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

Date of Decision: 17th September, 2024

+ CS(COMM) 759/2023, I.A. 4515-4516/2024 & I.A. 5004/2024
JAIN IRRIGATION SYSTEMS LIMITEDPlaintiff
Through: Ms. Samiksha Godiyal and Mr.
Govind Manoharan, Advocates
versus
M/S. PRAGYAWAN TECHNOLOGIES
PRIVATE LIMITEDDefendant
Through: Mr. Rohan Chawla, Mr. Harshit Joshi
and Mr. Bharat, Advocates

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T (ORAL)

I.A 4516/2024 (*Application under Order VII Rule 10 CPC by defendant*)

1. The present application has been filed by the defendant under Order VII Rule 10 of the Code of Civil Procedure, 1908 ('CPC') seeking return of the plaint to the court having appropriate jurisdiction.
2. The plaintiff in the present suit seeks a recovery of an amount of INR 3,49,70,864.13 (INR 3.49 Cr) from the defendant as the sum being due and payable under the two (2) Purchase Orders ('POs')¹ issued by the defendant to the plaintiff. The sum prayed for is inclusive of interest at 18% per annum calculated till the date of the filing of the suit.

Facts germane for deciding the captioned application pleaded by the defendant

3. It is stated that the defendant placed two POs from its Noida office on the plaintiff's factory situated in Jalgaon, Maharashtra for the supply of

¹ 10.06.2019 ('first purchase order') and 10.07.2019 ('second purchase order')



certain PLB Ducts. Thereafter, disputes arose between the parties, which led to foreclosure of the contract on 21.11.2019

3.1. It is stated that in January 2020, the defendant filed a suit bearing Suit No. 9 of 2020 against the plaintiff in the Court of Civil Judge (Senior Division), Gautam Buddh Nagar, Uttar Pradesh in respect of the aforesaid POs ('Noida Suit').

3.2. It is stated that in March 2021, the plaintiff herein filed an application under Order VII Rule 10 of CPC in the Noida Suit, based on the jurisdiction clause mentioned in the POs wherein '*it was stated that jurisdiction of all the disputes shall be New Delhi*'. The said application was dismissed in the Noida Suit vide order dated 25.07.2023.

3.3. It is stated that thereafter, in October 2023, the present suit was filed before this Court, however, the plaint of the Noida Suit was not annexed with the present suit and the dismissal of the plaintiff's application under Order VII Rule 10 of CPC in the Noida Suit was not disclosed in the plaint. It is stated that this was a material fact and has been suppressed by the plaintiff from this Court.

3.4. It is stated that the plaintiff has invoked the territorial jurisdiction of the present Court on three grounds which are stated at paragraph 18 of the plaint – (i) firstly, that the terms of the POs alone are sufficient to confer jurisdiction on the Courts at Delhi (ii) Secondly, as per section 20(a) of CPC since the situs of the defendant's registered office is within the jurisdiction of this Court, therefore, it confers territorial jurisdiction of the Courts at Delhi (iii) Thirdly, the pre-contract discussions before issuance of POs by the defendant occurred at Delhi, therefore, part of cause of action has arisen within jurisdiction of this Court.



3.5. It is stated that the aforesaid grounds are not sufficient to confer territorial jurisdiction of the Courts at Delhi to hear, try, entertain and dispose of the suit since no part of cause of action arose in Delhi and, therefore, through the captioned application the defendant herein seeks return of the plaint.

Arguments on behalf of the applicant/defendant

4. Mr. Rohan Chawla, learned Counsel for the applicant/defendant stated that with respect to the first ground, the exclusive jurisdiction clause of the POs *alone* are not sufficient to confer jurisdiction on the Courts at Delhi, as no part of the cause of action arisen in Delhi. In this regard, he relied upon the judgment of Supreme Court passed in **A.B.C. Laminart Pvt. Ltd. & Anr. v. A.P. Agencies, Salem**², wherein it was observed that the parties, by consent, cannot confer jurisdiction on a court which would otherwise not have jurisdiction. He, therefore, stated that the plaintiff must show that the courts at Delhi otherwise also have jurisdiction.

4.1 He stated that with respect to the second ground, plaintiff has relied upon Section 20(a) of the CPC read with the Explanation to contend that since the defendant's registered office is in Delhi, therefore, this Court had jurisdiction to entertain the present suit. He stated that the said contention already stands rejected through the judgment passed by the Supreme Court in **Patel Roadways Ltd. v. Prasad Trading Company**³ wherein it was held that the Explanation to Section 20 is really a clarification to Section 20(a). He stated that in the said judgment, it was further held that the explanation is divided into two parts, separated by the use of disjunctive "*or*" and the first

² (1989) 2 SCC 163

³ (1991) 4 SCC 270



part applies only if the corporation has a sole or principal office. And, if the corporation has a sub-ordinate office where cause of action has arisen, then the second part of the explanation is applicable. He stated that in view of the said judgment and the facts of this case, the first part is inapplicable and the defendant cannot be sued at the place of its principal office and the defendant has to be sued where the subordinate office is situated i.e., Noida as the cause of action has arisen at Noida.

4.2 Further he also relied upon the judgment passed by the Coordinate Bench of this Court in **Piccadily Agro Industries Ltd. v. Ashok Narwal & Anr.**⁴, wherein it was observed that a defendant can be sued at the place where its registered office is situated only if part of the cause of action had also arisen there.

4.3 He, therefore, stated the situs of the registered office of the defendant is not sufficient since part of the cause of action must also arise where the registered office is. He stated that, if the plaintiff has dealt with the subordinate office of the defendant and cause of action had also arisen there, then the plaintiff must sue where the subordinate office is and not where the principal office is situated.

4.4 With respect to the third ground, he stated, that the alleged pre-contract discussions held at Delhi would not form part of cause of action. He stated that at the outset, the alleged pre-contract discussions are denied by the defendant. He stated that further no such ground/fact was taken by the plaintiff in its application under Order VII Rule 10 CPC filed in the Noida Suit. He stated, therefore, the same is an afterthought to create jurisdiction of

⁴ 2016 SCC OnLine Del 1542



this Court by alleging a miniscule event, which does confer jurisdiction on this court. In this regard, he relied upon the reasoning passed in **A.B.C. Laminart Pvt. Ltd.**⁵ (supra), wherein Supreme Court held that making of an offer on a particular place does not form a cause of action.

4.5 He stated that the plaintiff's case is that the POs are the contract. He stated that (i) the POs were issued by the defendant in Noida to the plaintiff in Jalgaon, Maharashtra; (ii) the POs were issued to the plaintiff in Jalgaon, Maharashtra based on the plaintiff's request on 07.06.2019; (iii) the POs were accepted by the plaintiff in Jalgaon, Maharashtra as is evident from the plaintiff's email-dated 11.07.2019; and (iv) Proforma invoices were issued by the plaintiff from Jalgaon, Maharashtra to the defendant in Noida. He stated, therefore, aforesaid facts clearly evidence that the contract was not made or accepted in Delhi. He stated that the acceptance was communicated in Noida and thus the contract was made in Noida.

4.6 He further relied upon the case in **Arinitis Sales Pvt. Ltd. v. Rockwell Plastic Pvt. Ltd.**,⁶ whereby the Coordinate Bench of this Court held that cause of action in contracts regarding purchase of goods arises at the place (i) where the contract was made; or (ii) where performance was to be executed/completed/goods delivered; or (iii) where the money/price was expressly or impliedly payable.

4.7 He stated as per the aforesaid requisites, firstly, as noted above the contract was made in Noida. Secondly, the goods were manufactured and dispatched from Jalgaon, Maharashtra which is also evident from the Letter of Credit. Thirdly, Letter of Credit was issued by defendant from RBL Bank

⁵ Paragraph 15

⁶ 2007 SCC OnLine Del 1697



in Noida to plaintiff's SBI Bank in Mumbai. He stated that tax invoices were raised by Plaintiff's Jalgaon, Maharashtra office to defendant's corporate office at Noida for supply of Goods in Gujarat; and thus, no payment as well was made in Delhi. He stated that additionally, the correspondence clearly shows interaction only between the defendant's 'Noida, UP' office and the plaintiff's 'Jalgaon, Maharashtra' office.

4.8 He stated that hence in view of the aforesaid admitted facts, no part of cause of action arose in Delhi and hence the plaintiff cannot invoke the territorial jurisdiction of this Court to maintain the present suit at Delhi.

Arguments on behalf of the non-applicant/plaintiff

5. In response, Ms. Samiksha Godiyal, learned counsel for the plaintiff stated that the defendant has failed to raise any valid grounds for return of the present plaint under Order VII Rule 10 of CPC. She stated that the defendant has taken two grounds in the captioned Application: (i) the defendant filed a prior suit against the plaintiff in the Court of Civil Judge (Senior Division), Gautam Buddh Nagar, Uttar Pradesh and the Plaintiff's application filed under Order VII Rule 10 of CPC in that suit has been dismissed by the Noida Court vide order dated 25.07.2023; (ii) this Court has no jurisdiction to try the present Suit since no cause of action arose in Delhi.

5.1. She stated with respect to the first ground pleaded in the captioned application for return of the plaint is wholly misconceived and should be rejected since the plaintiff has maintained its objection to the assumption of jurisdiction by the Noida Court; and, plaintiff herein has accordingly neither filed a written statement nor a counterclaim in the Noida Court.



5.2. She stated that the plaintiff has challenged the order of the Noida Court dated 25.07.2023 in this regard before the Allahabad High Court in CM (M) 5436/2024 on the basis of the exclusive jurisdiction clause in the POs conferring exclusive jurisdiction to courts in Delhi. She stated that the Allahabad High Court has issued notice in the said petition and has stayed the proceedings before the Noida Court. She, therefore, stated that dismissal of the plaintiff's application by the Noida Court is not a ground for return of captioned plaint under Order VII Rule 10 of CPC, if this Court finds that it has jurisdiction to hear the present suit.

5.3. She stated that Section 20(a) of the CPC read with the Explanation allows for a suit to be instituted in a Court within whose jurisdiction a defendant carries on business. She stated that therefore, since in the present case it is an admitted fact that the defendant's registered office is in Delhi, therefore the jurisdiction to entertain the present suit is vested in this Court. In this regard, she relied upon the decisions of Co-ordinate Benches of this Court titled as **Bela Goyal Proprietor of Ispat Sangrah (India) v. VIPL-MIPL JV (Jaipur) & Ors.**,⁷ and **B.S. Verma v. K.G. Khosla Compressors, Ltd.**⁸

5.4. She stated that the defendant has primarily relied upon **Patel Roadways** (supra). She stated that this judgement is distinguishable in the present facts. She stated that application of **Patel Roadways** (supra) in favour of the defendant in the present suit would defeat the intention of the legislature as well as the interpretation of Section 20 of CPC.

⁷ 2022 SCC OnLine Del 38

⁸ 1999 SCC OnLine Del 905



5.5. She relied upon the judgment of Division Bench of this High Court in **Horlicks Ltd. v. Heinz India Pvt. Ltd**⁹, to contend that so long as this Court has jurisdiction to try a suit, the plaintiff, being the dominus litus cannot be non-suited.

5.6. She stated that the exclusive jurisdiction of Courts in Delhi has been agreed under POs dated 10.06.2019 and 10.07.2019. She stated that POs issued by the defendant itself clearly indicate the intention of the defendant was to refer any disputes which arise between the parties to courts in Delhi. She stated that the plaintiff seeks to honour the agreement entered into between the parties, which it is bound to do under applicable law, however, in the present case the defendant is seeking to wriggle out of its own agreement.

5.7. She stated that it is settled law that where the parties confer exclusive jurisdiction on a court which is otherwise competent to hear the dispute, the parties are mandated to honour this agreement and file only in the agreed court. She relied upon the Supreme Court judgments of **Hakam Singh v. M/s. Gammon (India) Ltd**¹⁰ and **Shriram City Union Finance Corporation Ltd v. Rama Mishra**¹¹.

5.8. She contended that it is trite law that where more than one court would have jurisdiction to decide a dispute, an exclusive jurisdiction clause ousts the jurisdiction of any other court [**Rajasthan State Electricity Board v. Universal Petrol Chemicals Limited**¹²]; and use of the words “only”, “exclusive”, “alone”, etc. is not essential to convey the intention of parties to

⁹ (2009) SCC OnLine Del 3342

¹⁰ 1971 (1) SCC 286

¹¹ (2002) 9 SCC 613

¹² (2009) 3 SCC 107



confer exclusive jurisdiction. She further relied upon the judgement of the Supreme Court in **Swastik Gases Private Limited v. Indian Oil Corporation Limited**¹³ wherein the Supreme Court has expressly held with regards to exclusive jurisdiction clause that:

“32...It is a fact that whilst providing for jurisdiction clause in the agreement the words like ‘alone’, ‘only’, ‘exclusive’ or ‘exclusive jurisdiction’ have not been used but this, in our view, is not decisive and does not make any material difference... 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

“55... The very fact that the ouster clause is included in the agreement between the parties conveys their clear intention to exclude the jurisdiction of Courts other than those mentioned in the concerned clause.

5.9. She further relies upon the judgement passed by the Coordinate bench of this Court in **Pantaloan Retail (India) Ltd. v. Amer Sports Malaysia SDN BHD & Anr.**¹⁴ wherein it has been insisted on parties suing in the agreed forum of choice.

5.10. She stated that in view of the aforesaid judicial pronouncements not only does this Court have jurisdiction to hear the present suit in view of the exclusive jurisdiction clause between the parties coupled with the location of

¹³ (2013) 9 SCC 32

¹⁴ 2012 SCC OnLine Del 2677



the registered office of the defendant, however, the defendant is also in breach of its contract with the plaintiff in instituting proceedings in Noida.

5.11. She stated that the defendant has erroneously contended that no part of the cause of action here arose in Delhi. She stated that the plaint in the present suit expressly avers at paragraph 18 that:

“18... This Hon’ble Court also has jurisdiction as discussions between the parties prior to issuance of the purchase orders in the present case occurred in New Delhi and therefore, part of the cause of action arises within the jurisdiction of Delhi.”

5.12. She further stated that it is a settled law as held in **Prakash Industries Ltd. v. Manmohan Bansal and Ors.**¹⁵ and **Devarpan Foods Private Limited v. Sukhwant Singh and Others**¹⁶ that an application under Order VII Rule 10 of CPC must be considered on a demurrer and the averments in the plaint must be assumed to be correct. She stated that accordingly, the averments made in the present plaint must be assumed to be correct and it must be assumed that part of the cause of action arose in Delhi.

5.13. She stated that the defendant has misleadingly argued that the plaintiff’s case of cause of action is based on “pre-contractual negotiations”. She stated that the plaint does not make any such averment. She stated that the plaintiff has stated that discussions between the parties prior to issuance of the POs occurred in Delhi, thus, whether these discussions concluded the terms of the contract between the parties by amounting to offer plus acceptance or fell short of this, is a triable issue. She stated that, therefore,

¹⁵ (2016) SCC OnLine Del 4389

¹⁶ (2022) SCC OnLine Del 2515



the plaintiff's case of cause of action cannot be rejected on an averment never made.

5.14. She stated that since the defendant's argument of "pre-contractual negotiations" not amounting to a cause of action are wholly irrelevant at this stage, therefore, the reliance placed upon **A.B.C. Laminart Pvt. Ltd.** (supra) as well is completely misplaced. She stated that observations of paragraph 15 of **A.B.C. Laminart Pvt. Ltd.** (supra) relied upon by the defendant are not binding on this Court especially at this stage.

5.15. She stated that in light of the aforesaid judgments cited and submissions made, the captioned application of the defendant filed under Order VII Rule 10 of CPC ought to be rejected.

Response by applicant/defendant to the judgments submitted by the plaintiff

6. The defendant has submitted a distinguishing note on the judgments filed by the plaintiff, which reads as under:

".....

11.1. The judgments in **Hakam Singh v. M/s Gammon (India) Ltd. (1971) 1 SCC 286** and **Gopal Singh Hira Singh v. Punjab National Bank (1975) SCC OnLine Del 110**, are prior to the judgment in ABC Laminart (supra) and thus, these are inapplicable to the present case. The judgment of Hakam Singh (supra) has been considered in ABC Laminart (supra).

11.2. The judgments in **Shriram City Union Finance Corporation Ltd. v. Rama Mishra (2002) 9 SCC 613** and **Rajasthan State Electricity Board v. Universal Petrol Chemicals Ltd. (2009) 3 SCC 107** are also inapplicable as in the facts of the said cases, there was an arbitration clause and hence the parties could designate the courts of a particular place to have exclusive jurisdiction, even if no part of the cause of action had arisen there.

11.3. The judgment in **Swastik Gases Pvt. Ltd. v. Indian Oil Corporation Ltd. (2013) 9 SCC 32** is also inapplicable, as in the said



case there was no dispute that part of the cause of action had arisen in the territorial jurisdiction of the court on which jurisdiction had been conferred. (Para 31, 56)

11.4. The judgments in **Devarpan Foods Pvt. Ltd. v. Sukhwant Singh & Ors. (2022) SCC OnLine Del 2515** and **Prakash Industries v. Manmohan Bansal (2016) SCC OnLine Del 4389** only state that an application under order VII Rule 10, CPC has to be judged on demurer/reading of the plaint. The Defendant has shown that even on demurer/reading of the plaint, the contract was not executed in Delhi and the making of an offer does not amount to cause of action.

11.5. The judgment in **Pantaloon Retail (India) Ltd. v. Amer Sports Malaysia (2012) SCC OnLine Del 2677** was overruled by the Division Bench of this Hon'ble Court in **FAO (OS) 224/2012** on 31.05.2012. An **SLP bearing no. 18953/2012** was filed against the order of the Division Bench. The said SLP was disposed of on 20.07.2012, as the original suit had been withdrawn on 18.07.2012. Thus, the judgment-dated 31.05.2012 of the Hon'ble Division Bench was not interfered with. Thus, the instant judgment is inapplicable.

11.6. The judgment in **Bela Goyal v. VIPL-MIPL JV (JAIPUR) & Ors.** is inapplicable as even therein, it was held that cause of action had arisen within the territorial limits of the registered office of the Defendant (Para 21). As stated above, no cause of action had arisen in Delhi. Interestingly, the said judgment rejects the jurisdiction clause in the invoice, as there was no "exclusion clause". Even in the instant case, the Purchase Orders do not use the words "exclusive jurisdiction".

11.7. Similarly, the judgment in **BS Verma v. KG Khosla Compressors (1999) SCC OnLine Del 905** also held that cause of action had arisen within the territorial limits of the registered office of the Defendant (Para 8). Thus, the said judgment is inapplicable.

11.8. The judgments in **FMC Corporation v. NATCO Pharma Limited (2020) SCC OnLine Del 2074** and **Horlicks Ltd. v. Heinz India (2009) 164 DLT 539 (DB)** are on the issue of forum conveniens. The substantial cause of action arose in Noida."



Findings and analysis

12. This Court has considered the submissions of the learned counsel for the parties and perused the record.

13. The relevant paragraph 18 of the plaint for deciding the issue raised in the present application reads as under:

“18. This Hon'ble Court has jurisdiction to hear, try, entertain, and dispose of the present suit filed by the Plaintiff. Both the First and Second Purchase Orders under which the PLB Duct Pipes were supplied by the Plaintiff, clearly mentioned that the jurisdiction of all the disputes shall be New Delhi, thus, this Hon'ble Court has jurisdiction to hear, try and dispose this matter. Moreover, under Section 20 of the Code of Civil Procedure, 1908, this Hon'ble Court has jurisdiction inasmuch as the Defendant carries on business for gain within the jurisdiction of this Hon'ble Court from its registered office at Laxmi Nagar, New Delhi. This Hon'ble Court also jurisdiction as the discussions between the parties prior to issuance of the purchase orders in the present case occurred in New Delhi and therefore, part of the cause of action arises within the jurisdiction of this Hon'ble Court.”

Registered office in Delhi is not sufficient to confer territorial jurisdiction of the courts in Delhi

14. Learned counsel for the plaintiff relied upon the fact that the defendant corporation has its registered office at Delhi to maintain the suit as per Section 20(a) CPC. It was her contention that this fact alone without any cause of action arising in Delhi is sufficient to clothe this Court with the territorial jurisdiction to entertain this suit. She contended that since the POs as well contain an exclusive jurisdiction clause, therefore, this fact is sufficient to confer territorial jurisdiction on the Court at Delhi. The plaintiff does not dispute that the cause of action arose at Noida and the defendant has a subordinate office at Noida.

14.1. In the considered opinion of this Court the submission of the plaintiff



in this regard is misconceived and contrary to the law as settled by Supreme Court in the judgments of **A.B.C. Laminart Pvt. Ltd. and Anr.** (supra) and **Patel Roadways Ltd.** (supra).

14.2. In **Patel Roadways Ltd.** (supra) the Supreme Court unequivocally held that where the defendant corporation has its principal office at one place and subordinate office at another place and cause of action arises at the place where the subordinate office is located, then the suit has to be filed ‘only’ in the Court within whose jurisdiction the defendant corporation has its subordinate office and not in Court within whose jurisdiction it has the principal office. The relevant paragraph nos. 9, 12 and 13 read as under:

“9. Clauses (a) and (b) of Section 20 inter alia refer to a court within the local limits of whose jurisdiction the defendant inter alia “carries on business”. Clause (c) on the other hand refers to a court within the local limits of whose jurisdiction the cause of action wholly or in part arises. It has not been urged before us on behalf of the appellant that the cause of action wholly or in part arose in Bombay. Consequently clause (c) is not attracted to the facts of these cases. What has been urged with the aid of the Explanation to Section 20 of the Code is that since the appellant has its principal office in Bombay it shall be deemed to carry on business at Bombay and consequently the courts at Bombay will also have jurisdiction. On a plain reading of the Explanation to Section 20 of the Code we find an apparent fallacy in the aforesaid argument. The Explanation is in two parts, one before the word “or” occurring between the words “office in India” and the word “in respect of” and the other thereafter. The Explanation applies to a defendant which is a corporation, which term, as seen above, would include even a company such as the appellant in the instant case. The first part of the Explanation applies only to such a corporation which has its sole or principal office at a particular place. In that event the courts within whose jurisdiction the sole or principal office of the defendant is situate will also have jurisdiction inasmuch as even if the defendant may not be actually carrying on business at that place, it will “be deemed to carry on business” at that place because of the fiction created by the Explanation. The latter part of the Explanation takes care of a case where the defendant does not have a



sole office but has a principal office at one place and has also a subordinate office at another place. The words “at such place” occurring at the end of the Explanation and the word “or” referred to above which is disjunctive clearly suggest that if the case falls within the latter part of the Explanation it is not the court within whose jurisdiction the principal office of the defendant is situate but the court within whose jurisdiction it has a subordinate office which alone shall have jurisdiction “in respect of any cause of action arising at any place where it has also a subordinate office”.

.....

12. We would also like to add that the interpretation sought to be placed by the appellant on the provision in question renders the Explanation totally redundant. If the intention of the legislature was, as is said on their behalf, that a suit against a corporation could be instituted either at the place of its sole or principal office (whether or not the corporation carries on business at that place) or at any other place where the cause of action arises, the provisions of clauses (a), (b) and (c) together with the first part of the Explanation would have completely achieved the purpose. Indeed the effect would have been wider. The suit could have been instituted at the place of the principal office because of the situation of such office (whether or not any actual business was carried on there). Alternatively, a suit could have been instituted at the place where the cause of action arose under clause (c) (irrespective of whether the corporation had a subordinate office in such place or not). This was, therefore, not the purpose of the Explanation. **The Explanation is really an Explanation to clause (a). It is in the nature of a clarification on the scope of clause (a) viz. as to where the corporation can be said to carry on business. This, it is clarified, will be the place where the principal office is situated (whether or not any business actually is carried on there) or the place where a business is carried on giving rise to a cause of action (even though the principal office of the corporation is not located there) so long as there is a subordinate office of the corporation situated at such place. The linking together of the place where the cause of action arises with the place where a subordinate office is located clearly shows that the intention of the legislature was that, in the case of a corporation, for the purposes of clause (a), the location of the subordinate office, within the local limits of which a cause of action arises, is to be the relevant place for the filing of a suit and not the principal place of business.** If the intention was that the



location of the sole or principal office as well as the location of the subordinate office (within the limits of which a cause of action arises) are to be deemed to be places where the corporation is deemed to be carrying on business, the disjunctive “or” will not be there. Instead, the second part of the Explanation would have read “and, in respect of any cause of action arising at any place where it has a subordinate office, also at such place”.

13. As far as we can see the interpretation which we have placed on this section does not create any practical or undue difficulties or disadvantage either to the plaintiff or a defendant corporation. It is true that, normally, under clauses (a) to (c), the plaintiff has a choice of forum and cannot be compelled to go to the place of residence or business of the corporation and can file a suit at a place where the cause of action arises. If a corporation desires to be protected from being dragged into litigation at some place merely because a cause of action arises there it can save itself from such a situation by an exclusion clause as has been done in the present case. **The clear intendment of the Explanation, however, is that, where the corporation has a subordinate office in the place where the cause of action arises, it cannot be heard to say that it cannot be sued there because it does not carry on business at that place.** It would be a great hardship if, in spite of the corporation having a subordinate office at the place where the cause of action arises (with which in all probability the plaintiff has had dealings), such plaintiff is to be compelled to travel to the place where the corporation has its principal place. That place should be convenient to the plaintiff; and since the corporation has an office at such place, it will also be under no disadvantage. **Thus the Explanation provides an alternative locus for the corporation's place of business, not an additional one.”**

(Emphasis Supplied)

15. In the facts of the present case as noted above, the plaintiff admittedly has a subordinate office at Noida, Uttar Pradesh. The POs were issued at Noida, Uttar Pradesh and were accepted by the plaintiff in Jalgaon, Maharashtra as is evident from the plaintiff's email-dated 11.07.2019. The Tax invoices were raised by plaintiff's Jalgaon office in Maharashtra to



defendant's corporate office at Noida for supply of Goods in Gujarat. Further as asserted by the parties as well, the goods were manufactured and dispatched from Jalgaon, Maharashtra. Therefore, as per the aforesaid facts noted neither any (i) contract was made or accepted in Delhi (ii) nor any payments were made in Delhi (iii) nor contract performance was made in Delhi. Thus, as per the judgment of the Supreme Court in **Patel Roadways Ltd.** (supra) the plaintiff herein can sue the defendant at Noida as per Section 20(a) of CPC read with the Explanation thereto since the defendant has a subordinate office at Noida and the cause of action has arisen at Noida. However, in these apparent facts the plaintiff cannot sue defendant in Delhi by invoking Section 20(a) only on the ground that the registered office of the plaintiff is at Delhi, as no part of the cause of action arose in Delhi.

16. It would also be relevant to refer to another judgment passed by the Coordinate Bench of this Court in **Piccadily Agro Industries Ltd.** (supra) wherein it has been held that a suit cannot be maintained against a defendant corporation in Delhi on the mere plea that it has its registered office in Delhi, if the defendant corporation has a subordinate office where the cause of action has arisen. In this judgment, the Court also held that bald pleas which do not give rise to a cause of action, would not confer jurisdiction on the Courts at Delhi. The relevant paragraph nos. 28 and 32 of the judgment read as under:

“28. I now proceed to examine whether any part of cause of action can be said to have arisen within the jurisdiction of this Court merely because defendant no. 2 takes its business decisions regarding manufacture and marketing of the impugned product at its registered office in Delhi and it maintains its books of account in Delhi, and takes its administrative decisions in Delhi at its registered office.

...



32. I agree with the submission of Mr. Kirpal that if the excuses given by the plaintiff for invoking the jurisdiction of this Court were to be accepted on the ground that defendant no. 2 has taken its business decisions in Delhi at its registered office, and on the ground that defendant no. 2 is obliged to maintain its record and accounts at its registered office in Delhi, then in every case it would be possible to file the suit against a defendant corporation at the place where its registered office is situated - even when no cause of action has arisen within the jurisdiction of the Court, where the Registered Office is situated, and the Corporation has a subordinate office where the cause of action has arisen, thereby completely nullifying the scheme contained in Section 20(c) read with its explanation.

(Emphasis Supplied)

17. Thus, the contention of the plaintiff that it can maintain the suit against the defendant corporation in Delhi under Section 20(a) CPC as the defendant has its registered office at Delhi is misconceived in law, as by virtue of the Explanation to the said provision it is the Court where the subordinate office is located and where the cause of action has arisen would have jurisdiction under Section 20(a) CPC.

Terms of the POs cannot confer jurisdiction to the courts in Delhi if no cause of action has arisen in Delhi

18. The plaintiff has next contended that the suit is maintainable in Delhi because of the jurisdiction clause mentioned in the POs. The plaintiff contends that in view of the said contractual clause the suit would be maintainable even though no cause of action has arisen at Delhi. The said contention of the plaintiff is contrary to the law settled by the landmark judgment of the Supreme Court in **A.B.C. Laminart Pvt. Ltd.** (supra). In the said judgment, Supreme Court held that if several Courts have jurisdiction over a transaction, parties can confer exclusive jurisdiction on one of the Court which otherwise in law has jurisdiction to entertain the



dispute. The Supreme Court held that if parties execute an exclusive jurisdiction clause, conferring jurisdiction on a Court which does not have jurisdiction to entertain the suit, such a clause would be void under Sections 23 and 28 of the Indian Contract Act, 1872. The relevant paragraph nos. 16 and 20 of the judgment reads as under:

“16. So long as the parties to a contract do not oust the jurisdiction of all the courts which would otherwise have jurisdiction to decide the cause of action under the law it cannot be said that the parties have by their contract ousted the jurisdiction of the court. If under the law several courts would have jurisdiction and the parties have agreed to submit to one of these jurisdictions and not to other or others of them it cannot be said that there is total ouster of jurisdiction. In other words, where the parties to a contract agreed to submit the disputes arising from it to a particular jurisdiction which would otherwise also be a proper jurisdiction under the law their agreement to the extent they agreed not to submit to other jurisdictions cannot be said to be void as against public policy. If on the other hand the jurisdiction they agreed to submit to would not otherwise be proper jurisdiction to decide disputes arising out of the contract it must be declared void being against public policy. Would this be the position in the instant case?

...

20. When the court has to decide the question of jurisdiction pursuant to an ouster clause it is necessary to construe the ousting expression or clause properly. Often the stipulation is that the contract shall be deemed to have been made at a particular place. This would provide the connecting factor for jurisdiction to the courts of that place in the matter of any dispute on or arising out of that contract. It would not, however, ipso facto take away jurisdiction of other courts. Thus, in *Salem Chemical Industries v. Bird & Co.* [AIR 1979 Mad 16 : (1978) 2 Mad LJ 189] where the terms and conditions attached to the quotation contained an arbitration clause provided that: “any order placed against this quotation shall be deemed to be a contract made in Calcutta and any dispute arising therefrom shall be settled by an arbitrator to be jointly appointed by us”, it was held that it merely fixed the situs of the contract at Calcutta and it did not mean to confer an exclusive jurisdiction on



the court at Calcutta, and when a part of the cause of action had arisen at Salem, the court there had also jurisdiction to entertain the suit under Section 20(c) of the Code of Civil Procedure.”

(Emphasis Supplied)

19. In the facts of the present case, since this Court has concluded that the Courts at Delhi do not have any jurisdiction under Section 20(a) CPC, no exclusive jurisdiction could have been conferred at Delhi by consent in the POs. Thus, the terms of the POs cannot confer jurisdiction to the Courts in Delhi, since the said Courts otherwise did not have jurisdiction.

Pre-contract negotiations cannot form a part of cause of action

20. Lastly, the plaintiff has contended that a part of cause of action has arisen at Delhi. In this regard, the learned counsel for the plaintiff relied upon the below mentioned portion of paragraph 18 of the plaint, which reads as under:

18. ...This Hon'ble Court also has jurisdiction as the discussions between the parties prior to issuance of the purchase orders in the present case occurred in New Delhi and therefore, part of the cause of action arises within the jurisdiction of this Hon'ble Court.”

21. Learned counsel for the plaintiff during oral arguments stated that the pre-negotiation talks were held at Delhi and this gives rise to part of cause of action within the jurisdiction of this Court. She further stated that whether these discussions held at Delhi amounted to offer plus acceptance (or fell short of this) is a triable issue. She contended, however, the aforesaid averment in the plaint was sufficient for maintaining the suit at the pre-trial stage.

22. Before examining the said plea of the plaintiff, it would be relevant to refer to few judgments of the Supreme Court and this Court on cause of



action. The Supreme Court in **A.B.C. Laminart Pvt. Ltd.** (supra) at paragraph nos. 11, 12 and 15 has succinctly explained the extent and scope of cause of action in the context for determining the jurisdiction of the Court in the matter of formation of contract, which reads as under:

“

11. The jurisdiction of the court in the matter of a contract will depend on the situs of the contract and the cause of action arising through connecting factors.

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.

...

15. In the matter of a contract there may arise causes of action of various kinds. In a suit for damages for breach of contract the cause of action consists of the making of the contract, and of its breach, so that the suit may be filed either at the place where the contract was made or at the place where it should have been performed and the breach occurred. The making of the contract is part of the cause of action. A suit on a contract, therefore, can be filed at the place where it was made. The determination of the place where the contract was made is part of the law of contract. But making of an offer on a particular place does not form cause of action in a suit for damages for breach of contract. Ordinarily, acceptance of an offer and its intimation result in a contract and hence a suit can be filed in a court within whose jurisdiction the acceptance was communicated. The performance of a contract is part of cause of action and a suit in respect of the breach



can always be filed at the place where the contract should have been performed or its performance completed. If the contract is to be performed at the place where it is made, the suit on the contract is to be filed there and nowhere else. In suits for agency actions the cause of action arises at the place where the contract of agency was made or the place where actions are to be rendered and payment is to be made by the agent. Part of cause of action arises where money is expressly or impliedly payable under a contract. In cases of repudiation of a contract, the place where repudiation is received is the place where the suit would lie. If a contract is pleaded as part of the cause of action giving jurisdiction to the court where the suit is filed and that contract is found to be invalid, such part of cause of the action disappears. The above are some of the connecting factors.”

(Emphasis Supplied)

23. The plaintiff in written submissions has contended that the observations of the Supreme Court in paragraph 15 are not binding on this Court as they are not the ratio of the said judgment, however, this Court does not agree with the said submission of the plaintiff.

24. The Supreme Court in **A.B.C. Laminart Pvt. Ltd.** (supra) at paragraph 15 has categorically held that a suit can be filed in a Court within whose jurisdiction the acceptance was communicated. In paragraph no. 18 of the plaint under consideration there is no averment by the plaintiff that the acceptance was communicated to defendant at Delhi. To the contrary, the plaintiff at paragraph no. 18 of the plaint has only asserted that discussions ‘prior’ to the issuance of the POs were held at Delhi. Thus, assuming the averments at paragraph no. 18 of the plaint to be correct on a demurrer, no cause of action can be said to have arisen at Delhi on account of the said prior discussions.

25. The Supreme Court in **A.B.C. Laminart Pvt. Ltd.** (supra) at paragraph 12 has held that cause of action means every fact, which if



traversed, it would be necessary for the plaintiff to prove in order to support its right to a judgment of the Court. And, everything which if not proved would give the defendant the right to immediate judgment must be part of cause of action. In the opinion of this Court, ‘prior’ discussions held between the parties do not form a part of a cause of action of the claim raised by the plaintiff in this plaint. Prior discussions do not form a part of cause of action in the formation of the contract. This is also in conformity with the law laid down under the Section 94 and 95 of Bharatiya Sakshya Adhiniyam, 2023¹⁷ which bars admission of any pre-contractual negotiations which are not a part of the executed contract. The plea of the plaintiff to allege that the pre-contract negotiations were held at Delhi, though innovative, fails to give rise to any cause of action.

26. It would also be instructive to refer to a judgment of the Coordinate Bench of this Court in **Rashtriya Mahila Kosh v. The Dale View & Anr.**¹⁸ wherein the learned Single Judge after considering the law laid down by the Supreme Court in all the landmark judgments culled out principles which are useful in deciding the plea of territorial jurisdiction vis-à-vis cause of action. The relevant paragraphs 21 and 22 of the judgment reads as under:

“21. It is well settled that the territorial jurisdiction of a civil court would be ascertained having regard to the place of accrual of cause of action. This issue has fallen for consideration in a catena of judicial pronouncements by the Apex Court reported at **AIR 1985 SC 1289 : (1985) 3 SCC 217 State of Rajasthan v. Swaika Properties; (2002) 1 SCC 567 : AIR 2002 SC 126, Union of India v. Adani Export Ltd.; (2004) 9 SCC 786, National Textile Corporation Ltd. v. Haribox Swalram; (2004) 6 SCC 254, Kusum Ingots & Alloys Ltd. v. Union of India; (1991) 4**

¹⁷ erstwhile Sections 91 and 92 of the Indian Evidence Act, 1872

¹⁸ 2007 (95) DRJ 418



SCC 270 : AIR 1992 SC 1514, Patel Roadways Limited Bombay v. Prasad Trading Company; JT 1994 (5) SC 1, Oil & Natural Gas Commission v. Utpal Kumar Basu; (1996) 3 SCC 443, South East Asia Shipping Company Ltd. v. Nav Bharat Enterprises Pvt. Ltd. Several pronouncements of Division Bench of this court also have adjudicated upon this issue. In the judgments reported at **85 (1997) DLT 81 DB Sector 21 Owners Welfare Association v. Air Force Naval Housing Board;** and **(2003) 69 DRJ 98, A.K. Surekha v. Pradeshiya Investment Corporation of U.P. Ltd.;** and **(2004) 73 DRJ 104, Callipers Naigai Ltd. v. Government of NCT of Delhi,** this court has considered the same issue.

22. I have had occasion to deal with this issue on two earlier occasions. In a decision rendered on 4-1-2007 in Arbitration Application No. 242/2006 **Rattan Singh Associates (P) Ltd. v. Gill Power Generation Co. Pvt. Ltd.** and an earlier decision rendered on 23-12-2005 in Writ Petition (C) No. 5133/2005 **Jai Ganesh Petroleum v. Union of India,** upon a careful consideration of the principles laid down in the several judicial pronouncements noticed hereinabove, so far as the accrual for the place of cause of action which would enable a court to have territorial jurisdiction to adjudicate upon a lis relating thereto, the following principles had been culled out:—

- i. making and signing of a contract is part of cause of action;
- ii. **parties cannot by consent confer jurisdiction on a court;**
- iii. In the case of several courts having jurisdiction, parties can legally agree to exclude the jurisdiction of any of such courts and elect to restrict territorial jurisdiction to one out of such courts which otherwise has jurisdiction;
- iv. **the high court must be satisfied from the entire facts pleaded in support of the cause of action that those facts which constitute the cause or are necessary to decide the dispute have wholly arisen within its territorial jurisdiction, or, in any case, which have, atleast in part, arisen within its jurisdiction;**
- v. each and every fact pleaded in the petition does not ipsofacto lead to the conclusion that those facts which constitute the cause of action vesting territorial jurisdiction upon the court to adjudicate upon the lis;



- vi. **only those facts pleaded which have a nexus or relevance with the issues involved in the lis confer territorial jurisdiction on the court;**
- vii. in determining an objection relating to lack of territorial jurisdiction, the court must take all the facts pleaded in support of the cause of action as pleaded in the petition into consideration without embarking upon an inquiry as to the correctness or otherwise to the fact that;
- viii. A question of territorial jurisdiction must be apparent on the facts pleaded in the petition, the source or otherwise of the averments made in the writ petition being immaterial. In matters where the parties have agreed to restrict jurisdiction to one or the other court out of several courts which may have territorial jurisdiction, such clause would be enforceable only if the litigation which has arisen falls within the domain of the subject matter which is being provided in such clause. The parties may have confined jurisdiction to litigation arising only under the agreement. In such cases, the court has to arrive at a finding that the litigation between the parties was within the domain of the clause confining jurisdiction. If it does not, then the territorial jurisdiction of the court could be barred;
- ix. **The court must be satisfied that all relevant facts which have merely a substantial nexus with the lis are located within its territorial jurisdiction;**
- x. Even if it were to be held that a court has jurisdiction, yet guided by principles of forum non-conveniens, the court may divert the parties to the court having a closer connection with the subject matter of the litigation. Residence of parties, location of evidence, situs of the dispute and such like considerations could guide the decision of the court to this effect.
- xi. To the above, yet another principle requires to be added. **It also requires to be borne in mind that a trivial or insignificant part of the cause of action arising at a particular place or where it may have incidentally arisen, would not be sufficient to confer territorial jurisdiction on the court, it is the court within whose jurisdiction, the cause of action has substantially or predominantly arisen**



which would have territorial jurisdiction to adjudicate upon the lis.”

(Emphasis Supplied)

27. In the opinion of this Court, the plea of the plaintiff with respect to ‘prior’ discussions held at Delhi does not constitute its cause and admittedly the said ‘prior’ discussions even otherwise are not relied upon by the plaintiff for the final relief of recovery of money sought in this suit. Thus, this Court is satisfied that no part of the cause of action has arisen within the jurisdiction of this Court so as to enable the plaintiff to maintain the present suit in Delhi.

28. The plaintiff has not disputed that the plea of ‘prior’ discussions at Delhi was not raised by the plaintiff in its pleadings filed in the Noida suit while challenging the territorial jurisdiction of the Noida Court. This lends credence to the submission of the defendant that the said plea is an afterthought or an extrapolation to maintain the present suit in Delhi by raising a plea so as to allege sliver of cause of action arose in Delhi.

Suppression of the material facts and pleadings filed in the Noida suit

29. With respect to plaintiff’s non-disclosure of the proceedings in the earlier suit [Suit No. 9 of 2020] filed by the defendant at Noida with respect to the rejection of the plaintiff’s application therein (vide order dated 25.07.2023) filed under Order VII Rule of 10 CPC, this Court is of the opinion that the plaintiff has failed to explain the said non-disclosure during oral arguments and/or in the written submissions. It is a matter of record that the pleadings of the Noida suit were not filed by the plaintiff with the present suit. The plaintiff has contended that since the order dated 25.07.2023 passed in the Noida suit rejecting its application under Order VII



Rule 10 of CPC has since been challenged before the Allahabad High Court in CM(M) 5436/2024 and subsequently, as the proceedings of the Noida suit has been stayed by the Allahabad High Court on 01.07.2024, therefore, the non-disclosure is inconsequential.

30. This Court is unpersuaded by the aforesaid explanation offered by the plaintiff. The Noida suit was filed by defendant herein in January, 2020. The plaintiff's application seeking return of the plaint under Order VII Rule 10 of CPC was dismissed on 25.07.2023. The present suit was instituted in this Court in October, 2023 and the plaintiff was obliged in law to make a full disclosure of the filings made in the earlier suit at Noida and especially the order passed in the Noida suit *vide* order dated 25.07.2023 and annex the same with the present plaint. The order dated 25.07.2023 ought to have also been pleaded in the paragraph 18 of the plaint while dealing with pleas relating to territorial jurisdiction. However, the non-disclosure in the present suit by the plaintiff is wilful and is contrary to the settled law which obliges a party approaching the Court to make a full disclosure of all pending proceedings. In fact, the incongruity in the stand taken by the plaintiff can be seen from the plaint itself wherein, at paragraph no. 21 of the plaint the plaintiff has made a disclosure which reads as under:

“21. The Plaintiff has not filed a separate suit or any other proceeding which is pending and pertaining to the subject-matter of the present suit in any Court in India.”

31. In the opinion of this Court, the said disclosure made at paragraph no. 21 of the plaint is misleading and the plaintiff has approached this Court with unclean hands. The brazenness with which the said non-disclosure has been defended is also condemn worthy. The pendency of the proceedings at



Noida was mentioned in paragraph no. 5.40 of the plaint, however, without any mention of the order dated 25.07.2023 passed in the Noida suit. The relevant paragraph no. 5.40 of the plaint reads as under:

“5.40 The Defendant thereafter preferred a purported civil suit before the Court of Civil Judge (Sr. Division), Gautam Buddh Nagar, Uttar Pradesh seeking recovery of INR 57,00,000/- (Rupees Fifty Seven Lakhs Only). The said suit is pending before the Court of Civil Judge (Sr. Division), Gautam Buddh Nagar, Uttar Pradesh in CS No. 9 of 2020. The Plaintiff craves leave to refer to the papers and proceedings, including all the orders passed by the Court of Civil Judge (Sr. Division), Gautam Buddh Nagar, Uttar Pradesh in CS No. 9 of 2020, as and when necessary.”

32. The stay order dated 01.05.2024 granted by Allahabad High Court in CM(M) 5436/2024 does not mitigate the suppression of material fact and wilful non-disclosure by the plaintiff herein. The suit was filed in October, 2023 which is 8 months prior to the aforesaid order. This Court, therefore, imposes costs of Rs. 10,000/- on the plaintiff for the aforesaid non-disclosure and the same will be paid to the defendant within a period of two (2) weeks from today.

33. In view of the aforesaid findings on lack of territorial jurisdiction, this Court is of the considered opinion that the defendant's application I.A. No. 4516/2024 deserves to be allowed. The plaint, therefore, is liable to be returned under Order VII Rule 10 of CPC for presentation before the appropriate Court having competent jurisdiction. The registry is directed to return the plaint as per applicable rules.

34. In view of the findings hereinabove, the judgments relied upon by the plaintiff do not substantiate the submission of the plaintiff for invoking the jurisdiction of the Courts at Delhi and have been rightly distinguished by the



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defendant as noted hereinabove.

35. Pending applications stand disposed of.

MANMEET PRITAM SINGH ARORA, J
SEPTEMBER 17, 2024/msh/ms