

Dqs Certification India Pvt. Ltd vs Isaca Inc & Ors. on 26 March, 2025

Author: Purushaindra Kumar Kaurav

Bench: Purushaindra Kumar Kaurav

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IN THE HIGH COURT OF DELHI AT NEW DELHI

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ CS(COMM) 611/2021, CRL.M.A. 27317/2024, I.A.
15696/2021, I.A. 15749/2021, I.A. 847/2022, I.A. 2120/2022, I.A.
3852/2022, I.A. 9893/2022, I.A. 9894/2022, I.A. 9895/2022, I.A.
9896/2022, I.A. 9897/2022, I.A. 9898/2022, I.A. 9899/2022, I.A.
9900/2022, I.A. 9901/2022, I.A. 9902/2022, I.A. 9903/2022, I.A.
9904/2022, I.A. 9905/2022, I.A. 12045/2022, I.A. 16542/2022, I.A.
18452/2022, I.A. 19884/2022, I.A. 35598/2024 and I.A. 7337/2025

DQS CERTIFICATION INDIA PVT.LTD.

[THROUGH RAJENDRA KHARE, DIRECTOR]

501, BEST SKY TOWER, F-05, NETAJI SUBHASH PLACE,
PITAMPURA, DELHI - 110034, INDIA

[THROUGH RAJENDRA KHARE, DIRECTOR]

....PLAINTIFF

(Through: Mr. Rajendra Khare, (Authorized Representative)-plaintiff
person.)

Versus

1. ISACA INC.

[INFORMATION SYSTEMS AUDIT AND CONTROL
ASSOCIATION, INC.]

LOCATED AT:

[A] 1700 EAST GOLF ROAD, SUITE 400,
SCHAUMBERG, ILLINOIS, IL 60173, U.S.A.

[B] BUSINESS CENTER, HARSHA BHAWAN, E 13/29,
1ST FLOOR, CONNAUGHT PLACE, NEW DELHI,
110001

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THROUGH ITS CEO, MR.DAVID SAMUELSON

2. ROBERT MICEK

CHIEF FINANCIAL OFFICER

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By:PURUSHAINDR

KUMAR KAURAV

ISACA INC.
1700 EAST GOLF ROAD, SUITE 400,
SCHAUMBERG, ILLINOIS, IL 60173, U.S.A.
3. GREGORY J. TOUHILL, ISACA BOARD CHAIRPERSON AND
DIRECTOR
4. PAM NIGRO, ISACA BOARD, VICE CHAIRPERSON AND
DIRECTOR
5. JOHN DE SANTIS, DIRECTOR
6. NIEL HARPER, DIRECTOR
7. GABRIELA HERNÁNDEZ-CARDOSO, DIRECTOR
8. MAUREEN O'CONNELL, DIRECTOR
9. VERONICA ROSE, DIRECTOR
10. GERRARD SCHMID, DIRECTOR
11. ASAF WEISBERG, DIRECTOR
12. TRACEY DEDRICK, DIRECTOR
13. BRENNAN P. BAYBECK, DIRECTOR
14. ROB CLYDE, DIRECTOR
ADDRESS FOR DEFENDANTS 3 TO 14:
1700 EAST GOLF ROAD, SUITE 400,
SCHAUMBERG, ILLINOIS, IL 60173, U.S.A.

(Through: Mr.Anuj Berry, Ms.Anusha Ramesh and Mr.Aparajito Sen,
Advocates for D-1 to 14.)

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Pronounced on: 26.

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JUDGMENT

I.A.2120/2022 (Order VII Rule 10 and 11 read with Section 151 seeking rejection of plaint) The instant application has been filed by defendant No.1 seeking rejection/return of the plaint for being non-maintainable before this Court, for lack of jurisdiction over the dispute.

2. The facts of the case would indicate that defendant No.1 claims to be a foreign non-profit organization based in Illinois, USA, which owns the Capability Maturity Model Integration (CMMI) that helps organizations effectuate process improvement and develop behaviours that decrease risks in service, product, and software for process improvement. Furthermore, Defendant No. 1 lacks its presence in India.

3. In the year 2007, the plaintiff initiated a professional relationship with the predecessor of defendant No.1 through licensing agreements, which were later reassigned to defendant No.1 in May 2020. On 12.10.2020, a new License Agreement was executed between the parties to conduct appraisals of companies that desire to receive a CMMI certification. Defendant No.1 and plaintiff continued to operate under the License Agreement from 20.10.2020 to August 2021. The dispute

arose when on 30.08.2021, citing the deficiency in services, defendant No.1 sent a termination notice to the plaintiff. After receiving the termination notice, the plaintiff via an email dated 14.09.2021 invoked Clause 12.2 of the License Agreement to initiate the Arbitration. Thereafter, on 15.09.2021, defendant No.1 replied to said email and apprised the plaintiff that they did not intend to opt for Arbitration and that if the plaintiff desires to challenge the termination notice issued to Digitally Signed By:PRIYA Digitally Signed Signing Date:27.03.2025 By:PURUSHAINDRA 11:25:15 3 KUMAR KAURAV it, it could litigate the dispute in the United States District Court for the Northern District of Illinois (USDC Illinois).

4. On 22.09.2021, an extension of the termination notice was accorded to the plaintiff as per his request by the CEO of defendant No.1 while he reviewed the matter subject to certain conditions. After due scrutiny, the termination notice was found to have bona fide reasons, and termination was effected immediately. Thereafter, the plaintiff filed a present suit seeking a mandatory injunction to restore the status quo as it existed on 29.08.2021, i.e., prior to the issuance of a Termination Notice dated 30.08.2021. For the sake of clarity, the entire relief clause of the plaint is extracted as under:-

"(a) pass an order of mandatory injunction to restore the status quo as it existed on 29.08.2021 [last non-contested status], prior to the issuance of Termination Notice on 30.08.2021.

(b) pass any other order or relief which this Hon ble Court may deem fit and proper in facts and circumstances of the case in favour of plaintiff and against the defendants."

5. Mr. Anuj Berry, learned counsel for defendant No.1 submits that as per express terms of the License Agreement dated 12.10.2020, the jurisdiction of any other Court except the USDC Illinois is completely ousted. He further submits that no material/essential/integral part of the cause of action has arisen within the jurisdiction of this Court. He submits that according to the License Agreement, the governing law of the contract is the law of Illinois, USA, rather than Indian law and if any dispute arises, it would be governed by Illinois law and shall be exclusively resolved in Cook County, Illinois.

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6. He submits that the plaintiff continued to operate under the License Agreement from October, 2020 to August 2021, and meanwhile, 22 appraisals conducted by the plaintiff were performed on the companies and business units located in the USA and not in India. Thus, according to him, it establishes the fact that the entire business activity has taken place outside India. Exercising the right, the plaintiff agreed under Clause 12.2 of the License Agreement that the disputes are to be resolved by arbitration or Court proceedings in Cook County, Illinois, and at no other location.

7. He further contends that by virtue of an express agreement to the abovementioned term of the License Agreement, the right of the plaintiff to file a suit in India stood waived. Therefore, the ouster

of the jurisdiction of this Court had been expressly agreed upon by the parties to the License Agreement. The plaintiff vide an email dated 14.09.2021 invoked Clause 12.2 and inquired if defendant No. 1 would opt for arbitration to resolve the dispute.

8. It is further submitted by defendant No. 1 that by an email dated 30.10.2021, the plaintiff falsely stated that foreign citizens do not have the ability to bring and maintain a suit in the USDC, Illinois. The reliance of the plaintiff on an Illinois State law was erroneous as the same is not applicable in Federal Courts, including the USDC, Illinois.

9. To sum up, the grounds taken by defendant No. 1 under Order VII Rule 11 for the rejection of the present plaint are twofold, firstly, the lack of jurisdiction of this Court to entertain the present case in terms of Clause 12.2 of the License Agreement. Secondly, by virtue of the applicability of the doctrine of forum non conveniens, this Court does not have the jurisdiction Digitally Signed By:PRIYA Digitally Signed Signing Date:27.03.2025 By:PURUSHAINDRA 11:25:15 5 KUMAR KAURAV to entertain the present suit for the reason that the USDC, Illinois is the more appropriate forum to adjudicate the same.

10. Learned counsel places reliance on the cases of Piramal Healthcare Ltd. v. Diasorin S.P.A.1, Modi Entertainment Network, and Ors. v. W.S.G. Cricket Pvt. Ltd2, Bush Foods Overseas Pvt. Ltd. v. Sentinel Capital Pte Ltd. & Anr3, to substantiate his submissions.

11. Mr. Rajendra Khare, the representative of the plaintiff, appeared in person and vehemently opposes the grounds taken by defendant No.1. He submits that the plaintiff had established a contractual relationship with the predecessor of defendant No. 1 to further the business activities related to conducting CMMI appraisals under licensing agreements. Subsequently, when defendant No. 1 acquired all rights to CMMI from its predecessor, the agreements between the plaintiff and the predecessor were re-assigned to defendant No. 1, and a new agreement was executed.

12. He submits that defendant No. 1 is amenable to the territorial jurisdiction of this Court because defendant No.1 has accepted the jurisdiction of the Indian Courts in its termination email dated 12.10.2021, which triggered the cause of action. He further asserts that this Court can exercise its jurisdiction because the plaintiff is located in Delhi, the agreement dated 12.10.2020 was signed in Delhi and the cause of action triggered by the email communication dated 12.10.2021 was also received in Delhi. Therefore, the High Court of Delhi has an uncontested jurisdiction to entertain the plaint and is thereby, an appropriate forum to undertake the 2010 SCC OnLine Del 2897 (2003) 4 SCC 341 2012 SCC OnLine Del 3325 Digitally Signed By:PRIYA Digitally Signed Signing Date:27.03.2025 By:PURUSHAINDRA 11:25:15 6 KUMAR KAURAV adjudication of the lis between the parties as per the doctrine of forum conveniens.

13. He further asserts that the License Agreement is prejudicially tilted in favor of defendant No. 1, granting them broader authority concerning jurisdictional aspects. Furthermore, the License Agreement stipulates that specific Courts will have jurisdiction over disputes that arise between the parties. However, the language used therein is excessively broad and ambiguous, failing to specify the specific Courts that will have jurisdiction for adjudicating disputes. The plaintiff also challenges

the validity of the License Agreement, arguing that it is biased against them by granting more control to defendant No. 1 in matters such as termination of the contract, etc.

14. An additional argument is also made by the plaintiff stating that this Court can only exercise the power to return the plaint to a Court within its own jurisdiction. If it is determined that exclusive jurisdiction lies with the Courts of the United States of America, then this Court would not have the authority to return the plaint to such Courts. Therefore, it has been contended that the application filed by defendant No.1 should be dismissed as being bereft of merit.

15. He places reliance on the decisions in the cases of Meyer Apparel Ltd. v. Panchanan International (P) Ltd.⁴, Madhav Prasad Aggarwal and Ors. v. Axis Bank Ltd. & Ors⁵, Sejal Glass Ltd. v. Navilan Merchants Pvt. Ltd⁶, Sri Biswananth Banik and Anr. v. Smt. Sulanga Bose and Ors.⁷, Geetha v. Nanjundaswamy and Ors⁸ to support his submissions.

2020 SCC OnLine Del 2896.

(2019) 7 SCC 158.

(2018) 11 SCC 780

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16. I have considered the submissions advanced by both parties and perused the record.

17. The central issue which has arisen for consideration is whether the jurisdiction of this Court is excluded by the License Agreement, which would warrant this Court to return/reject the plaint.

18. Before embarking on the merits of the case, it is pertinent to peruse Section 20 of the CPC, which inter alia stipulates that civil litigation must be instituted in a Court possessing jurisdiction over the territory in which the defendant resides, employed, or conducts commerce. Additionally, this provision also takes into account the location where the cause of action has arisen. Section 20 of CPC reads as under:-

"20. Other suits to be instituted where defendants reside or cause of, action arises .-
Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction-

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

[Explanation] [Substituted by the Code of Civil Procedure (Amendment) Act, 1976, Section 7, for " Explanation II" (w.e.f. 1.2.1977).]-A corporation shall be deemed to carry on business at its sole or principal office in [India] [Substituted by Act 2 of 1951, Section (2022) 7 SCC 731.

2023 SCC OnLine SC 1407.

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3, for " the States" .] or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place."

19. Section 20 (c) lays down that the Court within whose local limits a cause of action arises wholly or in part will have the territorial jurisdiction for adjudication of the dispute. It recognises the territorial jurisdiction of Courts, inter alia, wherever the cause of action wholly or in part arises.

20. Coming to the facts of the present case, admittedly the defendants do not reside or primarily operate in the local jurisdiction of this Court, however, defendant No. 1 has entered into franchise agreements titled License Agreement with entities situated all around the world. Such a License Agreement has also been executed between the plaintiff and defendant No. 1, whereby, the plaintiff conducted the appraisals under the aegis of defendant No. 1 on businesses situated in India and other parts of the world.

21. Moreover, in order to attract the territorial jurisdiction of this Court, the plaintiff essentially pleaded the following averments:-

"Territorial Jurisdiction:

92. That this Hon ble Court can assume jurisdiction on the grounds of contractual provisions, cause of action, balance of convenience, interests of justice and forum nonconveniens as explained below.

93. That the Defendant no.1 is amenable to the personal jurisdiction of this Hon ble Court for the following reasons:

[a]. the Defendant no.1 in its Termination Email dated 12.10. 2021 have accepted the jurisdiction of Indian Courts by mentioning that it will defend itself vigorously in Indian Courts and thus shown amenability towards the jurisdiction of this Hon ble Court.

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[b]. there are around 200 CMMI Certifications carried out every year in India which are reviewed, approved, and certified by the Defendant no.1 .

[c]. the Indian Consumers including the Indian Government uses these aforesaid CMMI Certification Results published on the Defendant no.1 s website for Published Appraisal Results: <https://cmmi institute.com/pars>.

[d]. the Indian Citizens take online training, online education and online examination from the website of the Defendant no.1 [www.isaca.org] for more than 25 [approx.] types of courses that are available through Defendant no.1 s website in India. The average cost of such course is around US \$ 500 per person which is a reasonably high amount for an individual course.

94. That the Defendant no.1 has close connection of activities in India as explained below:

[a]. the Defendant no.1 has 48 franchisees in India [based in India] for CMMI Certification Business.

[b]. there are around 200 CMMI Certifications carried out every year in India which are reviewed, approved, and certified by the Defendant no.1.

[c]. the Defendant no.1 has 12 very active offices in India, called Chapters, whose activities are very closely linked with the Defendant no.1. These 12 offices of Defendant no.1 are located at, Delhi, Ahmedabad, Bengaluru, Chennai, Cochin, Cochin, Coimbatore, Hyderabad, Kolkata, Pune, Mumbai, Trivandrum and Vijaywada, carry out activities on the behalf of and in the name of Defendant no.1 throughout the year.

[d]. the Defendant no.1 collects fee on the behalf of these Indian Chapters and has the power to form or dissolve these Chapters as per the Section 3.7 and Article VII of the Defendant no.1 s "Amended and Re-stated Byelaws dated 14.02.2020." The Defendant no.1 hosts the mini website of these chapters/offices on its main website. For example, the mini website of Delhi Chapter of Defendant no.1 is:

<https://engage.isaca.org/newdelhichapter/home> [e] the Defendant no.1 has around 14000 [approx.] members who are citizens of India and have their legal rights.

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95. That this Hon ble Court can exercise its jurisdiction because the Plaintiff is located at Delhi, the Agreement dated 12.10.2020 was signed by the Plaintiff at Delhi and the cause of action triggered by the Termination Email dated 12.10.2021 has been received at Delhi.

96. That the Plaintiff has no office in any city of USA nor has any employee in USA.

97. That it is reasonable and just for this Hon ble Court to exercise its jurisdiction because:

[a]. the Illinois Business Corporation Act of 1983, State of Illinois, USA, mandates that being a foreign company, the Plaintiff cannot file a suit in the State of Illinois, USA, without seeking permission from the Secretary of State of Illinois. This was not revealed by Defendant no.1 to the Plaintiff at the time of signing of the Agreement dated 12.10.2020.

[Ref.: Business Corporation Act of 1983, [805 ILCS 5/Section 13.70] Transacting business without authority.

(a) No foreign corporation transacting business in this State without authority to do so is permitted to maintain a civil action in any court of this State, until the corporation obtains that authority] <https://www.ilga.gov/legislation/ilcs/ilcs4.asp?DocName=080500050HArt%2E+13&ActID=2273&ChapterID=65&SeqStart=16300000&SeqEnd=17900000> [b]. the Illinois Franchise Disclosure Act, 1987, State of Illinois, USA, mandates that the Defendant no.1 should have made the aforesaid disclosure to the Plaintiff. Thus, the Defendant no.1 not only concealed this information from the Plaintiff but also violated the law of its own state and country by doing that.

[Ref.: Franchise Disclosure Act of 1987. [815 ILCS 705/5 Section 5]: Sec. 5(2) Failure to deliver a disclosure statement unlawful].

<https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2381&ChapterID=67> [c]. the practices of Defendant no.1 are discriminatory to the Plaintiff because it allows Arbitration for all NorthAmericans but not for Indians. On the Defendant no.1 s Digitally Signed By:PRIYA Digitally Signed Signing Date:27.03.2025 By:PURUSHAINDRA 11:25:15 11 KUMAR KAURAV website the following notice [27.04.2021] is given:

"IMPORTANT NOTICE FOR RESIDENTS IN NORTH AMERICA ONLY: YOU AND ISACA® AGREE THAT ANY FUTURE DISPUTES BETWEEN YOU AND ISACA WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION, UNLESS YOU OPT-OUT IN ACCORDANCE WITH SECTION 13."

[<https://www.isaca.org/terms%20of%20use>] [d]. the Agreement dated 12.10.2020 allows approach to any court if the jurisdiction of the court mentioned in the said Agreement is not available to the Parties and the Parties have decided to waive off objections to venue of any such court.

98. That this Hon ble Court exercised jurisdiction over a foreign Defendant and granted an ex-parte injunction in the past.

99. That sufficient points of contact exist for vesting jurisdiction in this Hon ble Court.

100. That the forum of choice documented in the contract is not the forum of choice of the plaintiff. Plaintiff had no other choice to accept the forum of choice mentioned by defendant because the denial would have left the plaintiff with the destruction of business and the Defendant no.1 was in complete power to dominate the Plaintiff.

101. That under the provisions of Section 20[c] CPC, a suit can be filed within the local limits of the Courts where the cause of action arises, wholly or in part.

102. That the Hon ble Supreme Court has held that a contractual clause which restrains legal proceedings shall be void where the clause imposes an absolute restraint.

Here in the instant suit, this is true because, Plaintiff cannot file a suit in the State of Illinois as explained above, hence this Hon ble Court can acquire the jurisdiction."

22. It is the trite law that a cause of action, although devoid of a precise definition, encompasses all the material facts that are mandatorily required to be proved by the plaintiff in order to prove his entitlement to the relief Digitally Signed By:PRIYA Digitally Signed Signing Date:27.03.2025 By:PURUSHAINDRA 11:25:15 12 KUMAR KAURAV claimed from the Court of competent jurisdiction. Admittedly, in the present case, defendant No.1 does not reside in Delhi. However, looking at the nature of the License Agreement, the plaintiff can issue certification to companies all around the world, thus, the effect of the License Agreement is felt within the territorial jurisdiction of this Court. Furthermore, the plaintiff resides in Delhi and the License Agreement was signed and executed in Delhi. Moreover, the effect of the impugned Termination Notice was also felt in Delhi as the plaintiff resides and works from the Delhi office. Therefore, the factum of the execution of the contract, the place of execution, the place of business, the scope of the operation of the contract, and the resultant effect of the breach or invocation of the contract are illustratively some of the few fundamental aspects of the cause of the action and they have a nexus with respect to the jurisdiction of this Court.

23. Therefore, by looking at the averments in the plaint and as per Section 20(c) CPC, a part of the cause of action arises within the territorial jurisdiction of this Court, thus, this Court has jurisdiction to entertain the suit. (See Kusum Ingots & Alloys Ltd. v. Union of India and Another⁹, Alchemist Ltd. and another v. State Bank of Sikkim and others¹⁰ and Nawal Kishore Sharma vs Union Of India & Ors¹¹).

24. Now, the moot question which arises for this Court's consideration is whether by virtue of Clause 12.2 of the License Agreement, which was mutually agreed by the parties and confers exclusive jurisdiction to the Courts of Illinois, the jurisdiction of this Court gets excluded.

(2004) 6 SCC 254

(2007) 11 SCC 335

(2014) 9 SCC 329

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25. At this juncture, it is pertinent to refer to the case of Hakam Singh v. Gammon (India) Ltd¹², wherein, the Supreme Court held that when multiple Courts possess jurisdiction under the CPC to adjudicate a suit or proceeding, an agreement between the parties stipulating that the dispute shall be resolved in one of these Courts does not violate public policy. The relevant extract of the said decision read as under:-

"4. The Code of Civil Procedure in its entirety applies to proceedings under the Arbitration Act. The jurisdiction of the courts under the Arbitration Act to entertain a proceeding for filing an award is accordingly governed by the provisions of the Code of Civil Procedure. By clause 13 of the agreement it was expressly stipulated between the parties that the contract shall be deemed to have been entered into by the parties concerned in the city of Bombay. In any event the respondents have their principal office in Bombay and they were liable in respect of a cause of action arising under the terms of the tender to be sued in the courts at Bombay. It is not open to the parties by agreement to confer by their agreement jurisdiction on a Court which it does not possess under the Code. But where two courts or more have under the Code of Civil Procedure jurisdiction to try a suit or proceeding an agreement between the parties that the dispute between them shall be tried in one of such Courts is not contrary to public policy. Such an agreement does not contravene Section 28 of the Contract Act."

26. Reference can also be made to the decision of A.B.C. Laminart Pvt. Ltd. & Anr v. A.P. Agencies, Salem¹³ that addresses the issue of jurisdiction clauses in contracts. In the said case, the appellants

therein, A.B.C. Laminart Pvt. Ltd., had entered into a contract with the respondent therein, A.P. Agencies, Salem, for the supply of metallic yarn. The contract therein contained a clause stating that any disputes arising from the agreement (1971) 1 SCC 286.

(1989) 2 SCC 163.

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would be subject to the jurisdiction of the Courts in Kaira, Gujarat. When a dispute arose, the respondent filed a suit in a Court in Salem, Tamil Nadu, which also had jurisdiction over the matter.

27. The Supreme Court further held that when multiple Courts have jurisdiction to try a suit or proceeding, an agreement between the parties to have the dispute tried in one of those Courts is not contrary to public policy. The Supreme Court also emphasized that such an agreement does not contravene Section 28 of the Indian Contract Act, 1872 which prohibits agreements that restrict the ability of a party to enforce their rights through legal proceedings. The Court further clarified that if the parties to a contract agree to vest jurisdiction in one of the competent Courts, the agreement is valid as long as it is clear, unambiguous, and explicit. The decision of A.B.C. Laminart Pvt. Ltd. reinforces the principle that parties can contractually agree on the jurisdiction of a particular Court, provided it is within the bounds of the law. The relevant extracts of the said decision read as under:-

"20. When the court has to decide the question of jurisdiction pursuant to an ouster clause it is necessary to construe the oustering expression or clause properly. Often the stipulation is that the contract shall be deemed to have been made at a particular place. This would provide the connecting factor for jurisdiction to the courts of that place in the matter of any dispute on or arising out of that contract. It would not, however, ipso facto take away jurisdiction of other courts. Thus, in Salem Chemical Industries v. Bird & Co. [AIR 1979 Mad 16 : (1978) 2 Mad LJ 189] where the terms and conditions attached to the quotation contained an arbitration clause provided that:"any order placed against this quotation shall be deemed to be a contract made in Calcutta and any dispute arising therefrom shall be settled by an arbitrator to be jointly appointed by us", it was held that it merely fixed the situs of the contract at Calcutta and it did not mean to confer an exclusive jurisdiction on the court at Calcutta, and when a part of the Digitally Signed By:PRIYA Digitally Signed Signing Date:27.03.2025 By:PURUSHAINDR 11:25:15 15 KUMAR KAURAV cause of action had arisen at Salem, the court there had also jurisdiction to entertain the suit under Section 20(c) of the Code of Civil Procedure.

21. From the foregoing decisions it can be reasonably deduced that where such an ouster clause occurs, it is pertinent to see whether there is ouster of jurisdiction of other courts. When the clause is clear, unambiguous and specific accepted notions of contract would bind the parties and unless the absence of ad idem can be shown, the other courts should avoid exercising jurisdiction. As regards construction of the

ouster clause when words like "alone", "only", "exclusive" and the like have been used there may be no difficulty. Even without such words in appropriate cases the maxim "expressio unius est exclusio alterius" -- expression of one is the exclusion of another -- may be applied. What is an appropriate case shall depend on the facts of the case. In such a case mention of one thing may imply exclusion of another. When certain jurisdiction is specified in a contract an intention to exclude all others from its operation may in such cases be inferred. It has therefore to be properly construed."

28. In the case of Shriram City Union Finance Corpn. Ltd. v. Rama Mishra¹⁴, the legal position stated in Hakam Singh was reiterated. In the said case, the exclusive jurisdiction clause conferred the jurisdiction to the Courts of Calcutta and the Supreme Court held that if one or more Courts have the jurisdiction to try any suit, it is open for the parties to choose any one of the two competent Courts to decide their disputes. Whilst drawing the distinction between the inherent lack of jurisdiction of a Court on account of some statute and the other where parties through agreement bind themselves to have their dispute decided by any one of the Courts having jurisdiction, the Supreme Court held as under:-

"9. ... It is open for a party for his convenience to fix the jurisdiction of any competent court to have their dispute adjudicated by that court alone. In other words, if one or more courts have the jurisdiction to try (2002) 9 SCC 613.

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any suit, it is open for the parties to choose any one of the two competent courts to decide their disputes. In case parties under their own agreement expressly agree that their dispute shall be tried by only one of them then the parties can only file the suit in that court alone to which they have so agreed. In the present case, as we have said, through Clause 34 of the agreement, the parties have bound themselves that in any matter arising between them under the said contract, it is the courts in Calcutta alone which will have jurisdiction. Once parties bound themselves as such it is not open for them to choose a different jurisdiction as in the present case by filing the suit at Bhubaneswar.

Such a suit would be in violation of the said agreement."

29. In the context of preventing a party from approaching a Court whose jurisdiction has been excluded by the Contract, thereby, giving prominence to the Court which has been exclusively conferred jurisdiction by virtue of a Contract, it would be apposite to take a brief detour of the decision of the Supreme Court in the case of Modi Entertainment Network which provides a comprehensive exposition of the principles governing the issuance of anti- suit injunctions within the framework of transnational litigation. The dispute centered around contractual obligations related to the ICC Knockout Cricket Tournament in Kenya, wherein the plaintiff, Modi Entertainment Network, sought an injunction to restrain the defendant, W.S.G. Cricket Pvt. Ltd.,

from prosecuting a parallel claim in the High Court of Justice, Queen's Bench Division, England.

30. The Supreme Court meticulously delineated the criteria for the exercise of discretion in granting anti-suit injunctions. First, the Court underscored the necessity of personal jurisdiction over the defendant, asserting that the injunction can only be issued if the defendant is amenable to the jurisdiction of the Court. Second, the Court highlighted the imperative to safeguard the ends of justice, emphasizing that the injunction should be Digitally Signed By:PRIYA Digitally Signed Signing Date:27.03.2025 By:PURUSHAINDRA 11:25:15 17 KUMAR KAURAV granted only if the denial thereof would result in irreparable injustice or perpetuate vexatious litigation. Third, the Court reaffirmed the principle of comity, which mandates a judicious respect for the jurisdiction of foreign Courts, thereby ensuring that the anti-suit injunction does not unduly interfere with the exercise of jurisdiction by a competent foreign tribunal.

31. Furthermore, the Supreme Court elucidated the equitable considerations that govern the grant of anti-suit injunctions, noting that such relief should be sparingly invoked and tailored to the exigencies of the specific case. Consequently, the Supreme Court reinstated the injunction, restraining the defendants therein from proceeding with the action in the English Court, thereby affirming the contractual forum selection clause which conferred exclusive jurisdiction upon the Indian courts. This seminal judgment delineates the jurisprudential contours of anti-suit injunctions, balancing the imperatives of judicial comity, equitable discretion, and the protection of contractual rights within the realm of cross-border commercial disputes. The relevant extracts of the said decision read as under:-

"24. From the above discussion the following principles emerge:

(1) In exercising discretion to grant an anti-suit injunction the court must be satisfied of the following aspects:

(a) the defendant, against whom injunction is sought, is amenable to the personal jurisdiction of the court;

(b) if the injunction is declined, the ends of justice will be defeated and injustice will be perpetuated; and

(c) the principle of comity -- respect for the court in which the commencement or continuance of action/proceeding is sought to be restrained -- must be borne in mind.

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(2) In a case where more forums than one are available, the court in exercise of its discretion to grant anti-suit injunction will examine as to which is the appropriate forum (forum conveniens) having regard to the convenience of the parties and may

grant anti-suit injunction in regard to proceedings which are oppressive or vexatious or in a forum non-conveniens.

(3) Where jurisdiction of a court is invoked on the basis of jurisdiction clause in a contract, the recitals therein in regard to exclusive or non-

exclusive jurisdiction of the court of choice of the parties are not determinative but are relevant factors and when a question arises as to the nature of jurisdiction agreed to between the parties the court has to decide the same on a true interpretation of the contract on the facts and in the circumstances of each case.

(4) A court of natural jurisdiction will not normally grant anti-suit injunction against a defendant before it where parties have agreed to submit to the exclusive jurisdiction of a court including a foreign court, a forum of their choice in regard to the commencement or continuance of proceedings in the court of choice, save in an exceptional case for good and sufficient reasons, with a view to prevent injustice in circumstances such as which permit a contracting party to be relieved of the burden of the contract; or since the date of the contract the circumstances or subsequent events have made it impossible for the party seeking injunction to prosecute the case in the court of choice because the essence of the jurisdiction of the court does not exist or because of a vis major or force majeure and the like.

(5) Where parties have agreed, under a non-exclusive jurisdiction clause, to approach a neutral foreign forum and be governed by the law applicable to it for the resolution of their disputes arising under the contract, ordinarily no anti-suit injunction will be granted in regard to proceedings in such a forum conveniens and favoured forum as it shall be presumed that the parties have thought over their convenience and all other relevant factors before submitting to the non-exclusive jurisdiction of the court of their choice which cannot be treated just as an alternative forum.

(6) A party to the contract containing jurisdiction clause cannot normally be prevented from approaching the court of choice of the parties as it would amount to aiding breach of the contract; yet when one of the parties to the jurisdiction clause approaches the court of choice in which exclusive or non-exclusive jurisdiction is created, the Digitally Signed By:PRIYA Digitally Signed Signing Date:27.03.2025 By:PURUSHAINDRA 11:25:15 19 KUMAR KAURAV proceedings in that court cannot per se be treated as vexatious or oppressive nor can the court be said to be forum non-conveniens.

(7) The burden of establishing that the forum of choice is a forum non- conveniens or the proceedings therein are oppressive or vexatious would be on the party so contending to aver and prove the same."

32. In the case of New Moga Transport Co. v. United India Insurance Co. Ltd.¹⁵, the question that fell for consideration before the Supreme Court was whether the Civil Court at Barnala had jurisdiction to try the suit. The Supreme Court considered Section 20 of the CPC and following the decisions of Hakam Singh and Shriram City held as under:

"19. The intention of the parties can be culled out from use of the expressions „only , „alone , „exclusive and the like with reference to a particular court. But the intention to exclude a court's jurisdiction should be reflected in clear, unambiguous, explicit and specific terms. In such case only the accepted notions of contract would bind the parties. The first appellate court was justified in holding that it is only the court at Udaipur which had jurisdiction to try the suit. The High Court did not keep the relevant aspects in view while reversing the judgment of the trial court. Accordingly, we set aside the judgment of the High Court and restore that of the first appellate court. The court at Barnala shall return the plaint to Plaintiff 1 (Respondent 1) with appropriate endorsement under its seal which shall present it within a period of four weeks from the date of such endorsement of return before the proper court at Udaipur."

33. The Supreme Court in the case of Man Roland Druckmachinen Ag v. Multicolour Offset Ltd.¹⁶ has held that when parties mutually designate a specific forum, the judiciary shall enforce this concurrence. This is not predicated on a lack of inherent jurisdiction or the exclusion thereof by the consensual delegation to an alternate tribunal, but rather on the commitment (2004) 4 SCC 677.

(2004) 7 SCC 447.

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of the judiciary to uphold the sanctity of the agreement and to not aid in its breach thereof. Such a concord is neither inimical to public policy nor does it contravene Section 28 or Section 23 of the Indian Contract Act, 1872.

34. Reference can also be made to the decision of Rajasthan SEB v. Universal Petrol Chemicals Ltd.¹⁷, wherein Clause 30 of the general conditions of the Contract therein and Clause 7 of the bank guarantee were considered. Both these clauses conferred the jurisdiction to the Courts at Jaipur in Rajasthan. In the light of the above clauses, the question under consideration before the Supreme Court was whether the Calcutta High Court, where an application under Section 20 of the Arbitration Act, 1940 was made, had territorial jurisdiction to entertain the petition or not. Following the decisions of Hakam Singh and A.B.C. Laminart Pvt. Ltd., the Supreme Court in paras 27 and 28 held as under:

"27. The aforesaid legal proposition settled by this Court in respect of territorial jurisdiction and applicability of Section 20 of the Code to the Arbitration Act is clear, unambiguous and explicit. The said position is binding on both the parties who were contesting the present proceeding. Both the parties with their open eyes entered into the aforesaid purchase order and agreements thereon which categorically provide that all disputes arising between the parties out of the agreements would be adjudicated upon and decided through the process of arbitration and that no court other than the court at Jaipur shall have jurisdiction to entertain or try the same. In

both the agreements in Clause 30 of the general conditions of the contract it was specifically mentioned that the contract shall for all purposes be construed according to the laws of India and subject to jurisdiction only at Jaipur in Rajasthan courts only and in addition in one of the purchase order the expression used was that the court at Jaipur only would have jurisdiction to entertain or try the same.

(2009) 3 SCC 107.

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28. In the light of the aforesaid facts of the present case, the ratio of all the aforesaid decisions which are referred to hereinbefore would squarely govern and apply to the present case also. There is indeed an ouster clause used in the aforesaid stipulations stating that the courts at Jaipur alone would have jurisdiction to try and decide the said proceedings which could be initiated for adjudication and deciding the disputes arising between the parties with or in relation to the aforesaid agreements through the process of arbitration. In other words, even though otherwise the courts at Calcutta would have territorial jurisdiction to try and decide such disputes, but in view of the ouster clause it is only the courts at Jaipur which would have jurisdiction to entertain such proceeding."

35. In the case of Swastik Gases Pvt. Ltd. v. Indian Oil Corporation Ltd.¹⁸, the Supreme Court noted that while conferring the exclusive jurisdiction to one Court, generally words like „alone , „only , „exclusive or „exclusive jurisdiction may be used but this is not the only material and decisive factor to look into. The Court held as under:-

"32. For answer to the above question, we have to see the effect of the jurisdiction clause in the agreement which provides that the agreement shall be subject to jurisdiction of the courts at Kolkata. It is a fact that whilst providing for jurisdiction clause in the agreement the words like „alone , „only , „exclusive or „exclusive jurisdiction have not been used but this, in our view, is not decisive and does not make any material difference. The intention of the parties-by having Clause 18 in the agreement - is clear and unambiguous that the courts at Kolkata shall have jurisdiction which means that the courts at Kolkata alone shall have jurisdiction. It is so because for construction of jurisdiction clause, like Clause 18 in the agreement, the maxim *expressio unius est exclusio alterius* comes into play as there is nothing to indicate to the contrary. This legal maxim means that expression of one is the exclusion of another. By making a provision that the agreement is subject to the jurisdiction of the courts at Kolkata, the parties have impliedly excluded the jurisdiction of other courts. Where the contract specifies the jurisdiction of the courts at a particular place and such courts have jurisdiction to deal with the matter, we think that an inference may be drawn that parties intended to exclude all other

(2013) 9 SCC 32.

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courts. A clause like this is not hit by Section 23 of the Contract Act at all. Such clause is neither forbidden by law nor it is against the public policy. It does not offend Section 28 of the Contract Act in any manner."

36. Thus, even in the absence of categorical keywords indicating exclusivity of jurisdiction upon a particular Court, the exclusivity could be inferred from the context of the agreement if there is nothing to suggest otherwise. This interpretation also strengthens from the fact because in ordinary parlance and in the absence of a suggestion to the contrary, the exclusive specification of a particular Court in the Contract amounts to the automatic exclusion of all the other Courts. For, in the absence of mutual consent to confer exclusive jurisdiction upon a particular Court, there is no reason for the parties to confer territorial jurisdiction upon a particular Court in the express language of the Contract. The latin maxim *expressio unius est exclusio alterius* which means that the expression of one is the exclusion of another comes into play in such a scenario as there is nothing to indicate to the contrary.

37. A similar position has been followed in the decisions of *R.S.D.V. Finance Co. (P) Ltd. v. Shree Vallabh Glass Works Ltd.*¹⁹, *Angile Insulations v. Davy Ashmore India Ltd.*²⁰, *Hanil Era Textiles Ltd. v. Puromatic Filters (P) Ltd.*²¹ and *Balaji Coke Industry (P) Ltd. v. Maa Bhagwati Coke Gujarat (P) Ltd.*²².

(1993) 2 SCC 130.

(1995) 4 SCC 153.

(2004) 4 SCC 671.

(2009) 9 SCC 403.

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38. At this juncture, it is pertinent to have a look at Clause 12.2 of the License Agreement which is the bone of contention in the present controversy. Clause 12.2 reads as under:-

"12.2 Governing Law. This Agreement shall be governed by the laws of the state of Illinois without regard to its conflicts of laws provisions. All claims and/or controversies of every kind and nature arising out of or relating to this Agreement, including any questions concerning its existence, negotiation, validity, meaning, performance, non- performance, breach, continuance or termination shall be settled: (1) at ISACA's election, by binding arbitration administered by the American

Arbitration Association ("AAA") in accordance with its Commercial Arbitration Rules and, in such case (a) the arbitration proceedings shall be conducted before a panel of three arbitrators, with each party selecting one disinterested arbitrator from a list submitted by the AAA and the two disinterested arbitrators selecting a third arbitrator from the list, (b) each party shall bear its own costs of arbitration, (c) all arbitration hearings shall be conducted in Cook County, Illinois, and (d) the provisions hereof shall be a complete defense to any suit, action or proceeding instituted in any Federal, state or local Court or before any administrative tribunal with respect to any claim or controversy arising out of or relating to this Agreement and which is arbitrable as provided in this Agreement, provided that either party may seek injunctive relief in a Court of law or equity to assert, protect or enforce its rights in any intellectual property and/or proprietary information as described in this Agreement; or (2) in the event that ISACA does not elect binding arbitration as permitted in point (1) above, exclusively in the United States District Court for the Northern District of Illinois or, if such Court does not have jurisdiction, in any Court of general jurisdiction in Cook County, Illinois and each party consents to the exclusive jurisdiction of any such Courts and waives any objection which such party may have to the laying of venue in any such Courts.

12.3 Legal Compliance. Each party agrees to exercise its rights and obligations hereunder in accordance with applicable laws and regulations, including but not limited to export control laws. The ISACA's obligations hereunder are contingent on compliance with applicable United States export laws and regulations. The transfer of certain technical data and commodities may require a License from the pertinent agency of the United States Government and/or written assurances by Agreement Partner that Agreement Partner shall not Digitally Signed By: PRIYA Digitally Signed Signing Date: 27.03.2025 By: PURUSHAINDRA 11:25:15 24 KUMAR KAURAV export data or commodities to certain foreign countries without prior approval of such agency. ISACA neither represents that a License shall not be required nor that, if required, it shall be issued. Agreement Partner agrees that it will not bring export-controlled materials onto ISACA's premises or pass such materials to any ISACA personnel without first (i) informing ISACA, (ii) receiving ISACA's written consent to accept such materials, and (iii) determining with ISACA the specific mechanism by which such materials will be provided to and received by ISACA."

39. A bare perusal of the said clause would indicate that the agreement shall be governed by the laws of the State of Illinois. Moreover, all claims and disputes arising out of the controversy will be settled as per AAA (American Arbitration Association). Furthermore, if defendant No. 1 does not elect the binding arbitration as enumerated in point (1) thereto, then exclusively, USDC Illinois or, if such Court does not have jurisdiction, then any Court of general jurisdiction in Cook County, Illinois will have jurisdiction. The said clause would further indicate that each party consents to the exclusive jurisdiction of any such Courts and waives any objection which such party may have to the laying of venue in any such Courts.

40. The plaintiff does not dispute the existence of the jurisdiction clause in the Contract, nor has any allegation of fraud, coercion, or undue influence been raised at the time of its execution. A meticulous examination of the contractual terms and supporting documents thereto would unequivocally establish that the parties, through an express and unequivocal agreement, have conferred exclusive jurisdiction upon the foreign court for the adjudication of disputes arising therefrom. By doing so, they have consciously and voluntarily ousted the jurisdiction of Courts in India.

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41. The use of definitive terms such as "exclusively" in the jurisdiction clause further fortifies the parties' unequivocal intention to submit to the authority of the foreign Court, leaving no room for ambiguity or residual jurisdiction before this Court. It is a well-established principle that jurisdictional clauses in commercial agreements, particularly those that confer exclusive jurisdiction upon a foreign tribunal, do not per se violate public policy and are also not in contravention of the mandate of Section 28 of the Indian Contract Act, 1872, which deals with agreements in restraint of legal proceedings.

42. Given that the parties, with full knowledge and understanding of their contractual obligations, have voluntarily agreed to an exclusive jurisdiction clause in favor of a foreign court, this Court is precluded from exercising jurisdiction over the present dispute. Any interference in such matters would not only be contrary to the settled principles of party autonomy in contractual arrangements but would also amount to a judicial overreach into the legitimate expectations and intentions of the contracting parties.

43. Furthermore, as it has been held in Modi Entertainment Network that a Court of natural jurisdiction will not normally grant anti-suit injunction against a defendant when the parties have agreed to submit to the exclusive jurisdiction to another Court, except in exceptional circumstances to prevent injustice. In the present case, the plaintiff is not able to show any convincing contingencies that prevent it from ventilating its grievances before a mutually agreed forum; rather no concrete steps were even taken by the plaintiff to approach the mutually agreed forum. Mere complexity of the procedure in a foreign country or inconvenience of the parties on that count Digitally Signed By:PRIYA Digitally Signed Signing Date:27.03.2025 By:PURUSHAINDRA 11:25:15 26 KUMAR KAURAV cannot ipso facto be the made the sole basis to disturb the mutual intention of the parties which is duly reflected in the agreement, which was not only consciously signed by both the parties but also presumably with the underline understanding of the procedural nuances prevalent in the exclusive jurisdiction of mutual choice as agreed by the parties. In such a scenario, the exceptions carved out in the Modi Entertainment Network are not applicable in the present case.

44. Order VII Rule 11 of the CPC confers upon Courts the jurisdiction to summarily dismiss a plaint at any juncture of the proceedings if it fails to articulate a legitimate cause of action or is precluded by statutory provisions. This procedural mandate serves to obviate frivolous and vexatious litigation, thus conserving judicial resources. The Supreme Court has elucidated the import of this provision in

Azhar Hussain v. Rajiv Gandhi²³. In the application of this rule, as expounded in Geetha v. Nanjundaswamy and Ors²⁴ and evaluated in Hardesh Ores (P) Ltd. v. Hede & Co²⁵, the Court must scrutinize the plaint in its entirety, accepting the averments therein as prima facie true. This authority is exercisable at any stage of the suit, as reiterated in Saleem Bhai v. State of Maharashtra²⁶.

45. Recently, this Court as well in the case of Meena Vohra v. Master Hosts Pvt. Ltd. & Ors.²⁷ while examining the position revolving around the Order VII Rule 11 CPC held that the power vested in the Court under Order VII Rule 11 CPC is not incumbent upon a formal application moved by the
1986 Supp SCC 315.

2023 SCC OnLine SC 1407.

(2007) 5 SCC 614.

(2003) 1 SCC 557.

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defendant but can also be exercised by the Court on its own. Moreover, at this stage, it is not permissible to segregate a sentence or a passage and to read it in isolation, and the plaint has to be construed as it comprehensively stands, without addition or subtraction of words. While considering an application under the aforesaid provision, the underlying intent of this remedy is to be kept in mind, that is to curb abusive or fruitless litigation which is bound to meet a dead fate. At the same time, once the conditions stipulated in the provision are found to exist in a given case, the Court must exercise the power of rejection, which is discernible from the use of the word "shall".

46. Therefore, juxtaposing the legal position with regard to the principle of "exclusive jurisdiction" as laid down in the judicial pronouncements of the Supreme Court with the principles of Order VII Rule 11 CPC, it would establish that the mutual conferment of jurisdiction to a Courts of Illinois explicitly ousts the jurisdiction of this Court to adjudicate the lis between the contesting parties.

47. In view of the aforesaid, the application is allowed and the plaint stands rejected.

48. All pending applications are disposed of.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

MARCH 26, 2025

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