

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**W.P.(227) No. 119 of 2021**

Great Galleon Ventures Limited, through its authorized signatory Sunit Madhok, S/o. Late Shri Madan Lal Madhok, aged about 63 years, Managing Director, Great Galleon Ventures Ltd., 308-309, Princess Business Skypark, Scheme No. 54, AB Road, Indore (Madhya Pradesh).

**---- Petitioners**

**Versus**

Chhattisgarh Distilleries Limited, Bearing CIN U15520WB1988PLCO45554, having registered office at 610, 'O' Block New Alipore, Kolkata, West Bengal 700053 acting through Its Director Mr. Baby Joseph, S/o. Mr. K.J. Joseph Mobile 9584434727.

**-----Respondent**

---

For Petitioner : Mr. B.P. Sharma, Advocate with  
Mr. M.L. Sakat & Mr. Vaibhav Tiwari,  
Advocates

-----  
**Hon'ble Shri Justice Rajendra Chandra Singh Samant**

**Order On Board**

**25/02/2021**

1. This petition has been brought seeking indulgence by this Court under Article 227 of the Constitution of India to quash the order dated 26.06.2020, passed in Civil Suit No.1-A/2020, passed by the learned Commercial Court, Raipur.
2. It is submitted by the learned counsel for the petitioner that Civil Suit No.1-A/2020 was filed on 24.06.2020 with an application under Order 39 Rule 1 and 2 of C.P.C. and an application under

Order 39 (3) of C.P.C. Prayer was made under Section 12-A of the Commercial Court Act, 2015 for exemption from undergoing pre-institution mediation as provided in the same provision. That application was allowed by the impugned order. It is submitted by the learned counsel for the petitioner, that the application for ex-parte ad-interim injunction under Order 39 Rule 3 of C.P.C. was dismissed by the same order. Subsequent to which, the learned Commercial Court is proceeding with the trial of the case.

3. It is submitted that when the learned Commercial Court dismissed the application for urgent interim relief, then the parties should have been directed to submit to mediation proceedings instead of that the learned Commercial Court has entertained the civil suit and is proceeding further. Hence, the impugned order is erroneous, illegal and not sustainable. Petition be admitted and relief be granted to the petitioner as prayed for. It is also submitted that this petition be disposed off with a direction to the learned Commercial Court to order for mediation proceedings between the parties.
4. Considered on the submissions.
5. Section 12 (A) (1) of the Commercial Courts Act, 2015 provides as follows :-

**12A. Pre-Institution Mediation and Settlement. –**

(1) A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation in accordance with such manner

and procedure as may be prescribed by rules made by the Central Government.

6. The application for pre-institution mediation has to be filed before the filing of the civil suit and after filing of the same, that has to be dealt with according to the Commercial Court (Pre-institution Mediation and Settlement) Rules, 2018. The provisions under Section 12A of the Act, 2015 makes an exemption that pre institution mediation stage can be given up, if there is a prayer for urgent interim relief. After dismissal of the application of the respondent under Order 39 Rule 3 of C.P.C., the application under Order 39 Rule 1 and 2 is still pending and that has not been disposed off. Therefore, it can not be said at this stage that any urgent interim relief is not contemplated in the civil suit filed by the respondent.
7. On perusal of the copy of the order of the civil suit filed along with this petition, it is seen that time has been granted to the defendant, who is the petitioner herein for submission of reply and written statement, but the petitioner has not filed any reply and instead, filed an application under Order 7 Rule 11 of C.P.C., which is pending for decision. It was also proposed by the parties that there is possibility of compromise between them and the learned Judge of the Commercial Court has granted time for the same to both the parties.
8. Considered on the other submission of the petitioner regarding disposing of this petition with direction for mediation.

9. The Commercial Court Act, 2015 appears to be an exhaustive Code. There is no provision for mediation after the institution of civil suit. The mentioning of pre-institution mediation comes only once in Section 12A of the Act, 2015 and that is clear that such mediation has to be taken up before the institution of civil suit.
10. Section 16 of the Commercial Courts Act, 2015 provides as follows.

**16. Amendments to the Code of Civil Procedure, 1908 in its application to commercial disputes. –**

- (1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908) shall, in their application to any suit in respect of a commercial dispute of a Specified Value, stand amended in the manner as specified in the Schedule.
  - (2) The Commercial Division and Commercial Court shall follow the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Act, in the trial of a suit in respect of a commercial dispute of a Specified Value.
  - (3) Where any provision of any Rule of the jurisdictional High Court or any amendment to the Code of Civil Procedure, 1908 (5 of 1908), by the State Government is in conflict with the provisions of the Code of Civil Procedure, 1908, as amended by this Act, the provisions of the Code of Civil Procedure as amended by this Act shall prevail.
11. It is clear from sub-section (2) of Section 16 that a Commercial Court shall follow the provisions of Code of Civil Procedure as amended by this Act. The schedule under Section 16 provides for

amendment in the provisions of the Code of Civil Procedure and in that, there is no mention of Section 89 of C.P.C., which provides for mode of settlement of the dispute out of the Court. There is no such provision in this act empowering the Commercial Court to follow the Code of Civil Procedure as it is, regarding which schedule under Section 16 of the Act, 2015 is silent. The learned Commercial Court has granted opportunity to the parties to compromise and come to a settlement and further the law does not permit direction of any mediation process after the institution of civil suit. Therefore, I do not find any force in the submission made by the petitioner side.

12. On the basis of the discussion made herein above, this Court is of the view that the impugned order under challenge has been passed by the learned Commercial Court within the authority available to in under Section 12A of the Act, 2015. Hence, on the basis of the discussion made and conclusions drawn, this Court is of the view that this petition is without any substance, which is dismissed and disposed off at motion stage itself.

**Sd/-**  
**(Rajendra Chandra Singh Samant)**  
Judge