

(2008) 06 AP CK 0057

In the Andhra Pradesh High Court

Case No : W.P.M.P. No. 3076 of 2008 in Writ Petition No. 3369 of 2007

United Shippers Ltd.

APPELLANT

Vs

Volta Impex Private Limited and Others

RESPONDENT

Date of Decision : 10-06-2008

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35G(1)
Constitution of India, 1950 — Article 226, 32
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15, 16, 18(4),
19(3), 20(1)

Citation : (2008) 4 ALD 665 : (2008) 4 ALT 588

Hon'ble Judges : G. Rohini, J

Bench : Single Bench

Advocate : S. Ravi, for the Appellant; V.V. Prabhakara Rao, for Respondent No. 1, R. Raghunandan, for Respondent No. 4, G. Anil Rao, for Respondent No. 5, C.V. Mohan Reddy, General and A.K. Jaya Prakash Rao, for the Respondent

Judgement

G. Rohini, J.—The respondent No. 5 in the writ petition filed this application to decide the territorial jurisdiction of this Court to entertain the writ petition as a preliminary issue.

2. As a matter of fact, the writ petition was coming up for final hearing and the learned senior counsel appearing for the writ petitioner was already heard. However, in view of the specific objection raised by the respondents as to the maintainability of the writ petition on the ground that this Court lacks territorial jurisdiction, this Court after hearing the learned Counsel for both the parties in detail on the said issue, passed an order on 1 -2-2008 as under:

Having heard the learned senior counsel appearing for the writ petitioner with regard to the objection raised by the respondents as to the maintainability of the writ petition, I do not find any substance in the contention of the respondents that this Court lacks territorial jurisdiction to entertain this writ petition. Hence, while reserving the reasons to be elaborated in the final order in the writ

petition, the respondents are called upon to make their submissions on merits. As requested by the learned Counsel for the respondents, post on 8-2-2008 at 2.15 p.m. as part-heard.

3. Subsequently, on 6-2-2008 the respondent No. 5 filed the present application - W.P.M.P. No. 3076 of 2008 with a prayer to pass an order on the preliminary issue of territorial jurisdiction. That apart, the respondents 3 and 5 filed two appeals under Clause 15 of the Letters Patent against the order dated 1-2-2008. A Division Bench of this Court by judgment dated 29-2-2008 allowed the said Writ Appeals holding that the reasons shall be given for coming to the conclusion that this Court has jurisdiction to entertain the petition and then only to hear the writ petition on merits.

4. Pursuant thereto, when the writ petition was listed on 11-4-2008 along with W.P.M.P. No. 3076 of 2008, the learned Counsel for both the parties represented that since elaborate submissions were already made, no further arguments were necessary on the issue of maintainability of the writ petition.

5. As already expressed in the order dated 1-2-2008, this Court is of the considered opinion that the objection raised by the respondents as to the maintainability of the writ petition on the ground of lack of territorial jurisdiction is untenable. Before proceeding to give any reasons for the said conclusion, it is necessary to set out the facts in brief as under:

The writ petitioner - M/s. Volta Impex Private Limited (for short, "VIPL") which claims to be an international group is a company having its registered office at Hyderabad. The main writ petition is filed challenging the order dated 6-2-2007 passed by the 1st respondent - Appellate Authority for Industrial and Financial Reconstruction (for short, "AIFR") in Appeal Nos.98 and 127 of 2005 in setting aside the claim sanctioned by the 2nd respondent - Board for Industrial and Financial Reconstruction (for short, "BIFR") dated 26-7-2005 for revival of the 3rd respondent company as arbitrary, illegal and contrary to the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as "SICA") and unconstitutional.

6. It is not in dispute that the 3rd respondent company - M/s. Aluminum Industries Limited having its registered office at Kundara, Kerala State (for short, "ALIND") is a company incorporated under the provisions of the Companies Act, 1956 with multi divisions as under:

- (i) Switch Gear Division at Mannar (Kerala State)
- (ii) Relays Division at Tiruvananthapuram (Kerala State)
- (iii) Contracts Division at Tiruvananthapuram (Kerala State)
- (iv) Machinery Division at Hyderabad (A.P.)
- (v) Conductor Division at Hyderabad (A.P.)

- (vi) Material Handling Division at Hyderabad (A.P.)
- (vii) Conductor Division at Hirakud (Orissa State)
- (viii) Conductor Division at Kundara (Kerala State)
- (ix) Steel Wire Division at Kundara (Kerala State)

7. Since the net worth of ALIND has completely eroded, it filed a reference u/s 15 of SICA in the year 1987 before the BIFR and the same was registered as Case No. 93 of 1987. After due enquiry in terms of Section 16 of the SICA vide order dated 20-10-1987 the BIFR having declared ALIND as a sick industry, appointed IIBI as the operating agency (for short, "O.A.") to formulate a rehabilitation scheme for ALIND. In pursuance thereof, though the BIFR sanctioned a scheme on 5-10-1989 and in terms of the said scheme the management of ALIND was taken over by M/s. United Shippers Limited (the 5th respondent herein) which is under the control of Somani Group of Industries, one of the shareholders of ALIND, the scheme could not be worked out, it failed to revive ALIND in terms of sanctioned scheme. Accordingly, in the year 1994, the BIFR declared the sanctioned scheme dated 5-10-1989 as failed. Consequently, the BIFR proposed winding up of ALIND u/s 20(1) of SICA. However, subsequently, having taken into consideration the fact that ALIND was a multi division company located in three different States and that some of its units were still viable, the BIFR instead of winding up of the company decided to formulate a comprehensive scheme for the revival of the viable units while proceeding with the sale of unviable units. Accordingly, by order dated 19-12-2000 the BIFR directed the O.A. to negotiate with the bidders for sale of unviable units for which certain offers were already received. While the said proposals were under process, by order dated 27-6-2002 the BIFR appointed the State Bank of Travancore (SBT) - 4th respondent herein as the operating agency in the place of IIBI and directed it to issue advertisements for revival of viable units of ALIND as going concern basis. The O.A. was also directed to issue advertisements for sale of the assets of the nonviable units of ALIND.

8. It is to be noted that out of the nine units of ALIND four were found to be viable units and the remaining five units were found to be unviable as under:

Viable Units:

- (i) Switch Gear Division at Mannar (Kerala State)
- (ii) Relays Division at Tiruvananthapuram (Kerala State)
- (iii) Machinery Division at Hyderabad (A.P.)
- (iv) Conductor Division at Hyderabad (A.P.)

Non-viable Units:

- (i) Contracts Division at Tiruvananthapuram (Kerala State)

- (ii) Material Handling Division at Hyderabad (A.P.)
- (iii) Conductor Division at Hirakud (Orissa State)
- (iv) Conductor Division at Kundara (Kerala State)
- (v) Steel Wire Division at Kundara (Kerala State)

9. Accordingly, the Operating Agency issued advertisement dated 22-2-2002 for revival of viable units of ALIND. In response to the same, the petitioner company which was already carrying on business with Machinery and Conductor Divisions of ALIND at Hyderabad, submitted its bid of Rs. 2,700 lakhs to take over the units. Subsequently, the bid was increased to Rs. 4,250 lakhs. In the hearing held on 19-12-2002 the BIFR approved the proposal made by the petitioner - VI PL which entailed demerger of Machinery and Conductor divisions at Hyderabad into M/s. Alind Machinery Limited which was in turn to be merged into a newly constituted company M/s. Alter Engineering Limited, a subsidiary of the petitioner company with all the assets and ascertained liabilities. Accordingly, the BIFR issued directions for formulation of scheme for the revival of two viable units at Hyderabad based upon the proposal of the petitioner. Such schemes were formulated and having considered the same BIFR by order dated 10-11-2003 directed the O.A. to submit Draft Rehabilitation Scheme (DRS). Accordingly, DRS for revival of viable units of ALIND at Hyderabad was drawn by the O.A. The BIFR by order dated 28-1-2005 invited objections to the DRS. The 5th respondent (Somani Group) alone submitted its objections so far as the two viable units at Hyderabad. Having considered the same, the BIFR by order dated 26-7-2005 sanctioned the DRS for the two viable divisions at Hyderabad, as well as two other viable divisions at Tiruvananthapuram and Mannar respectively. The said order was passed in exercise of the powers conferred u/s 18(4) read with Section 19(3) of SICA.

10. Challenging the said order dated 26-7-2005, the 5th respondent herein (referred to as Somani Group in the order under challenge) filed an appeal being Appeal No. 98/2005 u/s 25 of SICA before the AIFR. Similar appeal was filed by ALIND Employees Union Revival Committee - the respondent No. 6 herein. The said two appeals along with seven other appeals filed by other creditors were heard by the AIFR and decided by a common order dated 6-2-2007. It was mainly contended before the AIFR that sanction of three independent schemes for transfer of viable units instead of approving a comprehensive scheme was violative of the provisions of SICA. The said contention was accepted by the AIFR holding that the procedure adopted by BIFR in sanctioning three different schemes was erroneous and the same would result in transferring all the assets of the company to third parties. It was also observed that although certain creditors would be paid in a preferential manner under the three separate sanction schemes the dues of remaining creditors would be irrecoverable and that there would be no manufacturing unit left in the company to be revived by BIFR. Accordingly, the appeals were disposed of with the following directions:

(i) The Board of Directors of ALIND shall be reconstituted forthwith to include 3 persons to be nominated as Directors by the existing promoters and the new Directors shall assume office immediately on nomination.

(ii) The company shall appoint a firm of auditors from the panel of approved auditors by C and AG to draw up the accounts and final statement of ALIND, get the same audited and adopted in the EGM within 16 weeks from the date of this order.

(iii) The audited financial statements should be filed with BIFR, who are thereafter directed to give a period of 4 weeks to the existing promoters of ALIND to submit a comprehensive rehabilitation scheme to the OA/BIFR for taking necessary further steps in accordance with law.

(iv) In the event the existing promoters are unable to submit a comprehensive rehabilitation scheme for ALIND within the stipulated period, BIFR should explore other avenues for reviving ALIND including the option of change of management.

11. The said order passed by AIFR dated 6-2-2007 is under challenge in this writ petition.

12. So far as the preliminary objection as to the maintainability of the writ petition on the ground that this Court lacks territorial jurisdiction to entertain the writ petition is concerned, the contention of the respondents is that since none of the respondents have their registered office within the territorial jurisdiction of this Court and since the entire proceedings resulting in the impugned order have taken place only at New Delhi, the writ petition cannot be maintained in this Court. While pointing out that both the respondents 1 and 2 whose orders are the subject matter of this writ petition, are situated at New Delhi and the registered office of the 3rd respondent company is situated in Kundara in the State of Kerala, the respondents contended that the mere fact that some of the assets of the 3rd respondent company are situated within the territorial jurisdiction of this Court is immaterial and does not confer jurisdiction on this Court to entertain and hear the writ petition against the order passed by the 1st respondent.

13. While reiterating the said contentions, the learned senior counsel appearing for the 5th respondent further submitted that the pleadings of the writ petitioner are totally silent with regard to the material facts which gave rise to any part of cause of action within the territorial jurisdiction of this Court and therefore the writ petition is liable to be dismissed in limine on that ground alone. The learned senior counsel also submitted that though the units for which the petitioner company tendered its bid are situated in the State of Andhra Pradesh, the said fact by itself does not constitute cause of action conferring jurisdiction on this Court to entertain the writ petition since the same has no nexus or relevance with the lis involved in the case. It is also vehemently contended by the learned senior counsel that even assuming that a small part of cause of action has arisen

within the territorial jurisdiction of this Court, in view of the doctrine of forum conveniens this Court shall refuse to exercise its discretionary jurisdiction under Article 226 of the Constitution of India. In support of the above contentions, the following decisions have been cited:

1. Ambica Industries Vs. Commissioner of Central Excise,
2. Canon Steels P. Ltd. Vs. Commissioner of Customs,
3. Jogesh Singh Sodhi v. Union of India in W.P.(C) No. 6114/2007 before High Court of Delhi
4. Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another,
5. Union of India and Others Vs. Adani Exports Ltd. and Another,
6. West Coast Ingots v. Commissioner of Central Excise (2007) 115 ECC 94
7. Navinchandra N. Majithia Vs. State of Maharashtra and Others,

14. On the other hand, the learned senior counsel appearing for the writ petitioner while refuting the contention raised by the respondents that no part of cause of action has arisen within the territorial jurisdiction of this Court, contended that the preliminary objection raised by the respondents as to the maintainability of the writ petition is misconceived and untenable.

15. The law relating to the territorial jurisdiction of the High Courts to entertain a writ petition under Article 226 of the Constitution of India is well-settled. Though prior to the Constitution (15th Amendment) Act, 1963 the territorial jurisdiction of the High Courts under Article 226 was restricted to the location or residence of the respondents, by virtue of insertion of Clause (1A) to Article 226 which was subsequently renumbered as Clause (2) by the 42nd Amendment to the Constitution, it was made clear that the High Court within the territorial jurisdiction of which the cause of action arises, wholly or in part, would also have jurisdiction to entertain a petition under Article 226 and to issue a writ to any Government, authority or person irrespective of the fact that the seat of such Government or authority or residence of such person was located beyond its territorial jurisdiction.

16. Article 226 as it stands as on today reads as under:

226. Power of High Courts to issue certain writs:

(1) Notwithstanding anything in Article 32, every High Court shall have powers, 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 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.

(3) ...

(4) ...

17. A plain reading of Clause (2) of Article 226 shows that the jurisdiction of a High Court to issue writs is not restricted to the territories in relation to which it exercises jurisdiction and the writs can as well be issued to any Government, authority or person situated/resided beyond its territorial limits provided the cause of action, wholly or in part, has arisen within the territory in relation to which it exercises jurisdiction.

18. Thus, it is clear that the situs of the cause of action upon which the petitioner approaches the Court and seeks issuance of a writ against the respondent is also a relevant and determinative factor to decide the dispute with regard to the territorial jurisdiction of the High Court under Article 226 of the Constitution of India and even if a small fraction of cause of action arises within the territory in relation to which the High Court exercises jurisdiction, it shall have jurisdiction to entertain the writ petition notwithstanding the fact that the situs of the office of all the respondents is situated outside its territorial jurisdiction.

19. In the case on hand, it is not in dispute that none of the respondents to the writ petition have their registered office within the territorial jurisdiction of this Court. It is also true that the Original and Appellate Authorities (BIFR and AIFR) under SICA whose orders are the subject-matter of this writ petition are located beyond the territory in relation to which this Court exercises jurisdiction. However, in view of the legal position noticed above, the said fact by itself does not exclude the jurisdiction of this Court and in case it is shown that the cause of action, wholly or in part, has arisen within the territorial jurisdiction of this Court, this writ petition can be entertained and decided by this Court under Clause (2) of Article 226 of the Constitution of India.

20. The meaning of the expression "cause of action" has been examined and explained by the Courts in various decisions from time to time. In this regard, it would be suffice to extract the following observations made by the Supreme Court in *Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI)* and *Another, ,* while dealing with the interpretation of cause of action:

6. Cause of action implies a right to sue. The material facts which are imperative for the suitor to allege and prove constitute the cause of action. Cause of action is not defined in any statute. It has, however, been judicially interpreted *inter alia* to mean that every fact which would be necessary for the plaintiff to prove, if

traversed, in order to support his right to the judgment of the Court. Negatively put, it would mean that everything which, if not proved, gives the defendant an immediate right to judgment, would be part of cause of action. Its importance is beyond any doubt. For every action there has to be a cause of action, if not, the plaint or the writ petition, as the case may be, shall be rejected summarily.

21. It is also made clear in the said case that not each and every fact pleaded in the writ petition but only such material facts which have nexus or relevance with the lis involved in the case give rise to a cause of action so as to confer territorial jurisdiction on the Court concerned.

22. In a recent decision in *Alchemist Limited and Another Vs. State Bank of Sikkim and Others*, , the above interpretation of the expression cause of action was reiterated observing as under:

From the aforesaid discussion and keeping in view the ratio laid down in catena of decisions by this Court, it is clear that for the purpose of deciding whether facts averred by the petitioner-appellant, would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a material, essential, or integral part of the cause of action. It is no doubt true that even if a small fraction of the cause of action arises within the jurisdiction of the Court, the Court would have territorial jurisdiction to entertain the suit/petition. Nevertheless it must be a "part of cause of action", nothing less than that.

23. In the light of the legal position noticed above, I shall now proceed to analyze the facts as pleaded in the present writ petition to find out whether any part of cause of action has arisen within the territory in relation to which this Court exercises jurisdiction.

24. As could be seen, the writ petitioner is aggrieved by the order passed by the 1st respondent - AIFR while allowing the statutory appeals preferred by different parties against the Draft Rehabilitation Scheme sanctioned by the 2nd respondent-BIFR in exercise of the powers conferred u/s 18(4) read with Section 19(3) of the SICA. By virtue of the said order of AIFR, impugned in this writ petition, the Rehabilitation Scheme approved by the BIFR was set aside and the Board of Directors of the 3rd respondent were directed to be reconstituted by including three nominees of the existing promoters apart from directing to audit afresh the accounts of the 3rd respondent and to submit a Comprehensive Rehabilitation Scheme to the BIFR for taking necessary further steps.

25. It is not in dispute that in terms of the order of BIFR, the Operating Agency issued an advertisement for revival of viable units of the 3rd respondent company and in respect of two viable units situated at Hyderabad the writ petitioner was the successful bidder. Pursuant thereto, the proposal made by the petitioner for revival of the said two viable units at Hyderabad was approved by the BIFR and consequently the Draft Rehabilitation Scheme was drawn by the Operating Agency and the same was sanctioned by the BIFR by order dated 26-7-2005 following due process of law.

26. By virtue of the said scheme sanctioned under the provisions of SICA, the writ petitioner acquired a legal right to receive the two viable units situated at Hyderabad in terms of the sanctioned Rehabilitation Scheme. However, the right so acquired by the writ petitioner was nullified on account of the order of the AIFR in the Appeals thereby giving rise to a cause of action for invoking the jurisdiction under Article 226 of the Constitution of India. However, the question is whether such cause of action can be said to have arisen within the territorial jurisdiction of this Court so as to maintain the writ petition.

27. The whole contention of the respondents is that since the AIFR is located at New Delhi and the registered office of the 3rd respondent company is situated in Kerala State though a part of cause of action can be said to have arisen within the territorial jurisdiction of the High Courts of Delhi and Kerala, absolutely no part of cause of action has arisen within the territory in respect of which this Court exercises jurisdiction. According to the respondents, the two units at Hyderabad are nothing but assets of the 3rd respondent company and therefore the location of the same is not a relevant factor and the writ petition if any can be instituted either in the High Court of Kerala within whose territorial jurisdiction the registered office of 3rd respondent is situated or in the High Court of Delhi which is the situs of office of the other respondents.

28. It is to be noted that this is not a case where the petitioner is aggrieved by any action of the 3rd respondent as such, the grievance of the petitioner is that the 1st respondent - AIFR committed an error in setting aside the scheme sanctioned by the 2nd respondent - BIFR and accordingly a Mandamus has been sought to declare the order of the 1st respondent as arbitrary, illegal and contrary to the provisions of the SICA. In other words, the validity and legality of the Rehabilitation Scheme as sanctioned by BIFR for revival of two viable units of the 3rd respondent company situated at Hyderabad in exercise of the powers conferred under the provisions of SICA is the subject-matter of the present writ petition.

29. It is also relevant to note that SICA is a special enactment promulgated to remove the ill-effects of sickness in industrial companies such as loss of production, loss of employment, loss of revenue to the Central and State Governments and locking-up of investible funds of Banks and Financial Institutions.

30. The scheme of different provisions of SICA with particular reference to the Statement of Objects and Reasons makes it clear that the legislation has been enacted in public interest and one of its objects is speedy revival and rehabilitation of the potentially viable sick industrial units in order to fully utilize the productive industrial assets, afford maximum protection of employment and optimize the use of the funds of the Banks and Financial Institutions. The enactment provides for devising suitable remedial measures through appropriate schemes made by BIFR and for proper implementation thereof.

31. Thus, it is apparent that the entire purpose of the proceedings before the respondents 1 and 2 which resulted in the order impugned in this writ petition is speedy revival and rehabilitation of viable units of the 3rd respondent company so as to afford protection of employment in the said units and to utilize their productive industrial assets fully.

32. Having regard to the object and intendment of SICA and the purpose of the proceedings initiated thereunder in respect of the 3rd respondent company, I am of the view that each and every step taken under the provisions of SICA for the purpose of revival and rehabilitation of the viable units at Hyderabad shall be construed as material facts forming part of the cause of action. Since all the said proceedings are aimed at revival and rehabilitation of the viable units at Hyderabad shall be construed as material facts forming part of the cause of action. Since all the said proceedings are aimed at revival of the viable units of the 3rd respondent which would have direct impact on the employment and productive industrial assets of the said units located at Hyderabad, in my considered opinion a major part of cause of action has arisen at Hyderabad also so far as the scheme relating to those two units. Since the entire question raised in the present writ petition relates to the validity of the scheme sanctioned by the BIFR in respect of the said units at Hyderabad, all the proceedings under SICA which ultimately resulted in the impugned order of the 1st respondent shall be treated as material and integral facts having direct nexus with the lis involved.

33. In the circumstances, I am of the opinion that the proceedings under SICA leading to sanction of Rehabilitation Scheme by the BIFR on Appeal, gave rise to cause of action not only at New Delhi where the AIFR is situated but a major part of cause of action also arose at Hyderabad where the two units in question are located.

34. Hence, the allegation of the respondents that not even a small fraction of the cause of action has arisen at Hyderabad so as to entertain the present writ petition by this Court is unfounded.

35. The further allegation that the pleadings of the writ petitioner are totally silent with regard to the material facts which gave rise to cause of action within the territorial jurisdiction of this Court is also fallacious. All the facts pleaded in the affidavit filed in support of the writ petition relating to the scheme sanctioned by the BIFR under which the petitioner acquired a legal right to revive the viable units at Hyderabad have direct nexus with the issue involved in the present writ petition and thus constituted a cause of action to the present writ petition. May be that the expression "cause of action" has not been repeatedly used in the affidavit, however on a meaningful reading of all the averments it is abundantly clear that a part of cause of action has also arisen within the territorial jurisdiction of this Court.

36. So far as the decisions cited by the learned Counsel for the respondents are concerned, it is to be noted that in *Ambica Industries Vs. Commissioner of*

Central Excise, , the issue that arose for consideration related to determination of situs of the High Court in which appeals would lie u/s 35G(1) of the Central Excise Act. It is a case where the Appellate Court exercises jurisdiction over Tribunal situated in more than one State and the ratio laid down therein has no application at all to the case on hand. As a matter of fact, in paras 15 and 17 of the judgment it was clarified by their Lordships that in such cases the cause of action doctrine cannot be invoked.

37. In *Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another*, , which was also cited by the respondents, the question involved was formulated as under:

Whether the seat of the Parliament or the Legislature of a State would be a relevant factor for determining the territorial jurisdiction of a High Court to entertain a writ petition - under Article 226 of the Constitution of India?

38. The said question was answered holding that framing of a statute, statutory rule or issue of an executive order or instruction would not confer jurisdiction upon a Court only because of the situs of the office of the maker thereof unless a cause of action arises therefor. Apparently, the question that falls for consideration in the case on hand is entirely different and therefore *Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another*, is of no assistance to uphold the objection raised by the respondents in the present case.

39. The further decision in *Union of India and Others Vs. Adani Exports Ltd. and Another*, , relied upon by the respondents is also clearly distinguishable on facts. In the said case, the writ petition was filed in the High Court of Gujarat claiming benefit of the passports scheme under the EXIM policy. None of the respondents was stationed within the State of Gujarat and even the passport was issued by Chennai office. Though the writ petitioner was carrying on business at Ahmedabad and the documents were sent and payment was made at Ahmedabad and the petitioner had furnished Bank Guarantee and executed a Bond at Ahmedabad the Supreme Court held that the said facts did not constitute a cause of action since the same had no nexus with the lis involved in the case.

40. Yet another decision of the Supreme Court in *Navinchandra N. Majithia Vs. State of Maharashtra and Others*, , cited by the respondents is also of no assistance to substantiate their contention that this Court lacks territorial jurisdiction. On a careful reading of the said judgment, it is clear that the context in which the said decision was rendered was entirely different. The question whether the Court has territorial jurisdiction or not is a pure question of fact which has to be decided taking into consideration the facts and circumstances of the particular case and the conclusions in the decided cases cannot be applied ignoring the context in which the said decisions have been rendered.

41. However, while relying upon *Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another*, the learned Counsel for the respondents further contended

that even assuming that a small fraction of cause of action arose at Hyderabad within the territorial jurisdiction of this Court, this Court ought not to have entertained the writ petition by invoking the doctrine of forum conveniens.

42. It is true that in *Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another*, while applying the doctrine of forum conveniens it was held 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 and that in appropriate cases the Court may refuse to exercise its discretionary jurisdiction in the light of the doctrine of forum conveniens.

43. The said principle was followed in a later decision in *Canon Steels P. Ltd. Vs. Commissioner of Customs*, . The High Court of Delhi has also applied the said doctrine in *Jogesh Singh Sondhi v. Union of India (UOI) and Ors. Writ Petition (C) No. 6114/2007* and *West Coast Ingots (P) Ltd. v. Commissioner of Central Excise Settlement Commission (2007) 115 ECC 94 (Delhi)*.

44. The doctrine of forum conveniens, in my considered opinion cannot be invoked in the instant case since as expressed above a major part of cause of action arose at Hyderabad, but not a small fraction of cause of action. At any rate, even according to the doctrine of forum conveniens, it is not mandatory to reject the writ petition on the ground that only a small part of the cause of action arose within the territorial jurisdiction of the particular High Court but it is the discretion of the Court either to entertain or to reject the writ petition depending upon the facts and circumstances of the case. Hence, the contention of the respondents to reject the writ petition applying the doctrine of forum conveniens is untenable. For the very same reasons, the allegation of the respondents that the petitioner had indulged in forum shopping and abused the judicial process by instituting the writ petition in this Court cannot be accepted.

45. For the aforesaid reasons, notwithstanding the fact that the situs of the office of all the respondents is beyond the territorial jurisdiction of this Court, I am of the opinion that the present writ petition is maintainable since a major part of cause of action has arisen at Hyderabad where the viable units in respect of which the Rehabilitation Scheme was sanctioned by the BIFR under the provisions of SICA are located. The petition is accordingly disposed of rejecting the preliminary objection raised by the respondents as to the maintainability of the writ petition.