IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.4344 OF 2024

1. Ram, Kishor Arora,
Suspended Director of Supertech
Township Projects Ltd.

2. Mohit Arora,
Suspended Director of Supertech
Township Projects Ltd.

3. Sangita Arora,
Erstwhile Director of Supertech
Township Projects Ltd.

All having their office at 114,
Hemkunt Chambers, 89, Nehru Place,
New Delhi – 110 019. .....Petitioners

Vs.

1. ICICI Bank,
ICICI Bank Tower,
Bandra-Karla Complex,

2. Reserve Bank of India,
6, Sansad Marg,
New Delhi, Delhi – 110 001.

3. Supertech Township Projects Ltd,
Having its registered office at 114,
Hemkunt Chambers, 89, Nehru Place,
New Delhi – 110 019.
Through the Interim
Resolution Professional. .....Respondents

Mr. Karl Tamboly with Ms. Vidhi Mehta, i/b. Aagam Doshi, for the Petitioners.
Dr. Birendra Saraf, Senior Advocate, Mr. Nimay Dave, Mr. Mayur Bhojwani & Ms. Dhamini Nagpal, i/b. Manilal Kher Ambalal & Co., for the Respondent No.1-ICICI Bank Ltd.

CORAM : REVATI MOHITE DERE & DR. NEELA GOKHALE, JJ.
DATE : 31st JANUARY 2025

PC:

1. The Petitioners seek a direction to quash order dated 5th January 2024 passed by the Committee of the Respondent No.1-ICICI Bank classifying the Petitioner's account as fraud and other ancillary reliefs including quashing of show-cause notice dated 26th September 2023.

2. The Petitioners No.1 and 2 are Directors of Supertech Township Projects Ltd., (for the sake of brevity referred as 'STPL'), which Directorship is presently placed under suspension. The Petitioner No.3 is the erstwhile Director of the STPL. The Respondent No.1 is the ICICI Bank, the Respondent No.2 is the Reserve Bank of India and the Respondent No.3 is the STPL, which is the Principal Borrower Company.

3. Admittedly, Corporate Insolvency Resolution Process is initiated against STPL by the Punjab and Sindh Bank and by order dated 12th July 2024, National Company Law Tribunal (for the sake of

brevity referred as ‘NCLT’), New Delhi has appointed an Interim Resolution Professional (for the sake of brevity referred as ‘IRP’). An Appeal is preferred and pending before the National Company Law Appellate Tribunal (for the sake of brevity referred as ‘NCLAT’), New Delhi. The account of STPL is classified as ‘Non Performing Asset’ (for the sake of brevity referred as ‘NPA’).

4. It is the case of the Petitioners that there are some amounts outstanding and payable to the Respondent No.1-Bank and the proposal for settlement is also made to the Bank. In the meantime, STPL learnt that the ICICI Bank has forwarded the classification of its accounts as ‘Fraud’ with the Serious Fraud Investigation Office (for the sake of brevity referred as ‘SFIO’). The fraud classification was admittedly challenged by STPL before the High Court of Delhi in Writ Petition (C) No.11886 of 2021. Some orders have been passed in that Petition by the Delhi High Court from time to time. According to the Petitioners, the Delhi High Court disposed off a bunch of Writ Petitions including its W. P. No.11886 of 2021 by order dated 12th May 2023. The Respondent-Bank was given liberty to proceed against the present Petitioners and other Petitioners in their respective Petitions, in accordance with law.

5. Mr. Karl Tamboly, learned counsel appearing for the Petitioners submits that pursuant to the liberty granted by Delhi High Court, the Petitioners received a show-cause notice dated 26th September 2023 issued by the Respondent No.1-Bank, calling upon them to give their explanations on the issues raised in the show-cause notice. The STPL requested a complete copy of the Forensic Audit Report and other documents. It also issued a response to the show-cause notice. Correspondence going back and forth between the parties, were exchanged and the impugned order dated 5th January 2024 was passed by the Bank, classifying the accounts of the Petitioners as ‘fraud’. Being aggrieved by this order, the Petitioners have filed the present Writ Petition.

6. Dr. Birendra Saraf, learned Senior Advocate represented the Respondent No.1-Bank. At the very outset, he raised an objection that the Petition was not maintainable on the ground that this Court does not have jurisdiction to entertain the Petition. He brought to our notice paragraph 29 of the Petition relating to the averment of the Petitioners pertaining to jurisdiction of this Court. He also referred to paragraph 29 of the earlier Petition before the Delhi High Court, which specifically averred the jurisdiction of Delhi High Court. *Albeit*, wryly,

Dr. Saraf also brought to our notice the 7th row on page ‘C’ of the synopsis to this Petition, which refers to the Delhi High Court to suggest that the Petition was in fact drafted to be filed before the Delhi High Court to imply that the Petitioners are fully aware of the appropriate jurisdiction of the Delhi High Court to entertain the present Petition. Most importantly, the relief sought in the present Petition based on grounds of challenge are similar to those sought in the earlier Petition before the Delhi High Court. To buttress this point, he referred to the prayers and the grounds in both the Petitions. Dr. Saraf, thus, submits that the Petitioners have indulged in Forum-Shopping and even judicial propriety requires that this Petition ought to have been filed before the Delhi High Court.

7. We have heard learned counsel for the parties and perused the documents, with their assistance.

8. Clause (2) of Article 226 of the Constitution of India and Section 20(c) of CPC reads thus:

> *"226. (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."

Section 20(c) of the Code of Civil Procedure reads as under:

"20. Other suits to be instituted where defendants reside or cause of action arises.— Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction—

(a) ……

(b) …….

(c) the cause of action, wholly or in part, arises.

9. The Supreme Court in its decision in the case of ***Kusum Ingots and Alloys Ltd. v. Union of India & Anr.***,[1] has dealt with the issue pertaining to jurisdiction of Courts and the doctrine of *forum conveniens* in depth. Referring to its previous decision in ***State of Rajasthan v. Swaika Properties,***[2] the Court held that the answer to the question, whether the service of notice is an integral part of the cause of action within the meaning of Article 226(2) of the Constitution, must depend upon the nature of the impugned order giving rise to the cause of action. The Apex Court also referred to paragraph 15 of its judgment in ***Aligarh Muslim University v. Vinay Engg. Enterprises (P)***

1 (2004) 6 SCC 254.
2 (1985) 3 SCC 217.

Ltd.,[3] which reads as under:

> *"2. We are surprised, not a little, that the High Court of Calcutta should have exercised jurisdiction in a case where it had absolutely no jurisdiction. The contracts in question were executed at Aligarh, the construction work was to be carried out at Aligarh, even the contracts provided that in the event of dispute the Aligarh court alone will have jurisdiction. The arbitrator was from Aligarh and was to function there. Merely because the respondent was a Calcutta-based firm, the High Court of Calcutta seems to have exercised jurisdiction where it had none by adopting a queer line of reasoning. We are constrained to say that this is a case of abuse of jurisdiction and we feel that the respondent deliberately moved the Calcutta High Court ignoring the fact that no part of the cause of action had arisen within the jurisdiction of that Court. It clearly shows that the litigation filed in the Calcutta High Court was thoroughly unsustainable. "*

10. In another of its recent judgment in the matter of ***State of Goa v. Summit Online Trade Solutions (P) Ltd.,***[4] the Supreme Court held that even if a small part of the cause of action arises within the territorial jurisdiction of a High Court, the same by itself cannot be a determinative factor compelling the High Court to entertain the Writ Petition. In the context of the facts in that matter, the Apex Court held

3 (1994) 4 SCC 710.
4 (2023) 7 SCC 791.

that merely because the Petitioning Company has its office in Gangtok, Sikkim, the same by itself does not form an integral part of the cause of action authorizing the Petitioner Company to move that High Court. The view of the Supreme Court in *Kusum Ingots (supra)* is thus consistently followed.

11. A Full Bench of the Delhi High Court in the case of ***Sterling Agro Industries Ltd. v. Union of India & Ors.***[5] also held that a conclusion that where the Appellate or the Revisional Authority is located constitutes the *forum conveniens* is not correct and it will vary from case to case and depends upon the *lis* in question. The High Court also held that while entertaining a Writ Petition, the doctrine of *forum conveniens* and the nature of the cause of action are required to be scrutinized by the High Court depending upon the factual matrix of each case.

12. Admittedly, the Petitioners and the branch of the Respondent No.1-Bank transacting with the Petitioners is in New-Delhi. The OTS Proposals are also being exchanged with the New-Delhi Branch of the ICICI Bank. All the correspondence and the communication between the parties are exchanged with the New-Delhi

[5] (2011) SCC OnLine Del. 3162.

Branch. Hence, the Petitioners rightly approached the Delhi High Court by way of its earlier W. P. No.11886 of 2021. The integral part of the cause of action even going by the Petitioners own averment in paragraph 29 of its Petition before the Delhi High Court arose within the territorial limits of Delhi High Court. Thus, applying the settled legal position to the facts in the present matter, it is clear that the cause of action must be addressed to the Delhi High Court.

13. In any case, the Petitioners had already challenged the Circular dated 1st July 2016 issued by the Reserve Bank of India as violative of Articles 14 and 19(1)(g) of the Constitution of India as well as the action of the Bank in classifying its accounts as 'fraud'. Paragraph 29 of the said Petition containing the jurisdiction clause specifically avers as under:

> *"**29.** The Petitioner submits that the Respondents has offices within the territorial jurisdiction of this Hon'ble Court. Further, the Petitioner Company submits that the Corporate Banking Branch of the Respondent No. 1 Bank with which communications were exchanged by the Petitioner Company is situated within New Delhi. Hence, this Hon'ble Court has the jurisdiction to entertain, try and dispose of the present Petition."*

14. In the present Petition also, the Petitioners have assailed the act of the Committee of the Bank in classifying its accounts as 'fraud', even though the Master Circular is not assailed, perhaps since its validity was already tested before the Supreme Court. Nevertheless, the integral part of the cause of action is similar in both the Petitions. Even the averment in the present Petition regarding cause of action relating to the corporate office of the Respondents being within the territorial jurisdiction of this Court is identical to the averment made in the Petition before the Delhi High Court. We fail to see as to how the Petitioners could have averred the same pleading in both these Petitions based on the corporate office of the Respondents, to selectively choose a forum of their choice.

15. At this juncture, Mr. Tamboly tried to justify this Court's jurisdiction by pointing to the show-cause notice dated 26th September 2023, whereby the address of communication at the bottom of the notice is shown to be at Bandra (East), Mumbai. We are not impressed by this argument for the reason that the ICICI Bank has offices pan India. The determination of jurisdiction shall be the territorial limits of the cause of action. In the present case, the Petitioners already invoked the jurisdiction of the Delhi High Court assailing the act of the Bank in

classifying its accounts as ‘fraud’. Pursuant to the directions of the Apex Court, the Petitions were disposed off by the Delhi High Court reserving liberty to the Banks to initiate action against the Petitioners and others by following due process of law. The Respondent No.1-Bank has thus availed the liberty to issue fresh show-cause notice to the Petitioners and take it to its logical conclusion in terms of the impugned order. Once the Delhi High Court was seized with the integral part of the issue, judicial propriety requires that the present Petition should also be filed before the Delhi High Court. Invoking the jurisdiction of this Court in the second round of litigation involving the same issue is nothing but Forum-Shopping on the part of the Petitioners. The *forum convinens* is undoubtedly the Delhi High Court and not this Court.

16. In view of the aforesaid discussion, we are inclined to dismiss the present Petition giving liberty to the Petitioners to file a fresh Petition before the appropriate Court.

17. Accordingly, the Petition stands disposed of with the aforesaid liberty.

18. Dr. Saraf undertakes, on instructions, that no objection on the jurisdiction of the Petition, if filed before the Delhi High Court,

shall be taken by the Respondents. Save and except an objection pertaining to the jurisdiction of the Delhi High Court, all contentions of all the parties are left open.

19. All parties to act on an authenticated copy of this order.

(DR. NEELA GOKHALE, J.) **(REVATI MOHITE DERE, J.)**