

**BEFORE THE DEBTS RECOVERY**  
**APPELLATE TRIBUNAL, AT: MUMBAI**  
**Present: Mr Justice Ashok Menon, Chairperson**

**Misc. Appeal No. 29/2014**

**Between**

MSTC Ltd. ... Appellant/s

V/s.

Standard Chartered Bank ... Respondent/s

Mr Gaurav Joshi, Senior Counsel along with Mr Rohit Gupta & Mr Amit & Ms Anamika Singh & Ms Nasrin Shaikh, i/b M/s Indus Law, Advocate for Appellant.

Mr Tushad Cooper, Senior Counsel along with Ms Radhika Gupta & Ms Rashika Bajpai, i/b M/s Khaitan & Co., Advocate for Respondent.

**-: Order dated: 03/04/2023:-**

MSTC Ltd, a government of India Enterprise under the Union Ministry of Steel, New Delhi and incorporated as a Company, is here in appeal challenging the order of the Ld. Presiding Officer, Debts Recovery Tribunal-I, Mumbai (D.R.T.) dated 26.09.2013 in I.A. No. 33/2013 in Original Application (O.A.) No. 43/2012.

2. The Appellant had, in the aforesaid I.A. No. 33/2013 raised an issue of lack of territorial jurisdiction for the D.R.T. to entertain the O.A. filed by the Respondent Standard Chartered Bank seeking recovery of amounts allegedly due to it from the Appellant. The Ld. P.O. in the impugned order found the contention of the Appellant unsustainable, and hence, dismissed the application. The Appellant is aggrieved, and hence in appeal.

3. The facts in a nutshell, essential for the disposal of this appeal are thus:

The above-mentioned O.A. was filed by the Respondent Standard Chartered Bank for recovery of a sum of ₹191,03,54,070.96 from the Appellant. I.A. No. 33/2013 was filed by the Appellant contending that the D.R.T. has no territorial jurisdiction to entertain the O.A. because no part of the cause of action concerning the transaction between the Applicant and the Defendant arose in Mumbai and that the dispute between them is taken cognizance of in the Civil Suit No. 7667/2012 pending before the 1<sup>st</sup> Civil Judge (Senior Division), Alipore, Kolkata. The Appellant contends that the Receivable Purchase Agreement (RPA) executed on 29.08.2008, which is the subject matter of the claim raised by the Respondent herein in the O.A. and all connected transactions about the said RPA were performed and concluded at Kolkata where the Appellant company is situated.

4. The Applicant resisted the plea of lack of jurisdiction by contending that the RPA as well as the various memorandum of agreements with some associates in India took place in Mumbai. The associates connected with the aforesaid RPA have their offices in Mumbai, the business orders for all such transactions were given from Mumbai and finally, the articles were dispatched from Mumbai. It is pointed out that a substantial part of the cause of action had arisen in Mumbai and hence, the D.R.T. at Mumbai had territorial jurisdiction to entertain the Application filed by the Applicant.

5. The Ld. Presiding Officer, in the impugned order, found that the contentions raised by the defendant challenging the territorial jurisdiction of the D.R.T. to entertain the O.A. were not sustainable and consequently dismissed I.A. No. 33/2013 and hence, this appeal.

6. This Misc. Appeal was heard by this Tribunal and vide order dated 03.02.2017 dismissed it as being devoid of merits.

7. The Appellant filed a Writ Petition No. 1804 of 2017 before the Hon'ble Bombay High Court challenging the order of this Tribunal dated 03.02.2017. It was observed that while considering the appeal this Tribunal had a photocopy of the RPA dated 29.08.2008 which is the subject matter of the dispute. A copy of the Agreement was filed along with an additional affidavit before the Hon'ble High Court on 31.10.2018 on behalf of the Respondent bank. In the affidavit, it was stated that on reviewing its record, it is located the executed version of the said agreement. The Ld. senior counsel appearing for the Appellant submitted before the Hon'ble High Court that the executed agreement produced by the bank has certain portions which are not found in the photocopy. The Division Bench of the Hon'ble High Court observed that this Tribunal should be given an opportunity to consider the executed version of the RPA dated 29.08.2008 and revisit the issue of jurisdiction raised by the petitioner. Under the circumstances, with consent and without prejudice to the rights and contention of both parties, the order of this Tribunal dated 03.02.2017 was cautioned

set aside and the matter was remanded for de novo consideration on the issue of jurisdiction giving liberty to the parties to raise all points.

8. Consequent to the remand, the erudite argument of Mr Gaurav Joshi Ld. Senior Counsel appearing for the Appellant and Mr Tushad Cooper, Ld. Senior Counsel appearing for the Respondent bank was heard at length. Records perused.

9. The Respondent bank while filing the Original Application was required to disclose the cause of action. Mr Joshi points out that, in para 3 of the application it is stated that “whilst, the defendant carries on business in Kolkata, it also has a branch in Mumbai. Under the terms and conditions of the Receivable Purchase Agreement dated 29.08.2008, the monies are payable to the Applicant’s branch in Mumbai. Whilst, the Applicant has, in accordance with the terms of the Receivable Purchase Agreement dated 29.08.2008, debited the account of the defendant in Kolkata, the Applicant’s (Mumbai branch) has by its notice dated 10.03.2012 called upon the defendant to discharge the aforesaid debt.”

10. According to the Appellant, the O.A. fails to reflect that the RPA was executed in Mumbai or through its Mumbai branch. The said story of the RPA being executed in Mumbai was concocted during the hearing of the matter. It is also submitted that nowhere in the O.A. has the Respondent mentioned the transaction of Bills of Exchange or any reference to the insurance policy, for conferring jurisdiction upon D.R.T.-I Mumbai.

11. In the impugned order, it was observed that the RPA although initiated in Kolkata, was signed in Mumbai. Mr Joshi points out that nowhere is it so mentioned in the O.A. Likewise, the finding in the impugned order that the insurance policy was issued by ICICI Lombard, Mumbai branch is also not a part of the pleadings in the O.A. the finding that the statement of account is shown at a branch in Mumbai is also pointed out to be contrary to the O.A. as the statement of account produced by the Respondent shows the account of the Appellant maintained in the Kolkata branch and the Respondent bank has not produced any account of the Appellant being maintained in the Mumbai branch. The impugned order is also observed that the concerned branch of the Respondent bank is situated in Mumbai as per the definition in the RPA and therefore Mumbai shall be the jurisdiction if a dispute arises. Mr Joshi points out that the RPA has been executed in Kolkata and that the statement of account produced by the Respondent bank clearly shows that the account of the Appellant was maintained in Kolkata. Furthermore, it is pointed out that the insurance policy relied upon by the Respondent has been issued from New Delhi. That apart it is argued by Mr Joshi that even assuming without admitting that the address of the ICICI Lombard as mentioned in the insurance policy is to be considered for determining jurisdiction, such jurisdiction would vest not in D.R.T.-I, Mumbai but in D.R.T.-II, Mumbai. Mr Joshi points out that it is evident from the aforementioned facts that the findings of the Ld. Presiding Officer is incorrect and contrary to the record. And, therefore, it is urged that the impugned order deserves to be set aside. Mr Joshi also takes exception to the

grounds taken by the Respondent for the 1<sup>st</sup> time in appeal without being contended in the O.A. The RPA annexed to the Original Application is not the final executed version and this has been admitted by the Respondent as well. In fact, the Respondent was always in the custody of the final and executed RPA but for reasons best known to it the Respondent never produced it until the matter reached the High Court from the conduct of the Respondent bank that it has deliberately concealed the final executed RPA and obtained orders from the D.R.T. as well as this tribunal by misrepresenting facts and producing documents that were incomplete, incorrect and unreliable, submits the Ld. Senior Counsel. It is further argued that the Respondent bank had even filed I.A. No. 303 of 2017 in the O.A. for reading secondary evidence in respect of the RPA. The reason cited in the said application for not producing the original RPA in evidence was that the same is not traceable despite the best efforts of the bank. Another application was filed as I.A. No. 958 of 2017 for impounding the RPA because it is insufficiently stamped under the Maharashtra Stamp Act, 1958. Both these applications are still pending before the D.R.T. The Ld. Counsel points out that the RPA was executed at Kolkata on the stamp paper of West Bengal and that it was executed by the Kolkata branches of the Appellant and the Respondent. The RPA was to be performed in Kolkata, the monies were received in Kolkata the bill of exchange and the memorandum of agreement, mention the Kolkata branch and monies were payable in Kolkata and that the account of the Appellant was debited in Kolkata. It is also specifically mentioned

in the RPA that the monies are payable to the bank and the bank means the branch in Kolkata. The performance of the contract is on account of payable on the payable is expressly or impliedly payable in Kolkata. It is also alleged that in any event a third party transaction cannot be construed as a cause of action for the proceedings under the RPA. The cause of action for the said O.A., according to the Appellant is non-payment of the debt by the Appellant which was required to be paid in the accounts maintained with the Respondent at Kolkata. The case of the Respondent that notice of demand has been issued by the Respondent from its Mumbai branch is no reason to have jurisdiction in Mumbai. Unilateral action of the Respondent cannot vest the Tribunal in Mumbai with the jurisdiction to try and entertainment. Even otherwise the notice has been issued to the concerned office of the Appellant situated in Kolkata. Assuming without admitting that the unilateral act of the Respondent for having sent the notice from Mumbai would confer jurisdiction in Mumbai, the notice being sent from the office of the Respondent in the Bandra Kurla Complex branch falls within the jurisdiction of D.R.T.-III and not D.R.T.-I, Mumbai. It is submitted that the claim under the insurance policy has no nexus with the reliefs sought in the O.A. and therefore, the Respondent cannot state that the cause of action arose upon the repudiation of the insurance claim by the ICICI Lombard at Mumbai. It is pointed out that the insurance policy was signed in New Delhi and has been issued in favour of the Appellant at its address in Kolkata and the co-insured is the Respondent bank, in New Delhi. For that reason, also the cause of action would not arise

in Mumbai, submits the Ld. Senior Counsel.

12. The Respondent relies on several bills of exchange to establish that the Tribunal at Mumbai has jurisdiction. Mr Joshi submits that the bills of exchange have no correlation with the cause of action based on which the O.A. has been filed. Admittedly, the O.A. is not filed for the dishonour of the bills of exchange, submits the Ld. Senior Counsel. It is pointed out that the O.A. does not even mention the bills of exchange and that they are not even annexed to the application. Even as per the bills of exchange, payments were to be made by the foreign buyers in the Kolkata branch of the Respondent bank routed through their collecting bank. It is submitted that since the location of sale and purchase between the customer and borrower can be anywhere, the same cannot be the basis for determining the jurisdiction for the bank to file recovery proceedings against its borrowers. Further, the default by the customers to make payment to the borrower cannot be construed as a cause of action for the bank to file recovery proceedings against the borrower.

13. The Respondent had also tried to rely upon the purchase orders which pertain to the transaction between the Appellant and its buyers. Mr Joshi would argue that if the contention of the Respondent is to be accepted, then jurisdiction is sought to be created based on where the customer of the borrower resides or where the purchase contract with the customer of the borrower is executed, then the entire country will have jurisdiction to decide the bank's claim. It is stated that the fact that payments received by the



Respondent bank from the buyers ultimately through the NOSTRO account maintained by the Respondent's branch in Mumbai at its own discretion, unilaterally would also not give jurisdiction to the D.R.T. in Mumbai because the dispute between the Appellant and the Respondent is solely based on the RPA and not on any action taken by the buyers.

14. Mr Joshi submits that it is a well-settled law that the facts which have no bearing with the *lis* or the dispute involved in the case do not give rise to a cause of action. *Sirsa* conferred territorial jurisdiction on the court concerned and that not every fact leads to *ipso facto* conclusion in the cause of action.

15. The Ld. Senior Counsel appearing for the Appellant relies on the decision of the Hon'ble Supreme Court in *Union of India and Ors vs. Adani Exports Ltd. and another* (2002) 1 SCC 567 wherein the Hon'ble Supreme Court relying on an earlier decision of the Apex Court in *Oil and Natural Gas Commission vs. Utpal Kumar Basu* (1994) 4 SCC 711, observed thus:

“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 of action so as to empower the court to decide the 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 any 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 would confer territorial jurisdiction on the courts at Ahmedabad.”

16. Pointing out to the photocopy of the RPA which was produced earlier by the Respondent and the one which is produced along with an affidavit before the High Court, the Ld. Senior Counsel submits that it is only during the hearing of the Writ Petition that the Ld. Senior Counsel appearing for the Respondent bank submits that the copy of the RPA annexed to the proceedings before the D.R.T. is not signed and executed by the Respondent although its case throughout was that the same was executed by the Respondent at Mumbai giving rise to the cause of action in Mumbai. It was further argued for the Respondent that there are 2 sets of originals of the said RPA and that the parties exchange their respective executed original sets of the RPA with each other for the counter signature of the other party thereon. The Respondent had earlier in the O.A. produced a copy of the RPA which was only a photocopy and had sought permission to secondary evidence concerning the RPA as the original was not traceable. The contention that there were two originals which were exchanged between the parties is not a case that was pleaded in the O.A. Given this submission, the Appellant had addressed a letter to the Respondent on 12.06.2018 calling upon it to produce any document evidencing the execution of the original set of RPA by the Respondent and the proof of dispatch in respect to the exchange of the original set of the RPA by the Respondent to the Appellant. There was no response to that letter. It was only consequent to that, that the Respondent produced the original RPA when directed by the Hon'ble High Court. The version that was produced had the

Mumbai branch address of the Respondent bank struck off and instead, the Kolkata address mentioned. The Respondent has thus attempted to create confusion as if there are 3 different versions of RPA. It is only the affidavit filed along with the RPA produce before the Hon'ble High Court that the Respondent bank comes up with a version that the RPA appears to contain certain modifications in the title which apparently have only been signed by the Appellant's authorised representative. It is based on such submission and the belated production of the RPA that the Hon'ble High Court was pleased to remand the matter back to this Tribunal for fresh consideration. The Ld. Senior Counsel Mr Joshi submits that there has been a concerted attempt to mislead this Tribunal by making misrepresentations. It is pointed out that the RPA now produced depicts a completely different picture as opposed to the case of the Respondent and the findings recorded in the impugned order. The RPA indicates that it was executed in Kolkata and is operated through the Respondent's branch in Kolkata. The suggestion of the Respondent that there has been an interpolation or modification of the RPA by the Appellant has no proof or pleading. The RPA would demonstrate that it was written and executed in Kolkata on stamp papers purchased from West Bengal. The Ld. Senior Counsel also points out that the entire bundle of facts pleaded, however, need not constitute a cause of action as what is necessary to be proved is material facts whereupon a proceeding would lie. He also relies on the decisions in *Eastern Coalfields Ltd. & Ors vs. Kalyan Banerjee* (2008) 3 SCC 456 and *Kusum Ingots & Alloys Ltd. vs. Union of India* (2004) 6 SCC 254.

17. The Ld. Senior Counsel for the Appellant would urge that the Tribunal could rely upon only the complete executed version of the RPA. It is submitted that although the definition of 'Bank' in the RPA refers to the branch in Mumbai, it is clear from the recital that the Standard Chartered Bank was acting through its Kolkata branch and its successors and assigns (the 'Bank'). The Ld. Senior Counsel submits that the rule of construction establishes that when there is a conflict between an earlier clause and later clauses and it is not possible to give effect to all of them, then the earlier clause must override the later clauses and not vice versa. In support of that, the Ld. Senior Counsel relies on the decision *Radha Sundar Dutta vs. Mohd. Jahadur Rahim & Ors AIR 1959 SC 24*. It is submitted that the Respondent was trying to confer jurisdiction on the D.R.T. at Mumbai by relying on an incomplete RPA which was produced with the O.A. and by disregarding the existence of the final executed original RPA. Relying on the decision *Patel Roadways Ltd Bombay vs. Prasad Trading Company & Ors (1991) 4 SCC 270*, the Ld. Senior Counsel argues that parties cannot confer jurisdiction on courts. Furthermore the Ld. Senior Counsel submits that if a contract consists of a printed form with cyclostyled amendments, typed additions and deletions, and handwritten corrections, an endeavour shall be made to give effect to all the provisions, then one should proceed on that assumption that the printed form contained the original terms, and changes thereto were incorporated by the cyclostyled amendments, followed by changes by typewritten additions and lastly the handwritten additions, this is binding on the parties. He relies on the decision of *M.K. Abraham & Co vs. State of*

*Kerala & Ano. 2009 SCC OnLine SC 1250*. In the instant case after printing the content of the agreement, there are handwritten additions and therefore the handwritten changes in the RPA would prevail submits the Ld. Senior Counsel. It is also submitted that the conduct of the parties is important to understand the true meaning of the document for which the Ld. Senior Counsel relies on the decision *Abdulla Ahmed vs. Animendra Kissen Mitter 1950 SCC OnLine SC 2*. The Ld. Senior Counsel urges that the intention of the parties may be collected from the language of the instrument and may be elucidated by the conduct they have pursued. It is further submitted that nothing can prevent the court from looking into the subsequent conduct or actions of the parties to find out the meaning of the terms of a document when there is a latent ambiguity. In support of this submission, the learned counsel lies on the decision of *Godbra Electricity Co Ltd. Vs. State of Gujarat (1975) 1 SCC 199*.

18. Mr Tushad Cooper, the Ld. Senior Counsel appearing for the Respondent submits that the entire jurisdictional challenge raised by the Appellant is frivolous and untenable. It is submitted that the Appellant had attempted to canvas the submission that there has been a deliberate suppression of the original (modified) RPA to obtain orders from the D.R.T. and the RPA was ultimately produced by the Respondent only under compulsion in the pending Writ proceedings. It was also attempted to submit that the rights and obligations of the parties are governed by the version embodied in the original (modified) RPA. And it was further attempted to establish that the D.R.T. would have to determine whether in the

event of the original (modified) version of the RPA being held to be determinative of the rights and obligations of the parties, would have jurisdiction to determine the present O.A.

19. Mr Cooper argues that there was no deliberate suppression of the RPA. It was voluntarily produced by the Respondent before the Hon'ble High Court during the hearing of the Writ Petition. When the Respondent filed the O.A. on 13.03.2012, the original RPA was not traceable and the same was filed based on a photocopy available with the Respondent at the relevant time. It is submitted that the Appellant had proceeded to file a suit before the Civil Judge (Senior Division) at Alipore in Kolkata on 03.04.2012. In that title suit the Appellant had significantly relied on and referred to an identical version of the RPA entered into between the Appellant and the Respondent and had annexed the copy thereto. The Respondent had filed an interlocutory application as I.A. No. 125/2012 for interlocutory reliefs in the O.A. The Appellant had filed a reply to this I.A. No. 125 of 2012 in which the Appellant has referred to and relied upon the same RPA that it had been earlier relied on in the title suit. The Ld. Senior Counsel points out that even in the written statement filed in the O.A., the Appellant did not raise any dispute as to the RPA produced by the Respondent. A perusal of the aforesaid circumstances would indicate that the parties were and *ad idem* on the terms of the said RPA. The version relied upon by the Respondent is identical to the version relied upon by the Appellant only with the solitary difference being that the version produced by the Respondent, did not bear execution of an authorised signatory

of the Respondent, whereas the version relied upon by the Appellant, exhibited execution by both the Appellant as well as the Respondent. Mr Cooper submits that it is obvious that both parties bona fide believed and relied on the unamended version of the RPA. It is only when the Appellant filed a Writ Petition in after the parties had concluded their arguments and the Writ Petition was reserved for orders and then adjourned again, the Respondent cost a further search to be undertaken of its records to locate the modified RPA in the circumstances as more particularly set out in the additional affidavit filed the time of producing the RPA before the Hon'ble High Court. This would indicate that the Respondent had produced the RPA voluntarily without any compulsion. From the chronology of the events, it is adequately clear that there was no wilful suppression on the part of the Respondent to produce the modified RPA on record. Further, it is submitted that the unamended and modified version of the RPA is identical in all aspects, save except for a modification in the party's description as to the place of the execution of the RPA. The said modification was affected unilaterally as evident from the fact that the said modification is countersigned only by the Appellant's authorised signatory and does not bear any signature of the Respondent's authorised signatory. The production of the modified RPA voluntarily would indicate that there was no attempt at suppression by the Respondent.

20. Mr Tushad Cooper would urge that the modified RPA was amended unilaterally as is evident from the fact and that the said

modification therein has been countersigned only by the Appellants authorised signatory and therefore, the parties are to be governed by the terms outlined in the unamended version of the RPA. From the conduct of both the parties as is evident from the pleadings in the O.A. as also from the civil suit filed by the Appellant, the parties were *ad idem* as to the real agreement between the parties and had acted based on the unamended version. The Appellants had not raised any objection or dispute whatsoever as to the version relied upon by the Respondent along with the O.A. which also would indicate that they had accepted the copy of the RPA produced by the Respondent with the O.A. as the true version. Pointing out to the decision of *Radha Sundar Dutta* (supra) Mr Cooper submits that the principle laid down in the said decision applies only when there is a contradiction between the clauses and the agreement cannot be read harmoniously. In the RPA there is no such contradiction and therefore the argument that the earlier clause would prevail over the later clauses has no application to the facts and circumstances of the present case. Since the parties have earlier relied upon the same version of the RPA which was produced with the O.A., the decision in *M.K. Abraham* (supra) to the effect that the handwritten terms would prevail over the printed terms has no application. Since both the parties had relied upon the unamended version of the RPA while filing the O.A. as also while filing the civil suit, the decision in *Abdulla Ahmed* (supra) to contend that the subsequent conduct of the parties would be relevant to consider the terms of the contract would rather militate against the Appellant's contention.



21. Mr Tushad Cooper would then submit that even assuming on a demurrer that the parties are bound by the modified version of the RPA, the D.R.T. at Mumbai would have jurisdiction to entertain the O.A. the Ld. Senior Counsel points out that it is settled law that cause of action means every fact which if travellers would be necessary for the Plaintiff to prove in order to support his right to the judgment of the court and that the issue of decision is to be determined on Act collective reading of the whole plaint/pleading. In support of this argument the Ld. Senior Counsel relies on the decisions in *ABC Laminart (P) Ltd. & Anr. vs. AP Agencies, Salem* (1989) 2 SCC163, *Om Prakash Srivastava vs. Union of India and Anr.* (2006) 6 SCC 207, *Navinchandra Majitha vs. State of Maharashtra and Ors.* (2000) 7 SCC 640 and the decision of the Hon'ble Delhi High Court in *Dashmesh Mechanical Works* 2009 SCC OnLine 4384 to bolster his arguments.

22. After having heard the Ld. Senior Counsel appearing on both sides and the Catena of decisions relied upon by them and on perusal of the records available, there is no doubt that cause of action is what determines the territorial jurisdiction of litigation. The cause of action in litigation is not just one instance or incident leading to the litigation. Every fact in litigation is important and has to be collectively read from the pleadings in the suit.

23. The primary reason for filing the O.A. before the D.R.T. by the Respondent bank is the refusal by the insurance company ICICI Lombard to honour its obligation under the insurance policy. Though the insurance policy was originally issued in favour of the

Appellant in terms of the RPA, the Respondent was subsequently added as a co-insured and designated as the lead insured under the policy. As per the terms of the RPA, the Respondent was to factor invoices raised by the Appellant on the foreign buyers and make payment thereof to the Appellant. In turn, those foreign buyers were to pay the invoice amount to the Respondent. It is therefore clear that the financial transaction between the Appellant and Respondent is not an ordinary loan transaction. The insurance policy issued by ICICI Lombard was to secure the entire transaction as per the RPA. The Appellant had exported goods to foreign buyers and raised bills upon such buyers under the RPA. On acceptance of those bills raised by the Appellant, the foreign buyers agreed to make payment to the Respondent within a maximum period of 170 days from the respective dates of shipment. The bills were placed before the Respondent for factoring. The Respondent under the RPA paid 95% of the amount under the bills raised by the Appellant. The Respondent alleges that the buyers defaulted on payment of the requisite amount raised as per the bills and in consequence, the Respondent raised the claim with the insurance company which was repudiated by the company. The RPA provided air right to the Respondent to realise the amount from the Appellant in case of remuneration by the insurance company. The claim against the Appellant to pay the amount would arise only in consequence of the refusal by the insurance company to pay the amount. ICICI Lombard had rejected the demand by the Respondent vide its letter dated 03.03.2011. Pursuant to the rejection of the insurance claim made by the Respondent a demand

letter was issued to the Appellant on 10.03.2012 calling upon it to reimburse the Respondent since the Respondent had debited into the Appellants bank account an amount of ₹191,57,80,069.02.

24. The argument that the reputation of the insurance company to pay the amount to the Respondent is not a part of the cause of action is fallacious. Only on the insurance company failing to pay the amount as claimed by the Respondent could the Respondent have claimed the amount from the Appellant as agreed by them in the RPA. The fact that the insurance policy was signed in Delhi and that the same was communicated to the Respondent in Kolkata is no reason to state that no portion of the cause of action by declining the claim put forth by the Respondent by the insurance company, had arisen in Mumbai.

25. It is also pertinent to note that all the purchase orders for goods placed by the associates namely Space Mercantile Company Pvt. Ltd., Joshi Billion Gems & Jewellery Pvt. Ltd., Bond Gems Pvt. Ltd. and K.A. Malle Pharmaceuticals Ltd., all based in Mumbai, and the Appellant had acted through their branch office in Mumbai for those transactions. The goods were also dispatched from Mumbai Port. The payments for goods dispatched from Mumbai were received in the account of the Respondent's branch in Mumbai. The Appellant's factoring account with the Respondent may be the place where the statement of account is maintained by the Appellant in Kolkata but that alone may not be sufficient to conclude that the cause of action arose only in Kolkata.

26. It is pertinent to note that even if the amended RPA indicating

that it was signed in Kolkata is accepted to be true, in the definition clause, “Bank” is defined as the Standard Chartered Bank acting through its branch at 90, Mahatma Gandhi Road, Fort, Mumbai 400001 or through any of its branches in India which includes its successors and assigns. Not only that, the term “Bank” throughout the RPA refers to the Respondent in Mumbai. Even if it is contended that the RPA was signed in Kolkata on stamp papers purchased from Kolkata, it is only a part of the cause of action. It would in no way oust the jurisdiction of Mumbai. The argument that the business transactions had taken place in Mumbai and that the shipment was sent from the Port of Mumbai and that the bills of exchange were all drawn in Mumbai are all extraneous to the litigation is not acceptable. The fact that goods were dispatched under the memorandum of agreements entered into by the Appellant in consequence of the RPA in Mumbai to the associates, is not a fact that is remotely connected to the transaction between the Appellant and the Respondent mentioned in the RPA. The transactions of exporting goods, the realisation of money, insurance of the transaction with the ICICI Lombard, default on the payment of the money, and thereafter rejection of the insurance claim by the insurance company would all, in the opinion of this Tribunal, fall into the category of bundle of facts which would constitute a cause of action giving rise to a dispute which would confer territorial jurisdiction on the D.R.T. at Mumbai.

27. I find no reason to interfere with the findings of the D.R.T. in concluding that the Respondent has rightly filed the O.A. in

Mumbai. The consequent production of the revised or amended RPA is definitely not going to oust the jurisdiction of D.R.T.-I, Mumbai.

Resultantly, the miscellaneous appeal has no merits and is dismissed.

Sd/-  
Chairperson

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DRAAT MUMBAI