IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

IA No.GA/1/2026

IN CS 2 of 2026

AND
IA No.GA/2/2026
IN CS 2 OF 2026

M. WALTER AND CO. AND OTHERS
-Vs-
RAJASHI DEVELOPERS PRIVATE LIMITED

For the Plaintiffs/Petitioners	: Mr. Debnath Ghosh, Sr. Adv. Mr. Sarosij Dasgupta Ms. Shomrita Das Mr. Shomrik Das
For the Defendant	: Mr. Jishnu Chowdhury Sr. Adv. Mr. Soumabho Ghose Mr. Dibesh Kumar Dwivedi Ms. Sanskriti Agarwal
Judgment on	: 29.09.2026

Ananya Bandyopadhyay, J.:-

1. The principal question arising for determination is whether the controversy pleaded in C.S. No. 2 of 2026 constitutes a "commercial dispute" within the meaning of Section 2(1)(c) of the Commercial Courts Act, 2015, particularly clause (xviii) thereof.

2. The answer cannot be obtained merely by examining the Settlement Agreement dated 1st November, 2022 as the immediate source of the monetary claim. The decree which preceded the agreement, the execution proceeding instituted for enforcement thereof, the circumstances in which

Rajashi Developers Private Limited entered the arrangement, the obligations undertaken by the respective parties and the purpose for which the Settlement Agreement was executed require consideration in their proper sequence.

3. C.S. No. 297 of 2003 was instituted by M. Walters & Company against Mrs. Gloria E. Mehra in respect of unpaid dues arising from a transaction involving sale of goods. The suit culminated in the decree dated 12th August, 2008. The liability of Mrs. Gloria E. Mehra was thereby adjudicated in favour of the plaintiff. E.C. No. 57 of 2009 was thereafter instituted for enforcement of the decree. An order dated 13th July, 2012 restrained alienation of the properties at 59A, 59B, 59C and 59D Park Street, Kolkata-700016, without leave of the Court.

4. The subsequent events acquired their legal significance from the decree and the execution proceeding. Mrs. Gloria E. Mehra had entered into an arrangement concerning sale of the aforesaid property. The intending purchaser nominated Rajashi Developers Private Limited as the purchaser. Rajashi consequently entered the transaction at a stage when the decree continued to be enforceable, the execution proceeding was pending and the property proposed to be transferred was subject to the restraint operating in execution.

5. The Settlement Agreement dated 1st November, 2022 thereafter recorded the arrangement between M. Walters & Company and Rajashi Developers Private Limited. Rajashi agreed to pay Rs.55,00,000/- towards full and final settlement of the decretal dues arising from the decree dated 12th August, 2008. Rs.5,00,000/- had already been paid by Pay Order

No.117643. The balance amount, subject to the stipulated deduction towards TDS, was to be paid by cheque retained in escrow. The plaintiff, in return, undertook to take steps for withdrawal of E.C. No. 57 of 2009.

6. The language of the Settlement Agreement affords no basis for treating the payment undertaking as a transaction having an origin independent of the decree. The amount stipulated under the agreement was expressly identified as the amount payable towards full and final settlement of the decretal dues. Withdrawal of the execution proceeding constituted the corresponding act contemplated from the plaintiff. The agreement was therefore directed to resolution of the liability which had already been adjudicated and was then being enforced through execution.

7. Rajashi assumed a fresh contractual obligation under the Settlement Agreement. Such obligation arose from the agreement executed between the parties. Its character, however, cannot be determined by severing the obligation from the purpose for which it was undertaken. The immediate source of the present claim is the subsequent contractual undertaking; the subject matter and purpose of that undertaking are disclosed by the decree, the execution proceeding and the express terms of the Settlement Agreement.

8. The reliance placed upon Section 62 of the Indian Contract Act, 1872 requires separate examination.

9. Novation contemplates substitution of an existing contract by a new contract. The chronology in the present case does not disclose such a substitution. The original commercial controversy had already culminated in the decree dated 12th August, 2008. The decree was thereafter sought

to be enforced through E.C. No. 57 of 2009. Rajashi entered the arrangement subsequently and undertook payment towards the decretal dues for securing withdrawal of the execution proceeding.

10. No executory contract between the original parties was awaiting substitution by the Settlement Agreement. The original transaction had already travelled through adjudication and had resulted in a decree. The legal relationship which the Settlement Agreement created between the plaintiff and Rajashi was therefore subsequent to, and directed towards resolution of, the adjudicated liability.

11. The illustrations to Section 62 relied upon by the plaintiffs do not alter the position. The illustrations contemplate a subsisting contractual or monetary obligation which is substituted by a fresh arrangement. The present case concerns an obligation which had already been adjudicated by a decree and was thereafter under execution. The question is therefore not whether the original contract was replaced by a new executory contract, but whether the subsequent undertaking had a sufficient juridical connection with the commercial dispute which it expressly sought to resolve.

12. The answer to the latter question is in the affirmative.

13. The contractual obligation assumed by Rajashi was new. The controversy which that obligation was intended to resolve was not new.

14. The plaint itself establishes the same sequence. The pleadings trace C.S. No. 297 of 2003, the decree dated 12th August, 2008, E.C. No. 57 of 2009, the restraint over the Park Street property, the proposed sale, the nomination of Rajashi as purchaser, the Settlement Agreement, the

payment of Rs.5,00,000/-, the escrow arrangement concerning the balance, the plaintiff's instruction for withdrawal of the execution proceeding, the order dated 25th January, 2023 dismissing the execution proceeding as withdrawn and the subsequent failure attributed to Rajashi in completing the agreed payment.

15. Paragraph 25 of the plaint identifies 1st November, 2022 as the date when the cause of action arose. Such identification does not alter the character of the controversy. The date of the immediate cause of action and the subject matter of the obligation giving rise to that cause of action are separate matters. The present claim arose from the alleged failure to perform the Settlement Agreement; the Settlement Agreement itself expressly concerned settlement of the decretal dues arising from the earlier commercial dispute.

16. The plaintiffs thereafter acted upon the reciprocal arrangement by taking steps for withdrawal of E.C. No. 57 of 2009. The execution proceeding was dismissed as withdrawn by the order dated 25th January, 2023. Withdrawal of execution was consequently not a collateral event. It constituted performance of the obligation contemplated from the plaintiff under the Settlement Agreement.

17. The decision of the Division Bench of this Court in *Modern Roadways Corporation v. Simplex Infrastructures Limited, 2026 SCC OnLine Cal 3822*, requires particular consideration.

18. The dispute in that case arose from an agreement for provision of transport services. Outstanding bills followed, and during proceedings before the National Company Law Tribunal the parties entered into a

settlement by which the liability was quantified and payment was agreed. Part payment followed and the balance remained unpaid. The subsequent suit sought recovery of the unpaid amount. The Division Bench examined the plaint and held that the subject matter of the suit involved a commercial dispute within Section 2(1)(c)(xviii), since the claim arose from the agreement for provision of services.

19. The plaintiffs seek to distinguish Modern Roadways on the ground that the settlement there was between the original contracting parties, whereas Rajashi was not a party to the transaction which gave rise to C.S. No. 297 of 2003.

20. The factual distinction is apparent. The principle emerging from Modern Roadways, however, does not make identity with the original contracting parties a prerequisite for the subsequent transaction to retain its connection with the earlier commercial controversy. The decision requires examination of the subject matter of the claim and the transaction from which the obligation under consideration arose.

21. The present case possesses an additional feature. The earlier commercial dispute had already culminated in a decree and had proceeded into execution. Rajashi entered the arrangement during execution and expressly undertook payment towards the decretal dues in consideration of withdrawal of that proceeding. The Settlement Agreement therefore cannot be treated as a stand-alone monetary arrangement.

22. The decision in *D.M. Corporation Pvt. Ltd. v. State of Maharashtra, 2018 SCC OnLine Bom 1112*, was cited for the proposition that the nature of the relief and the real nature of the dispute require examination while

determining whether the controversy constitutes a commercial dispute. The Bombay High Court emphasised that the Court must examine the real nature of the relief rather than permit the form of the prayer to determine jurisdiction.

23. The principle assists the present inquiry. The real nature of the controversy cannot be reduced to the fact that the plaintiff seeks recovery of money. The Court must ascertain why Rajashi became liable to pay the amount claimed. The answer is furnished by the Settlement Agreement itself: the payment was stipulated towards full and final settlement of the decretal dues arising from the earlier commercial dispute, and withdrawal of the execution proceeding constituted the corresponding performance.

24. The plaintiffs have relied upon *Durgapur Ispat Udyog Private Limited & Others v. Central Bank of India 2025 SCC OnLine Cal 2084,* decided on 28th February, 2025.

25. The decision requires careful distinction rather than rejection. In *Durgapur Ispat Udyog* (supra), the plaintiffs had entered into an OTS with the bank during recovery proceedings. The bank subsequently withdrew the OTS, and the plaintiffs sued principally for damages said to have resulted from the bank's refusal to permit sale of mortgaged properties and from the subsequent sale of those properties at lower prices. The Court held that the claim did not fall within Section 2(1)(c), principally because the damages claimed were not connected with a mercantile document or commercial transaction of the nature contemplated by clause (i).

26. The present case is materially different in its juridical source. The plaintiffs here do not claim damages merely because some commercial arrangement concerning property was terminated or because property was subsequently dealt with at a particular price. The present suit seeks enforcement of a payment obligation which the Settlement Agreement expressly described as payment towards full and final settlement of decretal dues arising from a commercial transaction already adjudicated in C.S. No. 297 of 2003.

27. The distinction assumes greater significance because *Durgapur Ispat Udyog* (supra) concerned Section 2(1)(c)(i), whereas the present controversy is examined under Section 2(1)(c)(xviii). Clause (i) concerns ordinary transactions of merchants, bankers, financiers and traders and mercantile documents. Clause (xviii) expressly covers agreements for sale of goods or provision of services. The statutory ingredients are therefore not interchangeable.

28. The reliance placed in *Durgapur Ispat Udyog* upon *Venkatesh Vincom Private Limited v. Spice of Joy, Multicuisine Restaurant cum Bar & Others, 2022 SCC OnLine Cal 3010*, and upon *State of Maharashtra v. Shri V.S. Naik, 1980 Supp SCC 229*, and *Goodyear India Ltd. v. Collector of Customs, Bombay, (2000) 10 SCC 489*, also concerns interpretation of clause (i), particularly the expression “such as” Venkatesh Vincom dealt with the requirement of a mercantile document under clause (i), while the latter authorities concerned the interpretation of illustrative expressions.

29. Those decisions do not determine the present question under clause (xviii). The present case does not depend upon bringing the Settlement

Agreement within the expression "mercantile document". The question is whether the controversy arising from the Settlement Agreement, which expressly sought settlement of the liability arising from an agreement for sale of goods and the decree founded upon that transaction, bears the requisite connection with the commercial dispute contemplated by clause (xviii).

30. *Durgapur Ispat Udyog* (supra) therefore does not govern the present controversy.

31. The plaintiffs have relied upon *Prime Hitech Textile LLP v. Manish Kumar, 2022 SCC OnLine Cal 2326*, for the proposition that every recovery of money connected with business does not thereby become a commercial dispute.

32. The proposition is accepted. Commercial character cannot be attributed merely because the parties carry on business or because the relief claimed is monetary.

33. The present case does not rest upon either circumstance. The commercial character is traced to the transaction which the Settlement Agreement expressly sought to settle. C.S. No. 297 of 2003 concerned unpaid consideration arising from sale of goods. That dispute culminated in a decree. The Settlement Agreement thereafter identified the decretal dues as the liability to be settled and linked payment with withdrawal of execution.

34. The present claim therefore does not become commercial merely because it is a money claim. It derives its character from the commercial dispute which the subsequent arrangement expressly addressed.

35. The defendant has relied upon *Laxmi Polyfab Pvt. Ltd. v. Eden Realty Ventures Pvt. Ltd., 2021 SCC OnLine Cal 1457*, particularly paragraph 74.

36. *Laxmi Polyfab* (supra) principally concerned the procedural consequences flowing from institution of a commercial dispute on the Ordinary Original Civil Jurisdiction rather than in the forum contemplated by the Commercial Courts Act. The judgment also dealt with the interplay between Section 12A and Section 15 of the said Act.

37. The decision therefore becomes relevant only after the substantive classification of the dispute has been made. It cannot determine whether the controversy itself constitutes a commercial dispute.

38. The principle that a plaint in an improperly instituted commercial suit may attract the consequences prescribed by Order VII Rule 10 of the Code of Civil Procedure does not answer the anterior question whether the suit is commercial.

39. Reliance upon *Patil Automation Private Limited v. Rakheja Engineers Private Limited, (2022) 10 SCC 1*, also requires a confined approach. The principal issue there concerned Section 12A of the Commercial Courts Act and the requirement of pre-institution mediation in suits which do not contemplate urgent interim relief.

40. The decision is important for the statutory scheme governing commercial suits, but it does not enlarge the substantive definition in Section 2(1)(c). The present inquiry remains whether the dispute pleaded in the plaint falls within clause (xviii). Section 12A and the consequences flowing from its application arise only after that character is established.

41. The plaintiffs have further relied upon *Sun Pharmaceutical Industries Limited v. Emami Limited and Others*, F.M.A.T. No. 56 of 2026 with CAN 1 of 2026, decided on 17th August, 2026.

42. The decision concerned a suit for alleged disparagement and the contention that the dispute fell within Section 2(1)(c)(xvii), relating to intellectual property rights. The Division Bench examined whether the source of the dispute and the reliefs claimed brought the action within that statutory category. The Court emphasised the source of the dispute must fall within one of the statutory categories and observed that a suit for defamation or disparagement simpliciter would not become a commercial suit merely because the parties carried on business or because intellectual property registrations were referred to in the pleadings.

43. The principle assists the plaintiffs only to the limited extent that the Court must identify the statutory source of the dispute and cannot infer commercial jurisdiction merely from the commercial character of the parties.

44. The present controversy has a statutory source materially connected with clause (xviii). The Settlement Agreement expressly records that the amount of Rs.55,00,000/- was payable towards full and final settlement of the decretal dues arising from a decree founded upon a transaction involving sale of goods. The connection is therefore pleaded through the substance of the transaction itself and not inferred merely from the identity or business character of the parties.

45. Sun Pharmaceutical accordingly does not support the proposition that a subsequent settlement necessarily loses the commercial character of the dispute which it was expressly designed to resolve.

46. Rajashi's status as a party to the Settlement Agreement, but not to the original commercial transaction, requires no finding that Rajashi acted as the formal agent of Mrs. Gloria E. Mehra.

47. The relevant facts are narrower. Rajashi was nominated as purchaser in relation to the property of Mrs. Gloria E. Mehra while the decree was being enforced. The property was subject to restraint in the execution proceeding. Rajashi thereafter undertook payment of Rs.55,00,000/- expressly towards the decretal dues. The plaintiff, in return, undertook withdrawal of the execution proceeding.

48. Rajashi therefore entered an existing controversy for the purpose of resolving the liability which was then the subject of execution. Its contractual obligation was newly assumed, but the subject to which the obligation related was already identified by the decree and the execution proceeding.

49. The Park Street property explains the circumstances in which Rajashi entered the arrangement. The substantive claim in the present suit, however, concerns the alleged failure to pay the amount stipulated under the Settlement Agreement.

50. The prayers for Receiver, injunction, attachment before judgment and preservation of assets are protective measures directed towards securing the monetary claim. They do not convert the suit into an action for adjudication of title to the Park Street property.

51. The statutory Explanation to Section 2(1)(c) also recognises that a commercial dispute does not cease to possess that character merely because the action additionally involves recovery of immovable property or realization of monies secured by immovable property.

52. The original dispute requires particular attention. C.S. No. 297 of 2003 concerned unpaid consideration arising from sale of goods. Clause (xviii) of Section 2(1)(c) expressly includes disputes arising out of agreements for sale of goods or provision of services.

53. The Settlement Agreement did not create a wholly new commercial transaction concerning sale of goods. Its relevance lies elsewhere. It recorded the subsequent arrangement by which the decretal liability arising from the earlier sale-of-goods transaction was to be settled. The commercial character is therefore not attributed to the Settlement Agreement by treating it itself as an agreement for sale of goods. The connection arises because the Settlement Agreement expressly concerned the liability adjudicated in the earlier commercial dispute and prescribed performance directed towards resolution of that liability.

54. Such construction also accords with the approach adopted in Modern Roadways, where the Court did not examine the subsequent settlement as a self-contained instrument divorced from the service transaction which had generated the liability.

55. The sequence of events admits of a coherent legal conclusion.

56. An earlier transaction involving sale of goods gave rise to C.S. No. 297 of 2003. The dispute culminated in the decree dated 12th August, 2008. E.C. No. 57 of 2009 followed for enforcement of the decree. The Park Street

property became subject to restraint in the execution proceeding. Rajashi was thereafter nominated as purchaser in connection with the proposed transfer of the property. Rajashi entered into the Settlement Agreement dated 1st November, 2022 and expressly undertook payment of Rs.55,00,000/- towards full and final settlement of the decretal dues. Withdrawal of the execution proceeding constituted the corresponding obligation of the plaintiff. The plaintiff acted upon that arrangement and the execution proceeding was thereafter dismissed as withdrawn.

57. The Settlement Agreement was consequently not a transaction whose legal purpose could be separated from the dispute which preceded it. It was the instrument through which the parties sought to resolve the existing decretal controversy.

58. Rajashi assumed a new contractual obligation. The obligation was directed towards resolution of an existing liability arising from a commercial dispute which had already culminated in adjudication.

59. The doctrine of novation therefore does not furnish a basis for severing the present claim from the earlier commercial controversy. *Prime Hitech Textile* does not assist merely because the present relief is monetary. *Durgapur Ispat Udyog* (supra) is distinguishable because its claim concerned damages arising from withdrawal of an OTS and subsequent dealings with mortgaged property and was examined principally under clause (i) *Venkatesh Vincom, State of Maharashtra v. V.S. Naik* and *Goodyear India* concern the statutory expression and mercantile-document requirement applicable to clause (i) which is not the provision presently engaged. Sun Pharmaceutical concerned Section 2(1)(c)(xvii) and

a dispute for disparagement; its reasoning concerning the need to identify the statutory source of the dispute does not assist a claim expressly connected with settlement of decretal dues arising from sale of goods. D.M. Corporation supports examination of the real nature of the controversy, which in the present case is disclosed by the decree, execution proceeding and Settlement Agreement. Modern Roadways supports examination of the subsequent settlement in conjunction with the underlying commercial transaction. *Laxmi Polyfab* (supra) and *Patil Automation* (supra) concern procedural aspects which arise after the substantive character of the dispute has been determined.

60. The commercial character of the present controversy therefore does not rest upon the business status of the parties, the monetary nature of the relief or the presence of immovable property. It rests upon the express and direct connection between the Settlement Agreement and the decretal liability arising from the earlier transaction involving sale of goods.

61. The Court accordingly holds that the controversy pleaded in C.S. No. 2 of 2026 constitutes a “commercial dispute” within the meaning of Section 2(1)(c)(xviii) of the Commercial Courts Act, 2015, subject to satisfaction of the other statutory requirements governing a commercial suit.

62. The objection to the commercial character of the suit is accordingly rejected.

63. Since the instant suit has been assigned to this Bench by virtue of an administrative order passed by the then Chief Justice, High Court at Calcutta, the Registrar Original Side is directed to take steps in converting

the instant suit changing the nomenclature commensurate to a commercial suit with a definite number, within a fortnight.

64. Next date be fixed on 17th November, 2026 for hearing of the said suit.

65. The Learned Advocate-on-Record of both the parties with contact the department to obtaining necessary details pertaining to the suit number.

66. The application is disposed of in the above terms.

67. There is no order as to costs.

68. All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

(Ananya Bandyopadhyay, J.)

P.A.