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

Date of decision: 18th NOVEMBER, 2026

IN THE MATTER OF:

\# **CNR No. DLHC010469682026**

\+ **FAO (COMM) 293/2026 & CM APPL. 67728/2026, CM APPL. 67729/2026, CM APPL. 67730/2026, CM APPL. 67731/2026**

BALAR MARKETING PRIVATE LIMITED .....Appellant

Through: Ms. Neha Buttan, Mr. Suksham Kwatra, Mr. Nadeem Malik and Mr. Ritwik Singh, Advs.

versus

SAMSUBRAMANI PROPRIETOR, KALALAKAR AGENCIES .....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
HON'BLE MS. JUSTICE RENU BHATNAGAR

JUDGMENT

1. The present Appeal under Section 13(1A) of the Commercial Courts Act, 2015 (*hereinafter referred to as* '**Commercial Courts Act**') read with Section 104(1) and Order XLIII Rule 1(A) of the Code of Civil Procedure, 1908 (*hereinafter referred to as* '**CPC**'), against the Order dated 05.06.2026, passed by the learned District Judge, Commercial Court, East District Karkardooma Courts, Delhi (*hereinafter referred to as* '**Commercial Court**'), in CS (COMM.) 177/2026, titled as, "Balar Marketing Pvt. Ltd. v. Samsubramani" ((*hereinafter referred to as* '**Impugned Order**'), whereby the learned Commercial Court, while exercising power under Order VII Rule 10 CPC, directed the return of the

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Plaint filed by the Plaintiff, that is, the Appellant herein, for want of territorial jurisdiction. The learned Commercial Court also directed the Plaintiff/Appellant herein to present the same before the Court of appropriate jurisdiction, either at Chennai or at the place where the entire cause of action arose.

2. Shorn of unnecessary details, the facts germane to the institution of the present Appeal, as stated on behalf of the Appellant, are as follows:

a. The Appellant, being a company registered under the Companies Act, 2013 (*hereinafter referred to as* '**Companies Act**'), has its registered office at 217, Functional Industrial Estate, Patparganj, New Delhi. The Appellant is engaged in the business of manufacturing and wholesale distribution of household electrical products, *viz*., fans, wires, cables, switchgear and lighting, under the brand name of "Fyrbos-Smart Electrical Creations". The Respondent, i.e., the Defendant in the original Suit, is the proprietor of the proprietorship concern named "Kalalakar Agencies", having its registered office at 23, 1st Floor, Radha Nagar, Chromepet Chennai, Kancheepuram, Tamil Nadu. The Respondent is engaged in the business of retail supply of household electrical goods.

b. The Respondent approached the Appellant for the wholesale purchase of household electrical goods. Thereafter, the Respondent commenced purchasing the said goods from the Appellant, and in view thereof, issued work orders for the

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purchase of the said goods from the Appellant during the period from 2018 to 2024.

c. The goods were supplied by the Appellant to the Respondent from the Appellant's regional warehouse situated in Chennai to the Respondent's office situated in Chromepet, Chennai, Kancheepuram, Tamil Nadu.

d. Disputes arose between the parties as the Respondent allegedly failed to make timely payments to the Appellant. Consequently, the Appellant instituted pre-litigation mediation proceedings before the Delhi Legal Services Authority, East District, Karkardooma Courts, Delhi, seeking recovery of an outstanding sum of Rs. 8,79,206/-, allegedly due and payable by the Respondent towards the balance of sale consideration for the goods supplied by the Appellant.

e. Upon the mediation proceedings being returned as non-starter, the Appellant instituted a Commercial Suit, being CS (COMM.) 177/2026 before the Commercial Court, seeking recovery of the said amount.

3. The learned Commercial Court, *vide* the Impugned Order, observed that the Suit had been filed before the Courts at Delhi, despite the Parties carrying on their respective businesses in Bangalore and Chennai. The learned Commercial Court further observed that, apart from the Appellant having its registered office and bank account in Delhi, and the Appellant's contention that the part-payments had been made by the Respondent into the Appellant's bank account maintained in Delhi, there is no other disclosure made to establish the territorial jurisdiction of the Courts at Delhi.

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Accordingly, the learned Commercial Court, while recording that the mere place of part payment of the outstanding amount does not confer territorial jurisdiction upon a Court, exercised its powers under Order VII Rule 10 of the CPC, and directed the return of the Plaint for want of territorial jurisdiction.

4. In the captioned Appeal, the Appellant assails the Impugned Order on the following grounds:

i. The Parties expressly agreed that the disputes arising between them shall be subject to the jurisdiction of the Courts at Delhi. This, according to the Appellant, was reiterated by the Appellant as part of printed Terms and Conditions accompanying each invoice.

ii. It is stated that the invoices raised by the Appellant reflected the details of one of its bank accounts maintained with Kotak Mahindra Bank, Sowcarpet, situated in Chennai. It is stated that the said bank account was mentioned to facilitate remittance of payments by the Respondent. It is, however, stated that during the course of the business relationship, the parties mutually agreed that the payments against the invoices raised by the Appellant would be remitted into the Appellant's bank account maintained with Kotak Mahindra Bank, Patparganj, New Delhi.

iii. It is further stated that the Respondent, after receiving the purchased goods, kept on making payments to the Appellant's bank account maintained with Kotak Mahindra Bank, Patparganj, New Delhi. However, an outstanding amount totalling Rs.8,79,206/- was due and payable by the Respondent. The last part-payment amounting to Rs.

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Signing Date:18.11.2026 19:37:56

25,000/- was also made by the Respondent in the said bank account maintained in Delhi.

iv. It is, therefore, the case of the Appellant that the Impugned Order is erroneous, insofar as the learned Commercial Court failed to take into consideration that the contractually agreed place of payment was Delhi and that the payment liabilities were discharged by the Respondent into the Appellant's bank account maintained in Delhi and therefore, for the suit of recovery on account of non-payment of outstanding dues, substantial cause of action also arose within the territorial jurisdiction of the Courts in Delhi.

v. It is also stated that, while exercising jurisdiction under Order VII Rule 10 CPC, the learned Commercial Court was required to undertake a *prima facie* consideration of the Plaint and therefore, any conclusive determination of disputed question regarding the mutually agreed place of payment and the performance without permitting the parties to lead evidence was outside the confines of Order VII Rule 10 CPC.

5. Heard the learned Counsel for the Appellant and perused the material on record.

6. The question to be determined in the instant Appeal is whether the learned Commercial Court was correct in returning the Plaint for want of territorial jurisdiction.

7. The learned Commercial Court, while returning the Plaint under Order VII Rule 10 CPC, recorded that both the parties carry on their

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Signing Date:18.11.2026 19:37:56

businesses in Bangalore and Chennai and have no business connected to Delhi, particularly East Delhi, except for the registered office and bank account of the Plaintiff/Appellant herein maintained at Patparganj, Delhi. Further, it was recorded that the goods were dispatched from Ambattur Road, Puzhal, Chennai, Tamil Nadu to Chrompet, Radha Nagar, Chennai, Tamil Nadu and that the mutually agreed place of payment was at Kotak Mahindra Bank, Sowcarpet, Chennai, Tamil Nadu. Even the statement of accounts/ledger of the Defendant/Respondent herein was held to be maintained at Chennai. Therefore, in view of the fact that no part of cause of action arose in Delhi, the Plaint was returned.

8. The Appellant primarily raises two grounds before this Court to challenge the Impugned Order and to aver that the Courts at Delhi have the jurisdiction: (i) Parties expressly agreed that Courts at Delhi will have the jurisdiction and the same was specifically mentioned on the printed "Terms and Conditions" accompanying each invoice raised by the Appellant. (ii) The Respondent persistently made payments into the bank account of the Appellant maintained with Kotak Mahindra Bank, Patparganj, New Delhi.

9. In so far as contention (i) is concerned, a perusal of the Plaint and the Impugned Order reveals that this ground was never raised before the learned Commercial Judge. It is well established that in an appeal, the Appellant is precluded from raising a new ground which was never raised before the Trial Court, and that Appellate Courts cannot create a new case at the appellate stage for either of the parties. Such a contention which was not raised, or pleaded or argued before the Commercial Court is, on the face of it, inadmissible, unless the party shows sufficient reasons which prevented

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Signing Date:18.11.2026 19:37:56

them from raising it at the first instance. In the said respect, the Apex Court in Rama Kt. Barman v. Mohd. Mahim Ali, **2024 SCC OnLine SC 4083**, held that:

> ***"12.*** *As per Order XLI Rule 25, the appellate court may, if necessary, frame issues and refer the same for trial to the court whose decree is appealed from, and direct such court to take additional evidence required. Further, as per Rule-27 Order XLI, the Appellate Court may allow evidence or document to be produced or witness examined, in the circumstances stated therein, after recording the reasons for such admission of evidence. However, the Appellate Court can not create a new case for the party, frame the issues and decide the issues without following the procedure contemplated under Order XLI of CPC.*
>
> ***13.*** *In the instant case, the High Court in the second appeal had framed one substantial question of law on 16-3-2007, and framed two another substantial questions of law on 5-2-2015 and one more substantial question of law in 2015. Thus, in all framed four additional questions of law.*
>
> ***14.Apart from the fact that none of the said substantial questions of law formulated by the High Court were either raised before the trial court or the appellate court, none of parties was given any opportunity of leading the evidence on the said issues. It is well-settled principle of law that the Court cannot create any new case at the appellate stage for either of the parties, and the appellate court is supposed to decide the issues involved in the suit based on the pleadings of the parties."***
>
> *(emphasis supplied)*

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Signing Date:18.11.2026 19:37:56

10. Accordingly, the Appellant's contention that jurisdiction of the Courts at Delhi was decided as part of printed "Terms and Conditions" forming part of each invoice is *de hors* any merit and does not warrant consideration of this Court under Order XLIII of the CPC. Moreover, the invoices have not been filed with the Appeal. It is also not stated whether the invoices have been filed along with the documents filed before the learned Commercial Court. In the absence thereof, the finding of the Commercial Court does not warrant interference.

11. In any event, it is trite law that parties may, by mutual agreement, confer exclusive jurisdiction upon one of the courts having jurisdiction to entertain the dispute, while excluding the jurisdiction of other courts which otherwise have concurrent jurisdiction. However, such an agreement cannot confer jurisdiction upon a court which otherwise lacks jurisdiction under Section 20 of the CPC.

12. So far as contention (ii) is concerned, the law as regards the territorial jurisdiction in a suit for recovery of money is enumerated under Section 20 of the CPC. Section 20 of the CPC, particularly its sub-Section (c), accords *dominus litus* to the Plaintiff to institute the Suit in the territorial limits of the Court where the cause of action wholly or in part arises. The moot question before this Court, therefore, is whether, in a suit for recovery of money, receipt of part payments in Delhi would lead to cause of action arising from Delhi and consequently confer territorial jurisdiction upon the Courts at Delhi.

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Signing Date:18.11.2026 19:37:56

13. It is the case of the Appellant that a substantial cause of action arose in Delhi as the Respondent, after receiving the goods, kept on making payments, including the last part-payment, to the Appellant's bank account maintained with Kotak Mahindra Bank at New Delhi. The Appellant substantiates this claim by placing on record the bank statements of the said Bank Account, which categorically show that substantial payments were made by the Respondent into the Appellant's bank account maintained in Delhi.

14. The Apex Court has time and again expounded the term "cause of action" to mean a bundle of facts. It is pertinent to note that every case is certainly a culmination of multiple facts. It, however, does not mean that any and every fact will give rise to a cause of action. Cause of action, therefore, is the particular bundle of facts which is relevant to determine the *lis* inter se the parties. Accordingly, such facts which assist the Plaintiff to seek relief in law give rise to the cause of action.

15. The Apex Court in the case of A.B.C. Laminart (P) Ltd. v. A.P. Agencies,**(1989) 2 SCC 163** held 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***

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Signing Date:18.11.2026 19:37:56

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.*

13. *Under Section 20(c) of the Code of Civil Procedure subject to the limitation stated theretofore, every suit shall be instituted in a court within the local limits of whose jurisdiction the cause of action, wholly or in part arises.* ***It may be remembered that earlier Section 7 of Act 7 of 1888 added Explanation III as under****:*

"Explanation III.—In suits arising out of contract the cause of action arises within the meaning of this section at any of the following places, namely:

(1) the place where the contract was made;

(2) the place where the contract was to be performed or performance thereof completed;

(3) the place where in performance of the contract any money to which the suit relates was expressly or impliedly payable."

14.The above Explanation III has now been omitted but nevertheless it may serve as a guide. There must be a connecting factor*.*

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*

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Signing Date:18.11.2026 19:37:56

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)

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Signing Date:18.11.2026 19:37:56

16. A perusal of the aforementioned indicates that the cause of action, within the meaning of Section 20(*c*) of the CPC, arises at the following places:

(i) The place where the contract was made;

(ii) The place where the contract was to be performed, which in such a contract would mean the place where the goods were delivered to the purchaser; and

(iii) The place where payment in performance of the contract was payable, expressly or impliedly.

17. It is no longer res integra that, in contracts involving the sale and purchase of goods or services, the place where money is payable may confer territorial jurisdiction upon the Courts situated at such place, as a part of the cause of action is considered to arise where the payment is required to be made. However, in the present case, the parties categorically agreed to make payments into the Appellant's bank account maintained in Chennai.

18. The Appellant, in their Appeal memorandum, categorically mentions that the Parties decided to make payment at the bank account maintained in Chennai:

> *"That it is submitted that the invoices raised by the Appellant reflected particulars of one of the Appellant's bank accounts maintained with Kotak Mahindra Bank, Sowcarpet, Chennai, mentioned only to facilitate remittance of payment by the Respondent. However during the course of the business relationship, the parties mutually agreed that payments against the invoices raised by the Appellant would be*

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Signing Date:18.11.2026 19:37:56

remitted into the Appellant's bank account maintained with Kotak Mahindra Bank, Patparganj, New Delhi."

19. According to A.B.C. Laminart (*supra*), the place where money is payable either expressly or impliedly does lead to the place of cause of action, thereby vesting the court concerned with territorial jurisdiction. However, as per the Appellant's own case, the parties expressly agreed to make payments in Chennai, as the invoice is also stated to mention the account details of the Bank in Chennai. Insofar as payments made in Delhi are concerned, mere account entries in the absence of express agreement, or express stipulation that the parties agreed that the payments would be made in Delhi, cannot confer territorial jurisdiction upon Courts at Delhi. Accordingly, an express agreement for payments to be made in the Appellant's bank account maintained at Chennai would prevail over a flimsy averment of the Appellant that certain monies were paid in the bank account maintained in Delhi. Additionally, entries of the bank account maintained in Delhi cannot vest jurisdiction upon the Courts which otherwise have no jurisdiction at all to entertain the matter since the Appellant has been unable to show that the parties agreed for Delhi to be the place of payment. Moreover, in the instant case, as rightly pointed out by the learned Commercial Court, the contract was performed at Chennai. The goods were dispatched from Ambattur Road, Puzhal, Chennai, Tamil Nadu to Chrompet, Radha Nagar, Chennai, Tamil Nadu. Therefore, the cause of action rightfully arose at Chennai.

20. Further, the reliance placed by the Appellant on Auto Movers v. Luminous Power Technologies (P) Ltd., **2021 SCC OnLine Del 4387,** to

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Signing Date:18.11.2026 19:37:56

aver that cause of action arises at the place where partial payment is made, this Court is of the opinion that the learned Commercial Court rightly held that the said case is not applicable to the instant case, as in the instant case, the parties decided that the place of payment would be Chennai. However, in Auto Movers (*supra*), it was categorically recorded by this Court that the cause of action arose in the place where partial payment was made by the Defendant, as there was no place of payment fixed by the parties. In that context, the place of payment was held to be the place where cause of action also arose. The relevant paragraph of the said Judgment is reproduced as under:

> ***"22.*** *When, in the present case, the part cause of action has arisen also on account of the payments made by the petitioner/defendant directly into the bank account of the respondent/plaintiff, even if these were not on regular basis, since there is nothing to show that the place of payment had been fixed, even without following the principle that the 'debtor must seek out the creditor', it is clear that the Delhi Courts have jurisdiction to try the suit and the invoice does not vest jurisdiction in a court which had no jurisdiction at all."*

21. However, in the instant case, as per the Appellant's own case, the place of payment, as per the invoice, was fixed at Chennai. In view of the above, this Court is of the opinion that the learned Commercial Court rightly concluded that both the Parties carried on their respective businesses in Bangalore and Chennai and have no business in Delhi, except for the registered office and bank account of the Plaintiff/Appellant herein maintained at Patparganj, Delhi. The learned Commercial Court was also right in holding that the Plaintiff's registered office cannot confer territorial

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Signing Date:18.11.2026 19:37:56

jurisdiction upon Courts at Delhi. Furthermore, the goods were dispatched from Chennai to Chennai only and that the agreed place of payment was also of Kotak Mahindra Bank, Sowcarpet, Chennai, Tamil Nadu. Therefore, it was rightly concluded by the learned Commercial Court that no part of the cause of action arose in Delhi. Accordingly, the Plaint was also rightly returned under Order VII Rule 10 of the CPC to be presented before the appropriate juridical forum.

22. Justifiably so, this Court is also of the opinion that mere payment of certain monies into the bank account of the Appellant in Delhi will not result in conferring upon the Courts at Delhi the territorial jurisdiction in the absence of any agreement *inter se* the parties. The position of the Appellant as the *dominus litus* should not lead to unjustified harassment of the Respondent by making them subject to the jurisdiction of the Courts which were never agreed to by them.

23. Accordingly, this Court finds no infirmity with the Impugned Order. The present Appeal, along with pending application(s), if any, is dismissed.

SUBRAMONIUM PRASAD, J

RENU BHATNAGAR, J

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