

Kavita S.J.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL SUIT NO. 70 OF 2024

Perfect Infraengineers Ltd. & Ors., ...Plaintiffs

Versus

The Board of Directors of Technology ...Defendants
Development Board & Ors.,

WITH
INTERIM APPLICATION (L) NO. 1436 OF 2025
WITH
INTERIM APPLICATION (L) NO. 18025 OF 2025
WITH
INTERIM APPLICATION (L) NO. 18844 OF 2025
WITH
INTERIM APPLICATION (L) NO. 25072 OF 2024
WITH
INTERIM APPLICATION (L) NO. 25073 OF 2024
WITH
INTERIM APPLICATION (L) NO. 25074 OF 2024
WITH
INTERIM APPLICATION (L) NO. 34247 OF 2024
IN
COMMERCIAL SUIT NO. 70 OF 2024

Mr. Mathew Nedumpara a/w Ms. Hemali Kurne & Ms. Sweta
Dadheech i/b Nedumpara & Nedumpara for the Plaintiffs.

Mr. Viraj Shelatkar a/w Mr. Sumedh Ruikar i/b Mr. Pradip Yadav for
Defendant Nos. 1 to 6 (TDB).

Ms. Mansi Thakkar i/b Raval – Shah & Co., for Defendant No.8.

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CORAM : R.I. CHAGLA, J.

DATED : 21st AUGUST, 2025.

ORDER :

1. Heard Mr. Nedumpara, learned Counsel appearing for the Plaintiffs. He has moved the Interim Applications seeking stay of the proceedings under Section 13(2), 13(4) and 14 of the SARFAESI Act as well as proceedings under the IBC and in particular the proceedings initiated by the IRP/Advocate Commissioner for taking forcible possession of the Plaintiff's property being described at Paragraph 3 of the Plaint and to restrain the Defendant Nos. 1 to 6 in particular from causing sale of the shares pledged as a security against partly disbursed term loan facility.

2. Mr. Nedumpara has relied upon the various Acts which includes, the Recovery of Debts and Bankruptcy Act, 1993; the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act'); the Insolvency Bankruptcy Code, 2016 ('IBC') as well as The Micro Small Medium Enterprises Development Act, 2006. He has submitted that the Commercial Court has jurisdiction to entertain the Suit filed by the Plaintiff which is a Micro Small Medium Enterprise ('MSME') for enforcing its rights and obligations recognized by common law.

Further, the jurisdiction of the Commercial Court is not ousted by the provisions of the aforementioned Acts, in particular SARFAESI and IBC under which proceedings have been instituted.

3. Mr. Nedumpara has referred to the urgency in moving the present Interim Application viz. that forcible possession of the Plaintiff's property is being taken.

4. Mr. Viraj Shelatkar, the learned Counsel appearing for Defendant Nos.1 to 6 and Ms. Mansi Thakkar, learned Counsel for Defendant No.8 has raised the preliminary objection as to the maintainability of the present Commercial Suit on the ground of non-exhaustion of the mandatory mediation under Section 12A of the Commercial Courts Act.

5. I have considered that the Suit has been filed on 29th May, 2023 and there is no averment of urgency for moving the matter for ad-interim / interim relief. Further, there is no averment in the Plaint with respect to Section 12A of the Commercial Courts Act. There are orders passed by the NCLT against the Plaintiff which have been challenged before the NCLAT and proceedings instituted under SARFAESI prior to the filing of the Suit.

6. Accordingly, I am of the view that the Plaintiff has failed to satisfy the case of 'urgency' to bypass the mandatory provision of pre-institution mediation under Section 12A of the 2015 Act. Accordingly, the present Suit being a Commercial Suit, cannot be filed without exhausting the mandatory pre-institution mediation under Section 12A of the Commercial Courts Act, 2015.

7. It is pertinent to note that by an Order dated 19th November, 2024, this Court had not granted ad-interim reliefs having come to the prima facie conclusion that it may have no jurisdiction to entertain this Commercial Suit. Further, by a prior Order dated 23rd August, 2024, this Court had noted that a preliminary objection had been raised by Defendant No.8 as to the maintainability of the present Commercial Suit as there was no mandatory mediation under Section 12A of the Commercial Courts Act. This preliminary objection has been considered by this Order.

8. It has been held in **Dhanbad Fuels Pvt. Ltd. Vs. Union of India¹** that any Suit instituted after 20th August, 2022 without complying with Section 12A of the Commercial Courts Act must meet

¹ (2025) SCC OnLine SC 1129.

with rejection under Order VII Rule 11 either on an application or suo motu by the Court.

9. Accordingly, the Plaint filed in the present Suit is rejected by directing the Plaintiff to exhaust the mandatory pre-institution mediation. The Plaintiff is at liberty to file a fresh Plaint in respect of the same cause of action after following the necessary procedure as mandated in Section 12A of the Commercial Courts Act.

10. The captioned Interim Applications and the Commercial Suit No.70 of 2024 is accordingly disposed of.

11. In view of the Commercial Suit being disposed of, any remaining Interim Applications filed in the Suit do not survive and are accordingly disposed of.

[R.I. CHAGLA, J.]