

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

CS-COM/110/2025

BISWAJEET KUMAR PASWAN
VS
SHAKAMBHARIISPAT AND POWER LTD.

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Date: August 11, 2025.

Appearance :

Ms. Ujjaini Chatterjee, Adv.

Mr. Debabrata Chakrabarti, Adv.

... for the plaintiff

1. The plaintiff has filed the present suit praying for a sum of Rs.68,95,641.82 along with interest at the rate of 18 % per annum. The plaintiff has also prayed for dispensation of provisions of Section 12A of the Commercial Courts Act, 2015.
2. The plaintiff says that the plaintiff has supplied materials to the defendant from time to time in terms of the agreement entered between the parties and the materials supplied by the plaintiff were duly accepted by the defendant. There was a due for a sum of Rs.67,26,466.58 and the plaintiff has made several requests to the defendant for payment of the balance amount but the defendant failed to pay the amount.
3. It is submitted by the Learned Counsel for the plaintiff that the defendant has admitted the claim of the plaintiff but the defendant has not paid the amount.

4. Learned Counsel for the plaintiff submits that several communications by way of e-mails have been exchanged between the parties and lastly, the defendant requested 25% discount of the total amount but even the defendant has not paid the said amount.
5. Counsel for the plaintiff prays for leave under Section 12A of the Commercial Courts Act on the ground that the defendant has admitted the claim of the plaintiff and in spite of several communications, the defendant has not paid the amount and recently, the plaintiff came to know that the accounts of the defendant undergoing fresh auditing wherefrom several claims of the creditors of the target entity being ESS DEE Aluminium Limited may be removed or extinguished by the current management of the defendant.
6. Counsel for the plaintiff submits that the plaintiff has made attempts so that the matter can be resolved but the defendant has not come forward for making payment of the amount though the defendant has admitted the amount and as such, no purpose would be served by initiating pre-institution mediation process.
7. Counsel for the plaintiff has relied upon the judgment in the case of ***Riveria Commercial Developers Ltd. vs. Brompton Lifestyle Brands Pvt. Ltd.*** reported in ***2022 SCC OnLine Del 4624*** and submitted that in the said case also the defendant had admitted the claim of the plaintiff and the Delhi High Court has considered that the plaintiff has filed an application for judgment upon admission and Section 12A of the Commercial Courts Act which does contemplate any urgent relief under the Commercial Courts Act shall

not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation but in the said case, the plaintiff has prayed for urgent relief and as such, the Delhi High Court has granted leave under Section 12A of the Commercial Courts Act.

8. Counsel for the plaintiff has further relied upon the judgment in the case of ***Ganga Taro Vazirani vs. Depak Raheja*** reported in **2021 SCC OnLine Bom 195** and submitted that Section 12A of the Commercial Courts Act is a procedural provision and there is no absolute embargo in instituting the suit unless the plaintiff exhausts the remedy of mediation. She submits that in the case, the Hon'ble Bombay High Court considering the correspondences between the parties wherein the parties tried to resolve their dispute before approaching the Court but the said attempts failed and accordingly, the Court has held that no purpose would be served by sending the matter to pre-mediation process.
9. Considering the judgments relied upon by the plaintiff, this Court finds that in the present case the plaintiff has filed the suit claiming an amount of Rs. 67,26,466/- along with interest at the rate of 18 % per annum. Though the plaintiff has made several correspondences with the defendant and the defendant has requested for 25 % discount of the total amount but in spite of the same, the defendant has not come forward. Taking into consideration of the above, this Court does not find that there is any urgency in the matter. The plaintiff has to satisfy the Court for dispensation of provisions of Section 12A of the Commercial Courts Act that there is an urgency to move the said application but here only the contention of the plaintiff

that the defendant has admitted the claim of the plaintiff and the plaintiff has shown urgency that the plaintiff intends to file an application for judgment upon admission and such, this Court finds that the plaintiff does not come within the purview to grant dispensation under Section 12A of the Commercial Courts Act. Accordingly, prayer for leave under Section 12A of the Commercial Courts Act is refused. However, the plaintiff is at liberty to approach for pre-mediation process and if the matter is not settled before the mediation centre, the plaintiff is at liberty to file a fresh suit.

10. As the Court has not admitted the plaint by granting leave under Section 12A of the Commercial Courts Act, accordingly, the department is directed to refund the Court Fees to the plaintiff with liberty to use the said Court Fees if the plaintiff intends to file a fresh suit for same cause of action.
11. CS-COM/110/2025 is dismissed with the above observation.

(KRISHNA RAO, J.)