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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RFA(COMM) 479/2025
ANIL KUMAR PITTIAppellant

Through: Mr. Kushagra Bansal and Mr.
Nama Gari, Advs.

versus

COMSOL ENERGY PRIVATE LIMITEDRespondent
Through: Mr Harsh Kaushik, Mr. Abhay
Chattopadhyay, Mr. Udipto Koushik
Sarmah, Ms. Rohini Roy, Advs.

+ RFA(OS)(COMM) 9/2025
COMSOL ENERGY PRIVATE LIMITEDAppellant
Through: Mr Harsh Kaushik, Mr. Abhay
Chattopadhyay, Mr. Udipto Koushik
Sarmah, Ms. Rohini Roy, Advs.

versus

ANIL KUMAR PITTIRespondent
Through: Mr. Kushagra Bansal and Mr.
Nama Gari, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

% **22.09.2025**

C. HARI SHANKAR, J.

1. These are cross appeals preferred against order dated 10 February 2025 passed by a learned Single Judge of this Court in IA 29590/2024 filed by the appellant and IA 41847/2024 filed by the respondent.

2. At the outset, Mr. Kushagra Bansal, learned Counsel for Anil Kumar Pitti undertakes to pay the deficient court fees, for institution



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of RFA (Comm) 479/2025, within a period of two weeks from today.

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The Issue

A Preliminary Observation

3. The limited issue involved in the present case is as to whether the appellant, as the plaintiff before the learned Judge in CS (Comm) 414/2024, had or had not complied with Section 12A¹ of the Commercial Courts Act, 2015.

4. We may note, at the outset, that IA 29590/2024 was, on the face of it, not maintainable. The application sought exemption from compliance with the requirement of pre-institution mediation under Section 12A of the Commercial Court Act. Section 12A does not contain any provision by which any party can seek exemption from its rigour.

5. As such, the prayer in this application could not, even otherwise, have been granted by the Court.

Facts

6. Mr. Kaushik, learned Counsel for the petitioner has very fairly

¹ 12-A. Pre-litigation 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-litigation mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.



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conceded to this position but asserts that his case is that Section 12A of the Commercial Courts Act effectively stood complied with, and that requiring the petitioner to formally resort to pre-institution mediation before instituting CS (Comm) 414/2024 would be an exercise in duplication.

7. He submits that the disputes between the parties are interconnected. For this purpose, he has referred us briefly to the circumstances in which these disputes arose, and we may also briefly make reference thereto.

8. The disputes between the parties pertained to purchase of 20000 MT of US Steel Coal. The appellant was to deliver the said coal to the respondent. A Deal Note was executed between the parties in this context on 3 March 2023. According to the appellant, the respondent did not lift the entire coal upon arrival at port and lifted only 10000 MT and failed to make full payment to the appellant. As a result, the appellant had to sell the remaining 10000 MT out of the total contracted 20000 MT to third parties, incurring, in the process, a loss of ₹ 5.23 crores.

9. This resulted in cross claims between the parties.

10. The respondent wrote to the appellant on 16 June 2023, claiming entitlement to refund, from the appellant, of an amount of ₹ 1.43 crores, albeit with respect to another transaction.

11. The appellant, in response, addressed a legal notice dated 19



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June 2023 to the respondent, stated that as the appellant had suffered a loss of ₹ 5.23 crores, the respondent owed the appellant an amount of approximately ₹ 3.80 crores.

12. Thus, the situation that emerged was that the appellant claimed approximately ₹ 3.80 crores from the respondent whereas the respondent was claiming ₹ 1.43 crores from the appellant.

13. The respondent moved an application under Section 12 A of the Commercial Courts Act before the Delhi State Legal Services Authority on 14 September 2023, for pre-institution mediation, prior to a prospective suit which could be instituted by the respondent against the appellant.

14. Mr. Kaushik points out that twelve mediation sessions took place in the said process. He has also drawn our attention to paras 2, 4(6) and 4(8) of the pre-institution mediation application filed by the respondent, which read thus:

“2. Quantum of claim: Rs. 2,10,00,000/- (Rupees Two Crores Ten Lacs Only) inclusive of principal amount of Rs. 1,43,02,289/- (Rupees One Crore Forty Three Lacs Two Thousand Two Hundred Eighty-Nine Only) along with interest calculated @ 18% per annum from the date of default till date of realization along with compensation on account of 'Loss of Profit'.

4. Brief synopsis of commercial dispute (not to exceed 5000 words):

6. That as on 19.05.2023, an advance amount of INR 1,43,02,289/- (Rupees One Crore Forty Three Lacs Two Thousand Two Hundred Eighty Nine Only) was lying in the accounts of the Defendant. It is submitted that when the Plaintiff requested the Defendant to refund the aforesaid



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amount, the Defendant started acting in an unlawful and illegal manner and further raised false allegations that the total quantity of the purchased coal was 20,000MT instead of 10,000MT. It is submitted that the averment of the Defendant was totally unwarranted.

8. That the Plaintiff again vide email dated 16.06.2023 tried his level best to resolve the issue in amicable manner and further requested the Defendant to refund the amount on immediate basis. It is submitted that the Defendant vide legal notice dated 19.06.2023 raised a false counter claim which was duly objected by the Plaintiff via reply dated 11.07.2023.”

15. Thus, submits Mr. Kaushik, the *lis* which formed subject matter of the mediation proceedings was not restricted to the respondent’s claim of ₹ 1.43 crores against the appellant, but also included the appellant’s claim of ₹ 3.80 crores against the respondent.

16. The mediation did not fructify. Thus, submits Mr. Kaushik, neither of these claims was found to be amenable to settlement in mediation.

17. As it happened, the respondent did not institute any suit against the appellant. The appellant, however, instituted CS(Comm) 414/2024 against the respondent, for the aforesaid amount of ₹ 3.80 crores, in which the presently impugned order has come to be passed by the learned Single Judge.

18. In the said suit, as we have already noted, the appellant preferred IA 29590/2024 for exemption from the requirement of compliance with Section 12A of the Commercial Courts Act on the



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ground that the rival claims of the parties against each other had already formed subject matter of an exhaustive mediation exercise, albeit instituted at the instance of the respondent, and had failed to fructify.

19. The respondent, on the other hand, preferred IA 41847/2024 under Order VII Rule 11² of the Code of Civil Procedure, 1908³, seeking dismissal of the claim, as it had been instituted without complying with the mandatory requisite of pre-institution mediation envisaged by Section 12A of the Commercial Courts Act.

20. The learned Single Judge has, by the judgment under challenge, adjudicated on both the applications. The learned Single Judge has dismissed CS(Comm) 414/2024 for non-compliance with the Section 12A of the Commercial Courts Act but has granted leave to the appellant to re-institute the suit after such compliance.

21. Against this order, the appellant and respondent are both in appeal.

Rival Contentions

22. The appellant submits that the learned Single Judge was in error in relegating the appellant to a fresh exercise of pre-institution mediation when the rival claims of both parties had already been exhaustively subjected to a mediation exercise.

² 11. **Rejection of plaint.** – The plaint shall be rejected in the following cases:—

(d) where the suit appears from the statement in the plaint to be barred by any law;
³ “CPC” hereinafter



23. As against this, the respondent submits that the learned Single Judge could not have left open the remedy to the appellant to re-institute the suit after complying with Section 12A of the Commercial Courts Act, as a suit which was instituted without such compliance had mandatorily to be dismissed.

Analysis

24. Having heard learned Counsel for both sides, we are not inclined to accept either appeal.

The decision in *Sanjana Agarwal*

25. Mr. Kaushik, learned counsel for the appellant, has placed reliance on the judgment of a coordinate Division Bench of this Court in *Sanjana Agarwal v Namoshivai Apparel Pvt Ltd*⁴. We may note that the learned Single Judge has distinguished this decision on the ground that it pertained to the issue of whether a counter-claim, which was filed in an existing suit which had already gone through the pre-institution drill of Section 12A of the Commercial Courts Act, was once again required to be preceded by a fresh Section 12A pre-institution exercise before instituting the counter-claim.

26. On a perusal of the decision in *Sanjana Agarwal*, we find this to be correct. *Sanjana Agarwal* was in fact a case in which a suit was instituted after complying with the requirements of Section 12A of the Commercial Courts Act. In the said suit, the defendant filed a counter-

⁴ 2024 SCC OnLine Del 9272



claim. The Court held, in these circumstances, that the counter-claim was not required once again to be preceded by an exercise of pre-institution mediation under Section 12A of the Commercial Courts Act. Mr. Kaushik has placed reliance on Paragraphs 25, 26 and 26.1 of *Sanjana Agarwal* which read thus:

“25. There is no cavil that under the provisions of the Civil Procedure Code, 1908, a counter-claim is to be treated as a plaint and governed by the rules applicable to plaint. However, in the case of commercial disputes to say that each counter-claim will be subject to preinstitution mediation process separately when the Plaintiff has already exhausted the remedy of pre-institution mediation, may not be apposite. The object of the CC Act is to ensure speedy resolution of commercial disputes to accelerate economic growth and improve the international image of the Indian Justice System and to restore the faith of the investors. Once a party has taken steps to exhaust the remedy of pre-institution mediation to then ask the opposite party in a case where the subject matter of dispute is entirely the same, to once again undertake pre-institution mediation, prior to filing its counterclaim would defeat the very purpose of the CC Act and delay adjudication of the commercial dispute between the parties.

26. In the present case, non-starter report which is available shows that the service of the pre-institution mediation was done through email to NAPL and that there was no appearance of NAPL leading to the closure of the pre-institution mediation.

26.1 There is another reason as well. In the present case as both the plaint and the counter-claim emanate from the same series of transactions between the parties. The dispute revolved around the 5 disputed invoices and to that extent the counter-claim is an integral part of NAPL's defence to Molmek's claim as articulated in the plaint. In such a scenario, to relegate the parties a period to a second round of pre-institution mediation would be contrary to the object of the CC Act for a speedy resolution of commercial disputes.”

Section 12A analyzed – Re. contention that appellant has exhausted S. 12A

27. While, in our view, *Sanjana Agarwal* would not apply even for



the reason that the facts and issue in controversy in that case were different as we have already noted, we deem it appropriate to enter an observation with respect to paras 25, 26 and 26.1 of the said decision. In the said paras, the Division Bench has emphasised the purpose of the Commercial Courts Act being speedy resolution of disputes and has, therefore, held that if the claims between the parties had already been subjected to a pre-institution mediation before institution of the suit filed by the plaintiff, and the counter-claim was filed in the same suit, it would be counter-productive to again subject the parties to an exercise of pre-institution mediation and would defeat the purpose of a speedy resolution of the disputes.

28. We may only observe that, in fact, there are two rival purposes and considerations which are involved, when one examines Section 12A in the backdrop of the Commercial Courts Act. In fact, these considerations complement each other. There is no doubt about the fact that the entire *raison d'être* of the Commercial Courts Act is speedy resolution of commercial disputes. Section 12A of the Commercial Courts Act is, in fact, a means towards that end. The entire purpose of Section 12A of the Commercial Courts Act, as is the entire purpose of the mediation paradigm, is to ensure that, if the dispute can be settled without subjecting it to a lengthy adjudicatory process, that should be the first attempt. It is for this reason that mandatory pre-institution mediation for commercial disputes has been engrafted statutorily into Section 12A of the Commercial Courts Act. As such, strict compliance with Section 12A of the Commercial Courts Act would further the purpose of speedy resolution of commercial disputes.



29. Of course, for cases in which urgent relief is required, where resort to a pre-institution mediation would defeat the cause, Section 12A of the Commercial Courts Act itself excepts its application. The present case, however, is not one such. This is a simple money suit. As such, the appellant, in not exhausting the mandate of Section 12A of the Commercial Courts Act before instituting the suit, is actually acting contrary to the purpose of the Commercial Courts Act, which is to attempt a speedy resolution of the dispute.

30. It is Mr. Kaushik's contention, however, that the appellant has in fact, exhausted the remedy of Section 12A of the Commercial Courts Act, as the entire dispute between the parties, which would include the dispute forming subject matter of the appellant's claim against the respondent, has been subjected to mediation. We are not prepared to countenance this argument. Section 12A of the Commercial Courts Act is clear in its terms. It states that the suit, which is not one which claims urgent relief, shall not be instituted unless *the plaintiff* exhausts the remedy of pre-litigation mediation. There is, admittedly, only one plaintiff in the present case, and that is the appellant. The recourse to pre-litigation mediation which had been set in motion by the respondent cannot, therefore, be said to be in compliance with Section 12A of the Commercial Courts Act, which requires the plaintiff to exhaust the remedy of pre-litigation mediation.

31. Besides, even on a reading of the reference to pre-litigation mediation, as invoked by the respondent, and the specific paragraphs thereof to which Mr. Kaushik has drawn our attention, we are not in a



position to accept the submission that the dispute which forms subject matter of the present suit has already endured an exercise of pre-litigation mediation. The specific dispute which was referred to the mediation at the instance of the respondent was the respondent's claim against the appellant of ₹ 2.10 crores. No doubt, para 4(8) of the note referring the matter to mediation does advert to the claim of the appellant against the respondent and states that it is an unmerited claim. That, however, would not constitute exhaustion, by the appellant, of the mandate of Section 12A of the Commercial Courts Act.

32. We, therefore, do not accept Mr. Kaushik's submission that the appellant had exhausted the remedy of pre-institution mediation, or that insisting on the appellant doing so would amount to an exercise in duplication. To our mind, this would be the first pre-institution mediation on the claim of the appellant against the respondent for ₹ 3.8 crores.

A closing observation on mediation

33. Mediation, with the advent of time, has metamorphosed. It is no longer a mode of alternative dispute resolution. It is, in fact, as much a mode of dispute resolution as adjudication and, with the strides that mediation is taking with the passing of every day, it is not impossible to foresee a situation where, at one point of time, mediation may become the preferred mode of dispute resolution. The advantages of mediation over adjudication are self evident. Unlike a case of adjudication, which is fundamentally adversarial in nature, and



in which, at the end of the day, one of the parties invariably leaves the court room with a scowl, and the other with a smile, in the case of mediation, both parties exit the mediation proceedings with the satisfaction of the disputes having being amicably resolved. There can be, therefore, no manner of doubt that the Court must be proactive and ensure that every possible effort is made to try and resolve matters through mediation, instead of subjecting them to exhaustive, detailed and rancour-ridden adjudication proceedings which, in form and in substance, are adversarial in context and colour.

The sequitur

34. In that view of the matter, we find no reason whatsoever to interfere with the decision of the learned Single Judge to dismiss the suit under Order VII Rule 11 of the CPC on the ground that it has been filed without exhausting the remedy of pre-institution mediation under Section 12A of the Commercial Courts Act.

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35. We now advert to the appeal filed by the respondent. The respondent has taken exception to the learned Single Judge permitting the appellant to reinstitute the suit after exhausting the remedy of pre-institution mediation. As Mr. Kaushik correctly points out, this direction is entirely in sync with Order VII Rule 13⁵ of the CPC which

⁵ 13. **Where rejection of plaint does not preclude presentation of fresh plaint.** – The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.



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clearly states that, if a plaint is rejected on any of the grounds envisaged by Order VII Rule 11 of the CPC, it would not preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

36. In fact, therefore, there was no need for the learned Single Judge to even grant liberty to the appellant to reinstitute the suit after complying with Section 12A of the Commercial Courts Act. That remedy is statutorily available under Order VII Rule 13 of the CPC.

37. We, therefore, equally find no merit in the respondent's objection to the learned Single Judge having permitted the appellant to reinstitute the suit after complying with the requirement of Section 12A of the Commercial Courts Act.

Conclusion

38. As a result, both the appeals, in our view, are devoid of merit. They are accordingly dismissed.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

SEPTEMBER 22, 2025/pa