

IN THE HIGH COURT AT CALCUTTA

ORIGINAL SIDE

COMMERCIAL DIVISION

Present:

The Hon'ble Justice Krishna Rao

G.A. (Com) No. 3 of 2025

In

C.S. (Com) No. 70 of 2025

Tirupati Vancom Private Limited

Versus

James Glendye & Co. Private Limited & Ors.

Mr. Krishnaraj Thaker, Sr. Adv.

Ms. Sreenika Thaker

Ms. Sreenita Ghosh Dastidar

Mr. B. Chakraborty

Ms. Sneha Singhania

Ms. Rishita Sarkar

Ms. Shabana Khatun

...for the plaintiff

Mr. Zeeshan Haque

Mr. Paritosh Sinha

Mr. K.K. Pandey

Ms. Pooja Sett
Ms. Sonia Nandy
Ms. Mallika Bothra

..... for the defendant no.1

Mr. Ratnanko Banerji, Sr. Adv,
Mr. Rudrajit Sarkar
Mr. Debangshu Dinda
Mr. Jai Kumar Surana
Mr. Dhruv Surana
Mr. Abhimonyu Roy
Ms. Arundhuti Barman Roy

..... for the defendant nos.2 & 3

Hearing Concluded On : 30.07.2025

Judgment On : 08.08.2025

Krishna Rao, J.:

1. The defendant nos. 2 and 3 have filed the present application being G.A. (Com) No. 3 of 2025 praying for revocation of leave under Section 12A of the Commercial Courts Act, 2015 and for dismissal of the suit.
2. Counsel for the defendant nos. 2 and 3 submits that the plaintiff failed to provide any ground or reason for dispensation of pre-institution mediation under Section 12A of the Commercial Courts Act, 2015.
3. Mr. Ratnanko Banerji, Learned Senior Advocate submits that by an order dated 16th May, 2025, this Court has dispensed with the requirement of compliance of Section 12A of the Commercial Courts

Act, 2015 without assigning any reason. He submits that on 20th May, 2025, this Court has taken up the application being G.A. (Com) No. 1 of 2025 in C.S. (Com) No. 70 of 2025 for hearing and by consent of the parties, this Court has appointed one Senior Advocate as Mediator to resolve the disputes and differences raised in the suit between the parties. He submits that the plaintiff had agreed for mediation and as such there was no urgency in the suit.

4. Mr. Banerji submits that the plaintiff has filed the instant suit by the strength of an arbitration proceeding filed by the defendant nos. 2 and 3 and an award was passed in favour of the defendant nos. 2 and 3. Thereafter applications under Section 34 of the Arbitration and Conciliation Act, 1996 were filed but the same were dismissed by the judgment dated 4th September, 2024. He submits that thereafter an appeal was preferred under Section 37 of the Arbitration and Conciliation Act, 1996 and the appeal was also dismissed by an order dated 5th March, 2025. He submits that the plaintiff had the knowledge with respect to the award dated 29th June, 2023 but the plaintiff has filed the suit in the year 2025 after the period of two years from the award and thus there is no urgency.
5. Mr. Banerji in support of his case relied upon the judgment in the case of ***Dhanbad Fuels Private Limited vs. Union of India & Anr.*** reported in **2025 SCC OnLine SC 1129** and submits that at the time of grant of dispensation of the provisions of Section 12A of the Commercial Courts Act, 2015, the Court has to see the cause of action

and the prayer of urgent relief. He submits that in the present case, the cause of action alleged to have been arose in the year 2023 and the plaintiff has filed the present suit in the month of May, 2025 and as such it cannot be said that the suit filed by the plaintiff contemplate urgent relief.

6. Mr. Banerji submits that there is no ground for urgency made out in the plaint, thus the leave granted under Section 12A of the Commercial Courts, Act, 2015 to dispensation with pre-institution mediation is liable to be revoked and suit filed by the plaintiff is to be dismissed.
7. *Per contra*, Mr. Krishnaraj Thaker, Learned Senior Advocate representing the plaintiff submits that in the month of January, 2012, the defendant no.3 on behalf of the defendant nos. 2, 5 and 7 approached the Director of the plaintiff and represented that the defendant no.1 was the lessee of the premises no. 6, Jawaharlal Nehru Road, Kolkata – 700 013. The defendant no. 2 along with the defendant nos. 4 and 6 whose directors were the defendant nos. 3, 5 and 7 had entered into a Share Purchase Agreement dated 24th March, 2011 with the defendant nos. 8 to 19 to acquire all the shares of and in defendant no.1. The defendant nos. 3, 5 and 7 made over a copy of the Share Purchase Agreement dated 24th March, 2011 to the plaintiff and relying on the representations made by the defendant nos. 3, 5 and 7 on behalf of the defendant nos. 2, 4 and 6, the plaintiff agreed to purchase 18% of the total issued, subscribed and paid up equity shares of the defendant no.1 for consideration of Rs. 14.72 crores.

- 8.** Mr. Thaker submits that on 21st June, 2012, a Memorandum of Understanding was entered between the defendant no. 2 as transferor and the plaintiff as transferee and the defendant nos. 4 and 6 being the confirming party. He submits that in between 17th January, 2012 to 30th May, 2012, the plaintiff paid an aggregate amount of Rs. 4,66,88,582.94 to the defendant no. 2.
- 9.** By referring the said Memorandum, Mr. Thaker submits that as per Clause 9, if in case due to any reason the Share Purchase Agreement is cancelled or terminated, the transferee shall be entitled to the refund of the entire money until then paid by the transferee to the transferor immediately upon the transferor receiving the same from the present shareholders and/or the Company, as the case may be.
- 10.** Mr. Thaker submits that though the defendant no. 2 has got an award in the month of June, 2023 but the same was challenged before the Court by an application under Section 34 of the Arbitration and Conciliation Act, 1996 but the same was dismissed. The defendant no. 2 had further preferred an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 and the said appeal was also dismissed on 5th March, 2025, thus it cannot be said that cause of action for filing of the case arose in the month of June, 2023.
- 11.** Mr. Thaker submits that the defendant no. 2 along with the defendant nos. 8 and 9 have filed a suit being C.S. (Com) No. 764 of 2024 wherein the plaintiff has been made as party being defendant no. 4 wherein the

defendant no. 2 have prayed for declaration declaring that the plaintiffs are discharged of all liabilities to the defendant nos. 3 and 4 in respect of amounts of Rs. 69,47,250/- and Rs. 6,57,90,250/- together with interest thereon upon deposit the same with the Registrar, Original Side of this Court.

- 12.** Mr. Thaker submits that being aggrieved with the order passed in an appeal under Section 37 of the Arbitration and Conciliation Act, 1996, Deepak Bhargava & Ors. had preferred an SLP before the Hon'ble Supreme Court wherein by an order dated 9th May, 2025, the Hon'ble Supreme Court has passed an order by permitting the first respondent to withdraw the principal amount of Rs. 19,92,30,500/- from the Registrar of this Court and it was further directed the Registrar of this Court that the remaining amount shall be invested by the High Court in a fixed deposit with any Nationalized bank with auto renewal facility till disposal of the appeal.
- 13.** Mr. Thaker submits that the defendant no. 1 has received the amount and as per Clause 9 of the Memorandum of Understanding, the defendant no. 1 ought to have pay the amount to the plaintiff but has not paid, accordingly, on 14th May, 2025, the plaintiff has filed the present suit with the prayer for urgent relief and for dispensation of Section 12A of the Commercial Courts Act, 2015.
- 14.** Mr. Thaker submits that the plaintiff in the plaint had categorically pleaded the urgency stating the fact that by a letter dated 12 May,

2025, the defendant no. 1 has forwarded the order dated 9th May, 2025, passed by the Hon'ble Supreme Court wherein the Hon'ble Supreme Court has permitted the defendant no. 2 to withdraw an amount of Rs. 19,92,30,500/- from the amount deposited before this Court. He further submitted that the defendant no. 1 has also instituted a suit being C.S. (Com) No. 764 of 2024) and in the said suit, mediation between the parties, have failed and no purpose would be served for institution of mediation process. Mr. Thaker in support of his submission has also relied upon the judgment in the case of ***Dhandbad Fuels Private Limited (supra)*** and the judgment in the case of ***Gavrill Private Limited vs. Maira Fabricators Private Limited*** reported in ***2023 SCC OnLine Cal 2443*** and submits that the expression "contemplated" to express the intention that an interim relief may be required at the time of filing of the suit or may be required any time the defendant expresses an intention to do some act to defeat the decree to be passed.

15. Mr. Thaker further relied upon an unreported judgment passed by this Court in the case of ***Mahesh Thakur vs. Om Prakash Bhartia & Ors.*** in ***C.S. (Com) No. 568 of 2024*** dated ***8th April, 2025*** wherein this Court held that the plaintiff has elaborately explained the cause of action to file the present suit and thus it cannot be said that the plaint does not disclose cause of action.
16. The issue involved in the present application whether the leave granted to the plaintiff by dispensing with the requirement of provisions of

Section 12A of the Commercial Courts, Act, 2015, is liable to be revoked or not?

17. The plaintiff has filed the suit praying for the following reliefs:

“a) Declaration that the Award dated 29th June, 2023 made in the arbitral reference between the defendants is not binding on and does not affect the right, title and interest of the plaintiff in respect of 18% shares of and in the Defendant no.1;

b) Decree for Rs. 26,92,84,668/- (Rupees Twenty-Six Crores Ninety-Two lakhs Eighty-four thousand Six hundred and Sixty-eight only) as stated in paragraph 32 above against the defendants and each of them jointly and severally;

c) Decree for Rs. 25,05,00,000/- (Rupees Twenty-Five Crore and Five lakhs only) as stated in paragraph 34 above against the defendants and each of them jointly and severally;

d) Alternatively, enquiry into damages and decree for such sum as may be found upon enquiry.

e) Perpetual the injunction restraining defendants from withdrawing any amount deposited with the Registrar Original Side of this Hon'ble Court pursuant to the orders made in AP no. 664 of 2024 without making payment of the plaintiff's claims as stated in paragraph 32 and 34 above;

f) The amount deposited with the Registrar Original Side of this Hon'ble Court pursuant to orders made in AP no. 664 of 2024 be made over to the plaintiff in pro tanto satisfaction of its claims;

g) Pendente lite interest and interest on judgment at 12% pa till realization

h) Receiver;

i) Injunction;

j) Attachment;

k) Cost;

l) Further or other reliefs.”

- 18.** By an order dated 16th May, 2025, this Court passed the following order granting dispensation to the requirement of compliance of Section 12A of the Commercial Courts, Act, 2015.

“The Court: In view of the urgency pleaded on behalf of the plaintiff, the plaint is presented and admitted subject to scrutiny by the Department. Leave under Order II Rule 2 of the Code and Clause 12 of the Letters Patent, 1865 is granted. The requirement of compliance under Section 12A of the Commercial Courts Act, 2015 is also dispensed with.”

- 19.** The defendants have instituted an arbitral proceeding in which the plaintiff was not the party and Award was passed on 29th June, 2023. As per Memorandum of Understanding, 18% of the total shares of the defendant no.1 was to be assigned to the plaintiff for which the plaintiff had duly paid the full amount to the defendant no.1. The defendants have failed and refused to transfer 18% shares of the defendant no.1 to the plaintiff, the plaintiff is entitled to get an amount of Rs. 11,24,78,832.94 being the aggregate amount paid by the plaintiff as consideration for acquiring such shares.
- 20.** The defendant no.1 claims that it has already deposited a sum of Rs. 26,34,82,664.36 before this Court pursuant to orders passed by this Court and thereby discharged its liability to repay the plaintiff. The defendant no.2 is taking steps to withdraw the said amount and has

instituted an Execution Case No. 424 of 2024 for realization of the said amount.

- 21.** The Learned Sole Arbitrator has passed the following Award dated 29th June, 2023, against the defendant no.1:

“It is not in dispute that the transaction between the parties is a commercial transaction. The claimant has been deprived of the use of the aforesaid money and the aforesaid amount which the Claimant paid was lying at the disposal of the Respondents for its business. Considering all these facts, the Tribunal grants interest at the rate of 9% per annum which has to be paid by the Respondents to the Claimants on the aforesaid amount of Rs.19,92,30,500/- from the month of December, 2019, till the date of the Award at a rate of 9% per annum, which comes to about Rs.26,34,82,336.25/- in total (i.e. Rs.19,92,30,500/- as principal and Rs.6,42,51,836.25/- by way of interest). Such amount has to be paid to the Claimant by the Respondents within a periods of 6 weeks from date. Failing which the Respondents will have to pay the aforesaid amount of Rs. 26,34,82,336.25/-, namely the principal and the interest along with an interest at the rate of 11% on the total amount from the date of default till the date of actual payment.”

- 22.** The Award was challenged by way of an application under Section 34 of the Arbitration and Conciliation Act, 1996 and after dismissal of the said application, an appeal under Section 37 of the said Act was also preferred but the same was also dismissed. In the meantime the defendant no.1 has deposited an amount of Rs. 26,34,82,664.36 before this Court. The parties have preferred an SLP before the Hon’ble Supreme Court and by an order dated 9th May, 2025, the Hon’ble

Supreme Court allowed the defendant no.2 to withdraw the principal amount i.e. Rs.19,92,30 500/- from the Registrar of this Court. The defendant no.1 by a letter dated 12th May, 2025, informed the plaintiff about the order dated 9th May, 2025.

23. In the case of ***Dhanbad Fuels (supra)***, the Hon'ble Supreme Court held that 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.
24. In the present case, the plaintiff has made out a specific case for dispensation of provisions of Section 12A of the Commercial Courts Act, 2015, on the pretext that the plaintiff was not the party to the arbitration proceedings initiated by the defendant nos.1 and 2 wherein an award was passed on 29th June, 2023. Subsequently, the parties to the arbitration have filed an application under Section 34 of the Arbitration and Conciliation Act, 1996, challenging the Arbitration Award. After the dismissal of the application under Section 34, an appeal was filed under Section 37 of the said Act. The defendant no.1 has also instituted a suit being C.S. (Com) No. 764 of 2024 for discharge of his liability to pay any amount to the plaintiff as the defendant no.1 has deposited the amount with the Registrar of this Court. Subsequently, only on 12th May, 2025, the plaintiff came to know that from the communication of the defendant no.1 that as per

the order passed by the Hon'ble Supreme Court dated 9th May, 2025, the defendant no. 2 has withdrawn an amount of Rs.19,92,30,500/-.

- 25.** This Court finds that as per Clause 9 of the Memorandum of Understanding dated 21st June, 2012, in case the Share Purchase Agreement is cancelled or terminated, the transferee shall be entitled to the refund of entire money until then paid by the transferee to the transferor immediately upon the transferor receiving the same from the present shareholders and/or the company, as the case may be.

The defendant no.1 failed and refused to transfer 18% share in the defendant no.1 to the plaintiff though the plaintiff has paid an amount of Rs.11,24,78,832.94. As per the award, the defendant no.1 had received amount and has deposited in this Court and the defendant no.1 has also filed a suit for declaration.

- 26.** On receipt of the communication dated 12th May, 2025 from the defendant no.1, the plaintiff immediately filed the present suit. This Court considered the urgency, cause of action and the prayers made in the plaint and did not find any reasons to revoke the leave granted for dispensation of the requirement of provisions of Section 12A of the Commercial Courts, Act, 2015.

- 27. G.A. (Com) No. 3 of 2025 is dismissed.**

(Krishna Rao, J.)