IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 5176 OF 2025

Jayaswal Neco Industries Limited, F8, MIDC Industrial Area, Hingna Road, Nagpur, Maharashtra – 440016, Through its authorized signatory Kailash Sharma, Age : 58 years, Occ: Service, R/o c/o F-8, MIDC Industrial Area, Hingna Road, Nagpur, Maharashtra – 440016. **PETITIONER**

VERSUS

Abhiruchi Vision Private Limited, 10, Princep Street, 3rd Floor, Kolkatta, West Bengal 700072. Through authorized Signatory. **RESPONDENT**

Shri Sunil Manohar, Senior Advocate with Shri Akshat Goel and Shri R.G. Pandey, counsel for the petitioner.
Shri Deven Chauhan, Senior Advocate with S/Shri C.S. Dhore, A.D. Chaudhari and C.J. Dhruv, counsel for the respondent.

CORAM : PRAFULLA S. KHUBALKAR, J.
DATE ON WHICH ARGUMENTS WERE HEARD : OCTOBER 07, 2025
DATE ON WHICH JUDGMENT IS PRONOUNCWED : DECEMBER 23, 2025

JUDGMENT

RULE. Rule is made returnable forthwith and heard finally with consent of the learned counsel for the parties.

2. The petitioner has assailed the order dated 25.06.2025 passed by the Court of District Judge-2, Nagpur rejecting the application filed by the petitioner under Order 7 Rule 11 read with Order 7 Rule 10 of the Code of Civil Procedure, 1908 (for short, 'the Code') read with Section 15 of the Commercial Courts Act, 2015 (for short, 'the Act of 2015).

FACTUAL BACKGROUND:

3. The petitioner is the original defendant in the suit filed by the respondent for recovery of an amount of Rs.104,43,67,347.94 along with interest at the rate of 18% per annum. The parties are hereinafter referred

to as the plaintiff and the defendant according to their status in the suit for the sake of convenience.

4. The plaintiff claims to be a Non-Banking Financial Company (NBFC) and the defendant is a company duly incorporated and registered under the Companies Act 1956 having business of manufacturing variety of irons and specialty in steel. The defendant-Company and other companies belonging to Jayaswal family including a corporate entity viz. Corporate Ispat Alloys Limited (CIAL) had availed financial facilities and loans from various lenders and banks for approximately Rs.139 Crores for Strip Mill Division, which is one of the projects of CIAL. In the month of July-2008 there was a family separation and settlement by which various companies owned by the members of Jayaswal family were divided amongst them in between two groups; one being Basant Lal Shaw Group; and other being Manoj Kumar Jayaswal Group. As per the settlement agreed between the two groups CIAL came to the share of Manoj Kumar Jayaswal group. While one project of CIAL viz. Strip Mill Division alongwith its assets and liabilities got demerged from CIAL and merged with the defendant which formed part of Basant Lal Shaw group.

5. It is the plaintiff's case that the liability of discharging loans of strip mill division fell upon defendant and accordingly from the month of August-2008 onwards the defendant commenced repayment of loan to the bankers of Strip Mill Division and in view of various correspondences, the defendant company acknowledged the debt of the bankers. Thereafter, in the month of August-2010 the defendant stopped repayment of the

lenders of Strip Mill Division and therefore CIAL which belonged to Manoj Kumar Jayaswal group started making payments from August-2010 to March-2013 for and on behalf of the defendant to ensure that the account of Strip Mill Division did not turn into non-performing asset (NPA). It is alleged that during this period CIAL made payment of more than Rs.104 Crores to the lenders of Strip Mill Division for and on behalf of the defendant. In this background, after a dispute arose between the members of Jayaswal family, the matter was referred to the arbitrator and a Settlement Scheme on behalf of the parties was approved by this Court as well as the High Court of Calcutta. It is alleged that during entire period, CIAL had cumulatively paid amount of more than Rs.104 Croers and this amount was acknowledged by the defendant by sending email, so also the said amount is shown outstanding in the account books of the defendant. It is thus the case of the plaintiff that the defendant had acknowledged the liability to repay the said amount to CIAL in its balance-sheet for the year 2013-14 and onwards under the head of unsecured loan. It is the case of plaintiff that by letter dated 20.09.2014, the defendant denied its liability to pay the aforesaid amount, even though the said amount was reflected in its balance-sheet. Under these circumstances, CIAL approached the plaintiff and offered to assign the debt due against defendant and accordingly the debt which was payable by the defendant to CIAL was assigned in favour of the plaintiff as per Assignment Agreement dated 24.03.2017 for consideration.

6. On the basis of these pleadings, the plaintiff filed commercial suit for recovery of money against the defendant before the Court of District Judge, Nagpur which came to be registered as Commercial Suit no.4 of 2024. The defendant appeared in the suit and filed an application under Order VII Rule 11 read with Order VII Rule 10 of the Code read with Section 15 of the Commercial Courts Act, 2015 which came to be rejected by order dated 25.06.2025. This order is subjected to challenge by the petitioner-defendant by way of instant petition. By the impugned order, the trial Court has held that the suit filed by the plaintiff is a commercial dispute within the meaning of term as per the provisions of Act of 2015.

CONTENTIONS OF THE PARTIES

7. Shri Sunil Manohar, learned Senior Advocate for the petitioner while challenging the impugned order raised mainly two-fold submissions; *firstly* that the suit filed by the plaintiff did not disclose any cause of action as the controversy raised by way of the suit is an attempt of re-litigation of the dispute which is not permissible and therefore the plaint deserved to be rejected for want of cause of action; and *secondly* he submitted that the suit filed by the plaintiff is not at all a commercial suit as there are no documents of mercantile transaction between the parties to the suit and the plaint deserved to be rejected on this count also.

8. The primary contention of the learned Senior Advocate for the petitioner is that there exists no cause of action to file the instant suit in view of the fact that the controversy in between the plaintiff and Jayaswal Neco Industries Group stood settled by the judgment of National Company

Law Appellate Tribunal, Principle Bench, New Delhi (for short, 'NCLAT') delivered on 04.07.2023. He also submitted that the special leave petition challenging the judgment of NCLAT was dismissed on 20.11.2023 and thus the dispute attained finality. He thus submitted that the alleged assignment in favour of the plaintiff is of the dispute and not of a debt and in absence of any crystallized debt, there is no entitlement with the plaintiff to recover any money from the defendant. He invited attention to the judgment of NCLAT to put forth his submission that the assignment was nothing but a transfer of litigation in favour of the appellant therein i.e. the plaintiff in the commercial suit. He also submitted that a perusal of the plaint of the commercial suit in question clearly shows that there is no dispute based on or relating to any mercantile document and the dispute does not fall within the definition of 'commercial dispute' as defined under Section 2(1)(c)(vii) of the Act of 2015. In support of his submissions, he placed reliance on the following judgments:-

(i) ***Commissioner of Police & Others Versus Acharya Jagadishwarananda Avadhuta & Others*** [**(2004) 12 SCC 770**].

(ii) ***Ambalal Sarabhai Enterprises Ltd. Versus K.S. Infraspace LLP & Another*** [**(2020) 15 SCC 585**].

(iii) ***Varanium Cloud Limited – Applicant in the Matter between Rolta Private Limited & Another Versus Varanium Cloud Limited & Another*** [**2024 SCC OnLine Bom 3518**].

(iv) ***Meena Vohra Versus Master Hosts Private Limited & Others*** [**2025 SCC OnLine Del 1758**].

(v) ***Glasswood Realty Pvt.Ltd. & Others Versus Chandravilas Kailashkumar Kothari*** [**(2022) 1 Bom CR 527**].

(vi) ***Vicco Laboratories, Proprietor Vicco Products (Bombay) Versus Union of India & Another*** [**2007(1) Mh.L.J. 738**].

(vii) ***M. Nagabhushana Versus State of Karnataka & Others*** [**(2011)3 SCC 408**].

(viii) ***SNP Shipping Services Pvt. Ltd. Versus Kara Mara Shipping Co.Ltd.*** [**2000(1) Mh.L.J. 699**].

(ix) ***T. Arivandandam Versus T.V. Satyapal & Another*** [**(1977) 4 SCC 467**].

(x) ***Shri Mukund Bhawan Trust & Others Versus Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle & Another*** [**2024 SCC OnLine 3844**].

9. By relying upon the judgment in the matter of ***SNP Shipping Services Pvt. Ltd.*** (Supra), ***M. Nagabhushana and Vicco Laboratories*** (Supra) he submitted that re-litigation of a point is an abuse of process of the court and has to be nipped in the bud by exercising powers under Order VII Rule 11 read with Section 151 of Civil Procedure Code.

10. By highlighting the legal position in ***T. Arivandandam*** (Supra), he submitted that while considering an application under Order VII Rule 11 of the Code, the Court is empowered to deal with the aspect of absence of cause of action even though it is not specifically raised in the said application since it is the bounden duty of the Court to ensure that vexatious litigation is not contested.

11. By placing heavy reliance on the judgment of the Hon'ble Supreme Court in ***Shri Mukund Bhawan Trust & Others*** (supra), he submitted that the position of law is reiterated by the Hon'ble Supreme Court that under Order VII Rule 11 of the code, a duty is cast upon the Court to reject the

plaint if it is found that the suit is manifestly vexatious and without any merit. He submitted that a suit without cause of action should be nipped in the bud so that bogus litigation ends at the earliest stage and the Court has to ascertain existence of real cause of action as against the illusory one. On the basis of legal position, he submitted that in the instant case there does not exist any cause of action against the defendant entitling the plaintiff to recover the amount.

12. Further, by relying on the legal position as laid down in ***Ambalal Sarabhai Enterprises Ltd., Meena Vohra*** **and** ***Varanium Cloud Limited*** (supra) he submitted that the dispute raised by the suit does not fall in any of the clauses of S. 2 (1) (c) of the Commercial Courts Act, 2015 and therefore the plaint deserved to be returned.

13. Per Contra, Shri Deven Chauhan, learned Senior Advocate for the respondent vehemently opposed the petition and primarily submitted that in the wake of triable issues raised in the plaint the suit cannot be summarily rejected. He submitted that the plaint clearly discloses a cause of action as against the defendant and justified the impugned order. As regards the contention canvassed by the learned Senior Advocate for the petitioner that the plaint deserved to be rejected for absence of cause of action, learned Senior Advocate for the respondent submitted that an application under Order VII Rule 11 of the Code as filed before the trial Court does not raise this ground and hence the petitioner is precluded from raising the said ground before this Court. In support of his

submission, he placed reliance on the judgment in ***Kushal Anand*** (supra) and by inviting attention to paragraph 22 he submitted that the submission which was never advanced before the trial Court in support of application under Order VII Rule 11 of the Code cannot be raised in the petition under Article 227 of the Constitution of India. He further submitted that, the plaint indeed disclosed a cause of action as the alleged settlement by NCLAT cannot be considered to be final in view of the specific observation of the Hon'ble Supreme Court by its order dated 20.11.2023 stating that '*In case any civil proceeding are initiated, the same shall be decided in accordance with the Law. All issues in relation to the civil proceedings are left open.'* He therefore submitted that the averments in the plaint sufficiently disclosed cause of action in several paragraphs including paragraph 39 of the plaint.

14. In support of his submissions, he relied on the following judgments:-

(i) ***K. Valarmathi & Others Versus Kumaresan*** [**2025 SCC OnLine SC 985**].

(ii) ***Vinod Infra Developers Ltd. Versus Mahaveer Lunia & Others*** [**2025 SCC OnLine SC 1208**].

(iii) ***Kushal Anand Versus Mandhir Sachdeva*** [**2022 SCC OnLine Del 2102**].

15. While highlighting the scope of interference under Article 227 of the Constitution of India with reference to an order on an application under Order 7 Rule 11 of the Code, he placed reliance on the judgment of the Hon'ble Supreme Court in ***Vinod Infra Developers Ltd.*** (supra) and

submitted that rejection of plaint under Order 7 Rule 11 of the Code is permissible only when the plaint on its face, without considering the defence, fails to disclose any cause of action or other circumstances mentioned in the provision. He submitted that in view of the settled position, at the preliminary stage, the Court is required to confine its examination strictly in consonance with the averments made in the plaint and in case a triable issue arises from the pleadings, the suit cannot be summarily rejected.

16. As regards the contention of the petitioner that the suit filed by the plaintiff does not fall within the definition of 'commercial suit' as defined under the Act of 2015, the learned Senior Advocate for the respondent submitted that the controversy is in between two commercial entities with respect to recovery of amount of more than Rs.104 Crores and considering the nature of transaction and reliefs claimed, the suit was filed as a commercial dispute. However, as regards the contention about lack of foundation to style the suit as 'commercial suit', in absence of any mercantile document he candidly submitted that there does not exist any document to be strictly categorised as a mercantile document to bring the suit within the purview of the definition of 'commercial dispute'.

17. In the backdrop of the rival contentions the controversy thus falls for my consideration.

18. The instant petition is a challenge to the order passed by the trial Court rejecting the application under Order VII Rule 11 read with Order

VII Rule 10 of the Code. Thus, the primary issue is whether in view of the grounds raised in the application under Order VII Rule 11 of the Code, the plaint deserved to be rejected. While deciding this controversy, the Court has to be mindful about the scope of interference under Article 227 of the Constitution of India in the wake of the judgment of the Hon'ble Supreme Court in ***K. Valarmathi & Others*** (supra) from which paragraphs 8 to 11 being relevant are reproduced below:-

> "*8. Power of the High Court under Article 227 is supervisory and is exercised to ensure courts and tribunals under its supervision act within the limits of their jurisdiction conferred by law. This power is to be sparingly exercised in cases where errors are apparent on the face of record, occasioning grave injustice by the court or tribunal assuming jurisdiction which it does not have, failing to exercise jurisdiction which it does have, or exercising its jurisdiction in a perverse manner.*
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> *9. Essence of the power under Article 227 being supervisory, it cannot be invoked to usurp the original jurisdiction of the court which it seeks to supervise. Nor can it be invoked to supplant a statutory legal remedy under the Civil Proedure Code, 1908. For example, existence of appellate remedy under Section 96 of the Code operates as a near total bar to exercise of supervisory jurisdiction under Article 227.*
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> *10. Civil Procedure Code is a self-contained Code and order VII Rule 11 therein enumerates the circumstances in which the trial court may reject a plaint. Such rejection amunts to a deemed decree which is appealable before the High Court under Section 96 of the Code. This statutory scheme cannot be upended by invoking supervisory jurisdiction of the High Court under Article 227 to entertain a prayer for rejection of plaint.*
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> *11. In the present case, High Court has supervened the provisions of the Code when it rejected the palint on the ground it was barred by law. In doing so, the High Court not only substituted itself as the court of first instance but also rendered nugatory a valuable right to appeal available to the appellant had the issue been adjudicated by the trial court in the first place.*"

Reference also need to be made to the judgment of the Hon'ble Supreme Court in ***Vinod Infra Developers Ltd.*** (*supra*) dealing with the position of law in paragraph 8 which is reproduced below:-

> "*8. The position of law is that rejection of a plaint under Order VII Rule 11 CPC is permissible only when the plaint, on its face and without considering the defence, fails to disclose a cause of action, is barred by any law, is undervalued, or is insufficiently stamped. At this preliminary stage, the court is required to confine its examination strictly to the averments made in the plaint and not venture into the merits or veracity of the claims. If any triable issues arise from the pleadings, the suit cannot be summarily rejected. Keeping in mind this settled principle of law, we proceed to examine whether the High Court was justified in rejecting the plaint under Order VII Rule 11 CPC.*"

19. On a perusal of the application under Order VII Rule 11 of the Code, which is under consideration, it has to be noted that the application is filed by raising only one issue to the effect that the suit filed by the plaintiff is not a commercial dispute. There are no averments/grounds in the application to contend that the plaint deserves to be rejected for absence of cause of action. However, while advancing arguments before this Court, learned counsel for the petitioner has vehemently submitted that the issue as to rejection of plaint for absence of cause of action has to be considered by this Court, even though it was not specifically raised before the trial Court since it is the boundan duty of this Court while exercising powers under Article 227 of the Constitution of India to examine this issue. As such, even though the issue of absence of cause of action was not raised, the contentions in this regard are considered herewith.

20. It is relevant to see as to whether averments in the plaint are sufficient to disclose a cause of action. The scrutiny is confined to the averments in the plaint and there is no requirement to consider the defence sought to be raised by the defendant. On a perusal of the plaint, it appears that there are averments to the effect that there was an assignment of debt by CIAL in favour of Plaintiff. There are pleadings with respect to the document of 'Assignment agreement' dated 24.03.2017 and further there are pleadings with respect to the emails exchanged. As such, in view of pleadings in the plaint, at this stage it cannot be concluded that the plaint does not at all disclose cause of action. Apart from this, in view of the order dated 20.11.2023 passed by the Hon'ble Supreme Court, the plaintiff became entitled to initiate civil proceedings and thus the plaint cannot be rejected by terming it as an act of re-litigation.

21. In the wake of these averments and the documents filed alongwith the plaint, it appears that the plaintiff has raised a triable issue in the suit which needs adjudication on merits. The contentions of the petitioner that there was no assignment of debt or that there was no crystallized debt needs adjudication on the basis of evidence. Further, contention of the learned counsel for the petitioner that the suit is in nature of re-litigation if seen in the wake of rival submissions demonstrating that there was no compromise in between the parties, also requires adjudication on the basis of evidence. On a bare reading of the pleadings in the plaint alongwith the documents, it is difficult to conclude at this stage that there is no cause of action at all warranting rejection of plaint on that count.

22. In the backdrop of consideration of above mentioned factual and legal aspects, I am of the firm opinion that the plaint filed by the plaintiff disclose triable issues which need adjudication on the basis of evidence and it cannot be rejected at the threshold for lack of cause of action. By applying the position of law laying down the parameters of exercise of supervisory jurisdiction under Article 227 of the Constitution of India, this Court is required to test the legality of the order passed by the trial Court and is not required to substitute itself as the Court of first instance. As such, in view of the fact that the plaint discloses a cause of action, it does not deserve to be rejected under Order VII Rule 11 as claimed by the petitioner.

23. As regards the contention of the learned Senior Counsel for the petitioner that the suit filed as commercial suit is not maintainable in absence of any mercantile document, also needs due consideration. In response to these arguments, there is no strong opposition by the counsel for the respondent since he has fairly submitted that there exists no mercantile document. A perusal of the plaint and documents placed on record in support of the plaint do not *prima-facie* show that any of the documents could form the basis to categorize the suit as a commercial suit. Merely because the valuation of the suit is for a higher amount, the suit cannot be treated to be a commercial suit. Reliance placed by the learned Senior Advocate for the petitioner on the judgment of the Hon'ble Supreme Court in ***Ambalal Sarabhai Enterprises Limited*** (supra) highlighting the legal position about nature of dispute being a commercial

dispute is appropriate. It is profitable to reproduce paragraph 13 of the said judgment which reads as under:-

> "*13. The learned Senior Advocate for the appellant would however, contend that a strict interpretation as in the case of taxing statutes would not be appropriate in the instant case where the issue relates to jurisdiction. In that regard, the learned Senior Advocate has referred to the Statement of Objects and Reasons with which the Commercial Courts Act, 2015 is enacted so as to provide speedy disposal of high value commercial disputes so as to create the positive image to the investors world about the independent and responsive Indian legal system. Hence, he contends that a purposive interpretation be made. It is contended that a wider purport and meaning is to be assigned while entertaining the suit and considering the dispute to be a commercial dispute. Having taken note of the submission we feel that the very purpose for which the CC Act of 2015 has been enacted would be defeated if every other suit merely because it is filed before the Commercial Court is entertained. This is for the reason that the suits which are not actually relating to commercial dispute but being filed merely because of the high value and with the intention of seeking early disposal would only clog the system and block the way for the genuine commercial disputes which may have to be entertained by the Commercial Courts as intended by the lawmakers. In commercial disputes as defined a special procedure is provided for a class of litigation and a strict procedure will have to be followed to entertain only that class of litigation in that jurisdiction. If the same is strictly interpreted it is not as if those excluded will be non-suited without any remedy. The excluded class of litigation will in any event be entertained in the ordinary civil courts wherein the remedy has always existed.*"

24. As regards the categorization of the suit as commercial suit in view of the consideration of relevant aspects as aforesaid, I am of the firm view that the suit need not be tried as a 'commercial suit' although it is a dispute between two commercial entities and to that extent, interference is warranted with the impugned order. A perusal of the impugned order

passed by the trial Court shows that despite there being no mercantile document or other documents to bring the suit in defination of Clause 2(1)(c), the Court has concluded that the categorization of the suit as 'commercial suit' is proper. The impugned order deserves to be modified to this extent by observing that the suit be tried as a regular/special civil suit and not a commercial suit.

25. In view of the above mentioned factual and legal aspects the contentions canvassed on behalf of the petitioner for rejection of plaint under Order VII Rule 11 of the Code for absence of cause of action cannot be accepted. However, the application at Exhibit 21 is entertained to the extent of Order VII Rule 10 of Code and the order dated 25.06.2025 is accordingly modified. Hence, the following order is passed:-

I. The writ petition is partly allowed.

II. The application at Exhibit 21 under Order VII Rule 11 of the Code of Civil Procedure, 1908 is rejected whereas, the prayer for return of plaint under Order VII Rule 10 of the Code of Civil Procedure, 1908 is granted.

26. Rule is made absolute in aforesaid terms. No order as to costs.

(PRAFULLA S. KHUBALKAR, J.)

APTE