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

\+ CS(COMM) 1357/2025 and I.As.31732-35/2025

TOURISM FINANCE CORPORATION
OF INDIA LTD .....Plaintiff

Through: Mr. Tanmay Mehta, Ms. Nupur Sharma, Mr. Arshit Anand, Ms. Apurva Gaur, Mr. Mohit Kumar Bansal & Ms. Anju Gupta, Advocates.

versus

COSMEA INVESTMENT HOLDCO
PRIVATE LIMITED (CIHL) & ORS. .....Defendants

Through: Mr. Jayant Mehta, Senior Advocate, with Mr. Mahfooz A. Nazki, Mr. Alok Jain, Ms. Purva Kohli, Mr. Samrath Saxena, Mr. Vivek Rajan D.B., Advocates.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **18.12.2025**

1. The suit is for specific performance of Exclusive Term Sheet dated 30.10.2025 to which the plaintiff and defendant no. 2 are parties. The plaintiff is a non-banking finance company, defendant no. 2 is a company which the plaintiff was to acquire. Defendant no. 1 is the holding company of defendant no. 2, and defendant no. 3 is the promoter of defendant no. 1 and director of defendant no. 2. The plaintiff and the defendants entered into negotiations for 100% acquisition of defendant no. 2 by the plaintiff, in August, 2025.

2. In the meantime, defendant no. 2 intended to acquire a third party

company, Reliance Asset Reconstruction Company Ltd. (*RARCL*), for which, the plaintiff sanctioned a loan of Rs. 25,00,00,000/- (Rupees Twenty-Five Crore only) to defendant no. 2 and Loan Agreement dated 25.09.2025 was executed between them.

3. The parties, thereafter, initiated the due diligence process for the acquisition of defendant no. 2 by the plaintiff. On 06.10.2025, the plaintiff shared a draft of the Exclusive Term Sheet containing the terms governing its acquisition of defendant no. 2, including an 'Exclusivity' clause prohibiting the defendants from entering into discussions with third-parties regarding any sale of shares or similar transactions. However, the defendants modified the aforesaid 'Exclusivity' clause and sent the revised Exclusive Term Sheet, with signatures, back to the plaintiff.

4. However, the aforesaid amendment was not approved by the plaintiff's Board of Directors and the plaintiff sent an email to defendant no. 3 asking him to sign the agreement in its original form. Thereafter. on 01.12.2025, the plaintiff claims to have become aware that the defendants have entered into discussions with third-parties for a similar transaction. The defendants, on 04.12.2025, have repaid the entire 25,00,00,000/- (Rupees Twenty-Five Crore), received under Loan Agreement dated 25.09.2025, to the plaintiff.

5. Mr. Tanmay Mehta, learned counsel appearing for the plaintiff, submits that there exists a concluded contract between the parties. He takes the Court through page 178 of the paper book and submits that the Exclusive Term Sheet dated 30.10.2025 stood finalised and that the 'Exclusivity', 'Confidentiality', and 'Jurisdiction' clauses of the same are binding on the parties. According to him, the parties, thereafter, were not *ad idem,* only in

respect of certain clauses thereof. However, he submits, the aforesaid lack of consensus would not render otiose the Exclusive Term Sheet as was signed by the parties on 30.10.2025.

6. He further submits that the suit contemplates urgent interim relief, in so far as participation in pre-instituion mediation would create an irreversible position frustrating the purpose of the suit, if the defendants enter into negiotiations with third-parties for similar transactions.

7. The Court in the cases of ***Mr. Rakesh Mediratta v. Asian Hotels (North) Limited & Anr., CS(COMM) 66/2024 and Exclusive Capital Limited v. Clover Media Private Limited, 2025 SCC OnLine Del 5221*** has considered the import of Section 12A of the Commerical Courts Act. The relevant portion of the decision in ***Mr. Rakesh Mediratta*** (supra) is extracted below, for reference:

> *"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."

8. The Court in the case of ***Exclusive Capital Limited v. Clover Media Private Limited, 2025 SCC OnLine Del 5221*** (supra) has held as under:

"58. To sum up, in determining whether a suit contemplates urgent interim relief, one pertinent consideration is whether the failure to grant such relief would render ethe 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. This is one of the determinative factors, among others, including: (i) the origin and timeline of the cause of action, (ii) the timing and manner of the plaintiff's approach to the Court, and (iii) whether adherence to the preinstitution mediation mechanism under Section 12A would operate to the detriment or prejudice of the plaintiff."

9. It be noted that the suit is for specific performance of an agreement which, according to the defendants, has not been conclusively executed between the parties as per their consensus. Though Mr. Mehta, learned counsel appearing for the plaintiff, has to contend otherwise, however, the aforesaid is a moot question to be adjudicated if the suit is taken up for hearing.

10. The Court, as of now, is only dealing with the application under

Section 12A of the Commercial Courts Act. The question to be decided is whether, if exemption from the mandate under Section 12A of the Commercial Courts Act, 2015 *(the CCA)* is not granted, an irreversible situation would be created and whether the subject matter of the suit would be rendered infructuous.

11. At this stage, Mr. Samarth Saxena, learned counsel assisting Mr. Jayant Mehta, learned senior counsel for the defendants, submits, on instructions that the defendants have not entered into any agreement for acuisition with any third-party. Further, it is noted that an attempt at mediation need not take much time, so as to irreparably harm the plaintiff's interests.

12. Even otherwise, if any third-party enters the scene in the meantime, the plaintiff shall have liberty to challenge the same and the Court is capable of binding the third-party to the outcome of the suit.

13. Under these circumstances, at this point of time, the Court does not find that any irreversible situation would occur if the parties participate in the mandatory pre-insitutution mediation in accordance with Section 12A of the CCA. Liberty is granted to file the suit afresh. All rights and contentions of the parties stand reserved.

14. Under the peculiar circumstances, 50% of the Court fee stands refunded.

15. Accordingly, the suit and the pending applications stand disposed of.

PURUSHAINDRA KUMAR KAURAV, J

DECEMBER 18, 2025

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