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

+ **CS(COMM) 491/2021 & I.A. 13137/2021**

M/S LUBE INDUSTRIES SRLPlaintiff

Through: Appearance not given.

versus

M/S 21ST CENTURYDefendant

Through: None.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

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12.08.2025

I.A. 13139/2021 (filed on behalf of the plaintiff under Section 12A of the Commercial Courts Act, 2015)

1. The Supreme Court in the case of *Dhanbad Fuels (P) Ltd. v. Union of India*¹, has laid down the following findings:-

“62. In light of the aforesaid discussion, we summarise our findings as under:

a. The decision of this Court in Patil Automation (supra) lays down the correct position of law as regards Section 12A of the 2015 Act by holding it to be mandatory in nature.

b. As held in paragraph 104 of the decision in Patil Automation (supra), the declaration of the mandatory nature of Section 12A of the 2015 Act relates back to the date of the Amending Act.

c. As held in paragraph 113.1 of the decision in Patil Automation (supra), any suit which is instituted under the 2015 Act without complying with Section 12A is liable to be rejected under Order VII Rule 11. However, this declaration applies prospectively to suits instituted on or after 20.08.2022.

¹ 2025 SCC OnLine SC 1129



d. A suit which contemplates an urgent interim relief may be filed under the 2015 Act without first resorting to mediation as prescribed under Section 12A of the 2015 Act.

e. Unlike Section 80(2) of the CPC, leave of the court is not required to be obtained before filing a suit without complying with Section 12A of the 2015 Act.

f. The test for “urgent interim relief” is if 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.

g. Courts must also be wary of the fact 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.

h. Even if the urgent interim relief ultimately comes to be denied, the suit of the plaintiff may be proceeded with without compliance with Section 12A if the test for “urgent interim relief” is satisfied notwithstanding the actual outcome on merits.

i. Suits instituted without complying with Section 12A of the 2015 Act prior to 20.08.2022 cannot be rejected under Order VII Rule 11 on the ground of non-compliance with Section 12A unless they fall within the exceptions stipulated in paragraph 113.2 and 113.3 of the decision in Patil Automation (supra).

j. In suits instituted without complying with Section 12A of the 2015 Act prior to 20.08.2022 which are pending adjudication before the trial court, the court shall keep the suit in abeyance and refer the parties to time-bound mediation in accordance with Section 12A of the 2015 Act if an objection is raised by the defendant by filing an application under Order VII Rule 11, or in cases where any of the parties expresses an intent to resolve the dispute by mediation.”

2. Paragraph No.62(i) of the said decision would indicate that suits instituted without compliance with Section 12A of the Commercial Courts Act, 2015 [Act], prior to 20.08.2022, cannot be rejected under Order VII Rule 11 on the ground of non-compliance with Section 12A, unless they fall within the exceptions stipulated in paragraph 113.2 and 113.3 of the decision in ***Patil Automation Private Limited v. Rakheja Engineers Private Limited***².

3. The instant civil suit, since has been instituted prior to 20.08.2022.



Therefore, the Court deems it appropriate to allow the plaintiff to undertake mediation proceedings in terms of Section 12A of the Act.

4. The parties are referred to the Delhi High Court Mediation Centre to undergo pre-institution mediation in accordance with the Section 12 A of the Act. Let the same be concluded before the next date of hearing.

5. List before the mediation centre on 28.08.2025.

6. In the meantime, the proceedings of the instant civil suit are kept in abeyance.

7. Learned counsel appearing for the plaintiff, however, contends that since the defendant has been proceeded *ex parte*, therefore, sending the matter to be mediation will not entail any fruitful result. This argument presupposes failure of the mediation, but the same remains unconvincing as, non-starter can not be the reason to do away with the mediation process.

8. The Court is not inclined to accept the said submission.

9. Even otherwise, the instant civil suit is for recovery of a certain amount, and the Court does not find it appropriate to allow the exemption or the provisions of Section 12A of the Act.

10. Accordingly, the application stands disposed of.

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List this matter before the Court on 16.12.2025.

PURUSHAINDR KUMAR KAURAV, J

AUGUST 12, 2025/P/SP

² (2022) 10 SCC 1