

COMMERCIAL COURT AT ASANSOL

Present: Sri Sourav Bhattacharya

Ld. Judge, Commercial Court at Asansol

Money Suit No. : 05 /2022

CNR No. : WBB17-000009 -2022

JO Code : WB00854

Plaintiff : M/S J.K. Construction

V/s

Defendants : M/s. Global Construction & 4 Ors.

Order No - 01

Dated - 14.02.2022

Plaint accompanied with the duplicate is filed today with court fee of Rs. 100/-.

Court fees payable as per valuation on the plaint to Rs. 49,900/- is not paid, so the suit be posted for D.C.F.

Plaintiff files a petition praying for time to file D.C.F. Let this be registered as separate IA. Prayer is considered and allowed.

In view of such petition, let the suit proceeds.

This is a suit for claim of Rs. 3,42,74,793.34/-.

Requisites has not been filed. Process fees is not paid.

Plaintiff is directed to file requisites in both ways.

Another petition U/Sec. 12A of the Commercial Courts Act, 2015 is filed. Perused the petition, case record. Heard the Ld. Advocate. Considered.

The suit is not accompanied with urgent interim relief and on perusal of case record, it transpires that the suit does not contemplate any urgent interim relief as per the provisions of the said Act. The plaintiff has not yet exhausted the remedy of pre - institution mediation in terms of said provisions of law.

However, a glance at Section 12 A of the Commercial Courts Act, 2015, as amended would clearly indicate that it was an obligation / mandatory procedural formality on the part of the plaintiff to exhaust the remedy of Pre - Institution Mediation in accordance with law prior to the institution of this suit.

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So, I am of the considered view that in the given facts, leave U/Sec. 12A of the Commercial Courts Act, 2015, as amended cannot be granted to dispense with this provision for pre - institution mediation.

The petition U/Sec. 12A of the said Act stands rejected.

Accordingly, this suit cannot proceed unless this process is exhausted subject to payment of D.C.F.

The plaintiff is directed to take steps as per the provisions of The Commercial Courts (Pre - Institution) Mediation and settlement Rules, 2018 read with the SOP in force in this regard.

In light of the ratio of the judgment dated 22/02/2021 passed by the Hon'ble High Court, Calcutta in C.O. No - 1678 of 2020 (M/s. Dhanbad Fuels Ltd. V/s. Union of India & Ors.), it would be appropriate to keep the suit in abeyance and to direct the plaintiff to approach the concerned District Legal Services Authority (DLSA) i.e. Paschim Bardhaman (since the cause of action arose at Paschim Bardhaman) to exhaust the process of Pre - Institution Mediation in accordance with law.

HENCE,

IT IS

ORDERED

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That the suit be kept in abeyance until receipt of the report of the Ld. Mediator in the matter of Pre - Institution Mediation.

The plaintiff is directed to approach the DLSA, Paschim Bardhaman in accordance with the SOP(Standard Operating Procedure).

Let a copy of this order sheet be sent to the email id of the recorded Advocate of the plaintiff.

Let a copy of this order sheet be sent by email to the Secretary, DLSA, Paschim Bardhaman for information and necessary action, who is requested to act in terms of the said Rules of 2018 and the SOP (Standard Operating Procedure) to initiate Pre - Institution Mediation subject to payment of D.C.F.

The Secretary, DLSA, Paschim Bardhaman is requested to complete the process within the period as prescribed by Rule 3(8) of the Rules of 2018.

The Mediator shall file a report in such form and manner as prescribed by the Rules within the stipulated period before this Court through the Secretary, DLSA, Paschim Bardhaman.

The remuneration / fees etc of the Ld. Mediator will be fixed as per the SOP read with the Rules of 2018.

The Ld. Mediator is at liberty to hold the process through online mechanism / virtual mode, if such facilities are available at the Mediation Center, Paschim Bardhaman.

Fix **10/03/2022** for **Pre - Institution Mediation report, steps for D.C.F.**

D/C by me.

Judge, Commercial Court
Asansol

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