra (E), Mumbai-400051.

2. Rajendra Bohra
Director of Moorgate Industries India Private Limited
Having his office at We Work, 3rd Floor, 3A-109 & 3A-110,
C-20, G Block, Main Road, Opposite MCA, Bandra Kurla
Complex, Bandra (E), Mumbai-400051.
...Petitioners

Versus

1. Registrar of Companies (Western Region),
having its address at IFCI Tower, 4th Floor,
61, Nehru Place, New Delhi-110019.
and
having its address at 100, Everest,
Marine Drive, Mumbai-400002.

2. Union of India
Through the Ministry of Corporate Affairs,
having its office at 'A' Wing, Shastri Bhawan,
Dr. Rajendra Prasad Road, New Delhi-110001.

3. Mideast Integrated Steels Limited
a company incorporated under the Companies Act,

1956, having its registered office at H1, Zamrudpur
Community Centre, Kailash Colony, New Delhi-110048.

4. Twenty First Century Finance Limited
a company incorporated under the Companies Act,
1956, having its registered office at
Shop No.158, Ground Floor, Defence Colony
Flyover Market (North of Railway Line),
New Delhi-110024.

5a. Ms. Natasha Singh Sinha
residing at D3A, Ansal Villa,
Satbari, New Delhi-110030.

5b. Ms. Shipra Singh Rana
residing at D3A, Ansal Villa,
Satbari, New Delhi-110030.

5c. Ms. Rita Singh
residing at D3A, Ansal Villa,
Satbari, New Delhi-110030. ...Respondents

Mr. Zubin Behramkamdin a/w. Mr. Chirag Kamdar, Ms. Namita Shetty and Mr. Mohit Prabhu i/b. CYRIL AMARCHAND MANGALDAS for Petitioner Mr. Chirag Mody a/w. Ms. Chandni Dewani i/b. Ms. Shikha Dharia i/b. Vashi & Vashi for R.4 & 5(a)(b)(c).
Mr. Y.R.Mishra a/w. Mr. Rahul Tiwri, Mr. Shailendra Mishra for R.1.

CORAM : S.V. GANGAPURWALA &
MADHAV J. JAMDAR, JJ.
RESERVED ON : 18th AUGUST 2022

PRONOUNCED ON: 21st OCTOBER 2022

ORAL JUDGMENT : (PER MADHAV J. JAMDAR, J.)

1. Petitioner No.1 is a company incorporated under the Companies Act, 1956. Petitioner No.2 is an executive director of Petitioner No.1. The Petitioners by way of the present Writ Petition are challenging legality and validity of the impugned order dated 3rd April 2019 passed by the Deputy Registrar of Companies, NCT Delhi and Haryana (hereinafter referred to as **"ROC"**). By said impugned order dated 3rd April 2019, complaint of the Petitioner No.1 made to Respondent No.1- Registrar of Companies (Western Region) about the non-issuance of duplicate certificate by Respondent No.3-Mideast Integrated Steels Limited (hereinafter referred to as **"MISL"**), non-payment of dividend and non-receipt of notice for general meeting was dismissed on the ground that dispute is subjudice before the High Court of Judicature at Bombay vide Commercial Suit (L) No.368 of 2017 titled as *Twenty First Century Finance Limited vs. Moorgate Industries India Private Limited and Ors.*

2. Before setting out the rival contentions and consideration of the

same, it is necessary to set out certain factual aspects as emanating from the Writ Petition.

i. Petitioner No.1 executed two separate agreements dated 5th August 2005, one with Respondent No.4- Twenty First Century Finance Limited (hereinafter referred to as **"TFCFL"**) and Stemcor Sea Pvt. Ltd (an associate company of the Petitioner No. 1) and another with Mesco Projects Limited and Stemcor Sea Pvt. Ltd. By these agreements, Petitioner No. 1 purchased and acquired equity shares of MISL aggregating to 10% of the total issued share capital of MISL. Subsequently, supplemental agreement dated 28th March 2006 was executed modifying the clause regarding payment.

ii. On 31st March 2006, physical share certificates were delivered to Petitioner No.1 by duly transferring the shares in the name of Petitioner No.1. Petitioner No.1's name was included in the Register of Members maintained by MISL.

iii. In 2011-2012 and 2012-2013, Petitioner No.1 was paid dividends.

iv. In May 2013, Petitioner No.1 misplaced the said share certificates.

v. Thereafter Petitioner No.1 carried on correspondence with Respondent No.3 and also filed police complaint. Petitioner No. 1 also carried on correspondence with Respondent No.3's Registrar and Transfer Agent, M/s. Skyline Financial Services Private Limited.

vi. Inspite of correspondence, Respondent No.3 failed to issue duplicate share certificate and also stopped paying dividends.

vii. On 1st December 2015, Petitioner No.1 filed complaint with Respondent No.1, i.e. ROC, Delhi. The said complaint raises issues concerning non-issuance of duplicate share certificate, non-payment of dividend and non-receipt of notice of general meetings.

viii. Respondent No.1 – ROC (Western Region), Delhi addressed a letter dated 13th January 2016 to Respondent No.3 calling upon them to furnish an explanation.

ix. Thereafter extensive correspondence took place between

Petitioner and Respondent No. 1 *inter alia* regarding fixing date of hearing of said complaint.

x. Respondent No.1 scheduled the hearing on Petitioner No.1's complaint on 30th June 2017. Respondent No.3 sought an adjournment. The same was opposed by Petitioner No.1. However, Respondent No.1 adjourned the hearing and no fresh date was fixed.

xi. Respondent No.4 – TFCFL filed Commercial Suit No.584 of 2017 in this Court challenging the share purchase agreement dated 5th August 2005 as being illegal and void for want of consideration.

xii. Petitioner No. 1 sent reminder letters dated 13th July, 2017, 26 September, 2018, 1st November, 2018 to ROC as no fresh date of hearing was fixed.

xiii. Notice of hearing scheduled on 28th November 2018 was not received by the Petitioner No.1 as the same was sent on the previous registered address of the Petitioner No. 1.

xiv. On 29th November 2018, Petitioner No. 1 informed Respondent

No.1 that they could not attend the hearing as the notice fixing date of hearing was sent to earlier registered address and therefore, sought fixing of fresh date of hearing. As no fresh date of hearing was communicated, Petitioner No.1 sent letter dated 19th February 2019. Inspite of above position and oral assurance given to the Advocate of the Petitioner No.1, without giving any hearing to the Petitioners, Respondent No.1 passed the impugned order on 3rd April, 2019 mainly on the ground that suit is pending between the parties.

xv. Notice of Motion No. 468 of 2017 in Commercial Suit No. 584 of 2017 filed by Respondent No. 4 -TFCFL seeking appointment of Court Receiver as a Receiver of the suit shares and for an injunction restraining Petitioner No. 1 from creating any 3rd party rights or accepting dividends, bonus shares and also from exercising any rights in respect of the said shares, was dismissed by learned Single Judge by order dated 19th March, 2019.

xvi. On 25th April, 2019, Petitioner sent communication through

Advocate to Respondent No.1 explaining that the suit and complaint filed with Respondent No.1 are not connected with each other.

xvii. Thereafter, Petitioner No.1 sent reminder dated 25th April 2019.

3. In the above background, on 13th August 2019, the present writ petition has been filed *inter alia* impugning the decision dated 3rd April 2019 of the Respondent No.1.

4. We have heard Mr. Zubin Behramkamdin, learned counsel appearing for Petitioners, Mr. Y. R. Mishra, learned counsel appearing for Respondent No.1 and Mr. Chirag Modi, learned counsel appearing for Respondent No.4, 5a, 5b and 5c.

5. Mr. Behramkamdin on behalf of Petitioners raised following contentions :

(i) ROC is the only appropriate forum to resolve the dispute relating to issuance of duplicate share certificate. He relied on judgment of Supreme Court in the case of ***Shripal Jain vs. Torrent Pharmaceuticals Ltd. & Ors.***[1] The relevant portion of said judgment reads as under:-

> "2. The share certificates purchased by the appellant in respect of M/s. Torrent Pharmaceuticals Ltd. were stolen. The appellant approached the Registrar, Respondent 2 in the appeal herein, for issue of duplicate certificates. The Registrar directed the appellant to have a direction in this respect from the civil court. The civil court rejected the application of the appellant. The High Court dismissed the civil revision filed by the appellant in limine.
>
> 3. We are of the view that **the Registrar of the Company was in patent error in referring the appellant to the civil court** in the facts and circumstances of the present case. **He should have himself held an enquiry into the matter under Section 84(4) of the Companies Act read with the Companies (Issue of Share Certificates) Rules, 1960 and taken a decision himself in the matter**.
>
> 4. We, therefore, set aside the impugned order of the civil court and consequent order of the High Court and remand the case back to the Registrar, Respondent 2 to decide the matter in accordance with law in the first instance. The appeal is disposed of. No costs."
>
> (Emphasis added)

(ii) He submitted that although it is the contention of the contesting Respondents that Petitioner should have approached

1 1995 Supp. (4) SCC 590

the NCLT, there is no provision in the Companies Act, 2013 (hereinafter referred to as "said Act") that empowers the NCLT to deal with complaints relating to issuance of duplicate share certificate.

(iii) He relied on paragraph 31 of the judgment reported in case of ***Embassy Property Developments Private Limited vs. State of Karnataka & Ors***[2]. The said paragraph 31 reads as under:-

> "NCLT and NCLAT are constituted, not under the IBC, 2016 but under Sections 408 and 410 of the Companies Act, 2013. Without specifically defining the powers and functions of the NCLT, Section 408 of the Companies Act, 2013 simply states that the Central Government shall constitute a National Company Law Tribunal, to exercise and discharge such powers and functions as are or may be, conferred on it by or under the Companies Act or any other law for the time being in force. Insofar as NCLAT is concerned, Section 410 of the Companies Act merely states that the Central Government shall constitute an Appellate Tribunal for hearing appeals against the orders of the Tribunal. **The matters that fall within the jurisdiction of the NCLT, under the Companies Act, 2013, lie scattered all over the Companies Act.** Therefore, Sections 420 and 424 of the Companies Act, 2013 indicate in broad terms, merely the procedure to be followed by the NCLT and NCLAT before passing orders. **However, there are no separate provisions in the Companies Act, exclusively**

2 (2020) 13 SCC 308

dealing with the jurisdiction and powers of NCLT."

(Emphasis added)

(iv) He also relied on judgment in the case of ***Rajiv Sanghvi & Ors. vs. Pradip R. Kamdar & Ors.***[3] which relied on ***Embassy Property Developments Pvt. Ltd.*** (supra)

(v) He submitted that ROC in exercise of its supervisory jurisdiction under section 396 of the Act is entitled to deal with cases of non-issuance of duplicate share certificates. He also relied on the manual issued by the Ministry of Corporate Affairs.

6. Mr. Chirag Modi, learned counsel appearing for the Respondent Nos.4, 5(a), 5(b), 5(c) made following submissions.

i. As the civil suit is pending *inter alia* praying that Respondent Nos. 4 and 5 be declared as owners of the said shares and have further sought declaration that

3 IA No.571 of 2022 in Suit No.44 of 2021

agreements be declared as void on account of non-payment of consideration by the Petitioners, the Writ Petition be not entertained.

ii. Respondent No.3 has been registered as company with the Respondent No.1-Registrar of Companies, Delhi and Haryana and therefore, the present petition is barred even on the basis of territorial jurisdiction. He submitted that in any case, in view of pendency of suit, petition be not entertained.

iii. Section 46 of the Act is concerning issuance of duplicate share certificate by the company. Section 408 of the Act provides for Constitution of National Company Law Tribunal (NCLT) and confers upon it the authority to adjudicate upon the matters arising from the Act.

iv. Section 97 of the act confers powers upon the NCLT to take action against companies regarding annual general meeting even on an application filed by any member of the company.

v. He submitted that section 430 of the Act bars Civil Court's jurisdiction to entertain the matters which the NCLT is empowered to adjudicate upon.

vi. Reliance on ***Shripal Jain*** (supra) is of no assistance to the Petitioner as the said judgment is of the year 1995, whereas NCLT has been constituted by the said Act in 2013. Thus, NCLT will have exclusive jurisdiction.

vii. Security and Exchange Board of India (SEBI) is empowered to deal with complaints regarding non-payment of dividend under section 24 of the Act. Accordingly, Petitioners have also filed complaint with SEBI on 14th October 2015.

viii. Respondent No.1, i.e. ROC has no authority to deal with Petitioners' complaint and therefore, petition be dismissed.

ix. He relied on paragraph 39 of the judgment of National Company Law Appellate Tribunal (NCLAT) in case of ***Vintage Hotels Private Limited vs. Ahamed Nizar Moideen***

Kunhi[4], which reads as under:-

> "39. It is to be pointed out that the **power to issue 'Duplicate Shares' is with the Board of Directors of the Company** and the same may be issued if such certificate is established to have been lost or destroyed or torn or mutilated or was defaced and is surrendered to the Company. **Further, the refusal order of the Board of a Company to issue 'Duplicate Shares' can be assailed before the Tribunal when the powers of the Board was improperly exercised, although there is absence of provision in the Companies Act for a 'Tribunal' to issue necessary directions to the Board of a Company to issue the 'Duplicate Shares' in question**."
>
> (Emphasis added)

(x) He also relied on paragraph 19 of ***Parenteral Drugs (India) Limited vs. Jagdish Mangal HUF & Ors.***[5]. Said paragraph 19 reads as under:-

> "19. In the present case, the **parties are at variance with regard to the issue of duplicate share certificate**. In the backdrop of the law laid down by Hon'ble the Apex Court and followed by the Bombay High Court and the afore stated provisions of the Companies Act, in the facts and circumstances of the present case, **it is manifest that the dispute between the parties is a company matter and not a civil dispute as held by the learned trial Court. After incorporation of new Companies Act, 2013 such matters has to be heard and decided by the Company Law**

4 2020 SCC Online NCLAT 737

5 2020 (2) MPLJ

> **Tribunal constituted under the new company law and is the only competent authority and has jurisdiction under the law to decide the conflict between the parties in respect of any company matter**. It can hold enquiry into the matter under section 84 of the Act, 1956 or 46 of **the Companies Act, 2013 read with the Companies (Issue of Share Certificates) Rules, 1960 or The Companies (Share Capital and Debentures) Rules, 2014** and take a decision in the matter."
>
> (Emphasis added)

7. In the light of above rival contentions, following points arise for our consideration:-

i. **Whether this Court has jurisdiction to entertain the present Writ Petition as the impugned order is passed by the ROC, NCLT Delhi and Haryana?**

ii. **Whether ROC has jurisdiction to deal with complaint dated 1st December 2015 filed by the Petitioner No.1?**

iii. **What is the effect of the pending Commercial Suit No.584 of 2017 on the complaint dated 1st December 2015 filed by the Petitioner No.1 with Respondent No.1-ROC.**

8. First we will deal with the point whether this Court has

jurisdiction to entertain the present Writ Petition.

9. The averments regarding jurisdiction of this Court to entertain, try and decide the present petition are found in paragraph 45 of the memo of the Writ Petition. Said paragraph 45 reads as under:-

> "45. Petitioner submits that **its registered office is situated in Mumbai**, **which is within the territorial jurisdiction of this Hon'ble Court. Correspondence addressed to RoC and MISCL has been addressed from Mumbai. The Shares are listed with the Bombay Stock Exchange and are traded in Mumbai. The Petitioner would be able to trade with the Shares in Mumbai. The Duplicate Share Certificates once issued (in dematerialised form) would be issued in the Petitioner's demat account in Mumbai. Even suit filed by TCFC and J.K. Singh have been filed in Mumbai**. Further, **RoC has its regional office in Mumbai and MISL also has an office in Mumbai. The RoC's Impugned Letter/Order has affected Petitioner's rights in Mumbai**. **Given that Petitioner, RoC and MISL are within the territorial jurisdiction of this Court**, it would be expedient and efficacious to file the present Petition in this Hon'ble Court. The Petitioner therefore submits that this Hon'ble Court has jurisdiction to entertain, try and decide the present Petition."
>
> **(Emphasis added)**

10. It is important to note the averments in the affidavit-in-reply of the Respondent No.4 regarding paragraph 45 of the Writ Petition,

which reads as under:-

> "w. With reference to paragraph 41 to 49, the contents thereof do not warrant a response from this Respondent."

Thus, the averments made in the paragraph 45 by the Petitioners have remained uncontroverted and deemed to have been accepted. Thus, the above pleadings in the Writ Petition and the Affidavit-in-reply establishes following admitted position :-

a) The said shares are listed with the Bombay Stock Exchange and are traded in Mumbai. The Petitioner would be able to trade with the said shares in Mumbai. The Duplicate Share Certificates once issued (in dematerialised form) would be issued in the Petitioner's demat account in Mumbai.

b) The ROC's Impugned Letter/Order has affected Petitioners' rights in Mumbai.

Thus, the impugned order of ROC has affected Petitioners' rights in Mumbai.

11. The Respondent No.4 and deceased Respondent No.5 filed Commercial Suit No. 584 of 2017 in this Court inter alia seeking following reliefs:-

a) this Hon'ble Court be pleased to order and declare that the Plaintiff No.1 is the owner of 2,00,400 shares out of the suit shares and Plaintiff No.2 is the owner of 1,35,87, 100 shares out of the suit shares and that the Defendant No.1 is not entitled to make any claims in respect of the suit shares including claim for duplicate shares, bonus shares or dividends or any other entitlements and benefits in respect of the suit shares;

b) this Hon'ble Court be pleased to order and declare that the Agreements dated 5th August 2005 (at Exhibits B and C hereto) are illegal, void, bad in law and non-est for want of consideration and deliver them up for cancellation;

c) this Hon'ble Court be pleased to order and declare that the Agreements as referred by the Defendant No.1 in its balance sheets are illegal, void, bad in law and non-est for want of consideration and delivered up for cancellation;

d) this Hon'ble Court be pleased to pass an permanent Order of Injunction restraining the Defendant No.1 and its representatives, officers, servants and/or agents from creating any third party rights and making any claims in respect of the suit shares which belong to the Plaintiffs such as issuance of duplicate shares, accepting any dividends, bonus shares, applying for or receiving any rights shares of other entitlements or accepting any other related benefits and also from exercising any rights as shareholder in respect of the suit shares;

e) In the alternative and without prejudice to prayers (a) to (d) above,) this Hon'ble Court be pleased to order and direct the Defendant No.1 to make payment of Rs.100.00,00,000/-(Rupees One Hundred Crores) to the Plaintiffs as damages for the losses suffered by the Plaintiffs on account of the Plaintiffs being deprived of suit shares without any consideration and all benefits in respect of the suit shares with interest at the rate of 18% (Eighteen Percent) p.a. thereon of from the date of filing of the present suit till payment and/or its realization on the aforesaid sums of Rs.100.00,00,000/- (Rupees One Hundred Crores) as per the Particulars of Claim annexed at Exhibit"L' hereto;"

12. In paragraph 21 of the said suit, averments regarding jurisdiction are raised in the following manner:-

> "21. The said Agreements dated 5th August 2005 are entered into between the parties in Mumbai. The Defendant No.1 who is the main contesting Defendant has its registered office at Mumbai. The Defendant No.3 also carries on business at Mumbai. No reliefs as sought against Defendant No.2. Therefore, this Hon'ble Court has the territorial jurisdiction to try and entertain the present suit."

13. This Court has occasion to consider the issue regarding

jurisdiction to entertain Writ Petition under Article 226 of the Constitution of India in case of ***Asianet Star Communications Pvt. Ltd. vs. Competition Commission of India & Ors.***[6]. The relevant discussion is from paragraphs 17 to 22 which are reproduced hereinbelow:-

> "17 Jurisdiction connotes authority to decide.
>
> 18 The power conferred upon the High Court to issue directions, orders or writs can be exercised by the High Court exercising jurisdiction in relation to the **territories within which the cause of action, wholly or in part, arises for the exercise of such power. The Court exercising power under Article 226 of the Constitution can issue writs detailed under clause 1 to the person or authority situated beyond its territorial jurisdiction provided cause of action wholly or partly arises within the territorial jurisdiction of the court entertaining the Writ Petition**.
>
> 19 The apex court, in the case of ***Kunjan Nair Sivaraman Nair Vs. Narayanan Nair***[7] observed as under:
>
> > "16. The expression "cause of action" has acquired a judicially settled meaning. **In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider senses, it means the necessary conditions for the maintenance of the suit,**

6 Writ Petition No.3755 of 2022

7 (2004) 3 SCC 277

> **including not only the infraction of the right, but the infraction coupled with the right itself. Compendiously the expression means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court**. Every fact which is necessary to be proved, as distinguished from every piece of evidence which is necessary to prove each fact, comprises in "cause of action".
>
> 17. In Halsbury's Laws of England (4th Edn.) it has been stated as follows :
> "**Cause of action**" has been defined as meaning simply **a factual situation the existence of which entitles one person to obtain from the court a remedy against another person**. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. "Cause of action" has also been taken to mean that particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject matter of grievance founding the action, not merely the technical cause of action."

In the case of ***Kusum Ingots & Alloys (Supra)*** the Court observed as under:

> "Forum conveniens
> 30. We must, however, remind ourselves that **even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be**

> **considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens**. [See Bhagat Singh Bugga v. Dewan Jagbir Sawhney 1941 SCC OnLine Cal.247, Madanlal Jalan Vs. Madanlal 1945 SCC OnLine Cal.145, Bharat Coking Coal Ltd. Vs. Jharia Talkies & Cold Storage (P) Ltd. 1997 CWN 122, S.S. Jain & Co. Vs. Union of India 1993 SCC OnLine Cal 306 and New Horizon Ltd. Vs. Union of India 1993 SCC OnLine Del 564."

20 The Division Bench of this Court in the case of ***Sachin Chhotu Pawar Vs. Collector, Raigad & Ors***.[8] to which one of us (S.V. Gangapurwala,J) was a party, observed as under:

> 18. The extraordinary jurisdiction of this Court under Article 226 of the Constitution is sky high, but also has a regulation coming along under Article 226(2). The powers of this Court under Article 226 is sacrosanct. No statute or legislature can limit the powers of this Court under Article 226 of the Constitution. The constitution does not place fetter on exercise of extraordinary jurisdiction. This Court would exercise its authority, power or jurisdiction within its territorial realm. This Court normally would not travel beyond its limits.
> 19. Reading Article 226(1) and (2) of the Constitution, a petition under Article 226 can

8 2020 (6) Mh.L. J.285

> be entertained before any of the High Court :
>
> i) Within whose territorial jurisdiction the person or authority against whom relief is sought resides or is situated.
>
> ii) **The cause of action in respect of which relief is sought under Article 226 is wholly or in part arisen**.
>
> 20. **A distinction shall have to be drawn between cause of action and right of action. The petitioners may possess a right of action to institute the proceedings. To file a proceeding before a particular Court at least fraction of cause of action ought to have arisen within the precincts of that Court**.

21 The issue of territorial jurisdiction in entertaining the Writ Petition revolves around Article 226(2) of the Constitution. It would be appropriate to refer to 226(2) of the Constitution. The same reads thus:

> **"226. Power of High Courts to issue certain writs:**
>
> (2) **The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for** the exercise of such power, **notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories**."

> 22 The phraseology “cause of action” is broadly construed as bundle of facts necessary for the party to prove before he can succeed. The apex court in the case of ***Kusum Ingots (supra)*** observed thus:
>
> > “9. Although in view of Section 141 of the Code of Civil Procedure the provisions thereof would not apply to writ proceedings, the phraseology used in Section 20(c) of the Code of Civil Procedure and clause (2) of Article 226, being in parimateria, the decisions of this Court rendered on interpretation of Section 20(c) CPC shall apply to the writ proceedings also. Before proceedings to discuss the matter further it may be pointed out that the entire bundle of facts pleaded need not constitute a cause of action as what is necessary to be proved before the Petitioner can obtain a decree is the material facts. The expression material facts is also known as integral facts.
> >
> > 10. **Keeping in view the expressions used is Clause (2) of Article 226 of the Constitution of India, indisputably even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter**.”
> >
> > (Emphasis added)

14. In case of ***Damomal Kausomal Raisinghani vs. Union of India & Ors.***[9], a co-ordinate Bench of this Court held that the place where the consequences of the impugned order fell on the Petitioner would be a

9 AIR 1967 Bom.355

place where at least the cause of action in part would arise.

15. Thus, in this case, the following two factors are required to be taken into consideration for determining the jurisdiction of this Court under Article 226 of the Constitution of India.

i. At least part of cause of action has arisen in the territorial jurisdiction of this Court.

ii. Consequences of the impugned order fell on the Petitioner in the territorial jurisdiction of this Court.

It is necessary to analyze the facts of this case in the light of above principles.

16. By the impugned order the Petitioners' complaint *inter alia* regarding non-issuance of duplicate share certificate was rejected. The said demand was made on the basis of two separate agreements (i) agreement dated 5th August 2005 entered into by Petitioner No.1 with Respondent No.4 and Stemcor Sea Pvt. Ltd. and (ii) agreement dated 5th August 2005 entered into by Petitioner No.1 with Mesco

Projects Limited and Stemcor Sea Pvt. Ltd. By these agreements, Petitioner No.1 purchased and acquired equity shares of MISL aggregating to 10% of the total issued share capital of MISL. Subsequently, supplemental agreement dated 28th March 2006 was executed modifying the clause regarding payment. Admittedly, the said agreements were executed at Mumbai. Thus, part of cause of action has taken place in Mumbai.

17. The Petitioners have specifically averred that the Petitioner No.1 would be able to trade with the shares in Mumbai and therefore, impugned order of ROC has affected Petitioners' rights in Mumbai. The said averments have remained uncontroverted. Thus, it is clear that the consequence of the impugned order fell on the Petitioner at Mumbai where atleast the cause of the action in part has taken place.

18. Therefore, there is no substance in the contention raised by the Respondents that this Court has no jurisdiction to deal with this Writ Petition.

19. Now we will take up the point Nos. 2 and 3 i.e., whether ROC has jurisdiction to deal with complaint dated 1st December 2015 filed by the Petitioner No.1 and what is the effect of pending Commercial Suit No.584 of 2017 on the said complaint dated 1st December 2015.

20. At the outset, it is to be noted that the said complaint dated 1th December 2015 is regarding three separate aspects namely (i) non-issuance of duplicate share certificate, (ii) non-payment of dividend and (iii) non-receipt of notice for general meeting.

21. It is to be noted that after filing of the said complaint dated 1st December 2015, from time to time, the Petitioner No.1 has carried on correspondence with ROC *inter alia* seeking that the said complaint be heard as early as possible. It appears that after extensive follow up the ROC issued notice dated 19th November 2018 fixing the date of hearing on 28th November 2018. However, the said notice was sent to the earlier registered address of the Petitioner No.1 and therefore, Petitioner No.1 could not attend the hearing scheduled on 28th

November 2018. It is significant to note that the said hearing was fixed at 10.00 a.m. of 28th November 2018. As the Petitioner No.1 and their legal team was constantly following with ROC regarding date of hearing, the representative of Petitioners' attorneys visited the office of ROC at 12.15 p.m. on 28th November 2018 and sought information regarding the date of hearing and said representative was informed that the hearing was fixed at 10.00 a.m. on 28th November 2018. At that time office of ROC showed to the representative of Petitioner's attorney's letter dated 19th November 2018 intimating date of hearing. Then it was realized that the said letter was sent on the old registered address of the Petitioner No.1.

22. Thus, it is admitted position that the Petitioner No. 1 was not heard on 28th November, 2018 when the hearing on said complaint was scheduled. It is further significant to note that thereafter on 29th November 2018 and 19th February 2019, Petitioner No.1 requested that hearing be granted by fixing fresh date. However, there is no response from ROC to the said letters and the impugned order was

passed on 3rd April 2019. It is to be noted that the impugned order dated 3rd April 2019 was sent on the new registered address of the Petitioner No.1.

23. The factual position on record clearly show that although Petitioner No.1 remained absent when the hearing of the said complaint was scheduled on 28th November 2018 as they have not been served with the notice of hearing but all along they requested for another date of hearing and without granting hearing, order was passed. It is further significant to note that this is not a case where after 28th November 2018 i.e. after scheduled date of hearing the ROC has immediately passed the impugned order. In fact, the impugned order has been passed after a period of four months after the said scheduled date of hearing. Thus, there was no impediment for ROC to grant hearing to the Petitioner No.1.

24. It is further significant to note that the complaint of Petitioner No.1 is dated 1st December 2015. After submitting the said complaint,

on number of occasions the Petitioner No.1 requested the ROC to fix the date of hearing and accordingly the hearing was fixed on 28th November, 2018 i.e. after a period of about three years from filing of the complaint. Unfortunately, the Petitioner No. 1 could not remain present for hearing as the intimation of date of hearing was sent on the earlier registered address of the Petitioner No. 1.

25. Therefore, it is clear that the impugned order is passed without giving hearing to the Petitioner No. 1 and without following principles of natural justice. The Petitioner has requested for fresh hearing and Petitioner No.1 has given valid reason for the absence. The factual position on record clearly demonstrates that the Petitioner No.1 from time to time requested for hearing even prior to 28th November 2018 and immediately after 28th November 2018 also. Thus, the impugned order is liable to be quashed and set aside on this ground alone.

26. The impugned order dated 3rd April 2019 of ROC records that

ROC is not in a position to take any further action in the matter as the complaint matter is sub judice before this Court vide Commercial Suit (L) No.368 of 2017 titled as *Twenty First Century Finance Limited vs. Moorgate Industries India Private Limited and Ors.* It is further mentioned in the said order that, in the complaint the said fact is not mentioned. It is significant to note that the Petitioner No.1 filed complaint on 1st December 2015 and the said suit has been filed in the year 2017. Therefore, there was no question of mentioning of pendency of said 2017 suit in the 2015 complaint. The said observation of the ROC is totally incorrect. Therefore, it is clear that grave prejudice has been caused to the Petitioners as they have not been granted hearing for the reasons set out hereinabove.

27. It is further significant to note that the submissions of the parties which we have noted in the earlier part of judgment show that it is the contention of the Petitioners relying on the judgment of Supreme Court in ***Shripal Jain*** (supra) that ROC has jurisdiction to deal with the said complaint. Whereas it is the submission of the

Respondent No.4 that the said judgment has no application as in view of constitution of NCLT by the Act of 2013, the grievance regarding non-issuance of duplicate certificate will have to be raised before the NCLT.. It is the contention of the Respondent No.4 that jurisdiction to deal with complaint regarding non-issuance of Duplicate Share Certificate and regarding non-receipt of notice for general meeting is with NCLT. It is also the contention of Respondent No.4 that as far as the issue regarding non-payment of dividend is concerned, the jurisdiction is with SEBI.

28. Learned counsel appearing for the Respondent Nos. 4, 5(a) to 5(c) has relied on ***Parenteral Drugs (India) Ltd***. (supra). Paragraph 19 of the said judgment appears to have been supporting the contention of the Petitioners that issue regarding issuance of duplicate share certificate is company matter and not a civil dispute. Thus, non-entertaining the complaint by ROC on the ground of pendency of suit appears to be contrary to the said judgment. However, we are not going into the said issue as we are remanding

the matter to Respondent No.1-ROC.

29. Very substantial questions of law and fact have been raised by the parties including point regarding jurisdiction of the ROC to deal with the said complaint. It is not proper to decide the said issues at this stage for the first time. Undisputedly, the complaint was decided by ROC without giving hearing to the Petitioners. Therefore, the impugned order is liable to be quashed and set aside.

30. In view of above discussion, we pass the following order:

ORDER

(a) Impugned order dated 3rd April, 2019 passed by the Deputy Registrar of Companies, NCT Delhi and Haryana is quashed and set aside.

(b) Complaint dated 1st December, 2015 filed by the Petitioner No.1 with ROC (Delhi and Haryana) is restored.

(c) ROC (Delhi and Haryana) to give fresh hearing to all the parties and decide the said complaint dated 1st December 2015 afresh within a period of six months.

(d) It is clarified that, we have not expressed any opinion on the merits of the complaint including the point regarding jurisdiction of ROC to decide the said complaint.

(e) All the contentions of the parties are expressly kept open.

31. Writ Petition is disposed in above terms with no order as to costs.

(MADHAV J. JAMDAR, J.) **(S.V. GANGAPURWALA, J.)**