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

\+ CS(COMM) 1213/2024

PAWAN GUPTA ANR .....Plaintiff

Through: Mr. Arvind Nayar, Sr. Adv. with Himanshu Satija, Mr. Karan Khanna, Mr. Harshit Khanduja, Ms. Simran Mulchandani, Ms. Divya Narayanan and Mr. Vishal Sharma, Advs.

versus

MITON CREDENTIA TRUSTEESHIP SERVICES LIMITED AND ORS .....Defendants

Through: Ms. Soumya Priyadarshinee and Ms. Pavitra Dixit, Advs. for D-1.
Mr. Kumar Sudeep, Mr. Gaurav H. Sethi, Mr. Rahul Pawar, Mr.Rahul Kapoor and Mr. Kartik Nagpal, Advs. for D-8 to 12.
Ms. Kanika Singhal, Adv for intervenor in I.A. 11027/2025.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% 08.12.2025

I.A. 49934/2024 (BY PLAINTIFF U/S. 12A OF CCA FOR EXEMPTION FROM PRE-LITIGATION MEDIATION)

1. Mr. Arvind Nayar, learned senior counsel for the plaintiff has taken the Court through the decision dated 27.10.2025 of the Supreme Court in the case of ***Novenco Building & Industry v. Xero Energy Engineering***

Solutions (P) Ltd.*[1]*, and another decision dated 24.03.2025 in case of ***Sabita Jha v. Aaone Developers (P) Ltd.*[2]*,.***

2. Mr. Nayar, avers that the merits of the application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 (CPC) may not be required to be looked into at this stage and the Court has to consider the immediacy of the peril, irreparable harm, risk of losing rights/assets, statutory timelines, perishable subject-matter etc. and to consider whether delay would render eventual relief ineffective. Therefore, pressing urgency now, Mr. Nayar contends that the debentures in question are being sold off and if the relief is not considered appropriately, the same may possibly render infructuous. He, therefore, tries to emphasise that under the facts and circumstances in the instant case, the exemption under Section 12A of the Commercial Courts Act, 2015 (hereinafter 'the CCA') deserves to be granted.

3. I have considered the aforesaid submissions and have perused the record.

4. The prayer for grant of interim relief in the instant case has been extensively considered by the Court *vide* judgment dated 27.12.2024. *Vide* the said judgment, the Court noted that the dispute arose from ongoing family and corporate conflicts governed by a Family Settlement, with related issues already pending with the Sole Arbitrator, who had earlier restrained the parties from dealing with the subject properties. The Court further observed that the plaintiffs had not demonstrated immediate urgency and that an application under Section 12A of the CCA was still pending. The

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[1] 2025 SCC OnLine SC 2278
[2] 2025 SCC OnLine SC 1822

relevant extract of the afore-noted judgment dated 27.12.2024 is extracted as under :-

> "*30. firstly, the application under section 12a of the commercial courts act is yet to be adjudicated. the cause of action as narrated in the suit itself reflects that there is no immediate urgency. secondly, the issue of maintainability of the suit by the plaintiffs to question the acts of the companies, which can be done under the provisions of the companies act before nclt, have also been raised.*"

5. It is, thereafter, that the matter was taken up on various dates and the applicability of Section 12A of the CCA was also considered. During the pendency of the suit, attempts were made for post institution mediation on 14.01.2025 and 04.08.2025.

2. All the aforesaid dates, events and the circumstances however, clearly collectively indicate that there were no attempts for pre-institution mediations in the instant case.

3. The Court in ***Mr. Rakesh Mediratta v. Asian Hotels (North) Ltd. and Anr*[3]*.,*** while relying upon the decision of the Supreme Court in ***Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd***[4] and of this Court in ***M/s Exclusive Capital Limited v. Clover Media Private Limited.***[5] has held that in cases where no urgent interim relief is contemplated, post-institution reference to mediation cannot be held to be substantial compliance of the requirements under the Act. The relevant extract of the afore-noted decision reads as under: -

> **"***15. It is also pertinent to note that the legislative intent behind Section 12A of the Act has also been discussed in extenso in the said decision. The Court has considered the phraseology of Section 12A of the Act and has given due emphasis to each of the words used therein.*

[3] 2025: DHC: 7310
[4] 2022 SCC OnLine SC 1028
[5] 2025:DHC:6513

In paragraph No.38, the term 'urgent' has been discussed and it has been held that the Court must remain vigilant against attempts to circumvent the legislative intent through a superficial plea of urgency, and is duty bound to assess whether the claimed exigency with respect to rigours of the judicial scrutiny is a bona fide invocation of the proviso rather than an attempt to evade compliance with the mandatory pre-institution mediation framework. The invocation of the term 'urgent' within the proviso of Section 12A of the Act is held to contemplate a narrow class of situations where the plaintiff is confronted with such imminent and irreparable peril to their rights or interests that adherence to the pre-institution mediation process would be not only unreasonable or unjust but might also defeat the ends of justice. The narrow scope of exemption has also to be understood from an inherent understanding that all interim reliefs are primarily premised on a sense of urgency. Although the Court held that desire for an urgent relief is implicit in any prayer for interim relief, it further held that the legislative usage of the word 'urgent' along with 'interim relief' is intended to indicate an immediate threat to the rights of the plaintiff, something that could potentially defeat the right, if the intervention of the Court is not made at the earliest opportunity. This may not always be the case with other interim reliefs.

16. In Patil Automation, the Supreme Court examined whether any attempt at mediation between the parties to a commercial suit, post its institution would satisfy the mandate under Section 12 A of the Act. In paragraph No.88 of the decision, the Court held as under:

> *"88. We may immediately draw a parallel between Sections 80(1)CPC and 12-A of the Act. In Section 12-A also, the bar of institution of the suit is applicable only in a case in which plaintiff does not contemplate urgent interim relief. The situation is akin to what is contemplated in Section 80(1)CPC. In other words, the suit under the Act which does not contemplate urgent interim relief is like a suit covered by Section 80(1)CPC which does not project the need for any urgent or interim relief. In regard to a suit covered under Section 12-A of the Commercial Courts Act, namely, in a suit where interim relief is not contemplated, there can be no substantial compliance by way of post institution reference to mediation. The argument of the plaintiff overlooks the object apart from the language used besides the design and scheme of the law. It will, if accepted, lead to courts also spending their invaluable time on such matters which follow from adjournments, objections and hearings. There is no need to adopt such a*

course.”

17. A bare reading of the said paragraph would indicate that in cases where no urgent interim relief is contemplated, post-institution reference to mediation cannot be held to be substantial compliance of the requirements under the Act.

18. The law in respect of exemption from pre-institution mediation under Section 12A of the Act, upon appreciation of the aforesaid decisions, can be summarised as follows:

18.1. Pre-institution mediation is the rule in respect of commercial suits, and exemption from the same is the exception.

18.2. Such exemption from pre-institution mediation may only be sought where the suit contemplates urgent immediate relief under the Act.

18.3. While a formal application for exemption from pre-institution mediation is not necessary, the Court must necessarily be satisfied that the suit contemplates urgent interim relief under the Act.

18.4. In determining whether a suit contemplates urgent interim relief, one pertinent consideration is whether the failure to grant such relief would render the plaintiff's application for injunction or the suit itself infructuous, or would create an irreversible or unalterable situation, thereby disabling the Court from restoring status quo ante at the stage of adjudication of such application.

18.5. Other factors that the Court must keep in mind for the said purpose include, but are not restricted to (i) the origin and the timeline of the cause of action, ii) the timing and the manner of the plaintiff's approach to the Court, and iii) whether adherence to the pre-institution mediation mechanism under Section 12A of the Act would operate to the detriment or prejudice of the plaintiff.

18.6. Courts must be cautious when determining whether a suit contemplates urgent relief, keeping in mind the legislative intent behind the Act and Section 12A therein.

18.7. Courts are duty bound to assess whether the claimed exigency with respect to rigours of the judicial scrutiny is a bona fide invocation of the proviso rather than an attempt to evade compliance with the mandatory pre-institution mediation framework.

18.8. Post-institution mediation is not contemplated under Section 12A of the Act, and thus, does would not satisfy the mandate under the said provision.

6. The Supreme Court in the case of ***Dhanbad Fuels (P) Ltd. v. Union of India***[6]***,*** has held that Section 12A of CCA mandates pre-institution

[6] (2025) 9 SCC 424

mediation. The post-institution mediation has not been recognised therein.

7. The cut-off date for allowing post-institution mediation as sufficient compliance of Section 12A of CCA, has been recognised in the case of ***M/s Dhanbad Fuels Private Limited,*** to be 20.08.2022**.** Thus, only suits instituted before the afore-noted date can be kept in abeyance, and the parties can be referred to post-institution mediation.

8. A mere prayer for interim relief would not be sufficient to absolve the mandate under Section 12A of the CCA, the Court has to be satisfied that the suit, actually, contemplates certain urgent relief that would be frustrated if the parties are relegated first to pre-institution mediation.

9. Upon perusal of the plaint on the anvil of the aforesaid legal position, it is seen that the suit is essentially directed towards obtaining final declaratory and injunctive reliefs. The plaintiffs seek declarations that the Debenture Trust Deed dated 30.03.2022, the Memorandums dated 19.04.2022 recording equitable mortgage, and the pledge of shares are null and void, along with a permanent injunction restraining the defendants from acting in furtherance of the said instruments and directions for delivery of original title deeds.

10. It is seen that the transactions sought to be impugned pertain to the year 2022 and do not disclose any immediate or imminent action requiring urgent intervention of this Court. The reliefs claimed would necessarily require adjudication after a full consideration of pleadings and evidence, and are not in the nature of emergent or urgent reliefs. In these circumstances, the plaint does not disclose any urgent interim relief so as to warrant exemption from the requirement of pre-institution mediation under Section 12A of the CCA.

11. Accordingly, the application stands dismissed.

<u>CS(COMM) 1213/2024 and I.A. 49931/2024, I.A. 49935/2024, I.A. 50003/2024, I.A. 50004/2024, I.A. 11027/2025, I.A. 21074/2025</u>

12. Consequent to the order passed in I.A. 49934/2024, the instant civil suit, along with pending applications, also stands dismissed.

PURUSHAINDRA KUMAR KAURAV, J

DECEMBER 8, 2025
aks/mj