IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
INTERIM APPLICATION NO. 5085 OF 2022
IN
COMMERCIAL SUIT NO. 237 OF 2021

State Bank of India,
a statutory corporation constituted under the State Bank of India Act, 1955 having its Corporate Centre at State Bank Bhavan, Madame Cama Road, Nariman Point, Mumbai-400 021 and Branch Offices inter alia at The Arcade, World Trade Centre,Post Box No. 16094, Cuffe Parade,Mumbai-400 005

Applicant
(Orig. Defendant No. 1.)

In the matter between

1. **Asean International Limited,**
a company incorporated under the laws of Island of Nevis, having its branch office at DAFZA, Suite 5EA-824, PO Box 5809, Dubai, United Arab Emirates

2. **Modest & Parson International Private Limited** a company within the provisions of Companies Act, 2013, having its Registered office at 20/21 Rex Chambers, Ground Floor, Walchand Hirachand Marg, Ballard Estate, Mumbai-400 001

… Plaintiffs

Versus

1. **State Bank of India,**
   a statutory corporation constituted under the State Bank of India Act, 1955 having its Corporate Centre at State Bank Bhavan, Madame Cama Road, Nariman Point, Mumbai-400 021 and Branch Offices inter alia at The Arcade, World Trade Centre, Post Box No. 16094, Cuffe Parade. Mumbai-400 005

2. **Axis Bank Limited**
   an existing company within the meaning of the Companies Act, 2013, having its registered office at Trishul 3rd Floor, Opposite Samartheshwar Temple, Law Garden, Ellis Bridge, Ahmedabad-380 006, Gujarat and Branch office at Corporate Banking Branch, Axis House, Ground Floor, Bombay Dyeing Mill Compound, Wadia International Centre, Pandurang Budhkar Marg, Worli, Mumbai-400 025

3. **Export Import Bank of India**
   a corporation established under the Export-Import Bank of India Act, 1981, having its head office at Centre One

Building, Floor 21, World Trade Centre Complex, Cuffe Parade, Mumbai-400 005

4. **ICICI Bank Limited**
an existing company within the Companies Act, 2013, having its Registered office at Landmark, Race Course Circle, Alkapuri, Vadodara-390 007, Gujarat and its corporate office at ICICI Bank Towers, Bandra Kurla Complex, Mumbai-400 051

5. **IL & FS Financial Services Limited**
a company existing within the meaning of the Companies Act, 2013 having its registered office at IL & FS Financial Centre, 3rd Floor, Plot No. C-22, G-Block, Bandra Kurla Complex, Bandra (East), Mumbai and its branch office at Core 4B, 4th Floor, Indian Habitat Centre, Lodhi Road, New Delhi-110 003

6. **Vijaya Bank**
a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings Act) 1970, having its head office at 41/2, Trinity Circle, M. G. Road, Bengaluru-460 001 and Corporate Banking Branch, Maker

Chamber IV, Rear Portion, 222, Nariman Point, Mumbai-400 021

7. **Indian Bank**
a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings Act), 1970, having its head office at PB No. 5555, 254-260, Avvai Shanmugam Salai, Royapettah, Chennai 600 014 and Branch Office at Mumbai Fort Branch, United India Building, Sir P. M. Road, Mumbai-400 001

8. **Bank of India**
a bank constituted under the Banking Companies (Acquisition and Transfer) of Undertakings Act), 1970 having its head office at “Star House”, BKC (E), Mumbai-400 051 and Branch office at Oriental Building, Ground Floor, 364, D. N. Road, Fort, Mumbai-400 021

9. **Andhra Bank**
a bank constituted under the Banking Companies (Acquisition and Transfer) of Undertakings Act), 1970 having its head office at Dr. Pattabhi Bhavan, 5-9-11, Saifabad, Hyderabad-500 004 and Branch

Office at Specialised Corporate Finance Branch, 16B-Eastern House, 169th Floor, 194, NCPA Marg, Nariman Point, Mumbai-400 021

10. **SBICap Trustee Company Limited**
a company existing within the meaning of the Companies Act, 2013 having its registered office at 202, Maker Tower “E”, Coffee Parade, Mumbai-400 005 and Branch office at 6th Floor, Apeejay House, 3, Dinshaw Wacha Road, Churchgate, Mumbai-400 005

11. **SBI Overseas Branch, Mumbai**
having address at the Arcade, World Trade Centre, Cuffe Parade, Mumbai-400 005

12. **Yudhisthir Khatau**
of Mumbai, Indian Inhabitant residing at Khatau Mansion, Malabar Hills, Mumbai and having office at Laxmi Building, 6, Shoorji Vallabhdas Marg, Ballard Estate, Mumbai

13. **Sanjeev Maheshwari**
Liquidator of Varun Resources Limited (now in liquidation) bearing Registration No.IBBI/IPA-001/IP-P00279/2017-8/10523

having his address at 3rd, 4th Floor, Vastu Darshan, B-Wing, Azad Road, Above Central Bank of India, Andheri (East), Mumbai-400 001 Defendants

Mr. Nirman Sharma a/w. Mr. Deeshank Doshi and Ms. Dhruva Sikarwar i/b. M/s. Desai and Diwanji for the Applicant / Org. Def. No. 1.

Mr. Siddhesh Bhole a/w. Mr. Yakshay Chheda i/b. SSB Legal and Advisory for Respondent/Original Plaintiff.

Ms. Vidhi Sharma i/b. Indus Law for Defendant No. 4.

Mr. Mohd. Riyaz Khan i/b. Mr. Jamshed Ansari for Defendant No. 9.

CORAM : GAURI GODSE, J.

RESERVED ON: 8th OCTOBER 2025

PRONOUNCED ON: 5th JANUARY 2026

JUDGMENT:

1. This application is filed by defendant no. 1 for rejection of the plaint under Order VII Rule 11(a) and (d) of the Civil Procedure Code, 1908 (“CPC”). Defendant no. 1 has prayed for rejection of the plaint on the ground that it does not disclose any cause of action against defendant no.1, the plaint is barred for non-compliance with the mandatory provision of Section 12-

A of the Commercial Courts Act, 2015 (“the said Act”) and on the ground that the suit is barred by limitation.

Facts In Brief In The Plaint:

2. According to the plaintiffs, they supply bunkers to ocean-going vessels. The plaintiffs have entered into a commercial agreement under which the orders procured by them were executed. The plaintiffs have referred to them as ‘the Asean Group’. The suit is filed for a money decree against defendant nos. 1 to 11, directing them to jointly and severally pay an amount of Rs. 83,57,70,274/- to plaintiff no. 2, being the outstanding amount payable to Asean Group Credit Facility. The plaintiffs have prayed for directing defendant nos. 1 to 11 to jointly and severally pay a sum of USD 6,326,895.05 towards outstanding payable to plaintiff no. 1 towards outstanding bunker invoices. As per the plaintiff's case, defendant nos. 1 to 9 are the banking companies and financial institutions that had advanced funds to Varun Resources Limited (“Varun”) and were members of the Joint Lenders Forum (“JLF”) for restructuring the debts of Varun.

3. Defendant no. 10 is the security trustee for defendant nos. 1 to 9 under the debt restructuring documents pertaining to Varun. Defendant no. 11 is the account bank nominated by defendant nos. 1 to 10 for the purpose of the debt restructuring scheme for Varun. Defendant no. 12 is one of the promoters of Varun's group of companies. Varun is now in liquidation; hence, defendant no. 13, who is appointed as a Resolution Professional, is added as a party defendant.

4. The plaintiffs have claimed recovery of monies from the defendants towards the monies advanced by the plaintiffs and for the supply of bunker fuel to the vessels of Varun.

Submissions on behalf of the Applicant (Defendant no. 1):

5. The submissions made on behalf of defendant no. 1 for rejection of the plaint are summarised as under :

(a) The plaintiffs have asserted that they attempted pre-litigation mediation through a private mediator; however, that attempt was unsuccessful. Hence, the suit was filed. According to the learned counsel for defendant no. 1, a private mediation is not contemplated

under the said Act, and pre-litigation mediation is contemplated as per The Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018 (“the said Rules).

(b) In view of Section 12-A of the said Act, read with the said Rules, due compliance with the mandate of Section 12-A of the said Act is through the procedure as contemplated under the said Rules. Hence, the plaintiffs’ contention that pre-litigation mediation was attempted; however, the same failed, cannot be termed as compliance with the mandatory provision under Section 12-A of the said Act. The plaintiffs relied upon the mediation failure report dated 23rd June 2021 issued by the private mediator. The plaintiffs thus relied on the non-starter certificate dated 23rd June 2021, issued by the private mediator, to justify their purported compliance with Section 12-A. However, addressing a request for mediation cannot be construed as compliance with the mandatory provision under Section 12-A of the said Act.

(c) The suit was registered on 18th December 2021. Therefore, the institution of the suit is on 18th December 2021, and not on the date of filing. The said Rules came into force before the date of institution of the suit. Hence, the legal principles settled in the decisions of ***Patil Automation Private Limited and Others vs. Rakheja Engineers Private Limited***[1] *and* ***Dhanbad Fuels Private Limited vs. Union of India and Another***[2] would not apply to the present case, as the plaintiffs had already attempted a private pre-litigation mediation. Hence, according to the learned counsel for defendant no. 1, the plaint is liable to be rejected for non-compliance with the provisions of Section 12-A of the said Act.

(d) The suit claim is based on the invoices raised from 2014 to 2019. The second part of the claim is with respect to the amounts due and payable as per the Asean Group Credit Facility upto November 2015. The plaintiffs' attempt to recover the payments from the bank by this suit is therefore barred by limitation. Plaintiffs

1 (2022) 10 SCC 1
2 2025 SCC OnLine SC 1129

failed to take any action for recovery of the amounts within three years from the due dates mentioned in the invoices, either against Varun or defendant no. 1. Hence, the claim would not be sustainable in the present suit as it would be barred by limitation.

(e) The Asean Group Credit Facility Agreement, i.e., the Loan agreement dated 29th April 2014, was executed between Varun and plaintiff no. 2. Under the said agreement, the amounts disbursed by plaintiff no. 2 were payable by Varun at the end of three years from the date of execution of the agreement. However, the plaintiffs failed to recover the amount within three years of the amount becoming due and payable under the loan agreement. Accordingly, the claim of plaintiff no. 2 under the loan agreement is also barred by limitation.

(f) Varun was admitted into the Corporate Insolvency Resolution Process ("CIRP") by the National Company Law Tribunal ("NCLT"). Hence, the claim, if any, under the loan agreement would lie before the resolution professional of Varun and cannot be agitated in this suit.

(g) Learned counsel for defendant no. 1 relied upon the decision of this Court in the case of ***Deepak Raheja Vs Ganga Taro Vazirani***[3], to support his submissions that this court held the compliance with Section 12-A of the said Act mandatory. This court further observed that on 24th January 2019, the main mediation monitoring committee approved the mediation scheme for this Court, which was implemented with effect from 15th February 2019. Hence, in the present case, the plaintiffs' contention that pre-institution mediation was attempted through private mediation cannot be accepted as a compliance with the mandatory provision of Section 12-A.

(h) Learned counsel for defendant no. 1 relied upon the decision of the Delhi High Court in the case of ***Renewflex Recycling vs. Facilitation Centre Rohini Courts and Others***[4]***.*** He submits that a private mediator is not contemplated under the provisions of the said Act or the pre-litigation mediation Rules framed under the

3 2021 SCC OnLine Bom 3124
4 2025 SCC OnLine Del 978

said Act. The parties are obligated to adopt a pre-litigation mediation process in accordance with the Rules framed under the Act. The Delhi High Court has taken the view that it is trite that if a statute prescribes a particular mode or manner for implementing its provisions, the same must be done in that manner or not at all. Hence, the grounds raised by the plaintiffs that pre-litigation mediation was attempted but the defendants refused to participate in the mediation proceedings cannot be accepted as grounds for compliance under Section 12-A of the said Act.

(i) There is no privity of contract between the plaintiffs and defendant no. 1. The suit claim is in two parts. First, with respect to the bunker charges, i.e., the supply of fuel, and second, with respect to the Asean Group Credit Facility. Hence, for lack of privity, the suit does not disclose any cause of action against defendant no. 1. Hence, the plaint is liable to be rejected also on the ground that there is no cause of action against defendant no. 1.

Submissions on behalf of the plaintiffs:

6. The submissions made on behalf of the plaintiffs are summarised as under:

a) Learned counsel for the plaintiffs relied upon the various pleadings in paragraphs 17 to 20, 24 to 34 and 40 to 48 to support his submissions that there is sufficient cause of action against all the defendants to maintain the present suit for recovery of the amounts due and payable to the plaintiffs. The relevant averments in the plaint show a continuous supply of fuel to Varun, on the assurance given by defendant nos. 1 to 9 under the credit facility restructuring agreement executed for Varun's debts.

b) When plaintiff no. 2 inquired about the payments of the dues, defendant no. 12 represented that the lenders of Varun, being defendant nos. 1 to 9, have constituted the JLF, who would soon take the remedial measures. Hence, plaintiff no. 1 continued to supply bunkers. Plaintiff no. 2 executed a loan agreement with Varun and advanced money.

c) Defendant no. 12, who was the director of Varun at the relevant time, forwarded the minutes of the JLF meetings approving corrective plans and incremental funding to be utilised for the repayment of the credit extended to the plaintiffs. On the request of defendant nos. 1 to 11, along with defendant no. 12, the plaintiffs' representative attended the JLF meetings scheduled on 27th June 2014 and 1st September 2014. Accordingly, defendant nos. 1 to 9 agreed to make disbursements into the Trust and Retention Account in accordance with RBI guidelines under Corporate Debt Restructuring ("CDR"). The plaintiffs have relied upon the minutes of the meetings to support these pleadings.

d) Relying upon the representations of defendant nos. 1 to 9 that the plaintiffs would be paid their dues in priority in the manner set out in the amended and restated Master Restructuring Agreement ("MRA") and the Trust and Retention Account Agreement, the plaintiffs continued to supply bunkers to Varun. These defendants made all the representations during the JLF meetings held on 27th

June 2014 and 1st September 2014, and under the amended MRA. However, defendant nos. 1 to 11 failed to implement the restructuring package and received a large amount of money from the revenue generated from the operation of the fleet of vessels of Varun. In the absence of bunker supply by plaintiff no. 1 and financial assistance by plaintiff no. 2, Varun would not have been in a position to generate revenue. Thus, it was an obligation on the part of defendant nos. 1 to 11 to release payments to the plaintiffs in accordance with the priorities set out in the agreements.

e) On 21st May 2019, plaintiff no. 1 received a copy of Miscellaneous Application No. 1410 of 2019, dated 10th April 2019, filed by Mauritius Commercial Bank before the NCLT, Mumbai, in Company Petition No. 247 of 2017. The contents of the said miscellaneous application revealed that the claim was filed against the defendants herein, Varun group of entities, its directors and defendant no. 13, i.e. liquidator of Varun, Reserve Bank of India and plaintiff no. 1. From the contents of the said

miscellaneous application it transpired that defendant no. 1 was required under the amended MRA and TRA agreement to maintain the Trust Account and an overdraft account. It further revealed that in breach of the amended MRA and TRA agreements and with an intention to divert and siphon money from Varun to Varun Asia Pte Limited ("Varun Asia"), i.e. one of the group of entities of Varun, the amount payable as per the priority list was not disbursed by defendant no. 1.

f) The contents of the said miscellaneous application revealed that defendant no. 1 misappropriated funds from Varun Resources Limited to Varun Asia Pte Limited. In view of the facts revealed from the contents of the said application, the plaintiffs realised that by committing breach of the restructuring agreements the total revenue of Varun as stated in the statement of profit and loss accounts for the period ending 31st March 2016 was shown as Rs. 342.87 crores, for the period ending 31st March 2017 was shown as Rs.259.97 crores and as on 30th June 2017 was shown as Rs. 3.75 crores.

g) Accordingly, the plaintiffs contend that, as of March 2016, Varun generated revenue that could have been routed through the TRA to repay the outstanding bunker dues, in accordance with the order of priority set out in the agreements. However, in violation of the terms and conditions of the TRA agreements, defendant no. 1 siphoned the amounts to Varun without the consent of the other lenders. Accordingly, on 6th December 2019, the plaintiffs initiated pre-litigation mediation proceedings against defendants nos. 1 to 12. However, defendant nos. 1 to 12 refused to participate in the mediation, the mediation process was rendered infructuous, and the learned mediator issued a non-starter certificate.

h) The plaintiffs relied upon the MRA agreement dated 29th June 2015 and the TRA agreement dated 24th September 2015. Under clause 4.3 of the TRA agreement, the order of priority for withdrawals from the member Funds Sub Account was prescribed. The distribution of the sub-accounts referred to the amounts due and payable to the plaintiffs. Hence, in view of the order of priority, it was

defendant no. 1's obligation to inform the plaintiffs about the funds available for payments due to the credit of both plaintiffs.

i) On 14th June 2017, the Insolvency Petition of Varun was admitted by the NCLT. On 21st May 2019, the miscellaneous application was filed by the Mauritius Commercial Bank before the NCLT. Thus, based on the information received on 21st May 2019 from the miscellaneous application, the plaintiffs learned of the revenue available under the TRA and MRA agreements. Until then, the plaintiffs were unaware of the funds available for release to their credit under the order of priority set out in the TRA agreement. Hence, this suit is filed for the recovery of money due on the invoices of plaintiff no. 2, and the monies advanced by plaintiff no. 2 to Varun are covered under Article 113 of the Schedule to the Limitation Act, 1963. The suit is therefore well within the limitation period, and the pleadings and cause of action would warrant a trial. The plaint, therefore, cannot

be rejected at the threshold on the ground that it is barred by limitation.

j) Based on the plaintiffs' knowledge of the revenue available under the TRA and MRA agreements, a right to sue defendant no. 1 accrued in favour of the plaintiffs on 21st May 2019. Hence, defendant no. 1 is under an obligation to release funds from the revenue generated by Varun to the plaintiffs under the MRA and TRA agreements, which set out these plaintiffs in the order of priority for such releases. Hence, in view of the terms and conditions of the TRA and MRA, the plaintiffs have the right to sue defendant no. 1. Therefore, it cannot be construed that, because there is no privity of contract with the plaintiffs, there is no cause of action to maintain the suit. Even otherwise, any dispute on the cause of action pleaded by the plaintiffs would not mean that there is no cause of action for rejection of the plaint at the threshold. The issue or dispute as to the correctness of the cause of action cannot be made the subject matter of rejection of the plaint under Order VII Rule 11 of the CPC.

k) The pleadings in paragraph 82 reveal the cause of action as contemplated under Article 113 of the Schedule to the Limitation Act, 1963, read with Section 10 of the Limitation Act. Hence, the cause of action pleaded in paragraphs 67, 68, and 69 establishes the plaintiffs' right to sue defendant no. 1. The cause of action pleaded for suing defendant no. 1 supports the plaintiff's contention that the suit is well within the limitation.

l) According to the plaintiffs, defendant no. 1 was under an obligation to release funds to the plaintiffs under clauses 2.4 and 4.3 of the TRA agreement. As per clause 4.3, amounts should have been paid to the plaintiffs as per order of priority, and defendant no.1 was under an obligation to maintain the accounts and release revenue in favour of the plaintiffs by adhering to the order of priority mentioned under the TRA agreement. At the meeting held with JLF on 1st September 2014, these plaintiffs were assured of the release of funds towards their dues; hence, the plaintiffs continued to advance monies to Varun and supply bunkers to enable Varun to

generate revenue to comply with the debt restructuring agreement in respect of Varun. Under clause (5) of the TRA agreement, JLF assured the plaintiffs of the release of funds. Accordingly, based on these assurances, the plaintiffs intervened to support Varun in generating revenue. Based on the facts revealed on 21st May 2019, the plaintiffs have the right to sue all these defendants.

m) To support his submissions, learned counsel for the plaintiffs relied upon the decision of the Hon'ble Apex Court in the case of ***Geetha D/o. Late Krishna and others vs. Nanjundaswamy and Others***[5]. He submits that the Hon'ble Apex Court held that in an application under Order VII Rule 11, the plaint cannot be rejected in part. He submits that all the arguments raised for rejection of the plaint pertain only to defendant no. 1. Hence, the plaint cannot be rejected in its entirety at the threshold.

n) Learned counsel for the plaintiffs also relied upon the decision in the case ***Shakti Bhog Food Industries Limited vs. Central Bank of India and Another***[6] to support his

5 2023 SCC OnLine SC 1407
6 (2020) 17 SCC 260

submissions that the expression “when the right to sue accrues” is distinct from the expression used in other Articles in the First division of the Schedule to the Limitation Act, 1963. He submits that, as held by the Hon’ble Apex Court, the expression used in Article 113 is distinct from the expression used in other Articles dealing with suits, such as the limitation provided under Article 58, when the right to sue “first” accrues. Learned counsel for the plaintiffs, therefore, submits that the expression used in Article 113, “when the right to sue accrues”, should cover the plaintiffs' claim for recovering the amount based on the cause of action as pleaded in the suit.

o) Learned counsel for the plaintiffs relied upon the decision in the case of ***Indian Evangelical Lutheran Church Trust Association vs. Sri Bala & Co.***[7] to support his submissions that the suit claim would be within the limitation period in view of Article 113 of the Limitation Act. According to the learned counsel for the plaintiffs, there is a distinction

7 2025 SCC OnLine SC 48

between a lack of cause of action and a defective cause of action. He submits that all the objections raised for rejection of the plaint on the ground of no cause of action would amount to raising a dispute on the merits of the cause of action. Hence, according to the learned counsel for the plaintiffs, in the facts and circumstances of the present case, the plaint cannot be rejected on any ground.

p) To support his submissions, learned counsel for the plaintiffs relied upon the decision of this court in the case of ***Diyashree Tuyenkar and Another vs. Vinod Vishwanath Tuyenkar and Others***[8] and in the case of ***Pratul Chemicals Pvt. Ltd. Through its Director, Ashok Gulrajani and Others vs. Alphagam Coatings Solutions Pvt. Ltd. Represented by Dhanajai S. Pai and Others***[9]. On a similar proposition, on the objection of no cause of action, learned counsel for the plaintiffs relied upon the decision of the Hon'ble Apex Court in the case of ***K. Paramasivam vs. Karur Vysya Bank Ltd. and Another***[10].

8 (2024) SCC OnLine Bom 165
9 (2023) SCC OnLine Bom 1184
10 (2022) SCC OnLine SC 1163

q) Learned counsel for the plaintiffs thus submitted that the prayers for recovery of the amount are made against defendant nos. 1 to 11 jointly and severally. Hence, the plaint cannot be rejected on the ground that it would not be maintainable so far as defendant no. 1 is concerned.

r) So far as the objection on the ground of non-compliance with the mandatory requirement of Section 12-A is concerned, the law is well settled. The decision of ***Patil Automation*** was made after the present suit was filed. As held by the Hon'ble Apex Court, in the decision of ***Patil Automation,*** only if the plaint is filed after the jurisdictional High Court has declared Section 12-A mandatory, the plaint can be rejected for non-compliance. The declaration of mandate was made effective from 20th August 2022, as held by the Hon'ble Apex Court in the decision of ***Patil Automation***. Hence, the present suit, filed before the declaration that made Section 12-A mandatory, cannot be rejected at the threshold.

Points For Consideration:

7. Whether the plaint in the present suit can be rejected at the threshold on the grounds that (i) the suit is barred by law for non-compliance with Section 12A of the said Act, (ii) there is no cause of action against defendant no. 1, and (iii) the suit is barred by the law of limitation.

Legal Position:

8. In ***Patil Automation***, the Apex Court held that Section 12-A of the said Act is mandatory and that any suit instituted in violation of its mandate can be rejected under Order VII Rule 11 of the CPC. However, this declaration takes effect on 20th August 2022. The Apex Court further held that, if the plaint is filed violating Section 12-A after the jurisdictional High Court has declared Section 12-A mandatory, the plaintiff will not be entitled to the relief. The Division Bench of this Court in ***Deepak Raheja*** held that Section 12-A of the said Act is mandatory, and a commercial suit which does not contemplate any urgent interim relief cannot 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. The decision in ***Deepak Raheja*** was pronounced on 1st October 2021. Thus, this Court has declared Section 12-A mandatory on 1st October 2021. Therefore, in view of the legal principles settled in ***Patil Automation***, by the Apex Court, any plaint filed in this court after 1st October 2021, violating Section 12-A of the said Act, the plaintiff will not be entitled to the relief.

9. In ***Patil Automation***, one of the arguments was that there is no institution of the suit within the meaning of Section 12-A until the court admits the plaint and registers it in the suit register. Thus, it was argued that the presentation of the plaint may not amount to the institution of the suit for the purposes of Order IV Rule 1 of the CPC and Section 12-A of the said Act; hence, if there is non-compliance with Section 12-A before the institution of the suit, the plaint must be rejected. However, the Apex Court observed that, in the facts of the case, this question did not arise and that it may not be necessary to explore the matter further. However, on the distinction between the presentation of a plaint and the institution of a suit, the Apex Court observed that Section 3(2) of the Limitation Act, 1963,

provides that for the purpose of the Limitation Act, a suit is instituted in the ordinary case when the plaint is presented to the proper officer. In the case of a pauper, the suit is instituted when his application to leave to sue as a pauper is made. The Apex Court referred to sub-rule (3) of Rule 1 of Order IV, which was inserted by Act 46 of 1999 with effect from 1st July 2002.

10. The judgment of the High Court of Madras in ***Olympic Cards Ltd. v. Standard Chartered Bank***[11], was referred to by the Apex Court. In the facts before the Madras High Court, the question arose whether there was an abandonment or withdrawal of the suit within the meaning of Order XXIII Rule 1 of the CPC, which would operate as a bar to the filing of a fresh suit. The Madras High Court held that the plaint, which does not comply with the Rules contained in Orders IV and VII, is not a valid plaint. It is held that only when the court admits the plaint, registers it, and enters it in the suit register it can be said that the suit is validly instituted. In the context of Order XXIII Rule 1 of the CPC, it was held by the Madras High Court that any abandonment before the registration of a suit would not

11 2012 SCC OnLine Mad 5133

constitute withdrawal or abandonment of suit within the meaning of Order XXIII Rule 1 of CPC, to operate as a legal bar for a subsequent suit of the very same nature.

11. For understanding the distinction between the words *'filed'* and *'instituted'* in the context of Section 12-A of the said Act, it is necessary to understand the object of Section 12-A and the well-settled legal principles concerning the said provision and the provision of Order VII Rule 11 of the CPC, as explained in various decisions. In ***Patil Automation,*** the Apex Court discussed the regime under Order VII, Rule 11 of the CPC and observed that Order VI addresses various aspects of what is to be pleaded in a plaint, the documents that should accompany it, and other details. The Apex Court considered the scheme of Orders IV, V and VII of the CPC, and held that, since a summons is to be issued in a duly instituted suit, in a case where the plaint is barred under Order VII Rule 11(d), the stage begins at that time when the court can reject the plaint under Order VII Rule 11, where the court is satisfied after hearing the plaintiff before it invokes its power besides giving reasons under Order VII Rule 12. It is held that in a clear case, where

on allegations in the suit, it is found that the suit is barred by any law, and where the plaintiff in a suit under the said Act does not plead circumstances to take his case out of the requirement of Section 12-A, the plaint should be rejected without issuing summons.

12. In ***Patil Automation***, while discussing the aspect of "does not contemplate urgent interim relief", the Apex Court referred to the provision of Section 80 of the CPC and observed as under:

> ***"100.*** *In the cases before us, the suits do not contemplate urgent interim relief. As to what should happen in suits which do contemplate urgent interim relief or rather the meaning of the word "contemplate" or urgent interim relief, we need not dwell upon it. The other aspect raised about the word "contemplate" is that there can be attempts to bypass the statutory mediation under Section 12-A by contending that the plaintiff is contemplating urgent interim relief, which in reality, it is found to be without any basis. Section 80(2)CPC permits the suit to be filed where urgent interim relief is sought by seeking the leave of the court. The proviso to Section 80(2) contemplates that the court shall, if, after hearing the parties, is satisfied that no urgent or immediate relief need be granted in the suit, return the plaint*

for presentation to the court after compliance. Our attention is drawn to the fact that Section 12-A does not contemplate such a procedure. This is a matter which may engage attention of the lawmaker. Again, we reiterate that these are not issues which arise for our consideration. In the fact of the cases admittedly there is no urgent interim relief contemplated in the plaints in question."

13. In ***Patil Automation,*** while discussing the objects of Section 12-A, the Apex Court observed that the object of the said 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 and that the legislature has taken care to expressly exclude the period undergone during mediation for reckoning limitation under the Limitation Act, 1963.

14. The Apex Court in ***Dhanbad Fuels (P) Ltd.*** observed that the aim and object of Section 12-A are 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 referred to the

legal principles settled in ***Patil Automation***, with respect to the regime under Order VII Rule 11 of the CPC, the scheme of Orders IV, V, and VII of the CPC, and the conclusions regarding the mandatory character of Section 12-A of the said Act. The Apex Court in ***Dhanbad Fuels*** 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.

15. In ***Dhanbad Fuels***, the Apex Court discussed the legal principles settled in ***Yamini Manohar Vs. T.K.D. Keerthi*** [12], and held that in the absence of any statutory mandate or rules made by the Central Government, an application per se is not a condition for seeking a waiver under Section 12-A of the 2015 Act. The word “contemplate” connotes to deliberate and

12 (2024) 5 SCC 815

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 12-A. 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 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. It is held that the facts and circumstances of the case have to be considered holistically from the standpoint of the plaintiff. Thus, that the test under Section 12-A is held to be 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. It is also held that the urgent interim relief must not be merely an unfounded excuse by the plaintiff to bypass the mandatory requirement of Section 12-A of the said Act.

16. 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 Commercial Courts (Pre-Institution Mediation and Settlement) Rules of 2018. In ***Renewflex Recycling,*** the Delhi High Court held that the legal framework under Section 12-A envisages and bestows a legal sanctity to the *"settlement'* arrived at by the parties contemplated under sub-section (4) of Section 12-A of the said Act by deeming the same to be an arbitral award. Thus, pre-institution mediation and settlement under Section 12-A must be conducted in accordance with the manner and procedure prescribed by the said Rules and not through a private mediation process.

17. In ***Geetha Krishna***, the Apex Court followed the legal principles settled in ***Sejal Glass Ltd. v. Navilan Merchants (P)***

Ltd .[13] and *Madhav Prasad Aggarwal* v. *Axis Bank Ltd.*[14] holding that the relief of rejection of plaint in exercise of powers under Order VII Rule 11(*d*) of the CPC cannot be pursued only in respect of one of the defendants. It is held by the Apex Court that the plaint has to be rejected as a whole or not at all, in exercise of power under Order VII Rule 11(*d*) of the CPC. In *Sejal Glass Ltd.,* an application was filed by the defendants under Order VII Rule 11(*d*) of the CPC stating that the plaint disclosed no cause of action. The Apex Court held that it is not permissible to reject the plaint qua any particular portion of a plaint, including against some of the defendants, and continue the same against the others. It is held that if the plaint survives against certain defendants and/or properties, Order VII Rule 11(d) of the CPC will have no application at all, and the suit as a whole must then proceed to trial.

18. In *Shakti Bhog Food Industries Ltd.,* it was held that the cause of action for filing a suit consists of a bundle of facts, and that the factum of the suit being barred by limitation is ordinarily a mixed question of fact and law. In *Indian Evangelical*

13 (2018) 11 SCC 780
14 (2019) 7 SCC 158

Lutheran Church Trust Association, the Apex Court held that a "right to sue" means the right to seek relief by means of legal procedure when the person suing has a substantive and exclusive right to the claim asserted by him and there is an invasion of it or a threat of invasion. It is held that when the right to sue accrues, it depends, to a large extent, on the facts and circumstances of a particular case, keeping in view the relief sought and that the use of the phrase "right to sue" is synonymous with the phrase "cause of action" and would be in consonance when one uses the word "arises" or "accrues" with it.

19. In *Diyashree Tuyenkar,* this Court held that when the claim is made for rejection of the plaint that it does not disclose the cause of action, it is the duty of the court to read the plaint in a meaningful manner. It is held that the terms "absence of cause of action" and "defective cause of action" are two different aspects, and there is a difference between non-disclosure of cause of action, which comes within the scope of Order VII Rule 11 and a defective cause of action, has to be decided during the trial. In *Pratul Chemicals Pvt. Ltd.*, this

Court held that it is the bounden duty of the Court to ascertain the material mentioned in the plaint along with the other documents and, on a meaningful reading of it, to arrive at a conclusion whether it discloses a cause of action or whether the suit is barred by any law. It is thus held that the basic question to be decided while dealing with the application filed under Order VII Rule 11 of the CPC is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to getting out of Order VII Rule 11 of the CPC.

20. In the decision of ***K. Paramasivam,*** relied upon by the learned counsel for the plaintiff, the issue pertained to a right or cause of action to the lender to proceed against the principal borrower, as well as the guarantor and the obligation of the guarantor being co-extensive and coterminous with that of the principal borrower to defray the debt, as predicated in section 128 of the Contract Act. However, the Apex Court examined the cause of action in light of the proceedings under the Insolvency and Bankruptcy Code.

21. For understanding the distinction between the words *'filed'* and *'instituted'* in the context of Section 12-A of the said Act, it is necessary to understand the purpose and effect of the remedy provided for mediation and settlement. 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. Section 3(2) of the Limitation Act, 1963, provides that for the purpose of the Limitation Act, a suit is instituted in the ordinary case when the plaint is presented to the proper officer. In the case of a pauper, the suit is instituted when his application to leave to sue as a pauper is made. As per sub-section (5) of Section 12-A, the settlement arrived under the said Section is given the status and effect of an arbitral award under sub-section (4) of Section 30 of the Arbitration and Conciliation Act 1996. Thus, unlike as held by the Madras High Court, that any abandonment before the registration of a suit would not constitute withdrawal or abandonment of suit within the meaning of Order XXIII Rule 1 of CPC, to operate as a legal

bar for a subsequent suit, institution of a suit under the said Act would mean presentation of the plaint under sub-rule (1) of Rule 1 of Order IV of the CPC. In the context of Section 12-A of the said Act, exhausting the remedy of pre-institution mediation and settlement is before filing of a suit and not its registration. Thus, the word “institution” in Section 12-A of the said Act means the filing of a suit by presenting the plaint and the documents in the registry or before the Court or such officer appointed in that behalf and not before registration of the suit.

22. While deciding the mandatory character of Section 12-A of the said Act and the interpretation of the expression “a suit which does not contemplate any urgent interim relief” the legal principles that emerge from the decisions of the Hon’ble Apex Court, as discussed in the above paragraphs for considering rejection of the plaint under Order VII Rule 11 of the CPC, are summarised as follows:

a) The declaration that Section 12-A of the said Act is mandatory and that any suit instituted in violation of its mandate must be visited with rejection under Order VII Rule 11 is made effective from 20th August 2022, or after

the jurisdictional High Court has declared Section 12-A mandatory. The Division Bench of this Court in ***Deepak Raheja*** on 1st October 2021 declared Section 12-A mandatory. Therefore, suits filed in this court after 1st October 2021, in violation of the mandate under Section 12-A of the said Act, may be rejected under Order VII Rule 11 of the CPC, subject to the conditions enumerated under Section 12-A.

b) Institution of a suit under the said Act would mean presentation of the plaint under sub-rule (1) of Rule 1 of Order IV of the CPC. In the context of Section 12-A of the said Act, exhausting the remedy of pre-institution mediation and settlement is before filing of a suit and not its registration.

c) The pre-institution mediation and settlement under Section 12-A must be conducted in accordance with the manner and procedure prescribed by the said Rules and not through a private mediation process.

d) Order V Rule 1 declares that when a suit has been duly instituted, a summons may be issued to the defendant to

answer the claim on a date specified therein. Even if the trial court issues a summons, the plaint is liable to be rejected at any stage if any of the conditions enumerated under Order VII Rule 11 of the CPC are satisfied.

e) Order VI of the CPC addresses various aspects of what must be pleaded in a plaint, the documents that should accompany it, and other details. Since a summons is to be issued in a duly instituted suit, in a case where the plaint is barred under Order VII Rule 11, the stage begins at that stage, when the court can exercise the power under Order VII Rule 11 suo motu and reject the plaint after hearing the plaintiff, provided the conditions enumerated under Order VII Rule 11 of the CPC are strictly adhered to.

f) On reading of the plaint and the supporting documents, if it is found that the suit is barred by any law, as would be the case, where the plaintiff in a suit under the said Act does not plead circumstances to take his case out of the requirement of Section 12-A, the plaint can be rejected without issuing summons.

g) The object of the said Act and the Amending Act of 2018 is to partly impose compulsory exhaustion of the remedy of mediation and settlement on a plaintiff who does not seek urgent interim relief. In the absence of any statutory mandate or rules, an application per se is not a condition for seeking a waiver from the compliance under Section 12-A of the said Act. Therefore, the pleadings in the plaint and the supporting documents on record and the oral submissions would be sufficient for examining whether the suit contemplates any urgent interim relief for not exhausting the remedy of pre-institution mediation.

h) The legal position that the plaint can be rejected at the threshold reflects the court's application of mind to the requirement of "urgent interim relief" and to whether the prayer for urgent interim relief is not in disguise to circumvent the bar contemplated under Section 12-A. However, mere non-grant of the interim relief at the ad interim stage, when the plaint is taken up for admission and examination, would not justify the rejection of the plaint under Order VII Rule 11 of the 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. Therefore, when a plaint is filed under the said Act, with a prayer for an urgent interim relief, the Commercial Court has to examine the nature and the subject-matter of the suit, the cause of action, and the prayer for interim relief to find out whether the prayer for urgent interim relief is not in disguise to wriggle out of and get over Section 12-A of the said Act. Hence, the facts and circumstances of the case must be considered holistically from the plaintiff's standpoint.

i) The words “contemplate any urgent interim relief” in Section 12-A(1) of the said Act, with reference to the suit, should be read as conferring power on the court to be satisfied, which means the plaint, documents and facts should show and indicate the need for an urgent interim relief.

j) It is not permissible to reject the plaint qua any particular portion of a plaint, including against some of the

defendants, and continue the same against the others. If the plaint survives against certain defendants and/or properties, Order VII Rule 11 (a) or (d) of the CPC will have no application at all, and the suit as a whole must then proceed to trial.

k) The cause of action for filing a suit consists of a bundle of facts, and the factum of the suit being barred by limitation is ordinarily a mixed question of fact and law. A “right to sue” means the right to seek relief by means of legal procedure when the person suing has a substantive and exclusive right to the claim asserted by him, and there is an invasion of it or a threat of invasion. When the right to sue accrues, it depends, to a large extent, on the facts and circumstances of a particular case, keeping in view the relief sought and that the use of the phrase “right to sue” is synonymous with the phrase “cause of action” and would be in consonance when one uses the word “arises” or “accrues” with it.

l) There is a difference between non-disclosure of cause of action, which comes within the scope of Order V Rule 11

and a defective cause of action, which has to be decided during the trial.

m) On a meaningful reading of the plaint, the basic question to be decided while dealing with the application filed under Order VII Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to getting out of Order VII Rule 11 of the CPC.

n) In the amendments made applicable to the commercial division and commercial courts, the provision of Order VII Rule 11 of the CPC are not amended, and thus the legal principles for rejection of the plaint in Order VII Rule 11 of the CPC would also apply to the suits filed in the commercial courts and commercial division. The power of the Court to reject the plaint is 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.

Analysis and Conclusions:

23. The suit is filed for the recovery of an amount against defendant nos. 1 to 11. The plaintiffs contended that amounts are due and payable to plaintiff no. 1 on account of the supply of fuel, as per bunker invoices raised by plaintiff no. 1, and for a loan advanced by plaintiff no. 2. The plaintiffs rely upon the terms and conditions of the MRA and TRA agreements that the outstanding dues of the Asean Group Credit Facility would be payable to them as per the priority set out in the said agreements.

24. A perusal of the terms and conditions of the MRA and TRA agreements reveals that the plaintiffs' names are listed as beneficiaries for the purpose of releasing funds from revenue generated by Varun. The plaintiffs further pleaded that defendant no. 12, i.e., the director of Varun, represented that defendant nos. 1 to 9 had constituted a Joint Lenders Forum, i.e. JLF, under the guidelines of the Reserve Bank of India. Defendant no. 12 further represented that JLF would take remedial measures to address the financial stress faced by Varun. Thus, based on the representation made by defendant

no. 12, plaintiff no. 1 continued assistance to Varun for the supply of bunkers, which were essential for the completion of repairs and maintenance of the vessels of Varun, which had been dry docked. Hence, plaintiff no. 1 supplied bunkers to enable Varun to resume the operation of vessels.

25. The plaintiffs have further pleaded that Defendant no. 12 assured them that the JLF would be informed of their dues. Accordingly, JLF held various meetings to formulate and finalise restructuring agreements for Varun in accordance with the guidelines of the Reserve Bank of India. Defendant no. 12, who is the ex-director of Varun, had supplied the minutes of the meeting of JLF. From the minutes of the meeting, it transpired that defendant no. 12 had informed JLF that the plaintiffs had agreed to provide the additional credit to Varun, enabling him to generate funds. Thus, it is the plaintiffs' contention that, based on the assurances given by defendant nos. 1 to 12, they continued to provide assistance to Varun.

26. It is argued on behalf of defendant no. 1 that the plaintiffs' pleadings show that defendant no. 12 had assured that the plaintiff's inter-corporate deposit would be repaid at the first

instance, along with the outstanding bunker invoices from the new loan, which was promised to be sanctioned by defendant nos. 1 to 12. Therefore, the pleadings, according to defendant no. 1, show that the cause of action is against defendant no. 12 and not against defendant no. 1.

27. However, a correct reading of the pleadings shows that, under the agreements entered into by defendant nos. 1 to 12, the plaintiffs are referred to as creditors and beneficiaries of the Asean Group Credit Facility under the MRA and TRA. A perusal of the copies of the agreements produced with the plaint reveals the plaintiffs' names as creditors entitled to the funds on a priority basis. Defendant no. 1 is shown in the agreements as the 'Lead Bank and the Account Bank', and defendant no. 10 is shown as 'the Security Trustee'. The plaintiffs have pleaded the cause of action on the basis of information received by them on 21st May 2019 from a copy of the miscellaneous application filed by the Mauritius Commercial Bank with the NCLT. Thus, according to the plaintiffs, the contents of the miscellaneous application revealed that, although funds were available, they were not

released in favour of the plaintiffs, even though they were shown on the priority list to receive the funds.

28. Thus, according to the plaintiffs, based on the assurance given by defendant no. 12 through JLF, and as agreed in the MRA and TRA agreements, the plaintiffs are entitled to sue the defendants to recover amounts due to them from Varun. The plaintiffs have pleaded that their representative attended the meetings of JLF and that they were also provided with the minutes of those meetings, which recorded that, once cash flow began, their dues would be paid.

29. Thus, the question whether the plaintiffs' cause of action is sustainable or defective presents a triable issue that warrants trial and cannot be decided at this stage. Based on the averments in the plaint and the supporting documents, the cause of action is pleaded for recovering amounts from defendant nos. 1 to 11, as these defendants acted as trustees of the revenue generated by Varun. According to the plaintiffs Varun was able to generate revenue because of the financial assistance provided by plaintiff no. 2 and supply of bunkers by plaintiff no. 1. Hence, the plaintiffs’ claim for recovering amount

from defendant nos. 1 to 11 is based on this cause of action pleaded against defendant nos.1 to 11, in view of the terms and conditions agreed between defendant nos. 1 to 11 with Varun. Hence, the plaint cannot be rejected on the ground that there is no cause of action. The cause of action is also pleaded against defendant no. 1, as the lead bank and the Account Bank responsible for releasing funds to the plaintiffs in accordance with the priority set out in the agreements.

30. As to the objection that the suit is barred by limitation, the plaintiffs have pleaded that the cause of action arose on 21st May 2019, based on the miscellaneous application filed before the NCLT. The plaintiffs learnt that revenue was available in the sub-account maintained by defendant no. 1 for the release of funds to the Asean Group Credit Facility, based on the cause of action pleaded in paragraph 43. According to the plaintiffs, the suit filed on 18th December 2021 is well within the limitation in view of Article 113 of the Limitation Act, 1963. As per the law settled by the Hon'ble Apex Court in the decisions relied upon by the learned counsel for the plaintiffs, they would be entitled to lead evidence to support their plea that the suit

for recovery of amount against defendant nos. 1 to 11 would be covered under Article 113 read with Section 10 of the Limitation Act, 1963 or any other article of the schedule to the Limitation Act. Thus, even the issue of limitation warrants a trial and cannot be decided at this stage.

31. So far as the objection on the non-compliance of Section 12-A is concerned, the suit was filed much prior to the law declared by the Hon'ble Apex Court in the decision of ***Patil Automation*** that the compliance under Section 12-A of the said Act is mandatory. This Court in ***Deepak Raheja*** declared Section 12-A mandatory on 1st October 2021. Therefore, in view of the legal principles settled in ***Patil Automation***, by the Apex Court, any plaint filed in this court after 1st October 2021, violating Section 12-A of the said Act, the plaintiff will not be entitled to the relief. In the present case, the suit was presented (filed) on 31st July 2021 and registered on 18th December 2021. Thus, it was filed before Section 12-A was declared mandatory by this Court and registered after the declaration. Therefore, in view of the well-established legal principles as discussed in the above paragraphs, the plaint in the present case, cannot be

rejected on the ground of non-compliance with the mandatory requirement under Section 12-A of the said Act. Therefore, none of the grounds enumerated under Order VII Rule 11 of the CPC are satisfied in the facts of the present case, for rejection of the plaint at the threshold.

32. It is a common experience of this Court that applications under Order VII Rule 11 of the CPC are routinely filed. It is unfortunate that, despite the well-settled legal principles on the mandatory character of Section 12-A of the said Act and the circumstances under which the bar applies, as well as the well-established legal principles under Order VII Rule 11 of the CPC, applications are routinely filed for rejection of the plaint, thereby delaying the decision in suits filed under the said Act. Such attempts by the defendant to routinely file an application with no substance on any of the grounds for rejection of the plaint at the threshold defeats the very object of the Commercial Courts Act, namely, the speedy disposal of suits.

33. For the reasons recorded above, the application is rejected.

[GAURI GODSE, J.]