

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.583 of 2021

Present :

Mrs. Justice Kausar Sultana Hussain.

SICPA SA.....Plaintiff.

Versus

Federation of Pakistan and four others.....Defendants.

For hearing of CMA No.6648 of 2021 (Application U/O VII Rule 11 CPC)

Date of Hearing : 11.06.2021, 17.06.2021, 22.06.2021,
23.06.2021, 25.06.2021 & 28.06.2021

Date of Order : **20th August, 2021.**

For the Plaintiff : M/s Makhdoom Ali Khan, Jam Zeeshan Ali
and Ali Almani, Advocates.

For Defendant No.1/State : M/s. Khalid Javed & Kashif Sarwar Paracha,
Attorney General and Deputy Attorney
General.

For Defendant No.2,3&4 : M/s Ameer Bakhsh Metlo, Imran Ahmed
Metlo, and Mr. Altmash Faisal Arab,
Advocates.

For Defendant No.5 : Mr. Salahuddin Ahmed, Advocate.

ORDER

Kausar Sultana Hussain, J.:- By this order, I intend to decide an application under Order VII Rule 11 CPC being CMA No. 6648 of 2021, moved by the learned counsel for the defendant No.5, accompanied by an affidavit of its authorized representative namely Aqeel Ahmed, whereby he prayed to reject or return the plaint of suit No. 583 of 2021 filed by the plaintiff.

2. The plaintiff/bidder (SICPA SA) being aggrieved, through filing this suit No. 583 of 2021 for “Declaration, Permanent Injunction” against the Federation of Pakistan through Secretary Revenue (defendant No.1), FBR (defendant No.2), Licensing Committee (defendant No.3), Grievance Redressal Committee (GRC) (defendant No.4) and AJCL Private Limited (defendant No.5) has challenged the order dated 03.03.2021 (impugned order) passed by

the Grievance Redressal Committee (GRC/defendant No.4), constituted by the defendant No.2 (FBR) and the conduct of the bidding process for the award of license to defendant No.5 for a trace and track System (T&T System) for tobacco products, cement, sugar and fertilizers. The defendant No.4 (GRC) through the impugned order had dismissed plaintiff's complaint filed under Rule 48 (2) of the Public Procurement Rules, 2004 (2004 Rules) and upheld the award of the license to defendant No.5 in clear violation of the Instructions for license (IFL) issued by defendant No.2 and 2004 Rules.

3. Precisely, the background of the case is that plaintiff is a company incorporated under the laws of Switzerland and is one of the largest providers of T&T Systems in the world producing billions of stamps per annum. The plaintiff entered into a Teaming Agreement dated 6th September 2019 with Arwen Tech (Private) Limited (**"Arwen Tech"**), which is a private limited company incorporated in Pakistan and provides enterprise IT solutions. On 20 November 2020, defendant No.2 (FBR) issued Instruction for license (IFL) for awarding a contract for the license and published (annexure B-1) the evaluation Framework (annexure B-2)|. The plaintiff raised certain queries regarding IFL through emails in order to prepare its technical proposal, however defendant No.2 did not respond such plaintiff's emails. Plaintiff, as part of a consortium along with Arwen Tech, thereafter, submitted an application/bid for the license in accordance with the IFL, the 2004 Rules and Sales Tax Rules, 2006. Apart from plaintiff, ten (10) other applications/bids were submitted. On 31st December, 2020, these eleven (11) applications/bids were opened by the defendant No.3 (the Licensing Committee). Initially, four (4) entities met the eligibility criteria. Following an appeal to the Grievance

Redressal Committee/defendant No.4 by some bidders, a total of eight (8) entities were declared to have met the eligibility criteria. On 29th January, 2021, the Licensing Committee issued a notice to these entities to nominate their representatives to attend a meeting for opening of financial bids. On 1st February, 2021, financial bids were opened. Further, on 2nd February, 2021 the Licensing Committee issued an evaluation report, whereby M/s. AJCL (defendant No.5) consortium secured the highest score and was declared as most advantageous applicant. The Licensing Committee announced the results of bidding process and published the evaluation report on the official website of FBR, which portray the following position of the plaintiff and defendant No.5.

| Name of Bidder | Marks | | | Rules/Regulations/SB D*/Policy/Basis for Rejection/Acceptance as per Rule 35 of PP Rules 2004 |
|----------------|---------------------------|---------------------------|--------------------|---|
| | Technical (if applicable) | Financial (if applicable) | Total (out of 200) | |
| AJCL | 156.60 | 26.33 | 182.93 | 1 st |
| NIFT | 134.99 | 28.97 | 163.96 | 2 nd |
| SICPA | 134.02 | 28.56 | 162.58 | 3 rd |

4. This report was published on 2nd February, 2021 on FBR's website (annexure-E). The evaluation report did not provide any breakdown of the scoring or explanation for accepting or rejecting bids as required under Rule 35 of the 2004 Rules. On 4th February, 2021, therefore, plaintiff requested the Licensing Committee to provide a complete copy of the evaluation report. On 15th February, 2021, under Rule 48 (2) of the 2004 Rules the plaintiff had filed a grievance petition. Most of the other unsuccessful bidders also filed grievance petitions before GRC. On 23rd February, the plaintiff filed its written submission before GRC and oral submissions were made at the hearing as well. On

03.03.2021, the GRC (defendant No.4) passed the impugned order. The official defendants have made every possible effort to accommodate and facilitate the defendant No.5. The bidding process since its very inception was tainted with mala fide and lacked transparency. The sole purpose was to award the license to a pre-determined party to the exclusion of others, such conduct is unlawful. Furthermore, plaintiff received the impugned order on 04th March, 2021 and on 05th March, 2021 defendant No.2 officially signed a contract with defendant No.5 and partners, hence this suit.

The plaintiff made following prayers in its suit :-

- i) Grant a declaration that the Impugned Order is without lawful authority and of no legal effect;
- ii) Grant a declaration that the bidding process for awarding the License to defendant No.5 is unlawful, violative of IFL, and 2004 Rules and, therefore, of no legal effect;
- iii) Grant a mandatory injunction directing defendants No.1 and 2 to carry out the process of awarding License afresh in accordance with law;
- iv) Grant a permanent injunction restraining the defendants from directly or indirectly, in any manner whatsoever, taking any steps towards implementing or proceeding with the contract with, and license awarded to, defendant No.5 under the IFL, for providing a T&T System;
- v) Grant any other relief deemed appropriate by this Court in the circumstances of this case.
- vi) Grant Costs.

5. After being served with the notice of this Court of instant suit, the defendant No.5 AJCL (Pvt) Limited has raised legal objections regarding maintainability of the suit and territorial jurisdiction of this Court through filing an application under Order VII Rule 11 CPC, 1908. Per learned counsel for the defendant No.5, the instant plaint may be rejected as it does not disclose any cause of action and plaintiff does not have any locus standi to maintain

the instant suit as it has secured the third highest aggregated points as per the Evaluation Report, hence the plaintiff would not be awarded the license, if even AJCL's (defendant No.5) bid had been rejected; the plaintiff has failed to prefer an appeal against the impugned order dated 03.03.2021 as required under Rule 48(5) of the Public Procurement Rules, 2004; and the instant case does not fall within the territorial jurisdiction of this Court.

6. The learned counsel for plaintiff Mr. Makhdoom Ali Khan has submitted Counter Affidavit of the plaintiff to the contents of the instant application of the defendant No.5. The learned counsel for the plaintiff and defendant No.5 have advanced their lengthy arguments on the point of rejection of the plaint under Order VII Rule 11, C.P.C, simultaneously they have also argued on the point of return of the plaint of the plaintiff under Order VII, Rule 10, C.P.C due to lack of territorial jurisdiction of the Court. Since, the point of territorial jurisdiction of this Court is involved in this matter as raised by the defendant No.5, therefore, first I want to decide the point of territorial jurisdiction of this Court in this matter.

7. The learned counsel for the defendant No.5 while submitting his arguments on the point of territorial jurisdiction of this Court has referred para 41 of the plaint, whereby the plaintiff has stated that the instant suit has been instituted by M/s. SICPA SA, which submitted its bid pursuant to a Teaming Agreement with M/s. Arwen Tech; the plaintiff, a company incorporated and operating in Switzerland, while M/s. Arwen Tech has its registered office at Karachi and the plaintiff has a subsidiary company which carries on business from Karachi, therefore, the Court at Karachi would have jurisdiction. Per learned counsel for the defendant No.5 the place of business or residence of the plaintiff or its subsidiary

company does not create jurisdiction of a Court, besides, the plaint is silent with regards to particulars of the plaintiff's subsidiary company and in any case the plaintiff's subsidiary company has no nexus with the tender, as such, the plaintiff's cause of action cannot arise from the place of business of its subsidiary company. The learned counsel for the defendant No.5 Mr. Salahuddin Ahmed, has submitted that the plaint is not accompanied with the said Teaming Agreement, as such there is no proof that Ms. Arwen Tech was a member of the plaintiff's consortium and mere receiving the order of the Grievance Redressal Committee (GRC) at Karachi would not create jurisdiction of the Courts at Karachi. In order to rebut the legal point of view of the learned counsel for the plaintiff, whereby he argued that as per Section 120, C.P.C, 1908, Sections 16, 17 and 20 will have no applicability for determination of this Court's jurisdiction, the learned counsel for the defendant No.5 has pointed out that in the case laws reported in 1991 CLC 684 (para-3); 2011 CLC 1176 (para-31) and 2018 YLR 247, this Court had reviewed the provisions of sections 16, 17, 20 and 120 of the C.P.C, 1908 and Section 7 of the Sindh Civil Court Ordinance, 1962 and it was held that :-

“The High Court of Sindh at Karachi exercises original Civil jurisdiction exclusively within the territorial limits of Karachi and such jurisdiction can be invoked when a cause of action has arisen within the territorial limits of Karachi.”

8. Per learned counsel for the defendant No.5 no cause of action to file the instant suit arose to the plaintiff in Karachi, as such, this Court does not have jurisdiction to entertain this suit. The learned counsel for the defendant No.5 while emphasizing on the point of territorial jurisdiction of this Court has further argued that in various pronouncements of the Hon'ble Supreme Court of

Pakistan it was held that **“determination of territorial jurisdiction of a High Court in cases where the Federal Government is sued depends on the dominant object of filing the case and where the impugned action or order of the Federal Government was taken or passed.”** It was also pointed out by the learned counsel for defendant No.5 that in the instant case, the subject tender was floated from Islamabad, all bids were received and evaluated by the licensing committee/defendant No.2 in Islamabad, admittedly, the plaintiff also gave live demonstration of its “Unique Identification Marks” at Islamabad on 13.01.2021 (as mentioned in para 22 (P) of the plaint), the plaintiff filed its complaint before the Grievance Redressal Committee at Islamabad and order passed thereon was also announced at Islamabad, and all the official defendants also operate from Islamabad, the dominant object of the plaintiff through this suit is to impugn and set aside the actions of defendants No.1-4 taken in Islamabad, as such this Court cannot exercise jurisdiction to entertain the instant dispute even on the ground that Federal Government can be sued anywhere. The learned counsel for the defendant No.5 in support of his contention has relied on the judgments reported in **PLD 1997 S.C 334 (para7&8)** and **2005 SCMR 1746 (para-7)**. The Hon’ble Supreme Court of Pakistan in PLD 1997 SC 334 held that:-

“the petitioner’s prayer was for a direction to the Customs Authorities at Karachi not to levy the regulatory duty. The above relief could have been granted by the High Court of Sindh within whose jurisdiction the person performing the affairs of the Federation is discharging his functions. We may observe that it has become common practice to file a writ petition either at Peshawar, or Lahore, or Rawalpindi or Multan etc. to challenge the order of assessment passed at Karachi by adding a ground for impugning the

notification under which particular levy is imposed. This practice is to be depreciated. The court is to see what is the dominant object of filing of the writ petition. In the present case, the dominant object was not to pay the regulatory duty assessed by a Customs Official at Karachi. We are, therefore, not inclined to grant leave. Leave is refused,”

9. The learned counsel for the defendant No.5, therefore, submitted that the order of the Grievance Redressal Committee and belated frivolous objections on bidding process conducted and completed in Islamabad could not be challenged before this Court, hence he prayed for return of the plaint of this suit.

10. On the contrary Mr. Makhdoom Ali Khan, the learned counsel for the plaintiff on the point of legal objection of lack of territorial jurisdiction of this Court to entertain the instant suit of the plaintiff has argued that the plaintiff filed its bid and participated in the tendering process alongwith Arwen Tech pursuant to a Teaming Agreement; plaintiff has a subsidiary company of business in Karachi and Arwen Tech has its registered office in Karachi. Per learned counsel for the plaintiff the bid was prepared and submitted from Karachi; the GRC order was received by plaintiff in Karachi; defendants No.1-4 are officials, who operate throughout the Country and can be sued anywhere in Pakistan, hence this Court has territorial jurisdiction to hear and decide this matter. The learned counsel for the plaintiff on the point of territorial jurisdiction of this Court has further argued that the plaint cannot be rejected under order VII Rule 11 CPC, on the ground of lack of territorial jurisdiction. In support of his contention the learned counsel for the plaintiff has relied on the following judgments reported in 2014 CLD 1181 (Peshawar High Court/Single Bench) Amanullah Khan v. Habib Bank Limited, wherein, it has been decided that:-

“The perusal of impugned order shows that the plaint has been rejected under Order VII, rule 11, C.P.C on the ground of lack of jurisdiction which is incorrect application of law.”

11. 1995 PLC 57 (SHC/DB) at 58-A, (Pakistan Steel Mills Corporation, Karachi v. Nisar Ahmed Memon) :-

“At the very outset we may observe that a petition cannot be rejected for want of territorial jurisdiction under Order 7, Rule 11, C.P.C.”

12. In support of his contention the learned counsel for the plaintiff has relied upon the following judgments passed by this Court in case of Pakistan National Shipping Corporation v. Coniston Limited, reported in 2020 CLC 454 (SHC/SB) at 467-A, wherein this point was discussed as under:-

“It is settled law that a plaint can only be rejected by a Court which otherwise has jurisdiction to entertain the Suit / Plaint and to decide the entire lis on its merits, and if during such proceedings, an application has been filed by the Defendant for rejection of the plaint on the grounds so mentioned under Order VII, Rule 11, C.P.C., the Court having such jurisdiction can decide the application either way. However, once it is pleaded on behalf of the Defendant that the Court has no jurisdiction, this Court is of the view that no such application can be filed and entertained under Order VII, Rule 10, C.P.C. by the same Court. By filing such application the Defendant submits to the jurisdiction of the Court and waives the objections to that effect, and therefore, cannot press upon an application under Order VII, Rule 11, C.P.C. for rejection of the plaint. In view of such position, I am of the view that at least an application under Order VII, Rule 11, C.P.C. for rejection of the Plaint at this stage of the proceedings cannot be entertained.”

13. It has been decided in the judgment, reported in 2019 CLD 1060 (SHC/SB), at 1067 para 6 (Samsonite IP Holdings S.ar.l. v. Famous Brands (Pvt.) Limited that:-

“Notwithstanding this, at the very outset, I had also confronted the learned Counsel for the Defendant as to how both these applications under Order VII, Rules 10 and 11, C.P.C. are maintainable simultaneously, to which the learned Counsel for the Defendant failed to respond satisfactorily. It needs to be appreciated that an application under Order VII, Rule 11, C.P.C. can only be entertained by a Court of competent jurisdiction. It is settled law that a plaint can only be rejected by a Court which otherwise has jurisdiction to entertain the Suit/plaint and decide the entire lis on its merits, and if during such proceedings, an application has been filed by the Defendant for rejection of the plaint on the grounds so mentioned under Order VII, Rule 11, C.P.C., the Court having such jurisdiction can decide the application either way. However, once it is pleaded on behalf of the Defendant that the Court has no jurisdiction and plaint be returned under Order VII, Rule 10, C.P.C., then perhaps, this Court is of the view that no application can be filed and entertained under Order VII, Rule 11, C.P.C. by the same Court. By filing such application the Defendant submits to the jurisdiction of the Court and waives the objections to that effect, and therefore, cannot press upon an application under Order VII, Rule 10, C.P.C. for return of the plaint. In view of these observations, I am of the view that both these applications do not merit any consideration at the present moment and are liable to be dismissed and it is so ordered accordingly.”

14. The learned counsel for the plaintiff has also relied on the judgment reported in 2021 MLD 568 (SHC/SB) at 570-571 para 6 (Sui Southern Gas Company Ltd. v. Tata CNG Filling Station, Larkana, wherein it was decided that :-

“Insofar as order of rejection of plaint under Order VII, Rule 11, C.P.C. is concerned, again the same even

otherwise does not have any merits even if one goes with the presumption that the learned Judge had no jurisdiction in the matter. From where does Order VII, Rule 11 (d) [where the suit appears from the statement in the plaint to be barred by any law] comes into effect. Lacking jurisdiction cannot be equated with a plaint being barred in law. It is not for the litigant to confer or establish jurisdiction on a Court. As soon as the notification was placed on record, it was for the Court to see that whether it had jurisdiction or not. But under no circumstances, it could be said by burdening the litigant that his plaint is barred in law. And even if it is so, then under what law it is barred? Both issues are diagonally opposite and cannot be equated as has been done in the impugned order. The impugned order appears to be without proper appreciation of the provisions of Order VII, Rule 10 and Order VII Rule 11, C.P.C. It may be observed that an application under Order VII, Rule 11, C.P.C., can only be entertained by Court having jurisdiction in the matter, as it is only the Court which otherwise has jurisdiction which can reject the plaint on the ground that it is barred in law. If the Court has no jurisdiction to adjudicate a matter on merits, then that Court cannot exercise such jurisdiction to reject the plaint on the ground that it is barred in law. The Court lacking jurisdiction can only exercise the powers under Order VII, Rule 10, C.P.C., for returning the plaint for its presentation before the appropriate Court having jurisdiction and not to exercise powers for rejection of the plaint. In the case reported as *Samsonite IP Holdings S.a.r.l. v. Famous Brands (Pvt.) Limited* (2019 CLD 1060), I had the occasion to dilate upon this issue...”

15. In the judgment reported in **2010 MLD 198 (LHC/SB) at 200 A & B (Tharparkar Sugar Mills v. Masood Aziz Chaudhary)** relied on by the learned counsel for the plaintiff it was decided that :-

“Consequently the respondent brought suit No. 26 of 2007 under the provisions of Order XXXVII, C.P.C.

After receipt of notices/summons petitioner filed an application under Order VII Rule 11, C.P.C. which was dismissed being premature. Simultaneously petitioner moved an application for leave to appear and defend which was allowed and petitioner was granted conditional leave to appear and defend the suit. Instead of complying with the conditional order petitioner once again resorted to an application under Order VII Rule 10, C.P.C. Respondent filed reply thereto and the learned trial Court after hearing counsel, for the parties proceeded to dismiss the application vide impugned order, dated 6-4-2009. Hence this revision petition.

In the application petitioner did not controvert the claim of the respondent and raised the core ground of jurisdiction. Conditional leave was granted to consider this question. Petitioner having submitted to the jurisdiction of Court as also questioning its jurisdiction in the application for leave to defend, which was appreciated and conditional leave was granted, now is estopped by its conduct to behave in a hasty manner. According to the assertion of petitioner in the application of leave to appear and defend the issues of law and fact require detailed consideration, but instead of waiting for their adjudication by the learned trial Court petitioner resorted to the provisions of Rule 10 of Order VII, C.P.C., praying for return of plaint. Dismissal of application by the learned trial Court is, therefore, not open to any exception.”

16. The counsel for the plaintiff submitted that, in the alternative, if the plaint was to be returned it should be done by continuing the stay till the Court it is returned to is seized of the mater and for 30 days thereafter. The learned counsel for the plaintiff has also relied on the order reported in **PLD 2014, Sindh 601 at 623-D & 624-D (redtone Telecommunications Pakistan (Pvt) Ltd & 3 others v. Federation of Pakistan through Secretary & 11 others)**, wherein it was decided that :-

“I conclude that by filing the present suit in this Court, the plaintiffs have prima facie breached the Agreement in respect of the jurisdiction clause. In terms of section 16 of the Specific Relief Act, this part of the contract can and ought to be specifically enforced. Nothing has been shown as would establish that the defendant No. 3 is not entitled to such relief, whether in terms of section 22 or otherwise. Taking into account all the circumstances of the case, in my view the proper manner of granting the remedy would not be by way of directing that the plaint be returned but by transmitting the suit to the Islamabad High Court, with the result that (subject to what is stated below) the interim order dated 27-1-2014 made on C.M.A. 986 of 2014 shall continue to hold the field and that application itself shall also be deemed to be pending. I may note here that section 8 of the Islamabad High Court Act, 2010 provides, inter alia, in subsection (2) that the rules with respect to the practice and procedure of this Court (including the SCCR) shall apply with the necessary modifications to the Islamabad High Court unless and until varied or revoked by that Court.”

17. In respect of the plea of learned counsel for the plaintiff that a prayer for rejection and return of plaint cannot be sought simultaneously, the learned counsel for defendant No. 5 has submitted that admittedly, the defendant No. 5 through C.M.A No. 6648 of 2021 has sought rejection of the plaint and prayer for return of plaint was only made as an alternative. He further argued that this Court can exercise suo moto powers to return a plaint if it comes to the conclusion that, even if the suit is maintainable, it lacks territorial jurisdiction to entertain this Suit. He relied upon the judgments reported in 2015 SCMR 1708 at para 5; 1999 MLD 1668; 2016 CLC 1425 at para 38; 2007 SCMR 741 at para 10.

18. The learned counsel for the defendant No. 5 while rebutting the arguments of the learned counsel for the plaintiff that “even if

this Court returns the plaint it should maintain the ad-interim injunctive order dated 12.03.2021”, pointed out that on the case reported at PLD 2014 Sindh 601 and relied on by the learned counsel for the plaintiff in his arguments is Redtone Judgment and is distinguishable inasmuch as the peculiar facts and circumstances of that case warranted protecting the injunctive order. It is further submitted that in the Redtone Judgment the plaint was not returned under Order VII Rule, 10 C.P.C but the case was “transmitted” to the Islamabad High Court on the ground that the Islamabad High Court and the High Court of Sindh at Karachi had concurrent inherent jurisdiction to entertain the Suit, but the parties to the Suit had by way of an Agreement bound themselves to approach the Islamabad High Court, as such, the Redtone Judgment held that the High Court of Sindh, though had jurisdiction, but is the “Excluded Court” whereas the Islamabad High Court is the “Nominated Court”. As such, the High Court of Sindh had jurisdiction to pass an Injunctive Order. However, in the instant suit, this Court lacks territorial jurisdiction, hence the plaint may be “returned” and not “transmitted” and a plaint cannot be returned with interim orders intact.

19. The learned counsel for the defendant No. 2, (F.B.R), Mr. Ameer Bakhsh Matilo, has also submitted his written arguments in support of the arguments advanced by the learned counsel for defendant No.5 on the point of territorial jurisdiction of this Court.

20. After hearing arguments of learned counsel for the parties at length and perusal of the record. I am of the view, the learned counsel for the defendant No.5 has moved an application under Order VII, Rule 11, C.P.C with the prayer to reject the plaint on the grounds mentioned therein regarding maintainability of the instant suit before this Court as according to him no cause of action had

been arisen to the plaintiff to file this suit and being bidder at third position the plaintiff has no locus standi to challenge the bidding process as unlawful, violative of IFL and 2004 Rules, and so also he has pointed out in his application that this Court has no territorial jurisdiction to entertain this suit. Although the learned counsel for the defendant No.5 did not caption this application under Order VII, Rule 10, C.P.C, but while mentioning the reasons to reject the instant plaint he has also prayed that due to lack of territorial jurisdiction of this Court the plaint is also liable to be returned. It is settled law that a Court which has no jurisdiction over a suit cannot pass any judicial order in such a suit except the orders which the statute empowers it to pass. In instant suit the defendant No.5 challenged territorial jurisdiction of this Court, therefore, I don't want to discuss or give any findings on merits of this suit unless I found this Court legally competent to have territorial jurisdiction to decide this matter on merits. In order to find out whether this Court has jurisdiction or not the allegations in the plaint alone have to be looked into.

21. The plaintiff has filed this Suit under Section 9, C.P.C challenging therein the bidding process for awarding the subject license to defendant No.5. The plaintiff itself in para 40 of the plaint, has unfolded the cause of action to file this suit in the following terms:-

“The cause of action arose when the Licensing Committee illegally awarded the License to defendant No.5, it arose again when the Licensing Committee failed to address plaintiff's concerns raised through various emails and letters. It finally arose on 3rd March, 2021 when the GRC rejected the grievance petition filed by plaintiff and it continues to arise on a daily basis.”

22. Reading of above mentioned para 40 of the plaint makes it clear that the subject matter of this suit is a license, awarded to

the defendant No.5 by the defendant No.3 (licensing committee), and in this regard all the bidding proceedings adopted by the Committee (defendant No.3) were initiated in Islamabad i.e. the subject tender was floated from Islamabad, all bids were received and evaluated by the defendant No.3 in Islamabad, plaintiff filed its complaint against bidding process before GRC (defendant No.4) at Islamabad and then impugned order was also passed at Islamabad. The main relief sought by the plaintiff is against the defendants, who are also carrying on their business in Islamabad, as such I don't find any cause of action or its part accrued to the plaintiff within the territorial jurisdiction of this Court. However, the plaintiff claims that it had filed its bid and participated in the tendering process alongwith "Arwen Tech" pursuant to a Teaming Agreement and it has a subsidiary company undertaking business in Karachi and has its registered office in Karachi, bid was prepared and submitted from Karachi and the impugned order was received by plaintiff in Karachi.

23. Keeping in view the arguments, advanced by the learned counsel for the plaintiff in respect of reasons of arising cause of action to the plaintiff within the jurisdiction of this Court, I have gone through the Section 20(a), (b) and (c) of C.P.C, which deals with institution of suit (other than the suits mentioned in Section 16 and 17).

24. Section 20 of the C.P.C regarding institution of suits specifics as under :-

Section 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.”

25. Sections 16 & 17 of the C.P.C are not applicable in this matter as these sections deal with the institution of such civil suits related with the immovable/moveable properties, while section 20 of C.P.C aimed to institution of other suits. It is clear from bare reading of section 20 of C.P.C that other suits to be instituted where defendants reside or cause of action arises. In instant suit evidently all defendants are carrying on their business in Islamabad and cause of action, wholly and in part had arisen to the plaintiff within the territorial jurisdiction of Islamabad, therefore, the plea of the learned counsel for the plaintiff that plaintiff's subsidiary company is carrying on its business in Karachi, submitted bid from Karachi, received impugned order in Karachi has no force.

26. The learned counsel for the plaintiff has further submitted that in view of section 120 of C.P.C, 1908, sections 16, 17 and 20 are not applicable for determination of territorial jurisdiction of this Court. Before discussing this point, I would reproduce section 120 C.P.C hereunder :-

Section 120 :- “Provisions not applicable to High Court in original civil jurisdiction.-----(1) The following provisions shall not apply to the High Court in the

exercise of its original civil jurisdiction, namely, sections 16, 17 and 20.”

Plain reading of above mentioned provision of law reflects that it deals with the original civil jurisdiction of this Court and while exercising original civil jurisdiction, provisions of sections 16, 17 & 20 are not applicable to this Court. In several cases decided by this Court it had already been settled that this Court at Karachi exercises original civil jurisdiction exclusively within territorial limits of Karachi and if cause of action has been arisen within the territorial limits of Karachi, civil original jurisdiction of this Court at Karachi can be invoked. In instant suit no doubt that the cause of action had been arisen within the territorial limits of Islamabad as main relief which is being sought by the plaintiff in instant Suit is related with legality and process of bidding to award License to the defendant No.5, as such no cause of action can be claimed to have accrued to the plaintiff within the territorial jurisdiction of this Court. In view of above mentioned facts and circumstances of the instant case, I am of the firm opinion that no cause of action has ever been arisen to the plaintiff within the jurisdiction of this Court, hence, this Court has no territorial jurisdiction to pass any Judgment and Decree against the defendants, therefore, the Plaint is hereby returned under order VII Rule 10 CPC, 1908 for presenting it before a Court of Competent Jurisdiction, if plaintiff desires so. The case laws relied upon by the learned counsel for the plaintiff in support of his contentions regarding return of plaint under order VII Rule 10 CPC, 1908 are of no assistance as facts of the present case are quite distinguishable. There shall be no order as to costs.

27. Before parting with this Judgment, I must appreciate that the learned counsel for the plaintiff Mr. Makhdoom Ali Khan and

learned counsel for the defendant No.5 Mr. Salahuddin Ahmed, who both have advanced their very valuable arguments on their case well and assisted this Court on the subject under discussion.

J U D G E

Faheem/PA