

(2025) 12 DEL CK 0019

Delhi HC

Case No: Writ Petition (C) No. 8049 Of 2024, Civil Miscellaneous Application Nos. 33093, 49251 Of 2024

Ueta Inc & Ors.

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision: Dec. 17, 2025

Acts Referred:

- Constitution of India, 1950- Article 12, 14, 226, 226(1), 226(2)

Hon'ble Judges: Devendra Kumar Upadhyaya, CJ; Tushar Rao Gedela, J

Bench: Division Bench

Advocate: Arvind K Nigam, Arunabh Chowdhury, Abhay Jadeja, Varun Satija, Agnish Aditya, Urvi Gulecha, Aniruddha M Sethi, Karma Dorjee, Anjana Gosain, Akansha Choudhary, Shreya Manjari, Amar Gupta, Mohit Sharma, Pranav Tanwar, Ramji Srinivasan, Milanka Chaudhury, Ashly Cherian, Shivankar Sukul, Arjun Bhatia, Shefali, A. Dave, Saman Ahsan, Srijita Majumdar, Yashwant Gaggar

Final Decision: Dismissed

Judgement

Devendra Kumar Upadhyaya, CJ

CHALLENGE

1. Invoking this Courts jurisdiction under Article 226 of the Constitution of India, the petitioners have sought a prayer for seeking a declaration that rejection of the bid submitted by them, as verbally communicated on 07.05.2024, for setting up, development, operation, maintenance and management of duty free outlets and retail outlets at Noida International Airport, Jewar, Uttar Pradesh (hereinafter referred to as the Airport) is illegal and arbitrary thereby, violative of Article 14 and 19(1)(g) of the Constitution of India. Accordingly, the petitioners have sought quashing of the said rejection of their bid.

2. The petitioners also seek a prayer to quash the award of license awarded by respondent no.5 to the respondent nos.6 and 7 in respect of the said duty-free

outlets and retail outlets at the Airport, as published on the website of respondent no.5 on 13.05.2024.

FACTS

3. Facts giving rise to filing of the instant writ petition can be summarized as below:

3.1 Petitioner no.1 is a company incorporated under the relevant laws of Republic of Panama, having its registered office at Panama City, Panama. Petitioner no.2 is an existing company incorporated under the Companies Act, 2013, having its registered office at Mumbai. Petitioner no.3 is also a company incorporated under the Companies Act, 2013 and has its registered office at Mumbai. Petitioner no.4 is the authorised representative of petitioner nos.1, 2 and 3. He is also the shareholder and director of petitioner nos.2 and 3.

3.2 The Government of Uttar Pradesh obtained in principle approval from the Government of India for development, operation and maintenance of the Airport on PPP (Public Private Partnership) mode and authorised Noida International Airport Limited respondent no.4 as the authority responsible for establishment of the Airport.

3.3 On 25.09.2019, respondent no.4 invited bids for selection of bidder for developing the Airport through competitive bidding process vide Request for Qualification-cum-Proposal issued on the said date. Pursuant to the bid process initiated on 25.09.2019 by respondent no.4, bid of Zurich Airport International AG was accepted and accordingly, a letter of award was issued on 04.05.2020 to Zurich Airport International AG for development, operation and maintenance of the Airport.

3.4 Zurich Airport International AG incorporated Yamuna International Airport Pvt. Ltd. - respondent no.5 as a Special Purpose Vehicle (hereinafter referred to as the SPV) which is a 100% subsidiary of Zurich Airport International AG.

3.5 On 07.10.2020, a Concession Agreement was executed between respondent no.4 and respondent no.5 for grant of exclusive right, license and authority to develop, operate and maintain the Airport by respondent no.5.

3.6 In terms of the requirement of the Concession Agreement entered into between respondent no.4 and respondent no.5, the registered office of respondent no.5 was re-located at Noida on 05.01.2022.

3.7 Respondent no.5 on 10.11.2023, issued a Request for Proposal (hereinafter referred to as the subject RFP) inviting bids for maintenance and management of duty-free outlets and retail outlets at the Airport.

3.8 Pursuant to issuance of the subject RFP, following three bids were received by respondent no.5:-

(a) Rozeus Airport Limited Petitioner no.3, which is a consortium formed by petitioner no.1 and 2.

(b) Avolta-Voyage, a consortium formed by Dufry International AG and Voyage Retail Solutions Private Limited.

(c) A consortium formed by Heinemann Asia Pacific PTE Ltd. respondent no.6 and BWC Forwarders Private Limited respondent no.5.

3.9 The deadline for submission of bids was extended from time to time and lastly on 03.02.2024, respondent no.5 issued Addendum no.7 to the subject RFP, whereby deadline for submission of bids was extended to 12.02.2024 till 5:00 P.M.

3.10 The petitioners submitted their bid on 12.02.2024, at 2:02 P.M. which was much before the deadline fixed for the submission of the bids, i.e. 5:00 P.M. The information relating to submission of bid by the petitioners was also given to respondent no.5 through email communication dated 12.02.2024. Thus, the bid according to the petitioners ought to have been closed on 5:00 P.M. on 12.02.2024.

3.11 That, however, on the same date, i.e. 12.02.2024, respondent no.5 issued a Corrigendum no.13 at 6:01 P.M. which was after expiry of the deadline of submission of the bids scheduled at 5:00 P.M. The said Corrigendum extended the deadline for submission of the bids on 12.02.2024 to 9:30 P.M.

3.12 It appears that the said extension of deadline for submission of bid till 9:30 P.M. was opposed by the petitioners vide email dated 12.02.2024; however, respondent no.5 responded to the said complaint by stating that due to some technical glitch on e-tendering portal, some of the bidders were unable to upload their bids, hence, the deadline for submission of bids was extended. It was also stated that such extension was in line with the standard practice and in accordance with the conditions of the subject RFP, which permitted providing additional time on account of bidders facing technical issues that may occur.

3.13 From 28.02.2024 till 09.03.2024, the tender evaluation process kept on going, and the representatives of the petitioners also attended the technical presentation in-person on 28.02.2024.

3.14 On 09.03.2024, respondent no.5 sought password to open the petitioners financial bid, indicating that the bid had moved to the next stage.

3.15 On 03.05.2024, respondent no.5 issued Letter of Intent to Award (hereinafter referred to as the LoIA) to the consortium of respondent no.6 and 7, informing that pursuant to their proposal submitted in response to the subject RFP, they have been shortlisted as the selected bidder, subject to fulfillment and/or compliance of certain conditions to the satisfaction of respondent no.5. Thus, pursuant to conclusion of the process of subject RFP, consortium comprising of respondent nos.6 and 7 were issued the LoIA for the work of the subject RFP, i.e. setting up,

development, operation, maintenance and management of duty free outlets and retail outlets at the Airport.

3.16 In the subject RFP process the proposal submitted by the petitioners was also considered; however, on technical and financial scores they could not compete with the proposal submitted by the consortium of respondent nos.6 and 7 and accordingly, the petitioners were not declared to be the successful bidders.

3.17 Thus, it is not that the bid of the petitioners was rejected on non-fulfilment of any requisite condition or criteria, to the contrary they were found not competing enough with the proposal of the consortium of respondent nos.6 and 7 and accordingly, it is the consortium of respondent nos.6 and 7 which was declared as the successful bidder in whose favour the LoIA was issued on 03.05.2024 by respondent no.5, which is under challenge herein.

SUBMISSIONS BY THE PETITIONERS

4. The issuance of LoIA by respondent no.5 in favour of consortium of respondent nos.6 and 7, which resulted in the ouster of the petitioners from the process, has been challenged on various grounds by the petitioners. The petitioners have urged that the entire tender process for award of license is illegal, arbitrary and mala fide and has been designed to favour the pre-determined bidder, namely, respondent nos.6 and 7. It has been stated that respondent no.5 which operated the Airport as a public utility under the Concession Agreement dated 07.10.2020 and also under statutory frameworks provided by the Aircraft Act, 1934 and the Airports Authority of India Act, 1994, is duty bound to act fairly, transparently and in public interest.

4.1 Further case setup by the petitioners is that respondent no.5 had acted in violation of Clauses 5.6.1 and 5.6.2. of the Concession Agreement, which mandates fair and non-discriminatory procurement through open competitive e-tendering process for high-value contracts. According to the petitioners, such obligations also flow from the Airport Infrastructure Policy, 1997, which governs the setting up of Greenfield Airports. Further submission on behalf of the petitioners is that the subject RFP was inadequately publicized and access to the process of RFP was restricted by requiring prior profile approval, which was granted to the petitioners only two days before the deadline despite consistent follow-ups.

4.2 It was also submitted on behalf of the petitioners that respondent no.5 shifted from the practice of common pre-bid meeting to one-on-one meetings, which eroded the transparency. According to the petitioners, such acts on the part of respondents collectively demonstrate a deliberate design to oust competition and also restrict participation to a favourable bidder.

4.3 It is also the submission of the petitioners that the specific eligibility criteria, particularly the USD 1 Billion duty free turnover requirement and disqualification of Indian Airport Operators, were tailor made to benefit respondent nos.6 and 7 and to

exclude Indian players.

4.4 It has been contended further on behalf of the petitioners that the deadline for submission of bid was extended after expiry illegally without any justification and contrary to the provisions of the subject RFP to allow respondent nos.6 and 7 to re-calibrate their bid and that explanation for such extension as sought to be given by respondent no.5 relating to technical glitch was an after-thought, vague and not supported by any evidence. It has also been stated on behalf of the petitioners that their bid was rejected orally without furnishing score sheets or written reasons in a cryptic manner, and further, that bids were not opened in the presence of the bidders, which is in violation of the Central Vigilance Commission Guidelines and the norms as evolved by the Ministry of Finance, Government of India. Reliance in this regard has been placed by the petitioners on a judgment of the Honble Supreme Court in **Haffkine Bio-Pharmaceutical Corpn. Ltd. v. Nirlac Chemicals, (2018) 12 SCC 790**.

4.5 It is in the background of the aforesaid facts as pleaded by the petitioner that the prayer in the instant writ petition has been made to quash the LoIA dated 03.05.2024, which was published on the website of respondent no.5 on 13.05.2024.

SUBMISSIONS BY THE RESPONDENTS

5. Respondents have opposed the prayers made in the writ petition and have submitted that there is no merit in the grounds taken by the petitioners for the reason that all the grounds taken by the petitioners regarding inadequate publicity of the subject RFP, the eligibility criteria of the prospective bidders, etc., are not available to the petitioners at this juncture for the reason that petitioners, without challenging the same, had participated in the bid process pursuant to the subject RFP and once they participated in the bid, such a challenge at their behest is not available to them.

5.1 It is also the contentions raised on behalf of the respondents that the bid process which has been followed has been open, transparent, and it did not violate any of the norms and therefore, the submission of the petitioners is untenable.

5.2 It has also been argued on behalf of the respondents that the deadline to submit bids was extended owing to a technical glitch which was faced by certain bidders, and therefore, extension was granted in order to avoid non-participation of eligible bidders who faced such a technical glitch, otherwise wide range of competition in the bid process could not have been ensured by respondent no.5.

5.3 Apart from making submission on the merits, it has also been argued by the respondents that the instant writ petition is not maintainable before this Court at Delhi as Delhi High Court lacks territorial jurisdiction to entertain the writ petition for the reason that no cause of action can be said to have accrued to the petitioners within the territorial jurisdiction of this Court to invoke its extraordinary jurisdiction

under Article 226 of the Constitution of India at Delhi.

5.4 The respondents have also argued that the relief in the instant writ petition has essentially been sought against respondent no.5 which is purely a private entity and thus, is not a State within the meaning of Article 12 of the Constitution of India and accordingly, no writ as has been prayed for in the instant writ petition is legally permissible to be issued against the respondent no.5.

PRELIMINARY OBJECTIONS RAISED BY RESPONDENTS AS TO THE MAINTAINABILITY OF THE PETITION

6. Before advertng to respective submissions made by learned counsel for the parties as to the merit of their respective claims, it would be appropriate to determine first the issue of territorial jurisdiction of this Court to entertain this writ petition, as has been urged on behalf of the respondents.

6.1 In this regard we may encapsulate the submissions on behalf of the respondents, which are as under:

6.2 By mutual agreement, parties cannot confer territorial jurisdiction upon a Court which otherwise does not have the jurisdiction to entertain a writ petition. Reliance in this regard has been placed on the decision of Honble Supreme Court in **A.B.C. Laminart (P) Ltd. v. A.P. Agencies, (1989) 2 SCC 163**, where it has been held that parties by way of an exclusive jurisdiction clause in an agreement cannot oust the jurisdiction of Courts which have otherwise jurisdiction to adjudicate the matter and similarly, parties by way of agreement cannot confer jurisdiction on a Court which does not have otherwise jurisdiction to hear the matter. Reliance in this regard has also been placed on another judgment of the Honble Supreme Court in **Inter Globe Aviation Ltd. v. N. Satchidanand, (2011) 7 SCC 463**. According to the respondents, in **Inter Globe Aviation (Supra)**, it has been held that any clause in an agreement which ousts the jurisdiction of all Courts having jurisdiction and confers jurisdiction on a Court not otherwise having jurisdiction, would be invalid. The respondents have also relied upon **Kwality Caterers v. Union of India, 2011 SCC OnLine Del 5503** and **Durgapur Freight Terminal (P) Ltd. v. Union of India, 2023 SCC OnLine Del 1254**.

6.3 Submissions by the respondents is that the registered office of the respondent no. 5 is not located within the territorial jurisdiction of this Court at Delhi, and further that even the petitioners do not reside within the territorial jurisdiction of this Court. It is also stated that at the time of issuance of the subject RFP, respondent no. 5 was located at Noida which is in the State of Uttar Pradesh and as such respondent no. 5 is situated outside the territorial jurisdiction of this Court. Further submission is that even currently the registered office of respondent no. 5 is at Gautam Budh Nagar which is also situated in the State of Uttar Pradesh. Our attention has been drawn in this regard by the respondents to Article 5.4.2 (h) of the Concession Agreement whereby respondent no.5 is mandated to ensure that its

registered office is situated in the State of Uttar Pradesh.

6.4 It is also the submission on behalf of the respondents that registered offices of the petitioners are also not located in Delhi. The submission is that registered office of petitioner no.1 is located in Panama City, Panama, whereas, the registered offices of petitioner no.2 and 3 are located in Navi Mumbai, State of Maharashtra. Petitioner no. 4 is also located in Navi Mumbai, State of Maharashtra and, therefore, it has been stated that none of the petitioners are located in Delhi.

6.5 Another submission made on behalf of the respondents to urge that this Court will not have territorial jurisdiction to entertain this writ petition is that all the facts which are integral and essential to constitute cause of action which forms basis of filing the instant writ petition had occurred in Noida in the State of Uttar Pradesh. Elaborating further, it has been stated that subject matter of the subject RFP, i.e. setting up the duty-free outlets and retail outlets to be established at the Airport which is located in Jewar, Gautam Budh Nagar, State of Uttar Pradesh. It is also submitted that the subject RFP was issued from Noida in the State of Uttar Pradesh, where the registered office of respondent no. 5 is located and further that in terms of Clause 6.3 of the subject RFP, clarifications were also required to be sought from an officer by email or by addressing letters to the officer at Unit no. A-701, Tower A, Advent Navis Business Park, Plot No. 7, Sector 142, Noida, District Gautam Budh Nagar, State of Uttar Pradesh. In this regard, it has also been alleged that petitioners sought clarifications from respondent no. 5 vide email addressed to the said officer and has referred the said clarification at the address of the officer concerned as given above at District Gautam Budh Nagar, State of Uttar Pradesh. Respondents have also stated that pre-bid meeting took place at the registered office of respondent no.5 located in Noida, State of Uttar Pradesh, and further that bids were also opened at the registered office of respondent no.5 located in Noida, State of Uttar Pradesh.

6.6 It is also stated that evaluation of technical and financial bids took place at the registered office of respondent no.5 at Noida, State of Uttar Pradesh, and further that the petitioners were informed about the non-acceptance of their bids in the meeting held on 07.05.2025 at the registered office of respondent no.5 located in Noida, State of Uttar Pradesh. We have also been taken through the decision to select the consortium comprising of respondent nos.6 and 7, which was taken at the registered office of respondent no.5 located in Noida, State of Uttar Pradesh.

6.7 Respondents further argued that bidding process was undertaken by respondent no. 5 without any involvement of the Ministry of Civil Aviation - respondent no.1, Airport Authority of India - respondent no.2, State of Uttar Pradesh - respondent no.3 or Noida International Airport Limited - respondent no. 4. And also, that the decision to declare the consortium of respondent nos. 6 and 7 as the successful bidder was also taken independently by respondent no. 5 without any involvement of the aforesaid authorities. It has, thus, been argued that prayer in the

writ petition for issuance of appropriate writ or order has been made which are directed to respondent no. 5, which is not located the territorial jurisdiction of this Court at Delhi and accordingly, this Court does not have jurisdiction to adjudicate the issues raised in the writ petition for the reason that no part of cause of action has arisen in New Delhi and all material causes of action have taken place in the State of Uttar Pradesh.

6.8 On the basis of the aforesaid facts, it has been argued on behalf of the respondents that parties cannot be permitted to confer territorial jurisdiction to this Court to the exclusion of the Court(s) which have otherwise proper jurisdiction to adjudicate the instant matter.

REPLY ON BEHALF OF THE PETITIONERS TO THE PRELIMINARY OBJECTION

7. Learned counsel for the petitioners replying to these submissions made on behalf of the respondents to the effect that this Court at Delhi does not have jurisdiction to adjudicate the issues raised in this writ petition, has drawn our attention to various clauses in the subject RFP which contained exclusive jurisdiction clauses in respect of the jurisdiction of the Courts. The petitioners refer to Clause 14 of the disclaimer clause, which forms part of the subject RFP and submits that the said clause clearly stipulates that,

This RFP is subject to laws of the Republic of India. The Courts in New Delhi, India shall have the exclusive jurisdiction in relation to any disputes arising from this RFP.

7.1 Similarly, our attention has also been drawn to Clause 9.11, which falls under the heading, Governing Law and forms part of the subject RFP. On this basis, it has been stated on behalf of the petitioners that the said Clause 9.11 clearly stipulates that the subject RFP and all the entities participating in the bid process shall be governed by the laws of Republic of India, without having regard to its principles of conflict of laws and the Courts in New Delhi, India shall have exclusive jurisdiction to entertain, hold trial and adjudicate upon any dispute in relation to subject RFP, bid process or any other aspect in relation thereto. Clause 14 (Disclaimer) and 9.11 (Governing Law) of the subject RFP are extracted herein below:

Clause 14

14. This RFP is subject to the laws of the Republic of India. The courts in New Delhi, India, shall have exclusive jurisdiction in relation to any disputes arising from this RFP.

9.11 Governing Law

This RFP and all the entities participating in the Bid Process shall be governed by the laws of the Republic of India, without having regard to its principles of conflict of laws, and the courts in New Delhi, India shall have exclusive

jurisdiction to entertain, hold trial, and adjudicate upon any dispute in relation to the RFP, Bid Process or any other aspect in relation thereto.

7.2 It has also been submitted on behalf of the petitioners that Paragraph 9 of the LoIA dated 03.05.2024, also states that the said LoIA shall be governed by the laws of Republic of India and in respect of all matters arising out of or relating to the LoIA, the Courts in New Delhi, India shall have exclusive jurisdiction. Clause 9 of LoIA, dated 03.05.2024 is also extracted herein below:-

9. This LOIA shall be governed by the laws of the Republic of India. In respect of all matters arising out or relating to this LOIA, the courts in New Delhi, India shall have exclusive jurisdiction.

7.3 It has been argued by learned senior counsel representing the petitioners that it has always been the intent of respondent no. 5, as is apparent from a perusal of relevant clauses of subject RFP and LoIA, that any dispute arising from the subject RFP including the LoIA, shall be confined to exclusive jurisdiction of the Courts in New Delhi and therefore, it is not open to the respondents, especially respondent no. 5 to contend to the contrary.

7.4 Referring to the judgment of Honble Supreme Court in **Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489**, it has been stated that it is a settled principle of administrative law that every executive authority should be rigorously held accountable to the standards by which such authority professes its acts to be judged and that such executive authority must scrupulously observe to a standard. It is stated that respondent no.5 cannot be permitted to approbate and reprobate and is estopped from wriggling out of the terms and conditions of the subject RFP and, therefore, on the principle of law laid down in **Ramana Dayaram (Supra)**, the respondent no.5 should be rigorously held to the terms and conditions of the subject RFP and it cannot be permitted to deviate from the same. The relevant portion of paragraph 10 of the report is extracted herein below:

10. It is a well-settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them.

7.5 Reference has also been made on behalf of the petitioners to exclusive jurisdiction clauses occurring in other documents which, according to the petitioners, form part of the subject RFP. The clauses referred to in this regard from other documents are as under:

a. Clause 7.3.5 of the Memorandum of Understanding dated 22.11.2021 entered into between Respondent No.1 and Respondent No.5;

- b. Clause 8 of the template of the Memorandum of Understanding to be entered into between Respondent No.5 and bidder;**
- c. Clause 10 of the template of the Confidentiality Undertaking to be entered into between the bidder and Respondent No.5;**
- d. Article 18.1 of the template of the License Agreement for Duty-free shops to be entered into between Respondent No.5 and selected bidder;**
- e. Article 18.1 of the template of the License Agreement for Retail Outlets to be entered into between Respondent No.5 and selected bidder;**
- f. Clause 16 of the template of the Deed of Guarantee to be entered into between the guarantor of the selected bidder and the selected bidder;**
- g. Clause 15 of the template of the Performance Bank Guarantee to be entered into between Respondent No.5 and the guarantor of the selected bidder;**
- h. Clause 16 of the template of the Deed of Guarantee to be entered into between the guarantor of the selected bidder and the selected bidder; and**
- i. Clause 15 of the template of the Performance Bank Guarantee to be entered into between Respondent No.5 and the guarantor of the selected bidder.**

7.6 Learned senior counsel representing the petitioners has also drawn our attention to exclusive jurisdiction clauses from other tenders floated by respondent no.5, which are as under:

- a. Clause 9 of the Request for Quotation dated 07.06.2024 for award of license for EV charging stations;**
- b. Clauses 14 and 9.11 of the Request for Proposal dated 14.06.2024 for award of license for SPA and wellness centre;**
- c. Clauses 14 and 9.10 of the Request for Proposal dated 24.06.2024 for award of license for branded taxis;**
- d. Clauses 24, 5.3 and 6 of the Invitation to Tender dated 05.08.2024 for award of license for fuel stations; and**
- e. Clauses 10, 20 and 8 of the Request for Proposal dated 10.08.2024 for award of license for ARFF-ATC, GSE-AMB & OBW Facility Buildings.**

7.7 Learned senior counsel has contended that as per Clause 2 of Article 226 of the Constitution of India, substantial part of cause of action has arisen within the territory of this Court, which is evident from the fact that public announcement regarding award of license to the consortium of respondent nos. 6 and 7 was made at New Delhi on 13.05.2024 by publishing the LoIA dated 03.05.2024 on the website of respondent no. 5. It is also stated that LoIA was issued and signed by the Chief Executive Officer and Chief Commercial Officer of respondent no. 5 from their

corporate office located at Nehru Place, New Delhi and that confidentiality undertaking dated 29.12.2023 was entered into between the respondent no. 5 and the petitioners which was also executed at New Delhi. It is further submitted that Memorandum of Understanding (hereinafter referred to as the MoU) dated 22.11.2021 entered into between respondent no.1 and respondent no.5 was executed at New Delhi, and that the agreement for ATM facilities dated 28.02.2022 entered into between respondent no. 2 and respondent no.5 and was executed at New Delhi. In this regard, a further submission has been made on behalf of the petitioners that upon its incorporation, respondent no. 5 was originally located at Okhla Industrial Estate, Phase-III, New Delhi and that bid processing fee of Rs.3,54,000/- was paid by the petitioners in the current account of respondent no. 5 maintained with the commercial branch of State Bank of India located in Nehru Place, New Delhi and that the security amount of Rs.37,50,000/- was also deposited by the petitioners in the said current account of respondent no. 5 in the bank located at Nehru Place, New Delhi.

7.8 Our attention has also been drawn to the License Agreement for duty free shops, according to which security deposit is required to be made by the selected bidder in the current account of respondent no. 5 maintained in the bank at Nehru Place, New Delhi. According to the petitioners, part of cause of action has arisen to them to institute the instant writ petition before this Court for the reason that money is expressly or impliedly payable under the contract and payment of bid processing fee for deposit of bid security or deposit of security by licensee is to be made in the bank of respondent no. 5 located in New Delhi and, therefore, part of cause of action has clearly arisen within the territorial jurisdiction of this Court at Delhi.

7.9 Learned counsel for the petitioners have placed reliance on **Hanil Era Textiles Ltd. v. Puromatic Filters (P) Ltd., (2004) 4 SCC 671** and **A.B.C. Laminart (Supra)** to argue that part of cause of action arises where money is expressly or impliedly payable under a contract. It is stated further that in **Hanil Era Textiles (Supra)**, advance payment was made by the defendant at Bombay and, therefore, it was held that part of cause of action had arisen at Bombay.

7.10 In addition to the aforesaid submission, it has also been contended that corporate office of the respondent no. 5 was and is still located at Nehru Place, New Delhi, which is within the territorial jurisdiction of this Court and therefore, on account of location of the corporate office of respondent no.5 within the territories of Delhi, this Court will have jurisdiction to try and adjudicate the issues raised in this writ petition. The petitioners have placed reliance in this regard on **Kusum Ingots & Alloys Ltd. v. Union of India, (2004) 6 SCC 254**.

7.11 The petitioners have also relied upon a judgment of this Court in **Jayaswals Neco Ltd. v. Union Of India, 2007 SCC OnLine Del 2094**. A Full Bench judgment of this Court in **Sterling Agro Industries Limited v. Union of India & Ors., 2011 SCC**

OnLine Del 3162 has also been relied upon by the petitioners to submit that even if a small fraction of cause of action arises within the jurisdiction of a Court, the Court would have territorial jurisdiction to entertain a suit or petition, nevertheless, it must be a part of cause of action. The argument, thus, is that even if a minuscule part of cause of action arises within the jurisdiction of this Court, a writ petition would be maintainable before this Court.

DISCUSSION AND ANALYSIS

8. We have heard the respective submissions and arguments made on behalf of the parties in respect of the preliminary issue regarding maintainability of the instant writ petition, and have also gone through the records available before us on this writ petition.

9. We have given our anxious consideration to the submissions; however, we do not find ourselves aligned to the submissions made on behalf of the petitioners, so far as maintainability of this writ petition on the ground of lack of territorial jurisdiction of this Court is concerned.

10. Article 226 of the Constitution of India confers power on every High Court to issue directions, orders or writs, including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-warranto and Certiorari, throughout the territory in relation to which the High Court exercises jurisdiction. Clause (2) of Article 226 of the Constitution of India provides that the power conferred by Clause (1) of Article 226 of the Constitution of India may also be exercised by any High Court, exercising jurisdiction in relation to the territories within which cause of action, wholly or in part, arises for exercise of such power, notwithstanding, that the seat of such government or authority or the residence of such person is not within those territories. Article 226 (2) of the Constitution of India is extracted herein below:

226. Power of High Courts to issue certain writs.

(1)

(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)

11. Thus, Article 226 of the Constitution of India confers powers on all High Courts of issuing writs with only two limitations and the limitations are, (1) that such power is to be exercised throughout the territories in relation to which the High Court

exercises jurisdiction, in other words, writs issued by the High Court cannot go beyond the territories subject to its jurisdiction, and (2) that the person, authority or the government to whom such writ is to be issued, should be within those territories, that is to say, such person, authority or government must be amenable to the jurisdiction of the High Court by way of either residence or location within those territories. There is only one exception to this rule, as is apparent from a perusal of Clause (2) of Article 226 of the Constitution of India and the exception is that writs can go beyond the territorial jurisdiction of a High Court where the cause of action arises, either in part or in whole, within the territorial jurisdiction of that High Court.

12. Thus, the writ to be issued by a High Court can go to a person or an authority residing or located beyond its territorial jurisdiction, provided the cause of action, either in whole or in part, arises within the territorial jurisdiction of the High Court concerned. Prior to insertion of Clause (2) in Article 226 of the Constitution of India, no High Court could issue a writ or order under Article 226 of the Constitution of India unless the government or the authority or the person against whom writ was sought, physically resided or located within the territorial jurisdiction of the High Court. By the 15th Constitutional Amendment Act, 1963, Clause (1A) was added to Article 226 of the Constitution of India, which was later on renumbered as Clause (2) by the Constitution (42nd Amendment) Act, 1976. As a result of insertion of Clause (2) in Article 226 of the Constitution of India, a petition with the prayer for issuance of an order or direction or a writ or an order or direction in the nature of a writ can be instituted under Article 226 of the Constitution of India before any High Court, if the High Court within whose territorial jurisdiction the person or the authority against whom relief is sought, is situated or resides and also, if, the cause of action in respect of which relief is sought has arisen wholly or in part.

13. However, before examining the contention made on behalf of the petitioners as to whether any part of cause of action can be said to have accrued to the petitioners within the territorial jurisdiction of this Court at Delhi, we need to reflect as to what is meant by cause of action and what would constitute accrual of cause of action so as to enable the petitioners to invoke jurisdiction of this Court.

14. Cause of action, as is understood, is a bundle or chain of facts; however, to invoke jurisdiction of a High Court for entertaining a writ petition, the cause of action must disclose that the facts pleaded in support of the cause of action constitute a cause so as to empower the High Court concerned to decide the dispute. A fact to constitute a cause of action or even part of cause of action must have a direct nexus on the basis of which a prayer for issuing a writ can be granted. In other words, the facts which have no co-relation with the prayer made in a petition seeking issuance of a writ cannot be said to give rise to a cause of action conferring jurisdiction on the High Court.

15. It is well settled as laid down by the Honble Supreme Court in **Kusum Ingots (Supra)**, that in a case where part of the cause of action arises within one or the other High Court, it is for the petitioner to choose either of the High Courts. Having regard to the language available in Clause (2) of Article 226 of the Constitution of India, what we find is that even if a small fraction of the cause of action arises within the jurisdiction of a particular High Court, the said High Court will have jurisdiction in the matter. It is also well settled that even if a part of cause of action arises within the territorial jurisdiction of a particular High Court, the same may not be a determinative factor permitting the High Court to decide the matter on merits and in appropriate cases the Court may refuse to exercise its discretionary jurisdiction under Article 226 of the Constitution of India by invoking the doctrine of forum conveniens as laid down in **Ambica Industries v. Commissioner of Central Excise, (2007) 6 SCC 769**. In **Ambica Industries (Supra)** a reference has been made to certain observations made by Privy Council in **Mussummat Chand Kour v. Partab Singh [(1887-88) 15 IA 156]** where it has been held that cause of action has no relation with the defense which may be set up by the defendant nor does it depend on the character of the relief prayed for rather, it refers entirely to the grounds set forth in the plaint as the cause of action. Paragraph 41 and 42 of **Ambica Industries (Supra)**, are extracted herein below:

41. Keeping in view the expression cause of action used in Clause (2) of Article 226 of the Constitution of India, indisputably even if a small fraction thereof accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter though the doctrine of forum conveniens may also have to be considered.

42. In Mussummat Chand Kour v. Partab Singh [(1887-88) 15 IA 156], it was held: (IA pp. 157-58)

[T]he 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 grounds 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.

16. The principle of forum conveniens, as finds mentioned and discussed in **Ambica Industries (Supra)**, has been reiterated by a Full Bench Judgment of this Court in **Sterling Agro (Supra)**. Paragraph 35 of **Sterling Agro (Supra)** is extracted herein below:

35. In view of the aforesaid analysis, we are inclined to modify the findings and conclusions of the Full Bench in New India Assurance Co. Ltd. v. Union of India, AIR 2010 Delhi 43; [2011] 166 C-C 87 (Delhi) 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 minuscule 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. v. State Bank of Sikkim* (2007) 136 C-C 665; (2007) 11 SCC 335.

(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 mala fide manner is too restricted/constricted as the exercise of the power under article 226 being discretionary cannot be limited or restricted to the ground of mala fide alone.

(f) While entertaining a writ petition, the doctrine of forum conveniens and the nature of cause of action are required to be scrutinised by the High Court depending upon the factual matrix of each case in view of what has been stated in *Ambica Industries v. CCE* (2007) 213 ELT 323; [2009] 20 VST 1 (S.C.) and *Union of India v. Adani Exports Ltd.* (2002) 1 SCC 567.

(g) The conclusion of the earlier decision of the Full Bench in *New India Assurance Co. Ltd. v. Union of India*, AIR 2010 Delhi 43; (2011) 166 C-C 87 (Delhi) (page 115): "... 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.

17. Thus, conclusion (f) drawn by Full Bench of this Court in **Sterling Agro (Supra)**, as finds mentioned in paragraph 35 of the judgment as quotes above, clearly states that while entertaining a writ petition, doctrine of forum conveniens and nature of cause of action are required to be scrutinized depending on the facts of each case. The Full Bench has also held that even if a minuscule part of cause of action arises within the jurisdiction of this Court, a petition seeking issuance of a writ would be maintainable, however, such cause of action has to be understood as per the law laid down in the case of **Alchemist Ltd. v. State Bank of Sikkim, (2007) 11 SCC 335**. In **Alchemist Ltd (Supra)**, it has been held by Honble Supreme Court that for the purposes of deciding whether facts as stated by the petitioner would or would not constitute a part of cause of action, it is to be considered whether such fact constitutes a material, essential or integral part of cause of action. The Honble Supreme Court has also observed that there is no doubt that even if a small fraction of cause of action arises within the jurisdiction of the Court, the Court would have territorial jurisdiction to entertain the writ petition, nevertheless it must be a part of cause of action. Thus, as per the law laid down by the Honble Supreme Court in **Alchemist Ltd (supra)**, to confer jurisdiction on the Court, only such facts are to be considered which constitute a material, essential or integral part of cause of action. In other words, all facts averred by the petitioner may or may not form part of cause of action, however, only such facts, which are material, essential or integral to the cause of action, are to be taken into account for arriving at a conclusion as to whether, the facts averred by the petitioner would constitute a part of cause of action. Observations made in paragraph 37 in **Alchemist Ltd (supra)** are relevant to be quoted which reads as under:

37. From the aforesaid discussion and keeping in view the ratio laid down in a catena of decisions by this Court, it is clear that for the purpose of deciding whether facts averred by the appellant-petitioner 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.

18. From the discussion made above, the legal position which, according to us, emerges is that every fact pleaded by the petitioner seeking issuance of a writ in a petition filed under Article 226 of the Constitution of India will not constitute a part of the cause of action. It is only those facts which constitute a material, essential or integral part of the cause of action that are relevant for the purposes of determining as to whether, part of cause of action has arisen within the territorial jurisdiction of the Court.

19. Honble Supreme Court in **Union of India & Ors. v. Adani Export, (2002) 1 SCC 567** has held that for entertaining a writ petition the High Court should be satisfied from the facts pleaded in support of 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. The Honble Supreme Court goes on to observe that each and every fact pleaded by a party does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the Courts territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the dispute that is involved in the case.

20. Honble Supreme Court also observes that facts which have no bearing with the lis or the dispute, do not give rise to a cause of action so as to confer territorial jurisdiction upon the Court concerned. Paragraph 17 of the judgment in Adani Export (Supra) is apposite to be extracted here, which reads as under:

17. It is seen from the above that in order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application as in this case, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower the court to decide a dispute which has, at least in part, arisen within its jurisdiction. It is clear from the above judgment that each and every fact pleaded by the respondents in their application does 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 pleaded 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, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned. If we apply this principle then we see that none of the facts pleaded in para 16 of the petition, in our opinion, falls into the category of bundle of facts which would constitute a cause of action giving rise to a dispute which could confer territorial jurisdiction on the courts at Ahmedabad.

21. In **State of Goa v. Summit Online Trade Solutions, (2023) 7 SCC 791**, Honble Supreme Court has reiterated the aforesaid principles and has held that determination of the question as to whether, the facts pleaded constitute part of cause of action which is sufficient to attract Article 226(2) of the Constitution of India 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. Honble Supreme Court has further observed in this judgment that it is the substance of the matter that is relevant and, therefore, what follows is that the party filing a writ petition has to disclose that integral facts pleaded in support of cause of action constitute a cause empowering the High Court to decide the dispute. Paragraph 17 of the judgment in **Summit Online Trade (Supra)** is extracted herein below:

17. Determination of the question as to whether the facts pleaded constitute a part of the cause of action, sufficient to attract clause (2) of Article 226 of the Constitution, would necessarily involve an exercise by the High Court to ascertain that the facts, as pleaded, constitute a material, essential or integral part of the cause of action. In so determining, it is the substance of the matter that is relevant. It, therefore, follows that the party invoking the writ jurisdiction has to disclose that the integral facts pleaded in support of the cause of action do constitute a cause empowering the High Court to decide the dispute and that, at least, a part of the cause of action to move the High Court arose within its jurisdiction. Such pleaded facts must have a nexus with the subject-matter of challenge based on which the prayer can be granted. Those facts which are not relevant or germane for grant of the prayer would not give rise to a cause of action conferring jurisdiction on the court. These are the guiding tests.

22. We now need to proceed to determine as to whether, in view of the legal principles as discussed above, the instant petition discloses any part of cause of action so as to invoke our jurisdiction under Article 226 (2) of the Constitution of India. From the above discussion, it is already clear that the facts pleaded in support of the cause of action should be material, essential and integral to the cause of action and in case, such facts are not material, essential or integral part of the cause of action, this Court will have no jurisdiction to entertain the instant writ petition.

23. The petitioner has pleaded that part of cause of action to institute this petition has accrued to the petitioners for the reason that payment of bid processing fee or deposit of bid security or deposit of security by licensee is required to be made in the instant case into the bank account of respondent no.5 in a bank which is located in New Delhi and according to the petitioner such requirement of deposit of money into the bank account of a bank situated in Delhi gives rise to part of cause of action as the place where the payment is being made or money is being deposited is New Delhi which will be relevant to determine the territorial jurisdiction of this Court. Such a plea in our considered opinion, is untenable. The bank details of respondent no.5 were provided to the participating bidders only to facilitate the deposit. In the present days when payment is mostly made by RTGS/NEFT, situs of the bank account where money is to be paid, in our opinion, cannot be construed to mean that the money payable was payable in Delhi for the reason that ultimately such money once paid in the bank account has to go to the coffers of respondent no.5 which is situated in Noida.

24. It is also to be noticed that payment through electronic transfers can be made from anywhere in the world and merely because the details of the receiving bank are within the jurisdiction of Delhi, this fact alone would not mean that amount are payable in Delhi and therefore, on that count no part of cause of action can be said to have arisen in Delhi, we in this regard may refer to a judgment of Bombay High

Court in **PVR v. Proteus LLP, 2023 SCC OnLine Bom 1205**. Paragraph 25 of the aforesaid judgment is relevant which is extracted herein below:

25. Second, the Defendants contention that the amounts due under the invoices were payable in Delhi is also equally untenable. The invoices do not either expressly or by implication provide that the moneys are payable in Delhi. The invoices in fact set out the modes of payment acceptable to the Plaintiff, i.e., either by account payee cheque, demand draft or NEFT/RTGS. The Plaintiffs bank details set out in the invoices is only to facilitate such electronic payment should the Defendant so chose to make payment by RTGS/NEFT and nothing more. This cannot in any manner be construed to mean that the monies payable under the said invoices were payable in Delhi even by implication. In today's times of electronic transfers payment can be effected from anywhere in the world. Merely because the details of the receiving bank are within the jurisdiction of another city, this fact alone would not mean (a) that the amounts are payable in that city and (b) that part of the cause of action had arisen in that city. Additionally, even assuming that the only mode for payment under the said invoices was via RTGS/NEFT, the same would not by itself amount to monies being payable in Delhi under the contract. The details of the Plaintiff's bank are set out only to facilitate the payment by electronic mode and nothing else. This by no stretch of imagination can be construed to mean that the amounts due under the said invoices were payable in Delhi.

25. Accordingly, we state that only on account of the fact that bank details in which monies where to be paid are in respect of a bank where respondent no.5 has its account which is situated in Delhi, is a fact which, in our opinion, is neither a material nor an essential fact so as to form integral part of the cause of action to confer jurisdiction on this Court to entertain the instant writ petition.

26. The next argument made by learned counsel for the petitioner to contend that part of cause of action has arisen to institute the proceedings of this writ petition before this Court at Delhi is that public announcement on the website of respondent no.5 in respect of issuance of the LoIA was made at New Delhi. In this respect, a document enclosed as Annexure-P/46 of the writ petition at page 618 has been referred to by the petitioners. If we peruse the said document, what is apparent is that it is an announcement made by respondent no.5 in respect of selection of the bidder for issuance of license for running the duty-free outlets and retail outlets at the Airport. The document starts with the words New Delhi, May 13, 2024. The said document appears to be in the shape of a press release, though published on the website of respondent no.5. Publication of such information on the website, in our opinion, is not germane in any manner to the lis which the petitioner seeks to be decided in this writ petition. Accordingly, the arguments based on the said document merits rejection, which is hereby rejected.

27. It has next been submitted by learned counsel for the petitioners in respect of part of cause of action that LoIA was issued and signed by the Chief Executive Officer and Chief Commercial Officer of respondent no.5 from their corporate office located at Nehru Place, New Delhi. When we peruse the LoIA dated 03.05.2024, issued by the Chief Executive Officer and Chief Commercial Officer of respondent no.5 in favour of the consortium respondent nos.6 and 7, what we find is that the said LoIA was issued from the office of respondent no.5 situated at 7th Floor, Tower A, Advant Navis Business Park, Sector 142, Noida, Uttar Pradesh. The said address of the office of respondent no.5 has been mentioned at the bottom of page 1 of the LoIA, and accordingly, the submission in this regard made by the petitioner, as we find, is not tenable.

28. Learned senior counsel for the petitioners has drawn our attention to the confidentiality undertaking dated 29.12.2023 executed by the petitioners at New Delhi, which was submitted to respondent no. 5 and on the said basis it has been stated that since the said undertaking was executed by the petitioners at New Delhi, the same would constitute a part of cause of action so as to enable this Court to entertain the instant writ petition. The said submission, in our considered opinion, is also not tenable for the reason that a writ is being sought to be issued to respondent no. 5, and any act done by the petitioners for fulfilment of the requirement for the purpose of participation in the bid is not material or essential or integral, so as to form part of cause of action.

29. It is also relevant to point out at this juncture that the respondents have taken a stand that as a part of fulfilment of the requirement of participation in the bid, all the bidders were required to give their undertakings, which could have been executed at any place, including the situs of the bidder. In this view of the matter as well, execution of the undertaking by the petitioners at New Delhi, does not, in our opinion, give rise to any cause of action for the petitioners to invoke our jurisdiction.

30. It has been next contended by the learned senior counsel for the petitioners that the MoU dated 22.11.2021 was entered into between respondent no.1 and respondent no.5 and the agreement for ATM facilities dated 28.02.2022 was entered into between respondent no.2 and respondent no.5, which were both executed at New Delhi. The submission, thus is, that since these two documents were executed at New Delhi between respondent no. 5 and respondent no.1 and 2 respectively, execution of such documents is part of the cause of action, and therefore, this Court will have jurisdiction to entertain instant writ petition. Such submission also does not impress us to entertain the writ petition for the reason that, these documents were executed between the respondent no. 5 and respondent nos. 1 and 2 respectively, prior to the issuance of the subject RFP itself. It is also to be noticed that for the purposes of deciding the lis between the parties and issues raised in this writ petition, any act between the respondents that occurred prior to issuance of the subject RFP which has no bearing on the issue involved will not constitute any

material or relevant fact, so as to form part of the cause of action, and therefore, the submission made in this regard on behalf of the petitioners is not tenable.

31. We may note that originally, on incorporation, the registered office of respondent no. 5 was located at Okhla Industrial Estate, Phase III, New Delhi, which, however, was later shifted to Noida. Taking a clue from this fact, it has been urged on behalf of the petitioners that the original location of the respondent no. 5 at Okhla Industrial Estate, New Delhi will amount to accrual of part of the cause of action to institute this petition at New Delhi. This submission, in our opinion, is also fallacious for the reason that at the time of issuance of the subject RFP and also at the time the proceedings were drawn and conducted pursuant to the subject RFP, the registered office of the respondent no. 5 was and is currently located at Noida, and therefore, merely because at the time of incorporation the registered office of the respondent no. 5 was located in New Delhi, it will not be a material fact so as to form part of cause of action. Thus, this submission is also irrelevant so as to determine the issue relating to territorial jurisdiction of this Court to entertain the instant writ petition is concerned.

32. Much emphasis has been laid by the learned senior counsel for the petitioners in respect of exclusive jurisdiction clause occurring at various places in the subject RFP to contend that once the parties have, by agreement, chosen Courts at Delhi to have exclusive jurisdiction to entertain, hold trial and adjudicate upon any dispute, the respondent no. 5 cannot be permitted to wriggle out of this exclusive jurisdiction clause.

33. The aforesaid submission also does not come to the rescue of the petitioners to invoke our jurisdiction under Article 226 of the Constitution of India, as it is a well settled principle of law that by agreement, neither any jurisdiction can be created in a Court which otherwise does not have any jurisdiction, nor jurisdiction can be ousted from a Court which otherwise has jurisdiction to try a dispute or lis between the parties.

34. The Honble Supreme Court in **Kusum Ingots & Alloys Ltd. (Supra)**, referring to an earlier judgment of the Apex Court in **Sri Nasiruddin v. State Transport Appellate Tribunal, (1975) 2 SCC 671**, has held that when a part of cause of action arises within one or the other High Court, it will be for the petitioner to choose his forum. Paragraphs 24 & 25 of **Kusum Ingots & Alloys Ltd. (Supra)**, are extracted herein below:

24. Learned counsel for the appellant in support of his argument would contend that the situs of framing law or rule would give jurisdiction to the Delhi High Court and in support of the said contention relied upon the decisions of this Court in Nasiruddin v. STAT [(1975) 2 SCC 671 : AIR 1976 SC 331] and U.P. Rashtriya Chini Mill Adhikari Parishad v. State of U.P. [(1995) 4 SCC 738] So far as the decision of this Court in Nasiruddin v. STAT [(1975) 2 SCC

671 : AIR 1976 SC 331] is concerned, it is not an authority for the proposition that the situs of legislature of a State or the authority in power to make subordinate legislation or issue a notification would confer power or jurisdiction on the High Court or a Bench of the High Court to entertain a petition under Article 226 of the Constitution. In fact this Court while construing the provisions of the United Provinces High Courts (Amalgamation) Order, 1948 stated the law thus: (SCC p. 683, para 37)

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. 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.

25. The said decision is an authority for the proposition that the place from where an appellate order or a revisional order is passed may give rise to a part of cause of action although the original order was at a place outside the said area. When a part of the cause of action arises within one or the other High Court, it will be for the petitioner to choose his forum.

35. Thus, as per the law laid down in **Sri Nasiruddin (Supra)**, which has been reiterated in **Kusum Ingots & Alloys Ltd. (Supra)** by Honble Supreme Court, freedom to choose a particular High Court can be said to be available to a petitioner only when part of cause of action arises within one or the other High Court. In the absence of part of cause of action arising in one or the other High Court, the petitioner will have no freedom to choose the High Court to institute the

proceedings under Article 226 of the Constitution of India. In our discussions made and for the reasons given in the preceding paragraphs, we have already held that no part of cause of action can be said to have accrued to the petitioners within the territorial jurisdiction of this Court in New Delhi so as to allow the petitioners to invoke our jurisdiction for instituting the instant writ petition, and accordingly, we are of the opinion that the petitioners cannot be permitted to choose between this Court and the jurisdictional High Court to institute the proceedings of the instant writ petition.

36. We may also refer to the legal principles laid down by the Honble Supreme Court in **A.B.C. Laminart (P) Ltd. (Supra)**, wherein it has been held that an agreement to oust the jurisdiction of the Court will be unlawful and void, being against public policy if such Court have otherwise jurisdiction to entertain a dispute. It has further been held in **A.B.C. Laminart (P) Ltd. (Supra)** that where parties to a contract agreed to submit the disputes to a particular jurisdiction, which would otherwise be a proper jurisdiction under law, their agreement, to the extent they agreed not to submit to other jurisdictions, cannot be said to be void as public policy however if, on the other hand, the jurisdiction the parties agree to submit to, would not otherwise be proper jurisdiction to decide disputes arising out of the contract, it must be declared as void being against public policy. Paragraph 16 of **A.B.C. Laminart (P) Ltd. (Supra)** is extracted herein below:

16. So long as the parties to a contract do not oust the jurisdiction of all the courts which would otherwise have jurisdiction to decide the cause of action under the law it cannot be said that the parties have by their contract ousted the jurisdiction of the court. If under the law several courts would have jurisdiction and the parties have agreed to submit to one of these jurisdictions and not to other or others of them it cannot be said that there is total ouster of jurisdiction. In other words, where the parties to a contract agreed to submit the disputes arising from it to a particular jurisdiction which would otherwise also be a proper jurisdiction under the law their agreement to the extent they agreed not to submit to other jurisdictions cannot be said to be void as against public policy. If, on the other hand, the jurisdiction they agreed to submit to would not otherwise be proper jurisdiction to decide disputes arising out of the contract it must be declared void being against public policy. Would this be the position in the instant case?

37. As a corollary to what has been held by Honble Supreme Court in **A.B.C. Laminart (P) Ltd. (Supra)**, we can safely conclude that parties to a dispute can, by agreement, neither create jurisdiction in a Court, which otherwise has not been conferred with such jurisdiction, nor can the parties oust the jurisdiction of a Court which otherwise has the jurisdiction to entertain a dispute.

38. In the instant case, as already discussed above, since no cause of action can be said to have accrued to the petitioners within the territorial jurisdiction of this Court

at Delhi, no benefit can be derived by the petitioners to invoke the exclusive jurisdiction clause occurring in the subject RFP and, therefore, the submission based on the same is highly misconceived.

39. For the reasons given and discussions made above, we hold that the instant writ petition is not maintainable before this Court. Resultantly, the writ petition along with pending application(s), if any, is hereby dismissed.

40. However, it is needless to observe that notwithstanding dismissal of the instant writ petition by this Court, it will be open to the petitioners to raise their dispute and seeks redressal of their grievances by instituting appropriate proceedings before any other Court/forum including before the jurisdictional High Court.

41. There shall be no order as to costs.