



* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 1517/2014**

Reserved on: 02.04.2014

Date of decision: 06.05.2014

IN THE MATTER OF:

M/S SHRISTI UDAIPUR HOTELS AND RESROTS (P) LTD Petitioner
Through: Mr. Arjun Singh Bawa, Advocate
with Ms. Sushmita Das, Advocate

versus

HOUSING AND URBAN DEVELOPMENT CORPORATION LIMITED

.....Respondent

Through: Mr. Anil Sharma, Advocate with
Mr. Atul Sharma, Mr. Abhishek Agarwal and
Mr. Arun Baali, Advocates

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HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J.

CM APPL. 4084/2014 (by the petitioner for recall of the order dated 21.03.2014)

1. The present application has been filed by the petitioner praying *inter alia* that the order dated 21.03.2014 granting it leave to withdraw the writ petition be recalled and the same be restored for being heard on merits.

2. On 21.03.2014, learned counsel for the petitioner was requested to make submissions on the maintainability of the writ petition as the court was of the opinion that it would not be vested with the territorial jurisdiction to entertain the petition. The said reservation was expressed



for the reason that the averments made in the petition had revealed that the Loan Agreement dated 07.11.2008 was executed between the petitioner and the respondent at Jaipur, Rajasthan, the land in question, where the project is being developed by the petitioner is situated in the city of Udaipur and the impugned notice dated 20.01.2014 issued by the respondent, informing the petitioner that it proposes to recall the loan amount extended to it in terms of the aforesaid Loan Agreement, had also been issued from the Jaipur Regional Branch of the respondent/Corporation.

3. In response, instead of addressing arguments on the points raised above, learned counsel for the petitioner had sought leave to withdraw the writ petition while reserving the petitioner's right to approach the appropriate Court vested with the territorial jurisdiction, for seeking its remedies in accordance with law. Leave, as prayed for, was granted to the petitioner and the petition was dismissed as withdrawn. In less than one week from the date of passing of the aforesaid order, the petitioner has filed the present application seeking recall of the aforesaid order and restoration of the writ petition.

4. The grounds taken for filing the present application are that on the relevant date, learned counsel for the petitioner was unable to point out two material provisions of the Loan Agreement dated 07.11.2008, i.e., Sections 8.1 and 8.2(ii) under Article 8 (Miscellaneous) which, as per the petitioner, would vest territorial jurisdiction on courts situated in Delhi,



the fact that the impugned notice dated 20.01.2014 issued by the Regional Branch of the respondent/Corporation was received at the petitioner's corporate office at Delhi and lastly, because the petitioner/company's bank account, from where all the repayments of the loan amount have been made to the respondent/Corporation, namely, Axis Bank, Nehru Place Branch, is situated within the territorial jurisdiction of Delhi. In support of his submission that the aforesaid factors are relevant for vesting territorial jurisdiction on this Court, learned counsel for the petitioner had relied on the following decisions:-

- (i) Alchemist Limited and Anr. Vs. State Bank of Sikkim and Ors.; **AIR 2007 SC 1812**
- (ii) Jayaswals NECO Ltd. Vs. Union of India and Ors.; **MANU/DE/8079/2007**
- (iii) Sterling Agro Industries Ltd. Vs. Union of India and Ors.; **AIR 2011 Delhi 174**

5. It is therefore the stand of the learned counsel for the petitioner that this Court would have the territorial jurisdiction to entertain the present petition by virtue of sub-articles (1) & (2) of Article 226 of the Constitution of India, for the reason that at least a part of the cause of action has arisen within the territorial jurisdiction of this Court which would be sufficient for vesting it with the jurisdiction to exercise its discretionary powers. He urged that irrespective of the fact that the impugned loan recall notice had emanated from the regional office of the



respondent/Corporation located at Jaipur, all the important decisions of such a nature are taken by the respondent/Corporation at its head office located at Delhi, and taking that into consideration, the petition does not suffer from want of territorial jurisdiction and the order dated 21.3.2014 ought to be recalled.

6. Per contra, learned counsel for the respondent/Corporation had strongly opposed the present application and argued that nothing had taken place in Delhi in respect of the Loan Agreement for the petition to be maintainable in Delhi. He submitted that as all the relevant events starting from the issuance of the sanction letter, execution of the Loan Agreement, release of the loan amounts right upto the issuance of the impugned loan recall notice, have taken place in the city of Jaipur and further, as the property over which the sub-leasehold rights have been secured by the petitioner to the respondent/Corporation, is situated at Udaipur, the Courts at Rajasthan would be vested with the territorial jurisdiction to deal with the issues raised in the present petition.

7. It was next contended on behalf of the respondent/Corporation that the petitioner has deliberately failed to implead the sub-lessors of the subject land, on which the project in question has been undertaken by the petitioner, though they are necessary and proper parties and the reason therefor is that they also happen to be the residents of Udaipur, Rajasthan. He states that the petitioner has a running dispute with the sub-lessors and having invoked an arbitration clause contained in the



agreement executed between the parties, it has proceeded to file an arbitration petition in the Rajasthan High Court, being Arbitration Petition No.88/2011, that is pending consideration. He submitted that prior thereto, the sub-lessors had filed a writ petition before the Jodhpur Bench of the Rajasthan High Court (Civil Writ Petition No.9109/2010) for seeking appropriate relief against the Forest Department, Govt. of Rajasthan in respect of the subject project and as per the averments made by the petitioner in its Arbitration Petition, (pages 368 to 415 of the paper book), though the aforesaid petition had been filed in the name of the sub-lessors, but all the expenses in relation thereto, were being incurred by it. It was thus contended that the petitioner could have very well approached the courts in Rajasthan for the relief prayed for in this petition.

8. Lastly, learned counsel for the respondent/Corporation disputed the averments made in the jurisdiction para of the present writ petition wherein it has been averred that this Court has the requisite jurisdiction to entertain the writ petition as the respondent/Corporation has its head office in Delhi and it works for business here and he argued that the situs of the respondent's office cannot be of any relevance for invoking the jurisdiction of the courts at Delhi for the reason that the very basis of filing the writ petition is the issuance of impugned notice dated 20.01.2014, calling upon the petitioner to pay a sum of ₹6,26,93,311/- alongwith overdue interest under the Loan Agreement, and the same has admittedly been issued from the Regional Branch of the



respondent/Corporation located in Jaipur. In support of his submission that merely because the head office of the respondent/Corporation is located in Delhi, would not be sufficient ground to vest territorial jurisdiction on this Court, learned counsel for the respondent/Corporation has relied on the following decisions on the aspect of forum conveniens:-

- (i) Oil and Natural Gas Commission vs. Utpal Kumar Basu and Ors.; **(1994) 4 SCC 711**
- (ii) Canon Steels (P) Limited vs. Commissioner of Customs; **(2007) 14 SCC 464**
- (iii) Eastern Coalfields Ltd. and Ors. vs. Kalyan Banerjee; **(2008) 3 SCC 456**

9. The Court has heard the arguments advanced by the counsels for the parties and examined the decisions cited by them.

10. The territorial jurisdiction of the High Courts has been defined in Article 226 of the Constitution of India. By the Constitution (Fifteenth Amendment) Act, 1963, enacted by the Parliament, after clause (1), a new clause (1-A), [renumbered as Clause (2) by the Constitution (Forty second Amendment) Act, 1976] was added; which reads as under:-

“(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.”

11. The underlying object of the amendment was expressed in the following words :-

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

12. The effect of the amendment is that it made the accrual of cause of action an additional ground to confer jurisdiction on a High Court under Article 226. As the Joint Committee had observed:-

“This clause would enable the High Court within whose jurisdiction the cause of action arises to issue directions, orders or writs to any Government, Authority or person, notwithstanding that the seat of such Government or Authority or the residence of such person is outside the territorial jurisdiction of the High Court. The Committee feel`s that the High Court within whose jurisdiction the cause of action arises in part only should also be vested with such jurisdiction.”

13. Thus, after the insertion of Clause (1-A), the legal position is that a writ can be issued by a High Court against a person, Government or Authority residing within the jurisdiction of that High Court, or within



whose jurisdiction the cause of action in whole or in part arises. In other words, the concept of "cause of action" came into play.

14. After the insertion of Clause (1-A) (renumbered as Clause (2), the jurisdiction of a High Court can be invoked if the cause of action arises, wholly or in part, within the territorial jurisdiction of that court. However, the expression "cause of action" has not been defined in the Constitution or in the Code of Civil Procedure. As observed by the Supreme Court in the case of Eastern Coalfields Ltd. (supra), 'cause of action', for the purpose of Article 226 (2) of the Constitution of India, for all intent and purport, must be assigned the same meaning as envisaged under Section 20(C) of the Code of Civil Procedure. It means a bundle of essential facts that are required to be proved. However, the entire bundle of facts pleaded, need not constitute a cause of action and what is necessary to be proved is such material facts based whereon a writ petition can be allowed.

15. Apposite in this context, is the following observation made by the Supreme Court in the case of Kusum Ingots and Alloys Ltd. vs. Union of India & Anr., reported as **AIR 2004 SC 232**:-

"18.The facts pleaded in the writ petition must have a nexus on the basis whereon a prayer can be granted. Those facts which have nothing to do to the prayer made therein cannot be said to give rise to a cause of action which would confer jurisdiction on the court."



16. In the case of Oil and Natural Gas Commission (supra), the Supreme Court had clarified that in determining the objection of lack of territorial jurisdiction, the court must take into consideration all the facts pleaded in support of the cause of action, albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. Stated differently, whether a High Court has the territorial jurisdiction to entertain a writ petition, must be answered on the basis of the averments made in the writ petition, the truth or otherwise whereof being immaterial.

17. In the case of Alchemist Limited (supra), the Supreme Court held that "the test is whether a particular fact(s) is (are) of substance and can be said to be material, integral or an essential part of the *lis* between the parties. If it is, it forms a part of the cause of action. If it is not, it does not form a part of the cause of action. It is also well settled that in determining the question, the substance of the matter and not the form thereof has to be considered."

18. Taking a cue from the ratio laid down in a catena of decisions of the Supreme Court as also the High Courts, it is evident that for the purpose of deciding as to whether the facts averred by a petitioner would or would not constitute a part of the cause of action, the court is required to examine as to whether such facts constitute a material, essential or integral part of the cause of action. Even if a small fraction of the cause of action arises within the jurisdiction of the court, the said court would be



vested with the territorial jurisdiction to entertain the petition. However the condition is that it must be “a part of the cause of action” and nothing short of that.

19. Coming to the issue of forum conveniens, the argument advanced by the counsel for the petitioner that the situs of the head office of the respondent/Corporation is in Delhi and that itself is sufficient ground to file the petition in Delhi, has to be examined in the light of the decision in the case of Kusum Ingots and Alloys Ltd. (supra). In the said case, it was clarified that the situs of the office of Parliament, Legislature of a State or authorities empowered to make subordinate legislation would not by itself constitute any cause of action for cases arising. Consequently, framing of a statute, statutory rule or issuance of an executive order or instruction would not confer jurisdiction upon a court only because of the situs of the office of the maker thereof.

20. Recently, a Full Bench of five Judges of this Court in the case of Sterling Agro Industries Ltd. (supra), had the occasion to examine the doctrine of forum convenience and the concept of cause of action in view of conflicting judgments on the issue referred to them. After examining a number of decisions of the Supreme Court on this issue including the cases of Sri Nasiruddin vs. State Transport Appellate Tribunal, (1975) 2 SCC 671, Kishore Rungta and Ors. vs. Punjab National Bank & Ors., 2003 (151) ELT 502 (Bom), Alchemist Limited (supra), National Textile



Corporation Ltd. vs. Haribox Swalram, (2004) 9 SCC 786, the Full Bench

observed as below :

“31. The concept of forum conveniens fundamentally means that it is obligatory on the part of the court to see the convenience of all the parties before it. The convenience in its ambit and sweep would include the existence of more appropriate forum, expenses involved, the law relating to the lis, verification of certain facts which are necessitous for just adjudication of the controversy and such other ancillary aspects. The balance of convenience is also to be taken note of. Be it noted, the Apex Court has clearly stated in the cases of **Kusum Ingots (supra)**, **Mosaraf Hossain Khan (supra)** and **Ambica Industries (supra)** about the applicability of the doctrine of forum conveniens while opining that arising of a part of cause of action would entitle the High Court to entertain the writ petition as maintainable.

32. The principle of forum conveniens in its ambit and sweep encapsulates the concept that a cause of action arising within the jurisdiction of the Court would not itself constitute to be the determining factor compelling the Court to entertain the matter. While exercising jurisdiction under Articles 226 and 227 of the Constitution of India, the Court cannot be totally oblivious of the concept of forum conveniens. The Full Bench in **New India Assurance Co. Ltd. (supra)** has not kept in view the concept of forum conveniens and has expressed the view that if the appellate authority who has passed the order is situated in Delhi, then the Delhi High Court should be treated as the forum conveniens. We are unable to subscribe to the said view.”

21. The Full Bench of this Court went on to summarize their discussion in the following manner:-

“33. In view of the aforesaid analysis, we are inclined to modify the findings and conclusions of the Full Bench in **New India Assurance Company Limited (supra)** and proceed to state our conclusions in seriatim as follows:

(a) The finding recorded by the Full Bench that the sole cause of action emerges at the place or location where the tribunal/appellate authority/revisional authority is situate and



the said High Court (i.e., Delhi High Court) cannot decline to entertain the writ petition as that would amount to failure of the duty of the Court cannot be accepted inasmuch as such a finding is totally based on the situs of the tribunal/appellate authority/revisional authority totally ignoring the concept of forum conveniens.

(b) Even if a miniscule part of cause of action arises within the jurisdiction of this Court, a writ petition would be maintainable before this Court, however, the cause of action has to be understood as per the ratio laid down in the case of **Alchemist Ltd. (supra)**.

(c) An order of the appellate authority constitutes a part of cause of action to make the writ petition maintainable in the High Court within whose jurisdiction the appellate authority is situated. Yet, the same may not be the singular factor to compel the High Court to decide the matter on merits. The High Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens.

(d) The conclusion that where the appellate or revisional authority is located constitutes the place of forum conveniens as stated in absolute terms by the Full Bench is not correct as it will vary from case to case and depend upon the lis in question.

(e) The finding that the court may refuse to exercise jurisdiction under Article 226 if only the jurisdiction is invoked in a malafide manner is too restricted / constricted as the exercise of power under Article 226 being discretionary cannot be limited or restricted to the ground of malafide alone.

(f) While entertaining a writ petition, the doctrine of forum conveniens and the nature of cause of action are required to be scrutinized by the High Court depending upon the factual matrix of each case in view of what has been stated in **Ambica Industries (supra)** and **Adani Exports Ltd. (supra)**.

(g) The conclusion of the earlier decision of the Full Bench in **New India Assurance Company Limited (supra)** "that since the original order merges into the appellate order, the place where the appellate authority is located is also forum conveniens" is not correct.



(h) Any decision of this Court contrary to the conclusions enumerated hereinabove stands overruled.”

22. The position of law that clearly emerges from the above is that the expression “cause of action” means and includes the circumstance resulting in breach of right or immediate occasion for the party to react. The said expression shall take in its fold the whole bundle of material facts which a party must prove in order to succeed. It also includes the circumstances and situations that entitle a party to maintain an action in court. For determining as to whether a particular fact constitutes a cause of action, would depend on the facts and circumstances of each case and while considering the facts averred, the court has to consider the substance of the matter and not the form. Simply because a miniscule part of the cause of action arises within the territorial jurisdiction of a particular High Court may not be sufficient to compel the said court to decide the matter on merits. In appropriate cases, discretion still rests with the court to decline to exercise the jurisdiction vested in it by invoking the doctrine of forum conveniens or the doctrine of non-conveniens. The said doctrine of forum non-conveniens can be invoked when the court deciding to refrain from exercising its jurisdiction, is vested with the jurisdiction to decide the case.

23. Coming to the facts of the instant case and taking into consideration the relevant factors that must weigh with the court when deciding the issue of territorial jurisdiction, it is considered necessary to peruse the



averments made in the writ petition. A plain reading of the present petition would reveal that the entire focus of the petitioner is on the Loan Agreement dated 7.11.2008 executed with the respondent/Corporation at Jaipur, and the Sub-Lease Deed dated 11.1.2008 executed with the sub-lessors in respect of the project land situated at Udaipur. The petitioner's stand is that the respondent/Corporation had wrongfully issued the impugned Loan Recall Notice dated 20.1.2014, when no sub-lease rental was payable by it under the Sub-Lease Deed and at no stage was it in default of the Loan Agreement or the Sub-Lease Deed.

24. The petitioner has gone to great lengths to refer to the Sub-Lease Deed dated 11.1.2008 and the obligations cast on the sub-lessors, which they had allegedly failed to discharge, resulting into litigation between the parties. The petitioner claims to have suffered losses and damages owing to the purported mis-representation and false promises extended by the sub-lessors and the unreasonable stand adopted by the respondent/Corporation in recalling the entire disbursed loan amount despite being aware of the litigation pending between the parties in the High Court of Rajasthan at Jodhpur and the arbitration proceedings, initiated by it against the sub-lessors, also pending at Jaipur.

25. Further, a perusal of the memo of parties of the writ petition reveals that the registered office of the petitioner/company is situated in Kolkata and its corporate office is at New Delhi and the registered office of the respondent/Corporation is at Delhi and it has regional offices situated in



different regions in India including one at Jaipur. The Loan Agreement dated 07.11.2008, whereunder the respondent/Corporation had agreed to finance a term loan to the petitioner for undertaking construction of a Hotel-Mall Multiplex Project at Udaipur, Rajasthan by accepting mortgage of the sub-leasehold rights of the project property as the main security, was executed at Jaipur. The loan amounts were disbursed by the respondent/Corporation at Jaipur and the loan installments were remitted by the petitioner in the account of the respondent/Corporation at Jaipur. Most importantly, the impugned loan recall notice was issued by the Regional Branch of the respondent/Corporation situated at Jaipur, Rajasthan.

26. As learned counsel for the petitioner has laid great emphasis on Sections 8.1 and 8.2(ii) under Article 8 (Miscellaneous) of the Loan Agreement to urge that this Court is equally vested with the territorial jurisdiction to entertain the writ petition, the said clauses are reproduced hereinbelow for ready reference :-

“Section 8.1 - Payment of monies by Borrower to HUDCO

All moneys due and payable to HUDCO under this agreement shall be paid and remitted by the Borrower to the HUDCO at its registered office at “HUDCO BHAWAN”, India Habitat Centre, Lodhi Road, New Delhi-110003 and also at its Regional Office Jaipur at HUDCO Bhawan, Vidhyut Marg, Jyoti Nagar, Jaipur-302005 (unless otherwise directed by HUDCO) in proper time and the borrower shall so arrange that the amounts in question is/are realized by HUDCO at par on the due dates of the relative payment in New Delhi.

xxx

xxx

xxx



8.2 (ii) Any notice required to be served on HUDCO shall for the purpose of these presents be deemed to be sufficiently served if it is left at its Regional Office at "HUDCO BHAWAN", India Habitat Centre, Lodhi Road, New Delhi-110003 and also at its Regional Office Jaipur, at HUDCO Bhawan, Vidhyut Marg, Jyoti Nagar, Jaipur-302005."

27. This Court is of the opinion that neither of the aforesaid two clauses can be termed as those that have a material bearing on deciding the dispute or the lis involved in the present case. Section 8.1 only gives an option to the petitioner to remit moneys under the Agreement to the respondent/Corporation either at its Delhi office or at the Regional office at Jaipur and similarly, Section 8.2 gives a facility to the petitioner to serve any notice on the respondent/Corporation either at Delhi or at Jaipur. However, nothing turns on the aforesaid clauses as they are not a subject matter of dispute between the parties. Similarly, the existence of the escrow account opened with the Axis Bank at Delhi under the terms and conditions of the Loan Agreement would hardly be of any assistance to the petitioner for the reason that no dispute has been raised in respect of the transactions made in the said account.

28. Learned counsel for the petitioner had raised a valid point when he contended that merely because two litigations are pending in the Rajasthan High Court, i.e., Civil Writ Petition No.9109/2010 filed by the sub-lessors against the Forest Department, State of Rajasthan and the Arbitration Petition No. 88/2011 filed by the petitioner against the sub-



lessors for appointment of an Arbitrator to adjudicate the disputes between the parties arising out of the Sub-Lease Deed, would itself not debar the petitioner from approaching this Court for relief in appropriate cases. The petitioner's contention is that the registered office of the respondent is in Delhi and therefore it has chosen to approach this court. But that in itself would not be enough. For invoking the jurisdiction of this Court, the petitioner must be in a position to point out specific acts of omission/commission committed by the respondent/Corporation within the jurisdiction of this Court that would give it a cause of action to maintain the petition in Delhi.

29. It may be emphasized that the territorial jurisdiction must be determined on the facts pleaded in the petition, without delving into the correctness or otherwise of the averments made therein. At the same time, each and every fact pleaded in the writ petition does not ipso facto lead to the conclusion that those facts give rise to a cause of action with respect to a court's territorial jurisdiction, unless and until the facts that are pleaded are such that have a nexus with the *lis* or the dispute raised in the petition. Those facts that cannot have any bearing on the *lis*, do not give rise to a cause of action so as to confer territorial jurisdiction on the court. The decisions in the cases of Eastern Coalfields Ltd.(supra) & Canon Steels (P) Limited(supra), cited by learned counsel for the respondent also elucidate as to the circumstances that ought to weigh



with the court while exercising its judicial discretion on the ground of forum convenience.

30. In the present case, the mere location of the registered office of the respondent/Corporation in Delhi, cannot be a ground to canvass that the cause of action has arisen within the territorial jurisdiction of this Court, unless and until the petitioner has been able to point out that some material decision had been taken at the office of the respondent that would have a bearing on the present petition. A bald submission made to the effect that ordinarily a decision to recall a loan from a client is taken at the head office of the respondent/Corporation would not be of much assistance to the petitioner. As would be apparent from a bare perusal of the writ petition, the petitioner's grievance is directed against the act of the regional office of the respondent/Corporation in issuing the impugned loan recall notice dated 20.01.2014 and admittedly, the said regional office is not located within the territorial jurisdiction of this Court, but is based at Jaipur. Similarly, the Sub-Lease Deed dated 11.1.2008 in respect of the project land was executed by the petitioner with the sub-lessor at Udaipur and the project land is also located in Udaipur.

31. To conclude, this Court is of the view that the facts relating to jurisdiction that have been pleaded in the application and for that matter, in the writ petition, can hardly be stated to be either essential or material, much less integral for constituting a part of the cause of action, as envisaged under Article 226(2) of the Constitution of India, for vesting



territorial jurisdiction on this Court. On the contrary, as noted above, the most vital parts of the cause of action have arisen in Jaipur and the mere presence of the registered office of the respondent/Corporation in Delhi or the facility extended to the petitioner to address any correspondence to the respondent/Corporation and/or remit moneys due or payable under the Loan Agreement at Delhi, would have to be treated as irrelevant factors, being a miniscule part of the cause of action. By no stretch of imagination can these factors be treated as conclusive for determining the territorial jurisdiction of this Court.

32. In the given facts and circumstances of the case, this court is inclined to accept the submission made by learned counsel for the respondent/Corporation that neither the factors mentioned by the petitioner, nor the circumstances would by themselves confer territorial jurisdiction on this court for maintaining the petition in Delhi. Rather, this Court is of the opinion that it would be inconvenient for it to entertain the present petition and the High Court of Rajasthan would be better equipped to deal with the issues raised in the present petition. Accordingly, this Court declines to exercise the discretionary jurisdiction vested in it under Article 226 of the Constitution of India. Resultantly, the present application is dismissed, while leaving the parties to bear their own costs.

MAY 06, 2014
rkb/sk/mk

(HIMA KOHLI)
JUDGE