IN THE HIGH COURT OF JHARKHAND AT RANCHI

Commercial Appeal No. 02 of 2025

---

1. Union of India, Ministry of Railways, through the Secretary, Railway Board, New Delhi

2. The General Manager, South Eastern Railway, 11, Garden Reach Road, Kolkata, West Bengal State and represented locally by the Senior Divisional Commercial Manager, South Eastern Railway, posted at Divisional Office, Chakradharpur Division, District- West Singhbhum

... ... Appellants

Versus

1. M/s Sidhi Vinayak Metcom Limited, a Company incorporated with the Registrar of Companies, Bihar & Jharkhand, under Corporate Identification No. U27100JH2004PLC010925 dated 30.08.2004 and having its registered and principal office at House No. C-2, 2nd Floor, Basant Jamini Bhawan, Road No. 2, Contractors Area, Bistupur, P.O. & P.S.- Bistupur, Jamshedpur, District- East Singhbhum
2. Shri Vijay Kumar Mittal, son of Shri Ramavtar Agarwal, Director of M/s Sidhi Vinayak Metcom Limited having its registered office at House No. C-2, 2nd Floor, Basant Jamini Bhawan, Road No. 2, Contractors Area, Bistupur, P.O. & P.S.- Bistupur, Jamshedpur, District- East Singhbhum and resident of Purulia Road, P.O. & P.S.-Chas, District- Bokaro
3. Shri Shivjee Singh, son of Shri Ram Bahadur Singh, Director of M/s Sidhi Vinayak Metcom Limited having its registered office at House No. C-2, 2nd Floor, Basant Jamini Bhawan, Road No. 2, Contractors Area, Bistupur, P.O. & P.S.- Bistupur, Jamshedpur, District- East Singhbhum and resident of Goushala Nala Road, Jugsalai, Jamshedpur
4. Shri Shankar Lal Agarwal, son of Shri Narayan Agarwal, Director of M/s Sidhi Vinayak Metcom Limited having its registered office at House No. C-2, 2nd Floor, Basant Jamini Bhawan, Road No. 2, Contractors Area, Bistupur, P.O. & P.S.- Bistupur, Jamshedpur, District- East Singhbhum and resident of 157, New Baradwari, Sakchi, Jamshedpur
5. Smt. Prity Mittal, Director of M/s Sidhi Vinayak Metcom Limited having its registered office at House No. C-2, 2nd Floor, Basant Jamini Bhawan, Road No. 2, Contractors Area, Bistupur, P.O. & P.S.- Bistupur, Jamshedpur, District- East Singhbhum

.... Respondents

CORAM: HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJESH SHANKAR

For the Appellants : Mr. Prashant Pallav, D.S.G.I.
Mr. Ayush, A.C. to D.S.G.I.

For the Respondents : Mr. Shresth Gautam, Advocate

Reserved on 17.09.2025 **Pronounced on 26.09.2025**
Per : Rajesh Shankar, J. :

I.A No. 8004 of 2024

The present interlocutory application has been filed on behalf of the appellants for condonation of delay of 14 days in filing the present appeal.

2. Having heard learned counsel for the parties and on being satisfied with the reasons stated in the present interlocutory application, the said delay in filing the present appeal is hereby condoned.

3. I.A No. 8004 of 2024 is accordingly disposed of.

Commercial Appeal No. 02 of 2025

4. The present appeal is directed against the order dated 08.05.2024 passed by the District Judge-III-cum-Presiding Officer, Commercial Court, East Singhbhum, Jamshedpur in Original Suit No. 06 of 2022 whereby the plaint filed by the plaintiffs/appellants has been rejected holding that the said suit was filed without compliance of the mandatory provisions as contained in Section 12-A of the Commercial Courts Act, 2015 (hereinafter to be referred as the "Act, 2015").

5. The factual background of the case as stated in the present appeal is that the defendants/respondents had transported 88,506.07 MT iron ore through rail at concessional freight rate during the period from 01.04.2009 to 31.03.2010, 01.04.2011 to 31.03.2012 and 01.04.2013 to 31.03.2014 on specific representation that the said iron ore would entirely be utilized for domestic consumption, however only 65,884.08 MT iron ore was utilized in the domestic manufacturing units of the respondents for manufacturing the permitted goods and 28,700.16 MT iron ore was used for the purposes other than domestic consumption for which they were liable to pay the charges against evaded freight charges and additional charges at penal rate.

6. The appellants initiated a mediation process set out under rule 3 of the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018 (in short, "the Rules, 2018") by filing an application before the District Legal Services Authority, Jamshedpur in Form-1 specified in Schedule-I of the Rules, 2018.

7. The said application was registered as Pre-Institution Mediation and Settlement (PIMS) Case No. 06 of 2019, however the mediation process was treated as "Non-Starter" vide orders dated 23.12.2021 and 20.01.2022 passed by the Secretary (Incharge), DLSA, Jamshedpur on the ground that both the parties did not submit the mediation fee. Further, the office was directed to issue "Non-Starter" report which was issued to both the parties in Form-3 of Schedule-I of the Rules, 2018.

8. The appellants filed a suit against the respondents before the Additional District Judge-I, Commercial Court, East Singhbhum, Jamshedpur for recovery of a sum of Rs.26,73,77,920/- towards the principal amount of evaded freight charges along with compensation of Rs.5,34,75,584/- for direct loss suffered by them caused due to fundamental breach of contract as well as interest of Rs.33,43,36,737/- till 30.06.2019 (in total Rs.65,51,90,241/-) and future interest "pendente lite" till realization of the said amount.

9. The said suit was registered as Original Suit No. 06 of 2022 in which the respondents appeared and filed a petition under order VII rule 11 read with Section 151 CPC and Section 12-A of the Act, 2015. After hearing the parties, the plaint filed by the plaintiffs/appellants was rejected vide order dated 08.05.2024 holding that the said suit was instituted without complying the mandatory provisions of Section 12-A of the Act, 2015. Hence, the present appeal.

10. Learned counsel for the appellants submits that the provisions of section 12-A of the Act, 2015 has duly been complied by the appellants and hence it cannot be a ground for rejection of the plaint filed by them.

11. It is further submitted that rule 3 of the Rules, 2018 lays down the grounds for submitting "Non-Starter" report by the mediating authority. A "Non-Starter" report can be issued either in view of sub-rule (4) of rule 3 of the Rules, 2018 when the opposite party refuses to participate in the mediation process or in view of sub-rule (6) of rule 3, when the opposite party fails to appear in the mediation process on the date fixed under sub-rule (5) of rule 3 of the Rules, 2018. However, in the present case, the opposite parties/respondents had appeared during mediation process and as such, there was no ground for submitting the "Non-Starter" report.

12. It is also submitted that as per rule 11 of the Rules, 2018, the mediation fee has to be paid in equal shares by the parties to the commercial dispute and in the instant case, the share of mediation fee was not paid by either of the parties. Moreover, the said rule does not stipulate consequences for non-payment of mediation fee and as such, the rejection of plaint of the appellants on the ground of non-compliance of the mandatory provisions of Section 12-A of the Act, 2015, is erroneous.

13. It is further argued that the appellants were obliged to deposit their share of mediation fee only after appointment of mediator and since the said stage had not come in the mediation proceeding, there was no question of issuance of "non-starter" report by the Secretary, DLSA, Jamshedpur on the ground of non-deposit of the mediation fee.

14. Per contra, learned counsel for the respondents submits that the relief sought by the appellants by filing the Original Suit No. 6 of 2022 was not urgent in nature and as such, they were bound to comply with the process of pre-institution mediation and settlement as per the provisions of Section 12-A of the Act, 2015 read with Rules, 2018, however the appellants failed to comply with the said mandatory provisions and as such, the plaint of the appellants was rightly rejected by the Commercial Court, Jamshedpur.

15. Heard learned counsel for the parties and perused the materials available on record.

16. Before coming to the rival submissions canvassed by learned counsel for the parties, it would be appropriate to refer the relevant provisions of law relating to the issue.

17. Section 12-A of the Act, 2015 has been introduced by the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Act, 2018 and the same is reproduced hereinbelow: -

> *"12-A. 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.*
>
> *(2) The Central Government may, by notification, authorise the Authorities constituted under the Legal Services Authorities Act, 1987 (39 of 1987), for the purposes of pre-institution mediation.*
>
> *(3) Notwithstanding anything contained in the Legal Services Authorities Act, 1987 (39 of 1987), the Authority authorised by the Central Government under sub-section (2) shall complete the process of mediation within a period of three months from the date of application made by the plaintiff under sub-section (1):*
>
> *Provided that the period of mediation may be extended for a further period of two months with the consent of the parties:*
>
> *Provided further that, the period during which the parties remained occupied with the pre-institution mediation, such period shall not be computed for the purpose of limitation under the Limitation Act, 1963 (36 of 1963).*

(4) If the parties to the commercial dispute arrive at a settlement, the same shall be reduced into writing and shall be signed by the parties to the dispute and the mediator.

(5) The settlement arrived at under this section shall have the same status and effect as if it is an arbitral award on agreed terms under sub-section (4) of section 30 of the Arbitration and Conciliation Act, 1996 (26 of 1996)."

18. Thus, Section 12-A of the Act, 2015 clearly provides that if no urgent relief is required in a suit, the plaintiff is bound to exhaust the remedy of pre-institution mediation in accordance with the manner and procedure as may be prescribed by the Rules made by the Central Government. The time for completion of mediation process by the Authority, authorized by the Central Government under sub-section (2) of Section 12-A of the Act, 2015, has been fixed as three months from the date of application made by the plaintiff and the said period is further extendable for two months with the consent of the parties. It has further been provided that the period during which the parties remain occupied with the pre-institution mediation, shall not be computed for the purpose of limitation under the Limitation Act, 1963. Moreover, the settlement arrived at between the parties shall have the same status and effect as if it is an arbitral award on the agreed terms under Section 30(4) of the Arbitration and Conciliation Act, 1996.

19. The Rules, 2018 has been framed in exercise of the powers conferred by sub-section (2) of section 21-A read with sub-section (1) of Section 12-A of the Act, 2015.

20. Rule 2(1)(e) of the said Rules defines the word "mediation" which means a process undertaken by a Mediator to resolve, reconcile and settle a commercial dispute between the parties thereto.

21. Further, rule 3 of the Rules, 2018 deals with the procedure for initiation of mediation process which is quoted hereinbelow: -

> *"3. Initiation of mediation process.- (1) A party to a commercial dispute may make an application to the Authority as per Form-1 specified in Schedule-I, either online or by post or by hand, for initiation of mediation process under the Act along with a fee of one thousand rupees payable to the Authority either by way of demand draft or through online;*
>
> *(2) The Authority shall, having regard to the territorial and pecuniary jurisdiction and the nature of commercial dispute, issue a notice, as per Form-2 specified in Schedule-I through a registered or speed post and electronic means including e-mail and the like to the opposite party to appear and give consent to participate in the mediation process on such date not beyond a period of ten days from the date of issue of the said notice.*
>
> *(3) Where no response is received from the opposite party either by post or by e-mail, the Authority shall issue a final notice to it in the manner as specified in sub-rule (2).*
>
> *(4) Where the notice issued under sub-rule (3) remains unacknowledged or where the opposite party refuses to*

participate in the mediation process, the Authority shall treat the mediation process to be a non-starter and make a report as per Form 3 specified in the Schedule-I and endorse the same to the applicant and the opposite party.

(5) Where the opposite party, after receiving the notice under sub-rule (2) or (3) seeks further time for his appearance, the Authority may, if it thinks fit, fix an alternate date not later than ten days from the date of receipt of such request from the opposite party.

(6) Where the opposite party fails to appear on the date fixed under sub-rule (5), the Authority shall treat the mediation process to be a non-starter and make a report in this behalf as per Form 3 specified in Schedule-I and endorse the same to the applicant and the opposite party.

(7) Where both the parties to the commercial dispute appear before the Authority and give consent to participate in the mediation process, the Authority shall assign the commercial dispute to a Mediator and fix a date for their appearance before the said Mediator.

(8) The Authority shall ensure that the mediation process is completed within a period of three months from the date of receipt of application for pre-institution mediation unless the period is extended for further two months with the consent of the applicant and the opposite party."

22. Thus, before filing a commercial suit, a party to a commercial dispute is required to file an application before the Authority notified by the Central Government under sub-section (2) of Section 12-A of the Act, 2015 as per Form-1 specified in Schedule I, for initiation of mediation process and thereafter a notice is to be issued by the Authority to the concerned opposite party. If the notice remains unacknowledged or the opposite party refuses to participate in the mediation process, the Authority is to treat the mediation process to be a "Non-Starter" making a "Non-Starter" report as per Form-3 specified in the Schedule-I as well as endorsing the same to both the parties. Further, when after receiving the notice, the opposite party seeks time for his appearance, the Authority may fix an alternate date, however when the opposite party fails to appear on the date fixed, then the Authority is to treat the mediation process to be a "Non-Starter". It has also been provided that the dispute is to be referred by the Authority to a Mediator when both the parties to the commercial dispute appear before the Authority and give consent to participate in the mediation process.

23. Learned counsel for the appellants has given much emphasis to the argument that since both the parties had not deposited their shares of mediation fee, the plaint of the appellants was not liable to be rejected by the Commercial Court, Jamshedpur on the ground of non-compliance of the mandatory provisions of Section 12-A of the Act, 2015.

24. Before adverting to the said contention of the learned counsel for the appellants, it would be apt to take note of the judgment rendered by the Hon'ble Supreme Court in the case of **Dhanbad Fuels Private Limited vs. Union of India** reported in **2025 SCC OnLine SC 1129,** on which much reliance has been placed by learned counsel for the respondents. In the said case, Their Lordships took note of another judgment rendered by the Hon'ble Supreme Court in the case of **Patil Automation (P) Ltd. Vs. Rakheja Engineers (P) Ltd.** reported in **(2022) 10 SCC 1** and quoted relevant paragraph of the said judgment which reads under: -

> *"35. The Court summed up its reasoning from paragraph 99 onwards as follows:*
>
> > *"99.1. The Act did not originally contain Section 12-A. It is by amendment in the year 2018 that Section 12-A was inserted. <u>The Statement of Objects and Reasons are explicit that Section 12-A was contemplated as compulsory. The object of the Act and the Amending Act of 2018, unerringly point to at least partly foisting compulsory mediation on a plaintiff who does not contemplate urgent interim relief. The provision has been contemplated only with reference to plaintiffs who do not contemplate urgent interim relief.</u> The legislature has taken care to expressly exclude the period undergone during mediation for reckoning limitation under the Limitation Act, 1963. The object is clear.*
> >
> > *99.2. It is an undeniable reality that courts in India are reeling under an extraordinary docket explosion. Mediation, as an alternative dispute mechanism, has been identified as a workable solution in commercial matters. In other words, the cases under the Act lend themselves to be resolved through mediation. Nobody has an*

absolute right to file a civil suit. A civil suit can be barred absolutely or the bar may operate unless certain conditions are fulfilled. Cases in point, which amply illustrate this principle, are Section 80 CPC and Section 69 of the Partnership Act.

99.3. <u>The language used in Section 12-A, which includes the word "shall", certainly, goes a long way to assist the Court to hold that the provision is mandatory.</u> The entire procedure for carrying out the mediation, has been spelt out in the Rules. The parties are free to engage counsel during mediation. The expenses, as far as the fee payable to the mediator, is concerned, is limited to a one-time fee, which appears to be reasonable, particularly, having regard to the fact that it is to be shared equally. A trained mediator can work wonders.

99.4. Mediation must be perceived as a new mechanism of access to justice. We have already highlighted its benefits. <u>Any reluctance on the part of the Court to give Section 12-A, a mandatory interpretation, would result in defeating the object and intention of Parliament. The fact that the mediation can become a non-starter, cannot be a reason to hold the provision not mandatory. Apparently, the value judgment of the lawgiver is to give the provision, a modicum of voluntariness for the defendant, whereas, the plaintiff, who approaches the court, must, necessarily, resort to it. Section 12-A elevates the</u>

<u>settlement under the Act and the Rules to an award within the meaning of Section 30(4) of the Arbitration Act, giving it meaningful enforceability. The period spent in mediation is excluded for the purpose of limitation.</u> The Act confers power to order costs based on conduct of the parties."

25. In the aforesaid case, their Lordships finally answered the issues involved *inter alia* in the following terms: -

> *"63. Thus, the answer to the question formulated by us whether a suit filed without complying with Section 12-A of the 2015 Act must be dismissed or be kept in abeyance with a direction to the parties to explore mediation is as follows:*
>
> *a. If the suit is instituted on or after the date of the decision in Patil Automation (supra), i.e., 20.08.2022, without complying with Section 12-A of the 2015 Act, then it must meet with rejection under Order VII Rule 11, either on an application by the defendant or suo motu by the court.*
>
> *b. If the suit was instituted prior to 20.08.2022 without complying with Section 12-A of the 2015 Act, and the same does not fall within one of the exceptional categories as explained in paragraph 47 of this judgment, then it would be open to the court to keep the suit in abeyance and direct the parties to explore the possibility of mediation in accordance with the 2015 Act, the PIMS Rules and the 2020 SOP."*

26. It is now well settled that compliance of Section 12-A of the Act, 2015 read with Rules, 2018 is mandatory for the plaintiff whereas the same is voluntary for the defendant. If the plaintiff fails to invoke the procedure of pre-institution mediation and settlement, the suit filed by the plaintiff is liable to be rejected under Order VII rule 11 of CPC. On the other hand, if the defendant refuses to participate in the mediation process, the Authority has to treat the mediation process to be "Non-Starter" preparing a "Non-Starter" report as well as endorsing the same to both the parties. Thereafter in that case, the concerned plaintiff is at liberty to file suit before the competent Commercial Court.

27. We have also perused the statement of objects and reasons for introducing Section 12-A of the Act, 2015 which clearly suggests that it was introduced for the reason that due to competitive global economic environment, India had to improve its ranking in the World Bank's "Doing Business Report" which, inter alia, considered the dispute resolution mechanism in the country as one of the parameters for doing business. Further, the tremendous economic development had ushered in enormous commercial activities in the country including foreign direct investments, public private partnership, etc. which prompted the Central Government to initiate legislative measures for speedy settlement of commercial disputes by widening the scope of the courts to deal with commercial disputes and facilitating ease of doing business so as to create a positive image amongst the investors about strong and responsive Indian legal system.

28. The legislature while enacting Section 12-A of the Act, 2015 was aware of the fact that the Courts in India were under tremendous pressure and as such an Alternative Dispute Resolution (ADR) system was required for redressal of commercial disputes in order to facilitate ease of doing business. If the compliance of the provisions of Section 12-A of the Act, 2015 was not taken as mandatory, the object behind its enactment would have frustrated.

29. In the case in hand, mere filing of application by the appellants for initiation of mediation process was not sufficient in order to comply Section 12-A of the Act, 2015, rather both the parties were bound to show bonafide and to perform their part with the intention to settle the dispute. Since the appellants and respondents had not deposited their shares of mediation fee, their action could not be treated to be true compliance of Section 12-A of the Act, 2015.

30. One of the arguments of learned counsel for the appellants is that the consequence of not depositing the mediation fee is not specifically mentioned in rule 11 of Rules, 2018. We do not find any substance in the said argument in view of the fact that Section 12-A of the Act, 2015 itself mandates that the plaintiff will have to exhaust the remedy of pre-institution mediation in accordance with the manner and procedure prescribed by the Rules made by the Central Government.

31. As such, the manner and procedure prescribed under the Rules, 2018 are to be strictly complied by the plaintiff failing which the suit is not entertainable by the commercial court. Since rule 11 of the Rules, 2018 specifically provides for deposit of mediation fee by the parties, non-deposit of the same by the appellant has to be treated as non-compliance of Section 12-A of the Act, 2015. Thus, the plaint filed by the appellants has rightly been rejected by the Commercial Court under Order VII rule 11 of CPC.

32. If the appellants had deposited their share of mediation fee, the same would have been treated as compliance of Section 12-A of the Act, 2015 and in that case, the suit filed by the appellants was entertainable after issuance of "Non-Starter" report by the DLSA, Jamshedpur on the ground of failure of the respondents to deposit their share of mediation fee.

33. Next argument of learned counsel for the appellants is that the appellants were required to deposit the mediation fee only after appointment of the mediator.

34. To appreciate the said contention, we have gone through rule 11 of the Rules, 2018 which provides that before commencement of the mediation, the parties to the commercial dispute have to pay to the Authority a one-time mediation fee, to be shared equally, as per the quantum of claim as specified in Schedule-II. The words "before the commencement of the mediation" unambiguously speak that it is mandatory for the parties to deposit their shares of mediation fee before the start of mediation. Further, the words "shall pay to the Authority" in rule 11 of the Rules, 2018 clarify that the parties are bound to pay the mediation fee to the Authority itself and not to the mediator. Thus, we are of the view that the appellants were under misconception that they were required to pay the mediation fee after appointment of mediator.

35. Learned counsel for the appellants has further contended that the appellants were not given sufficient opportunity to deposit their share of mediation fee. We do not find any substance in the said contention also in view of the fact that on bare perusal of the order dated 17.12.2021 passed by the DLSA, Jamshedpur, it transpires that on the said date, the lawyers/representatives of both the parties were present and they were directed to deposit the mediation fee by the next date, however they did not comply the said order by the next date and only thereafter, the office was directed to issue a "Non-Starter" report. Moreover, the order of DLSA, Jamshedpur was never put to challenge by the appellants and as such, they cannot be allowed to raise question on the legality of the said order.

36. Learned counsel for the appellants puts reliance on the judgment rendered by the Division Bench of Delhi High Court in the case of **Kapil Goel Vs. Ram Dulare Yadav** reported in **2022 SCC OnLine Del 3873**. In the said case, Delhi Legal Services Authority (DLSA) had submitted a "Non-Starter" report on the ground that both the parties did not want to participate in the process of pre-institution mediation. In the said case, the learned Division Bench observed as under: -

> *"18. In the present case, both the plaintiff and the defendant have refused to participate in the mediation. It is not the case as if the defendant was interested in proceeding ahead with the mediation*

and the plaintiff was not interested. This Court is of the opinion that the defendant having refused to participate in the pre-institution mediation will suffice for the suit of the plaintiff to be allowed to proceed without any encumbrance. The learned District Judge Commercial Courts II has erred in observing that the plaintiff had not followed the mandate of Section 12-A of the Act, and, therefore, this legal infirmity warrants the interference of this Court."

37. In the aforesaid case, the "Non-Starter" report was filed by the DLSA observing that both the parties did not want to participate in the process of pre-institution mediation and the Delhi High Court having observed that the defendant had refused to participate in the pre-institution mediation, held that the learned District Judge-cum-Presiding Officer, Commercial Court-II had erred in observing that the plaintiff had not followed the mandate of section 12-A of the Act. However, in the present case, the "Non-Starter" report was given assigning the reason that both the parties did not submit the mediation fee. Thus, the facts and circumstances of the aforesaid case are different from the case in hand.

38. Moreover, the Hon'ble Supreme Court in the case of **Patil Automation (P) Ltd. (Supra.)** has held that the provisions of Section 12-A of the Act, 2015 is voluntary for the defendant whereas the same is mandatory for the plaintiff. The said ratio has subsequently been followed in the case of **Dhanbad Fuels Private Limited (Supra.)** and we are bound by the said principle laid down by the Hon'ble Supreme Court.

39. In view of the aforesaid discussion, we do not find any infirmity in the order dated 08.05.2024 passed by the District Judge-III-cum- Presiding Officer, Commercial Court, East Singhbhum, Jamshedpur in Original Suit No. 06 of 2022.

40. The present appeal is, accordingly, dismissed.

(Tarlok Singh Chauhan, C.J.)

(Rajesh Shankar, J.)

September 26, 2025
Ritesh/*A.F.R.*