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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

\+ **CS(COMM) 399/2025, I.A. 10950/2025, I.A. 10951/2025, I.A. 10952/2025 & I.A 14993/2025**

M/S EXCLUSIVE CAPITAL LIMITED

THROUGH ITS AUTHORIZED REPRESENTATIVE,
MR. ACHAL KUMAR JINDAL
HAVING ITS REGISTERED OFFICE AT,
7/17, LGF, NEAR HAUZ KHAS METRO STATION,
SARVPRIYA VIHAR, NEW DELHI -110016

.....PLAINTIFF

.

(Through: Mr. Harish Malhotra and Mr. Dayan Krishnan, Sr. Advs. with Mr. Apoorv Agarwal, Mr. Manav Goyal, Ms. Ritika Gusain, Mr. Sukrit Seth, Ms. Amrita Sony and Ms. Aastha Arora, Advs.)

VERSUS

1. CLOVER MEDIA PRIVATE LIMITED

THROUGH ITS AUTHORIZED REPRESENTATIVE,
HAVING ITS REGISTERED OFFICE AT,
82, FLOOR-8, MAKER CHAMBER III,
JAMNALAL BAJAJ MARG NARIMAN POINT,
MUMBAI, MAHARASHTRA, INDIA – 400021

..…DEFENDANT NO. 1

2. VSJ INVESTMENTS PVT. LTD.

THROUGH ITS AUTHORIZED REPRESENTATIVE,

HAVING ITS REGISTERED OFFICE AT,
G-12 RAHEJA CENTRE, FREE PRESS MARG,
NARIMAN POINT, MUMBAI 400021

..…DEFENDANT NO. 2

3. MR. HARVINDER SINGH

R/O B-80, SHARDA PURI,
RAMESH NAGAR,
NEW DELHI -110015

…DEFENDANT NO.3

4. ASIAN HOTELS (NORTH) LTD.

THROUGH: AUTHORIZED REPRESENTATIVE
HYATT REGENCY HOTEL BHIKAJI CAMA PLACE,
M.G. MARG, R.K. PURAM,
NEW DELHI - 110066

…DEFENDANT NO.4

(Through: Mr. Rajiv Nayar, Sr. Adv. with Mr. Anirudh Sharma, Ms. Meghna Mishra, Mr. Tarun Sharma and Ms. Ujjwala Gupta, Advs. for D-1.
Mr. Rajiv Nayar, Sr. Adv. with Mr. Sanyam Khetarpal, Ms. Devika Mohan, Ms. Sonal Gupta and Ms. Lisa Sankrit, Advs. for D-2.
Mr. Sidhant Kumar, Ms. Ekssha Kashyap and Ms. Shagun Chopra, Advs. for D-4.
Mr. Jayant Mehta, Sr. Adv. with Mr. Raghav Chadha, Mr. Mukund Rawat, Mr. Nishant Upadhyay and Mr. Akash Mahwani, Advs. for the applicant in I.A. 14933/2025.)

% Reserved on: 21.07.2025
Pronounced on: 04.08.2025

J U D G M E N T

I.A. 10952/2025 (filed on behalf of the plaintiff seeking exemption from pre-institution mediation and settlement)

The instant application is preferred by the plaintiff under Section 12A(1) of the Commercial Courts Act, 2015 (*hereinafter referred to as "the Act"*), seeking exemption from pre-institution mediation.

Factual Matrix

2. The present commercial suit has been instituted by Exclusive Capital Ltd., a Non-Banking Financial Company (NBFC), against Clover Media Pvt. Ltd. i.e., defendant No. 1, VSJ Investments Pvt. Ltd. i.e., defendant No. 2, Mr. Harvinder Singh, i.e., defendant No. 3, and defendant No. 4, i.e., Asian Hotels (North) Ltd (**AHNL**) seeking declaratory and injunctive reliefs.

3. The Plaintiff prays for a decree declaring the Inter-Corporate Loan Agreement dated 14.12.2022 (*hereinafter referred to as "ICL Agreement*") executed between the plaintiff and defendant No. 1, and the Assignment Deed dated 01.02.2024 (*hereinafter referred to as "VSJ Assignment Agreement"*) executed between defendant No. 1 and defendant No. 2, to be illegal, *non-est,* and *void ab initio*.

4. The genesis of the dispute can be traced back to a structured financial arrangement whereby, pursuant to an Inter-Corporate Deposit Agreement (*hereinafter referred to as 'ICD Agreement'*) dated 14.12.2022, the plaintiff received a sum of INR 60 crores from defendant No. 1 towards the acquisition of a corporate loan owed by AHNL, to IndusInd Bank. The ICD Agreement had a repayment tenure of 12 months and was extendable by mutual consent. As a

consequence to this transaction, the plaintiff entered into an Assignment Deed dated 28.12.2022 with IndusInd Bank for a consideration of INR 98 crores, whereby, the loan account of AHNL was duly assigned in favour of the plaintiff, creating a charge over AHNL's assets.

5. As per the case set up by the plaintiff, in February 2024, defendant No. 1 unlawfully assigned the AHNL loan to Defendant No. 2 based on an allegedly forged and fabricated ICL Agreement dated 14.12.2022, which is the same date as the ICD agreement. The plaintiff avers that the ICL Agreement was signed by defendant No. 3, Mr. Harvinder Singh, acting without authority and contrary to the company's internal resolutions and legal mandate.

6. Upon discovery of the fabricated documents and after realizing the collusive and fraudulent conduct of the defendants, the plaintiff lodged a complaint with the Economic Offences Wing (**EOW**), Mandir Marg Branch, New Delhi, for the commission of offences punishable under Sections 379, 420, 465, 468 and 471 of the Indian Penal Code, 1860.

7. In the plaint, it is alleged by the plaintiff that the defendants, while acting in collusion, orchestrated a fraudulent scheme to usurp its legitimate and secured rights in the AHNL debt through the creation and execution of false and unauthorised documents. The present suit, therefore, seeks the annulment of the impugned ICL Agreement and the VSJ Assignment Deed, along with damages for the injury caused by the fraudulent and unlawful acts of the defendants.

8. The instant matter was earlier called out on 01.07.2025, when an objection was raised by Mr. Rajiv Nayar, learned senior counsel appearing on advance notice for defendant Nos. 1 and 2 , regarding the maintainability of the

instant civil suit on the ground of non-adherence to the mandate of Section 12A of the Act. The matter was, thereafter, adjourned to enable the learned senior counsel for the plaintiff to satisfy this Court regarding the maintainability of the instant civil suit.

Submissions advanced by the parties

9. Mr. Harish Malhotra and Mr. Dayan Krishnan, learned senior counsel appearing on behalf of the plaintiff, broadly made the following submissions for the consideration of this Court:

i. Section 12A of the Act contemplates only the existence of an urgent interim relief. According to learned senior counsel, in the present case, such urgent interim relief is clearly contemplated, and therefore, the question of whether such relief would eventually be granted or not ought not to be a determining factor at the stage of entertaining the civil suit.

ii. It was submitted that the decision of the Supreme Court in ***Patil Automation v. Rakheja Engineers***[1] is not applicable to the facts and circumstances of the present case as no urgent interim relief had been sought in the said case. Nevertheless, the Supreme Court, while interpreting the language of Section 12A of the Act has held that the use of the expression "shall" indicates the mandatory nature of the provision. However, it was submitted that such a construction must be assessed within the factual matrix of each individual case. Reliance is placed on paragraph 100 of the said judgment to highlight that the Supreme Court

[1] (2022) 10 SCC 1

specifically noted the absence of any claim for urgent interim relief.

iii. Reliance is also placed on the decision of the Supreme Court in ***Yamini Manohar v. T.K.D***.[2], wherein, at paragraph 10, it has been held that while considering an application under Section 12A, the Court must examine the nature of the subject matter of the suit, the cause of action, and the prayer for interim relief. It was contended that although a claim for interim relief ought not to be a pretext to circumvent the statutory mandate of Section 12A of the Act, the parameters of the said provision should not be conflated with the principles under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (CPC) governing the grant of interim injunctions.

iv. It was thus submitted that even if the decision in ***Yamini Manohar*** is applied to the present case, the plaintiff would still be entitled to maintain the present civil suit without being compelled to resort to the mediation process contemplated under Section 12A of the Act. Further reliance was placed on the judgment of the Supreme Court in ***M/s Dhanbad Fuels Private Limited v. Union of India & Anr***.[3], with specific reference to paragraph 62, to demonstrate that none of the conclusions therein would disentitle the plaintiff from maintaining the instant suit. It was further submitted that the nature of urgent relief sought in the present case, if viewed from the standpoint of the plaintiff, clearly brings the plaintiff within the exception carved out under Section 12A of the Act.

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[2] (2024) 5 SCC 815
[3] 2025 SCC OnLine SC 1129

v. It was further submitted that *vide* order dated 03.04.2025 passed by the Division Bench in FAO(OS)(COMM) No. 09/2025, the stay operating against all the lenders restraining them from initiating any proceedings or seeking recovery from AHNL was lifted, and subsequently, the plaintiff approached this Court by way of a civil suit.

vi. Reference was made to several factual assertions demonstrating that the plaintiff had been assigned the debt of AHNL and had already discharged a substantial portion thereof. The balance sum, roughly amounting to INR 60 Crores, was obtained from defendant No. 1.

vii. Despite the plaintiff having made substantial payments, defendant No. 2 unlawfully and improperly discharged the debt of AHNL. It was argued that the charge created by AHNL in favour of the plaintiff has also been wrongfully discharged by the Registrar of Companies (*hereinafter referred to as 'RoC'*), at the instance of defendant No. 2, on 17.04.2025.

viii. In view of the above, it was submitted that if the prayer for urgent interim relief is not entertained on account of the wrongful discharge of the charge by AHNL, the defendants are likely to misuse the same. It was strenuously submitted that the plaintiff ought not to be relegated to the mediation process as contemplated under Section 12A of the Act.

10. Mr. Nayar, learned senior counsel appearing on behalf of defendant Nos. 1 and 2, reiterated the submissions earlier advanced by him on 01.07.2025 and submitted that the entire factual matrix of the case must be appreciated from the following perspective: -

i. A valid ICL Agreement dated 14.12.2022 and VSJ Assignment Agreement dated 01.02.2024 was executed between defendant No. 1 and 2.

ii. While drawing the attention of this Court to paragraph 15 of the plaint, it was highlighted that the plaintiff has specifically pleaded that the cause of action arose on 05.02.2024. It was also submitted that the plaintiff filed a criminal complaint with respect to forgery of the ICL agreement on 29.02.2024, whereas, the present civil suit came to be filed only in January 2025. He also highlighted that the suit remained under defect for over three months and was subsequently listed on 02.05.2025. In this context, it was submitted that had there been any genuine urgency for interim relief, the plaintiff would have taken immediate steps to cure the defects and ensure that the suit was promptly processed.

iii. He further submitted that, upon a plain reading of the application filed by the plaintiff under Section 12A of the Act as well as under Order XXXIX Rules 1 and 2 of the CPC, it is discernible that there are no sufficient averments or grounds pleaded to justify an exemption from compliance with the mandatory pre-institution mediation stipulated under Section 12A of the Act. It was further contended that the transaction in question has already been concluded, and there are no further steps left to be taken. On the strength of the aforesaid submissions, it was argued that the question of whether the mediation process would eventually be effective or not cannot be a relevant consideration at this stage. According to Mr. Nayar, it is the mediator concerned who is empowered to evaluate such matters and take appropriate decisions thereon.

iv. Apart from reiterating the legal position in ***Patil Automation***, ***Yamini Manohar*** and ***Dhanbad***, he also placed reliance on the decision of this Court in ***M/S R. K. Associates and Hoteliers Pvt. Ltd. v. Capital Equipment India***[4] to buttress his submissions.

11. Mr. Sidhant Kumar, learned counsel appearing for AHNL, made the following submissions: -

i. It was submitted that the Plaintiff has not sought any relief in respect of the return of the surety document. The earlier civil suit, which remained pending before this Court, bears no relevance to the subject matter of the present suit.

ii. As per Mr. Kumar, the debt owed by AHNL has already been discharged as of 01.01.2025. He, therefore, argued that unless and until the plaintiff succeeds in the present proceedings and obtains a decree as prayed for, no relief can be granted in its favour.

iii. It was further submitted that after an objection was raised regarding the maintainability of the present suit, the plaintiff proceeded to file an application under Order VI Rule 17 of the CPC and has thereby sought to manufacture a ground of urgency. It was, thus, contended that the plea of urgency is artificial and contrived, and the present civil suit is, therefore, not maintainable.

12. Mr. Jayant Mehta, learned senior counsel appearing for DBS Bank made

[4] CS(COMM) 1178/2024

a limited submission that he has moved an application and the Court, while passing the order, may keep in mind the relief prayed therein.

13. I have heard the learned counsel appearing for the parties and have perused the record.

Analysis

14. The present case concerns the scope and applicability of the mandatory requirement under Section 12A of the Act and in a nutshell, calls for a closer examination of the exemption provision therein, more specifically, whether such exemption needs to be assessed on the basis of the nature of the dispute, accrual of cause of action, relief sought, pleadings and other relevant considerations. It is, therefore, deemed appropriate to first delineate the framework of Section 12A of the Act alongwith the judicial interpretation accorded to it by various Courts so as to determine its application in the present factual backdrop.

Section 12A: A statutory nudge steering disputes towards dialogue

15. Section 12A of the Act was introduced by the Commercial Courts (Amendment) Act, 2018, marking a significant shift from the traditional adversarial mode of dispute resolution in commercial cases. It was brought with a twofold objective i.e., *firstly*, to provide disputing parties an opportunity to reach a mutually acceptable resolution and *secondly*, to reduce the burden of Courts by filtering out cases that can be settled outside the courtroom. For the sake of reference, the text of the provision reads as under:-

> ***"12A. Pre-Institution 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 preinstitution mediation*

in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.

(2) The Central Government may, by notification, authorise the Authorities constituted under the Legal Services Authorities Act, 1987 (39 of 1987), for the purposes of pre-institution mediation.

(3) Notwithstanding anything contained in the Legal Services Authorities Act, 1987 (39 of 1987), the Authority authorised by the Central Government under sub-section (2) shall complete the process of mediation within a period of three months from the date of application made by the plaintiff under sub-section (1):

Provided that the period of mediation may be extended for a further period of two months with the consent of the parties:

Provided further that, the period during which the parties remained occupied with the pre-institution mediation, such period shall not be computed for the purpose of limitation under the Limitation Act, 1963 (36 of 1963).

(4) If the parties to the commercial dispute arrive at a settlement, the same shall be reduced into writing and shall be signed by the parties to the dispute and the mediator.

(5) The settlement arrived at under this section shall have the same status and effect as if it is an arbitral award on agreed terms under sub-section (4) of section 30 of the Arbitration and Conciliation Act, 1996 (26 of 1996).]

16. A plain reading of the aforenoted Section would exhibit that if a commercial suit is filed without any urgent interim relief, the plaintiff must first attempt mediation. The mediation acts as a precondition to the institution of such a suit. The *raison d'être* of this provision lies in the broader legislative endeavour to streamline the resolution of commercial disputes and to promote early settlement, particularly in commercial relationships, where preserving business related engagements and finding business-oriented solutions can be beneficial in juxtaposition to the protracted litigation. The Statement of Objects

and Reasons for the 2018 Amendment explicitly notes that the provision was brought in to improve the *"ease of doing business"* in India by providing a mechanism for speedy dispute resolution.

17. The said provision further empowers the Central Government to authorize the authorities under the Legal Services Authorities Act, 1987 to conduct these pre-institution mediations. Typically, District Legal Services Authorities (DLSAs) or other notified bodies facilitate the mediation process. It is further envisaged that the mediation process should be completed within three months from the date the application for mediation is made by the plaintiff (extendable by two months with consent of the parties). Importantly, the time spent in pre-institution mediation is excluded for the purpose of calculating the limitation period for the commercial suit. It ensures that engaging in mediation does not make the plaintiff lose the right to sue due to delay. If mediation is successful and the parties arrive at a settlement, it must be reduced to writing and signed by the parties and the mediator.

18. Notably, a settlement under Section 12A of the Act has the status and effect of an arbitral award on agreed terms under Section 30(4) of the Arbitration and Conciliation Act, 1996. In other words, a successful pre-litigation mediation settlement is enforceable as if it were an arbitral award, giving it finality in the eyes of law.

19. Therefore, the legislative scheme of sub-section (1) of Section 12A is clear in its objective in fostering a culture of amicable settlement and reducing unnecessary litigation. In fact, the statute uses emphatic language in Section 12A(1), signaling a firm mandate. The underlying policy behind this legislative

mandate is premised on sound economic wisdom that commercial disputes must be put to a quietus without unreasonable delay, as the protraction of such disputes directly affects the economic health and ease of doing business sentiment in any economy.

20. The mechanism of pre-institution mediation under Section 12A operates under the aegis of the Legal Services Authorities Act, 1987, and the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018 (*hereinafter referred to as 'rules'*). These rules elaborate on the procedural modalities such as the submission of the mediation application to the appropriate Authority, the time frame for completion and the confidentiality and admissibility of communications made during the mediation process. The mediation is facilitated by empanelled mediators and is designed to conclude in a settlement agreement.

21. Thus, upon a bare reading of the said provision, the inescapable conclusion that comes to the fore is that: (i) a commercial suit cannot be validly instituted unless the plaintiff has first exhausted the remedy of pre-institution mediation; (ii) such pre-institution mediation is a mandatory requirement; (iii) where the suit contemplates any *urgent interim relief*, the bar under Section 12A(1) does not apply.

22. Undisputedly, sub-section (1) to Section 12A carves out an exception to the otherwise mandatory requirement of pre-institution mediation and exempts from its ambit the suits wherein the plaintiff '*contemplates urgent interim relief*'. The lawmakers' intent to deliberately create this exception to cater to exigencies that warrant immediate judicial intervention is clear in recognizing

that the rigours of mediation may, in such cases, defeat the ends of justice.

23. It is, however, worth noting that the niche exception i.e., urgent interim relief, remains undefined in the provision. The legislative text does not spell out circumstances which would aid in assessing urgency contemplated by the litigant. Neither does the Act clearly stipulate conditions which would allow any litigant to claim exemption under the guise of "contemplation of urgent interim relief" i.e., those cases where waiting for mediation could cause irreparable harm due to the urgency of the situation. Thus, the central question which arises at this stage is whether a simple assertion of urgent interim relief is sufficient for a litigant to fall in the exception discussed above or the same is tempered by some pragmatic considerations. While the answer to this query is largely guided by the authoritative pronouncement of the Supreme Court in ***Yamini Manohar***, however, for the sake of clarity, the Court deems it appropriate to first traverse through the meaning of the phrase "contemplates urgent interim relief" to ascertain the pith and substance of the provision.

Parsing the exemption phrase - "contemplate any urgent interim relief"

24. As it has been succinctly captured in words by this Court in the case of ***Sanyam Seth v. Union of India***[5], the time-tested and cardinal rule while interpreting the provisions of any statute would require the Court to primarily construe the said provisions literally and grammatically giving the words their ordinary and natural meaning. In fact, it is a fundamental presumption that the legislature does not waste words or enact redundancies. Every word in a statute

[5] 2023 SCC OnLine Del 4697

is there for a reason. The Courts, therefore, strive to give effect to each term and phrase in the provision.

25. In ***Gurudevdatta VKSSS Maryadit v. State of Maharashtra***[6], the Supreme Court held that words in a statute should be given their plain grammatical meaning unless such an interpretation leads to absurdity or is contrary to the statute's objective. It reiterated that when the language of a statute is clear and unambiguous, Courts must adhere to its ordinary meaning and ensure that every word used by the legislature is given due effect. The relevant extract of the aforesaid decision reads as under: -

> ***"26. Further we wish to clarify that it is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law-giver.*** *The courts have adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute as being in apposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of the statute…*
>
> *(emphasis supplied)*

26. Similarly, in ***Hiralal Rattanlal v. State of U.P.***[7], the Supreme Court noted that the foremost rule of construction is the literal rule, and when a

[6] (2001) 4 SCC 534
[7] (1973) 1 SCC 216

provision is unambiguous, Courts need not resort to other interpretative tools. The relevant paragraph is reproduced as under: -

> *22. It was next urged that on a true construction of Explanation II to Section 3-D, no charge can be said to have been created on the purchases of split or processed pulses. It was firstly contended that an Explanation cannot extend the scope of the main section, it can only explain that section. In construing a statutory provision, the first and the foremost rule of construction is the . All that we have to see at the very outset is what does that provision say? If the provision is unambiguous and if from that provision, the legislative intent is clear, we need not call into aid the other rules of construction of statutes. The other rules of construction of statutes are called into aid only when the legislative intention is not clear. Ordinarily a proviso to a section is intended to take out a part of the main section for special treatment. It is not expected to enlarge the scope of the main section. But cases have arisen in which this Court has held that despite the fact that a provision is called proviso, it is really a separate provision and the so-called proviso has substantially altered the main section. In CIT v. Bipinchandra Maganlal & Co. Ltd., Bombay [AIR 1961 SC 1040 : (1961) 2 SCR 493 : (1961) 41 ITR 290] this Court held that by the fiction in Section 10(2)(vii) second proviso read with Section 2(6-C) of the Indian Income Tax Act, 1922 what is really not income is, for the purpose of computation of assessable income, made taxable income."*
>
> *(emphasis supplied)*

27. Furthermore, in ***B. Premanand v. Mohan Koikal***[8], the Supreme Court provided a broader philosophical justification for the literal rule, asserting that language should be understood in its direct and unambiguous sense to ensure effective communication. The Court illustrated that if words were arbitrarily reinterpreted, social and legal interactions would become chaotic. It also lamented the decline of the *Mimansa* rules of interpretation of traditional Indian legal principles that have guided jurists for centuries, highlighting their relevance and the unfortunate neglect of indigenous legal wisdom in contemporary Courts. Paragraph nos. 24 to 27 are reproduced hereinbelow: -

[8] (2011) 4 SCC 266

"*24. The literal rule of interpretation really means that there should be no interpretation. In other words, we should read the statute as it is, without distorting or twisting its language. We may mention here that the literal rule of interpretation is not only followed by Judges and lawyers, but it is also followed by the layman in his ordinary life. To give an illustration,if a person says "this is a pencil", then he means that it is a pencil; and it is not that when he says that the object is a pencil, he means that it is a horse, donkey or an elephant. In other words, the literal rule of interpretation simply means that we mean what we say and we say what we mean. If we do not follow the literal rule of interpretation, social life will become impossible, and we will not understand each other. If we say that a certain object is a book, then we mean it is a book. If we say it is a book, but we mean it is a horse, table or an elephant, then we will not be able to communicate with each other. Life will become impossible. Hence, the meaning of the literal rule of interpretation is simply that we mean what we say and we say what we mean.*

25. In this connection, we may also refer to the Mimansa rules of interpretation which were our traditional principles of interpretation used for thousands of years by our jurists. It is deeply regrettable that in our law courts today these principles are not cited. Today, our so-called educated people are largely ignorant about the great intellectual achievements of our ancestors, and the intellectual treasury which they have bequeathed to us. The Mimansa rules of interpretation are one of these great achievements, but regrettably they are hardly ever used in our law courts.

26. It may be mentioned that it is not stated anywhere in the Constitution of India that only Maxwell's principles of interpretation can be utilised. We can utilise any system of interpretation which can help to resolve a difficulty. Principles of interpretation are not principles of law but are only a methodology for explaining the meaning of words used in atext. There is no reason why we should not use Mimansa principles of interpretation on inappropriate occasions.

27. In Mimansa, the literal rule of interpretation is known as the "Shruti" or "Abhida" principle. This is illustrated by the Garhapatya nyaya (in Mimansa maxims are known as"nyayas"). There is the Vedic verse: "Aindrya garhapatyam upatishthate", which means "by the mantra addressed to Indra establish the household fire". This verse can possibly have several meanings viz. (1) worship Indra, (2) worship garhapatya (the household fire), (3)worship both, or (4) worship either. However, since the word "garhapatyam" is in the objective case, the verse has only one meaning, that is, "worship garhapatya". The word "aindrya" means "by Indra", and hence the verse means that by verses dedicated to Indraone should worship garhapatya. The word "aindrya" in this verse is a linga (in Mimansa, linga means the suggestive power of a word), while the words

> *"garhapatyam upatishthate"are the shruti. According to the Mimansa principles, the shruti (literal meaning) will prevail over the linga (suggestive power)."*
>
> *(emphasis supplied)*

28. Thus, when the words of a statute are clear and unambiguous, it is the solemn duty of the Court to give effect to their natural and grammatical meaning without adding or subtracting anything. If a provision is free from ambiguity and the legislative intent is so discernible from the plain language employed, there is no necessity to invoke other principles of statutory interpretation. The aforesaid principle is encapsulated in the Latin maxim *absoluta sententia expositore non indiget*, i.e, absolute sentences need no exposition. Such language, standing alone, best conveys and decisively affirms the intention of the legislature. The literal rule of interpretation is also grounded in the legal maxim *verbis legis non est recedendum*, meaning there should be no departure from the words of the law. It mandates that Courts must adhere to the plain and exact meaning of the statutory text and refrain from any interpretative exercise that deviates from the legislature's words.

29. Turning to the bare language of Section 12A of the Act, it is couched in a manner that it begins with a negative connotation, which says '*a suit, which* ***does not*** *contemplate any urgent interim relief,* ***shall not*** *be instituted* ***unless*** *the plaintiff exhausts the remedy of pre-institution mediation*.' (*emphasis supplied*)

30. It is also a well-recognized principle of statutory interpretation that the mandatory nature of a provision is often reinforced when the legislative command is expressed in negative or prohibitory terms. As noted by J. Crawford in his treatise on statutory construction, prohibitive or negative

language in a statute can seldom, if ever, be construed as merely directory. The rationale is that negative expressions inherently carry a more compelling and imperative force.

31. This principle finds judicial affirmation in the decision of the Supreme Court in ***M. Pentiah v. Muddala Veeramallappa,*** [9] where it was unequivocally held that "*negative words are clearly prohibitory and are ordinarily used as a legislative device to make a statute imperative*". In other words, when a statute contains expressions such as "shall not," "no person shall," or "nothing shall be done," it reflects a legislative intent to make the provision mandatory and non-negotiable.

32. Thus, the use of the term '*shall*' in conjunction with the expression '*institution*' under Section 12A of the Act unequivocally reflects the mandatory character of the said provision, as has already been held by the Supreme Court in ***Patil Automation***.

33. Nonetheless, what bears more significance is the interpretation of the phrase "*contemplate any urgent interim relief*" employed in Section 12A(1) of the Act. At first blush, while applying the literal rule of interpretation, the expression may more closely resonate with what has been quixotically argued by the learned senior counsel for the plaintiff i.e., the provision contemplates only the existence of an urgent interim relief and nothing more. However, in the considered opinion of the Court, such an existence of urgency must be proved, certainly beyond plain assertions. To say the least, such an interpretation only provides a broad direction but does not draw a definitive roadmap to reach the

[9] AIR 1961 SC 1107

intended destination without any detour. Put differently, the destination in the eyes of draftsmen was a mandatory pre-institution mediation in commercial suits with a dual objective to declog the Courts swamped with cases and to provide an efficient resolution of disputes involving commerce. Now, to allow the language of Section 12A to become clay in the hands of the interpreter i.e., the plaintiff herein, to be molded as it sees fit, would only militate against the legislative mandate behind such enactment. For such an interpretation gives a latitude to the plaintiff to skirt mediation with mere inclusion of a prayer for interim relief.

34. Therefore, the phrase "contemplate any urgent interim relief" demands an elevated level of scrutiny as it is not a box to be checked at the plaintiff's sole discretion. To strike a balance, though the urgency is viewed from the plaintiff's perspective, but further scrutiny of the legitimacy of claim for exemption, by the Court, is crucial. This check-and-balance prevents abuse of process. In essence, the Court's role in such cases is somewhat akin to a sentinel at the door of the Commercial Court; it checks the plaintiff's "urgent" ticket. If the ticket (the claim of urgency) is valid, entry without mediation is allowed; if the ticket lacks genuineness, the plaintiff is rerouted to the mediation door.

35. There can be no gainsaying that a statute is a will of the legislature conveyed in the form of text and therefore, full effect has to be given to the intent of the legislature. Such an interpretation needs to be resorted to when there arise two possible views *viz.*, one which says that mere inclusion of prayer of urgent interim relief is sufficient and another, which demands a judicial scrutiny of such prayer. Reliance can be placed upon the following discussion

in the decision of the Supreme Court in the case of ***Jaishri Laxmanrao Patil v. State of Maharashtra***[10]:

> ***"206.*** *In the 183rd Report of the Law Commission of India, M. Jagannadha Rao, J. observed that a statute is a will of legislature conveyed in the form of text. It is well-settled principle of law that as a statute is an edict of the legislature, the conventional way of interpreting or construing the statute is to see the intent of the legislature. The intention of legislature assimilates two aspects. One aspect carries the concept of "meaning" i.e. what the word means and another aspect conveys the concept of "purpose" and "object" or "reason" or "approach" pervading through the statute. The process of construction, therefore, combines both liberal and purposive approaches. However, necessity of interpretation would arise only where a language of the statutory provision is ambiguous, not clear or where two views are possible or where the provision gives a different meaning defeating the object of the statute. He supported his view by referring to two judgments of this Court in R.S. Nayak v. A.R. Antulay [R.S. Nayak v. A.R. Antulay, (1984) 2 SCC 183 : 1984 SCC (Cri) 172] and Grasim Industries Ltd. v. Collector of Customs [Grasim Industries Ltd. v. Collector of Customs, (2002) 4 SCC 297] . It was held in R.S. Nayak [R.S. Nayakv. A.R. Antulay, (1984) 2 SCC 183 : 1984 SCC (Cri) 172] that the plainest duty of the court is to give effect to the natural meaning of the words used in the provision if the words of the statute are clear and unambiguous.*
>
> ***207.*** *The words of a statute, when there is a doubt about their meaning, are to be understood in the sense in which they best harmonise between the subject of the enactment and the object which the legislature has used. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained. [Workmen v. Dimakuchi Tea Estate, 1958 SCR 1156 : AIR 1958 SC 353]*
>
> ***208.*** *It is a recognised rule of interpretation of statutes that the expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the legislature [New India Sugar Mills Ltd. v. CST, 1963 Supp (2) SCR 459 : AIR 1963 SC 1207] . However, the object-oriented approach cannot be carried to the extent of doing*

[10] (2021) 8 SCC 1

> *violence to the plain language used by rewriting the section or structure words in place of the actual words used by the legislature [CIT v. N.C. Budharaja & Co., 1994 Supp (1) SCC 280] .*
>
> ***209.** The logical corollary that flows from the judicial pronouncements and opinion of reputed authors is that the primary rule of construction is literal construction. If there is no ambiguity in the provision which is being construed there is no need to look beyond. Legislative intent which is crucial for understanding the object and purpose of a provision should be gathered from the language. The purpose can be gathered from external sources but any meaning inconsistent with the explicit or implicit language cannot be given."*

36. The legislative intent is clear that no commercial suit may be instituted without first undergoing the pre-institution mediation process, save and except in cases where the suit demonstrably contemplates any urgent interim relief. Post the incorporation of Section 12A, judicial forums have discerned a pattern wherein parties, under various pretexts, attempt to circumvent the statutory requirement of pre-institution mediation, thereby necessitating extensive judicial scrutiny into the question of whether the suit indeed contemplates urgent interim relief, which in turn occupies substantial judicial time. Consequently, exceptions start assuming the shape of norms, thereby striking at the root of the legislative intent behind the amendment.

37. It is noteworthy that the word "*contemplate*", as employed in sub-section (1) to Section 12A, is not to be construed as a mere ornamental language, but a term connoting that the plaintiff must, at the time of institution of the suit, has *anticipated,* or *reasonably foreseen* the need for an urgent interim relief. It entails a conscious application of mind to the factual substratum of the case, where the cause of action is so inherently exigent that any delay caused by the mediation process would cause irreparable prejudice. Such contemplation necessitates a demonstrable application of judicial mind to the factual

substratum, from the standpoint of the plaintiff, revealing that the cause of action is so pervaded by exigency that the procedural detour of mediation would occasion grave and irreparable prejudice. The urgency contemplated must, therefore, be neither speculative nor presumptive, but must be anchored in specific factual predicates, discernible *ex facie* from the pleadings, cause of action as also the conduct of the plaintiff.

38. Additionally, the term *"urgent"* captures a situation of critical immediacy and exigency, where the plaintiff is genuinely precluded from awaiting the outcome of the mediation mechanism due to the impending risk of irretrievable harm. In the determination of urgency, time is of utmost essence. Simultaneously, *"interim relief"* pertains to a an interlocutory remedy aimed at preserving the substratum of the dispute, protecting legal and forestalling irreversible injury before the *lis* attains final adjudication. A bald or mechanical assertion of urgency, bereft of evidentiary underpinning, is insufficient to invoke the statutory exemption. Courts must remain vigilant against attempts to circumvent the legislative intent through superficial pleas of urgency, and are duty-bound to assess whether the claimed exigency withstands the rigours of judicial scrutiny as a *bona fide* invocation of the *proviso* rather than a stratagem to evade compliance with the mandatory pre-institution mediation framework.

39. Essentially, the invocation of the term "*urgent*" within the proviso to Section 12A of the Act contemplates a narrow class of situations wherein 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 could also be understood from an inherent

understanding that all interim reliefs are primarily premised on a sense of urgency. A desire for an urgent relief is implicit in any prayer for interim relief. Despite so, the legislative usage of the word "*urgent*" along with "*interim relief*" is certainly 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, which may not always be the case with other interim reliefs.

40. Thus, a plain reading of the provision in tandem with the will of the legislature would evince that all suits knocking on the doors of Commercial Courts must, at the threshold, demonstrate one of two things – either that they have exhausted the remedy of pre-institution mediation, or that they fall within the urgent interim relief exception with a bona fide, substantiated urgency.

The exemption under Section 12A as guided by the Courts

41. The aforesaid interpretation of Section 12A of the Act is also bolstered with the ruling of the Supreme Court in the case of ***Patil Automation (P) Ltd***. and ***Yamini Manohar***, and the decisions of High Courts, which clearly highlight the need to closely examine the contemplation of urgent interim relief.

42. The Supreme Court in ***Patil Automation (P) Ltd***. has held that Section 12A of the Act cannot be defined as a mere procedural law. It was also held that the scope of the Act, as amended in 2018, by which Section 12A was inserted, would make it untenable that legislature intended to accord the said provision a mandatory flavour and any other interpretation would not only be in the teeth of the express language used but would also result rendering the object of the provision otiose. The relevant extracts of the decision of the Supreme Court in ***Patil Automation Private Ltd***., read as under:-

> *"99.1. The Act did not originally contain Section 12-A. It is by amendment in the year 2018 that Section 12-A was inserted. The Statement of Objects and Reasons are explicit that Section 12-A was contemplated as compulsory. The object of the Act and the Amending Act of 2018, unerringly point to at least partly foisting compulsory mediation on a plaintiff who does not contemplate urgent interim relief. The provision has been contemplated only with reference to plaintiffs who do not contemplate urgent interim relief. The legislature has taken care to expressly exclude the period undergone during mediation for reckoning limitation under the Limitation Act, 1963. The object is clear.*
>
> ***
>
> *113.1. We declare that Section 12-A of the Act is mandatory and hold that any suit instituted violating the mandate of Section 12-A must be visited with rejection of the plaint under Order 7 Rule 11. This power can be exercised even suo motu by the Court as explained earlier in the judgment. We, however, make this declaration effective from 20-8-2022 so that stakeholders concerned become sufficiently informed."(emphasis supplied)*

43. While discussing the purview of the exception carved out in Section 12A regarding contemplation of urgent interim relief, the Supreme Court in ***Yamini Manohar***, has held that the language used in the provision to the effect "*contemplate any urgent interim relief*" stipulates the discretion of the Court to examine the plaint, cause of action, and documents attached thereto, to determine whether there arises an urgent relief or not. Paragraph No.12 of the aforesaid decision reads as under:-

> *"12. The words "contemplate any urgent interim relief" in Section 12-A(1) of the CC Act, with reference to the suit, should be read as conferring power on the Court to be satisfied. They suggest that the suit must "contemplate", which means the plaint, documents and facts should show and indicate the need for an urgent interim relief. This is the precise and limited exercise that the commercial courts will undertake, the contours of which have been explained in the earlier paragraph(s). This will be sufficient to keep in check and ensure that the legislative object/intent behind the enactment of Section 12-A of the CC Act is not defeated."*

44. In ***Yamini Manohar***, the Court emphasized that while the provision does not require express leave of the Court or an application for exemption, the

pleadings and submissions must objectively demonstrate a genuine urgency. It was observed that the test is not whether the Court ultimately grants interim relief, but whether, from the standpoint of the plaintiff, the nature of the suit and the cause of action justify an urgent prayer. The Supreme Court also cautioned against using the interim relief prayer as a camouflage to bypass mediation and emphasized the limited but essential gatekeeping role of the Commercial Courts to examine the authenticity of such pleas. It was also held that the phrase "*contemplate any urgent interim relief*" empowers the Court to examine if the relief is *bona fide* or merely a thoughtful strategy to evade statutory compliance.

45. Moreover, in ***Dhanbad,*** the Supreme Court, reiterating the decision in ***Yamini Manohar***, explicitly reaffirmed that the mere use of the phrase "*urgent interim relief*" in a plaint, without substantiating material or factual urgency, does not by itself entitle a plaintiff to exemption from the mandatory pre-institution mediation requirement under Section 12A of the Act. The Court held that a bald assertion of urgency cannot be permitted to defeat the statutory mandate intended to reduce litigation through structured settlement opportunities. Paragraph nos. 42 to 44 are reproduced hereinbelow: -

> *"iii. How the expression "urgent interim relief" is to be construed*
>
> *42. Further, it is also pertinent to note that Section 12A of the 2015 Act does not contemplate leave of the Court for filing a suit which contemplates an urgent interim relief, as is clear from the language and words used in the provision. The provision also does not necessarily require an application seeking exemption if a suit is being filed without pre-institution mediation. An application seeking waiver on account of urgent interim relief setting out grounds and reasons may allay a challenge and assist the court, but in the absence of any statutory mandate or rules made by the Central Government, an application per se is not a condition under Section 12A of the 2015Act. Pleadings on record and oral submissions would be sufficient in ordinary course.*

43. This Court in Yamini Manohar v. T.K.D. Keerthi reported in (2024)5 SCC 815 while interpreting the import of the expression "a suit which does not contemplate any urgent interim relief" used in Section12A of the 2015 Act observed that the word "contemplate" connotes to deliberate and consider. Further, the legal position that the plaint can be rejected and not entertained reflects application of mind by the Court as regards the requirement of "urgent interim relief". The Court further observed that the prayer of urgent interim relief should not act as a disguise to get over the bar contemplated under Section 12A. However, at the same time, the Court observed that the mere non-grant of the interim relief at the ad-interim stage, when the plaint is up for admission and examination would not justify the rejection of the plaint under Order VII Rule 11 of the CPC, as interim relief is at times also granted after issuance of notice. 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. The relevant observations from the said decision are reproduced hereinbelow:

> *"10. We are of the opinion that when a plaint is filed under the CC Act, with a prayer for an urgent interim relief, the commercial Courts would examine the nature and the subject-matter of the suit, the cause of action, and the prayer for interim relief. The prayer for urgent interim relief should not be a disguise or mask to wriggle out of and get over Section 12-A of the CC Act. The facts and circumstances of the case have to be considered holistically from the standpoint of the plaintiff. Non-grant of interim relief at the ad interim stage, when the plaint is taken up for registration/admission and examination, will not justify dismissal of the commercial suit under Order 7 Rule 11of the Code; at times, interim relief is granted after issuance of notice. Nor can the suit be dismissed under Order 7 Rule 11 of the Code, because the interim relief, post the arguments, is denied on merits and on examination of the three principles, namely : (i) prima facie case, (ii) irreparable harm and injury, and (iii)balance of convenience. The fact that the Court issued notice and/or granted interim stay may indicate that the Court is inclined to entertain the plaint.*
>
> *11. Having stated so, it is difficult to agree with the proposition that the plaintiff has the absolute choice and right to paralyse Section 12-A of the CC Act by making a prayer for urgent interim relief. Camouflage and guise to bypass the statutory mandate of pre-litigation mediation should be checked when deception and falsity is apparent or established. The proposition that the commercial courts do have a role, albeit a limited one, should be*

accepted, otherwise it would be up to the plaintiff alone to decide whether to resort to the procedure under Section 12-A of the CC Act. An "absolute and unfettered right" approach is not justified if the pre-institution mediation under Section 12-A of the CC Act is mandatory, as held by this Court in Patil Automation [Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd., (2022) 10 SCC 1 : (2023) 1 SCC(Civ) 545] .

12. The words "contemplate any urgent interim relief" in Section 12-A(1) of the CC Act, with reference to the suit, should be read as conferring power on the Court to be satisfied. They suggest that the suit must "contemplate", which means the plaint, documents and facts should show and indicate the need for an urgent interim relief. This is the precise and limited exercise that the commercial courts will undertake, the contours of which have been explained in the earlier paragraph(s). This will be sufficient to keep in check and ensure that the legislative object/intent behind the enactment of Section 12-A of the CC Act is not defeated."(Emphasis supplied)

44. Thus, it becomes clear from a perusal of the aforesaid decision that the test under Section 12A is not whether the prayer for the urgent interim relief actually comes to be allowed or not, but whether on an examination of the nature and the subject-matter of the suit and the cause of action, the prayer of urgent interim relief by the plaintiff could be said to be contemplable when the matter is seen from the standpoint of the plaintiff. Further, what is also to be kept in mind by the courts is that the urgent interim relief must not be merely an unfounded excuse by the plaintiff to bypass the mandatory requirement of Section 12A of the 2015 Act.

45. In the case at hand indisputably, no urgent interim relief was prayed for at the time of the institution of the suit by the Union"

46. It is pertinent to note here that the provision does not necessarily requires the grant of interim relief at the admission stage. It only requires that the interim relief is *contemplable* from the plaint, cause of action etc., and interim relief may be considered after issuance of notice as well. Thus, the Court is required to take a holistic view of the matter. It is crucial to take cognizance of the decision of the Division Bench of this Court involving the plaintiff itself, in

Exclusive Capital Ltd. v. Silver And C.Z. International[11] wherein the judgment dated 05.03.2025 of the Learned District Judge (Commercial-01), South District, New Delhi, rejecting the plaint on the ground of non-compliance with Section 12A of the Act, was affirmed. The plaintiff had instituted a commercial suit seeking recovery of Rs. 42,00,434.09/- pursuant to a Term Loan Facility Agreement dated 29.04.2022, citing default in monthly instalments. The suit was accompanied by an application under Order XXXVIII Rule 5 of the CPC and another under Section 12A of the Act seeking exemption from pre-institution mediation on the ground of urgency. The Trial Court, having found the allegations of urgency vague and unsupported by credible material, held that the suit was instituted merely to circumvent the statutory mandate. The delay in institution undermined the claim of emergent necessity. The Court found no error in the Trial Court's conclusions and held that the invocation of urgency was manifestly illusory and contrived to bypass the mandatory pre-litigation mediation process. The relevant extract reads as under:-

> *"In the present case, as has been noted hereinabove, the claim of the appellant is that the respondent has defaulted in making the payment of the monthly instalments, interest, and penal charges, in terms of the Loan Agreement. Along with the suit, the appellant filed an application under Order XXXVIII Rule 5 of the CPC, making vague allegations that it had "credible information and a reasonable apprehension" that the respondent, with mala fide intent to defeat the legitimate claims of the appellant, was likely to dispose of or alienate its assets. The claim amount is only Rs.42,00,434.09/-, which, as noted hereinabove, also includes penal charges. The Suit was filed claiming default of the respondent starting from 31.01.2023, which itself belies the claim of any urgency that can justify bypassing the compliance with Section 12A of the Act. The learned Trial Court, therefore, in our view rightly so, found that in the facts of the case, no interim relief could even be "contemplated" in the Suit. The interim*

[11] 2025 : DHC : 3212: DB

application filed was merely a camouflage and guise to bypass the statutory mandate of pre-institution mediation under Section 12A of the Act."

47. In ***Reddys Laboratories Ltd. v. Smart Laboratories (P) Ltd.***[12], this Court took a view that subterfuge and stratagem must not be permitted to be used as a resort to escape Section 12A. Paragraph 37 and 38 of the said decision reads as under: -

> ***"37.*** *In essence, what the Supreme Court has held in the afore-extracted paras from* ***Yamini Manohar****, is that Commercial Courts must be vigilant to ensure that, by artful drafting, or creation of artificial urgency where no such urgency exists, a plaintiff is not allowed to bypass Section 12A of the Commercial Courts Act. The use of the words "deception" and "falsity" are indicative of the intent of the Supreme Court in holding as it does. Subterfuge and stratagem must not be permitted to be used as a resort to escape Section 12A. Ultimately, what matters is, as the Supreme Court has clearly held, "the plaint, documents and facts". The matter has, nonetheless, to be examined from the standpoint of the plaintiff. If a plaintiff, in its plaint, seeks urgent interim relief, the Commercial Court must, therefore, ordinarily defer to the request of the plaintiff. However, if it is seen that, by practising deception or falsehood, or by cleverly worded in the plaint in such a manner as to make it appear that urgent interim relief is necessary, though the plaint, in the light of the facts and the documents which a company or, does not in fact reflect such urgency, the plaintiff would necessarily have to be relegated to exhausting, in the first instance, the remedy of pre-institution mediation.*
>
> ***38.*** *The Court has, therefore, while examining whether the plaintiff is required to exhaust Section 12A before instituting the plaint, to first examine whether the plaint contemplates any urgent interim relief. If it does not, the matter must rest there, as held in Patil Automation and the plaint, if it has been instituted without exhausting pre-institution mediation, has necessarily to be rejected under Order VII Rule 11 of the CPC. If, however, the plaint does contemplate, or envisage grant of urgent interim relief, the Court has then to satisfy itself that the plea is genuine, and that the plaintiff has not ingeniously engineered a situation in which it appears that urgent interim relief is needed, though the plaint, seen in the light of the facts and the documents accompanying the plaint, does not in fact disclose the need for any such urgent relief. If the plea for interim relief is genuine, the Court*

[12] 2023 SCC OnLine Del 7276

has necessarily to entertain the plaint without requiring the plaintiff to exhaust pre-institution mediation. In arriving at this decision, the Court is not concerned, in any way, with the merits of the plea for interim relief. All that the Court is required to determine is that the plea is genuine and bona fide."

48. The Madras High Court *vide* decision dated 14.09.2022 in a case titled as ***M/S Micro Labs Limited v. Mr. A. Santhosh***[13], while rejecting the suit filed with a delay of four months, noted that such delay would reflect absence of contemplation. It was further held that mere filing of applications for interim prayers do not save the plaintiff from the death knell consequence *qua* infraction of Section 12A, rather it is the prerogative of the Court to decide whether the interim relief sought for is urgent and a product of 'contemplation'.

49. A similar view has been taken by the High Court of Jammu and Kashmir and Ladakh at Srinagar in the case of ***M/s Devyani International Limited v. Airport Authority of India and Others***[14], reaching a conclusion that the plaintiff does not have any absolute choice and unfettered right to paralyse Section 12A of the Act, by making a prayer for urgent interim relief without any emergent cause of action and imminent danger.

50. The High Court of Bombay in ***Future Corporate Resources (P) Ltd. v. Edelweiss Special Opportunities Fund***[15], while mentioning that Section 12A was meant to accelerate disposal by providing a disposal mechanism that did not involve Courts, it does not permit a plaintiff to bypass its provisions by

[13] C.S (Comm. Div.) No.185 of 2022
[14] CS (OS) No. 01/2025
[15] 2022 SCC OnLine Bom 3744

merely filing an interim application. As per the said decision, the words "which does not contemplate" does not mean "in the opinion of the plaintiff". The Court emphasized that a plaintiff may in a commercial cause contemplate very many things and may want even more but that is immaterial.

51. It is equally pertinent to refer to the decision of the High Court of Bombay in ***Kaulchand H. Jogani v. Shree Vardhan Investment***[16], which has been approved by the Supreme Court in ***Yamini Manohar*** and which settles the debate regarding the conduct of inquiry by Court with respect to justifiability in the claim for urgent interim relief. Paragraphs 28 to 31 of ***Kaulchand*** read as under:-

> *"28. In the case of Patil Automation (supra) the Supreme Court has emphasized the legislative object behind introduction of pre-institution mediation as a mandatory measure. Evidently, the outlet for not resorting to pre-institution mediation is provided by the text of Section 12A itself namely a suit contemplating an urgent interim relief. In my view, if the said outlet is construed too loosely in the sense that mere filing of an application for interim relief, howsoever unjustified and unwarranted it may be, would take the suit out of the purview of Section 12A, it may run counter to the legislative object. The interdict contained in Section 12A can be easily circumvented by filing an application for interim relief without their being any reason or basis therefor. Such an interpretation may not advance the legislative object.*
>
> *29. The Parliament, it seems, has designedly used the expression, "a suit, which does contemplate any urgent interim relief ....". This phrase cannot be interchangeably used with the expression, "where the plaintiff seeks an urgent interim relief..." The test would be whether the suit does contemplate an urgent interim relief.*

[16] 2022 SCC OnLine Bom 4752

> *30. In a given case, the Court may be justified in embarking upon an inquiry as to whether there is an element of justifiability in the claim for urgent interim relief or such a prayer is a mere subterfuge to overcome the bar under Section 12A. At the same time, the scope of such an inquiry would be extremely narrow. Such an inquiry cannot partake the character of determination of the prayer for interim relief on merits. It cannot be urged that if the Court is disinclined to grant interim relief then the justifiability of the institution of the suit, without pre-institution mediation, can itself be questioned. Therefore, the Court may be called upon to stear clear of two extremes.*
>
> *31. In my considered view, the proper course would be to asses whether there are elements which prima facie indicate that the suit may contemplate an urgent interim relief irrespective of the fact as to whether the plaintiff eventually succeeds in getting the interim relief. In a worst case scenario, where an application for interim relief is presented without there being any justification whatsoever for the same, to simply overcome the bar under Section 12A, the Court may be justified in recording a finding that the suit in effect does not contemplate any urgent interim relief and then the institution of the suit would be in teeth of Section 12A notwithstanding a formal application."*

52. In ***Indian Explosives (P) Ltd. v. Ideal Detonators (P) Ltd.***[17], the Calcutta High Court took a view that the exercise of seeking dispensation cannot be made solely plaintiff-centric and the same must withstand judicial discretion. The Court also cautioned about every plaintiff having the formal averments in the plaint that the suit contemplates urgent interim reliefs simply to overcome the mediation process as the same would render nugatory the entire purpose of mediation. The relevant paragraphs of the said decision read as under:-

> ***"11.*** *There may be urgency in any of the specified transactions enumerated in section 2(c) of the Act which defines "commercial dispute". Urgency would vary from case to case. There can be no strait jacket formulae in such cases. Each case must be decided on its own facts. There must be pleadings to support the case of urgent interim reliefs. The Court at the time of presentation of the plaint has to be*

[17] 2023 SCC OnLine Cal 1944

satisfied that there are averments which justify a case for urgent interim reliefs and for dispensation with the requirement of section 12A of the Act in the overall facts and circumstances. Ordinarily, at the stage of admission of the plaint, the defendant is not represented. However, a defendant has a right to question whether dispensation has been appropriately granted or not. This exercise may require the Court to re-examine the grant of dispensation. The entire exercise of seeking dispensation under section 12A of the Act must be subject to judicial scrutiny.

12. *The decision in Chandra Kishore Chaurasia v. R A Perfumery Works Private Limited, 2022 SCC OnLine Del 3529 cited on behalf of the plaintiff is distinguishable and inapposite. In the said decision, the Court in a suit inter alia for infringement and passing off found the same to be maintainable in the light of averments in the plaint. It is true that the plaintiff is dominus litis. However, the exercise of seeking dispensation cannot be made solely plaintiff-centric. This exercise must withstand judicial discretion. Otherwise, it would lead to every plaintiff having the formal averments in the plaint that the suit contemplates urgent interim reliefs simply to overcome the mediation process. This would render nugatory the entire purpose of mediation. The ultimate grant or refusal of the interim relief on merits is not the determining factor. The only question is whether on the basis of the averments made out in the plaint and the cause of action pleaded, there is a case for urgent interim reliefs."*

53. Thus, 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. Such conduct erodes the sanctity of the legislative framework and subverts the object of reducing the burden on Courts through alternative dispute resolution mechanisms. The prayer for urgent relief must be substantiated through specific pleadings and demonstrable facts and cannot be allowed to serve as a mere procedural ruse to escape mandatory compliance. Courts must rigorously assess the genuineness of the asserted urgency and reject suits where the plea for interim relief is palpably contrived or unsubstantiated.

54. As affirmed by the Supreme Court in ***Yamini Manohar***, the invocation of urgency must transcend mere perfunctory allusions, and instead find expression through averments in the pleadings, which, when subjected to judicial scrutiny, disclose a *bona fide* and imminent necessity for protective relief at the threshold stage

55. Stepping back, it is important to remember why this pre-institution mediation provision exists. It merits mention that mediation, as a mechanism of alternative dispute resolution, plays a pivotal role in alleviating the burden of an overburdened judiciary while promoting efficient, amicable, and cost-effective resolution of disputes. It offers a collaborative platform where parties can engage in open dialogue with the assistance of a neutral facilitator, thereby preserving commercial relationships and fostering solutions that are mutually beneficial. Particularly, in commercial matters, mediation allows parties to retain control over the outcome without subjecting themselves to the adversarial rigour of litigation.

56. The significance of mediation lies not only in its procedural efficiency but also in its transformative potential to reshape the dispute resolution landscape. It serves the broader objective of access to justice by making dispute resolution more accessible and less intimidating, especially for smaller enterprises that may be discouraged by protracted Court proceedings.

57. Section 12A of the Act fulfills this requirement by instituting a mandatory pre-institution mediation mechanism, which serves as a bypass and fast-track route for resolving disputes without occupying judicial time at the inception stage. The only exception to this route balances the right to immediate

judicial intervention in genuinely urgent matters which may be proved by pleadings, cause of action etc.

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 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. 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 pre-institution mediation mechanism under Section 12A would operate to the detriment or prejudice of the plaintiff.

59. The foregoing factors are only illustrative, and not exhaustive, parameters to be considered at the threshold while evaluating the maintainability of a suit without compliance with Section 12A, on the ground of urgency.

60. In this contextual backdrop, it becomes imperative upon the Commercial Court, while dealing with an application for exemption from pre-institution mediation, to determine whether a mere averment or prayer for an interim relief, is *per se* adequate to bypass the procedural mandate of Section 12A, or whether the expression *'contemplation of urgent interim relief'* warrants a more elevated threshold of scrutiny to uphold and give effect to the salutary objectives underlying Section 12A. The adjudication as to whether the suit contemplates urgency has to be made under the facts and circumstances of each and every case.

Refracting the facts through legal prism

61. In order to appreciate the factual matrix of the present case on the touchstone of the aforesaid discussion, it is pertinent to firstly advert to the prayer sought in the instant suit. For the sake of clarity, the relief clause of the suit is reproduced as under :-

> "*PRAYER*
>
> *58. In light of the above submissions, the Plaintiff respectfully prays for the following reliefs: -*
>
> *a. Decree of declaration that the Inter-Corporate Loan Agreement dated 14.12.2022 (hereinafter referred to as the "ICL Agreement") allegedly executed between the Plaintiff and the Defendant No. 1 as void, non-est and illegal and not binding upon the Plaintiff and the consequential relief of cancellation of the ICL Agreement;*
>
> *b. Decree of declaration that the Assignment Deed dated 01.02.2024 (hereinafter referred to as the "VSJ Assignment Agreement") executed between Defendant No. 1 and Defendant No. 2, as void ab initio, non-est and illegal;*
>
> *c. An order for permanent injunction restraining the Defendant No.1,2,4 from claiming any rights under the forged ICL Agreement and VSJ Assignment Agreement;"*

62. The averments in the exemption application are also reproduced hereinunder and thus read: -

> "*APPLICATION UNDER SECTION 12A (1) OF THE COMMERCIAL COURTS ACT, 2015 SEEKING EXEMPTION FROM PRE-INSTITUTION MEDIATION AND SETTLEMENT*
>
> *MOST RESPECTFULLY SHOWETH:*
>
> *1. That the Plaintiff has filed the accompanying Suit, inter-alia, seeking a decree of declaration that the alleged Inter-Corporate Loan Agreement dated 14.12.2022 (hereinafter referred to as the "ICL Agreement") executed between the Plaintiff and the Defendant No.1 as illegal, non-est and void with consequential relief of cancellation of ICL Agreement and a decree of declaration that the Assignment Deed dated 01.02.2024 (hereinafter referred to as the "VSJ Assignment*

Agreement") executed between Defendant No. 1 and Defendant No. 2, as illegal, non-est and void ab initio. Further, the Plaintiff is also seeking for injunction. I.A.-10952-2025

2. It is submitted that the reliefs sought in the present suit are urgent in nature and therefore, the Plaintiffs seek exemption from Pre-Institution Mediation proceedings under Section-12 A of the Commercial Courts Act, 2015.

3. The Plaintiff along with the present plaint, has filed an application under Order 39 Rule 1 & 2, Code of Civil Procedure, 1908 for urgent ad-interim/ interim relief in the present proceedings against all these Defendants.

4. The Plaintiffs are entitled to common reliefs against all these Defendants as the Defendant No. 2 has relied upon the forged and fabricated documents to allegedly settle with the Defendant No. 3,when the Plaintiff is the rightful creditor of the Defendant No. 3. It is submitted that on 05.02.2024, an application bearing I.A. No.3178/2024 was filed by the Defendant No. 2 in the Civil Suit bearing CS (Comm) No. 128 of 2022 before the Hon'ble High Court of Delhi under Order I Rule 10 of the Code of Civil Procedure, 1908 seeking substitution of the Defendant No. 2 as a defendant in the Suit in place of the Plaintiff who was impleaded as the Defendant No. 9 in the Suit.

5. It is submitted that the Defendant No. 2 had relied on Clause 3.1(f)and 11.2 of the purported ICL Agreement for substitution of the Defendant No. 2. That, the Ld. Single Judge of this Hon'ble High CS(COMM)-399-2025 19Courtof Delhi, by an order dated 23.12.2024, substituted the Plaintiff in Civil Suit bearing CS (COMM) No. 128 of 2022 and replaced Defendant No. 2.

6. Aggrieved by this order, the Plaintiff filed an appeal, FA(OS)(COMM)No. 09 of 2025, challenging the order dated 23.12.2024 before this Hon'ble Court. It is submitted that the said appeal was disposed of vide order dated 03.04.2025, upon the submission made by Ld. Counsel for Defendant No. 3 that in view of the Compromise Settlement Sanction dated 24.01.2025 between Defendant No. 3 and Bank of Maharashtra, the Civil Suit bearing CS (COMM) No. 128 of2022 will be withdrawn unconditionally by Defendant No. 3. It is pertinent to mention that the Order dated 03.04.2024 specifically stated that as the Suit itself is being withdrawn, any interim orders that had been passed in the Suit including Order dated 23.12.2024, could not survive or affect the rights of the parties to the Suit. The relevant extract of the Order dated 03.04.2025 is reproduced hereunder:

> ***"****3. As the appellant is withdrawing the Suit itself, nothing further survives in this appeal. Needless to state, once the suit has been withdrawn, any interim/interlocutory order that has been passed in CS (COMM)-399-2025 20the Suit, cannot survive or affect the rights of the parties to the Suit or others.4. In view of the above, the appeal is disposed of as having become infructuous. However, in case the respondent no. 4 does not withdraw the Suit, it shall be open to the appellant to revive the present appeal. We further make it clear that the appellant shall be entitled to agitate its individual rights in its individual separate proceedings."***
>
> *7. It is pertinent to note that AHNL unconditionally withdrew Civil Suit bearing CS (COMM) No. 128 of 2022, vide Order dated 08.04.2025alleging that it has settled the dues of the lenders though it is a matter of fact that there has been no settlement between the Plaintiff and the Defendant No. 2.*
>
> *8. The Defendants are trying to wrongfully gain based on the fraudulent ICL Agreement and the VSJ Assignment Deed, to the detriment of the Plaintiff.*
>
> *9. The Plaintiff is thus seeking urgent ad-interim relief, as the same is required in the facts and circumstances of the present case. It is most respectfully submitted that if urgent interim reliefs are not granted in the present suit, Defendants will continue to rely on the forged and fabricated documents and getting unjustly benefited from the said forgery and fabrication. As a direct consequence of theCS(COMM)-399-2025 21aforementioned fraudulent and unlawful acts perpetrated by the Defendant Nos. 1 and 2 in concert with Defendant No. 3, the Plaintiff has been gravely prejudiced in its lawful rights, title, and interest over the AHNL Debt.*
>
> *10. In view of these urgent reliefs that are sought, the Plaintiff is straight away approaching this Hon'ble Court without resorting to preinstitution mediation as prescribed under Section 12A of the Commercial Courts Act, 2015.*
>
> *11. That allowing the present Application would not cause any prejudice to Defendants; however, grave prejudice will be suffered by the Plaintiff if same is not allowed"*

63. A perusal of the plaint and the accompanying documents reveals that no imminent or irreparable harm has been pleaded or demonstrated so as to justify

the invocation of urgent relief. The pleadings neither disclose any circumstance warranting bypass of the mandatory pre-institution mediation mechanism, nor is there any material to indicate that the matter is of such urgency as would render the statutory process under Section 12A of the Act otiose.

64. The foundational premise upon which the plaintiff seeks to circumvent the mandatory procedural requirement of pre-institution mediation under Section 12A of the Act is the alleged existence of urgency, primarily arising from a sequence of legal proceedings that culminated in the withdrawal of Civil Suit No. CS (COMM) 128 of 2022. It is averred that defendant No. 2 filed an application seeking substitution of the plaintiff as a defendant in the said Civil Suit, which was allowed by a Coordinate Bench of this Court *vide* order dated 23.12.2024.

65. The plaintiff did initiate appellate proceedings to challenge the said substitution through LPA No. 6/2025, and interim protection was granted *vide* a consensual *status quo* order dated 13.01.2025. However, the appeal was unconditionally withdrawn on 17.01.2025, with liberty reserved to file a fresh appeal. Subsequently, the plaintiff filed FAO(OS)(COMM) No. 09/2025, in which notice was issued on 20.01.2025 and the interim *status quo* order was continued by the Court on 20.02.2025.

66. It is further relevant to note that during the pendency of the said appellate proceedings, AHNL sought to withdraw the Civil Suit on the purported ground of having settled its dues with the Bank of Maharashtra. The Division Bench of this Court, *vide* order dated 03.04.2025, disposed of the appeal as infructuous

and categorically recorded that all interim orders passed therein would not survive.

67. Notably, the plaintiff has pleaded that it became aware of the impugned ICL Agreement and VSJ Assignment Deed on 05.02.2024. Thereafter, the plaintiff approached the police with a criminal complaint on 29.02.2024, alleging that the said ICL Agreement was forged.

68. These facts collectively establish that the plaintiff was aware of the impugned transactions for over a year before instituting the present suit. The plaintiff, despite this knowledge, failed to act in a prompt manner. No justifiable circumstance has been demonstrated to explain as what impeded the plaintiff to institute a suit immediately after it learnt about the execution of ICL. The inaction is, thus, attributable solely to the plaintiff's own conduct and undermines any plea of urgency.

69. Furthermore, it is an admitted position that the plaintiff had previously filed the present suit in January 2025 but allowed it to remain under defect, taking insignificant steps to get it listed or to rectify the same. The defects were only cured in April 2025, which conclusively establishes that the matter was not treated as urgent for a prolonged period of time. A plea of urgency in this backdrop does not inspire confidence.

70. The plaintiff has also contended that the last cause of action arose on 17.04.2025, when the Ministry of Corporate Affairs (MCA) recorded the satisfaction of charge in favour of Defendant No. 2. However, notably, no relief is sought in the present proceedings concerning the allegedly wrongful satisfaction of AHNL’s debt.

71. In any event, the relief sought, an injunction restraining the misuse of the ICL Agreement, has become infructuous, given that AHNL's debt has already been discharged and satisfaction has been recorded by the MCA. The apprehended course of action has already culminated and in such a case, the reversal of such action cannot be ordered by way an urgent relief as it would have the effect of disturbing a settled state of affairs without adjudication.

72. The plaintiff has itself acknowledged that it was substituted in the earlier proceedings, that the appeal was disposed of, that all dues under the Assignment Agreement have been paid, and that the charge has been removed by the MCA. Thus, as it appears from the facts and circumstances, the ship has sailed for claiming any urgent relief and even if any interim measure could be claimed during the suit, the element of urgency is not justified and appears to be missing.

73. Thus, it could be observed that the Plaintiff has failed to establish the existence of any genuine, immediate, or compelling urgency that would justify an exemption from the mandatory requirement of pre-institution mediation as contemplated under Section 12A of the Act.

74. In light of the above, this Court finds that no case is made out for exemption under Section 12A of the Act. The plea of urgency is untenable, both factually and legally, and does not meet the threshold required to bypass the mandatory pre-institution mediation process.

75. Furthermore, it may also be noted that the plaintiff's application for interim relief, bearing I.A. No. 10950 of 2025, is for an ad-interim injunction to restrain the defendants from acting upon or enforcing rights under the alleged

ICL Agreement dated 14.12.2022 and the VSJ Assignment Agreement dated 01.02.2024, which are claimed to be forged, unauthorized, and *void ab initio*. The plaintiff contends that these documents were executed without authority, using fabricated stamp paper, and without any requisite corporate approvals, thereby constituting a fraud designed to unlawfully deprive the plaintiff.

76. However, a plain reading of the reliefs sought in this application reveals that they are inseparably linked to the core issues raised in the suit itself, namely, the validity and enforceability of the ICL Agreement and the VSJ Assignment Deed. The allegations of forgery, lack of authority, and fabrication, as well as the prayer for cancellation of the impugned agreements, necessarily require a detailed examination of facts and evidence, including documents. Therefore, at best, the plaintiff may have a case to argue for a grant of interim relief, but the same cannot be said to be urgent.

77. More importantly, the mere filing of an application under Order XXXIX Rules 1 and 2 of the CPC, reiterating the relief of declaration on assertions of forgery or fabrication, without specific and cogent pleadings of imminent or irreversible harm, cannot by itself be construed as seeking "*urgent relief*" for the purposes of bypassing the mandatory pre-institution mediation contemplated under Section 12A of Act. It is trite law, as seen from the aforementioned decisions, that the grant of an interim injunction and the contemplation of urgent relief for the purpose of an application seeking exemption from the mandate of Section 12A are materially distinct. An application seeking exemption from pre-litigation mediation under Section 12A must be independently assessed on its own merits and not conflated with the filing of an interlocutory application. In the present case, the Plaintiff has failed to plead or

demonstrate any immediate or irreversible action that threatens to alter its legal status or cause irreparable harm in the *interregnum* so as to justify exemption under the statutory scheme. Even if the plaintiff manages to make out a case for interim relief, it does not *ipso facto* make out a case for exemption from the mandate of Section 12A, as the threshold required for the latter is materially distinct.

78. To adopt any contrary construction would not only erode the literal meaning embedded in the phrase "*contemplate urgent relief*," but would amount to a transgression of legislative intent. It would reflect a misconstrual of the statutory scheme, undermining the legislative purpose and defeating the very rationale behind the creation of the urgency exception within the framework of Section 12A.

79. Accordingly, the application for exemption is rejected.

80. In view of the aforesaid, the suit is also liable to be rejected at the threshold, along with pending applications. However, liberty is reserved in favour of the plaintiff to file a suit for the instant cause of action afresh, if the need so arises, post-frustrating pre-institution mediation envisaged in Section 12A of the Act.

81. Further, liberty is also reserved in favour of the applicant- DBS bank to re-agitate the issues raised in I.A.-14993/2025, if so necessitated.

82. The date fixed before Joint Registrar, i.e., 08.08.2025, stands cancelled.

PURUSHAINDRA KUMAR KAURAV, J

04 AUGUST, 2025/p/mj *Click here to check corrigendum, if any*