$~31

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 6070/2024**

Date of Decision: **12.03.2026**

IN THE MATTER OF:

SRI SAI ENTERPRISES .....Petitioner

Through: Mr. Angad Mehta, Advocate.

versus

NATIONAL HIGHWAY AUTHORITY OF INDIA THROUGH ITS CHAIRMAN .....Respondent

Through: Mr. Santosh Kumar, Standing Counsel and Mr. Adithya Ramani, Advocate for R1.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGEMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The petition seeks a release of the petitioner's purported *force majeure* relief claim of the amount of INR 7,31,53,240 along with interest, and a release of the Performance Security furnished by the petitioner to the respondent, to the tune of INR 1,37,91,995/- along with interest.

2. The facts, as stated in the petition, appear to be that *vide* an agreement dated 03.03.2021 ("**the Toll Agreement**"), the petitioner was awarded the work of collection and remittance of toll at Bhoothakudi Toll Plaza at km. 21.020 (Length 60.633) for the section from km 0.000 to km 124.840 (Trichy bypass to Tovaramkurchi-Madurai Section) on NH-45B in the State of Tamil Nadu; the period of the Toll Agreement was from 08.03.2021

(08:00 hrs) to 08.03.2022 (08:00 hrs). In terms of the Toll Agreement, the petitioner had agreed to make an annual remittance to the respondent for a sum of INR 58,59,99,999/-. Also, the petitioner submits that in terms of Clause 17 of the Toll Agreement, the petitioner had to furnish to the respondent one Performance Bank Guarantee and a Performance Security, each in the sum of INR 4,88,33,333/-.

3. The petitioner purportedly furnished a Performance Bank Guarantee no. 21428BG000009 of the sum of INR 4,88,33,333/- to the respondent. In addition to the performance bank guarantee, the petitioner also, allegedly, furnished the respondent with a Performance Security in the amount of INR 4,88,33,333/- (hereinafter "**the Performance Security**").

4. The petitioner contends that in the present case, the Performance Bank Guarantee as well as the Performance Security, as per Clause 17 of the Toll Agreement, was to have been refunded on or before 08.04.2022, which was not done. Ultimately, after repeated follow-ups and reminders, the Performance Bank Guarantee was unconditionally returned to the petitioner on 12.08.2022 with a delay of more than 6 months, whereas the Performance Security amount of Rs.4,88,33,333/-continues with the respondent even as on date despite lapse of more than 2 years. It is submitted that against this, an ad hoc amount of INR 3,50,41,338/- has been released to the petitioner, without any notice and/or explanation, and which the petitioner has adjusted against the Performance Security; accordingly, an amount of INR 1,37,91,995/- remains refundable towards the Performance Security.

5. In addition to the above, in terms of Clause 25 (c)(ii) of the Toll Agreement (*force majeure relief*), on 18.10.2022, the respondent has also, purportedly, approved a *force majeure* relief to the petitioner in the sum of

INR 7,31,53,240/- for the period 12.04.2021 to 22.02.2022, which has not been released till date.

6. The petitioner contends that the respondent continues to unlawfully retain the balance Performance Security and withhold the *force majeure* relief which the petitioner is entitled to.

7. It appears that the present petition has been instituted in this Court only on grounds that the respondent has its registered office at New Delhi.

8. This Court in ***The Indure Pvt. Ltd. v. Government of NCT of Delhi***,[1] took note of the decisions in ***Shristi Udaipur Hotels v. Housing and Urban Development Corp.***,[2] ***Riddhima Singh v. Central Board of Secondary Education***,[3] ***Smt. Manjira Devi Ayurveda Medical College and Hospital v. Uttarakhand University of Ayurveda and Ors.***,[4] ***Michael Builders and Developers Pvt. Ltd. v. National Medical Commission and Ors.***,[5] which declare that the situs of the head office/registered office of the respondent, does not determine whether the Court has the requisite territorial jurisdiction to entertain a writ petition.

9. The Court in ***The Indure Pvt. Ltd.*** importantly noted, at para. 36:

> "***36.*** *A petitioner who approaches this Court to assail a decision of an authority situated in Delhi, when the underlying cause for the said decision lies elsewhere, effectively attempts to make this High Court a mini-pan-India Superior Court exercising jurisdiction over all events which take place throughout this Country. There is no gainsaying with the proposition that every High Court is competent to adjudicate upon a lis which arises from events or actions taking place within its territory. Merely because the ultimate order, which is based on events taking place outside Delhi and takes cognizance of actions outside of Delhi, is passed within the jurisdiction of this Court, a writ petition ought not be entertained by this*

---

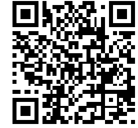
[1] 2026:DHC:1605.
[2] 2014 SCC OnLine Del 2892.
[3] 2023 SCC OnLine Del 7168.
[4] 2024:DHC:6903-DB
[5] 2024:DHC:7146.

Court."

10. On the issue of a claimant approaching this Court on the sole-ground of the respondent-authority, an arm of the union government, being situated within the jurisdiction of this Court, it was observed at para. 37-38:

> "***37.*** *Naturally, being the capital of the Country, various authorities and bodies having pan-India jurisdiction would be located within the jurisdiction of this Court. Merely because the decision making authority happens to be in Delhi, ought not to be the sole reason to entertain a lis in this Court. The decision, no doubt, may be passed in the national capital, but it is usually against persons situated outside Delhi; and even more importantly, for actions which took place beyond the borders of this Court. The act of giving a hearing in Delhi, or the passing of an order in Delhi, is merely a result of a body/authority being situated in the national capital, it has nothing to do with the lis, the offending action, the legal injury or the foundational facts on the basis of which action is being taken.*
>
> ***38.*** *The case-law cited above, makes repeated reference to "dominant facts", and facts which are "material, essential and integral" to the lis in question. In most cases, the fact that the order is passed, or the head office is located, or that opportunity of hearing was afforded, within the jurisdiction of this Court is completely immaterial, non-essential, and non-integral to the dispute in question. Any of the aforenoted three aspects could very well have taken place in another part of the Country, it is for the sole reason that Delhi is the national capital, that, in most cases these factors get connected to the jurisdiction of this Court. From another lens, it may be seen that regardless of what the underlying facts or legal injury/infringement may be, the order impugned would, in an overwhelming number of cases be passed from Delhi. If this be the case, can this constant factum, which shall remain present in each case, be considered a "dominant fact" or a "material, essential and integral" fact? The answer must be in the negative.*"

11. Ultimately, the Court concluded that the substance of a matter must be adjudged, and not the unchanging constant which is present in every petition against a state-authority, to arrive at a conclusion on whether to entertain a petition in the context of territorial jurisdiction and *forum non conveniens*. At para. 42 this Court observed:



"***42.** It is the substance of the matter which the Court must consider in determining the connection with Delhi. An order being passed by an authority in Delhi is an unchanging constant. This static/uniform facet, which is unmoved by the nature of the lis, ought not to determine where territorial jurisdiction would lie.*"

12. Insofar as the argument of the petitioner that there exists a clause in the agreement between the parties that purportedly confers exclusive jurisdiction upon Courts in Delhi, it may be noted that parties cannot by their private conduct and agreement, supersede, restrict, or modify the powers of the writ Court provided for under Article 226 of the Constitution of India. The agreements governs those that are party to it, not this Court.

13. The same is the position taken by this Court in the case of ***The Indure Pvt. Ltd. v. Govt. of NCT of Delhi & Ors.***,[6] the material portion of which read as under:

"21. It may also be noted that parties cannot, through the means of a private agreement, require a writ Court to exercise jurisdiction in a case where it would not otherwise entertain a given petition. The Constitutional Court cannot be moulded to suit the fancies of parties expressed in their contract. In this connection this Court in ***Durgapur Freight Terminal Pvt. Ltd. and Anr. v. Union of India****,[7] has held:*

> *"29. The petitioners' reliance on Clause 26.4.1 of the License Agreement to attract jurisdiction of this Court is also fundamentally flawed. Jurisdiction clauses in the contracts would decide the jurisdiction within which contractual disputes are resolved. Party autonomy is the reason for such choice being provided to contracting parties to chose a forum of their mutual choice in contractual disputes. However, when a party chooses to invoke extraordinary writ jurisdiction of a constitutional Court, the jurisdiction clause in the contract cannot be a guiding factor. Regardless, even in contracts, one cannot confer jurisdiction by way of jurisdiction clauses on a Court that does not have one. One can only confine jurisdiction to one of the two competent Courts that have jurisdiction. As already held, this Court lacks jurisdiction to start with, therefore, even under Clause 26.4.1 of the license*

---
[6] 2026:DHC:1605.
[7] 2023 SCC OnLine Del 1254.

agreement, this Court does not attract jurisdiction in the matter. The whole argument advanced by the petitioners on "seat v. venue" is misplaced. There is no need to refer to Clause 26.4.1 of the License Agreement dated 19.09.2012 to look for signs to find if this Writ Court will have jurisdiction."

22. A converse situation emerged in ***Mahrashtra Chess Association v. Union of India & Ors.,***[8] *where the By Laws of the second respondent therein i.e., the All India Chess Federation provided as under:*

"21. Legal Course
(i) The Federation shall sue and or be sued only in the name of the Hon. Secretary of the Federation.
(ii) Any Suits/Legal actions against the Federation shall be instituted only in the Courts at Chennai, where the Registered Office of All India Chess Federation is situated or at the place where the Secretariat of the All India Chess Federation is functioning"

23. The Bombay High Court in light of the aforenoted Clause 21 declined to its jurisdiction under Article 226 of the Constitution of India claiming its jurisdiction had been ousted. The Supreme Court negativing this finding, in strong words, declared:

*"**25.** In the present case, the Bombay High Court has relied solely on Clause 21 of the Constitution and Bye Laws to hold that its own writ jurisdiction is ousted. The Bombay High Court has failed to examine the case holistically and make a considered determination as to whether or not it should, in its discretion, exercise its powers under Article 226. The scrutiny to be applied to every writ petition under Article 226 by the High Court is a crucial safeguard of the rule of law under the Constitution in the relevant territorial jurisdiction.* ***It is not open to a High Court to abdicate this responsibility merely due to the existence of a privately negotiated document ousting its jurisdiction.****"*

14. A narration of the facts contained in para. 2-6 of this order would reveal that the material, essential and integral cause of action has arisen outside the jurisdiction of this Court. Even if it is considered that a part of cause of action has arisen in Delhi, the same should not be the sole reason to entertain the instant petition.

15. The Supreme Court in the case of ***Kusum Ingots & Alloys Ltd. v.***

[8] Civil Appeal No. 5654 of 2019, order dt. 29.07.2019.

Union of India and Anr.,[9] has held that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of *forum conveniens*. The material portion of the aforenoted decision reads as under:

> *"Forum conveniens*
>
> *30. We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens. [See Bhagat Singh Bugga v. Dewan Jagbir Sawhney [AIR 1941 Cal 670 : ILR (1941) 1 Cal 490] , Madanlal Jalan v. Madanlal [(1945) 49 CWN 357 : AIR 1949 Cal 495] , Bharat Coking Coal Ltd. v. Jharia Talkies & Cold Storage (P) Ltd. [1997 CWN 122] , S.S. Jain & Co. v. Union of India [(1994) 1 CHN 445] and New Horizons Ltd. v. Union of India [AIR 1994 Del 126] .]"*

16. In view of the above, petition stands dismissed. Liberty is, however, granted in favour of the petitioner to approach the jurisdictional High Court to agitate the instant *lis*, if so advised.

17. All rights and contentions of the parties are left open.

PURUSHAINDRA KUMAR KAURAV, J

MARCH 12, 2026
tr/ksr

[9] (2004) 6 SCC 254.