



September 2025

Delhi High Court dismissed a commercial suit for non-compliance with mandatory pre-institution mediation, upholding the court's role in scrutinising the element of 'urgency'

The Delhi High Court (“**Delhi HC**”), in the case of *Exclusive Capital Limited vs. Clover Media Private Limited and Ors.*¹, dismissed a commercial suit filed by Exclusive Capital Limited (“**ECL**”). The suit was dismissed since ECL had approached the court without complying with the mandatory pre-institution mediation under Section 12A of the Commercial Courts Act, 2015 (“**CC Act**”) on the ground of urgent interim relief. The Delhi HC held that granting such an exemption mechanically and merely at the request of the plaintiff would nullify the objective of making the pre-institution mediation mandatory. The objective of this requirement is to promote the ‘ease of doing business’ in India by providing a mechanism for speedy dispute resolution.

Brief facts

1. ECL, a non-banking financial company (NBFC), pursuant to an Inter-Corporate Deposit Agreement dated December 14, 2022 (“**ICD Agreement**”), received a sum of INR 60,00,00,000 (Indian Rupees sixty crore) from Clover Media Private Limited (“**CMPL**”) (defendant no. 1), towards the acquisition of a corporate loan owed by Asian Hotels (North) Limited (“**AHNL**”) (defendant no. 4) to IndusInd Bank. Consequently, ECL entered into an assignment deed dated December 28, 2022 with IndusInd Bank, whereby the loan account of AHNL was assigned in favour of ECL, creating a charge over AHNL’s assets.
2. As per the plaint, Mr. Harvinder Singh (defendant no. 3), on behalf of ECL, and CMPL executed a forged and fabricated ICD Agreement. Consequently, in February 2024, CMPL unlawfully assigned the AHNL loan to VSJ Investments Limited (defendant no. 2), by way of an assignment deed dated February 1, 2024.
3. Upon discovery of the aforesaid collusive conduct of the defendants, ECL lodged a complaint with the Economic Offences Wing on February 29, 2024, alleging forgery.
4. Subsequently, ECL filed a commercial suit in January 2025 seeking declaratory and injunctive reliefs, along with an application under Section 12A of the CC Act seeking exemption from pre-institution mediation.

¹ CS (COMM) 399/2025 (decided on August 4, 2025)

Issue

The Delhi HC was called upon to determine the scope and applicability of the mandatory requirement under Section 12A of the CC Act and whether the exemption under Section 12A of the CC Act was to be viewed only from the standpoint of the plaintiff, without judicial scrutiny?

Analysis and finding

1. **On interpretation of Section 12A of the CC Act:** Relying on a well-recognised principle of statutory interpretation, which has been judicially affirmed by the Hon'ble Supreme Court of India², the Delhi HC held that the negative language used in Section 12A of the CC Act *vis-à-vis* "*which does not contemplate any urgent interim relief*" and "*shall not be instituted*" signifies the mandatory nature of the provision. The said interpretation reinforces the legislature's objective behind incorporating the said provision, i.e. to improve the 'ease of doing business' in India by providing a mechanism for speedy dispute resolution.
2. **On interpretation of the phrase "*contemplate any urgent interim relief*":** The Delhi HC held that the mere assertion of "*urgent interim relief*" in the plaint cannot be a valid ground to seek exemption from the mandatory pre-institution mediation. It emphasised that such an existence of urgency demands an elevated level of scrutiny by the court and must be proved beyond plain assertions.
3. **On determining factors:** The Delhi HC held that to determine whether a suit "*contemplates any urgent interim relief*", the following factors (not exhaustive) play a crucial role:
 - a) the failure to grant such exemption would render the plaintiff's application for injunction or the suit itself infructuous;
 - b) the failure to grant such exemption would create an irreversible or unalterable situation, disabling the court from restoring *status quo ante* at the stage of adjudication of such application;
 - c) the origin and timeline of the cause of action;
 - d) the timing and manner of the plaintiff's approach to the court; and
 - e) adherence to the pre-institution mediation mechanism would operate to the detriment of the Plaintiff.
4. **On ECL's approach to the court:** The Delhi HC considered that ECL had been aware of the allegedly forged documents since February 2024, i.e., for over a year before institution the suit. Further, the suit was filed in January 2025 and was allowed to remain in defects for 3 (three) months. The said defects were removed only in April 2025. Such inaction was attributable solely to ECL and undermined any plea of urgency.
5. **On facts of the case:** The Delhi HC noted that the apprehended course of action had already culminated. The order to reverse such action cannot be taken by way of an urgent relief as it would have the effect of disturbing a settled state of affairs without adjudication. The reliefs sought in the exemption application were inseparably linked to the core issues raised in the suit *vis-à-vis* allegations of forgery, lack of authority and fabrication, which necessarily required a detailed examination of facts and evidence. Further, the plaintiff had failed to plead any immediate or irreversible action that threatened to alter its legal status. The mere existence of an interim relief could not be contemplated to be an urgent interim relief. Therefore, the element of urgency was not justified and appeared to be missing. Accordingly, the application for exemption and, consequently, the suit were rejected.

Conclusion

The judgment is a welcome reiteration of the principles of statutory interpretation, upholding the objective of the legislature to boost the Indian economy by providing a speedy framework for resolution of commercial disputes. By reiterating the mandatory nature of the pre-institution mediation and on the court's role in deciding the existence of

² *M. Pentiah and Ors. vs. Muddala Veeramallappa and Ors.*, AIR 1961 SC 1107; *Patil Automation vs. Rakheja Engineers*, (2022) 10 SCC 1

urgency to claim exemption, the Delhi HC has circumvented an easy escape on the part of parties from adhering to the provisions of Section 12A of the CC Act.

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