



* IN THE HIGH COURT OF DELHI AT NEW DELHI
Reserved on: 22nd February, 2024
% Pronounced on: 16th May, 2024

+ **CS(COMM) 735/2018**

SSIPL LIFESTYLE PRIVATE LIMITED

Having its registered Office at
B1/F4, Mohan Cooperative Industrial Area
Main Mathura Road, New Delhi-110044

..... Plaintiff

Through: Mr. Alishan Naquee, Mr. Rupal
Bhatia & Mr. Iman Naqui, Advocates.

versus

1. **VAMA APPARELS (INDIA) PRIVATE LIMITED**

Having its registered Office at Kanchenjunga,
72-Pedder Road, Mumbai-400026

..... Defendant No. 1

2. **MS. JAYA PARMANAND PATEL**

Director,
Vama Apparels (India) Private Limited,
Kanchenjunga, 72-Peddar Road,
Mumbai-400026

..... Defendant No. 2

Through: Mr. Gautam Dhamija, Advocate.

+ **CS(COMM) 736/2018**

SSIPL RETAIL LIMITED

Having its registered Office at
B1/F4, Mohan Cooperative Industrial Area
Main Mathura Road, New Delhi-110044

..... Plaintiff

Through: Mr. Alishan Naquee, Mr. Rupal
Bhatia & Mr. Iman Naqui, Advocates.



versus

1. **VAMA APPARELS (INDIA) PRIVATE LIMITED**
Having its registered Office at Kanchenjunga,
72-Pedder Road, Mumbai-400026 Defendant No. 1

2. **MS. JAYA PARMANAND PATEL**
Director,
Vama Apparels (India) Private Limited,
Kanchenjunga, 72-Peddar Road,
Mumbai-400026 Defendant No. 2

Through: Mr. Gautam Dhamija, Advocate.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

I.A. 2677 / 2021 (under Order VII Rule 10) in CS (COMM) 735 /2018 &

I.A. 2668 / 2021 (under Order VII Rule 10) in CS (COMM) 736 /2018

1. The aforesaid two Suits for recovery of Rs. 2,17,31,781/- and Rs. 3,38,73866/- along with interest, have been filed by *SSIPL Private Ltd.* and *SSIPL Retail ltd.* respectively, against *VAMA Apparels India Pvt. Ltd.*, based on ***Agreements and Addendum dated 22.04.2016***, entered into between the parties for supply of various products/apparels/garments, under the brand names “*Nike*”, “*Addidas*” and “*Sports Station*”, for sale from the *Vama Department Store*, at Kanchenjunga, 72, Peddar Road, Mumbai-400026.
2. However, subsequently, issues arose between the parties with respect to payment of outstanding dues and thus, VAMA issued Notice dated 21.08.2017, seeking refunds of the outstanding amounts. This was followed



by letter of Termination dated 20.10.2017, issued by SSIPL, which was followed by several communications/correspondences, including a Notice under Section 138 of the Negotiable Instruments Act for dishonour of a cheque for a sum of Rs. 5 lakhs, issued in acknowledgement of the part outstanding dues. Thus, the present two suits were filed on 17.02.2018 seeking recovery towards outstanding invoices, refund of security deposits and losses and damages caused.

3. ***By way of the present applications***, the defendants seek return of the Suit for want of territorial jurisdiction, as the parties had entered into an ***Agreement and Addendum*** dated 22.04.2016, wherein ***Clause 32*** provided for the ***Jurisdiction of Mumbai Courts exclusively***.

4. It is submitted by the defendant that the plaintiff has claimed that the novation/rescission of previous Contract was triggered on account of abysmal low sales-turn out by the defendants, which was contrary to their initial representation, causing losses to the plaintiff. However, as per their own admissions, an ***Understanding*** was arrived only with respect to "***3 Clauses***" and the Agreement dated 22.04.2016 was never rescinded.

5. It is claimed by the defendants that the plaintiff has cleverly sought to plead that because of the novation/rescission, the Original Agreement dated 22.04.2016, which included the ***exclusive jurisdiction clause***, have taken a back seat and the terms of the Invoices issued subsequently, vested ***jurisdiction in the Delhi Courts***.

6. It is submitted that the plaintiff has pleaded that this Court is vested with the territorial jurisdiction to try the present matter on the following grounds: -



- (i) *The terms and conditions stipulated in the Invoices raised by the plaintiff upon the defendants, mentioned the Courts in Delhi to have the jurisdiction;*
- (ii) *The plaintiff has its registered Office in Delhi;*
- (iii) *The discussions and correspondences with the defendants have been exchanged by the plaintiff from Delhi;*
- (iv) *The products have been supplied by the plaintiff from Delhi;*
- (v) *The payments and funds have been received by the plaintiff in Delhi in the bank of the plaintiff maintained and operated in Delhi, from the defendants; and*
- (vi) *The management discussions had taken place in Delhi.*

7. However, in view of the express terms of the Contract dated 22.04.2016, this Court has no *territorial jurisdiction* to entertain the present Suit, as the Agreement was never rescinded and is still binding upon both the parties. The plaintiff having its registered office in Delhi, would not confer jurisdiction to the Delhi courts in as much as the principal place of business of the Plaintiff is in Mumbai as is also mentioned in the Invoices relied by the Plaintiff.

8. It is further asserted that only the *Mumbai Courts* have the exclusive jurisdiction to adjudicate the present case as the Agreements dated 22.4.2016 were executed in Mumbai, goods were supplied by the Plaintiff from its Branch office in Mumbai; goods were delivered to the Defendant in Mumbai and thus, all the acts from formation of contract to its execution, have taken place in Mumbai. Therefore, it is argued that the Mumbai courts have exclusive jurisdiction to try and adjudicate the present case.

9. To buttress the submissions, Ld. Counsel for the Defendants have



placed reliance upon Begum Sabiha Sultan vs Nawab Mohd. Mansur Ali Khan &Ors. (2007) 4 SCC 343; Exphar SA and ors. Vs Eupharma Laboratories Ltd. & Anr. (2004) 3 SCC 688; Harshad Chimanlal Modi vs DLF (2005) 7 SCC 791; P. Anand Gajapathi Raju & Ors. Vs P.V.G. Raju & Ors. (2000) 4 SCC 539; and State of West Bengal vs Associated Contractors (2015) 1 SCC 32.

10. Thus, the defendants have sought the return of the plaints under *Order VII Rule 10*, CPC, 1908 with a direction to present the same to the court of requisite jurisdiction, in Mumbai, to adjudicate the present suits.

11. **The plaintiff in its Reply** has asserted that the defendants have failed to file the Written Statement and, in fact, their right to file the Written Statement has been struck off *vide* Order dated 13.07.2018. The present applications are only to delay the hearing and are not for the purpose of ousting the jurisdiction of this Court but to bring in their false and frivolous defences obliquely despite their right to file the Written Statement, having been struck off.

12. It is submitted that the plea of ouster of jurisdiction of this Court is also hopelessly barred by time. The defendants had filed the two Applications under *Section 8 of the Arbitration and Conciliation Act, 1996*, wherein also, the plea of ouster of territorial jurisdiction of this Court was taken, which was suitably addressed by the plaintiff in its Reply to the said applications.

13. It was asserted that because of the novated/ consolidated Understanding /Arrangement agreed between the parties, post termination of the Agreement and Addendum dated 22.04.2016, the claims of the plaintiff are not only not-arbitrable but also lie within the jurisdiction of this Court.



14. The *Exclusive Jurisdiction Clause* as contained in the original Agreement and Addendum dated 22.04.2016, already stands completely novated. Additionally, the unpaid Invoices clearly mention the jurisdiction of *Delhi Courts*.

15. It is also argued that this Court, *vide* its Order dated 19.02.2020 dismissing the Application under *S.8 of the Arbitration and Conciliation Act, 1996*, has observed that the disputes agitated in the present Suits do not arise from the Agreement and Addendum dated 22.04.2016 and, therefore, are not arbitrable. There is a clear finding that the claims of the plaintiff do not pertain to the Contract dated 22.04.2016 and, therefore, the Contract having been terminated, the jurisdiction for the maintainability of the Suits is dependent upon where the cause of action has arisen and also as mentioned in the Invoices on which the claims of the plaintiff are based.

16. It is, therefore, submitted that this Court has the territorial jurisdiction and the present application is without merit and is liable to be dismissed.

17. In support of the arguments advanced, the Id. Counsel for the plaintiffs have relied upon *Mis Meyer Apparel Ltd. vs Mis Panchanan Internaltional Pvt. Ltd.* delivered on 1 1.03.2020 in CM(M) 1511 of 2018; *Ramdayal Umraomal vs Pannalal Jagannathji* decided on 12.01.1979 in Civil Revn. No. 207 of 1976 by Madhya Pradesh High Court; *Auto Movers Vs. Luminous Power Technologies Pvt. Ltd.*(CM(M) 604/2020); *Mis. RSPL Ltd. vs Mukesh Sharma and Anr.* delivered on 03.08.2016 in FAO(OS) 145; *Mis Allied Blenders and Distillers Pvt. Ltd. vs Prag Distillery Pvt. Ltd. and Anr.*, 2017(5)R.A.J 183 (Del); and *Impressario Entertainment and Hospitality Private Limited v. Mocha Blu Coffee Shop*, CS(COMM) 733/2017.

18. **Submissions heard and judgments as well as written submissions**



by both the parties, perused.

19. The defendants, by way of the present applications, have raised a *preliminary challenge to the jurisdiction of this court to entertain the present Suits for Recoveries under Order XXXVII of CPC, 1908.*

20. *The first aspect for consideration is the novated Contract/ Agreement between the Parties.* To understand the contention of the defendants, pertinently one needs to refer to the assertions made by the plaintiff in the Plaints.

21. The *Plaintiff has submitted in the Plaint* that it is engaged in the business of *inter alia*, trading, marketing, retailing and sales of branded Footwear/Garments/Lifestyle products and accessories through various supply channels across India and the parties entered into an *Agreement and Addendum dated 22.04.2016* with the defendants, for sale of their products by the Defendants from their Store situated in Mumbai.

22. However, since the defendants were not able to achieve high sales turnout, discussions were held afresh between the plaintiff and the defendants and they realised that the arrangement mentioned in the Agreement and Addendum dated 22.04.2016 would not work from the business standpoint. Accordingly, the defendant No. 2 when confronted by the plaintiff, accepted and acknowledged her misrepresentations, rendering the Addendum and Agreement dated 22.04.2016 as legally voidable.

23. Thus, to discard/effectively overrule the Agreement and Addendum dated 22.04.2016, the parties agreed to relook at/novate the entire Agreement to arrive at a fresh *Understanding.*

24. Pursuant to the above discussions, the parties novated the Agreement and arrived at a fresh *preliminary novated Understanding/Arrangement*



w.e.f. July, 2016, which was operationalized from September, 2016 on the request of the defendants, which was as under: -

- (i) *The minimum guarantee amount agreed under the Agreement was done away with against a purely reduced product sales linked payment arrangement,*
- (ii) *No lock-in/assured payment linked to the sale was to be paid by the plaintiff, and*
- (iii) *The novated understanding/arrangement would be terminable at convenience as a pure business driven relationship.*

25. Thus, it becomes evident from the averments contained in the Plaint itself, is that after the Agreement and Addendum dated 22.04.2016 was signed by the parties, the sale turnout was abysmally low and thus, the parties agreed to the aforementioned ***three terms of doing away with the minimum guarantee and lock-in/ assured payment***, as was agreed in the original Agreement and Addendum dated 22.04.2016.

26. From the averments made in the Plaint itself, it is evident that only certain terms of the Agreement had been novated and the parties continued to do business under the ***Original Agreement and Addendum dated 22.04.2016***, with the clauses novated, by mutual consent. Clearly, the entire Contract was not rescinded. Therefore, the plea of the plaintiff that the original Contract was repealed is not borne out from its own averments in the Plaint. The parties admittedly have continued to do business pursuant to their Contract, till about 2017.

27. ***The natural corollary to the above, is that since the Original Agreement was never rescinded, the parties would remain bound by the original terms of the Agreement dated 22.04.2016.***



28. In light of this observation, the *second aspect for consideration* is *whether this Court has jurisdiction for the purpose of adjudicating the disputes between the parties, arising out of the Agreement dated 22.04.2016.*

“Place of Suing” under CPC, 1908 :-

29. The CPC, 1908 provides provisions to identify the Court of competent jurisdiction. The Jurisdiction of Civil Courts to try Suits, is governed by *Section 9 of CPC, 1908* which provides that, all courts shall have jurisdiction to try all suits of civil nature unless the jurisdiction is either expressly or impliedly barred. However, the extent of jurisdiction and the place of institution of suits is determined under *Section 15–20 of the CPC, 1908*, on the basis of the nature of the case, the pecuniary value of the suit, the territorial limitation and where the cause of action has arisen. *Section 15* pertains explicitly to pecuniary jurisdiction, *Section 16-18* deals with jurisdiction with respect to immovable properties and *Section 19* covers suits related to compensation for wrongs and movable property.

30. *Section 20 of the CPC, 1908*, being the residuary section, addresses situations where the *cause of action* arises from a breach of contract or business transactions and lays down the various jurisdictions of the Courts where a suit can be instituted. According to this section, if there is a breach of contract or *cause of action* arises, wholly or partly, within the jurisdiction of one Court, or if the defendant voluntarily resides, carries on business, or works for personal benefit within the jurisdiction of another court, the plaintiff has the option to file the suit in any of those courts.

“Exclusive Jurisdiction Clauses” :-

31. The parties while entering into a Contract, for the sake of convenience



and to avoid future confusion with respect to institution of suits in respect to disputes that may arise out of the Contracts, often agree to limit the place of legal proceedings to one place and forum by way of “*Exclusive Jurisdiction*” clauses in the Contract.

Interplay between Exclusive Jurisdiction Clauses and the Provisions of CPC, 1908 and ICA, 1872:-

32. Since, *section 28 of the Indian Contract Act, 1872*, makes agreements in restraint of legal proceedings void, issue with respect to the validity of such “*Exclusive jurisdiction clauses*”, conferring jurisdiction to one court to the exclusion of other courts that may have the territorial jurisdiction to entertain the disputes, was settled by the Apex Court in the case of *Hakam Singh vs. M/s. Gammon (India) Ltd.*, 1971 (1) SCC 286. The Court, while discussing the fundamental principles relating to “*jurisdiction*” in reference to Section 20 of the CPC, 1908, observed that the Courts would have jurisdiction to entertain the proceedings only in accordance with the provisions of CPC, 1908 and thus, the parties by way of “*Exclusive jurisdiction clauses*” cannot seek to confer jurisdiction to a court which was not the “*competent court of jurisdiction*” as per the provisions of the CPC, 1908. However, in cases where two or more Courts have the jurisdiction to try a Suit or proceeding as per the provisions of CPC, 1908, an Agreement between the parties to limit the jurisdiction to one court by way of *exclusive jurisdiction clause*, would neither contravene *Section 28 of the ICA, 1872* nor be contrary to public policy. It, was therefore, recognised that where two or more Courts have the jurisdiction, the parties may agree to limit the trial of the disputes to the jurisdiction of one Court to the exclusion of other.



33. This principle was followed in the case of Globe Transport Corpn. vs. Triveni Engg. Works, (1983) 4 SCC 707, wherein a similar clause limiting the jurisdiction to one Court, was held to be valid and effective.

34. Further, in A.B.C. Laminart (P) Ltd. vs. A.P. Agencies, (1989) 2 SCC 163, wherein it was held that where the *exclusionary clause* regarding the jurisdiction is clear and unambiguous and specific, it would be binding on the parties unless the absence of *ad idem* can be shown. It was further observed that while the use of words like '*alone*', '*only*', '*exclusive*' and *the like* make it easier to conclude that the parties have limited the jurisdiction to one Court, but even in the absence of such words, the maxim *expression unius est exclusio alterius*, (*expression of one is the exclusion of another*) may be applied. Therefore, when certain "jurisdiction" is specified in a Contract, an intention to exclude all others from its operation can be inferred and has to be construed in accordance with the agreed terms of the Contract.

35. Following A.B.C. Laminart (supra), the Apex Court in the case of R.S.D.V. Finance Co. (P) Ltd. vs. Shree Vallabh Glass Works Ltd., (1993) 2 SCC 130 reaffirmed that when there is choice of forum, it is certainly open to the parties to agree on the *exclusive forum* for settlement of disputes, but such an agreement may be clearly spelled out either by expression of words or by necessary implication. Ouster of jurisdiction of Courts cannot be lightly assumed or presumed; if there is a concluded Agreement, it would certainly operate as *estoppel* against the parties to the Contract.

36. Recently, the Calcutta High Court in the case of Shridhar Vyapaar Private Limited vs. Gammon India Limited, 2018 SCC Cal 11749, after referring to the various judgments including those discussed above, observed that the intention of the parties to exclude jurisdiction of other



Courts and to confer exclusive jurisdiction on a particular Court, must be given primacy. The *four exceptions* have been recognised to this exclusive jurisdiction clause viz., *firstly*, where one of the parties is able to establish ignorance of the clauses or that by conduct, it is evident that such clause had been inserted unilaterally in the Agreement by one party and not affirmed by the other party. The *second exception* would be where despite both the parties having agreed to confer exclusive jurisdiction on certain Courts, filing or continuing proceedings in the Court agreed upon would either be oppressive or cause insurmountable inconvenience to either of the parties. The *third exception* may arise from sheer practicality and common sense; where the evidence forming the basis of the dispute and the witnesses who would bring that evidence to light are located in a jurisdiction other than that agreed upon by the parties. The *fourth exception* would be where the parties have concurred to confer jurisdiction of a Court which was otherwise not competent to try the proceedings. These exceptions, however, are to the general rule that *the exclusive jurisdiction clause* would be binding if the parties at *ad idem*, had agreed to the said clause.

37. Thus, these judicial precedents created two categories of cases, first where no “jurisdiction clause” was agreed by the parties and second where there exists a valid jurisdiction clause/ ouster of jurisdiction clause, in the Agreement recording consensus of the parties. In the former, the place of institution of a suit would be determined by the provisions of CPC, 1908 while the latter would be governed by the expressly agreed terms and the jurisdiction clause of the agreement. Further, the clauses may either be inclusive or exclusive, i.e. may either expressly exclude other jurisdictions of other courts or include the jurisdiction of certain courts. The determining



factors are the **express agreement** and whether the parties were **ad idem in** limiting the jurisdiction to a particular Court. Only circumstances where the Exclusion Clause may be overlooked are the four exceptions as mentioned above.

38. It was quite evident from the appraisal of the Invoices and other documents relied upon by the plaintiff, that the *place of business* was Mumbai. All the business dealings were done by Mumbai branch of the Plaintiff Company and even the goods were supplied from the Office of the plaintiff at Mumbai to the defendant's office, which was also at Mumbai. Further, even the Agreement dated 22.04.2016 had also been executed at Mumbai, as has been indicated in the *opening clause* of the Agreement.

39. Part cause of action also arose in Delhi as has been explained by the plaintiff. The Courts at Mumbai as well as Delhi Courts, therefore had jurisdiction.

40. It would thus, be imperative to interpret the terms of the Agreement dated 22.04.2016 followed by Addendum, mutually agreed by the parties, to ascertain the jurisdiction in terms of the Contract. **Clauses 31 and 32** of the Agreement dated 22.04.2016 are relevant which read under: -

*“31. **ARBITRATION:** All disputes, differences and questions whatsoever which shall arise between the parties hereto during the continuance of this Agreement thereof or any clause or matter therein contained or the rights, duties and liabilities of either party in connection therewith shall be referred to the arbitration of three arbitrators. Out of three, one to be appointed and nominated by the First Party, another to be appointed and nominated by the Second Party and the third to be appointed and nominated by the said two arbitrators nominated and appointed by the parties above named. The arbitration proceedings shall be held in Mumbai and shall be in*



accordance with the subject to the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modifications(s) re-enactment thereof for the time being in force.

32. JURISDICTION: *The courts at **Mumbai** shall have **exclusive jurisdiction** in all matters arising out of this Agreement.”*

41. From the bare perusal of the aforesaid two Clauses, it is evident that the parties had agreed to vest the jurisdiction, "**exclusively**" to **Mumbai Courts**, to adjudicate disputes arising under the Agreement, which is valid as per the judicial pronouncements, as discussed above. Even the Arbitration proceedings were provided to be undertaken only at Mumbai Courts, further reinforcing that parties agreed for jurisdiction of Mumbai Courts to the exclusion of Delhi Courts.

42. The *first ground* on which the plaintiff has resisted the claim of Defendant to the jurisdiction is that the *original Contract got completely novated* and *Exclusive jurisdiction Clause* was rendered ineffective. However, from the contentions of the plaintiff itself, it is evident that the parties admittedly executed an express Agreement and Addendum 22.04.2016, some of the clauses which, as per the submissions in the plaint itself, stood only partly-novated. **Therefore, this exclusive jurisdiction Clause 32 remained binding and only Mumbai Courts within the territorial limits of which the parties did their business, are vested with the jurisdiction to determine the disputes inter se the parties.**

43. The second ground of the plaintiff is that in furtherance of Novation, the "**terms and conditions**" on the **Invoices**, indicated "**Jurisdiction; Delhi Courts**", as the parties had subsequently agreed that the Delhi Courts would have the jurisdiction.



44. *The fountain head of the conundrum are the subsequently generated invoices, which allegedly vested jurisdiction to the Delhi Courts.*

45. *Thus, the **core issue which arises for consideration** in the present factual scenario, is whether the jurisdiction clause printed/mentioned in the subsequently generated Invoices would supersede the exclusive jurisdiction Clause 32 (Mumbai) of the Agreement dated 22.04.2016?*

46. This aspect was considered in the case of Secretary Vikalanga Sevaka vs. Sheth, 1983 KLT 652, wherein the Court emphasised upon the presence of "*consensus ad idem*" of the parties while conferring/ousting/limiting the jurisdiction of Courts in such matters. It was observed that particular caution would be necessary, while adjudicating issue of jurisdiction, where a Clause is found to be contained in a printed form. It was observed that unless such printed form is *signed by both the parties or where a form printed by one party is signed by the other party and forwarded by the latter to the former and the printed form contains clear words conferring exclusive jurisdiction on a Court at any particular place or ousting jurisdiction of the Court at any other place*, it may be difficult to hold that the parties have agreed on such a term. It was highlighted that people who often sign the Order, containing a good deal of printed material, may not care to read what is printed in it. It cannot be always said that everything that is printed may be deemed to form part of the Contract. *Thus, it was held that where a form printed by one party is signed only by that party and delivered to the other party, without anything more it will be difficult for the Court to hold that there has been **consensus ad idem in regard to the particular clause**. However, only if there is something material to indicate acceptance or consent of the party who received the printed form, then the Court is free to infer with the*



jurisdictional clause contained in that printed form, amounted to an agreement between the parties. Thus, it was concluded that since there is nothing to show that the printed material was brought to the notice of the second plaintiff or that the second plaintiff had accepted the same, it could not be said that this Clause became an agreement *inter se* the parties.

47. Similar situation was considered in the case of United India vs. Associated Transport, AIR 1988 Ker 36, and it was held that the printed words contained in the ouster clause, without further affirmation by the parties, was simply not enough to bind the parties to such clause.

48. Recently, the Calcutta High Court in the case of Shridhar Vyapaar Private Limited (supra) Raipur and Nagpur were provided as the only Courts of jurisdiction. The Suit was filed in Calicut on the ground that the payments were made through RTGS into the bank account of plaintiff, maintained at IDBI Bank Park Street Branch. It was held that in the light of the expressly agreed exclusive jurisdiction clause, it was only Raipur and Nagpur Courts which had the exclusive jurisdiction and the Suit filed at Calicut, was found to be without territorial jurisdiction.

49. Thus, what emerges is that unless “*consensus ad idem*” gets reflected from the subsequently issued Invoices, mere mention of a State having jurisdiction in contradistinction to the main Contract, would not have the effect of nullifying the exclusive jurisdiction Clause. Further, this “*consensus*” cannot always be perceived from the Signatures obtained on such Order/Invoices, as these unilaterally generated Invoices might not be signed by the authorised parties or may be signed by the agents of the parties who *are not competent to modify the terms of the Original Contract*. Therefore, the clauses in the Original Agreement between the consenting



parties recording the intent of the parties to exclude all other courts, would be pre-eminent and clearly supersede any term merely printed on any bill/invoice, which does not distinctly record the consent of the parties. The unilateral addition of the clause by one party, without confirmation by the other party would necessarily fail on the touchstone of *consensus ad idem* and thus, would be of no consequence and would not bind the parties.

50. Thus, the above discussion warrants analysis of whether the parties were at “*consensus ad idem*” in agreeing to Delhi as mentioned in the Invoices to be the jurisdiction.

51. The perusal of the Invoices would show that the Invoices which have been unilaterally generated from the Mumbai address of the plaintiff, bear the signature of some agent on behalf of the plaintiff, which is supported by the stamp of the plaintiff-Company. There is another initial/signature on the Invoices which does not indicate as to who was the person accepting the Invoices. These Invoices may have been prepared by some authorised representative of plaintiff, are signed apparently by some representative of the defendant whose name is not even discernible on the Invoices. The original authorized representative of the plaintiff and the defendants are not the signatory to these Invoices. Mere signatures on Invoices by the agents/representatives of plaintiff and the defendants would not lead to any inference of there being any *consensus ad idem* between the authorized representatives of the parties competent to modifying the terms of the Contract to provide for the jurisdiction of Delhi Courts; *merely printing a Clause without being expressly agreed by the parties, would not confer any jurisdiction on the Delhi Courts.*

52. The plaintiff had also contended that this Court in its Order dated



19.02.2020 while adjudicating the Application under *Section 8 of Arbitration and Conciliation Act 1996*, has given a finding that the original Contract stood novated and the disputes in the present case do not relate to the original Contract. However, this argument is totally fallacious as there is no such observation in the said Order.

53. In the end, it may also be observed that **the case of the plaintiff also does not fall in any of the exceptions** crystallized in the case of *Shridhar Vyapaar Private Limited (supra)*. There is no averment in the plaint qua inconvenience or feasibility, or the plaintiff had not consented to the Exclusive jurisdiction clause in the Original Agreement.

54. Lastly, merely because this plea has been agitated after dismissal of the Application under Section 8 of the Arbitration and Conciliation Act, 1996 filed by the defendants and without there being any Written Statement of defendants on record, does not bar the defendant to raise this objection or for the court to consider whether this Court has the territorial jurisdiction.

Conclusion: -

55. In view of above discussion, it is held that, *firstly*, the parties are bound by the Original Agreement dated 22.04.2016 as the same was never rescinded/novated in toto and merely 3 clauses were amended subsequently by way of the Understanding. *Secondly*, the *exclusive jurisdiction Clause 32*, contained in the Contract is binding, valid and is the only document which records the intent/ affirmation of the parties. *Thirdly*, the terms merely printed on the unilaterally generated Invoices, which does not reflect the affirmation/consensus of the parties, cannot alter the exclusive jurisdiction clause expressly agreed by the parties.

56. **Thus, it is held that this Court has no territorial jurisdiction to**



entertain the present Suits. Therefore, the present Applications under Order VII Rule 10 of CPC, 1908 are allowed and the Plaints are directed to be returned to the plaintiff, to be filed in the Court of appropriate jurisdiction.

I.A. 15576/2018 (u/O XIII-A r/w Order VIII Rule 10 & Section 151 of CPC, 1908,) in CS(COMM) 735/2018 and I.A. 15575/2018 (u/O XIII-A r/w Order VIII Rule 10 & Section 151 of CPC, 1908) in CS (COMM) 736/2018

57. In view of the above, these applications cannot be decided by this court as it lacks territorial jurisdiction and are dismissed, with liberty to file afresh in the suit, when filed in the court of competent jurisdiction.

CS(COMM) 735/2018 & CS(COMM) 736/2018

58. In view of the above decision that this Court has no territorial jurisdiction, **the Suits are directed to be returned to be presented in the court of competent jurisdiction.**

**(NEENA BANSAL KRISHNA)
JUDGE**

MAY 16, 2024
S.Sharma