2026:DHC:8902-DB

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 05.10.2026

\# **CNR No. DLHC010479992026**

\+ FAO(OS) (COMM) 275/2026, CM APPL. 69113/2026 & CM APPL. 69114/2026

NETSYSNETWORK PVT LTD & ORS. .....Appellants

Through: Mr. S. P. Singh Rajput, Mr. Rajkumar Chauhan and Ms. Prerna Rajput, Advs.

versus

SHAWNTEL CONSULTANCY SERVICES .....Respondent

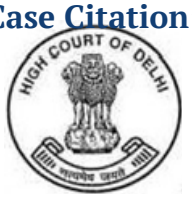
Through:

CORAM:
HON'BLE MR. JUSTICE VIVEK CHAUDHARY
HON'BLE MS. JUSTICE NISHA SAHAY SAXENA

J U D G M E N T

1. The present Regular First Appeal, has been preferred under Section 13(1A) of the Commercial Courts Act, 2015 ("CC Act") by the appellants, who are the defendants in the underlying suit, assailing the order dated 10.08.2026 ("impugned order") passed by the learned Single Judge in I.A. 13994/2026 in CS(COMM) 94/2026, titled *Shawntel Consultancy Services v. Netsys Network Pvt. Ltd. & Ors.* By the impugned order, the application filed by the appellants under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure, 1908 ("CPC"), seeking rejection of the plaint on the grounds of non-compliance with Section 12A of the CC Act and want of pecuniary jurisdiction, has been dismissed.

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2. For the sake of convenience, the parties are referred to in terms of their status before the learned Single Judge, i.e., the appellants as the "defendants" and the respondent as the "plaintiff".

BRIEF FACTS

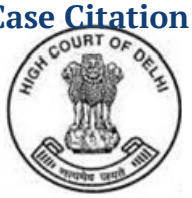
3. The plaintiff is a registered partnership firm engaged in the business of supply of IT hardware and software. Defendant No.1 is a private limited company engaged in the distribution of network hardware and network security products, and defendant Nos.2 and 3 are its Directors.

4. As per the plaint, in October, 2023, defendant No.2 approached the plaintiff for the purchase of IT hardware and software for the projects of Defence Scientific Information & Documentation Centre ("DESIDOC") and Dakshin Haryana Bijli Vitran Nigam ("DHVBN"). Pursuant to Purchase Orders dated 14.10.2023 and 27.10.2023, the plaintiff supplied the goods and raised Tax Invoice Nos.31 and 30, both dated 31.10.2023, for Rs.98,60,630/- and Rs.1,88,80,000/- respectively, payable within 90 days. Pursuant to a further Purchase Order dated 13.03.2024 for the "BHEL" project, the plaintiff raised Tax Invoice No.58 dated 15.03.2024 for Rs.44,84,000/-, payable within 45 days. Each of the invoices stipulated interest @ 24% per annum on delayed payment.

5. The plaintiff alleges that the defendants, despite acknowledging the outstanding amount in several e-mails and in reply to the legal notice dated 05.07.2024, defaulted in payment and made only part payments aggregating to Rs.2,10,00,000/- between 05.11.2024 and 04.01.2025. As per the plaintiff, a principal sum of Rs.1,79,08,100/- remained outstanding, besides interest @ 24% per annum for the period of delay.

6. The plaintiff initially instituted a summary suit under Order XXXVII of

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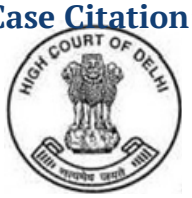


the CPC, being CS(OS) 454/2025, for recovery of Rs.2,04,19,140/-. The defendants entered appearance and filed an application under Order VII Rule 11 of the CPC as well as an application seeking leave to defend, in which, as per the plaintiff, they acknowledged a liability of Rs.1,21,96,712/- while disputing the claim of interest. Vide order dated 25.11.2025, on an application of the plaintiff under Order VII Rule 10 of the CPC, the plaint was returned for being filed before the appropriate Commercial Court/Division.

7. The plaintiff, thereafter, on 28.01.2026, instituted the present commercial suit, being CS(COMM) 94/2026, for recovery of Rs.2,29,30,180/-, along with I.A. 2758/2026 seeking exemption from pre-institution mediation under Section 12A of the CC Act, on the plea of urgency arising from the admitted part liability of the defendants. Notice was issued on the said application on 02.02.2026 and the defendants filed their reply thereto on 25.03.2026.

8. Vide order dated 27.04.2026, the learned Single Judge, noting that pre-litigation mediation was yet to be undertaken, referred the parties to the Delhi High Court Mediation and Conciliation Centre for the purposes of pre-litigation mediation, and listed the matter before the Court on 10.08.2026. In the meantime, the defendants filed I.A. 13994/2026 under Order VII Rule 11 of the CPC on 15.05.2026. *Vide* order dated 19.05.2026, the learned Single Judge, noting that the matter stood referred to pre-litigation mediation, re-notified the matter for 10.08.2026.

9. The defendants assailed the orders dated 27.04.2026 and 19.05.2026 by way of FAO(OS) (COMM) 185/2026. On 27.07.2026, after some submissions, learned counsel for the defendants sought to withdraw the said appeal in order to press I.A. 13994/2026 before the learned Single Judge, and





also categorically stated that the defendants were not agreeable for the dispute to be referred to the Mediation Centre. The appeal was, accordingly, dismissed as withdrawn. It is also relevant to note that, as is evident from the memorandum of the present appeal itself, a Non-Starter Report dated 24.07.2026 came to be issued in the pre-litigation mediation proceedings.

10. Thereafter, I.A. 13994/2026 was heard and dismissed by the learned Single Judge vide the impugned order, and summons in the suit were issued, which were accepted on behalf of the defendants. Aggrieved thereby, the defendants have preferred the present appeal.

IMPUGNED ORDER

11. The learned Single Judge, after noting the two objections raised on behalf of the defendants, has rejected the same by recording the following reasons:

> *"6. This Court is unable to accede to any of the arguments for the following reasons:*
> *7. There is no doubt that the provisions of Section 12A of the CC Act mandate that the plaintiff should exhaust the remedy of pre-litigation mediation in accordance with the manner and procedure prescribed by the Rules, however, the same is subject to the exception where urgent interim reliefs are prayed for in the particular suit.*
> *8. The provisions of Section 12A of the CC Act has come for consideration in two seminal judgments of the Supreme Court in **Patil Automation** (Supra) and **Dhanbad Fuels** (Supra).*
> *9. After a lot of deliberation on this issue, the Supreme Court in **Dhanbad Fuels** (Supra) particularly in para 63 has laid down as under:*
>
> > *"63. Thus, the answer to the question formulated by us whether a suit filed without complying with Section 12A of the 2015 Act must be dismissed or be kept in abeyance with a direction to the parties to explore mediation is as follows:*
> > *a. If the suit is instituted on or after the date of the decision in **Patil Automation** (supra), i.e., 20.08.2022, without complying with Section 12A of the 2015 Act, then it must meet with rejection under Order VII Rule 11, either on an application by the defendant or suo motu by the court.*
> > *b. If the suit was instituted prior to 20.08.2022 without complying with*

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Section 12A of the 2015 Act, and the same does not fall within one of the exceptional categories as explained in paragraph 47 of this judgment, then it would be open to the court to keep the suit in abeyance and direct the parties to explore the possibility of mediation in accordance with the 2015 Act, the PIMS Rules and the 2020 SOP.

64. Having answered the issues as aforesaid, we find it difficult to accept the contention of the appellant that the Trial Court as well as the High Court committed an error in refusing to reject the plaint under Order VII Rule 11. On the contrary, the approach adopted by the High Court in the impugned order in keeping the suit in abeyance and referring the parties to mediation, strikes a perfect balance between the mandatory nature of Section 12A of the 2015 Act as well as the prospective applicability of the consequence of non-compliance with Section 12A as held in Patil Automation (supra).

(emphasis supplied)

65. Needless to clarify that the mediation proceedings must be completed within the time frame stipulated by Section 12A of the 2015 Act and the PIMS Rules, that is, within a period of three months and extendable by two more months, if the need so arises."

*10. In view of the aforesaid authoritative pronouncement of the Supreme Court, it is clear that if a suit is instituted on or after the decision in **Patil Automation** (supra) without complying with the rigours of Section 12A of CC Act, then it must be met with rejection under Order VII Rule 11 of CPC either on application by the defendant or suo moto by the Court. It is significant to note that in **Dhanbad Fuels (supra)**, the Supreme Court has also noted that keeping the suit in abeyance and referring parties to mediation is a balanced approach and is in consonance with the ratio in **Patil Automation** (Supra).*

11. Moreover, while considering the mandate of the Supreme Court as laid down in para 63, it would be relevant to consider the various aspects taken into consideration in para 62, which is extract hereunder:

"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 CPC, 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."

12. It is clear from the conclusions drawn by the Supreme Court in para 62 particularly sub-para (d), (f), (g), (h) and (i) that the plaintiff before the Court is not precluded from filing an application seeking exemption from the procedure prescribed under Section 12A of the CC Act. It is this exception which was carved out in para 62 of the judgement of the Supreme Court in ***Dhanbad Fuels*** *(Supra), that various parties particularly the plaintiffs do file application seeking exemption from affecting the provisions of section 12A of the CC Act.*

13. In the present suit too, the plaintiff sought to carve out an exception by seeking exemption from the rigours of Section 12A of the CC Act, however, it is relevant to note that this Court had clearly refused such exemption and, as a consequence, directed the parties to proceed for pre-litigation mediation. It is also to be noted that though such an order was passed, the defendant never participated in the said proceedings.

14. Having regard to the fact that, the Court indeed directed the

parties to proceed in terms of the provisions under Section 12A of the CC Act, the objection raised appears to be academic and as such is rejected.

15. So far as the issue regarding the lack of pecuniary jurisdiction, predicated on the allegation that allegedly a sum of Rs.1,21,96,712/- is payable by the defendants is concerned, it is relevant to note that the plaintiff in its suit has prayed for a recovery of a sum of Rs.2,29,30,180/- and the requisite Court fee is stated to have also been affixed thereto.

16. In view of the aforesaid, at the pre-summoning stage, it is not open to this Court to conduct a mini trial to find out as to what is the correct amount which is to be recovered from the defendant. At this stage, particularly while considering the application under Order VII Rule 11 of CPC, the facts as stated in the plaint are to be taken to be correct.

17. It is trite that at the stage of considering an application under Order VII Rule 11 of CPC, only the averments in the plaint are to be considered. The defence of the defendant, of any nature whatsoever, cannot be considered.

18. In view of the above, once the averment of the plaintiff that it is seeking recovery of a sum of Rs.2,29,30,180/- is taken into consideration, it is clear that the said sum falls well within the pecuniary jurisdiction of this Court. Therefore the second objection too is untenable, unmerited and is rejected.

19. Consequently, the application under Order VII Rule 11 for the aforesaid reasons is dismissed."

SUBMISSIONS ON BEHALF OF THE APPELLANTS

12. Learned counsel for the appellants has reiterated before us the two objections which were urged before the learned Single Judge.

13. The first of the objections is in respect of non-exercise of the rigours of Section 12A of the CC Act. Learned counsel contends that Section 12A of the CC Act mandates that before a suit is filed, the plaintiff is to exhaust the remedy of pre-litigation mediation and in case such remedy is not exhausted, in terms of the judgments of the Supreme Court in ***M/s Patil Automation Pvt. Ltd. & Ors. v. Rakheja Engineers Pvt. Ltd.***, (2022) 10 SCC 1 and ***M/s Dhanbad Fuels Private Limited v. Union of India & Anr.***, (2025) 9 SCC 424, the suit ought to be dismissed under the provisions of Order VII Rule 11

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of the CPC. In elaboration, it is contended that there was no urgency whatsoever in the suit, which is a simple suit for recovery of money, and the application seeking exemption from Section 12A was filed on false and frivolous grounds only to bypass the mandatory requirement. It is further contended that the approach of keeping the suit in abeyance and referring the parties to mediation, approved in paragraph 64 of ***Dhanbad Fuels*** (*supra*), is confined to suits instituted prior to 20.08.2022, whereas the present suit was instituted in the year 2026, and, therefore, the learned Single Judge has misread the said judgment. It is also contended that the Non-Starter Report dated 24.07.2026, obtained without the consent of the appellants, does not validate the institution of the suit without exhausting the remedy of pre-institution mediation.

14. The second limb of argument of learned counsel is predicated on the lack of pecuniary jurisdiction with this Court. He states that without prejudice to his defence, the actual balance allegedly payable by the defendants is Rs.1,21,96,712/-, which would be below the pecuniary jurisdiction of this Court and, thus, the said suit has to be returned to the plaintiff to be filed before the Court of competent pecuniary jurisdiction. It is contended that the plaintiff has added an exorbitant amount of interest upon the said principal balance only to bring the suit within the pecuniary jurisdiction of this Court, whereas the suit properly lies before the learned District Judge (Commercial Court), Saket Courts, New Delhi.

ANALYSIS AND CONCLUSION

15. We have heard learned counsel for the appellants and perused the impugned order as well as the material placed on record.

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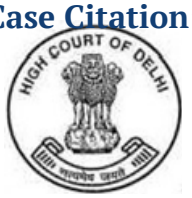
16. At the outset, we may note that the proviso to Section 13(1A) of the CC Act restricts appeals against orders of a Commercial Division to those orders which are specifically enumerated under Order XLIII of the CPC, as amended by the CC Act, and Section 37 of the Arbitration and Conciliation Act, 1996. An order dismissing an application under Order VII Rule 11 of the CPC neither finds mention in Order XLIII of the CPC nor does it amount to a decree, unlike an order rejecting a plaint. The maintainability of the present appeal is, therefore, itself open to serious doubt. However, since learned counsel for the appellants has addressed submissions on merits, we have examined the challenge on merits as well, and we find no merit therein for the reasons that follow.

Re: Non-compliance with Section 12A of the CC Act

17. There can be no quarrel with the proposition that Section 12A of the CC Act is mandatory in nature, as held in ***Patil Automation*** (*supra*), and that a suit instituted on or after 20.08.2022, which does not contemplate urgent interim relief and is filed without complying with Section 12A, is liable to be rejected under Order VII Rule 11 of the CPC, as reiterated in ***Dhanbad Fuels*** (*supra*). The learned Single Judge has, in fact, acknowledged this very position in paragraphs 7 and 10 of the impugned order. The question, however, is whether, in the peculiar facts of the present case, the defendants could insist upon the rejection of the plaint on this ground.

18. The object of Section 12A of the CC Act is to afford the parties to a commercial dispute a meaningful opportunity to resolve their dispute through mediation before the adjudicatory machinery of the Court is set in motion. The provision is intended to promote amicable resolution of commercial disputes and to reduce the burden on Courts; it is not intended to arm a

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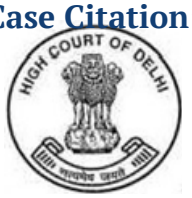




defendant, who has himself spurned the opportunity of mediation, with a technical plea to non-suit the plaintiff.

19. In the present case, it is not as if the plaintiff simply ignored the mandate of Section 12A of the CC Act. The plaintiff moved an application seeking exemption therefrom, and the learned Single Judge, instead of granting such exemption, referred the parties to the Delhi High Court Mediation and Conciliation Centre for pre-litigation mediation vide order dated 27.04.2026, i.e., precisely the process which Section 12A contemplates. The defendants did not participate in the mediation proceedings, which culminated in a Non-Starter Report dated 24.07.2026. Further, on 27.07.2026, the defendants categorically stated before the Division Bench in FAO(OS) (COMM) 185/2026 that they were not agreeable for the dispute to be referred to the Mediation Centre. The challenge laid by the defendants to the orders dated 27.04.2026 and 19.05.2026 was withdrawn, and the said orders have, thus, been left undisturbed.

20. In this backdrop, the learned Single Judge has rightly held that the objection of the defendants had become academic. The very opportunity which Section 12A of the CC Act seeks to secure was afforded to the parties under the orders of the Court, and the same was declined by the defendants themselves. The contention that the Non-Starter Report was obtained without the consent of the defendants is wholly misconceived, since the non-starter outcome is the direct consequence of the defendants' own refusal to participate. A party cannot be permitted to take advantage of its own wrong, and it would be wholly anomalous to permit the defendants, who have consciously refused to mediate, to seek rejection of the plaint on the ground that the plaintiff did not exhaust the remedy of mediation.



21. Even otherwise, rejection of the plaint at this stage would serve no useful purpose. The mediation having failed on account of the defendants' refusal, the plaintiff would be entitled to institute the suit afresh forthwith. The law does not compel the doing of a futile act, and rules of procedure, being the handmaid of justice, cannot be applied in a manner that merely multiplies proceedings and delays adjudication without advancing the object for which they are enacted.

22. The reliance placed by the appellants upon paragraph 64 of ***Dhanbad Fuels*** (*supra*), to contend that the course of keeping a suit in abeyance is confined to suits instituted prior to 20.08.2022, is also of no avail. The learned Single Judge has not rested the impugned order on the premise that the present suit, being instituted after 20.08.2022, could simply be kept in abeyance. The decision rests on the fact that the parties were, in fact, directed to undergo pre-litigation mediation in terms of Section 12A, and that the defendants chose not to participate therein. The reference to paragraph 64 of ***Dhanbad Fuels*** (*supra*) only underscores that referring the parties to mediation advances, rather than defeats, the legislative object of Section 12A. We, therefore, find no infirmity in the view taken by the learned Single Judge on the first objection.

Re: Pecuniary jurisdiction

23. Insofar as the second objection is concerned, it is settled law that while deciding an application under Order VII Rule 11 of the CPC, only the averments made in the plaint, along with the documents relied upon therewith, are to be looked into, and the defence set up by the defendant in the written statement or in the application is wholly irrelevant at that stage. The same principle governs the determination of pecuniary jurisdiction at the

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threshold, which is to be determined on the basis of the valuation of the claim made in the plaint.

24. In terms of Section 12(1)(a) of the CC Act, where the relief sought in a suit is for recovery of money, the money sought to be recovered, inclusive of interest, if any, computed up to the date of filing of the suit, is to be taken into account for determining the specified value of the suit. The plaintiff has sought recovery of Rs.2,29,30,180/-, comprising the outstanding principal and the interest @ 24% per annum stipulated in the invoices, and has paid court fee thereon. The said amount is well above Rs.2,00,00,000/-, and the suit, therefore, falls squarely within the pecuniary jurisdiction of this Court.

25. The figure of Rs.1,21,96,712/- propounded by the defendants is a figure arrived at on the basis of their own defence, which, as noted above, cannot be considered at the stage of Order VII Rule 11 of the CPC. Whether or not the plaintiff is entitled to the principal amount claimed and to interest at the contractual rate, and whether the defendants' plea regarding deficient services through the manufacturer is tenable, are matters to be adjudicated at trial. A claim for interest founded upon the terms of the invoices cannot, at the threshold, be branded as an artificial inflation of the claim merely because the defendants dispute it. The learned Single Judge has, thus, rightly declined to conduct a mini trial at this stage and rightly rejected the second objection as well.

26. In view of the foregoing discussion, we find no illegality, perversity or infirmity in the impugned order dated 10.08.2026 passed by the learned Single Judge, warranting interference by this Court in appellate jurisdiction.

27. The present appeal is, accordingly, dismissed, along with the pending applications.

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28. It is, however, clarified that nothing stated hereinabove shall be construed as an expression of opinion on the merits of the case, and the suit shall be decided on its own merits in accordance with law.

VIVEK CHAUDHARY, J

NISHA SAHAY SAXENA, J

OCTOBER 05, 2026/*VP/jd*