2023:DHC:9101

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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

\+ **W.P.(C) 15556/2023 & CM APPL.62322/2023**

Between: -

BHARAT NIDHI LIMITED
Through its Authorised Representative
Having its office at First floor, Express Building 9-10,
Bahadur Shaah Zafar Marg, New Delhi – 110002.

…PETITIONER

(*Through:* *Mr. Sandeep Sethi, Sr. Advocate with Mr. Ameya Gokhale, Mr. Vaibhav Singh, Ms. Radhika I, Ms. Riya Basu, Ms. Simran Malhotra, Mr. Manas Kotak and Ms. Riya Kumar, Advocates.)*

AND

SECURITIES AND EXCHANGE BOARD OF INDIA
Having its headquarters at SEBI Bhavan,
Plot No. C 4-A, G Block, Near Bank of India,
Bandra Kurla Complex,
Bandra East, Mumbai – 400051.
Also having office at:
NBCC Complex, Office Tower-1, 8th Floor,

Plate B, East Kidwai Nagar, New Delhi – 110023.

.... RESPONDENT NO.1

VINEET JAIN
15, Motilal Nehru Marg, New Delhi – 110002.

.... RESPONDENT NO.2

ASHOKA MARKETING LIMITED
First floor, Express Building 9-10, Bahadur
Shah Zafar Marg, New Delhi – 110002.

.... RESPONDENT NO.3

ARTH UDYOG LIMITED
16A, Lajpat Nagar-IV,
New Delhi – 110024.

.... RESPONDENT NO.4

MATRIX MERCHANDISE LIMITED
101, Pratap Nagar, Mayur Vihar,
Phase – 1, East Delhi, New Delhi – 110091.

.... RESPONDENT NO.5

MAHAVIR FINANCE LIMITED
101, Pratap Nagar, Mayur Vihar,
Phase-1, East Delhi, New Delhi – 110091.

.... RESPONDENT NO.6

TM INVESTMENTS LIMITED
814, Plot No. 7, Roots Tower,
Laxmi Nagar, District Centre, East Delhi,
New Delhi – 110092.

.... RESPONDENT NO.7

SANMATI PROPERTIES LIMITED
814, Plot No. 7, Roots Tower,
Laxmi Nagar, District Centre, East Delhi,
New Delhi – 110092.

.... RESPONDENT NO.8

(Through: Mr. J. J. Bhatt, Sr. Advocate with Mr. Abhishek Baid, Ms. Praneet Das, Mr. Mohit Kr. Bafna, Mr. Anup Jain and Mr. Ashok Kr. Jain, Advocates for R-1.)

\+ **W.P.(C) 15557/2023 & CM APPL.62323/2023**

Between: -

ASHOKA MARKETING LIMITED
Through its Authorised Representative
Having its office at First floor, Express Building 9-10,
Bahadur Shah Zafar Marg, New Delhi – 110002.

….PETITIONER NO.1

ARTH UDYOG LIMITED
Through its Authorised Representative
Having its office at 16A, Lajpat Nagar-IV,
New Delhi – 110024.

…PETITIONER NO. 2

(*Through: Mr. Jayant Mehta, Sr. Advocate with Mr. Ameya Gokhale, Mr. Vaibhav Singh, Ms. Radhika I, Mr. Riya Basu, Ms. Simran Malhotra, Mr. Manas Kotak and Ms. Riya Kumar, Advocates.)*

AND

SECURITIES AND EXCHANGE BOARD OF INDIA
Having its headquarters at SEBI Bhavan,
Plot No. C 4-A, G Block, Near Bank of India,

Bandra Kurla Complex,
Bandra East, Mumbai – 400051.
Also having office at:
NBCC Complex, Office Tower-1, 8th Floor,
Plate B, East Kidwai Nagar, New Delhi – 110023.

.... RESPONDENT NO.1

BHARAT NIDHI LIMITED
First floor, Express Building 9-10,
Bahadur Shaah Zafar Marg, New Delhi – 110002.

.... RESPONDENT NO.2

MATRIX MERCHANDISE LIMITED
101, Pratap Nagar, Mayur Vihar,
Phase – 1, East Delhi, New Delhi – 110091.

.... RESPONDENT NO.3

MAHAVIR FINANCE LIMITED
101, Pratap Nagar, Mayur Vihar,
Phase-1, East Delhi, New Delhi – 110091.

.... RESPONDENT NO.4

TM INVESTMENTS LIMITED
814, Plot No. 7, Roots Tower,
Laxmi Nagar, District Centre, East Delhi,
New Delhi – 110092.

.... RESPONDENT NO.5

SANMATI PROPERTIES LIMITED
814, Plot No. 7, Roots Tower,
Laxmi Nagar, District Centre, East Delhi,
New Delhi – 110092.

.... RESPONDENT NO.6

VINEET JAIN
15, Motilal Nehru Marg, New Delhi – 110002.

.... RESPONDENT NO.7

(Through: Mr. J. J. Bhatt, Sr. Advocate with Mr. Abhishek Baid, Ms. Praneet Das, Mr. Mohit Kr. Bafna, Mr. Anup Jain and Mr. Ashok Kr. Jain, Advocates for R-1.)

\+ **W.P.(C) 15558/2023 & CM APPL.62324/2023**

Between: -

MATRIX MERCHANDISE LIMITED
101, Pratap Nagar, Mayur Vihar,
Phase – 1, East Delhi, New Delhi – 110091.

.... PETITIONER NO.1

MAHAVIR FINANCE LIMITED
101, Pratap Nagar, Mayur Vihar,
Phase-1, East Delhi, New Delhi – 110091.

.... PETITIONER NO.2

TM INVESTMENTS LIMITED
814, Plot No. 7, Roots Tower,
Laxmi Nagar, District Centre, East Delhi,
New Delhi – 110092.

.... PETITIONER NO.3

SANMATI PROPERTIES LIMITED
814, Plot No. 7, Roots Tower,
Laxmi Nagar, District Centre, East Delhi,
New Delhi – 110092.

.... PETITIONER NO.4

VINEET JAIN

15, Motilal Nehru Marg, New Delhi – 110002.

.... PETITIONER NO.5

(*Through:* *Mr. Amit Sibal, Sr. Advocate with Mr. Ameya Gokhale, Mr. Vaibhav Singh, Ms. Radhika I, Mr. Riya Basu, Ms. Simran Malhotra, Mr. Manas Kotak and Ms. Riya Kumar, Advocates.)*

AND

SECURITIES AND EXCHANGE BOARD OF INDIA
Having its headquarters at SEBI Bhavan,
Plot No. C 4-A, G Block, Near Bank of India,
Bandra Kurla Complex,
Bandra East, Mumbai – 400051.
Also having office at:
NBCC Complex, Office Tower-1, 8th Floor,
Plate B, East Kidwai Nagar, New Delhi – 110023.

.... RESPONDENT NO.1

BHARAT NIDHI LIMITED
First floor, Express Building 9-10,
Bahadur Shaah Zafar Marg, New Delhi – 110002.

.... RESPONDENT NO.2

ASHOKA MARKETING LIMITED
Through its Authorised Representative
Having its office at First floor, Express Building 9-10,
Bahadur Shah Zafar Marg, New Delhi – 110002.

.… RESPONDENT NO.3

ARTH UDYOG LIMITED
Through its Authorised Representative
Having its office at 16A, Lajpat Nagar-IV,

New Delhi – 110024.

… RESPONDENT NO. 4

(Through: Mr. J. J. Bhatt, Sr. Advocate with Mr. Abhishek Baid, Ms. Praneet Das, Mr. Mohit Kr. Bafna, Mr. Anup Jain and Mr. Ashok Kr. Jain, Advocates for R-1.)

% Pronounced on: 18.12.2023

J U D G M E N T

1. This order shall decide a preliminary objection raised on behalf of respondent no.1-Securities and Exchange Board of India (hereinafter 'SEBI') on entertaining the instant writ petitions on the ground of lack of territorial jurisdiction and/or alternatively, on the ground of *forum non-conveniens*. The issue involved is common in all cases; hence, a combined order is being passed.

Description

2. The petitioner in W.P.(C) 15556/2023 i.e. Bharat Nidhi Limited (hereinafter 'BNL') is an unlisted public limited company incorporated under the provisions of the Companies Act, 1913 having its registered office at First floor, Express Building 9-10, Bahadur Shah Zafar Marg, New Delhi – 110002.

3. The respective petitioners in W.P.(C) 15557/2023 and in W.P.(C) 15558/2023 are also companies registered either under the provisions of the Companies Act, 1913 or under the provisions of the

Companies Act, 1956. All the petitioners have their registered offices at Delhi. Petitioner no.5 namely, Vineet Jain in W.P.(C) 15558/2023, is an Indian inhabitant residing at 15, Motilal Nehru Marg, New Delhi – 110002.

4. The petitioners in all other writ petitions, barring W.P.(C) 15556/2023, are the shareholders of BNL.

5. SEBI is respondent no.1 in all the writ petitions, which is established under Section 3 of the SEBI Act, 1992. SEBI is, therefore, a statutory authority and is tasked with the regulation of the securities market and for matters connected therewith and incidental thereto. The other respondents in respective writ petitions are also some of the shareholders of BNL.

6. Pursuant to complaints and representations received from certain shareholders primarily alleging violation of SEBI's minimum public shareholding norms (hereinafter 'MPS Norms') and disclosure requirements by and in respect of BNL, SEBI issued a common show cause notice (hereinafter 'SCN') on 28.10.2020 to BNL and respondent nos. 2 to 8 of W.P.(C) 15556/2023. In the said SCN, SEBI alleged that the petitioner had violated:-

> *"(a) Regulation 31(1)(b) of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 ("**LODR Regulations**") read with SEBI circular no. CIR/CFD/CMD/13/2015 dated 30th November 2015 read with regulation 2(za) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 and clause 35 of the listing agreement;*

> *(b) Rule 19A(1) of Securities Contract Regulation Rules, 1957 read with regulation 38 of LODR Regulations read with provisions of 2(II) of SEBI Circular No. CIR/CFD/DIL/10/2010 dated 16th December 2010 read with Circular No. CIR/CFD/CMD/14/2015 dated 30th November 2015;*
>
> *(c) Section 12(A)(a) and (b) of the SEBI Act and read with Regulation 3(b) and (c) and 4(1) of the SEBI (Prevention of Fraudulent and Unfair Trading Practices) Regulations 2003 ("**PFUTP Regulations**").*"

7. The said SCN, therefore, provided that the noticees, may note that a settlement mechanism is provided under the SEBI (Settlement Proceedings) Regulation, 2018 (hereinafter 'Regulations of 2018') and if the noticees wish to opt for the settlement process, they may apply for the same in the manner given in the said Regulations upon intimation to the concerned authority.

8. Thereafter, BNL filed an application under the Regulations of 2018 on 27.12.2020 and responded to the SCN on 28.02.2021. Separate and independent settlement applications were also filed by respondent nos.2 to 8. The said settlement applications were considered by the Internal Committee of SEBI formed under the Regulations of 2018. Various meetings took place on 06.08.2021, 31.08.2021, 28.10.2021 and 02.12.2021 to deliberate on the settlement application and to discuss and negotiate the terms of the settlement. BNL and the settlement applicants in their respective applications too responded to various queries raised by the Internal Committee and the petitioner filed revised settlement terms with the Internal Committee based on *inter se* deliberations.

9. During the pendency of the settlement application, on or around 14th January 2022, a group of shareholders holding 1.27% shares in BNL ('Ashok Shah Group') filed a writ petition bearing Writ Petition no.406 of 2022 before the High Court of Judicature at Bombay *inter alia* seeking an order restraining SEBI from considering the settlement application of the petitioner and respondent nos.2 to 8. On 08.04.2022, the said writ petition came to be withdrawn with the following observations:-

> *"1. After the petition was heard for sometime, Mr. Seervai seeks leave of the court to withdraw the petition with liberty to approach this court or any forum as advised, if petitioners are not satisfied with the orders to be passed by SEBI in the settlement applications filed by some of the respondents or in the show cause notices issued to some of the respondents before us.Mr. Bhatt states that show cause notices have been issued to 62 entities and considering the situation that we have just come out of Covid-19, an attempt will certainly be made to dispose the proceedings at the earliest. Mr. Andhyarujina appearing for respondent no.4 states that proceedings before SEBI pertaining to respondent nos.3 and 4 are going on and it is not like what petitioners have stated that there is no progress. We are not going into this aspect but considering the over all situation, we would expect the SEBI, i.e., respondent no.1 to complete the proceedings pending before them which have been agitated in this petition, as early as possible within 6 months. Liberty to apply for extension.*
>
> *2. All rights and contentions of the parties are kept open. We clarify that we have not made any observations on the merits of the matters pending before the SEBI.*
>
> *3. Petition dismissed as withdrawn with liberty as prayed for."*

10. Subsequently, the Internal Committee of SEBI finalised the terms of settlement in respect of BNL, and in terms of Regulation 13(3) of the Regulations of 2018, forwarded the same for

consideration of the High Powered Advisory Committee (hereinafter 'HPAC'). As per Regulation 11 of the Regulations of 2018, the HPAC was constituted, comprising of a Judicial member who has been a Judge of the Supreme Court or a High Court and three external experts having expertise in the securities market or connected matters.

11. The HPAC considered the Settlement Application and also the settlement terms as forwarded to it by the Internal Committee. The HPAC noted that a writ petition bearing W.P.(C) 10756 of 2019 titled as ***Aditya Aggarwal and Ors. v. SEBI and Ors***. alleging violation of certain SEBI regulations by BNL was pending before this court.

12. The HPAC, therefore, by an email dated 20.04.2022 directed *inter alia* BNL i.e., the petitioner in W.P.(C) 15556/2023 to specifically bring the fact of filing of Settlement Application to the notice of this court and seek specific permission to decide and dispose of the Settlement Application.

13. *Vide* order dated 27.05.2022, this court in W.P.(C) 10756 of 2019 permitted SEBI to deal/adjudicate on the settlement application filed by BNL, on its own merits, in accordance with law. The operative part of the order dated 27.05.2022 reads as under:-

> *"6. Mr. Deepak Jain, counsel for the Petitioners opposes the applications and argues that SEBI (Settlement Proceedings) Regulations, 2018 prohibit filing of settlement applications in respect of matters pending that are pending trial before any court.*
>
> *7. On the perusal of previous orders, no directions are found which restrain SEBI from considering/ adjudicating the*

> *settlement applications. It appears that the instant applications have been filed by way of abundant caution at the instance of HPAC.*
>
> *8. The Court has considered the objection put forth my Mr. Jain, but finds no cogent reason to reject the application. The decision on the settlement applications is the prerogative of SEBI. It is for the SEBI to deliberate and decide the same, in accordance with applicable provisions of SEBI Act, Rules, Regulations, etc. Whether the applications are prohibited or not is not for this Court to determine. Accordingly, the applications are disposed of with a clarification that SEBI shall be free to deal/ adjudicate the settlement applications filed by the Applicants, on its own merits, in accordance with law.*
>
> *9. The decision on the settlement applications shall not prejudice the Petitioners and all rights and contentions of the parties herein are left open."*

14. After obtaining permission from this court, the HPAC approved the terms of settlement and as per Regulation 14(3) of the Regulations of 2018 and forwarded the same to the Panel of Whole Time Members of SEBI (hereinafter 'Panel of WTMs'). As per the provisions of Regulation 15 of the Regulations of 2018, the Panel of WTMs is the ultimate authority within SEBI for the passing of settlement orders. After due consideration of the Panel of WTMs, the petitioner-BNL received an email dated 20.07.2022 from SEBI *inter alia* informing the petitioner that SEBI has in principle agreed to accept the terms of settlement and the petitioner was also advised to pay the settlement amount to SEBI and provide an undertaking to comply with certain non-monetary terms in addition to the payment of the amount.

15. The petitioner-BNL appears to have remitted its settlement amount of Rs.2,43,10,000/- on 11.08.2022 and BNL also provided the

undertaking to comply with the non-monetary terms as sought by SEBI.

16. On 12.09.2022, a settlement order was passed with respect to BNL and respondent nos.2 to 8. The terms of the settlement were enumerated in paragraph no.5 of the said order. The settlement applicants informed about the remittance of the respective settlement amounts between 10.08.2022 to 16.08.2022. SEBI had confirmed the credit of the same. On receipt of an undertaking to comply with the non-monetary terms forming part of the settlement terms in exercise of powers conferred under Section 15JB read with Section 19 of the SEBI Act and under Section 23JA of the Securities Contracts (Regulation) Act, 1956 (hereinafter 'SCR Act') and in terms of Regulation 23 read with Regulation 28 of the Regulations of 2018, it was ordered that the pending enforcement proceedings for the alleged defaults as mentioned at paragraph nos.1 and 2 of the said order were settled *qua* the applicants. The terms were enumerated in the order dated 12.09.2022. Paragraph nos.8 to 10 of the Settlement Order dated 12.09.2022 read as under:-

> *"8. In view of the above, in exercise of the powers conferred under Section 15JB read with Section 19 of the SEBI Act and under Section 23JA of the SCR Act and in terms of Regulation 23 read with Regulation 28 of the Settlement Regulations, it is hereby ordered that the pending enforcement proceedings for the alleged defaults as mentioned at paragraph 1 and 2 are settled qua the applicants on the following terms:*
>
> > *i. This Order disposes of the enforcement proceedings initiated by SEBI for the defaults as mentioned earlier in respect of the applicants;*

> *ii. SEBI shall not initiate any other enforcement action against the applicants for the said defaults; and*
>
> *iii. Bharat Nidhi Limited shall submit a report of compliance with the terms of its undertaking given at paragraph 5, within 15 days of the passing of this settlement order, failing which the settlement order shall cease to operate qua all the applicants.*
>
> *9. The passing of this Order is without prejudice to the right of SEBI under Regulation 28 of the Settlement Regulations to take enforcement actions including continuing proceedings against the applicants, if SEBI finds that:*
>
> *a) any representation made by the applicants in the present settlement proceedings is subsequently found to be untrue;*
>
> *b) the applicants have breached any of the clauses/ conditions of Undertakings/Waivers filed during the present settlement proceedings; and*
>
> *c) there was a discrepancy while arriving at the settlement terms.*
>
> *10. This Settlement Order is passed on this 12th day of September, 2022 and shall come into force with immediate effect."*

17. On or around 10th October 2022, the Ashok Shah Group and another set of shareholders of BNL ('Pina Shah Group') filed two writ petitions, i.e., W.P. no. 447 of 2023 and W.P. no. 530 of 2023 before the Hon'ble High Court of Judicature at Bombay *inter alia* challenging the Settlement Order and the petitioner's Postal Ballot Notice.

18. On 17.10.2022, the Hon'ble High Court of Judicature at Bombay passed an interim order *inter alia* directing respondent no.2 therein, not to finalize the offers till the next date of hearing, however,

respondent no.2 was granted liberty to proceed to the extent of inviting offers.

19. On 05.12.2022, the Hon'ble High Court of Judicature at Bombay, on an application filed on behalf of the petitioner, passed the following order:-

> *"1. The matter is mentioned in the morning by respondent No.2.*
>
> *2. Mr. Dhond, learned Senior Advocate for respondent No.2 submits that respondent No.2 has to complete the process of bye-back within a stipulated period as enumerated in Rules 17(5) and 17(7) of the Companies (Share Capital and Debentures) Rules, 2014.*
>
> *3. This Court has continued the interim orders till 10th December 2022 on 30th November 2022 and had granted liberty to the petitioner to file rejoinder on or before 20th December 2022.*
>
> *4. Considering that the prohibitory orders are operating restraining the respondents from finalizing the offer, the respondent No.2 may claim benefit of the interim orders so far as time frame is concerned.*
>
> *5. Place the matter on 6th January 2023.*
>
> *6. Interim orders passed earlier to continue till then."*

20. Contemporaneously, there were various developments and correspondences between the parties, however, they may not be necessary, at this stage, to be referred extensively except to state the fact that on 05.09.2023, SEBI verbally submitted before the Hon'ble High Court of Judicature at Bombay about the change in its WTMs and the decision likely to be taken as to whether the Settlement Order stood revoked.

21. The order dated 05.09.2023 passed by the Hon'ble High Court of Judicature at Bombay reads as under:-

> *"1. We had placed this matter for final hearing today at 2.30 p.m.*
>
> *2. Mr. Seervai, learned Senior Counsel for the Petitioners, has commenced his arguments. At the midst of the hearing Mr. Bhatt, learned Senior Counsel for the Respondent No.1-SEBI, has stated before us that there was a change in the Whole Time Members (WTM) of the SEBI. He states that SEBI would now be in a position to take a decision as to whether the settlement order in question (Exhibit- "A") has stood revoked. Mr. Bhatt would contend that if the settlement order stands revoked, in such event, further adjudication of the present petition would not be called for.*
>
> *3. We are of the opinion that it would be appropriate to know the stand of the SEBI. Depending as what the SEBI informs the Court on the adjourned date of hearing, further course of action on the proceedings can be decided.*
>
> *4. Accordingly, stand over to 13th September 2023 at 2.30 p.m."*

22. On 13.09.2023, the Hon'ble High Court of Judicature at Bombay has passed the following order:-

> *"Today the matter is placed before us on the backdrop of our order dated 5th September 2023. From what has been heard from the learned Counsel for the parties, it appears that the issues as raised in the petition cannot be resolved. The parties agree that the proceedings would be required to be now heard and decided.*
>
> *2. We, accordingly, place the proceedings for hearing on 4th October 2023 at 2.30 p.m. to be followed on 5th October 2023 and 9th October 2023."*

23. Thereafter, on 05.10.2023, the matter was further considered and during the course of the hearing on that day, the petitioner-BNL (respondent no. 2 therein) made an oral request to place on record a

compilation of certain documents, the request being strongly opposed by the petitioners therein. Therefore, the request made by BNL was rejected for the reasons recorded in the said order. Paragraph nos.11 to 17 of an order dated 05.10.2023 read as under:-

> *"11. Having heard learned counsel for the parties on the above issue, in our opinion, we find much substance in the contentions as urged on behalf of the petitioners by Mr. Seervai and Mr. Joshi. At the outset, we may observe that we cannot accept a compilation of documents to be placed on record of the proceedings at the stage the present proceedings stand, that is the Court having already commenced final hearing on the petitions. More particularly on a crucial issue the petitioners have already and quite substantively having argued their case for the entire second session yesterday.*
>
> *12. It may be that such averments are made in the affidavit as noted by us above, however, such averments would not confer any right or entitlement on respondent no. 2 to place on record a big bunch of documents, at the midst of the final hearing as requested by Mr. Dhond in his oral application. This would be certainly contrary to the basic rule the Court would adopt on pleadings. Respondent no. 2 was clearly aware as to what would be the principles in regard to the pleadings which has been very clearly set out in paragraph 17 of respondent no. 2's affidavit (supra), wherein respondent no.2 has categorically stated that respondent no. 2 craves leave to file a "further affidavit" to place additional material should the same be deemed necessary or be directed by this Court. This implies two things. Firstly, till the filing of the said affidavit dated 5 June, 2023, whatever respondent no. 2 thought "deemed necessary" was already part of the record and as far as second statement as made in paragraph 17 is concerned, we have not directed respondent no. 2 to file any further affidavit.*
>
> *13. This apart, for the clarity on the timing of such application as made on behalf of respondent No.2, we have referred to our earlier orders passed right from 17 July, 2023, which would point out that there were several opportunities which were available to respondent No.2, which could have been utilized by respondent No. 2 to place on record any further additional affidavit as desired by respondent No.2 as stated in paragraph No. 17 of its affidavit (supra) dated 5 June, 2023. Thus, after such long lapse of time and that too after the proceedings have commenced final hearing and*

the petitioners had commenced their arguments and quite substantially it would not be fair to the petitioners that new material documents unknown to the parties are permitted to be placed on record. It would also not be fair to the process of adjudication of the proceedings. Moreover, this would be completely contrary to the basic law of pleadings under which any plea to be taken by a party which may be on documents or otherwise would be required to be taken by way of a pleading in that regard, and such documents on which a plea is taken are required to form part of the record, in a manner known to law. This is the normal rule, so that such plea and documents are made known to all the parties on which the parties can advance their case before the Court.

14. If we permit such compilation of documents to be placed on record, we permit a completely new course of action, which would be permitting respondent no. 2 to make out a case on documents which are not part of the record and on which there is no specific pleading on any such document and above all which are not in the knowledge of the petitioners. This can certainly cause a grave and serious prejudice to the petitioners.

15. We may also observe and as relevantly pointed out by Mr. Seervai that on 11 March, 2023, advocate for the petitioner has addressed a categorical letter to the advocate for respondent no. 2 requesting that the documents referred and relied upon be furnished to the petitioners, as also that such documents being relied be forthwith provided to the petitioners. It has been pointed out to us that such letter of the advocate for the petitioner, was not replied by the advocate for respondent no. 2. Pointing out the said letter addressed, Mr. Seervai and Mr. Joshi's plea is quite significant that today's attempt to place on record the bunch of documents would be nothing but to condone such suppression of the documents by respondent no. 2, which are till date kept away by respondent no. 2 from the petitioners and by such method, an attempt on the part of respondent no. 2 to get wiser, after the petitioners have advanced substantive argument on their plea. We hence see much substance in the contention of Mr. Seervai.

16. Mr. Dhond would however submit and which appears to be quite a novel plea taken for the first time and without any such prior plea taken earlier, that there were certainly confidentiality requirements in respondent no. 2's correspondence with SEBI, hence the documents were earlier not placed on record. This appears to be an argument in desperation and without any basis, as

> *the prior affidavits of respondent no. 2 are completely silent on any such confidentiality requirement.*
>
> *17. We, thus, do not permit respondent no. 2 to place on record any new documents. We accordingly reject such request as made by Mr. Dhond and proceed with the final hearing of the petition."*

24. By a subsequent order dated 23.10.2023, the Hon'ble High Court of Judicature at Bombay directed SEBI to furnish some other documents in terms of the prayer made therein to Ashok Shah Group and Pina Shah Group, within a period of three weeks from the date of passing of the order. Paragraph nos. 29 to 33 of the order dated 23.10.2023 read as under:-

> *"29. Thus none of the contentions as urged on behalf of respondent nos.2 to 9 in opposing the prayer of the petitioners to furnish documents would persuade us to hold that there was any embargo legal and/or factual for such documents not to be furnished/supplied to the petitioners. The objection of such respondents that the petitioner ought not to have raised such plea on the documents at the midst of the final hearing, as this itself would show that no prejudice was caused to the petitioners, in our opinion, is certainly not a tenable contention, for more than one reason. Firstly on such case the petitioners have made a specific interim prayer as noted by us above. They have also supported such prayer, by pleading a case of a serious prejudice being caused to them in the capacity of being the shareholders of BNL. It is also not the case that they had in any manner given up their case on their necessity and entitlement to have such documents. In any event, the petition is being heard finally at the admission stage, which would not mean that a situation is brought about, that the specific contentions on documents, as urged by the petitioners and subject matter of specific prayers would stand given up by the petitioners much less on the law would understand. Moreover, as observed above, the case of the petitioners is that the very basis of the SEBI undertaking investigation on the complaints as made by the petitioners of BNL violating the rules, regulations and norms as prescribed by SEBI, being violated by BNL and the same*

> *forming subject matter of investigation by SEBI and the resultant show cause notice were foundational facts, hence, in such context, it was the petitioners' entitlement to receive all the documents in that regard. Such documents therefore have all relevancy as law would contemplates in the present lis between the parties. Thus, the impression of respondent nos.2 to 9 that the petitioners should not be provided with such documents, is not acceptable. Once it is the entitlement of the petitioners in law to receive such documents, they need to be furnished such documents, unless furnishing of these documents would stand prohibited in law, which is certainly not a situation in the present facts.*
>
> *30. We may also add that the regulations are framed under the SEBI Act, 1992. The avowed object and intention of the Act is to protect the interests of investors in securities and to promote the development of, to regulate the securities market. Thus, all actions which are taken by the SEBI and through the various bodies as constituted under the Act and the regulations are required to act considering the paramount interest of the investors. For such reasons as well, we do not find as to why the petitioners ought not to be entitled to the documents. We do not find that there is any impediment whatsoever in law or otherwise for the documents, as demanded, to be supplied to the petitioners.*
>
> *31. In the light of the above discussion, we are inclined to grant to the petitioners interim relief in terms of prayer clause (g).*
>
> *32. SEBI is directed to furnish to the petitioners copies of all such documents within a period of three weeks from today.*
>
> *33. List the proceedings for further hearing on 29 November 2023 (Part Heard).”*

25. The petitioner assailed the order dated 05.10.2023 and 23.10.2023 before the Hon'ble Supreme Court by way of a Special Leave Petition (Civil) (Diary) No. 45529 of 2023 ('BNL SLP'). The order dated 23.10.2023 was also challenged by respondent nos.2 to 8 by filing a separate Special Leave Petition (Civil) Diary No. 45770 of 2023.

26. *Vide* order dated 06.11.2023, both the petitions i.e., Special Leave Petition (Civil) (Diary) No. 45529 of 2023 and 45770 of 2023 were disposed of while directing that the parties would be at liberty to pursue their remedies in accordance with law on all counts after the final judgment of the High Court. It was observed by the Hon'ble Supreme Court that the impugned order therein was purely of an interlocutory nature, therefore, no interference was called for.

27. The order dated 06.11.2023 passed by the Hon'ble Supreme Court is reproduced as under:-

> *"1. Mr CA Sundaram, senior counsel, states that all material which is directed to be disclosed by the High Court shall be used only for the purpose of the proceedings pending before the High Court and shall not be disseminated to any third party.*
>
> *2. Since the impugned orders of the High Court are purely of an interlocutory nature, we are not inclined to entertain the Special Leave Petitions under Article 136 of the Constitution.*
>
> *3. However, the parties would be at liberty to pursue their remedies in accordance with law on all counts after the final judgment of the High Court.*
>
> *4. The Special Leave Petitions are dismissed.*
>
> *5. Pending applications, if any, stand disposed of."*

28. As the matter stood, the petitioner received the impugned order dated 10.11.2023 by way of an email from SEBI *inter alia* communicating that the Settlement Order stands revoked and withdrawn in terms of Regulation 28 of the Regulations of 2018 for "*failure to comply with the Settlement Order*" and on 14.11.2023, the petitioner received the physical copy of the impugned order.

29. On 29.11.2023, when the matter was taken up by the Hon'ble High Court of Judicature at Bombay, learned counsel who appeared on behalf of SEBI, tendered an affidavit of Mr. Sachin Sonawane, Deputy General Manager-SEBI dated 20.11.2023 and placed on record SEBI's order dated 10.11.2023, whereby, the settlement order dated 12.09.2022 which was challenged in the said writ petition was stated to have been revoked by SEBI.

30. The Hon'ble High Court of Judicature at Bombay extensively heard learned counsel for the parties on those developments, and more particularly, as to whether the petition would, thereafter, be rendered infructuous in view of the settlement order being revoked by the SEBI and the proceedings were accordingly adjourned to 01.12.2023 for passing orders.

31. For the sake of clarity, the order dated 29.11.2023 reads as under:-

> *"1. We have heard learned counsel for the parties on the backdrop of our order dated 23 October 2023. We were informed that respondent Nos.2 to 9 had approached the Supreme Court assailing our order dated 23 October 2023 in the proceedings of SLP No.45529 of 2023 which came to be dismissed by the Supreme Court by order dated 6 November 2023. We have perused the order dated 6 November 2023 passed by the Supreme Court.*
>
> *2. We are informed by Mr. Bhatt, learned Senior counsel for SEBI that recently even the SEBI had also approached the Supreme Court assailing the said orders, which came to be dismissed by the Supreme Court on 28 November 2023.*
>
> *3. Mr. Bhatt has also tendered affidavit of Mr. Sachin Sonawane, Deputy General Manager-SEBI dated 20 November*

2023 placing on record SEBI's orders dated 10 November 2023 whereby the settlement orders dated 12 September 2022 as challenged in the present petition Stands revoked by the SEBI.

4. We have extensively heard learned counsel for the parties on these developments, and more particularly, as to whether the petition is now rendered infructuous in view of the settlement order being revoked by the SEBI.

5. We would pass appropriate orders on these proceedings on such submissions made before us on behalf of the petitioners and the respondents on the adjourned date of hearing.

6. We are however of the opinion that the orders passed by the Supreme Court on the SEBI's Special Leave Petition needs to be apprised to the Court and placed on record.

7. The proceedings are accordingly adjourned to 1 December 2023 "For passing orders."

32. On 01.12.2023, the Hon'ble High Court of Judicature at Bombay pronounced the order, wherein, the following directions were passed:-

"I. The petitioners are entitled to the benefits of the order dated 23 October 2023 as confirmed by the Supreme Court, by rejection of the Special Leave Petitions of respondent Nos.2 and 9 and thereafter, by rejection of the Special Leave Petition filed by the SEBI.

II. The order dated 23 October 2023 passed by the Court, be forthwith complied by SEBI.

III. All the contentions of the petitioners and of the respondents on issues in regard to prayer clause (c) and (d) are expressly kept open to be agitated at appropriate time in appropriate proceedings.

IV. The petitions stand disposed of in the above terms. No costs."

33. The record would indicate that between 29.11.2023 to 01.12.2023, these writ petitions came to be filed by respective petitioners praying for relief *inter alia* to set aside the impugned order passed by SEBI dated 10.11.2023.

34. Under the aforesaid background of facts, Mr. J.J. Bhatt, learned senior counsel who appeared on behalf of SEBI, raised a preliminary objection on the following grounds:-

(i) No cause of action at all has arisen within the territorial jurisdiction of this court to entertain the instant writ petitions, much less material, integral and essential cause of action;

(ii) *Alternatively,* he submits that while applying the theory of *forum conveniens*, parties to the instant writ petitions be relegated to the jurisdictional High Court, where the entire or material cause of action had actually arisen.

35. To substantiate his arguments, he submits that the initial SCN was admittedly issued in Mumbai which may have been served in Delhi but the response thereto was considered in Mumbai. He also submits that the application for settlement was registered in Mumbai and the entire deliberation had taken place on different dates in Mumbai. The impugned decision has also been taken in Mumbai and the challenge to the settlement order remained the subject matter of scrutiny in two writ petitions where all the petitioners in their respective writ petitions actively participated; and therefore, the petitioners involved in the instant writ petitions ought to have agitated

their prayers before the jurisdictional High Court, where the material, integral and essential part of the cause of action has arisen i.e., at Mumbai.

36. According to him, W.P. nos.530 of 2023 and 447 of 2023 were disposed of by the Hon'ble High Court of Judicature at Bombay *vide* order dated 01.12.2023 taking note of the impugned order dated 10.11.2023 and all relevant aspects have been extensively considered by the concerned High Court in the presence of the present petitioners and therefore, the High Court of Judicature at Bombay is the *forum conveniens* for the petitioners and the respondent-SEBI as well. He further submits that entertaining a writ petition at the instance of the petitioners challenging the impugned order of revocation of settlement before this court would lead to conflicting orders and also inconvenience to the parties as throughout the entire proceedings, the petitioners were defending themselves and prosecuting their remedies either before the authorities of SEBI at Mumbai or before the jurisdictional High Court i.e., Bombay.

37. Learned senior counsel for the respondent-SEBI has placed reliance on the decision of the Hon'ble Supreme Court in the cases of ***State of Goa v. Summit Online Trade Solutions Private Limited and Others***[1]***, National Textile Corpn. Ltd. and others v. Haribox Swalram and others***[2]***, Union of India and Ors. v. Adani Exports Ltd.***

[1] (2023) 7 SCC 791
[2] (2004) 9 SCC 786

& Anr.[3] and the decision of the High Court of Judicature at Hyderabad in the case titled as ***BSE Limited v. JM Financial Asset Reconstruction Company Limited and others***[4]**.**

38. Submissions made on behalf of the respondent-SEBI were strongly opposed by learned senior counsel who appeared on behalf of the respective writ petitioners.

39. Mr. Sandeep Sethi, learned senior counsel who appeared on behalf of the petitioner in W.P.(C) 15556/2023 took this court through paragraph no.81 of the said writ petition to explain as to how this court has the territorial jurisdiction to entertain the instant writ petition. He also submits that a major part of shareholders and shareholdings of BNL is at Delhi and for the purposes of petitioners, all actions have taken place at Delhi including the alleged violations. He, therefore, submits that under the conspectus of settlement and the proceedings recorded in the order of settlement, it would be clearly discernible that the material, integral and essential cause of action has arisen within the territorial jurisdiction of this court and therefore, the instant writ petition is maintainable.

40. According to him, in any case, it is the convenience of the petitioner which should be a decisive factor and not the location of the office of the respondent. Since the petitioner has conveniently approached this court and according to him, this court has ample

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[3] (2002) 1 SCC 567
[4] 2018 SCC OnLine Hyd 256

jurisdiction to decide the validity of the impugned revocation, therefore, the petitioner should not be burdened to approach any other High Court.

41. Learned senior counsel has placed reliance on a decision of the Hon'ble Supreme Court in the case of ***Vodafone International Holdings BV v. Union of India and Another***[5] to submit that law on situs of share situates at the place where the company is incorporated and/ or the place where the share can be dealt with by way of transfer. He has also placed reliance on the decisions of the Hon'ble Supreme Court in the cases of ***Union of India v. Oswal Woollen Mills Ltd.***[6]***, Shanti Devi vs. Union of India***[7]***, Nawal Kishore Sharma v. Union of India and Ors.***[8]***, Navinchandra N. Majithia v. State of Maharashtra and Ors.***[9] and on the decision of this court in the case of ***Noida Mint Employees Union and Ors. v. Union of India and Ors.***[10]**.**

42. Learned senior counsel has also distinguished the decision of the Hon'ble Supreme Court in the case of ***State of Goa*** (supra) and sought to draw an analogy in his favour from the decision of this court in the case of ***Angika Development Society v. Union of India and Ors.***[11].

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[5] (2012) 6 SCC 613
[6] (1984) 2 SCC 646
[7] (2020) 10 SCC 766
[8] (2014) 9 SCC 329
[9] (2000) 7 SCC 640
[10] 2015 SCC OnLine Del 7079
[11] 2023 SCC OnLine Del 6436

43. Mr. Jayant Mehta, learned senior counsel appearing on behalf of the petitioners in W.P. (C) 15557/2023 explained from paragraph no.64 of the said writ petition regarding as to how the jurisdiction lies before this court. According to him, the entire cause of action had arisen at Delhi, except the order passed by SEBI in Mumbai. The petitioners are based in Delhi and the respondent-SEBI itself required the petitioners to take permission from this court in the pending writ petition bearing W.P.(C) 10756 of 2019. According to him, since only minority shareholders had approached the Hon'ble High Court of Judicature at Bombay, therefore, this court does not lack its jurisdiction to entertain the instant writ petition.

44. In any case, according to him, when the petitioners are legally entitled to knock the doors of this court, they cannot be relegated to any other High Court applying the doctrine of *forum conveniens*. He has also submitted that in the pending writ petitions before this court, at no point of time, the respondent-SEBI has raised any objection regarding the territorial jurisdiction of this court. He has further submitted that the order dated 01.12.2023 has been passed by the Hon'ble High Court of Judicature at Bombay after the petitioners have already approached this court i.e., on 30.11.2023. He has also distinguished the decision relied upon by the learned senior counsel appearing on behalf of the respondent-SEBI while explaining from the respective decision, the fundamental difference in the circumstances. He has extensively read over paragraph no.12 of the decision in the case of ***State of Goa*** (supra) and paragraph nos. 10, 12 and 12.1 of the

decision in the case of ***National Textile Corpn. Ltd. and others*** (supra). He has also relied upon the decision in the case of ***Dina Nath Public School v. Provident Fund Commr***.[12]

45. He has distinguished the decision relied upon by the petitioner in the case of ***Adani Exports Ltd. & Anr.*** (supra) while reading paragraph nos.6 and 18.

46. He has also relied on the principles laid down in ***Angika Development Society*** (supra) to submit that in that case, this court relegated the petitioner to the Hon'ble High Court of Patna as the entire cause of action had arisen within the jurisdiction of that High Court and merely on the ground that the office of the respondent in that case was situated at Delhi, this court declined to entertain the said writ petition. He, therefore, submitted that applying the same analogy, this court has to bear in mind that the entire cause of action has arisen within the territorial jurisdiction of this court except the order being passed at Mumbai.

47. Mr. Amit Sibal, learned senior counsel appearing on behalf of the petitioners in W.P.(C) 15558/2023 explained the scope of Article 226 of the Constitution of India to submit that if the petitioners in the instant case are relegated to different High Courts applying the principle of *forum conveniens*, the same would contravene the purpose of amendment under Article 226 of the Constitution of India. He has extensively explained the scheme of Article 226 of the

[12] (2021) 15 SCC 265

Constitution of India while reading various decisions. According to him, the initial SCN was received at Delhi and the impugned order has also been received at Delhi.

48. While reading paragraph no.66 of W.P.(C) 15558/2023, he has submitted that the averments made in the said paragraph are not controverted; and therefore, the same will have to be accepted as correct. He has also submitted that nothing has been done at Mumbai except passing of the order and everything has taken place at Delhi and the principle of *forum conveniens* cannot be applied to the detriment of the litigants who approach the High Court for enforceability of his or her fundamental rights under the Constitution of India.

49. He has also distinguished the decision relied upon on behalf of the respondent-SEBI. In addition, he submitted that the principles laid down by the larger bench of this court in the case of ***Sterling Agro Industries Ltd. v. Union of India and Ors.***[13] will have full application and applying the same principles, this court has the jurisdiction to entertain the instant writ petition. He has also placed reliance on the decision in the case of ***Animish Pradip Raje v. Securities and Exchange Board of India and Anr.***[14]**,** decided by the Hon'ble Division Bench of the High Court at Telangana. Reliance is also

[13] 2011 (124) DRJ 633
[14] W.P. No.7972 of 2023

placed on the decision of the Hon'ble Supreme Court in the case of ***Om Prakash Shrivastava v. Union of India***.[15]

50. In rejoinder submissions, learned senior counsel appeared on behalf of the respondent-SBI and submitted that he may not be misunderstood to have said that merely the location of SEBI's head office is at Mumbai, therefore, he has raised the objections on the territorial jurisdiction, rather his case is that no part of the cause of action had arisen within the territorial jurisdiction of this court. According to him, alternatively, under the facts of the instant cases, applying the principles of *forum conveniens*, the petitioners must be relegated to the jurisdictional High Court i.e., the Hon'ble High Court of Judicature at Bombay.

51. He explained that the writ petition pending before this court is related to the issues which have no relevance to the dispute at hand. No specific decision is under challenge in the said writ petitions, whereas, all the petitioners in the instant writ petitions were the respondents before the Hon'ble High Court of Judicature at Bombay and a substantial hearing was already conducted. He has also explained that it would not be inconvenient to the petitioners to approach the Hon'ble High Court of Judicature at Bombay as all throughout, all the petitioners were participating in the proceedings before SEBI as well as they were actively contesting the writ petition at Hon'ble High Court of Judicature at Bombay.

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[15] (2006) 6 SCC 207

52. According to him, all the record, evidence etc. are available within the territorial jurisdiction of the Hon'ble High Court of Judicature at Bombay and therefore, the petitions should be dismissed.

53. I have considered the submissions made by learned counsel appearing on behalf of the parties and perused the record.

54. The short controversy involved in the instant petitions, at this juncture is— whether this court is the appropriate forum for deciding the present writ petitions and granting the reliefs as prayed for. In order to determine this issue, this court is called upon to adjudicate— to what extent, if any, has the cause of action in the present writ petitions accrued in the territorial jurisdiction of this court. To decide the issue emanating from the instant writ petitions, reference must be made to the scope of Article 226 of the Constitution of India and its interplay with the doctrine of *forum conveniens*.

55. Before proceeding to analyse the law relating to *forum conveniens* and to appreciate the facts in the present petitions, it is pertinent to briefly embark upon the journey of the amendments in Article 226 of the Constitution of India to understand the objective and rationale behind the said enactment, more particularly about Clause 2 of Article 226, as it stands today.

56. Article 226 of the Constitution of India, as originally adopted before the amendments, reads as under:

> *"226. .....*

> *(1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.*
>
> *(2) The power conferred on a High Court by clause (1) shall not be in derogation of the power conferred on the Supreme Court by clause (2) of Article 32."*

57. The Hon'ble Supreme Court had an occasion to construe the original unamended Article 226 in the case of ***Election Commission, India v. Saka Venkata Rao***,[16] wherein, a strict and restrictive construction was accorded to Article 226.

58. Thereafter, the issue once again came up for consideration before the Hon'ble Supreme Court in the case of ***Lt. Col. Khajoor Singh v. Union of India***,[17] whereby, the decision in the case of ***Saka Venkata Rao*** (supra) was approved and it was unequivocally settled that functioning or the effects of the action of the government would not confer the jurisdiction upon the High Court. It was held that the power of the High Court to issue writs was subject to two-fold limitations. *Firstly*, such writs cannot run beyond the territories subject to its jurisdiction and *secondly*, it was settled that the person or authority to whom the writ may be issued must be amenable to the jurisdiction of the High Court either by residence or location within territories subject to its jurisdiction.

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[16] 1953 SCR 1144
[17] 1961 (2) SCR 828

59. While ruling upon the scope of introducing the concept of cause of action as a condition for the exercise of jurisdiction under Article 226, in the case of ***Lt. Col. Khajoor Singh*** (supra), it was held as under:

> *"16. Article 226 as it stands does not refer anywhere to the accrual of cause of action and to the jurisdiction of the High Court depending on the place where the cause of action accrues being within its territorial jurisdiction. Proceedings under Article 226 are not suits; they provide for extraordinary remedies by a special procedure and give powers of correction to the High Court over persons and authorities and these special powers have to be exercised within the limits set for them. These two limitations have already been indicated by us above and one of them is that the person or authority concerned must be within the territories over which the High Court exercises jurisdiction. Is it possible then to overlook this constitutional limitation and say that the High Court can issue a writ against a person or authority even though it may not be within its territories simply because the cause of action has arisen within those territories? It seems to us that it would be going in the face of the express provision in Art. 226 and doing away with an express limitation contained therein if the concept of cause of action were to be introduced in it. Nor do we think that it is right to say that because Art. 300 specifically provides for suits by and against the Government of India, the proceedings under Art. 226 are also covered by Art. 300. It seems to us that Art. 300 which is on the same line as S. 176 of the Government of India Act, 1935, dealt with suits as such and proceedings analogous to or consequent upon suits and has no reference to the extraordinary remedies provided by Art. 226 of the Constitution. The concept of cause of action cannot in our opinion be introduced in Art. 226, for by doing so we shall be doing away with the express provision contained therein which requires that the person or authority to whom the writ is to be issued should be resident in or located within the territories over which the High Court has jurisdiction. It is true that this may result in some inconvenience to person residing far away from New Delhi who are aggrieved by some order of the Government of India as such, and that may be a reason for making a suitable constitutional amendment in Art. 226."*

60. In order to remedy the practical constraints due to the restrictive interpretation of Article 226 after the aforesaid judgment, the Constitution (Fifteenth Amendment) Act was brought in 1963, which inserted Clause (1A), which was subsequently renumbered as Clause (2) *vide* Forty-second Constitutional Amendment, 1976. Clause 2 of Article 226 of the Constitution of India reads as under:

> *"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."*

61. The rationale behind the Constitution (Fifteenth Amendment) Act, 1963, which paved the way for the applicability of the concept of 'cause of action' which was earlier rejected to be read into Article 226(1), is captured in the Statement of Objects and Reasons appended to the Constitution (Fifteenth Amendment) Bill, 1962 and the same reads as under:

> *"Under the existing article 226 of the Constitution, the only High Court which has jurisdiction with respect to the Central Government is the Punjab High Court. This involves considerable hardship to litigants from distant places. It is, therefore, proposed to amend article 226 so that when any relief is sought against any Government, authority or person for any action taken, the High Court within whose jurisdiction the cause of action arise may also have jurisdiction to issue appropriate directions, orders or writs."*

62. In the words of Sh. A.K. Sen, the then Law Minister, while introducing the Fifteenth Amendment Bill, the intention behind introducing the then Article 226(1A) which is the present-day Article 226(2) was as under:

> *"We are amending Article 226 which has become very necessary in view of certain decisions of the Supreme Court that any application for the issue of writ under Article 226 against the Union of India can only be made in the Punjab High Court because Delhi, which is the headquarters of the Union of India happens to be within the jurisdiction of the Punjab High Court. So that, an ordinary man who wants to sue the Union of India in Kerala or Assam or Bengal or in far off places, has to travel all the way to Delhi and file his application in the Punjab High Court. In most cases for the common man whose resources are slender, it becomes an impossible thing. This demand has now arisen from everywhere. Though the original intention was never to make only the Punjab High Court the High Court against the Union of India, and it was contemplated that all the High Courts would have a similar jurisdiction, by a judicial decision of the Supreme Court, this unfortunate result has been brought about. Before the Constitution, the Privy Council took a different view altogether. They held in the Parlakimidi case and also in the case of Howrah Municipality that the seat of authority or Government was not material, so that, even if the seat, let us say, of the Union of India was Delhi, you could not sue in Delhi the Union of India for the issue of one of the writs unless the cause of action arose within the jurisdiction of this High Court also. They took quite a different view, quite the opposite view to what the Supreme Court has taken. When the law was in that state, this Constitution was framed thinking that every High Court will have jurisdiction within whose jurisdiction or territorial jurisdiction the cause of action had arisen. Therefore, we are trying to restore the position as it was in the contemplation of the framers of the Constitution in the Constituent Assembly, so that that man has not got to travel to Delhi with such scarce accommodation as is there."*

63. According to DD Basu, Commentary on the Constitution of India, 8th Ed., Vol. 10, Articles 214-226 (Contd.), the rationale behind the amendments is explained in the following words:

> ***"Objects of Amendments***
> *As a result of the view taken by the Supreme Court in Election Commn. v. Venkata and subsequent cases, it was location or residence of the respondent which gave territorial jurisdiction to a High Court under Article 226, the situs of the cause of action being immaterial for this purpose. The decision of the Supreme Court led to the result that only the High Court of Punjab would have jurisdiction to entertain petitions under Article 226 against the UOI and those other bodies which were located in Delhi.*
>
> *The object of clause (1A), inserted by the 15th Amendment Act, 1963, was to restore the view taken by the High Court and to provide that the High Court within which the cause of action arises wholly or in part, would also have jurisdiction to entertain a petition under Article 226 against the UOI or any other body which was located in Delhi. The Amendment thus supersedes the Supreme Court decisions to the contrary.*
>
> *The effect of the amendment is that it made the accrual of cause of action an additional ground to confer jurisdiction to a High Court under Article 226. As Joint Committee observed: "This clause would enable the High Court within whose jurisdiction the cause of action arises to issue direction, orders or writs to any Government, authority or person, not withstanding that the seat of such Government or authority or the residence of such person is outside the territorial jurisdiction of the High Court. The Committee feels that the High Court within whose jurisdiction the cause of action arises in part only should also be vested with such jurisdiction. (Report of Joint Committee—Clause 8)."*
>
> *The Constitution (Fifteenth Amendment) came into force on 5th October, 1963. However, as seen above, this clause does not confer new jurisdiction on a High Court, but provides an additional ground and extends its jurisdiction beyond the boundaries of the State if the cause of action arose within its territory."*

64. A perusal of Clause 2 of Article 226 indicates that the writ jurisdiction can be exercised by the High Court primarily in relation to the territories within which the cause of action, wholly or in part arises. However, the location of such Government or authority or residence of such person, outside the territories of the High Court will not deter the High Court from issuing the appropriate writ.

65. The introduction of Clause (2) in Article 226 of the Constitution of India widened the width of the area for issuance of writs by different High Courts, however, the same cannot be construed to completely dilute the original intent of the Constitution makers which is succinctly encapsulated in Clause (1) of Article 226. Rather, Clause (2) is an enabling provision, which supplements Clause (1) to empower the High Courts to ensure an effective enforcement of fundamental rights or any other legal right. Therefore, the power of judicial review cannot be circumscribed by the location of the authority against whom the writ is issued, however, the same does not mean that the constitutional mandate enshrined under Article 226 (1) can be completely neglected or whittled down.

66. On this aspect, it is significant to advert to a decision of the Co-ordinate Bench of this Court in the case of ***Jayaswals Neco Limited v. Union of India and Others***,[18] wherein, it was held that Article 226(2) has only extended the jurisdiction of the High Courts beyond its

[18] 2007:DHC:673

territorial limits but it does not supplant Article 226(1). The relevant paragraph of the said decision reads as under:

> *"20. ---*
>
> *This amendment introduced the concept of cause of action which the Supreme Court had earlier refused to read into Article 226 (1). However, this does not mean that the concept of territorial jurisdiction under Article 226 (1) was supplanted by Article 226 (2). The decision of the Supreme Court in Election Commission, India v. Saka Venkata Subba Rao (supra) and Khajoor Singh (supra) were rendered in the context of Article 226 (1) and in the absence of any provisions of the nature of Article 226 (2). The introduction of Article 226 (2), as observed in the case of Navinchandra N. Majithia (supra) widened the width of the area in respect of writs issued by different High Courts. In fact, Article 226(2) can be construed as an exception to the limitations mentioned in Election Commission, India (supra) and approved in Khajoor Singh (supra). The power conferred on the High Courts under Article 226 could now be as well exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, in whole or in part, arose and it was no matter that the seat of the authority concerned was outside the territorial limits of the jurisdiction of that High Court. This distinction between the provisions of Article 226 (1) and 226 (2) has to be maintained. While Article 226 (1) empowers a High Court to issue writs to a person, authority or government within its territorial limits de hors the question of where the cause of action arose, Article 226 (2) enables High Courts to issue writs to persons, authorities or governments located beyond its territorial limits provided a cause of action arises (in whole or in part) within the territorial extent of the said High Court.* ***What Article 226 (2) has done is to extend the jurisdiction of the High Courts beyond their territories in cases where part of the cause of action arises within its territories. Therefore, Article 226 (2) extends and does not supplant Article 226 (1).*** *The decision of the Supreme Court in the case of State of Rajasthan and Ors. v. Swaika Properties and Anr.:1985 (3) SCC 217, Oil and Natural Gas Commission v. Utpal Kumar Basu and Ors.: 1994 (4) SCC 711 as well as Adani Exports (supra) and Kusum Ingots (supra) all pertain to Article 226 (2) of the Constitution and have reference*

> *to the question of cause of action.* ***It is true, as observed in Kusum Ingots (supra), that the decision in Khajoor Singh (supra) would not be relevant insofar as the argument of cause of action is concerned inasmuch as Khajoor Singh (supra) was a decision rendered prior to the 15th Amendment of the Constitution. But, this does not mean that what Khajoor Singh (supra) has decided in respect of Article 226 (1) can be whittled down or ignored. That is a decision of seven judges of the Supreme Court and, with regard to the provisions of Article 226 (1), it is definitive."***
>
> *[Emphasis supplied]*

67. Thus, the salient aspects which emerge out of the aforesaid discussion can be delineated forthwith as:

(i) Article 226(2) does not take away the right of a High Court to dismiss a case on grounds of *forum non-conveniens*. The principles of *forum non-conveniens* and that of Article 226(2) operate in different field, where Article 226(2) (originally Article 226(1A)) was inserted to solve the problem of a litigant needing to go to a High Court where the seat of government authority was present.

(ii) In other words, merely because Article 226(2) allows jurisdiction to be conferred on a High Court in the absence of the seat of a government authority being under its jurisdiction; this does not in itself mean that the presence of a seat shall automatically grant jurisdiction.

(iii) Article 226(2) allows jurisdiction to be conferred if the cause of action, either in part or whole, had arisen in the jurisdiction of a High Court, however, where the purported cause of action is so minuscule

so as to make a particular High Court non- convenient, it is then that the concept of *forum non-conveniens* applies.

68. The 'cause of action' means a bundle of facts, which is necessary for the plaintiff to prove in order to succeed in the proceedings. It does not completely depend upon the character of the relief prayed for by the plaintiff. It is rather the foundation upon which the plaintiff lays his/her claim before the court to arrive at a conclusion in his/her favour. It depends on the right which the plaintiff has and its infraction.

69. Section 20 of the Civil Procedure Code, 1908, provides a generic definition of the term 'cause of action' to mean *fact, which is necessary to establish to support a right to obtain a judgment.*

70. *P. Ramanatha Aiyar* in Advanced Law Lexicon, 3rd Edition, Volume 1, has defined 'cause of action' in following words:-

> *"'Cause of action' has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. "Cause of action" has also been taken to mean that particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject matter of the grievance founding the action, not merely the technical cause of action."*

71. Similarly, Black's Law Dictionary (8th ed. 2004), defines 'cause of action' in the following words:-

> *"A group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person……"*

72. In Halsbury's Laws of England (4th Edn.), it has been stated as follows:-

> *" 'Cause of action' has been defined as meaning simply a factual situation, the existence of which entitles one person to obtain from the court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. 'Cause of action' has also been taken to mean that a particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject-matter of grievance founding the action, not merely the technical cause of action."*

73. The Hon'ble Supreme Court, in the case of ***Bloom Dekor Ltd. v. Subhash Himatlal Desai***[19] observed as under:

> *"28. By "cause of action" it is meant 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, a bundle of facts, which it is necessary for the plaintiff to prove in order to succeed in the suit. (Cooke v. Gill [1873 LR 8 CP 107 : 42 LJCP 98])."*

74. The meaning and scope of the term 'cause of action' in the context of Article 226 of the Constitution of India has been discussed and settled by various judgments of the Hon'ble Supreme Court. A three-judges Bench of the Hon'ble Supreme Court in the case of ***Oil and Natural Gas Commission (supra)*** has held as under:

> *"6. It is well settled that the expression "cause of action" means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. In* ***Chand***

[19] *(1994) 6 SCC 322*

> ***Kour v. Partab Singh*** *[ILR (1889) 16 Cal 98, 102 : 15 IA 156] Lord Watson said:*
>
> *"... the cause of action 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. It refers entirely to the ground set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour."*
>
> *Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. In other words the question whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition."*

75. In the case of ***Om Prakash Srivastava*** (supra), the Hon'ble Supreme Court has held as follows:

> *"11. It is settled law that "cause of action" consists of a bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the plaintiff a right to claim 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 would possibly accrue or would arise. [See South East Asia Shipping Co. Ltd. v. Nav Bharat Enterprises (P) Ltd. [(1996) 3 SCC 443]]*
>
> *12. The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense "cause of action" means the circumstances forming the infraction of the right or the immediate occasion for the reaction. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. Compendiously, as noted above, the expression means every fact, which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. Every fact, which*

> *is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove each fact, comprises in "cause of action". (See Rajasthan High Court Advocates' Assn. v. Union of India [(2001) 2 SCC 294].)"*

76. In the landmark judgment of ***Kusum Ingots*** (supra), an important observation regarding the cause of action was made by the Hon'ble Supreme Court, which reads as under:

> *"9.---*
>
> *Before proceeding to discuss the matter further it may be pointed out that the entire bundle of facts pleaded need not constitute a cause of action as what is necessary to be proved before the petitioner can obtain a decree is the material facts. The expression material facts is also known as integral facts."*

77. In the case of ***Rajasthan High Court Advocates' Association v. Union of India***[20]**,** the question as to where the cause of action arises was answered by the Hon'ble Supreme Court, which held that the same would have to be left to be determined in each individual case. The relevant paragraph of the said decision reads as under:

> *"17. The expression "cause of action" has acquired a judicially-settled meaning. In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but the infraction coupled with the right itself. Compendiously the expression means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Every fact which is necessary to be proved, as distinguished from every piece of evidence which is necessary to prove each fact, comprises in "cause of action". It has to be left to be determined in each individual case as to where the cause of action arises…"*

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[20] (2001) 2 SCC 294

78. The contention as to whether the facts averred by the writ petitioner, in a particular case, constitute a part of cause of action was decided by the full Bench of the Hon'ble High Court of Judicature at Allahabad, in the case of ***Manish Kumar Mishra v. Union of India & Ors.***[21] It was held that the same must be determined, on the basis of the test whether such facts constitute a material, essential or integral part of the *lis* between the parties; if it is, it forms a part of the cause of action and if it is not, it does not form a part of the cause of action. In determining the said question, the substance of the matter and not the form thereof has to be considered.

79. It was further held in the case of ***Manish Kumar Mishra*** (supra) that each and every fact pleaded by the parties shall not in itself constitute the cause of action, rather it shall be the facts which have a nexus with the *lis* that is involved in the case. Paragraph no.148 of the said decision reads as under:

> *"148. In order to confer jurisdiction on the High Court to entertain a writ petition, the Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts constitute a cause so as to empower the Court to decide a dispute which has, at least in part, arisen within its jurisdiction. Each and every fact pleaded in the application may not ipso facto lead to the conclusion that those facts give rise to a cause of action within the Court's territorial jurisdiction unless those facts are such which have a nexus or relevance with the lis that is involved in the case. Facts, which have no bearing with the lis or the dispute involved in the case would not give rise to a "cause of action" so as to confer territorial jurisdiction on the Court concerned, and only those facts which give rise to a cause of action within a Court's territorial jurisdiction which have a nexus or relevance with the lis that is involved in that case, would be relevant for the purpose of*

[21] 2020 SCC OnLine All 535

invoking the Court's territorial jurisdiction, in the context of clause (2) of Article 226."

80. The doctrine of 'cause of action' in relation to Article 226 of the Constitution of India, hence, becomes limited to the integral facts of the case and the *situs* of the cause of action then is construed as the *situs* where the material, essential and integral facts arose. The *situs* of the cause of action *vis a vis* the doctrine of *forum conveniens* was also discussed in the case of ***Nasiruddin v. STAT***,[22] wherein, the Hon'ble Supreme Court while construing the provisions of the United Provinces High Courts (Amalgamation) Order, 1948 stated the law thus:-

> *"37. The conclusion as well as the reasoning of the High Court is incorrect. It is unsound because the expression 'cause of action' in an application under Article 226 would be as the expression is understood and if the cause of action arose because of the appellate order or the revisional order which came to be passed at Lucknow then Lucknow would have jurisdiction though the original order was passed at a place outside the areas in Oudh. It may be that the original order was in favour of the person applying for a writ. In such case an adverse appellate order might be the cause of action. The expression 'cause of action' is well known. If the cause of action arises wholly or in part at a place within the specified Oudh areas, the Lucknow Bench will have jurisdiction. If the cause of action arises wholly within the specified Oudh areas, it is indisputable that the Lucknow Bench would have exclusive jurisdiction in such a matter. If the cause of action arises in part within the specified areas in Oudh it would be open to the litigant who is the dominus litis to have his forum conveniens.* ***The litigant has the right to go to a court where part of his cause of action arises. In such cases, it is incorrect to say that the litigant chooses any particular court. The choice is by reason of the jurisdiction of the court being attracted by part of cause of action arising within the jurisdiction of the court.***

[22] (1975) 2 SCC 671

> ***Similarly, if the cause of action can be said to have arisen part within specified areas in Oudh and part outside the specified Oudh areas, the litigant will have the choice to institute proceedings either at Allahabad or Lucknow. The court will find out in each case whether the jurisdiction of the court is rightly attracted by the alleged cause of action."***
>
> *[Emphasis supplied]*

81. The above cited case merits the discussion about the doctrine of *forum conveniens*, which has been defined by P. Ramanatha Aiyar, Advanced Law Lexicon, 3rd Edition in following words:-

> *"The principle that a case should be heard in a Court of the place where parties, witnesses, and evidence are primarily located."*

82. Black's Law Dictionary (8th ed. 2004), defines *forum conveniens* in the following words:-

> *"The court in which an action is most appropriately brought, considering the best interests and convenience of the parties and witnesses."*

83. In ***Tehran v. Secretary of State for the Home Department***,[23] the House of Lords expounded the doctrine in the following as under:-

> *"The doctrine of forum non conveniens is a good example of a reason, established by judicial authority, why a court should not exercise a jurisdiction that (in the strict sense) it possesses.* ***Issues of forum non conveniens do not arise unless there are competing courts each of which has jurisdiction (in the strict sense) to deal with the subject matter of the dispute.*** *It seems to me plain that if one of the two competing courts lacks jurisdiction (in the strict sense) a plea of forum non conveniens could never be a bar to the exercise by the other court of its jurisdiction."*

[23] [2006] UKHL 47

84. The principle was also explained in the judgment of United States Supreme Court in ***Gulf Oil Corporation v. Gilbert***,[24] wherein, it was held as under:-

> *"The principle of forum non conveniens is simply that a court may resist imposition upon its jurisdiction even where jurisdiction is authorised by the letter of a general venue statute. These statutes are drawn with a necessary generality and usually give a plaintiff a choice of courts, so that he may be quite sure of some place in which to pursue his remedy. But the open door may admit those who seek not simply justice but perhaps justice blended with some harassment. A plaintiff sometimes is under temptation to resort to a strategy of forcing the trial at a most inconvenient place for an adversary, even at some inconvenience to himself."*

85. The Hon'ble Apex court in ***Kusum Ingots*** (supra) has also referred to principle of *forum conveniens*. Paragraph no.30 of the said decision reads as under:-

> *"30. We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens. 33 [See Bhagat Singh Bugga v. Dewan Jagbir Sawhney [AIR 1941 Cal 670], Madanlal Jalan v. Madanlal [AIR 1949 Cal 495], Bharat Coking Coal Ltd. v. Jharia Talkies & Cold Storage (P) Ltd. [1997 CWN 122], S.S. Jain & Co. v. Union of India [(1994) 1 CHN 445] and New Horizons Ltd. v. Union of India [AIR 1994 Del 126]."*

86. The principle of *forum conveniens* was eloquently fleshed out by a Special Bench of this court in ***Sterling Agro Industries***

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[24] 330 U.S. 501

Ltd. v. Union* of *India[25]**,** wherein, the court laid down the law relating to *forum conveniens* in the following words:-

> *"33. In view of the aforesaid analysis, we are inclined to modify, the findings and conclusions of the Full Bench in New India Assurance Company Limited (supra) and proceed to state our conclusions in seriatim as follows:*
>
> *(a) The finding recorded by the Full Bench that the sole cause of action emerges at the place or location where the tribunal/appellate authority/revisional authority is situate and the said High Court (i.e., Delhi High Court) cannot decline to entertain the writ petition as that would amount to failure of the duty of the Court cannot be accepted inasmuch as such a finding is totally based on the situs of the tribunal/appellate authority/revisional authority totally ignoring the concept of forum conveniens.*
>
> *(b) Even if a miniscule part of cause of action arises within the jurisdiction of this court, a writ petition would be maintainable before this Court, however, the cause of action has to be understood as per the ratio laid down in the case of Alchemist Ltd. (supra).*
>
> *(c) An order of the appellate authority constitutes a part of cause of action to make the writ petition maintainable in the High Court within whose jurisdiction the appellate authority is situated. Yet, the same may not be the singular factor to compel the High Court to decide the matter on merits. The High Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens.*
>
> *(d) The conclusion that where the appellate or revisional authority is located constitutes the place of forum conveniens as stated in absolute terms by the Full Bench is not correct as it will vary from case to case and depend upon the lis in question.*
>
> *(e) The finding that the court may refuse to exercise jurisdiction under Article 226 if only the jurisdiction is invoked in a malafide manner is too restricted/constricted as the exercise of power under Article 226 being discretionary cannot be limited or restricted to the ground of malafide alone.*

[25] 2011 SCC OnLine Del 3162

> *(f) While entertaining a writ petition, the doctrine of forum conveniens and the nature of cause of action are required to be scrutinized by the High Court depending upon the factual matrix of each case in view of what has been stated in Ambica Industries (supra) and Adani Exports Ltd. (supra)*[4].
>
> *(g) The conclusion of the earlier decision of the Full Bench in New India Assurance Company Limited (supra) "that since the original order merges into the appellate order, the place where the appellate authority is located is also forum conveniens" is not correct.*
>
> *(h) Any decision of this Court contrary to the conclusions enumerated hereinabove stands overruled."*

87. In the case of ***Aligarh Muslim University v. Vinay Engg. Enterprises (P) Ltd.***[26]**,** the Hon'ble Supreme Court, while highlighting the abuse of jurisdiction by the respondents therein, has held 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."*

88. The Hon'ble Supreme Court in the case of ***State of Goa*** (supra) has held that determination of the question as to whether the facts

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[26] (1994) 4 SCC 710

pleaded constitute a part of the cause of action is 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. It has also been held that 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.

89. In paragraph no.21 of the said decision, it has also been held that assuming that a slender part of the cause of action arises within the jurisdiction of the particular High Court, the concept of *forum conveniens* ought to have been considered by the High Court. The Hon'ble Supreme Court relied on the decisions in the cases of ***Kusum Ingots*** (supra) and ***Ambica Industries v. CCE***,[27] to hold that even if a small part of the cause of action arises within the territorial jurisdiction of a High Court, the same by itself should not be a determinative factor compelling the High Court to keep the writ petitions alive.

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[27] (2007) 6 SCC 769

90. It is pertinent to refer to the decision of the Calcutta High Court in the case of ***Heiza Boilers (I) Pvt. Ltd. v. Union of India***,[28] whereby, the principle for ascertaining the material and essential facts in the bundle of facts constituting the cause of action was discussed as under:

> *"14. The principles are these; Facts which have no bearing on the lis or the dispute involved in the case do not give rise to a cause of action so as to confer territorial jurisdiction on a Court. What is to be seen is whether a particular fact is of substance and can be said to be material, integral or essential part of the list between the parties. If it is, it forms a part of the cause of action. If it is not, it does not form a part of the cause of action. In determining the question the substance of the mater, and not the form thereof, is to be considered. The answer to the question whether the service of a notice is an integral part of the cause of action within the meaning of Article 226(2) must depend upon the nature of the impugned order or action giving rise to the cause of action, and the test to ascertain this is whether for questioning the order or action it is necessary to plead the fact of service of the notice in the writ petition and prove it.* ***Only those facts without the proof of which the action must fail are material and essential facts in the bundle of facts constituting the cause of action. Hence a fact without the proof of which a writ petition will not fail is not an integral part of the cause of action, and, accordingly, it cannot be said that a part of the cause of action has arisen at the place where the event concerning the fact has happened."***
>
> *[Emphasis supplied]*

91. On the above conspectus, it is clearly seen that the question whether cause of action has arisen within the territorial jurisdiction of a court, has to be answered based on the facts and circumstances of the case. The cause of action, thus, does not comprise of all the pleaded

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[28] 2009 SCC OnLine Cal 2754

facts; rather it has to be determined on the basis of the integral, essential and material facts which have a nexus with the *lis*.

92. It is also a settled proposition of the law that the location where the tribunal/appellate authority/revisional authority is situated would not be the sole consideration to determine the *situs* of the accrual of cause of action, ignoring the concept of *forum conveniens in toto*. Hence, even if a small part of the cause of action is established, and the same is found to be non-integral or non-material to the *lis*, the court may invoke the doctrine of *forum non-conveniens* and decline to exercise its writ jurisdiction, if an alternative, more efficacious forum for the same exists.

93. A perusal of paragraph no.10 of the decision in the case of ***State of Goa (supra),*** would signify that one of the prayers related to a challenge against the notification issued by the State of Sikkim. Also, in the said case, the petitioner company's office was also located in the State of Sikkim. However, the Hon'ble Supreme Court while considering that a slender part of the action has arisen, held that the High Court of Sikkim was not clothed with the requisite jurisdiction to entertain the petition as the major part of the cause of action has arisen in another High Court. It can be safely concluded that neither the notification issued by the concerned government, nor the location of the office were considered to be the material facts to determine the cause of action.

94. The Hon'ble Supreme Court in the case of ***Oil and Natural Gas Commission v. Utpal Kumar Basu and others***[29] had an occasion to consider the question of territorial jurisdiction to entertain a writ petition by the Hon'ble Calcutta High Court. The jurisdiction of the Hon'ble Calcutta High Court was invoked by the petitioner therein on the ground that the petitioner had come to know of the tender from a publication in the newspaper which was within the jurisdiction of Hon'ble Calcutta High Court. The petitioner therein submitted its tender from the registered office situated within the same jurisdiction. A revised price bid was also submitted from the Hon'ble Calcutta High Court and a representation demanding justice was also made from the said High Court.

95. The Hon'ble Supreme Court in the said decision negatived the contentions advanced on behalf of the petitioner therein that either the acquisition of knowledge made through media at a particular place; or owing and having an office or property or residing at a particular place; receiving of a fax message at a particular place, receiving the telephone calls, maintaining the statement of accounts of businesses, the printing of letterheads indicating Branch Office of the firm, booking of orders from a particular place, are not the factors which would give rise, either wholly or in part, cause of action conferring territorial jurisdiction to courts. In the said case, the Hon'ble Supreme Court also held that the mere service of notice is also not a fact giving

[29] (1994) 4 SCC 711

rise to a cause of action unless such notice is an integral part of cause of action.

96. The aforesaid expressions have been used by the Hon'ble Supreme Court in the case of ***Adani Exports Ltd. & Anr.*** (supra) in paragraph no.19 thereof. The extract of the said paragraph is reproduced as under:-

> *"19. ……*
>
> *In the case of ONGC [(1994) 4 SCC 711] this Court negatived the contentions advanced on behalf of the respondents therein that either the acquisition of knowledge made through media at a particular place or owning and having an office or property or residing at a particular place, receiving of a fax message at a particular place, receiving telephone calls and maintaining statements of accounts of business, printing of letterheads indicating branch offices of the firm, booking of orders from a particular place are not the factors which would give rise to either wholly or in part cause of action conferring territorial jurisdiction to courts. In the said case, this Court also held that the mere service of notice is also not a fact giving rise to a cause of action unless such notice is an integral part of the cause of action."*

97. In the case of ***Adani Exports Ltd. & Anr.*** *(supra)*, to establish the territorial jurisdiction of the High Court at Ahmedabad, the averments made by the petitioners therein have been observed in paragraph no.6 of the said decision, which is reproduced as under:-

> *"6. For deciding the above issue, it is necessary to first notice the contentions raised in the special civil applications to establish the territorial jurisdiction of the High Court. Contentions regarding the cause of action and the territorial jurisdiction of the High Court are pleaded in the applications at para 16, which read thus:*

> ***"The petitioners carry on business of export and import from Ahmedabad. The orders for export and import are placed from and executed from Ahmedabad. The documents and payments for exports and imports are sent/made at Ahmedabad. The credit of duty claimed in respect of exports were handled from Ahmedabad since export orders were received at Ahmedabad and payments also received at Ahmedabad. The non-granting and denial of utilisation of the credit in the said passbook shall affect the business of the petitioners at Ahmedabad. Respondents 1 to 3 have regional offices at Ahmedabad. A substantial part of the cause of action has arisen within the jurisdiction of this Hon'ble Court. This Hon'ble Court has therefore, jurisdiction to entertain, try and dispose of this petition."***
>
> *[Emphasis supplied]*

98. In paragraph no.18 of ***Adani Exports Ltd. & Anr.*** *(supra)*, it has been noted that the facts pleaded, did not have any connection whatsoever with the dispute that had arisen in the said case. The non-granting and denial of credit in the passbook having the ultimate effect, if any, on the business of the respondents at Ahmedabad was also not considered to give rise to any such cause of action to a court at Ahmedabad to adjudicate on the actions complained against the appellants.

99. Going back to the case of ***Oil and Natural Gas Commission*** (*supra*), in paragraph no.12 thereof, the Hon'ble Supreme Court has strongly deprecated the growing tendency of exercising jurisdiction on the plea of some event, however trivial and unconnected with the cause of action and seeking jurisdiction of the concerned High Court resulting in abuse of the process. The observations made in paragraph

no.12 by the Hon'ble Supreme Court in the case of ***Oil and Natural Gas Commission*** *(supra)* read as under:-

> *"12. Pointing out that after the issuance of the notification by the State Government under Section 52(1) of the Act, the notified land became vested in the State Government free from all encumbrances and hence it was not necessary for the respondents to plead the service of notice under Section 52(2) for the grant of an appropriate direction or order under Article 226 for quashing the notification acquiring the land. This Court, therefore, held that no part of the cause of action arose within the jurisdiction of the Calcutta High Court. This Court deeply regretted and deprecated the practice prevalent in the High Court of exercising jurisdiction and passing interlocutory orders in matters where it lacked territorial jurisdiction. Notwithstanding the strong observations made by this Court in the aforesaid decision and in the earlier decisions referred to therein, we are distressed that the High Court of Calcutta persists in exercising jurisdiction even in cases where no part of the cause of action arose within its territorial jurisdiction.* ***It is indeed a great pity that one of the premier High Courts of the country should appear to have developed a tendency to assume jurisdiction on the sole ground that the petitioner before it resides in or carries on business from a registered office in the State of West Bengal. We feel all the more pained that notwithstanding the observations of this Court made time and again, some of the learned Judges continue to betray that tendency.***
>
> *[Emphasis supplied]"*

100. Some of the pleas taken by the petitioners like the *situs* of the registered offices or residences of the petitioners, the factum of receiving the communication in Delhi etc. are hit by the law laid down in the case of ***Oil and Natural Gas Commission*** (*supra*).

101. To appreciate the facts and circumstances of the instant writ petitions, this court deems it appropriate to reproduce the relevant

paragraphs of the respective writ petitions relating to averments set out for invoking the territorial jurisdiction of this court.

102. Paragraph no.81 of W.P.(C) 15556/2023 is reproduced as under:-

> *"81. The Petitioner has its registered office in New Delhi. The Petitioner carries on its business in New Delhi. Respondent No. 1, SEBI and Respondent Nos. 2 to 8 also have their offices in New Delhi. The Impugned Order (communicated by way of an email dated 10th November 2023 (ANNEXURE P – 2) and a physical hard copy (ANNEXURE P – 1) were received by the Petitioner at its address in New Delhi. The effect of the Impugned Order is felt by the Petitioner in New Delhi, from where the Petitioner, in ordinary course, operates and conducts its business. Effect of the Impugned Order is also felt by some of the Petitioner's shareholders in New Delhi, to whom the Petitioner had sought to provide an exit under the Settlement Order. Hence, the present cause of action has, wholly or at least partly, arisen in New Delhi i.e. within the jurisdiction of this Hon'ble Court. The Petitioner therefore submits that this Hon'ble Court has jurisdiction to entertain, try and dispose of the present petition."*

103. Paragraph no.64 of W.P.(C) 15557/2023 is reproduced as under:-

> *"64. The Petitioners have their registered office in New Delhi from where the Petitioners carry on their businesses. Respondent No. 1, SEBI and Respondent No. 2 also have offices in New Delhi. Respondent Nos. 3 to 6 also have their registered offices in New Delhi. Respondent No.7 has his residence in New Delhi. The Impugned Order (communicated by way of an email dated 10th November 2023 (ANNEXURE P – 3) and a physical hard copy (ANNEXURE P – 1 and ANNEXURE P – 2) were received by the Petitioners at their addresses in New Delhi. The effect of the Impugned Order is felt by the Petitioners in New Delhi, from where the Petitioners, in ordinary course, operate and conduct their businesses. Hence, the present cause of action has, wholly or at least partly, arisen in New Delhi i.e. within the*

> *jurisdiction of this Hon'ble Court. The Petitioners therefore submit that this Hon'ble Court has jurisdiction to entertain, try and dispose of the present petition."*

104. Paragraph no.66 of W.P.(C) 15558/2023 is reproduced as under:-

> *"66. Petitioners Nos. 1 to 4 have their registered office in New Delhi from where they carry on their businesses. Petitioner No. 5 herein has his residence in New Delhi. Respondent No. 1, SEBI, and Respondent Nos. 2 to 4 also have offices in New Delhi. The Impugned Order (communicated by way of an email dated 10th November 2023 (ANNEXURE P-6) and physical hard copy (ANNEXURE P-3 to P- 5)) were received by Petitioner Nos. 3 to 5 at their addresses in New Delhi. The effect of the Impugned Order is felt by the Petitioners in New Delhi, from where the Petitioners, in ordinary course, operate and conduct their businesses. Hence, the present cause of action has, wholly or at least partly, arisen in New Delhi i.e. within the jurisdiction of this Hon'ble Court. The Petitioners therefore submit that this Hon'ble Court has jurisdiction to entertain, try and dispose of the present petition."*

105. Going by the averments made in respective paragraphs of the instant writ petitions and also by the submissions made on behalf of the petitioners, the jurisdiction of this court is invoked primarily on the basis of the following facts:-

(i) Registered offices of the petitioners are situated in Delhi and the petitioners also carry on their businesses in Delhi;

(ii) SEBI and the other respondents also have their local offices in Delhi;

(iii) The impugned order and physical hard copy were received by the petitioners at their Delhi addresses;

(iv) The effect of the impugned order is also felt by the petitioners in Delhi;

(v) The petition bearing W.P.(C) no. 10756/2019 is pending before this court at Delhi;

(vi) The petitioners have the convenience to approach this court in comparison to any other High Court;

(vii) Shareholders and shareholdings i.e., the situs of share are also at Delhi.

106. A bare perusal of these averments would indicate that none of them are material, essential or integral facts which have any proximity with the *lis* involved in the instant matters.

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 27th 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 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 IC 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 IC 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.

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.

113. Merely because some of the writ petitions were entertained by this court relating to certain violations of norms and regulations of respondent-SEBI by the respondent companies therein and issues arising out of consequential settlement application, that in itself would not determine the integral, essential and material part of the cause of action as the pendency of the writ petition before this court has no relation with the impugned revocation order which has taken place subsequent to the said writ petition. The law relating to the doctrine of *forum conveniens*, as discussed above, already makes it explicitly

clear that the jurisdiction has to be determined on the facts and circumstances of each case.

114. With respect to the averment that this court is the most convenient forum for the petitioners, it would be inappropriate and myopic to assume that while determining the jurisdiction, only the convenience of the aggrieved party approaching the court has to be looked into. In fact, with the advent of technology in contemporary times, the courts have transcended the geographical barriers and are now accessible from remote corners of the country. Therefore, the convenience of the parties cannot be the sole criterion for the determination of jurisdiction considering the broader perspective of dynamism of technology and increased access to justice. The determination of cause of action and territorial jurisdiction has to be in line with the constitutional scheme envisaged under Article 226 of the Constitution of India.

115. Moreover, the litigation history of the present writ petitions reveals that the parties have, in fact, agitated their concerns before the Hon'ble High Court of Judicature at Bombay. Nothing has been put before this court, that shall allow the conclusion of the Hon'ble High Court of Judicature at Bombay being a non-convenient forum. The forum, in the considered opinion of this court, is available, convenient, as also approachable.

116. Further, a perusal of paragraph no.18 of the order dated 01.12.2023 in the petitions being W.P. nos.447 of 2023 and 530 of

2023 before Hon'ble High Court of Judicature at Bombay, recording the submissions of the respondents therein, would indicate that an impression has been created in the mind of the court that the petitioners herein desired for the expeditious disposal of the SCN. However, the facts of the present cases exhibit that, at the same time, the petitioners herein were also in the process of challenging the Settlement Order as the affidavits for the present petitions were sworn during the interregnum period of passing of the orders i.e., 29.11.2023 and 01.12.2023.

117. In all fairness, the petitioners herein ought to have disclosed the said fact before the Hon'ble High Court of Bombay regarding reserving the right to challenge the settlement order. Undoubtedly, they can challenge the same without prior intimation to the Hon'ble High Court of Bombay, but the recourse must have been taken before an appropriate forum/court. The burden of a fair demeanour on the part of litigants considerably amplifies when they approach the courts under the extraordinary jurisdiction. Therefore, at times, it is the constitutional courts upon which falls the burden to prevent the abuse of jurisdiction and eliminate any susceptibility of forum shopping.

118. In the instant case, except the fact that (i) the petitioners have their registered offices or residences in Delhi; (ii) they have received the SCN or the final order at Delhi; (iii) the fact that some of the shareholders are located in Delhi; (iv) this court is seized with W.P.(C) no. 10756/2019, there is no other fact, much less a material or

integral fact, to entitle the petitioners to invoke the jurisdiction of this court.

119. It is, thus, seen that under the facts of the instant matters, the integral, essential and material part of the cause of action had arisen with the territorial jurisdiction of the Hon'ble High Court of Judicature at Bombay and even assuming that a slender part of cause of action has arisen within the jurisdiction of this court, applying the principles of *forum conveniens* as has been held by the Hon'ble Supreme Court in the case of ***State of Goa*** (*supra*), this court does not deem it appropriate to entertain the instant writ petitions. The instant writ petitions are, therefore, dismissed.

120. The parties are, however, at liberty to approach the jurisdictional High Court. Needless to state that this court has not expressed any opinion on the merits or demerits of the instant cases.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

DECEMBER 18, 2023
nc/shs/mj