



Delhi High Court holds that issuance of correspondence for amicable resolution prior to litigation amounts to satisfaction of pre-litigation mediation under Section 12A of the Commercial Courts Act, 2015.

Introduction

The Delhi High Court (“**High Court**”) in *Bolt Technology OU. vs. Ujoy Technology Private limited & Anr.*¹, held that the requirement of Section 12A of the Commercial Courts Act (“**CCA**”) for pre institution mediation will stand satisfied where a party proposes amicable settlement, and the other party rejects the same, in response to the issuance of correspondence for amicable resolution. The High Court in effect has watered down the requirement of the procedure to be followed under Section 12A of the CCA read with Rule 3 of the Commercial Courts (Pre-institution Mediation and Settlement) Rules 2018 (“**Mediation Rules**”). The High Court came to the above conclusion basis the fact that the defendant had already responded to the legal notice for amicable resolution by stating that the notice was frivolous and instead sought a compensation of INR 5,00,00,000 (Indian Rupees five crore) for harassment. The High Court after consideration of the facts in the present case, also came to the conclusion that intellectual property rights are valuable rights not only for the parties but also customers and public at large and therefore will fall within the exemption of urgent interim reliefs as contemplated under Section 12A(1) of the CCA.

Facts

Bolt Technology OU (“**Bolt**”) filed a suit for trademark and copyright infringement seeking permanent injunction against the defendants from using the mark “BOLT”. Bolt is the registered proprietor of the mark “BOLT” used in relation to ride-hailing, food and grocery delivery, rental of cars, e-bikes and scooters, electric vehicle (“**EV**”) charging stations/docks, worldwide. Bolt argued that the defendants are using an identical mark “BOLT”, along with the logo, in relation to identical business i.e., charging points for EVs.

When the matter was taken up on the first date, the defendants opposed the application filed by Bolt seeking exemption from Section 12A of the CCA. Defendants argued the Plaint was liable to be rejected since there was non-compliance of Section 12A of the CCA. They relied on Patil Automation Private Limited & Ors. V. Rakheja Engineers Private Limited (“**Patil**”)² wherein it was held by the Supreme Court that pre-litigation mediation under Section 12A of the CCA is mandatory and no suit can be entertained without resorting to pre-litigation mediation. The Supreme Court further held that a suit liable to be rejected in case of non-compliance of Section 12A of the CCA.

¹ CS (COMM) 582/2022 decided on August 29, 2022.

² Civil Appeal Nos. 5333-34/2022 decided on August 17,2022.

Findings of the High Court

The High Court after hearing the parties and referring to the Patil case held that there was no urgent reliefs sought by the party when the Supreme Court came to its finding in the Patil case.

In the present case, Bolt sought urgent reliefs. Therefore, the question before the High Court was whether such urgent reliefs mean only urgent interim relief due to immediate past events or can it be urgent relief which a party seeks in the overall facts and circumstances of a particular case. The High Court after consideration of the facts in the present case, came to a conclusion that the present case pertains to one of urgent reliefs since the intellectual property rights of a party are required to be protected.

The High Court further held that where a party proposes amicable settlement, and the other party rejects the same, it would amount to requirement of Section 12A of the CCA being satisfied, in addition to the fact that Bolt has sought urgent interim reliefs. Thus, the conditions for exemption from Section 12A of the CCA are satisfied.

JSA Comment

Rule 3 of the Mediation Rules clearly sets out the manner in which the mediation process has to be initiated. Rule 3(4) of Mediation Rules provides that the mediation proceedings will be a non-starter if a party refuses to participate in the mediation process. Mediation can only happen if both parties consent to participate in the process. The Judge applied the requirement of refusal to participate by considering the response to the legal notice as a refusal rather than directing the parties to follow the procedure laid down under Rule 3 (1), Rule 3(2) and Rule 3(3) of the Mediation Rules.

In a way, this is a practical approach considering the urgency when filing for enforcement of intellectual property rights and also in situations where mediation process can be misused by the opposite party to delay the plaintiff from obtaining any relief. In so far as categorizing the intellectual property right matters as most urgent, so as to overcome the requirement of Section 12A(1) of the CCA, the Judge has only reiterated the law as provided under Section 12A of the CCA. However, this proposition will be used by every person to claim dispensation from Section 12A of the CCA when intellectual property right suits are sought to be filed before courts.

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This Prism has been prepared by:



Dheeraj Nair
Partner



Shruti Dass
Senior Associate



Mallika Chadha
Associate



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