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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 5723 OF 2025
IN
COMMERCIAL SUMMARY SUIT NO. 93 OF 2022**

1. Warana Sugar Limited
Commercial Complex
Warananagar, Tal – Panhala
Dist : Kolhapur, Pin – 416113
2. Vinay Kore
Warana Sugar Limited
Commercial Complex
Warananagar, Tal – Panhala
Dist : Kolhapur, Pin – 416113
3. Shri Tatyasaheb Kore Warana
Sahakari Sakhar Karkhana Ltd
A/P Warananagar, Tal – Panhala
Dist : Kolhapur, Pin – 416113 ... Applicants

Vs.

IL & FS Financial Services Limited
a Company Incorporated under the
provisions of the Companies Act, 1956
and having its Registered Office at
The IL & FS Financial Centre, Plot C-22
G Block, Bandra-Kurla Complex
Bandra (East), Mumbai 400 051 ... Respondents

RAJESHWARI
RAMESH
PILLAI

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by RAJESHWARI
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Mr. Zal Andhyarujina, Senior Advocate a/w. Ms. Ishani Khanwilkar, Mr, Sachin Chandarana, Mr. Jaiveer Dharan i/b. Manilal Kher Ambalal & Co. for the Plaintiff.

Mr. Phiroze Colabawalla a/w. Mr. Niharika Jalan i/b. Mr. Indrajeet Hingane for the Defendants.

CORAM : GAURI GODSE, J.

RESERVED ON : 11th NOVEMBER 2025

PRONOUNCED ON : 4th MARCH 2026

JUDGMENT :

1. This application is filed by the defendants under Order VII Rule 11 of the Code of Civil Procedure, 1908 (“CPC”), praying for rejection of the plaint at the threshold on the ground that it is barred for non-compliance with the mandatory provision under Section 12A of the Commercial Courts Act, 2015 (“the said Act”).

2. The suit is filed for recovery of an amount of approximately Rs. 123,50,10,401/-, which, according to the plaintiff, is due and payable as on 30th September 2022. The plaintiff is a non-banking financial company engaged in financial and advisory services. As pleaded in the plaint, defendant no. 1 is the borrower, and defendant no. 2 is the

personal guarantor who has guaranteed the facility availed by defendant no. 1 from the plaintiff. Defendant no. 3 is the corporate guarantor. According to the plaintiff, a loan agreement was executed, and defendant no. 1 unconditionally agreed and undertook to secure the loan amount by creating a charge over its assets in favour of the plaintiff. To secure the loan amount due and payable, defendant no. 2 executed a personal guarantee, and defendant no. 3 executed the corporate guarantee, and unconditionally agreed and undertook and guaranteed to pay an amount on demand to the plaintiff. The plaintiff has also relied upon copies of the undertakings, pledge agreements and a power of attorney in favour of the plaintiff. Since defendant no. 1 failed to comply with the terms and conditions and committed default in payments, plaintiff issued demand letters and legal notice calling upon the defendants to make the payment due and payable towards the loan.

3. As pleaded in the plaint, defendant no. 1 failed to comply with the demand notice, thereby breaching the contractual obligations. Defendant nos. 2 and 3 were also

called upon to comply with the terms and conditions of the guarantee. The plaintiff has relied on various correspondence with the defendants, including a settlement proposal they submitted. The board of directors of the plaintiff considered the same; however, the proposal was rejected as not commercially viable for the plaintiff. Accordingly, the defendants were called upon to submit a revised settlement proposal. Despite all efforts, the defendants failed to repay the dues. Hence, the plaintiff called upon the defendants to repay the entire amount due and invoked the personal and corporate guarantees. The plaintiff has also pleaded about the proposal for the one-time settlement. However, according to the plaintiff, the defendants failed and neglected to discharge their obligations. Hence, the plaintiff filed this summary suit to recover the amount.

4. The plaintiff filed a separate application for interim relief for a direction to the defendants to deposit the due amount in this court as per the particulars of the claim in the suit. The plaintiff also prayed for an order directing the defendants to furnish security for the suit claim. In the same application, the plaintiff prayed for directions to the defendants to disclose

their assets and for the appointment of a Court Receiver to take charge of the disclosed assets. The plaintiff thus also prayed for an injunction restraining the defendants from disposing of or creating a third-party interest in respect of the disclosed assets. In the application for interim relief, the plaintiff pleaded that the defendants, with a view to avoiding and delaying payment and defeating the plaintiff's legitimate claim, were likely to sell, transfer, and dispose of the assets and properties by creating third-party rights. Hence, to secure the plaintiff's claim, the application for interim relief was also filed along with the summary suit.

5. The defendants have prayed, by this application, to reject the plaint at the threshold on the ground that, to bypass the mandatory compliance under Section 12A of the said Act, the plaintiff has created a false urgency. The suit for recovery of money would not contemplate any urgent interim relief that would justify non-compliance with the mandatory provision of Section 12A of the said Act.

Submissions on behalf of the Defendants (Applicants):

6. The learned counsel for the defendants submitted that, after the suit was filed on 11th November 2022, the filing

department of this court raised certain objections on 13th December 2022. The plaintiff moved the matter before the court only on 2nd January 2023. However, no ad-interim urgent relief was granted, and the defendants were directed to file an affidavit-in-reply. Accordingly, affidavit-in-reply and rejoinder were filed. On 3rd July 2023, a summons for judgment was served upon the defendants, and an application for unconditional leave was filed. He submits that, except for the filing of the suit, no efforts were made to move the court immediately for any urgent interim relief, which itself shows that no urgent interim relief was contemplated in the suit, and the application for interim relief was filed only to bypass the mandatory provision under Section 12A. According to the learned counsel for the defendants, the plaintiff's failure to take any immediate steps to seek urgent interim relief would show that no such relief is contemplated in the suit.

7. Learned counsel for the defendants submits that the use of the words "shall not be instituted" in Section 12A of the said Act clearly mandates that the suit of a commercial nature for recovery of money cannot be filed unless pre-

institution mediation is followed. The plaintiff has failed to show any apprehension for filing the suit without adopting the process of pre-institution mediation and settlement as contemplated under Section 12A of the said Act. To support the submissions for rejection of the plaint at the threshold, learned counsel for the defendants relied upon the decision of the Delhi High Court in the case of *Exclusive Capital Limited vs. Clover Media Private Limited*¹, and the decision of this court in the case of *M/s. Kamla Landmarc Real Estate Holding Pvt. Ltd. And Others vs. M/s. Image Developer and Another*².

8. Learned counsel for the defendants submits that the Delhi High Court, after considering the legal principles on the issue of urgent interim relief contemplated as per Section 12A of the said Act, held that on a plain reading of the reliefs sought in the application, the allegation may require a detailed examination of the facts and evidence. The Delhi High Court held that the plaintiff in the said case may have a case to argue for the grant of interim relief, but the same cannot be said to be urgent, thereby justifying non-

¹ 2025 SCC Online Del 5221

² Interim Application (L) No. 5452 of 2025 in Commercial Suit (L) No. 39332 of 2024

compliance under Section 12A of the said Act. The Delhi High Court has therefore held that the plaintiff is required to plead or demonstrate an immediate or irreversible action that threatens to alter its legal status or cause irreparable harm in the interregnum, so as to justify an exemption from the mandate of Section 12A.

9. Learned counsel for the defendants relied upon the decision of this court in *M/s. Kamla Landmarc Real Estate Holding Pvt. Ltd.* to support his submissions that the conduct of the plaintiff before filing the suit and post-filing of the suit needs to be considered in examining whether non-compliance under Section 12A is justified. He submits that this court has taken a view that the plaintiff's conduct, pre-filing of the suit and post-filing of the suit, is required to be considered for deciding whether non-compliance with Section 12A is justified.

10. Learned counsel for the defendants, therefore, submits that in the present suit, which is purely seeking a money decree, no urgent interim relief is contemplated to justify non-compliance with Section 12A. None of the pleadings in the plaint or the application for interim relief expresses any

apprehension for seeking urgent interim relief for justifying non-compliance with Section 12-A. Hence, the plaint deserves to be rejected at the threshold as barred for non-compliance with the mandatory provisions under Section 12-A.

Submissions on behalf of the plaintiff (respondent):

11. Learned senior counsel appearing for the plaintiff relied upon the relevant pleadings in the plaint and the application for interim relief to support his submissions that sufficient grounds are made out by the plaintiff for seeking urgent interim relief. He submits that the defendants were likely to create third-party rights in respect of their assets, which would defeat the plaintiff's claim. Despite various proposals for settlement of the dues, the defendants failed to make any payments towards the amount due. Thus, to secure the plaintiffs' claim, a separate application for interim relief is filed along with the suit.

12. In a suit to recover the due amounts as per the loan granted to defendant no. 1, the plaintiff is required to secure the claim. The plaintiff has pleaded sufficient grounds to indicate that defendant no. 1, who is the principal borrower,

and the other defendants, who are the guarantors, are avoiding repayment of the dues on the ground of submitting a settlement proposal. Thus, the plaintiff's apprehension is well-founded that the defendants are avoiding making payments of the legitimate dues and thus are likely to defeat the plaintiff's claim. Hence, sufficient grounds are made out by the plaintiff to show that urgent interim relief is contemplated if viewed from the standpoint of the plaintiff.

13. Learned senior counsel for the plaintiff relies upon the decision of the Apex Court in *Novenco Building and Industry A/S. vs. Xero Energy Engineering Solutions Pvt. Ltd. and Another*³ 2025 SCC Online SC 2278 to support his submissions that the court must look at the plaint, pleadings and supporting documents to decide whether urgent interim relief is genuinely contemplated, and the court may also look for immediacy of the peril, irreparable harm, risk of losing rights/assets. He relied upon the decision of the learned division bench of this Court in *Future Corporate Resources Pvt. Ltd. Vs Edelwise Special Opportunities Fund and Another*⁴ and submitted that it held that Section 12A cannot be used to say that the court is powerless to pass an interim

³ 2025 SCC Online SC 2278

⁴ 2022 SCC Online Bom 3744

order. Learned division bench observed that Section 12A cannot be used by the party as a weapon against the plaintiff to oppose the grant of any interim relief. He also relied upon the decision of this court in ***Westin Infra World Prv. Ltd. Between Vistra ITCL India Ltd. Vs Darvesh Properties Pvt. Ltd. and others***⁵ to support his submissions that the legal principles interpreting the words “contemplate urgent interim relief” under Section 12A of the said Act are no longer *res integra*.

14. Learned senior counsel for the plaintiff submitted that, in view of the well-settled legal principles, the post-filing conduct of the plaintiff would be irrelevant for deciding the objection for rejection of the plaint at the threshold for non-compliance under Section 12A. The decision of this court in the case of ***M/s. Kamla Landmarc Real Estate Holding Pvt. Ltd.***, which refers to the pre-filing and post-filing conduct of the plaintiff, is with reference to the facts of the said case. Hence, in view of the well-settled legal principles by the Apex Court, to examine the bar under Section 12A, only the plaint and its supporting documents justifying non-compliance with Section 12A need be considered.

⁵ IA(L) No. 22747 of 2025 in Coms (L) No. 13824 of 2025

15. Learned senior counsel for the plaintiff, therefore, submits that in view of the well-settled legal principles as discussed in the aforesaid decisions, the urgent interim relief, whether contemplated or not, for not following the mandatory provision of Section 12A is to be seen from the standpoint of the plaintiff. The result of the application seeking urgent interim relief would be irrelevant to the question of whether non-compliance under Section 12A is justified. He therefore submits that in the present case, the plaint cannot be rejected at the threshold as prayed by the defendants.

Consideration and Analysis:

16. I have carefully perused the pleadings and the supporting documents to the plaint as well as the interim application seeking urgent interim relief. As set out in the earlier paragraphs, the plaintiff has pleaded all relevant factors calling upon the defendants to make payments towards the amounts that became due and payable to the plaintiff as of 1st June 2018. All the particulars regarding the undertakings and the guarantee agreements, as well as the share pledge agreements, are pleaded in detail in the plaint. According to the plaintiff, defendant no. 1 has availed a

short-term loan facility of Rs. 60 crores under the sanction letter dated 16th August 2017. A loan agreement of Rs. 60 crores was executed on 18th August 2017. The plaintiff has pleaded about the unconditional undertakings and the guarantee agreements executed by defendant nos. 2 and 3.

17. The plaintiff has relied upon various correspondence calling upon defendant no.1 to make payments towards the due amounts and clear the outstanding of Rs. 65,45,98,855/- as on 26th September 2018. The plaintiff has also pleaded the particulars about a correspondence calling upon defendant no. 2 to provide the information in connection with the guarantee provided by defendant no. 2. The request made by defendant no. 1 seeking no objection regarding the transfer of shares and the pledged units held by the then pledgor to defendant no. 1 is also pleaded by the plaintiff.

18. According to the plaintiff, the defendants constantly failed and neglected to pay the dues and cure the default committed by each of the defendants. The pleadings about the default notice within the conditional period granted by the plaintiff, which was beyond the permitted cure period under Clause 22 of the sanctioned letter, are substantially pleaded

by the plaintiff. The plaintiff has referred to the defendants' settlement proposal. Thus, according to the plaintiff, despite availing the facility of a short-term loan and the repayment guaranteed by defendant nos. 2 and 3, they omitted to make payments towards the legitimate dues in favour of the plaintiff.

19. Considering the apprehensions that defendants would indulge in creating third-party rights, the plaintiff filed a separate application seeking urgent interim relief. The defaults committed by the defendants are pleaded along with the supporting documents and the settlement proposals given by defendant no. 1, which indicate that there was no dispute regarding the defaults committed by defendant no. 1 and the breaches committed by the defendants in complying with the guarantee agreements and the share pledge agreement. Hence, if the pleadings in the plaint and the interim application for seeking interim relief are viewed from the standpoint of the plaintiff, urgent interim relief is contemplated for non-compliance with the mandatory provision of Section 12A.

Legal Position:

20. The legal principles for examining and deciding the non-compliance with Section 12A of the said Act are no longer res integra. The Apex Court in ***Dhanbad Fuels Pvt. Ltd. vs. Union of India and Another***⁶ observed that the aim and object of Section 12-A is to ensure that, before a commercial dispute is filed in court, alternative means of resolution are adopted, so that only genuine cases come before the courts. The said procedure has been introduced to decongest the regular courts.

21. The Apex Court referred to the legal principles settled in ***Patil Automation Private Limited and others vs. Rakheja Engineers Private Limited***⁷ and also discussed the power of the Court to reject the plaint, which is held to be a drastic measure, as it terminates a civil action at the threshold, and therefore must be exercised strictly in accordance with the conditions enumerated under Order VII Rule 11 of the CPC. The Apex Court held that the use of the word “shall” in Order VII Rule 11 of the CPC denotes that the courts are under an obligation to reject the plaint if the conditions specified

⁶ (2025) SCC OnLine SC 1129

⁷ (2022) 10 SCC 1

therein are satisfied. It is observed that the word “contemplate” connotes to deliberate and consider. Further, the legal position that the plaint can be rejected and not entertained reflects the application of mind by the court as regards the requirement of “urgent interim relief”. The Apex Court further observed that the prayer of urgent interim relief should not act as a disguise to get over the bar contemplated under Section 12-A. However, at the same time, the mere non-grant of the interim relief, when the plaint is taken up for admission and examination, would not justify the rejection of the plaint under Order VII Rule 11 of CPC. Further, even if after the conclusion of arguments on the aspect of interim relief, the same is denied on merits, that would not by itself justify the rejection of the plaint under Order VII Rule 11. It is held that the facts and circumstances of the case have to be considered holistically from the standpoint of the plaintiff.

35. In the decision of this court in ***M/s. Kamla Landmarc Real Estate***, the relevant observations regarding the material and statement in the plaint and pre-filing and post-filing conduct of the plaintiff are with reference to the facts of the said case, and the test applied is for considering whether the urgent interim relief is contemplated from the standpoint of

the plaintiff in the said case. As held by the Hon'ble Apex Court in the decisions of *Yamini Manohar v. T. K. D. Keerthi*⁸ and *Dhanbad Fuels Private Limited*, the facts and circumstances should be considered holistically from the standpoint of the plaintiff.

36. The Delhi High Court in *Exclusive Capital Limited* relied upon the legal principles settled by the Apex Court in *Patil Automation* and *Yamini Manohar* and held that it is imperative that Courts remain vigilant against attempts by unscrupulous litigants to abuse the exemption under Section 12A by mechanically appending a plea for urgent interim relief as a façade to circumvent the statutory mandate of pre-institution mediation. It is held that the prayer for urgent relief must be substantiated through specific pleadings and demonstrable facts. With reference to the facts of that case, it is further held that the plaintiff was aware of the impugned transactions for over a year before instituting the suit and despite such knowledge, failed to act in a prompt manner and that the inaction was attributable solely to the plaintiff's own conduct and undermines any plea of urgency. Hence, the court also referred to the suit remaining pending under

⁸ (2024) 5 SCC 815

the defects, which conclusively established that the plea of urgency did not inspire confidence.

37. This court, in the decision of *Future Corporate Resources Pvt. Ltd.*, held that Section 12-A is not meant to be weaponised by a defendant to prevent a court from passing an order where the court believes an order is justified and necessary. In *Westin Infra World Pvt. Ltd.*, this Court relied upon the legal principles for rejection of the plaint under Order VII Rule 11 of the CPC settled by the Hon'ble Apex Court in the decision of *Dahiben v. Arvinbhai Kalyanji Bhanusali* ⁹. The Apex Court held that the power conferred on the court to terminate a civil action is a drastic one, and the conditions enumerated in Order VII Rule 11 are required to be strictly adhered to.

38. In *Novenco Building and Industry*, the Apex Court held that a plaintiff can be exempted from the requirement of Section 12A only when the plaint and the documents attached to it clearly show a real need for urgent interim intervention and on a wholesome reading of the plaint and the material annexed to the plaint ought to disclose the need for urgent relief. It is held that the court must look at the

⁹ (2020) 7 SCC 366

plaint, pleadings and supporting documents to decide whether urgent interim relief is genuinely contemplated, and the court may also look for immediacy of the peril, irreparable harm, risk of losing rights/assets, statutory timelines, perishable subject-matter, or where delay would render eventual relief ineffective.

39. In *Novenco Building and Industry*, the prayer for injunction was made in a suit alleging continuing infringement of patent and design rights. The Apex Court held that a prayer for an injunction cannot be characterised as mere camouflage to evade mediation when it was a real grievance founded on the continuing nature of infringement and irreparable prejudice likely to be caused. It was held that the court must look beyond the time lag and evaluate the substance of the plea for interim protection. The Apex Court held in paragraph 24 that “.....*The insistence of pre-institution mediation in a situation of ongoing infringement, in effect, would render the plaintiff remediless allowing the infringer to continue to profit under the protection of procedural formality. Section 12A of the Act was not intended to achieve such kind of anomalous result.*”

40. In view of the well-established legal principles as discussed above, it is clear that there cannot be a straitjacket formula while examining the justification for non-compliance with Section 12A. Thus, after a meaningful reading of the plaint as a whole, each suit has to be examined in the facts and circumstances of that case for ascertaining whether non-compliance with Section 12A is justified on the ground that urgent interim relief is contemplated from the plaintiff's point of view.

Conclusions:

41. In the present case, the plaintiff has pleaded the urgency of seeking interim relief, as the defendants have failed to make payment of the legitimate dues to the plaintiff, despite the plaintiff granting time for payment. It is therefore a genuine apprehension expressed by the plaintiff that the defendants are likely to create third-party rights in respect of their assets to defeat the plaintiff's claim. Thus, the legal principles settled by the Hon'ble Apex Court in ***Novenco Building and Industry***, squarely apply to the facts of the present case. The defendants in the present case cannot be permitted to defeat the plaintiff's claim by allowing them to

continue to profit under the garb of raising an objection of bar under Section 12A of the said Act by alleging that no urgent interim relief can be contemplated in a suit for recovery of money. The plaintiff's pleadings clearly make out a case for seeking urgent interim relief to protect their claim, as, according to the plaintiff, the defendants are deliberately refusing to make payment of their legitimate dues and are likely to dispose of their assets, thereby defeating the plaintiff's claim.

42. Thus, in view of the legal principles settled in the Apex Court's decisions discussed in the above paragraphs, what is important to examine is whether the pleadings in the plaint demonstrate that urgent interim relief is contemplated according to the plaintiff for not following the mandatory pre-institution mediation under Section 12A of the said Act. Hence, what is relevant is the reason to seek urgent interim relief and whether it is well-founded. Therefore, the circumstances post-filing of the suit are irrelevant to decide the justification for not following the mandatory pre-institution mediation under Section 12A of the said Act. The decision of this Court in *Kamla Landmarc Real Estate* and the Delhi High Court judgment in *Exclusive Capital Ltd.*, which refers to the

post-filing circumstances, is with reference to the facts of those cases, holding that the reason seeking urgent interim relief did not inspire confidence. Hence, those decisions would not be of any assistance to the submissions made on behalf of the defendants on the post-filing circumstances of this suit.

43. It is a well-established legal principle, as held by the Apex Court in the decisions referred to in the above paragraphs, that the non-grant of ad-interim relief or the refusal to grant interim relief after considering the application on merits cannot justify the rejection of the plaint for non-compliance with Section 12A. Hence, the circumstances post-filing of the suit would not nullify the well-founded circumstances based on the pleadings for not following pre-institution mediation, on the ground that, according to the plaintiff, the suit contemplates urgent interim relief.

44. The well-settled legal principles as discussed in the above paragraphs and the averments in the plaint support the plaintiff's contention in the present case that the suit contemplates urgent interim relief. Hence, in the present case, non-compliance with the mandatory requirement under

Section 12-A of the said Act would not warrant rejection of the plaint at the threshold.

45. For the reasons recorded above, the interim application is dismissed.

[GAURI GODSE, J.]