



2025:DHC:3212-DB



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

*Date of decision: 02.05.2025*

+ RFA(COMM) 257/2025

EXCLUSIVE CAPITAL LTD. ....Appellant

Through: Mr.Siddharth Yadav, Sr.Adv.  
with Mr.Manav Goyal,  
Ms.Zinnea Mehta, Mr.Abhishek  
Jaiswal, Mr.Manthan Dixit,  
Ms.Ritika Gusain, Ms.Jahnvi  
Gupta, Advs.

versus

SILVER AND C.Z. INTERNATIONAL ....Respondent

Through: Nemo

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**HON'BLE MS. JUSTICE RENU BHATNAGAR**

**NAVIN CHAWLA, J. (ORAL)**

**CM APPL. 26670/2025 (Exemption)**

1. Allowed, subject to all just exceptions.

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2. This appeal has been filed, challenging the Judgment dated 05.03.2025 passed by the learned District Judge (Commercial-01), South District, New Delhi (hereinafter referred to as, 'Trial Court') in CS (COMM.) No. 113/2025, titled *Exclusive Capital Limited vs. Silver & C.Z. International*, dismissing the application filed by the



appellant herein seeking waiver of pre-litigation mediation stipulated by Section 12A of the Commercial Courts Act, 2015 (in short, 'Act') and, consequentially, rejecting the plaint filed by the appellant.

3. The appellant has filed the above-mentioned suit before the learned Trial Court, praying for the following reliefs:

*“A. Pass a decree in favour of the Plaintiff and against the Defendant for an amount of Rs. 42,00,434.09/- (Rupees Forty Two Lakhs Four Hundred Thirty Four and Nine Paise Only) as of 31.01.2025; and/or*

*B. Pass a decree in favour of the Plaintiff and against the Defendant for pendente lite and future interest at the rate of 10 % per annum together with default interest at the rate of 2% per month and penal charges at the rate of 2% per month from 01.02.2025 till the date of realization.”*

4. In the plaint, it is alleged that the appellant had extended a Loan Facility of a sum of Rs.2 crore to the respondent, under a Terms Loan Facility Agreement dated 29.04.2022 (in short, 'Loan Agreement'). The term loan was for a period of four years, commencing from April, 2022 and was to mature in May, 2026. The loan was to be repaid in equally monthly instalments of Rs.5,07,252/-, and in the event of default, the respondent was liable to pay interest at the rate of 2% to be charged per month and an additional penal charge of 2% per month over and above the applicable interest rate. The respondent also provided an undertaking dated 29.04.2022 to comply with the terms and conditions of the Loan Agreement and acknowledged that the loan would bear interest at the rate of 10% per annum.



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5. The appellant claimed that the respondent failed to pay the amounts towards the multiple monthly instalments, ranging from the period 01.07.2022 to 22.01.2023, thereby acting in breach of the terms of the Loan Agreement. The appellant, however, admits that the respondent had paid an amount of Rs.1 crore on 23.01.2023 and 24.01.2023, respectively. The respondent, however, did not make any further payments towards the outstanding balance amount, including principal, interest, default interest, and penal charges. The appellant further states that in view of the long-standing relationship between the parties, the appellant with a *bona fide* intent to recover the loan due to it, granted additional time to the respondent to repay the loan amount disbursed by the appellant under the Loan Agreement, however, the respondent failed to make the payment of the multiple instalments. In these circumstances, the appellant addressed a Demand Notice dated 01.06.2024, demanding from the respondent a sum of Rs.17,22,372/-, claimed to be due as on 31.03.2024 under the Agreement.

6. The appellant filed the above suit claiming that as on 31.12.2022, the due amount was Rs.41,09,698.09/-. Along with the suit, the appellant also filed an application under Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908 (CPC), praying for the following reliefs:

*“A. Direct the Defendant to deposit a sum of Rs. 42,00,434.09/- (Rupees Forty Two Lakhs Four Hundred Thirty Four And Nine Paise Only) towards security of the Suit claim;*



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*B. Direct the Defendant from alienating, creating any third party rights and disposing of its assets and properties.”*

7. In the application, apart from stating that amounts were due from the respondent, the only contention raised by the appellant is as under:

*“4. That the Plaintiff has credible information and a reasonable apprehension that the Defendant, with mala fide intent to defeat the legitimate claims of the Plaintiff, is likely to dispose of or alienate its assets. Such actions, if permitted, would render any decree passed by this Hon'ble Court infructuous and would cause irreparable loss and injury to the Plaintiff.*

*5. That the Plaintiff submits that the Defendant has already shown its intent to evade liabilities by failing to comply with the terms of the Loan Agreement, further ignoring the Demand Notice issued by the Plaintiff and not maintaining transparent communication with the Plaintiff regarding repayment obligations.*

*6. That the Plaintiff further submits that the balance of convenience lies in its favour as the Plaintiff has extended the loan amount of Rs. 2,00,00,000/- (Rupees Two Crores Only) in good faith and in compliance with all regulatory and contractual requirements, whereas the Defendant has deliberately and wilfully defaulted on repayment.*

*7. That the Plaintiff is likely to suffer irreparable harm and injury if the Defendant is allowed to dispose of or alienate its assets, as the recovery of the outstanding dues would become practically impossible.*

*8. That the Plaintiff has a prima facie case in its favour, as evidenced by the Loan Agreement dated 29.04.2022, the Undertaking dated 29.04.2022 executed by the Defendant, and the Ledger Account maintained by the Plaintiff, all of which clearly establish the*



*Defendant's liability. Further, the Plaintiff has a prima facie case as the Defendant has failed to repay the amount due to the Plaintiff despite service of Demand Notice.*

*9. Therefore, the Plaintiff most respectfully prays that this Hon'ble Court may most graciously be pleased to direct the Defendant to pay an amount of Rs.42,00,434.09/- (Rupees Forty Two Lakhs Four Hundred Thirty Four And Nine Paise Only) Towards security for suit claim and further, restrain the Defendant from alienating and disposing off its assets and properties."*

8. The appellant also filed an application under Section 12A of the Act, praying for an exemption from instituting pre-institution mediation, contending therein as under:

*"4. The Plaintiff respectfully submits that the present suit involves an urgent matter wherein the Defendant may take steps to dispose of or otherwise deplete assets unrelated to the subject matter of the dispute, which are crucial for the Plaintiff's recovery of the outstanding loan amount. The Plaintiff is under the genuine fear that the Defendant, in order to avoid the recovery of the debt, may take actions to dispose of or diminish such assets, thereby seriously impeding the Plaintiff's ability to enforce any judgment that may be passed in this case. Such conduct, if allowed to continue unchecked, would result in irreparable harm to the Plaintiff's ability to recover the loan amount. The urgency of the situation is further underscored by the Plaintiff's need to secure an immediate injunction to preserve the Defendant's assets pending the final resolution of the suit.*

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*6. That in view of the facts and premises of present matter, where an interim urgent relief has been sought by the Plaintiff, and in*



*pursuance of statutory mandates and established principles of law, it is clear that the mandatory requirement of pre-institution mediation is not applicable in the present matter. The Plaintiff is faced with a situation where the Defendant may act in a manner that could frustrate the Plaintiff's ability to recover the amount due, thereby necessitating the urgent relief sought in the present matter."*

9. As noted hereinabove, the learned Trial Court, by the Impugned Judgment, dismissed the application filed by the appellant under Section 12A of the Act, and consequentially rejected the plaint.

10. The learned senior counsel for the appellant vehemently submits that even where the Court finds that there was no urgent relief that was maintainable for the plaintiff, the Court cannot reject the plaint. He submits that the Court could have dismissed the application under Section 12A of the Act and referred the plaintiff for mediation, rather than rejecting the plaint itself. In support of his submission, he places reliance on the Judgment of this Court in ***Chandra Kishore Chaurasia v. R.A. Perfumery Works Pvt. Ltd.***, 2022 SCC OnLine Del 3529; the Judgment of the Bombay High Court in ***Kaulchand H. Jogani v. Shree Vardhan Investment & Ors.***, 2022 SCC OnLine Bom 4752; and the Judgment of the Supreme Court in ***Yamini Manohar v. T.K.D.Keerthi***, (2024) 5 SCC 815.

11. We are unable to agree with the submission of the learned senior counsel for the appellant.

12. Section 12A of the Act 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 pre-institution 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, 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).”*

13. The object and intent behind the introduction of Section 12A of the Act is to ensure that the parties first attempt to amicably resolve their dispute before approaching the Court. It is contemplated that in such mediation proceedings not only the disputes would be amicably



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resolved but would be resolved in an expeditious manner, which is the very object of the Act being introduced with a special procedure for the speedy resolution of the commercial dispute.

14. In *Patil Automation (P) Ltd. & Ors. v. Rakheja Engineers (P) Ltd.*, (2022) 10 SCC 1, the Supreme Court, while highlighting the object of the insertion of Section 12A of the Act, has held that where a Suit is instituted violating the mandate of Section 12A of the Act, it must be visited with rejection of the plaint under Order VII Rule 11 CPC. It was held 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.*

*99.2. It is an undeniable reality that courts in India are reeling under an extraordinary docket explosion. Mediation, as an alternative dispute mechanism, has been identified as a workable solution in commercial matters. In other words, the cases under the Act lend themselves to be resolved through mediation. Nobody has an absolute right to file a civil suit. A civil suit can be barred absolutely or the bar may operate unless certain conditions are fulfilled. Cases in point, which amply illustrate this principle, are Section 80CPC*



and Section 69 of the Partnership Act.

99.3. *The language used in Section 12-A, which includes the word “shall”, certainly, goes a long way to assist the Court to hold that the provision is mandatory. The entire procedure for carrying out the mediation, has been spelt out in the Rules. The parties are free to engage counsel during mediation. The expenses, as far as the fee payable to the mediator, is concerned, is limited to a one-time fee, which appears to be reasonable, particularly, having regard to the fact that it is to be shared equally. A trained mediator can work wonders.*

99.4. *Mediation must be perceived as a new mechanism of access to justice. We have already highlighted its benefits. Any reluctance on the part of the Court to give Section 12-A, a mandatory interpretation, would result in defeating the object and intention of Parliament. The fact that the mediation can become a non-starter, cannot be a reason to hold the provision not mandatory. Apparently, the value judgment of the lawgiver is to give the provision, a modicum of voluntariness for the defendant, whereas, the plaintiff, who approaches the court, must, necessarily, resort to it. Section 12-A elevates the settlement under the Act and the Rules to an award within the meaning of Section 30(4) of the Arbitration Act, giving it meaningful enforceability. The period spent in mediation is excluded for the purpose of limitation. The Act confers power to order costs based on conduct of the parties.*

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113. *Having regard to all these circumstances, we would dispose of the matters in the following manner:*

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*



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*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.”*

15. In ***Chandra Kishore Chaurasia*** (supra), the Division Bench of this Court held that the question whether the plaintiff desires any urgent relief is to be decided solely by the plaintiff while instituting a suit; the Court may or may not accede to such a request for urgent *interim* relief, but that is not relevant for determining whether the plaintiff was required to exhaust the remedy of pre-institution mediation.

16. The above view was partially approved by the Supreme Court in ***Yamini Manohar*** (supra), wherein it held that, although the non-grant of *interim* relief will itself not justify the dismissal of the Commercial Suit under Order VII Rule 11 of the CPC for non-initiation of the pre institution mediation, at the same time, a prayer for urgent *interim* relief should not be a guise or mask to wriggle out of and get over the mandate of the Section 12A of the Act. The Court expressed its disagreement with the proposition that the plaintiff has an absolute choice and right to paralyse the operation of Section 12A of the Act merely by making a prayer for urgent *interim* relief; camouflaged and guised to bypass the statutory mandate of pre-institution mediation. The Court observed that such deception and falsity must not be allowed to defeat the mandate of Section 12A of the Act. The Court held that an absolute and unfettered right approach is, therefore, not justified if the pre-institution mediation under





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*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.]”*

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

