IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION (L) NO. 34845 OF 2024

IN

COMM. SUIT NO 64 OF 2024

1. Guiness Securities Ltd.
(formerly known as Guiness Properties &
Holding Co. Private Limited)
2. Kamal Kumar Kothari
3. Dharmendra Kothari ***....Applicants***

IN THE MATTERS BETWEEN

National Stock Exchange of India Ltd.
a Company incorporated under the
provisions of the Companies Act, 1956 ***..... Plaintiff***

: Versus :

1. Guiness Securities Ltd.
(formerly known as Guiness Properties &
Holding Co. Private Limited)
2. Kamal Kumar Kothari
3. Dharmendra Kothari
4. Soumen Chatterjee
5. Tarun Kanti Sengupta ***....Defendants***

Mr. Kunal Vaishnav *with Ms. Surbhi Soni i/b. MGSV & Associates for Defendant Nos.1 to 3 and for Applicant in IAL No. 34845 of 2024.*

Dr. Birendra Saraf, Senior Advocate *with Mr. Ranjeev Carvalho, Mr. Rishab Murali, Mr. Sachin Chandarana, Mr. Jaiveer Dhakan an Mr. Ulrik Jehangir i/b. Manilal Kher Ambalal & Co., for the Plaintiff.*

CORAM : SANDEEP V. MARNE, J.

ORDER RESERVED ON : 11 AUGUST 2026.

ORDER PRONOUNCED ON : 21 AUGUST 2026

ORDER:

1) Defendant Nos.1 to 3 have filed the present application seeking rejection of the plaint under Order 7 Rule 11 of the Code of Civil Procedure, 1908 **(the Code)** for non-compliance with the mandatory pre-litigation mediation as provided under Section 12A of the Commercial Courts Act, 2015 **(CC Act)**.

2) Plaintiff-National Stock Exchange of India Ltd. (**NSEL)** has filed the present suit *inter-alia* for recovery of sum of Rs.339.57 crores as on 28 February 2023 alongwith interest arising out of 5393 claims submitted by the investors in pursuance of declaration of Defendant No.1 being a defaulter in terms of Bye-law No.1(a) of Chapter-12 of Bye-laws of NSEL and consequent upon expulsion of Defendant No.1 under Rules 1 and 2 of Chapter-IV of the Rules of NSEL.

3) Plaintiff is a leading Stock Exchange of India. Defendant No.1 is an incorporated entity and had been a trading member registered with NSEL in the Capital Market **(CM)** and Futures & Option **(F&O)** segments since July 2000 and in Currency Derivatives **(CD)** segment since October 2008. Defendant No.1 had also been a self-clearing member of CM segment and self-clearing member of F & O segment. Defendant Nos.2 to 5 are Directors of Defendant No.1. According to the Plaintiff, Defendant No.1 executed various trades on behalf of its investors. During the course of regular inspection across all segments of trading in the month of March 2018, various irregularities in the books and records of Defendant No. 1 were noticed leading to issuance of show cause notice dated 9 November 2018 to Defendant No.1 for initiation of disciplinary action, monetary penalty, expulsion, suspension etc. After receipt of reply of Defendant No.1, disciplinary action committee of NSEL passed orders dated 27 November 2018 directing Defendant No.1 to recoup the shortfall of funds and securities, to provide detailed explanation/supporting documents etc. as an interim measure. Trading membership of Defendant No.1 was suspended under all segments. Thereafter, Securities and Exchange Board of India **(SEBI)** passed ad-interim order dated 19 December 2018 against Defendant Nos.1 to 5 restraining them from accessing the securities market and prohibiting them from selling or otherwise dealing in securities etc. They were also restrained from disposing off or alienating the assets without prior permission of SEBI and to provide full inventory of all their assets. On 6 May 2019, the Member Selection Committee of the Plaintiff passed an order expelling Defendant No.1 from the membership.

4) In the above background, Plaintiff issued public notice on 9 May 2019 requesting the clients/constituents of Defendant No.1 to lodge claims in the prescribed formats. In the meantime, Forensic Audit Report was received on 22 October 2019 and the report confirmed that there was misappropriation of clients, securities, misrepresentation, falsification of books of account etc. on the part of Defendant No.1. On 31 July 2019, SEBI passed confirmatory order confirming the ad-interim order in respect of 29 entities, including Defendant No.1. On 28 September 2020, SEBI issued a Circular advising initiation of suitable action for liquidation of assets of defaulter members. On 7 January 2021, the Securities Appellate Tribunal passed order in Appeal preferred by Defendant No.3 setting aside the interim order dated 19 December 2018 and confirmatory order dated 31 July 2019. On 30 June 2022, SEBI passed final order restraining Defendant Nos.1 and 2 for 7 years and Defendant No. 3 for 5 years from buying, selling or dealing with securities and freezing of holdings of Defendant No.1 and imposing monetary penalty of Rs.2 crores, Rs.1 crores and Rs.75 lakhs on Defendant Nos.1, 2 and 3 respectively. SEBI restrained Defendant Nos. 1 to 3 from disposing off their assets without prior permission of SEBI and were also directed to provide an updated inventory of their assets. In the meantime, in pursuance of notice dated 9 May 2019, Plaintiff received total number of 5393 claims from the investors aggregating to Rs.339,57,00,000/-. Plaintiff has accordingly filed the present Suit for recovery of amount of Rs.339,57,00,000/- from the Defendants.

5) On 31 March 2023, this Court granted leave under Order 2 Rule 2 of the Code. Thereafter, leave under Clause 12 of the Letters Patent was granted. On 8 February 2024, this Court has passed ad-interim order granting relief in terms of prayer clauses (a), (b) and (f) of Interim Application for temporary injunction. In the above background, Defendants Nos.1 to 3 have filed the present application seeking rejection of plaint under Order 7 Rule 11 of the Code for failure to comply with mandatory pre-litigation mediation as provided under Section 12A of the CC Act. Plaintiff has filed affidavit-in-reply opposing the Interim Application to which Defendant Nos.1 to 3 have filed rejoinder.

6) Mr. Vaishnav, the learned counsel appearing for the Applicant submits that the Plaintiff has instituted the present suit without exhausting the remedy of pre-litigation mediation under Section 12A of the CC Act. Relying on judgment of the Apex Court in ***Patil Automation Private Limited & Ors. Versus. Rakheja Engineers Private Limited***[1] he submits that Section 12A is not a mere procedural provision and the same is intended to be mandatory. He submits that the only recognised exception to the requirement under Section 12A is the case where an urgent interim relief is contemplated. Relying on judgment of the Apex Court in ***Yamini Manohar Versus. T.K.D. Keerthi***[2] he submits that Plaintiff does not have an absolute right to paralyze Section 12A by inserting a prayer for urgent interim relief and that camouflage and guise to bypass the statutory mandate of pre-litigation mediation should be checked when deception and falsity is apparent or established. He relies

1 (2022) 10 SCC 1
2 (2024) 5 SCC 815

on judgment of this Court in ***Ekta Housing Pvt. Ltd. Versus. Shraddha Shelters Pvt. Ltd.***[3] in support of his contention that only genuine urgency is excluded. He relies on judgment of the Apex Court in ***Dhanbad Fuels Private Limited Versus. Union of India And another***[4] in support of his contention that mere allowing of interim relief is an irrelevant factor for determining compliance with the provisions of Section 12A of the CC Act. He also relies on judgment of the Delhi High Court in ***Exclusive Capital Limited Versus. Clover Media Private Limited and others***[5] in support of his contention that words 'contemplate any urgent interim relief' demands an elevated level of scrutiny as it is not a box to be checked at the Plaintiff's sole discretion. He also relies on judgment of this Court in ***Image Developer & Anr. Versus. Kamla Landmarc Real Estate Holding Private Limited and others***[6].

7) Mr. Vaishnav accordingly submits that provisions of Section 12A cannot be bypassed simply by making a prayer for urgent interim reliefs and that an urgency needs to be demonstrated to be imminent, disclosing a real and genuine apprehension. He submits that if there is a delay in filing proceedings, the same must be explained. He relies on judgment of this Court in ***IIFL Finance Ltd. Versus. Gundecha Estates Pvt. Ltd.***[7].

8) Mr. Vaishnav submits that Plaintiff itself has averred that the cause of action in respect of the claim first arose on 7 November 2018.

3 2024 SCC Online Bom 3538
4 2025 SCC Online SC 1129
5 2025 SCC Online Del 5221
6 2025 SCC Online Bom 3284
7 Commercial Suit (L)-8617 of 2025 dated 17.7.2025

That the suit is however filed in March 2023, after delay of 4.5. years. That therefore Plaintiff could have awaited completion of pre-litigation mediation period of 3 months contemplated under Section 12A of the CC Act. He submits that holistic reading of the plaint shows that circumstances averred in the plaint were in the knowledge of the Plaintiff since December 2018. That Plaintiff had issued notice dated 9 May 2019 prescribing period of 3 months for lodging of claims. That SEBI has already directed Defendants to provide inventory of its assets and investments and has also restrained them from dealing with/disposing off their assets. That therefore there was no urgency to seek any interim relief in the facts and circumstances of the present case. Mr. Vaishnav accordingly prays that the Interim Application be made absolute in terms of the prayers made therein by rejecting the plaint under Order 7 Rule 11 of the Code.

9) Dr. Saraf, the learned Senior Advocate appearing for the Plaintiff opposes the Application submitting that the present suit contemplates urgent interim reliefs and that therefore the requirement of exhausting the remedy of pre-litigation is inapplicable to the facts and circumstances of the present case. He submits that in the present case, interim relief has actually been granted by this Hon'ble Court on 8 February 2024 and therefore it is not necessary for this Court to decide whether the suit contemplates any urgent interim relief or not. That specific findings are recorded in the order dated 8 February 2024 regarding urgency. He relies on order of this Court in ***National Stock Exchange of India Ltd. Versus. Ficus Securities Pvt. Ltd. & Ors.***[8]. He also

8 Order dated 30.9.2024 passed in IA(L)-28727 of 2024 in Com.Suit No.80-2024

relies on order of this Court in ***National Stock Exchange of India Limited Versus. C.M. Goenka Stock Brokers Pvt. Ltd. & Ors.***[9]

10) Dr. Saraf thereafter takes me through the frame of the Suit, as well as entire chronology of events leading to filing of the Suit in support of his contention that the suit could be filed only after receipt of the claims in pursuance of the notice issued by the Plaintiff. That the suit is for recovery of amounts due by Defendant No.1 to 5393 investors. That claims of 5393 investors are received as on 28 February 2023 and accordingly the present suit has been filed. That since Defendants were likely to deal with the assets, the suit was required to be filed expressing the urgency for claiming interim and ad-interim reliefs. That Plaintiff in the plaint has clearly pleaded an urgency as contemplated under Section 12A of the CC Act. In any case, he submits that once ad-interim relief is granted by this Court, the issue of urgency cannot once again be gone into while deciding application under Order 7 Rule 11 of the Code. Dr. Saraf relies on judgment of this Court in ***Vistra ITCL India Ltd. Versus. Darvesh Properties Pvt. Ltd. and others***[10] in support of his contention that since ad-interim relief is granted, it cannot be contended that Interim Application was filed only for bypassing the mandatory provisions of Section 12A of the CC Act. He also relies on judgments of this Court in ***Lakhani Realty LLP Versus. Kalina Vihar Darshan Co-operative Housing Society and others***[11], ***Buildcon Sethia Versus. Dipti Co-operative Housing Society Ltd.***[12], ***Kaulchand H. Jogani Versus. Shree Vardhan***

9 Order dated 6.7.2023 passed in IA(L)-15176 of 2022 in Com.Suit No.248-2022
10 IA(L)-22747 of 2025 in COMS(L)-13824 of 2025 decided on 22.9.2025
11 IA-5492/2025 in COMS(L)-24873-2005 decided on 15.10.2025
12 2025 SCC Online Bom 4958

Investment and Ors.[13] and ***Paramvir Developers Pvt. Ltd. Versus. IIFL Finance Ltd. & Ors.***[14]. Dr. Saraf accordingly prays for dismissal of the application.

11) Rival contentions urged on behalf of the parties now fall for my consideration.

12) Defendant Nos.1 to 3 have sought rejection of plaint under Order 7 Rule 11 of the Code on account of failure on the part of the Plaintiff to comply with mandatory pre-litigation mediation as provided under Section 12A of the CC Act. Under Section 12A, a suit, which does not contemplate any urgent interim relief, cannot be instituted unless the Plaintiff exhausts the remedy of pre-litigation mediation. Section 12A of the CC Act provides thus:

> **12A. Pre-litigation Mediation and Settlement.**
>
> (1) A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-litigation mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.
>
> (2) For the purposes of pre-litigation mediation, the Central Government may, by notification, authorise-
>
>> (i) the Authority, constituted under the Legal Services Authorities Act, 1987 (39 of 1987); or
>> (ii) a mediation service provider as defined under clause (m) of section 3 of the Mediation Act, 2023.
>
> (3) Notwithstanding anything contained in the Legal Services Authorities Act, 1987 (39 of 1987), the Authority or mediation service provider authorised by the Central Government under sub-section (2)

13 2022 SCC Online Bom 4752
14 Order dated 4.4.2026 passed in IA-4596 of 2025 in COMS-126 Of 2025

> shall complete the process of mediation within a period of one hundred and twenty days from the date of application made by the plaintiff under sub-section (1):
>
> Provided that the period of mediation may be extended for a further period of sixty days with the consent of the parties:
>
> Provided further that, the period during which the parties spent for pre-litigation mediation shall not be computed for the purposes of limitation under the Limitation Act, 1963 (36 of 1963).
>
> (4) If the parties to the commercial dispute arrive at a settlement, the same shall be reduced into writing and shall be signed by the parties and the mediator.
>
> (5) The mediated settlement agreement arrived at under this section shall be dealt with in accordance with the provisions of sections 27 and 28 of the Mediation Act, 2023."

13) By now, it is well settled position that Section 12A of the CC Act is not a mere procedural provision and the same is intended to be mandatory [SEE: ***Patil Automation Private Limited*** (supra)]. However sub-section (1) of Section 12A recognises an exception to the requirement of exhaustion of pre-litigation mediation i.e. a suit which contemplates any urgent interim relief.

14) In ***Yamini Manohar*** (supra), the issue before the Apex Court was whether plaintiff has an absolute choice and right to bypass mandatory provisions of Section 12A of the CC Act by making a prayer for urgent interim relief. Answering the issue in the negative, the Apex Court has held in paras-10 and 11 of the judgment as under:

> **10. We are of the opinion that when a plaint is filed under the CC Act, with a prayer for an urgent interim relief, the commercial court should examine the nature and the subject matter of the suit, the cause of action, and the prayer for interim relief.** <u>The prayer for</u>

urgent interim relief should not be a disguise or mask to wriggle out of and get over Section 12A of the CC Act. **The facts and circumstances of the case have to be considered holistically from the standpoint of the plaintiff.** Non-grant of interim relief at the ad-interim stage, when the plaint is taken up for registration/admission and examination, will not justify dismissal of the commercial suit under Order VII, Rule 11 of the Code; at times, interim relief is granted after issuance of notice. Nor can the suit be dismissed under Order VII, Rule 11 of the Code, because the interim relief, post the arguments, is denied on merits and on examination of the three principles, namely, (i) prima facie case, (ii) irreparable harm and injury, and (iii) balance of convenience. The fact that the court issued notice and/or granted interim stay may indicate that the court is inclined to entertain the plaint.

11. **Having stated so, it is difficult to agree with the proposition that the plaintiff has the absolute choice and right to paralyze Section 12A of the CC Act by making a prayer for urgent interim relief. Camouflage and guise to bypass the statutory mandate of pre-litigation mediation should be checked when deception and falsity is apparent or established.** The proposition that the commercial courts do have a role, albeit a limited one, should be accepted, otherwise it would be up to the plaintiff alone to decide whether to resort to the procedure under Section 12A of the CC Act. An `absolute and unfettered right' approach is not justified if the pre-institution mediation under Section 12A of the CC Act is mandatory, as held by this Court in Patil Automation.

(emphasis and underlining added)

15) More recently, in ***Dhanbad Fuels Private Limited*** (supra), the Apex Court has explained how the expression '*urgent interim relief*' appearing in Section 12A of the CC Act is to be construed. The Apex Court has drawn its conclusions in para-62 of the judgment as under:

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

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

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

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

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

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

f. The test for "urgent interim relief" is if on an examination of the nature and the subject-matter of the suit and the cause of action, the prayer of urgent interim relief by the Plaintiff could be said to be contemplable when the matter is seen from the standpoint of the Plaintiff.

g. Courts must also be wary of the fact that the urgent interim relief must not be merely an unfounded excuse by the Plaintiff to bypass the mandatory requirement of Section 12A of the 2015 Act.

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

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

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

(emphasis added)

16) Thus, as held by the Apex Court in ***Dhanbad Fuels Private Limited***, the test for '*urgent interim relief* ' is that the Court must examine the nature of subject matter of the suit and the cause of action and then determine whether the prayer for urgent interim relief made by the Plaintiff could be said to be contemplable when the matter is seen from the standpoint of the Plaintiff. The prayer for urgent interim relief cannot be a mere unfounded excuse by the plaintiff to bypass the mandatory requirement under Section 12A of the CC Act. The Court has also held that even in a case where urgent interim relief is ultimately denied, the Suit of the Plaintiff can still proceed without compliance with provisions of Section 12A if the test for urgent interim relief is satisfied notwithstanding the actual outcome on merits.

17) A Single Judge of the Delhi High Court in ***Exclusive Capital Limited*** has held that the phrase '*contemplate any urgent interim relief*' demands an elevated level of scrutiny as it is not a box to be checked at Plaintiff's sole discretion. It further held that though the urgency is to be viewed from Plaintiff's perspective but further scrutiny of the legitimacy of claim for exemption by the Court is crucial. It is held that urgency contemplated should neither be speculative or presumptive, but must be anchored in a specific factual predicates, discernible *ex-facie* from the pleadings, cause of action and also the conduct of the Plaintiff.

18) The above principles have been reiterated in several decisions of the High Courts including this Court and it is not necessary to refer to ratio of each of those judgments which are relied upon by the rival parties. The principles which are discernible from the ratio of various judgments of the Apex Court and by the High Courts are as under:

a) Section 12A of the CC Act is a strict condition precedent for maintaining a suit involving commercial dispute, where no urgent interim relief is sought. Failure to comply with Section 12A in cases where urgency is not established justifies the rejection of the plaint under Order VII Rule 11 of the Code;
b) Any Suit instituted after 20 August 2022, without complying with Section 12A of the CC Act must meet with rejection under Order VII Rule 11 of the Code;
c) Section 12A cannot be bypassed simply by making a prayer for urgent interim reliefs. Only genuine urgency is excluded. Camouflage and guise to bypass the statutory mandate of pre-litigation mediation should be checked when deception and falsity is apparent or established;
d) Whether the suit genuinely contemplates urgent interim relief is to be ascertained on a holistic reading of the plaint and by examining the nature and subject matter of the suit and the cause of action;
e) The facts and circumstances of the case have to be considered holistically from the standpoint of the plaintiff.
f) 'Contemplation' does not mean an instant immediacy but the prejudice and irreparable loss and injury that the plaintiff is likely to suffer, if the plaintiff is made to wait for pre-litigation mediation;

g) The urgency has to be demonstrated to be imminent, disclosing a real and genuine apprehension with detailed facts and particulars. Plaint must disclose that if urgent relief is not granted, grave prejudice and irreparable harm would be caused;

h) Urgency contemplated should neither be speculative or presumptive, but must be anchored in specific factual predicates, discernible *ex-facie* from the pleadings, cause of action and also the conduct of the Plaintiff before institution of the suit. Conduct of proceedings by the Plaintiff in the suit post its filing is an irrelevant factor for deciding the application of rejection of plaint;

i) Even if the urgent interim relief ultimately comes to be denied, the suit may be proceeded with without compliance with Section 12A if the test for "urgent interim relief" is satisfied notwithstanding the actual outcome on merits. In a converse situation however, where ad interim or interim injunction is granted, the Court would readily presume contemplation of urgent interim relief in the suit;

j) Courts conduct a limited jurisdictional inquiry as to whether the facts justify immediate protection rather than testing the absolute merits of the case. Therefore merits of the underlying dispute are irrelevant at the stage of deciding the application for rejection of plaint under order VII Rule 11 of the Code on the ground of failure to exhaust the mandatory prelitigation mediation;

k) While deciding whether the urgency is genuinely contemplated, it is also imperative to see when the right to sue first arose and if there is a delay in filing proceedings from the date on which the right to sue arose, the Plaint must explain such a delay;

l) The onus of proving that there is a case for urgent interim reliefs rests on the Plaintiff and must be discharged by the Plaintiff.

19) Having discussed the settled principles for determining the urgency contemplated under sub-section (1) of Section 12A of the CC Act, I now proceed to determine whether the present suit fits into the exception carved out by the Legislature for compulsory exhaustion of remedy of pre-litigation mediation.

20) Plaintiff is a Stock Exchange and Defendant No.1 was its trading and clearing member in respect of various segments such as CM, F & O and CD. During the course of its routine inspection, Plaintiff claims to have discovered various irregularities and this is how various proceedings have been initiated both by the Plaintiff, as well as by SEBI against the Defendant No.1. Some details of the proceedings, as are necessary for deciding the present application, are already narrated in the preceding paragraphs. Defendant No.1 was initially suspended and thereafter expelled by the Plaintiff. Additionally, by final order dated 30 June 2022, SEBI has restrained Defendant Nos.1 and 2 for 7 years, and Defendant No.3 for 5 years from buying, selling or otherwise dealing in securities and from associating with securities in any manner. SEBI has also directed freezing of all holdings of Defendant No.1 in addition to imposition of penalties of Rs.2 crores, Rs.1 crore and Rs.75 lakhs on Defendant Nos.1 to 3 respectively.

21) Plaintiff had issued a public notice on 9 May 2019 calling upon clients/constituents of Defendant No.1 to lodge claims in the prescribed format within 3 months. Plaintiffs received as many as 5393 claims from investors as on 28 February 2023 aggregating to amount of Rs.339.57 crores. This is how the present suit is filed for recovery of amount of Rs.339.57 crores from the Defendants alongwith interest for the purpose of reimbursing the claims of the investors. The Suit is thus filed for the purpose of protecting the interests of investors who are clients of Defendant No.1 and who have apparently lost monies/securities due to actions of the Defendants. This is the broad frame of the Suit. Since rejection of plaint is not sought on the ground of absence of disclosure of cause of action, it is not necessary to make a detailed reference to averments made in the plaint.

22) Since rejection of plaint is sought only on the ground of non-exhaustion of pre-litigation mediation under Section 12A of the CC Act, all that needs to be examined is whether the suit, contemplates any urgent interim relief within the meaning of sub-section (1) of Section 12A of the CC Act. It is the case of Defendant Nos.1 to 3 that there was no necessity of seeking any interim relief for disclosure or injunction in the light of orders already passed by SEBI on 19 December 2018, 31 July 2019 and 30 June 2022. By order dated 19 December 2018 *ex-parte* ad-interim relief was directed thereby directing Defendant Nos.1 to 5 from disposing off or alienating any assets without the prior permission of SEBI and also to provide full inventory of their assets. The ad-interim order dated 19 December 2018 was confirmed on 31 July 2019. A final order has been passed on 30 June 2022 under which Defendant Nos.1 to 3 are directed not to dispose of their assets without prior permission of SEBI and also to provide inventory of their assets.

23) However, it is the case of the Plaintiff that despite final order dated 30 June 2022, Defendant No.1 provided inventory of assets only upto December 2018. This is a reason why the Plaintiff was required to file Interim Application in the Suit for seeking disclosures upto date. This Court has considered the prayer of the Plaintiff for ad-interim reliefs and by order dated 8 February 2024 ad-interim reliefs are granted in terms of prayer clauses (a), (b) and (f) of Interim Application (L.) No. 7105 of 2023. The order dated 8 February 2024 reads thus:

> Heard learned senior counsel appearing for the applicant/plaintiff. The present suit has been initiated by the plaintiff for recovery of amount to the tune of Rs.339 crores from the defendants.
>
> 2. The learned senior counsel for the applicant/plaintiff, made an effort to point out that a strong prima facie case is made out against the defendants and for the present, the plaintiff is seeking disclosures and for appropriate injunction against the defendants from dealing with their assets.
>
> 3. At this stage, the learned counsel for defendant Nos.1 to 3 submits that the Securities and Exchange Board of India (SEBI), on 30.06.2022, has already passed an order injuncting defendant Nos.1 to 3 from disposing of or dealing with their movable and immovable properties and further that a direction has been given to the defendants to give their disclosures. It is brought to the notice of this Court that although the said order has been challenged, there is no stay operating in respect of the said order.
>
> 4. This Court is of the opinion that while an opportunity can be granted to the defendants to file reply affidavit in the present application, in the light of the order dated 30.06.2022 passed by SEBI and the material brought to the notice of this Court in the present proceeding, ad-interim order can be granted in favour of the plaintiff.

5. It is to be noted that defendant Nos.4 and 5 are also the directors of defendant No.1-Company and therefore, ad-interim reliefs ought to operate against them also.

6. In view of the above, there shall be ad-interim reliefs in terms of prayer clauses (a), (b) and (f), which read as follows:

"(a) this Hon'ble Court may be pleased to direct the Defendant No.1 to disclose on oath by filing an Affidavit (A) its financial returns for the last three years; (B) certified statements of bank accounts for the last one year; (C) a list of all gross block fixed assets with complete particulars of location, area, details of encumbrances, name of secured lenders, date of security, amount due and the status; (D) a list of all other movable assets i.e., including all investments whether in public or private companies, debt, equity and every other portfolio; (E) all other movable items including automobiles, computers, servers, equipment and other assets of the acquisition or replacement value of more than Rs. 1 Lakh; (F) details of all the receivables from its clients/debtors, together with details of all encumbrances and valuation in respect thereof; (G) details of the shares, securities, funds, and investments which have been diverted / transferred by Defendant No. 1 and valuation with all supporting information / documents including the funds transferred to the related entities; (F) details of the used/utilization/application of the funds and securities diverted/transferred by Defendant No. 1 including the funds transferred to the related entities;

(b) this Hon'ble Court may be pleased to direct the Defendant Nos. 2 to 5 to disclose on oath by filing an Affidavit (A) their financial returns for the last three years; (B) certified statements of bank accounts for the last one year; (C) a list of all gross block fixed assets with complete particulars of location, area, details of encumbrances, name of secured lenders, date of security, amount due and the status; (D) a list of all other movable assets i.e., including all investments whether in public or private companies, debt, equity and every other portfolio; (E) all other movable items including automobiles, computers, servers, equipment and other assets of the acquisition or replacement value of more than Rs. 1 Lakh. (F) details of all the receivables from its clients / debtors, together with details of all encumbrances and valuation in respect thereof; (G) details of the shares, securities, funds, and investments which have been diverted / transferred by Defendant Nos.2, 3 & 4 and valuation with all supporting information/documents including the funds transferred to the related entities; (F) details of the used/utilization/application of the funds and securities diverted/transferred by Defendant Nos. 2, 3 & 4 including the funds transferred to the related entities;

f) this Hon'ble Court may be pleased to restrain the Defendants, their servants, agents, assigns, directors, officials or any person/s acting or claiming through or under it, by a temporary order and injunction of this Hon'ble Court, from in any manner transferring, alienating, selling, disposing of and/or dealing with and/or parting with possession and/or encumbering or creating any third party, right, title and interest in all assets, movable and immovable, tangible and intangible, securities, shares, debentures, investments owned by the Defendants and/or kept or diverted to any other connected entity, including the assets disclosed on oath by the Defendants;"

7. Reply affidavit on behalf of the defendants be filed within three weeks from today. The defendants shall give necessary disclosures, as per prayer clauses (a) and (b), in the reply affidavit itself.

8. Rejoinder affidavit, if any, be filed within two weeks thereafter.

9. List the application for further consideration on 18.03.2024.

10. The other pending applications shall also be taken up for consideration on the next date of listing.

11. The defendants are permitted to file their rejoinder affidavits in the applications filed on their behalf i.e. Interim Application (Lodging) No.11747 of 2023 and Interim Application (Lodging) No.11411 of 2023, within a period of three weeks from today.

24) Thus, Defendant Nos.1 to 3 had specifically invited attention of this Court to the order passed by SEBI on 30 June 2022 injuncting Defendant Nos.1 to 3 from disposing of or dealing with assets, as well as to give disclosures. Despite being aware of SEBI's order dated 30 June 2022, this Court has thought it appropriate to grant ad-interim reliefs in favour of the Plaintiff by order dated 8 February 2024. It therefore cannot be contended by Defendant Nos.1 to 3 that there was no need for seeking any interim relief after passing of SEBI's order dated 30 June 2022.

25) As observed above, this Court has already granted ad-interim relief in favour of the Plaintiff. Mr. Vaishnav has relied upon observations made by the Apex Court in para-62(h) of the judgment in ***Dhanbad Fuels Pvt. Ltd.*** in support of his contention that even if interim relief is granted, the Court can still examine whether the averments in the plaint and the conduct of the plaintiff make out a case of genuine contemplation or urgent interim relief within the meaning of Section 12A of the CC Act. I am unable to agree. Once a Court grants ad-interim/interim relief, it is to be necessarily presumed that grant of such ad-interim / interim relief is predicated on the urgency exhibited by the Plaintiff. While deciding application under Order 7 Rule 11 of the Code, this Court cannot sit in appeal over the findings recorded in the ad-interim order and hold that no case was made out in the plaint for consideration of ad-interim relief. What is held by the Hon'ble Apex Court in para-62(h) of the judgment in ***Dhanbad Fuels Pvt. Ltd.*** is that mere rejection of prayer for urgent interim reliefs does not come in the way of Plaintiff proceeding in the suit without complying with the provisions of Section 12A so long as the test of '*urgent interim relief*' is satisfied. Thus, the observations cannot be read to mean as if when the ad-interim/interim relief is granted, the Court can go into the issue as to whether a case for urgency for grant of ad-interim/interim relief is actually made out from the averments of the plaint while deciding application for rejection of plaint under Order 7 Rule 11 of the Code. In ***Vistra ITCL India Ltd.*** a similar contention was sought to be raised which has been repealed by this Court by observing in para-16 and 19 of the judgment as under :

> 16. Thus, I do not find any substance in the arguments raised on behalf of the applicants that the mere grant of adinterim relief would not mean that urgent interim relief was not contemplated in the suit on the date of filing of the suit. This court has granted ad-interim relief by considering the averments and the urgency of interim relief as on the date of filing of

> the suit. Thus, in the present case, it cannot be said that the interim relief application is filed only to bypass the mandatory provision under Section 12-A of the said Act.
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> 19. This court, in the decision of Kaulchand H.Jogani, held that the proper course would be to assess whether there are elements which prima facie indicate that the suit may contemplate urgent interim relief, irrespective of the fact whether the plaintiff eventually succeeds in getting the interim relief. In the present case, though the application for interim relief is still pending, this court, after considering the averments in the plaint and after hearing the present applicants, has granted ad-interim relief. Thus, the grant of ad-interim relief also supports the plaintiffs' contention that the interim relief is contemplated and the plaint cannot be rejected on the ground that there is no compliance under Section 12-A of the said Act. The Hon'ble Apex Court explained the applicability of the provisions of Section 12-A and its mandatory requirement in the case of Dhanbad Fuels Private Limited, by taking into consideration the legal principles settled in the decision of Patil Automation Private Limited vs. Rakheja Engineers Private Limited.

26) In my view therefore once ad-interim relief is granted by this Court considering the nature of urgency involved in the case, it does not lie in the mouth of Defendant Nos.1 to 3 to contend that urgency contemplated under Section 12A of the CC Act is involved in the present case. I am therefore fully convinced that the Suit filed by the Plaintiff falls in the exception envisaged under sub-section (1) of Section 12A of the CC Act. The suit undoubtedly contemplates urgent interim relief and therefore non-exhaustion of remedy of pre-litigation mediation is not fatal.

27) The case involves allegation of fraudulent activities by Defendant Nos.1 to 3. They have been held responsible by SEBI for misappropriation of shares and securities of the clients. In ***Ficus Securities Pvt. Ltd.*** (supra), an attempt was made to flag the provisions of Section 12A of the CC Act for opposing grant of interim reliefs. In that case as well, serious findings of fraud were made by SEBI against the Defendants therein. This Court held that while it was unconscionable for a party who had accepted finding of fraud to use Section 12A as a shield to resist grant of interim relief. The observations are not made in the context of rejection of plaint under Order 7 Rule 11 of the Code, however they would apply in the present case as the Defendant Nos. 1 to 3, against whom findings of fraud are recorded, are using the provisions of Order 7 Rule 11 of the Code to somehow defeat the claim of the Plaintiff. The findings recorded in paras-8 and 9 of the order are relevant which read thus:

> 8. I have heard learned counsel and find no merit in the preliminary objection that has today been raised. Section 12A of the Commercial Courts Act itself contemplates that the requirement of Pre-Institution Mediation can be dispensed with, when the Commercial Suit in question contemplates urgent interim relief. Mr. Kamat has taken me through the Plaint and pointed out from paragraph 22 onwards the case pleaded necessitating urgent reliefs. I did not hear Ms. Rastogi even attempting to deny any of this.
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> 9. In my view, on a plain reading of the Plaint as a whole, the same makes clear that the Suit is one which contemplates urgent reliefs. This is more so in the context of the most grave and serious findings of SEBI against Defendant Nos.1 to 3. These findings have admittedly not been challenged and are today final. In this factual backdrop, I find that it would be wholly unconscionable for a party, who has accepted findings of fraud to use Section 12A as a shield to resist the grant of interim relief. Also, Ms. Rastogi's contention that the Suit was filed after one year from the date of SEBI's order would not ipso facto mean that the Suit does not contemplate urgent reliefs. Furthermore, given the fact that Ms. Rastogi has chosen to proceed on the basis of a demurrer, it was thus not upon her to deny what has been pleaded in the Plaint.

28) The suit is filed by the Plaintiff for protecting the interests of the investors who are clients of Defendant No.1. NSEL is attempting to recover amounts due and payable by Defendant No.1 to its clients through the present Suit. As observed above, SEBI's order dated 30 June

2022 was not sufficient protection for the Plaintiff and it is justified in seeking further interim reliefs against the Defendants. In my view, therefore considering the nature and subject matter of the suit, the cause of action as well as conduct of the Plaintiff, a clear case of contemplation of urgent interim relief in the Suit is made out.

29) I am not impressed by the contention of Defendant Nos.1 to 3 that since the cause of action first arose on 7 November 2018 at the time of expulsion of Defendant No.1, there is delay on the part of the Plaintiff in seeking interim reliefs. The Suit could not be filed without receiving claims from the investors. The need for seeking urgent interim reliefs in the suit has arisen on account of conduct of Defendant No.1 in making disclosure only upto December 2018. Therefore, it cannot be contended that the Plaintiff did not press the prayers for urgent interim relief with necessary alacrity.

30) Thus the suit clearly involved contemplation of urgent interim relief within the meaning of Section 12A of the CC Act. Therefore the plaint cannot be rejected by having recourse of provisions of Order VII Rule 11 of the Code.

31) In view of the above discussion, I do not find that any case is made out for rejection of the plaint under Order 7 Rule 11 of the Code. The Interim Application is accordingly rejected. Costs of the Application shall be costs in the suit.

[SANDEEP V. MARNE, J.]