$~O-5

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CS(COMM) 414/2024 and I.A. 42363/2024

COMSOL ENERGY PRIVATE LIMITED .....Plaintiff

Through: Mr. Abhay Chattopadhyay and Mr. Udipto Kaushik Sarmah, Advs.

versus

ANIL KUMAR PITTI .....Defendant

Through: Mr. Kushagra Bansal, Adv.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

% **10.02.2025**

I.A. 29590/2024 (under Section 12 A of the Commercial Courts Act, 2015 seeking exemption of pre-institution mediation)
I.A. 41847/2024 (under Order VII Rule 11 read with Section 151 CPC, 1908 for rejection of the plaint)

1. I.A. 29590/2024 has been filed by the plaintiff seeking exemption of pre-institution mediation proceedings.

2. Learned counsel for the plaintiff places reliance on the decision of this Court in ***Sanjana Agarwal v. Namoshivai Apparels (P) Ltd***[1], to contend that the mandate of Section 12A of the Commercial Courts Act of pre-institution mediation has already been satisfied. He submits that the parties earlier, had participated in mediation proceedings, wherein 12 sittings were conducted, but the mediation ultimately remained unsuccessful. He submits that, if the present controversy is examined in the right perspective, it becomes evident that the issues involved in the present suit have already been the subject

[1]2024 SCC OnLine Del 9272

matter of the earlier undertaken mediation.

3. Learned counsel further argues that the principles applicable to counter-claims in a suit should equally govern the maintainability of the present plaint. Relying on the decision cited, he contends that the Court has categorically held that a claimant in a counter-claim is not required to undergo pre-institution mediation proceedings. By extrapolating the same principle, the same logic should apply to the present civil suit, thereby exempting the plaintiff from the requirement of pre-mediation institution.

4. Therefore, the case of the plaintiff is that, in view of the earlier conducted mediation between the same parties in another suit, the plaintiff herein should be exempted from undertaking pre-institution mediation once again.

5. Learned counsel for the defendant strongly opposes the aforesaid contention. He submits that the mediation proceedings were earlier initiated only at the instance of the defendant, and while they ultimately failed, the same does not absolve the plaintiff from complying with the mandatory pre-institution mediation requirement under Section 12 A of the Commercial Court Act. According to him, the pre-institution mediation is a statutory prerequisite for every commercial suit that does not contemplate urgent relief, and no distinction can be drawn between a counter-claim and a substantive suit in this regard. He further contends that in the present case, it is undisputed that no urgent relief has been sought. Therefore, while placing reliance on the principle laid down in ***Aditya Birla Fashion and Retail Ltd. v. Saroj Tandon***[2], he submits that the plaintiff cannot seek an exemption from pre-institution mediation merely on the ground that prior mediation

---

[2] 2024 SCC OnLine Del 6099

proceedings had taken place at the behest of the defendant herein. Learned counsel argues that the contention of the plaintiff, that a counter-claim need not undergo pre-institution mediation, should not be accepted. He maintains that the present suit has been instituted for substantive relief, and unless the plaintiff complies with the procedural mandate of Section 12A of the Commercial Courts Act, the suit is not maintainable.

6. I have considered the submissions made by learned counsel for the parties and have perused the record of the case.

7. The facts of the case would indicate that the instant civil suit has been instituted by the plaintiff for the recovery of Rs. 3,80,69,259/- along with interest at the rate of 15% per annum from the date of the alleged breach of contract by the defendant, i.e., 28.05.2023, until the realization of the payment, including interest *pendente lite*. It is also pertinent to note that the defendant had earlier filed an application under Section 12A of the Commercial Courts Act, 2015, seeking reference of his dispute/claim amounting to Rs. 2,10,00,000/-, which included the principal sum of Rs. 1,43,02,289/- along with interest totaling Rs. 2,20,88,296/-, at the rate of 18% per annum, from the date of default until the realization of the amount.

8. The dispute between the parties originates from a contract entered into on 20.02.2023 and 22.02.2023 for the purchase of USA Steel Coal. The defendant, in the said application before the mediator, asserted that he had made an advance Earnest Money Deposit (EMD) of 10% without any default on his part. However, he alleged that the plaintiff failed to fulfill its contractual obligations, leading to the present controversy. In para No.4 of the said application, the following pertinent averments have been made:-

> *"4. That the Plaintiff has failed to comply with the provisions of Section 12-A of Commercial Courts Act, 2015 and never referred its claims for pre-suit mediation. It is an admitted fact that it was the Defendant who had invoked the pre-suit mediation in terms of Section 12-A of Commercial Courts Act, 2015 by referring his claims for pre-suit mediation. It is submitted that the Defendant had filed an application u/s 12-A of Commercial Courts Act, 2015 seeking reference of his disputes/ claims of INR 2,10,00,000/- (Rupees Two Crores Ten Lacs Only) inclusive of principle amount of INR 1,43,02,289/- (Rupees One Crore Forty Three Lacs Two Thousand Two Hundred and Eighty Nine Only) along with interest @ 18% P.A. from the date of default till the date of realization and compensation on account of 'loss of profit' for pre-suit mediation against the Plaintiff. It is submitted that Ld. Delhi High Court Legal Services Committee was pleased to serve the notice upon the Plaintiff for pre-suit mediation. It is submitted that the after the receipt of notice, the Plaintiff appeared and showed its willingness for participation in mediation. However, the mediation had got failed and the non starter report was issued. It is pertinent to mention herein that the claim of the Plaintiff was never referred for pre-suit mediation as per Section 12-A of Commercial Courts Act, 2015 as it was only the claim of the Defendant which was referred for mediation as evident from fact that the ad-hoc mediation fees was paid by the parties qua the claim of the Defendant. The parties had only paid the mediation fees for the adjudication of claims of the Defendant. Thus, the suit of the Plaintiff is pre-mature and is not maintainable in terms of strict provisions of Commercial Courts Act, 2015."*

9. The plaintiff, through the instant application seeking exemption from pre-institution mediation, contends that the parties had previously been referred to mediation. However, the report of the pre-institution mediation was not available to the plaintiff, as it was not signed and was sent back to the Court. Therefore, the plaintiff argues that since mediation proceedings had already taken place, a fresh pre-institution mediation should not be mandated. In support of this contention, the plaintiff has made the following averments in paragraphs 6 and 7 of the application:-

> *"6. It is submitted that on 20.07.2023, the Defendant preferred an application for pre-institution mediation under Section 12A of the Commercial Courts Act 2015 before the Ld. Delhi State Legal Service Authority (Mediation Application). It is extremely pertinent to mention that the Defendant has duly admitted that it had received the Deal Note in the*

Mediation Application. Unfortunately on account of the Defendant s refusal to bonafidely deal with the Plaintiff the pre - institution mediation failed on 12.03.2024. It is submitted that the report of the pre - institution mediation is not currently available with the Plaintiff as it has not been signed and sent back to this Hon'ble Court by the Defendant. Accordingly the Plaintiff undertakes to provide a copy of the failure report to this Hon'ble Court as and when made available.

7. It is respectfully submitted that the Plaintiff shall suffer grave and irreparable loss if the present Suit is not heard on merits for the reasons set out therein. Further, it is submitted that as detailed in the accompanying Plaint, the Plaintiff has a good case on merits and that the Defendant will not be adversely affected if the present Application is allowed by this Hon'ble Court. Further, as detailed in the accompanying Plaint, the balance of convenience is also in favour of the Plaintiff and against the Defendant."s

10. Having considered the submissions advanced by learned counsel for the parties, the Court is of the considered opinion that the prayer made by the plaintiff in the instant application cannot be acceded to. It is pertinent to note that the instant case involves a fresh civil suit instituted by the plaintiff. At the time of its institution, there was no pending claim before this Court.

11. The decision in ***Aditya Birla Fashion*** unequivocally establishes that pre-institution mediation is mandatory for all commercial suits, and no distinction can be drawn in the case of a counter-claim that does not seek urgent relief. Furthermore, the present civil suit cannot, by any legal principle, be equated with a counter-claim or counter-suit.

12. The principle laid down in ***Sanjana Aggarwal*** pertains specifically to situations where a counter-claim is instituted during the pendency of a civil suit. The underlying objective of the Commercial Courts Act is to ensure the expeditious resolution of commercial disputes. In paragraph 25 of ***Sanjana Aggarwal***, the Court observed that once a party has already undertaken pre-institution mediation, requiring the opposite party to do the same for a dispute that is wholly identical would be counter-productive. The relevant

portion of the said decision reads as under:-

> *"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 pre-institution 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 counter-claim would defeat the very purpose of the CC Act and delay adjudication of the commercial dispute between the parties.*
>
> *25.1 The Supreme Court in Ambalal Sarabhai Enterprises Ltd. v. K.S. Infraspace LLP9 case has held that the statement of object and reasons for the enactment of the CC Act was the early and speed resolution of the commercial disputes and thus, there was an amendment made and fast track procedure set in place by the CC Act. The relevant extract is set out below:-*
>
>> *"31…*
>> *The object and purpose of the Commercial Courts Act is to ensure that the Commercial Courts, Commercial Appellate Courts, Commercial Division and Commercial Appellate Division of the High Courts and also to ensure that the commercial cases are disposed of expeditiously, fairly and at reasonable cost to the litigant.*
>>
>> …
>>
>> *34. The Schedule to the Commercial Courts Act amends various provisions of the Code of Civil Procedure and thereby makes significant departure from the Code. After Order 13 of the Code, Order 13-A — "Summary Judgment" has been inserted. Order 13-A contains the scope and classes of suits to which Order 13-A applies, grounds for summary judgment, procedure to be followed, evidence for hearing of summary judgment, orders that may be made by Court in such proceedings for summary judgment, etc. After Order 15 of the Code, Order 15-A—"Case Management Hearing" has been inserted. Order 15-A provides for first case management hearing (Rule 1); recording of oral evidence on a day-to-day basis (Rule 4); powers of the court in a*

case management hearing (Rule 6); adjournment of case management hearing (Rule 7); consequences of non-compliance with orders (Rule 8). By way of amendment, several rules have been incorporated to make the matters of commercial disputes on fast track. In Order 20 of the Code — "Judgment", Rule 1 has been substituted that within ninety days of the conclusion of arguments, the Commercial Court/Commercial Division/Commercial Appellate Division to pronounce the judgment and copies thereof shall be issued to all the parties to the dispute through electronic mail or otherwise.

35. Various provisions of the Act, namely, case management hearing and other provisions makes the court to adopt a pro-active approach in resolving the commercial dispute. A new approach for carrying out case management and strict guidelines for completion of the process has been introduced so that the adjudicatory process is not delayed. I have referred to the various provisions of the Act and the Schedule bringing in amendments brought to the Civil Procedure Code to deal with the commercial disputes, only to highlight that the trial of the commercial dispute suits is put on fast track for disposal of the suits expeditiously. Various provisions of the Act referred to above and the amendments inserted to the Civil Procedure Code by the Schedule is to ensure speedy resolution of the commercial disputes in a time bound manner. The intent of the legislature seems to be to have a procedure which expedites the disposal of commercial disputes and thus creates a positive environment for investment and development and make India an attractive place to do business."

[Emphasis is ours]

25.2 The Supreme Court analysed the provisions of the CC Act and based on such analysis held that statutory provisions of the CC Act and the language therein should be interpreted purposefully to facilitate the swift resolution of commercial disputes, thereby benefiting litigants involved in trade and commerce and contributing to the country's economic growth. The relevant extract reads as follows:

"42. The object and purpose of the establishment of Commercial Courts, Commercial Divisions and Commercial Appellate Divisions of the High Court is to ensure that the cases involved in commercial disputes are disposed of expeditiously, fairly and at reasonable cost to the litigants. Keeping in view the object and purpose of the establishment of the Commercial Courts and fast tracking procedure provided under the Act, the statutory provisions of the Act and the words incorporated thereon are to

be meaningfully interpreted for quick disposal of commercial litigations so as to benefit the litigants especially those who are engaged in trade and commerce which in turn will further economic growth of the country. On the above reasonings, I agree with the conclusion arrived at by my esteemed Brother A.S. Bopanna, J.”

[Emphasis is ours]”

13. It is seen that the observations made in ***Sanjana Aggarwal*** pertain to a counter-claim only, and nowhere does the said decision indicate that the counter-claim is on equal footing to a fresh civil suit and therefore, the fresh civil suit need not comply with the rigors of Section 12A.

14. The record demonstrates that the defendant had independently sought recourse to mediation for the redressal of his grievance. However, the claims of the plaintiff have not yet undergone the process of mediation.

15. In view of the aforesaid facts and circumstances, I.A. 41878/2024 stands allowed, and I.A. 29590/2024 stands dismissed.

CS(COMM) 414/2024 and I.A. 42363/2024

16. Resultantly, the instant civil suit stands dismissed, along with pending application, reserving liberty to the plaintiff to re-institute the same in case so necessitated, after resorting to the proceedings as contemplated under Section 12A of the Commercial Courts Act, 2015.

PURUSHAINDRA KUMAR KAURAV, J

FEBRUARY 10, 2025/DPA/SP

Click here to check corrigendum, if any