$~**45, 46 & 47**

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

\+ LPA 47/2024 & CAV 14/2024, CM APPL. 2400/2024, CM APPL. 2401/2024, CM APPL. 2402/2024

ASHOKA MARKETING LIMITED & ANR. ..... Appellants

Through: Mr. Jayant Mehta, Sr. Advocate with Mr. Manu Nair, Mr. Ameya Gokhale, Mr. Vaibhav Singh, Ms. Radhika, Mr. Neelabu Shreesh, Ms. Riya Basu, Ms. Simran Malhotra and Mr. Manas Kotak, Advocates

versus

SECURITIES AND EXCHANGE BOARD OF INDIA & ORS.

..... Respondents

Through: Mr. J.J. Bhatt, Sr. Advocate with Mr. Abhishek Baid, Mr. Mohit Kumar Bafna, Mr. Praneet Das, Mr. Anuj Jain, Mr. Ashok Kumar, Mr. Arnav Mishra, Advocates for R-1

46.

\+ LPA 48/2024 & CAV 15/2024, CM APPL. 2407/2024, CM APPL. 2408/2024, CM APPL. 2409/2024

BHARAT NIDHI LIMITED ..... Appellant

Through: Mr. Sandeep Sethi, Sr. Advocate with Mr. Manu Nair, Mr. Ameya Gokhale, Mr. Vaibhav Singh, Ms. Radhika, Mr. Neelabu Shreesh, Ms. Riya Basu, Ms. Simran Malhotra and Mr. Manas Kotak, Advocates

versus

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SECURITIES AND EXCHANGE BOARD OF INDIA & ORS.

..... Respondents

Through: Mr. J.J. Bhatt, Sr. Advocate with Mr. Abhishek Baid, Mr. Mohit Kumar Bafna, Mr. Praneet Das, Mr. Anuj Jain, Mr. Ashok Kumar, Mr. Arnav Mishra, Advocates for R-1

47.

\+ LPA 49/2024 & CAV 16/2024, CM APPL. 2412/2024, CM APPL. 2413/2024, CM APPL. 2414/2024

MATRIX MERCHANDISE LIMITED & ORS. ..... Appellants

Through: Mr. Amit Sibal, Sr. Advocate with Mr. Manu Nai, Mr. Ameya Gokhale, Mr. Vaibhav Singh, Ms. Radhika, Mr. Neelabu Shreesh, Ms. Riya Basu, Ms. Simran Malhotra and Mr. Manas Kotak Advocates

versus

SECURITIES AND EXCHANGE BOARD OF INDIA & ORS.

..... Respondents

Through: Mr. J.J. Bhatt, Sr. Advocate with Mr. Abhishek Baid, Mr. Mohit Kumar Bafna, Mr. Praneet Das, Mr. Anuj Jain, Mr. Ashok Kumar, Mr. Arnav Mishra, Advocates for R-1

% Date of Decision: 15th January, 2024

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T(ORAL)

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MANMEET PRITAM SINGH ARORA, J:

1. The present appeals have been filed under Clause X of the Letters Patent Act, 1865, as applicable to the High Court of Delhi, assailing the common final judgment and order dated 18.12.2023 ('Impugned Judgment') passed by the learned Single Judge in W.P.(C) No. 15556 of 2023, W.P.(C) No. 15557 of 2023 and W.P.(C) No. 15558 of 2023.

2. The learned Single Judge vide Impugned Judgment has held that Appellants are not entitled to invoke the jurisdiction of this High Court under Article 226 of the Constitution of India and has accordingly, dismissed the writ petitions. The learned Single Judge held that the integral, essential and material part of the cause of action has arisen within the territorial jurisdiction of the High Court of Judicature at Bombay; and assuming that a slender part of cause of action has arisen within the jurisdiction of this court, then, applying the principles of forum conveniens, he opined it would not be appropriate to entertain the writ petitions.

3. The facts of the case to the extent relevant for consideration of the present appeals as set out in the petitions are that certain shareholders alleged violation of SEBI's Minimum Public Shareholding Norms ('MPS Norms') and disclosure requirements by and in respect of Bharat Nidhi Limited ('BNL'). BNL is the Appellant in LPA No. 48/2024. Thereafter, Securities and Exchange Board of India (SEBI) issued a common show cause notice ('SCN') on 28.10.2020 to BNL and the other Respondent Nos. 2 to 8 in LPA No. 48/2024 for the said alleged violation.

3.1. It is stated that since the aforesaid SCN provided an option for

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settlement mechanism under the SEBI (Settlement Proceedings) Regulation, 2018 ('Regulations of 2018'); BNL and Respondent Nos. 2 to 8 opted for the same; they filed separate and independent applications with SEBI to settle the allegations contained in the SCN.

3.2. It is further stated that in furtherance to the above settlement applications, separate meetings between the representatives of the Appellants and members of the Internal Committee ('IC') of SEBI were held and the Appellants filed revised terms pursuant to the deliberations. It is stated that High Power Advisory Committee ('HPAC') of SEBI directed the Appellants to obtain permission from the High Court at Delhi in a pending writ petition i.e., W.P.(C) No. 10756/2019 filed by public shareholders. It is stated that the said permission was granted by the High Court of Delhi on 27.05.2022 and thereafter a panel of Whole Time Members ('WTMs') SEBI passed a common Settlement Order dated 12.09.2022 with respect to BNL and the other Respondent No.2 to 8 of in LPA No. 48/2024 ('Settlement Order'). It is stated that certain monetary and non-monetary terms were imposed on the Appellants in the Settlement Order, and steps have been taken by the Appellants to implement the said Settlement Order.

3.3. The said Settlement Order was challenged by two (2) groups of shareholders of BNL before the High Court of Judicature at Bombay. The said shareholders are referred to as Ashok Shah Group and Pina Shah Group in the pleadings. The said shareholders filed two (2) separate writ petitions, i.e., W.P. no. 447 of 2023 and W.P. no. 530 of 2023 inter alia challenging the Settlement Order. In the said petitions restraint orders were issued against BNL which affected the timely compliance of the terms of the Settlement Order. The High

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Court of Judicature at Bombay issued directions to SEBI to furnish documents sought by the petitioners before it with respect to the internal notings and communication of SEBI as well as the investigation report. It is during the pendency of said writ petitions a revocation order dated 10.11.2023 ('Impugned Revocation Order') was issued by SEBI whereby the Settlement Order stood revoked and withdrawn by SEBI in terms of Regulation 28 of the Regulations of 2018 on the ground of alleged failure of the Appellants to comply with the terms of the Settlement Order.

3.4. SEBI after issuing the Impugned Revocation Order also issued a notice of hearing to the Appellants for participating in the proceedings in furtherance of the SCN dated 28.10.2020. The Appellants were called upon to attend the hearing scheduled on 05.12.2023.

4. Being aggrieved of the said Impugned Revocation Order on several grounds including violation of principles of natural justice as well as the revival of the SCN proceedings at Mumbai, the Appellants preferred the aforesaid writ petitions before the learned Single Judge seeking a direction to quash and set aside the Impugned Revocation Order dated 10.11.2023 passed by SEBI and sought a restraint against SEBI from proceedings with the hearing scheduled on 05.12.2023 at Mumbai.

4.1. However, a preliminary objection on maintainability of the writ petitions was raised on behalf of SEBI with respect to lack of territorial jurisdiction of this court to entertain the aforesaid writ petitions.

4.2. In view of the said objection, the learned Single Judge in the facts of this case after perusing the grounds of the writ petitions has returned a finding that the cause of action has substantively arisen within the territorial jurisdiction of

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High Court of Judicature at Bombay and it would not be appropriate for this Court to entertain the writ petitions.

Arguments on behalf of the Appellants

5. Mr. Jayant Mehta, learned senior counsel for the Appellants in LPA No. 47/2024 states that the facts on which the jurisdiction of this Court has been invoked by the Appellants for challenging the Impugned Revocation Order issued by SEBI have been correctly noted by the learned Single Judge at paragraph 105 of the impugned judgment. He states that the averments contained in paragraph 66 of the writ petition extracted at paragraph 104 of the impugned judgment are sufficient for clothing this Court with requisite territorial jurisdiction to adjudicate the reliefs sought in the writ petitions.

5.1. He states the fact that the Appellants have their registered offices in New Delhi and the physical hard copy of the Impugned Revocation Order was received by the Appellants at their respective addresses in New Delhi, are facts that constitute material, essential and integral facts which have proximity with the lis involved in the writ petition. He states that the effect of the Impugned Revocation Order is felt by the Appellants in New Delhi as they carry on business from their registered offices located in New Delhi.

5.2. He states that the situs of the Appellants' shares is at the registered office of Respondent No. 2, BNL which is also located at New Delhi. He states that the said shares are the subject matter of the SCN and the proceedings initiated thereunder by SEBI pursuant to the Impugned Revocation Order.

5.3. He states that even prior to the issuance of the Settlement Order issued by SEBI, proceedings were initiated by some public shareholders in W.P.(C) No. 10756/2019. He states that the said writ petition is still pending before this

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High Court and no objection of territorial jurisdiction or forum non-conveniens has been raised by the SEBI in the said writ proceedings. He states that, in fact, the Settlement Order was issued by SEBI after seeking prior permission from this Court in W.P.(C) No. 10756/2019.

5.4. He states that merely because Appellants appeared before the High Court of Judicature at Bombay to defend writ proceedings filed by its shareholders challenging the Settlement Order, does not preclude the Appellants from maintaining the writ petitions before this High Court for challenging the Impugned Revocation Order. He states that in fact, the subsequent order dated 22.12.2023 passed by the High Court of Judicature at Bombay itself recognizes the independent rights of the Appellants herein to challenge the Impugned Revocation Order by way of appropriate proceedings before an appropriate forum.

5.5. He states that a Full Bench of this Court in ***Sterling Agro Industries Ltd. v. Union of India and Ors.***[1], has held that even if a miniscule part of cause of action arises within the jurisdiction of a High Court a writ petition before the said High Court would be maintainable. He states that in fact, in the said judgment it has been held that even if the appellate authority is situated in Delhi, this High Court may refuse to exercise its jurisdiction by invoking the principles of forum conveniens. He states therefore, the situs of SEBI being at Mumbai is not a relevant fact for deciding the issue of jurisdiction.

6. Mr. Amit Sibal, learned senior counsel appearing for the Appellants in LPA No. 49/2024 states that there is a distinguishing fact in his petition inasmuch as SEBI is not to be called upon to produce any records for the

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perusal of this Court, and therefore, there is no inconvenience caused to the said Respondent No.1, SEBI.

6.1. He states that the Appellants have already paid the amounts as per the Settlement Order and there is no further action remaining to be taken by these Appellants. He states that the Appellants are aggrieved by the passing of the Impugned Revocation Order by SEBI and in the facts noted in the Impugned Judgment this High Court has the requisite jurisdiction to entertain the writ petition.

6.2. He states that merely because the situs of the HPAC or SEBI is in Mumbai, it cannot be said that the High Court of Judicature at Bombay has the jurisdiction. He states that the concept of forum non-conveniens is to be applied in favour of the aggrieved party and against the statutory authority. He states that it is erroneous for SEBI to contend that the forum conveniens for the present lis lies with the High Court of Judicature at Bombay.

7. Mr. Sandeep Sethi, learned senior counsel appearing for the Appellant in LPA No. 48/2024 states that he represents the Company i.e., BNL. He states that with a view to comply with the non-monetary terms of the Settlement Order a meeting of the Board of Directors was held wherein, it was discussed to buy-back shares in terms of Companies Act, 2013. He states accordingly the Appellant, BNL issued a postal ballot notice on 26.09.2022 seeking its shareholders approval to authorize the buy-back and made public announcement in national newspapers on 27.09.2022. He states that the Appellant, BNL submitted a report of compliance to SEBI as regards the steps taken. He states that some of the shareholders filed writ petitions i.e., W.P. no.

[1] 2011 SCC Online Del 3162

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447 of 2023 and W.P. no. 530 of 2023 before the High Court of Judicature at Bombay inter-alia challenging the Settlement Order and the Appellant's postal ballot notice. He states that it was in these circumstances that the writ petitions were filed in High Court of Judicature at Bombay. He states the BNL itself did not approach the High Court of Judicature at Bombay and therefore, it has rightly challenged the Impugned Revocation Order before this Court. He states that the facts constituting the cause of action within the territory of this High Court are undisputed.

Analysis and findings

8. This Court has heard the learned counsel for the parties and perused the record.

9. The Appellants have filed the writ petitions impugning the Revocation Order within the territorial jurisdiction of this Court on the averments that (a) the registered offices of the Appellants are situated in New Delhi and the Appellants carry on their business in Delhi; (b) the physical hard copy of the Impugned Revocation Order was received at the addresses in New Delhi; (c) the Impugned Revocation Order was also received by an e-mail dated 10.11.2023 at the addresses in New Delhi; (d) the situs of the Appellants' shares held in BNL is the registered office address of BNL, which is the subject matter of the SCN and the proceedings initiated by SEBI pursuant to the Impugned Revocation Order; (e) the effect of the Impugned Revocation Order is felt by the Appellants at New Delhi as their registered address is at Delhi; (f) a prior writ petition filed by some public shareholders i.e., W.P.(C) 10756/2019 is already pending against BNL and SEBI before this High Court;

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and (g) the situs of compliance of the Settlement Order is at New Delhi.

10. The Appellants contend that the aforesaid facts are material, essential and integral for the purposes of deciding the challenge to the legality of the Impugned Revocation Order; and therefore, the cause of action for maintaining the challenge has wholly or atleast partly arisen within the territorial limits of this High Court.

11. The learned Single Judge, however, after perusing the averments made in the writ petitions and more specifically in W.P.(C) 15556/2023 concluded that none of the aforesaid facts are material, essential or integral for deciding the issue of challenge to the Impugned Revocation Order; and further, held that the cause of action of in favour of the Appellants has arisen at Mumbai and therefore concluded that the High Court of Judicature at Bombay is the appropriate High Court. The relevant portion of the impugned judgment reads as under:

> *"107. On the contrary, as stated in the respective writ petitions itself, pursuant to the complaints and representations from certain shareholders, alleging violations of the extant regulations, the SCN dated 28.10.2020 was issued to the petitioners by SEBI at Mumbai. The reply to the said SCN was submitted at Mumbai and the application for settlement too, was submitted at Mumbai. Therefore, the primary gravamen of the petitioners in respect of the Settlement Order lies at Mumbai.*
>
> *108. In paragraph nos.16 and 17, the petitioner in W.P.(C) 15556/2023 has made the following averments: -*
>
> > *"**16**. As stated above, prior to filing its reply to the SCN, on 27'h December 2020, BNL filed an application for settlement of the alleged violations in terms of the Settlement Regulations ("Settlement Application"). The Settlement Application of BNL was numbered as 6348/2021. Separate and independent settlement applications were also filed by Respondent Nos. 2 to 8 as well for settling the alleged violations by them as contained in the SCN The Settlement Application is not being annexed to the present Petition as the same is a confidential document under Regulation 29 of the Settlement Regulations. The Petitioner undertakes to produce a copy of the Settlement*

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Application if so directed by this Hon'ble Court. No prejudice is caused to SEBI if the Settlement Application is not annexed herewith as the Settlement Application is already filed with SEBI and SEBI is the recipient thereof.

***17**. The Settlement Application was thereafter considered by the internal committee of SEBI ("IC") formed under the Settlement Regulations. Meetings between the IC and the representatives of the Petitioner took place on 6th August 2021, 31st August 2021, 28th October 2021 and 2nd December 2021 to deliberate on the Settlement Application and to discuss and negotiate on the terms of the settlement. For the sake of clarity, it is submitted that the JC had separate discussions with the Petitioner and Respondent Nos. 2 to 8 in respect of their individual Settlement Applications. At and pursuant to the said meetings, the Petitioner responded to various queries raised by the JC and filed revised settlement terms with the IC based on inter se deliberations."*

109. ***It is, thus, unequivocally clear that the petitioners participated before SEBI 's Internal Committee on different dates at Mumbai and thereupon, a settlement had arrived at. It is, thus, seen that it is not merely the location of the respondent-SEBI's Head Office at Mumbai, but rather the entire genesis of the dispute lies in Mumbai itself. The settlement was finalized at Mumbai. The determination of the settlement not being fulfilled was made at Mumbai. The consideration to that effect has taken place at Mumbai and the decision to revoke the settlement has also been passed at Mumbai only****.*

110. The ***settlement order dated 12.09.2022*** *records the following facts, which form the integral, material and substantial facts leading to the passing of the settlement order:-*

(i) Based upon the investigation conducted by SEBI, enforcement proceedings were initiated against BNL and respondent nos. 2 to 8, under various provisions of SEBI Act, 1992 and other laws.

(ii) BNL and respondents no.2 to 8 herein, had filed a settlement application in terms of Regulations of 2018, proposing to settle, through a settlement order, without admitting or denying the findings of fact and conclusions of law, initiated vide show cause notice dated 28.10.2020.

(iii) The HPAC, thereafter, considered the applications and recommended the case for settlement upon fulfilment of various terms, in accordance with Regulations of 2018.

(iv) Finally, settlement order was passed in exercise of powers conferred under SEBI Act, 1992 and Regulations of 2018. The said order was passed without prejudice to the right of SEBI under Regulations of 2018 to take enforcement actions including continuing proceedings against the BNL and respondent nos. 2 to 8, if SEBI finds certain anomalies mentioned in the settlement order.

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> *111. It is seen that when the settlement order was challenged before the Hon'ble High Court of Judicature at Bombay, the petitioners had appeared in the respective writ petitions and have contested the matter. The Hon'ble High Court of Judicature at Bombay in writ petitions being W.P. nos. 447 of 2023 and 530 of 2023 dealt with the prayer relating to challenge of the Settlement Order and restoration of regulatory proceedings. On different dates, substantial orders were passed in the said writ petitions. Therefore, indisputably, and rightly so, the parties availed the jurisdiction of the Hon'ble High Court of Judicature at Bombay; and BNL along with respondent nos.2 to 8 surrendered themselves to the said jurisdiction.*
>
> *112. What is material, integral or essential part of cause of action in the instant case is the act of entering into the settlement and its revocation. The aspects which are not relevant to the passing of the settlement order and its cancellation cannot be considered to be integral, essential or material part of the cause of action as they do not have any substantial bearing on the issue involved in the present petitions."*
>
> (Emphasis Supplied)

12. In our considered opinion, the conclusion in the Impugned Judgement that the facts asserted by the Appellants constitute a small part of cause of action, which are not integral is correct and the learned Single Judge has therefore, rightly exercised discretion to not entertain the writ petitions by invoking the doctrine of forum conveniens. The fact that a small part of cause of action has arisen within the territorial jurisdiction of this Court is by itself not a determinative factor for compelling this Court to decide the matter on merits. Our reasons for upholding the Impugned Judgement are discussed hereinafter.

Registered offices of the Appellants at Delhi

13. The Supreme Court in ***State of Goa v. Summit Online Trade Solutions (P) Ltd.***[2] after referring to ***National Textile Corporation Ltd. vs. Haribox Swalram***[3]**,** has categorically held that registered office of a petitioning

[2] (2023) 7 SCC 791
[3] (2004) 9 SCC 786

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company does not form an integral part of the cause of action authorizing the petitioning company to approach High Court wherein the presence of registered office lies for invoking the jurisdiction under Article 226(2) of the Constitution of India. In the said judgment, the Supreme Court reiterated that facts pleaded for invoking territorial jurisdiction must form the basis of 'cause of action' and have nexus with the subject matter of challenge based on which the prayer can be granted. The relevant portion of the judgment of ***State of Goa*** (supra) reads as under:-

> ***"17.*** *Determination of the question as to whether the facts pleaded constitute a part of the cause of action, sufficient to attract clause (2) of Article 226 of the Constitution, would necessarily involve an exercise by the High Court to ascertain that the facts, as pleaded, constitute a material, essential or integral part of the cause of action. In so determining, it is the substance of the matter that is relevant. It, therefore, follows that the party invoking the writ jurisdiction has to disclose that the integral facts pleaded in support of the cause of action do constitute a cause empowering the High Court to decide the dispute and that, at least, a part of the cause of action to move the High Court arose within its jurisdiction. Such pleaded facts must have a nexus with the subject-matter of challenge based on which the prayer can be granted. Those facts which are not relevant or germane for grant of the prayer would not give rise to a cause of action conferring jurisdiction on the court. These are the guiding tests.*
>
> ***18.*** *Here, tax has been levied by the Government of Goa in respect of a business that the petitioning company is carrying on within the territory of Goa. Such tax is payable by the petitioning company not in respect of carrying on of any business in the territory of Sikkim.* ***Hence, 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 authorising the petitioning company to move the High Court.*** *We hold so in view of the decision of this Court in National Textile Corpn. Ltd. v. Haribox Swalram [National Textile Corpn. Ltd. v. Haribox Swalram, (2004) 9 SCC 786] . The immediate civil or evil consequence, if at all, arising from the impugned notification is that the petitioning company has to pay tax @ 14% to the Government of Goa. The liability arises for the specific nature of business carried on by the petitioning company within the territory of Goa. The pleadings do not reflect that any adverse consequence of the impugned notification has been felt within the jurisdiction of the High Court. At this stage, we are not concerned with the differential duty as envisaged in Schedule II (@ 6%) vis-à-vis Schedule IV (@ 14%) of the impugned notification. That is a matter having a bearing on the merits of the litigation."*

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(Emphasis Supplied)

In light of the aforesaid law and in the facts of this case, the factum of the Appellants having their registered office at Delhi is not an integral fact to the cause of action for challenging the Impugned Revocation Order.

Receipt of the physical copy of the impugned order at Delhi

14. The learned Single Judge has held that receipt of the Impugned Revocation Order by the Appellants at their respective Delhi address does not give rise to a cause of action within the jurisdiction of this Court in view of the judgments of the Supreme Court in ***Oil and Natural Gas Commission v. Utpal Kumar Basu and others***[4]**,** and ***Union of India and Ors. v. Adani Exports Ltd. & Anr***[5]**.** This is the consistent view taken by this Court[6] to hold that the mere receipt of the impugned notice by the petitioner within the jurisdiction of Delhi, whereas the respondent authority which passed the order is located outside, is not an integral or material part of the cause of action in the challenge laid to the impugned notice in a writ petition.

14.1. Pertinently, in the facts of this case, the Impugned Revocation Order was first received by the Appellants by way of email on 10.11.2023; followed by a physical hard copy at Delhi on 14.11.2023 and another copy on 29.11.2023 before the High Court of Judicature at Bombay in the pending writ petitions filed by the shareholders. The Impugned Revocation Order was therefore received by the Appellants in multiple jurisdictions including Mumbai.

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[4] (1994) 4 SCC 711

[5] (2002) 1 SCC 567

[6] *Shristi Udaipur Hotels v. Housing and Urban Development Corp*, 2014 SCC OnLine Del 2892 affirmed in LPA No. 729/2023 in *Riddhima Singh Through Her Father Shailednra Kumar Singh vs. CBSE* decided on 01.11.2023

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14.2. In this regard, it would be appropriate to refer the ratio of the judgment laid down by Full Bench of Kerala High Court in ***Nakul Deo Singh v. Deputy Commandant***[7] which has been later affirmed and upheld by another Full Bench of the said High Court in ***The Registrar, Indian Maritime University v. K.G. Viswanathan***[8] wherein it was held that receipt of the impugned order or communication only gives the aggrieved party right to initiate action based on cause of action which has arisen due to the issuance of the impugned order. The Full Bench also highlighted the mischief in accepting the invocation of writ jurisdiction on the basis of mere receipt of communication if the authority issuing it was located outside the jurisdiction. The relevant portion of the judgment of Full Bench of Kerala in ***Nakul Deo Singh*** (supra) reads as under:

> *"29. **It appears to us that the decisions in Swaika Properties case and the decision of the Supreme Court and that of the High Court subsequent thereto clearly establish that the receipt of communication by itself does not constitute a fact in the bundle of facts constituting the cause of action. At best receipt of the order or communication only gives the party a right of action based on the cause of action arising out of the action complained of.** When that action complained of takes place outside the territorial jurisdiction of the High Court and an appeal therefore is dismissed by an authority located outside the jurisdiction of the High Court cause of action wholly arises outside the jurisdiction of the High Court and **Art. 226(2) of the Constitution cannot be invoked to sustain a Writ Petition in this High Court on the basis that a part of the cause of action has arisen within the jurisdiction of this court, merely because the appellate order communicated from the seat of the appellate authority was received while the petitioner was residing or working within the jurisdiction of this court**. Acceptance of the argument that the situs of the receipt of the order will determine the jurisdiction can lead to a position where a litigant would be in a position to choose his own court for the purpose of redressal of his grievance. All that he need do is to move over to a particular place for receiving the communication from the appellate authority and then approach the High Court of that place with a plea that that court had jurisdiction because the order of the appellate authority was served on him while he was residing within the jurisdiction of that High Court. No litigant*

[7] 1999 SCC OnLine Ker 366
[8] 2014 SCC OnLine Ker 21221

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can have a right to choose the court for seeking relief and the mere introduction of clause 2 of Art. 226 does not alter that position."

(Emphasis Supplied)

14.3. The ratio of the aforesaid judgments when applied to the facts in these writ petitions lead to the conclusion that the cause of the action of the Appellants to challenge the legality of the Impugned Revocation Order issued by SEBI at Mumbai has no nexus with the receipt of the said order at Delhi; as this is not the material or integral fact to the said cause of action. The Impugned Revocation Order was admittedly received by the Appellants in multiple jurisdictions and this fact if held to be determinative would enable Appellants to pick and choose jurisdictions which is the mischief that the Full Bench of Kerala High Court has opined should not be permitted and we agree with the same. Therefore, the receipt of the Impugned Revocation Order at Delhi cannot alone be held determinative of the jurisdiction of this Court.

Effect of the Impugned Revocation Order felt at Mumbai

15. The grievance of the Appellants in the writ petitions is that the issuance of the Impugned Revocation Order of SEBI has resulted in re-initiation of the proceedings and hearing at Mumbai pursuant to the SCN dated 28.10.2020; thereby exposing the Appellants to regulatory proceedings. Thus, the effect of the Impugned Revocation Order felt by the Appellants is the revival of the SCN proceedings initiated by SEBI inter-alia for the violations of certain provisions of the Substantial Acquisition of Shares and Takeover, Regulations 2011 (SAST Regulations), Prohibition of Insider Trading, Regulations 2015 (PIT Regulations) and the Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market, Regulations 2003 (PFUTP Regulations) in respect of non-disclosure of its promoters and failure to comply with minimum

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public shareholding norms. The said SCN proceedings before SBI are admittedly pending at Mumbai and were initiated in the year 2020. Therefore, the effect of the Impugned Revocation Order has been felt by the Appellants at Mumbai.

Material, essential facts forming part of the Cause of Action

16. The Supreme Court in ***Kusum Ingots & Alloys Ltd. vs. Union of India and Another***[9] and ***State of Goa vs. Summit Online Trade Solutions (P) Ltd.*** (supra) while examining the expression cause of action used in Article 226(2) of the Constitution of India held that in the context of maintaining a writ petition, cause of action are the material facts which are imperative for the writ petitioner to plead and prove, if traversed by the respondent, in order to support his right to the judgment of the Court. It held that the facts pleaded in the writ petition must have a nexus on the basis whereof a prayer can be granted. It further held that those facts which have nothing to do with the prayers made therein cannot be said to give rise to a cause of action.

16.1. Keeping in view the aforesaid statement of law, an examination of the grounds of challenge in the present writ petitions to the Impugned Revocation Order would assist the Court in appreciating the pleaded cause of action. It is the facts pleaded in the grounds, which constitute the material and integral facts, which the Appellants will have to prove, if traversed by SEBI, to seek a judgment of the Court.

The challenge to the Impugned Revocation Order has been raised on the grounds of inter-alia non-adherence to the principles of natural justice by SEBI. It has been pleaded that the SEBI failed to provide the Appellants an

[9] (2004) 6 SCC 54

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opportunity of hearing prior to revocation and the order is unreasoned. It is further pleaded that the impugned order is contrary to the extant law. It is the facts pleaded in these grounds which would constitute the cause of action in favour of the Appellants herein. A bare perusal of the grounds would show that each one of them allege acts and omissions by SEBI at Mumbai. Therefore, in our considered opinion as per the grounds set out in the writ petition the cause of action for challenging the impugned order against SEBI has arisen at Mumbai.

16.2. In the facts pleaded by the Appellants for invoking the writ jurisdiction of the Courts at Delhi, undoubtedly, it cannot be said that the High Court of Delhi had no territorial jurisdiction for admittedly, the Appellants reside within the jurisdiction of this Court. However, none of the facts pleaded by the Appellants for invoking the jurisdiction of this Court are integral and material fact for challenging the Impugned Revocation Order. The said facts are not sufficient for compelling this Court to hear the matter on merits. For the same reason, the contention of the situs of shares of BNL is not an integral fact.

Pendency of W.P. 10756/2019 before this Court

17. The Appellants have relied upon the pendency of W.P.(C) No. 10756/2019 before this Court to invoke the territorial jurisdiction. The said writ petition has been filed by some public shareholders with regards to violation of SEBI regulations by associate companies of Bennett Coleman & Co. Ltd (BCCL); one of the associate company being Respondent No. 2 i.e., BNL. The petitioning shareholders therein are aggrieved by the acts and omissions of respondents therein i.e., BCCL including BNL. In the said petition the petitioning shareholders are aggrieved by the inaction of SEBI in failing to

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proceed against BNL as well as other companies of BCCL despite a complaint being filed on 18.07.2019. The pendency of the said writ petition admittedly does not form part of the cause of action for challenging the Impugned Revocation Order and is therefore not a relevant fact for invoking jurisdiction.

Forum Conveniens at Mumbai

18. It is a matter of record that genesis of this dispute is the SCN dated 28.10.2020 issued by SEBI. The Appellants admittedly participated in the said SCN proceedings at Mumbai and filed settlement applications on 28.02.2021 at Mumbai. The separate meetings in the year 2021 between the representatives of the Appellants and the members of the IC of SEBI under the Regulations of 2018 were held at Mumbai. The Appellants responded to various queries raised by the IC and filed revised settlement terms with the IC based on the deliberations at Mumbai. The HPAC considered the settlement applications and the settlement terms forwarded by IC at Mumbai. The common Settlement Order in relation to the SCN was passed by SEBI at Mumbai. Now, the Impugned Revocation Order, which has the effect of recalling the settlement order has also been passed by SEBI at Mumbai.

18.1. Prior to its revocation, the challenge to the SEBI's Settlement Order by another set of shareholders of BNL was made before the High Court of Judicature at Bombay in the year 2022 by filing two (2) separate writ petitions. The said High Court was in seisin of the validity of the Settlement Order and SEBI as well as the Appellants herein were parties to the said writ petitions.

18.2. The High Court of Judicature at Bombay directed SEBI to furnish the documents pertaining to issuance of SCN dated 28.10.2020, settlement applications as well as the investigation report, as sought by the writ petitioners

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before it. The said High Court issued interim orders directing BNL to not finalise offers relating to buy-back.

18.3. It was during the pendency of the said writ petitions, SEBI issued the Impugned Revocation Order and communicated to the Appellants that the Settlement Order stood revoked and withdrawn in terms of Regulation 28 of the Regulations of 2018. SEBI filed an affidavit before the High Court of Judicature at Bombay on 29.11.2023 placing on record the Impugned Revocation Order before the said Court. The writ petitions filed by the aggrieved shareholders before the Bombay High Court were disposed of vide order dated 01.12.2023 after observing that the rights and contentions of the parties are kept open.

18.4. In the aforesaid facts, which transpired between the Appellants and SEBI from 28.10.2020 (when the SCN was first issued) until 01.12.2023 (when High Court of Judicature at Bombay disposed of the petitions), as is evident all arose at Mumbai.

19. In fact, consequent to the revocation of the Settlement Order, SEBI immediately vide notice dated 28.11.2023 scheduled a hearing for further proceedings in pursuance to the SCN on 05.12.2023 and called upon the Appellants to attend the hearing at Mumbai. The Appellants were thus, relegated to the status as it earlier stood on 28.10.2020.

19.1. In the writ petitions filed before this High Court, the Appellants have sought a stay of the proceedings before SEBI in pursuance to the SCN scheduled for 05.12.2023 at Mumbai. It is the revival of the SCN proceedings by SEBI which the Appellants are aggrieved of. Therefore, the effect of the Impugned Revocation Order is felt by the Appellants at Mumbai.

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20. In the facts of this case, admittedly the High Court of Judicature at Bombay has the jurisdiction as the decision of SEBI to revoke the Settlement Order took place at Mumbai and all events prior thereto with respect to issuing the SCN and passing of the Settlement Order also occurred at Mumbai.

21. The High Court while exercising its jurisdiction under Article 226 of the Constitution of India to entertain a writ petition, in addition to examining its territorial jurisdiction also examines if the said Court is the forum conveniens to the parties. The issue of forum conveniens is seen not only from the perspective of the writ petitioner but it is to be seen from the convenience of all the parties before the Court. In the facts of this case, as is evident from the record that the forum conveniens for the both the parties is Mumbai. The Appellants since the year 2020 have been appearing in Mumbai before SEBI in the SCN proceedings. In W.P.(C) 15556/2023 (as well as the other writs) the writ petitioner has sought a direction for summoning the records of SEBI for examining the legality and validity of the Impugned Revocation Order. In these facts, therefore, the objection of SEBI that Mumbai is the forum conveniens for the parties has merit. The obligation of the Court to examine the convenience of all the parties has been expressly noted by the Full Bench of this Court in ***Sterling Agro Industries Ltd.*** *(supra)*. The following paragraphs of the judgment are instructive which are reproduced as under:

> ***"30.*** *From the aforesaid pronouncements, the concept of forum conveniens gains signification. In Black's Law Dictionary, forum conveniens has been defined as follows:*
>
> *"The court in which an action is most appropriately brought, considering the best interests and convenience of the parties and witnesses."*
>
> ***31.*** ***The concept of forum conveniens fundamentally means that it is obligatory on the part of the court to see the convenience of all the parties before it. The convenience in its ambit and sweep would include the existence of more***

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appropriate forum, expenses involved, the law relating to the lis, verification of certain facts which are necessitous for just adjudication of the controversy and such other ancillary aspects. The balance of convenience is also to be taken note of. *Be it noted, the Apex Court has clearly stated in the cases of Kusum Ingots (supra), Mosaraf Hossain Khan (supra) and Ambica Industries (supra) about the applicability of the doctrine of forum conveniens while opining that arising of a part of cause of action would entitle the High Court to entertain the writ petition as maintainable.*

32. *The principle of forum conveniens in its ambit and sweep encapsulates the concept that a cause of action arising within the jurisdiction of the Court would not itself constitute to be the determining factor compelling the Court to entertain the matter. While exercising jurisdiction under Articles 226 and 227 of the Constitution of India, the Court cannot be totally oblivious of the concept of forum conveniens. The Full Bench in New India Assurance Co. Ltd. (supra) has not kept in view the concept of forum conveniens and has expressed the view that if the appellate authority who has passed the order is situated in Delhi, then the Delhi High Court should be treated as the forum conveniens. We are unable to subscribe to the said view."*

(Emphasis Supplied)

21.1. In view of the facts noted hereinabove, this Court is of the view that the learned Single Judge has rightly concluded that applying the principles of forum conveniens, it would not be appropriate to entertain the writ petitions and the Appellants may approach the appropriate High Court.

22. With respect to the submissions of the learned senior counsel appearing in LPA 48/2024 that distinguishing factor of the said writ petitioner is that the records of the SEBI are not required for examining the challenge laid in W.P.(C) 15558/2023 is incorrect. A bare perusal of prayer (a) in the writ petition shows that the summoning of the records of the SEBI have been prayed for. Therefore, the reliance placed on the judgment of ***Animish Pradip Raje v. Securities and Exchange Board of India and Anr.***[10] passed in W.P.(C) No. 7972/2021 is of no assistance. In our considered view, the summoning of the record of the SEBI would be necessary for examining the rival contentions

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of the parties in the writ petition.

23. Accordingly, the present appeals are without merit and are accordingly dismissed.

24. Pending Applications, if any, stands disposed of.

MANMEET PRITAM SINGH ARORA, J

ACTING CHIEF JUSTICE

JANUARY 15, 2024/hp/ms

Click here to check corrigendum, if any

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