IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL SUIT NO. 124 OF 2025
WITH
INTERIM APPLICATION (L) NO. 20363 OF 2025

1. Phoenix ARC Private Limited }
A private company incorporated }
under the Companies Act, 1956 and }
registered as an Asset Reconstruction }
Company with the Reserve Bank of India}
and having its registered office at }
5 Floor, Dani Corporate Park 158, }
CST Road, Kalina, }
Santacruz East, Mumbai – 400 098. } …Applicant

Versus

1. Future Brands Limited }
A public company incorporated }
under the Companies Act, 1956 }
and having its registered office at }
Knowledge House, Shyam Nagar, }
Jogeshwari Vikhroli Link Road, }
Jogeshwari(E), Mumbai – 400 060. }

2. Future Entertainment Private Limited }
A private limited company incorporated }
under the Companies Act, 1956 }

and having its registered office at }
5th Floor, Sobo Central ,28, P.T. Madan }
Mohan Malviya Road, }
Haji Ali, Tardeo, Mumbai – 400 034. } Respondents

Mr. Shyam Kapadia a/w. Mr. Ranjit Shetty a/w. Mr. Rahul Dev a/w. Ms. Monika Vyas i/b. Argus Partners for the Applicant/Plaintiff.

Mr. Ashish Kamat, Senior Counsel a/w. Mr. Harsh Moorjani, Ms. Petrushka Dasgupta, Ms. Krishna Baruah and Mr. Altamash Qureshi i/b. Link Legal for Defendants.

CORAM : GAURI GODSE J
RESERVED ON : 1st DECEMBER 2025
PRONOUNCED ON : 15th APRIL 2026

JUDGMENT:

BASIC FACTS:

1. This suit is filed for a mandatory injunction directing defendant no.1, to infuse equity of Rs. 250,00,00,000/- into defendant no. 2 in the manner acceptable to the plaintiff and restraining defendant no.1, from selling, transferring, assigning, licensing or otherwise creating third party rights or dealing with the Brands, till the infusion of equity is made by the defendant no. 1. The plaintiff also prays for damages against the

defendants for more than Rs. 500 crores. The interim application is filed for a temporary injunction restraining defendant no. 1 from creating third-party rights or dealing with the Brands. The plaintiff also prays for an interim relief of a mandatory injunction directing defendant no. 1 to deposit Rs. 50,00,00,000/-, i.e. 20% of the equity infusion of Rs. 2,50,00,00,000/- on account of the admission of defendant no. 1 of its liability for the entire capital infusion recorded in the Guarantee Letter.

2. The plaintiff has pleaded that it is involved in the business of asset reconstruction and is registered with the Reserve Bank of India. Defendant no. 1 is a business solutions provider that provides consulting, advertising, management, and creation services to its clients. Defendant no. 1 is a company within the same group of companies as defendant no.2. Defendant no. 1 owns the brands Spunk', Buffalo', 'RIG, and 'AFL' ("the Brands"). According to the plaintiff defendant no. 1 had agreed to infuse equity to the extent of Rs. 2,50,00,00,000/- into defendant no.2, on the basis of which the plaintiff had agreed to restructure the loan facilities availed by defendant no.2. Defendant no.2 is described as the borrower under a Loan

Against Securities (LAS) Facility and a Corporate Loan(CL) facility, originally availed from the original lender, which subsequently stood assigned to the plaintiff since June 2022.

PRELIMINARY OBJECTIONS:

3. When the interim application came up for hearing, a preliminary objection was raised by the defendants that the plaint deserves to be rejected at the threshold under Order VII Rule 11 of the Civil Procedure Code ("CPC") on the ground of non-compliance with the mandatory provision under Section 12-A of the Commercial Courts Act 2015 ("said Act"). It is also argued that the suit is vitiated by material suppressions, including suppression of the plaintiff's own failure to participate in the statutory mediation process, which goes to the very root of maintainability of the suit.

SUBMISSIONS ON BEHALF OF THE DEFENDANTS:

4. The suit is filed on 4th July 2025 without disclosing the stage, status or outcome of the pre-institution mediation under Section 12-A of the said Act. Having approached this Court with unclean hands, the plaintiff is disentitled to any relief. The plaintiff stated in the plaint that the Section 12-A mediation application was filed on 21st March 2025. However, although the

application bears the date 21st March 2025, it was in fact submitted to the Maharashtra State Legal Services Authority only on 4th April 2025, as is seen from the Reply. The defendants received the mediation notice on 9th May 2025, intimating the initiation of pre-institution mediation and directing appearance on 11th June 2025 to convey consent. On that date, the defendants' counsel duly appeared, consented to mediation, and subsequently paid the mediation fee on 8th July 2025. The plaintiff, however, never paid the mediation fee, which directly led to the issuance of a non-starter report dated 20th August 2025, generated after the suit was filed. Neither the non-payment of fees by the plaintiff is disclosed in the plaint, nor the fact that the mediation failed solely due to the plaintiff's default. The plaint is, therefore, vitiated by material suppression, including suppression of the plaintiff's own failure to participate in the statutory mediation process, which goes to the very root of maintainability of the suit.

5. The plaintiff was at all material times, by virtue of communications dated 18th March 2021 and 4th June 2021, aware that no immediate urgent interim relief was warranted. Hence, the plaintiff invoked the pre-institution mediation under

Section 12-A; however, unilaterally abandoned the mediation and, on 4th July 2025, filed the present suit and Interim Application based on a cause of action of 19th August 2023, alleging an artificial and illusory urgency arising from receivables under brand-licensing agreements that had already lapsed on 30th June 2025 and 1st July 2025. To support his submissions, learned senior counsel for the defendants relied upon the Apex Court's decision in ***ITC Limited v. Debts Recovery Appellate Tribunal and Ors***[1].

6. The plaintiff claims "exhaustion" of the Section 12-A process and, simultaneously, seeks exemption under Section 12-A as a prayer in the plaint and the Interim Application. Therefore, the plaintiff's action of initiating pre-institution mediation shows that there was never any urgent interim relief contemplated. The plaintiff's abandonment of the pre-institution mediation process disentitles the plaintiff from seeking an exemption from the mandatory pre-institution mediation requirement to maintain the suit. Thus, the plaint deserves rejection for non-compliance with the mandatory requirement under Section 12-A.

1 (1990) 2 SCC 70

7. To support the submissions for rejection of the plaint at the threshold, learned senior counsel for the defendants relied upon the decisions in ***Dhanbad Fuels Pvt. Ltd. vs. Union of India and Another***[2], ***Patil Automation Private Limited and others vs. Rakheja Engineers Private Limited***[3], ***Yamini Manohar v. T. K. D. Keerthi***[4], ***Shraddha Shelters Private Limited vs. Ekta Housing Private Limited***[5], ***Image Developer Vs Kamla Landmarc Real Estate Holding Pvt Ltd.***[6], ***IIFL Finances Limited Vs Gundecha Estates Pvt. Ltd.***[7], ***ITC Ltd Vs DRAT***[8], ***Asma Lateef Vs Shabbir Ahmed***[9], ***Nagina Choube Vs Ajay Mohan***[10] and ***Dahiben v. Arvindbhai Kalyanji Bhanusali***[11]

SUBMISSIONS ON BEHALF OF THE PLAINTIFF:

8. The plaintiff is the assignee of the loan granted by L & T Finance Limited to defendant no. 2 under an Assignment Agreement dated 29th June 2022. Defendant no. 1 is a company providing consulting, advertising, managing and creation services to its clients and is the owner of brands “Spunk”,

2 (2025) SCC OnLine SC 1129
3 (2022) 10 SCC 1
4 (2024) 5 SCC 815
5 2024 SCC OnLine Bom 3538
6 2025: BHC-OS: 15574
7 2025 : BHC-OS: 11844
8 (1998) 2 SCC 70
9 2024 SCC Online SC 42
10 2025:BHC-OS-10176
11 (2020) 7 SCC 366

“Buffalo”, “Rig” and “AFL” (“Brands”). By a trademark license agreement, defendant no. 1 granted an exclusive license to use the brands/trademarks to defendant no. 2. The royalty income receivable by defendant no. 2 under the trademark agreement was charged in favour of the original lender. Sometime around March 2020, defendant no. 2 defaulted on its obligation to repay. As a key condition for considering the requests made by defendant no. 2 under the One Time Restructuring Framework dated 6th August 2020 ("OTR"), the term of the trademark agreement was extended till 1st July 2025 to align with the repayment schedule under the OTR. The extension letter indicates that defendant no.1 had agreed to extend the trademark agreement to ensure timely inflows of royalty payments to defendant no. 2.

9. Defendant no. 1 also agreed to infuse an amount of Rs. 250,00,00,000/- as equity infusion in defendant no. 2, as and when requested to do so by defendant no. 2, by executing a Guarantee Letter dated 4th June 2021. This Guarantee Letter was an essential precondition for favourably considering the OTR proposal. Thereafter, a Master Restructuring Agreement dated 14th June 2021 ("MRA") was executed inter alia between

the original lender, defendant do. 2, and Catalyst Trusteeship, under which the original lender restructured the entire loan facilities for an amount of Rs. 392,19,09,825/-.

10. Under the MRA, Trademark Agreements, the borrower shall not, without prior written consent of the Security Trustee, allow the Trademark Agreements to be revised, repudiated, lapse, or become vulnerable to termination and shall not transfer, assign, encumber, or otherwise dispose of or create any further charge or encumbrance upon the whole or any part of the receivables. On the date of filing of the suit, an amount of Rs. 514,91,42,038.08/- was due and payable by defendant no. 2 to the plaintiff. Defendant no. 2 defaulted on its obligations under the MRA and related financing agreements in repayment of outstanding debt to the plaintiff. The royalty income receivable by defendant no. 2 under the agreements is charged in favour of the plaintiff as security for repayment of the restructured facilities, and the term of the Trademark License Agreement and Trademark Assignment Agreement was up to 1st July 2025, extendable by 5 years. Therefore, if the Trademark License Agreements and Trademark Assignment Agreement were revised, repudiated or lapsed, the plaintiff

would have been left without any substantial security interest for the outstanding amount of more than Rs. 500 Crores. Hence, the suit was filed on 4th July 2025.

11. The plaintiff, in a bonafide manner, had filed the pre-institution mediation application under Section 12-A of the said Act on the genuine belief that the disputes between the parties could be amicably resolved prior to the said expiry date, i.e. 1st July 2025. The fact that the plaintiff invoked the pre-institution mediation mechanism on 21st March 2025 due to the imminent expiry of the assignment of the receivables from the Brands' license is specifically pleaded by the plaintiff in paragraph 39 of the Interim Application and paragraph 81 of the plaint. The Non-Starter Report dated 20th August 2025 is annexed to the plaintiff's Affidavit-in-Rejoinder filed in the Interim Application. In view of the foundational pleading that the mediation application was filed on 21st March 2025, the Non-Starter Report can be considered while deciding the objection of non-compliance with Section 12-A. The Non-Starter Report was made available only on 20th August 2025, and therefore, it was impossible for the plaintiff to annex it in the Interim Application or the plaint.

12. The plaintiff has pleaded that notices were issued to the defendants for the mediation; however, they failed to participate in the pre-institution mediation till 11th June 2025. It is submitted that in accordance with Section 12-A read with Rule 3(8) of the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018 ("Mediation Rules"), the mediation process was mandatorily required to be completed within three months from the date of receipt of the application for pre-institution mediation by the mediation centre. The prescribed mandatory period of three months expired on 20th June 2025. The plaintiff duly complied with the mandatory requirement under Section 12-A and filed the suit only on 4th July 2025, after the completion of the mandatory three-month period under the Mediation Rules. There is no provision in law requiring a party to persist with the mediation process until a resolution is achieved, notwithstanding the commercial reality of the matter, as this would be counterproductive to the intention of the legislature in introducing Section 12-A.

13. The plaintiff's averment that the pre-institution mediation be "exempted' or "waived' cannot mean that there was a non-compliance of Section 12-A, and the said averment cannot be

used to defeat the legal position and factual reality of the matter. The requirement under Section 12-A has already been exhausted, and accordingly, no exemption under the law is necessary. The plaintiff had no option but to file the suit and Interim Application to safeguard its rights and seek the urgent interim relief.

14. Without prejudice to the argument that there has been full compliance with Section 12-A, it is submitted that in view of the grave urgency as on 1st July 2025, the suit contemplated urgent interim relief as pleaded in the interim application and plaint in view of imminent expiry of Trademark Agreements under which defendant no. 2 was to receive royalty income from the use of the Brands. Such royalty income is one of the prime security interests granted in favour of the plaintiff for securing facilities granted in favour of defendant no. 2, and therefore, if the Trademark License Agreement and Trademark Assignment Agreement are allowed to lapse, irreparable harm and injury would be caused to the plaintiff. In such circumstances, even assuming and not admitting that Section 12-A was not fully complied with, from the standpoint of the plaintiff, there was a clear urgency which necessitated the filing of the suit and interim application. In view of the expiry of the Trademark

License Agreement on 1st July 2025, there was a consequent threat of losing the security interest for an outstanding amount of approximately Rs. 500 crores, thereby causing substantial loss and irreparable harm. Hence, the plaint cannot be rejected at the threshold.

15. The plaintiff disclosed the filing of the application under Section 12-A to exhaust the remedy of pre-institution mediation and settlement. Considering the urgency to seek interim relief from the court, the suit is filed after the expiry of the initial three-month period under sub-rule (8) of Rule 3 of the said Mediation Rules, to complete the mediation process. The non-starter report was issued after the suit was filed. The cause of action to seek urgent interim relief arose after the expiry of the initial three-month period. Hence, there is no suppression of any material fact that would warrant dismissal of the suit at the preliminary stage. The preliminary objections raised by the defendants are therefore without any substance.

CONSIDERATION OF SUBMISSIONS:

16. To consider the rival submissions, I have carefully examined the pleadings in the plaint. The pleadings in the plaint reveal the following facts relevant to the preliminary objections:

a) The plaintiff is the assignee of the loan granted by L & T Finance Limited to defendant no. 2. Under a trademark license agreement with defendant no. 1, the royalty income receivable by defendant no. 2 was charged in favour of the original lender. Defendant no. 2 defaulted on its obligation to repay. As per the One Time Restructuring Framework, the term of the trademark agreement was extended till 1st July 2025, to ensure the timely inflow of royalty payments to defendant no. 2.

b) Defendant No. 1 also agreed to infuse an amount of Rs. 250,00,00,000/- as equity infusion in defendant no. 2. A Master Restructuring Agreement was executed between the original lender, defendant do. 2 and Catalyst Trusteeship. Under the agreements between the parties, without the prior written consent of the Security Trustee, the Trademark Agreements could not be revised or repudiated, and no transfer, assignment, encumbrance, or other disposition of, or creation of any further charge or encumbrance upon the whole or any part of the receivables was permitted.

c) On 21st March 2025, the plaintiff filed the pre-institution mediation application before the mediation centre. Notices were issued to the defendants for the mediation.

d) As the term of the Trademark License Agreement and Trademark Assignment Agreement was up to 1st July 2025, extendable by five years, the suit was filed on 4th July 2025, as on the date of filing of the suit, an amount of Rs. 514,91,42,038.08/- was due and payable by defendant no. 2 to the plaintiff. Hence, to protect the plaintiff's security interest for the outstanding amount of more than Rs. 500 Crores, the suit was filed on 4th July 2025, as there was a necessity to seek urgent interim relief.

17. The defendants have prayed for the rejection of the plaint on the ground of non-compliance with Section 12-A of the said Act. There is no dispute that the plaintiff had initiated the pre-institution mediation process by filing the application as contemplated under the said Mediation Rules. The mediation was not concluded; however, a non-starter report was not issued on the date when the suit was filed. The defendants submitted that, even according to the plaintiff, no urgent interim

relief was contemplated; therefore, the pre-institution mediation was initiated. Hence, according to the defendants, there would not be any question of exemption from compliance with the mandatory requirement under Section 12-A of the said Act. Thus, according to the defendants, since the pre-institution mediation process was not completed as required under the said Mediation Rules before the suit was filed, it cannot be said that the requirement under Section 12-A was complied with. Hence, the plaint deserves to be rejected at the threshold in view of the bar under Section 12-A.

18. For deciding whether a suit deserves rejection of the plaint at the threshold under Order VII Rule 11 of the CPC, only the averments in the plaint and its supporting documents can be seen. Pleadings by the defendants in any form, including the affidavit-in-reply to the plaintiff’s application for interim relief, cannot be considered for rejection of the plaint at the threshold under Order VII Rule 11 of the CPC. However, the learned senior counsel for the defendants argued extensively on the suppression of facts, relying on the contents of the defendants' affidavit-in-reply to the plaintiff’s application for interim relief. Dismissal of a suit on the ground of suppression of material

facts is different from the rejection of the plaint at the threshold under Order VII Rule 11 of the CPC. However, since both parties referred to the defendants' affidavit-in-reply and the plaintiff's rejoinder affidavit, I have considered them to examine the allegation of suppression of material facts, warranting the dismissal of the suit at the preliminary stage.

POINTS FOR CONSIDERATION:

19. Therefore, in the present case, the points to be considered are (i) whether the initiation of the pre-institution mediation process can be termed as due compliance with the mandatory requirement under Section 12-A?, (ii) when the application under sub-section (1) of Section 12-A is filed, whether the bar under Section 12-A would apply to a suit filed before the issuance of a non-starter report?, (iii) whether there is any suppression of material facts, and (iv) whether the suit can be dismissed at a preliminary stage on the allegation of suppression of material facts?

ANALYSIS:

20. Learned counsel for the plaintiff contended that after the application under Section 12-A was filed, the Mediation Centre issued a notice to the defendants to appear on 24th April 2025;

however, the defendants did not appear. It is contended by defendant no. 1 that the notice was not received. Thereafter, the mediation centre issued a notice to the defendants to appear on 8th May 2025. According to the defendants, a copy of the application was not enclosed. However, after the final notice to the defendants, they appeared on 11th June 2025 and consented to mediation. Accordingly, the defendants also paid the mediation fees on 8th July 2025. It is therefore submitted on behalf of the defendants that the plaintiff suppressed the material facts that they abandoned the mediation and did not pay their share of the mediation fees; hence, a non-starter report was issued. To support the submissions for dismissal of the suit on the ground of suppression, learned senior counsel relied upon the decision of this Court in ***Nagina Ramsagar Choube***. He submitted that this court dismissed the suit at the preliminary stage on the ground of suppression of material facts. Hence, by applying the same principles, even this suit must be dismissed on the ground of suppression of material facts.

21. In the present case, from the pleadings, it is apparent that the non-starter report was issued after the suit was filed. The

non-starter report states that the date of application for pre-institution mediation is 21st March 2025. The non-starter report dated 20th August 2025 records that on 5th August 2025, the plaintiff requested that the matter be closed, that is, after the suit was filed. According to the plaintiff, after the expiry of the initial three-month period for completion of the mediation process, the plaintiff filed the suit due to the imminent urgency to seek interim relief. It is nobody's case that the initial three-month period was extended by consent as required under the first proviso to sub-section (3) of Section 12-A read with sub-rule (8) of Rule 3 of the Mediation Rules. Therefore, there was nothing for the plaintiff to disclose in the plaint at the time of filing the suit, except the filing of the application under sub-section (1) of Section 12-A and issuance of the notice by the Authority. The plaintiff has therefore disclosed that the application was filed and notice was issued to the defendants. Therefore, there is no suppression of facts. There is no substance in the defendants' argument that, because they deposited the mediation fees and the plaintiff refused to deposit the fees, the plaintiff abandoned the mediation. Deposit of the fees by the defendants, after the expiry of the initial three-month period and in the absence of any extension of the time by

consent of the parties, as provided under sub-rule (8) of Rule 3 of the said Mediation Rules, cannot be termed as any abandonment of the mediation process by the plaintiff only because the plaintiff did not deposit the mediation fees. It is important to note that, in the meantime, the plaintiff filed the suit seeking urgent interim relief on the cause of action that arose during the pendency of the mediation process, i.e. expiry of the term of the trademark agreements. The plaintiff's intimation to close the mediation is after filing the suit. Thus, there is neither any abandonment of the mediation process on the part of the plaintiff, nor is there any suppression of fact. Hence, there is no merit in the allegation made by the defendants regarding the suppression of facts. The decision in ***Nagina Ramsagar Choube*** would not be of any assistance to the defendants. Hence, in the facts of the present case, it is not necessary to discuss the point as to whether the suit can be dismissed at a preliminary stage on the allegation of suppression of material facts.

22. The law on the mandatory requirement under Section 12-A of the said Act and grounds available for the rejection of the plaint at the threshold for non-compliance with the said provision is no longer *res integra*.

Legal Position:

23. The Apex Court in ***Dhanbad Fuels Pvt. Ltd.*** observed that the aim and object of Section 12-A is to ensure that, before a commercial dispute is filed in court, alternative means of resolution are adopted, so that only genuine cases come before the courts. The said procedure has been introduced to decongest the regular courts. The Apex Court held that the settlement arrived at in the pre-institution mediation and settlement process under Section 12-A shall have the same status and effect as if it was an arbitral award on agreed terms under Section 30(4) of the Arbitration and Conciliation Act, 1996 by deeming the mediated settlement on a par with an arbitral award, providing strong legal backing to the mediation process and ensures that the enforceability of the same is met with fewer hurdles, thereby increasing the attractiveness of mediation as an alternative to litigation.

24. The Apex Court referred to the legal principles settled in ***Patil Automation*** and also discussed the power of the Court to reject the plaint, which is held to be a drastic measure, as it terminates a civil action at the threshold, and therefore must be exercised strictly in accordance with the conditions enumerated under Order VII Rule 11 of the CPC. The Apex Court held that

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

25. In ***Novenco Building and Industry A/S. vs. Xero Energy Engineering Solutions Pvt. Ltd. and Another***[12], the Apex Court

12 2025 SCC Online SC 2278

held that a plaintiff can be exempted from the requirement of Section 12-A only when the plaint and the documents attached to it clearly show a real need for urgent interim intervention and on a wholesome reading of the plaint and the material annexed to the plaint ought to disclose the need for urgent relief. It is held that the court must look at the plaint, pleadings and supporting documents to decide whether urgent interim relief is genuinely contemplated, and the court may also look for immediacy of the peril, irreparable harm, risk of losing rights/assets, statutory timelines, perishable subject-matter, or where delay would render eventual relief ineffective.

26. In ***Novenco Building and Industry***, the prayer for injunction was made in a suit alleging continuing infringement of patent and design rights. The Apex Court held that a prayer for an injunction cannot be characterised as mere camouflage to evade mediation when it was a real grievance founded on the continuing nature of infringement and irreparable prejudice likely to be caused. It was held that the court must look beyond the time lag and evaluate the substance of the plea for interim protection. The Apex Court held in paragraph 24 that ***"…..The insistence of pre-institution mediation in a situation of ongoing***

infringement, in effect, would render the plaintiff remediless allowing the infringer to continue to profit under the protection of procedural formality. Section 12A of the Act was not intended to achieve such kind of anomalous result."

27. The legal principles for rejection of the plaint under Order VII Rule 11 of the CPC are settled by the Hon'ble Apex Court in the decision of ***Dahiben***. The Apex Court held that the power conferred on the court to terminate a civil action is a drastic one, and the conditions enumerated in Order VII Rule 11 are required to be strictly adhered to.

CONCLUSIONS:

28. n view of the well-settled legal principles in the decisions of the Apex Court, as discussed in the above paragraphs, a discussion of the other decisions of this court relied upon by the learned senior counsel for the defendants is not necessary. The decision of the Apex Court in ***Asma Lateef*** concerned a challenge to orders arising out of an execution application under Section 47 of the CPC and thus would not be relevant to the controversy to be decided in the present suit. After a meaningful reading of the plaint as a whole, each suit has to be examined

in the facts and circumstances of that case for ascertaining whether the bar under Section 12-A applies.

29. The mandatory requirement under Section 12-A of the said Act prohibits the filing of a suit without exhausting the remedy of pre-institution mediation in accordance with the manner and procedure prescribed by the Mediation Rules made by the Central Government. It is a well-settled legal principle that when urgent interim relief is contemplated from the plaintiff's standpoint, a suit can be filed without exhausting the remedy of pre-institution mediation. Thus, when an urgent interim relief is not contemplated, it is mandatory upon the plaintiff to first exhaust the remedy of pre-institution mediation in the manner prescribed under the rules. Therefore, instituting a suit under the said Act in the context of Section 12-A of the said Act would mean filing the suit after exhausting the remedy of pre-institution mediation and settlement, unless an urgent interim relief is contemplated.

30. When a plaintiff claims that the bar under Section 12-A will not apply as the plaintiff has exhausted the remedy under the said provision, the Court must ascertain whether the remedy is exhausted in accordance with the prescribed rules. Hence, it

is necessary to understand the purpose and effect of the remedy provided for mediation and settlement under Section 12-A. The object of providing the remedy of pre-institution mediation under Section 12-A is to enable the parties to arrive at a settlement which can be reduced into writing. As per sub-section (5) of Section 12-A of the said Act, such a settlement in writing shall be dealt with in accordance with the provisions of Sections 27 and 28 of the Mediation Act 2023. Subject to the provisions of Section 28 of the Mediation Act to challenge the mediated settlement, a mediated settlement can be enforced as provided under Section 27, in accordance with the provisions of the CPC in the same manner as if it were a judgment or decree passed by a court. The Apex Court in ***Dhanbad Fuels*** held that a mediation settlement under Section 12-A of the said Act has been given the same status and effect as if it were an arbitral award on agreed terms under sub-section (4) of Section 30 of the Arbitration Act. Thus, if the parties sign a settlement in the mediation process under Section 12-A, the settlement, reduced into writing, would be enforceable as provided under Section 27 of the Mediation Act, subject to challenge under Section 28 of the Mediation Act. Therefore, the parties can enforce the mediated settlement, thereby avoiding lengthy litigation and

enabling the commercial dispute to be resolved in an expeditious manner.

31. To achieve the object of speedy disposal of a commercial dispute, sub-section (3) of Section 12-A provides that, notwithstanding anything contained in the Legal Services Authorities Act 1987, the authority under the said Mediation Rules shall complete the process of mediation within a period of 120 days (four months) from the date of application made by the plaintiff under sub-section (1). The first proviso to sub-section (3) permits extension for a further period of 60 days (two months), with the consent of the parties, to complete the process. Thus, keeping in mind the object of the said Act for speedy disposal of commercial suits, a time limit is provided for the Authority authorised under the said Mediation Rules to complete the process within a period of four months from the date of application made by the plaintiff, with an option of a further two-month extension with the consent of the parties. In view of the first proviso to sub-section (3), the initial period can be extended with the consent of the parties.

32. A reading of the provision of Section 12-A as a whole indicates that the process for exhausting the remedy of pre-

institution mediation and settlement under Section 12-A is divided into three parts. Firstly, the obligation is on the plaintiff to file an application as contemplated under sub-section (1), secondly, a time limit is provided for the Authority under the said Mediation Rules to complete the process of mediation within a period of four months from the date of application made by the plaintiff under sub-section (1), and thirdly, the time of four months provided under sub-section (3) can be extended for a further period of two months with the consent of the parties. Thus, the maximum time limit provided under Section 12-A of the said Act to complete the process of exhausting the remedy, of pre-institution mediation and settlement, is six months from the date of application made by the plaintiff under sub-section (1). The extension of two months under the first proviso to sub-section (3) involves the participation of the defendant. Thus, the question of a two-month extension would arise only if the defendant appears in the mediation process and consents to it.

33. As per the second proviso to sub-section (3) of Section 12-A of the said Act, the period during which the parties remain occupied with the pre-institution mediation is excluded for the computation of the period of limitation under the Limitation Act.

Thus, the whole idea of exhausting the remedy of pre-institution mediation and settlement provided under Section 12-A is to enable the parties to arrive at an amicable settlement that can be enforced, thereby ending the commercial dispute speedily and preventing the parties from going through the lengthy process of a suit. However, filing an application under sub-section (1) of Section 12-A would not take away the plaintiff's right to file a suit in the event a situation arises where the plaintiff is required to seek any urgent interim relief from the court. Only because the plaintiff applied for exhausting the remedy under Section 12-A, because, as on that date, the urgent interim relief was not contemplated, would not preclude the plaintiff from filing a suit at a later stage, if, according to the plaintiff, a situation has arisen to seek urgent interim relief from the Court. If a plaintiff is prohibited from filing a suit for seeking urgent interim relief only on the ground that an application to exhaust the remedy of mediation and settlement is filed and the process is not completed as provided under the said Mediation Rules, it would be contrary to the well-established legal principle that if urgent interim relief is contemplated in the suit from the standpoint of the plaintiff, the bar under Section 12-A would not apply.

34. The mandatory requirement under Section 12-A of the said Act is a remedy for mediation and settlement. Such a mandatory requirement that provides a "*remedy*" that may result in a settlement in writing, having the force of a decree that can be enforced/executed, cannot be interpreted to the extent of taking away a substantial civil right of a party to seek urgent interim relief from the court, which is also provided under sub-section (1) of Section 12-A of the said Act.

35. In the exercise of the powers conferred by sub-section (2) of Section 21-A read with sub-section (1) of Section 12-A of the said Act, the Central Government has notified the said Mediation Rules. Rule 3 of the said Mediation Rules requires a party to a commercial dispute to make an application to the Authority in the prescribed form for initiating the mediation process. Thereafter, the Authority has to issue notice in the prescribed form to the opposite party in the manner provided under the said Mediation Rules. If there is no response, the Authority shall issue a final notice, and when the notice remains unacknowledged or if the opposite party refuses to participate in the mediation process, the Authority shall treat the mediation process as a non-starter and make a report as per the

prescribed form and endorse the same to the applicant and the opposite party. If the opposite party appears and both parties consent to participate in the mediation process, the Authority shall assign the commercial dispute to a mediator. Sub-rule (8) of Rule 3 provides that the Authority shall complete the process within three months, subject to a two-month extension with the consent of the parties.

36. Thus, after the application, under sub-rule (1) of Rule (3) of the said Mediation Rules is filed by the plaintiff, the further process depends upon the service of notice upon the opposite party and the consent, if any, given by the parties after the opposite party appears. If, for any reason, the service of notice and issuance of a non-starter report remains incomplete, it would not take away the plaintiff's right to file a suit if, for the reasons pleaded by the plaintiff, an urgent interim relief is contemplated on the date of filing of the suit. The only criterion to be examined would be, that despite filing of the application for exhausting the remedy of pre-institution, mediation and settlement, whether on the date of filing of the suit an urgent, interim relief is contemplated from the plaintiff's standpoint, even if a non-starter report is not made and endorsed by the

Authority under sub-rule (6) of Rule 3 of the said Mediation Rules.

37. In the present case, the plaintiff pleaded that, as of the date of filing the suit, the amount was overdue by more than Rs. 500 crores. The cause of action arose when defendant no.1 failed to infuse equity by 3rd September 2023, as per the notice dated 19th August 2023. The cause of action arose again on 29th December 2023, when defendant no.1 was once again called upon to infuse equity. Then the cause of action arose again on 5th January 2023, when defendant no.1 failed to infuse equity as per the notice dated 29th December 2023. The plaintiff thus pleaded that the suit is within the limitation. The suit is filed on 2nd July 2025.

38. The plaintiff filed this suit after initiating the mandatory pre-institution mediation process prescribed under the said Mediation Rules, but did not annex a non-starter report under the Rules. It is pleaded that the application under Section 12-A was filed on 21st March 2025, and notices were issued to the defendants. So the three-month period under sub-rule (8) of Rule 3 of the said Mediation Rules expired on 20th June 2025, which could have been extended upto 20th August 2025 by

consent of the parties. However, according to the plaintiff, the term of the agreements expired on 30th June 2025; hence, the urgency to seek interim relief arose.

39. On reading the plaint as a whole, when looked from the standpoint of the plaintiff, the urgency for an interim relief is seen on account of the expiry of the agreements which formed the basis of the security interest created in favour of the plaintiff. According to the plaintiff, defendant no. 1 has fraudulently and dishonestly made a promise of equity infusion without the intention of performing it. It is also pleaded that defendant no. 2 colluded with defendant no.1 in order to obtain the Restructured Facilities to cause the original lender to believe that it was going to receive equity infusion from defendant no.1. After the pre-institution mediation and settlement application was filed and processed, during the pendency of completion period under the said Mediation Rules, the term of the agreements, was expiring. Hence, the plaintiff filed the suit with an application to secure the plaintiff's interest. Considering the due payment of more than Rs. 500 crores, the plaintiff’s rights and interests needed to be protected by urgent interim reliefs directing the defendants to provide adequate security and restraining them from creating

third-party interest or encumbering their assets. Therefore, the aforesaid facts and circumstances show that from the plaintiff's standpoint, an urgent interim relief is contemplated on the date of filing the suit. Therefore, it cannot be said that an illusory cause of action is pleaded as a result of clever drafting. Hence, the legal principles settled by the Apex Court in ***ITC Ltd.*** would not be of any assistance to the objections raised by the defendants.

40. Sub-section (3) of Section 12-A of the said Act provides for a period of 120 days from the date of application under sub-section (1) of Section 12-A of the said Act to the Authority under the said Mediation Rules to complete the process of mediation, with a proviso to sub-section (3) for extension of the said period for further 60 days with consent of the parties. However, under sub-rule (8) of Rule 3 of the said Mediation Rules, the Authority is duty-bound to ensure that the mediation process is completed within three months, subject to a two-month extension with the consent of the parties. The non-starter report can be issued as provided under sub-rules (4) or (6) of Rule 3 of the Mediation Rules in the event the opponent fails to appear or refuses to participate in the mediation process. The non-starter report

annexed to the rejoinder affidavit shows that the application for pre-institution mediation was filed on 21st March 2025, that the applicant did not pay the mediation fees, and that, on 5th August 2025, the applicant requested that the matter be closed. The notice to pay the mediation fee annexed to the rejoinder affidavit is dated 20th June 2025. Thus, the Authority issues the notice to pay the mediation fee on the last day of the initial three-month period provided under sub-rule (8) of Rule 3 of the said Mediation Rules. It is nobody's case that the period was extended by consent, as contemplated under the Mediation Rules. Hence, after the expiry of the initial three-month period, the plaintiff filed the suit on 2nd July 2025, along with an application for interim relief.

41. While deciding the preliminary objection for rejection of the plaint at the threshold under Order VII Rule 11 of the CPC, if the pleadings beyond the plaint, that is, the pleadings and documents in the affidavit-in-reply and the rejoinder affidavit filed in the application for interim relief, are ignored, the plain reading of the plaint can be considered. As per the pleadings in the plaint, the application under Section 12-A was filed on 21st March 2025. The initial three-month period provided under the

said Mediation Rules expired on 20th June 2025. According to the plaintiff, the suit contemplated urgent interim relief to protect the plaintiff's interest as the trademark agreements expired on 1st July 2025. Thus, even as per the pleadings in the plaint, the suit is filed after expiry of the initial three-month period for completing the pre-institution mediation process as contemplated under the said Mediation Rules. Thus, mere non-issuance of a non-starter report by the Authority would not preclude the plaintiff from filing the suit on the ground that the plaintiff has exhausted the remedy under section 12-A of the said Act for pre-institution mediation and settlement. Even otherwise, according to the plaintiff, on the date of filing of the suit, urgent interim relief was contemplated. Hence, in view of the well-settled legal principles, the bar under Section 12-A would not apply, as the plaintiff's pleadings show that from the plaintiff's standpoint, urgent interim relief is contemplated.

35. In the present case, based on the averments in the plaint and the supporting documents, the cause of action is pleaded for securing the plaintiff's interest in recovering amounts due and safeguarding the plaintiff's rights. Therefore, the need to seek urgent interim relief is established in view of the facts and circumstances discussed in detail in the above paragraphs. The

legal principles settled by the apex court in ***Novenco Building and Industry*** squarely apply to the facts of the present case. Despite a valid basis to seek urgent interim relief from the Court, insistence on waiting for a non-starter report can render a plaintiff remediless, thereby permitting a defaulting party to profit from procedural technicalities. Such an insistence would defeat the right given under Section 12-A to file a suit seeking urgent interim relief without exhausting the remedy of pre-institution, mediation, and settlement. Such attempts by a defendant to raise objections to apply the bar under Section 12-A of the said Act, with no substance on any of the grounds for rejection of the plaint at the threshold, defeat the very object of the Commercial Courts Act, namely, the speedy disposal of suits. There is no ground to reject the plaint at the threshold under Order VII Rule 11 of the CPC. The bar under Section 12-A of the said Act shall not apply to the present suit.

42. For the reasons recorded above, the preliminary objections raised by the defendants are rejected.

(GAURI GODSE J)