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

\+ CS(COMM) 1006/2025 & I.A. 23754/2025, I.A. 23755/2025, I.A. 23756/2025, I.A. 23757/2025, I.A. 23758/2025

NAYARA ENERGY LIMITED .....Plaintiff

Through: Mr. Rajiv Nayar and Mr. Dayan Krishnan, Sr. Advocates with Mr. Adarsh Ramanujan, Mr. Purusharth Singh, Mr. Anukrit Gupta and Mr. Dev Singh, Advocates.

versus

SAP INDIA PRIVATE LIMITED & ANR. .....Defendant

Through: Mr. Amit Sibal, Sr. Advocate with Mr. Susmit Pushkar, Mr. Gaurav Sharma and Ms. Roshni Srivastava, Advocates for D-1.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

O R D E R

% **23.09.2025**

1. Matter is received on transfer as the Coordinate Bench of Purushaindra Kumar Kaurav, J. is not holding Court today.

I.A. 23755/2025 *(u/S 12-A of the Commercial Courts Act, 2015)*

2. As the present suit contemplates urgent interim relief, in light of the judgment of the Supreme Court in ***Yamini Manohar* v. *T.K.D. Krithi***, 2023 SCC Online SC 1382, exemption from the requirement of pre-institution mediation is granted.

3. The application stands disposed of.

<u>I.A. 23756/2025 *(u/O II Rule 2 of CPC, 1908)*</u>

4. Issue Notice.

5. Notice accepted by Mr. Susmit Pushkar, counsel appearing on behalf of the defendant no.1.

6. Let notice be issued to the defendant no.2 through all permissible modes.

7. Reply(ies) be filed within two (2) weeks.

8. List before the Roster Bench on 29th October, 2025.

<u>I.A. 23757/2025 *(u/O XI Rule 1(4) of CPC, 1908)*</u>

9. The present application has been filed on behalf of the plaintiff seeking leave to file additional documents under the Commercial Courts Act, 2015.

10. The plaintiff is permitted to file additional documents in accordance with the provisions of the Commercial Courts Act, 2015 and the Delhi High Court (Original Side) Rules, 2018.

11. Accordingly, the application is disposed of.

<u>I.A. 23758/2025 *(seeking exemption from filing originals/certified/typed copies of documents)*</u>

12. Allowed, subject to the plaintiff filing originals/certified/typed copies of documents within four (4) weeks from today.

13. The plaintiff is exempted from filing originals at this stage.

14. The application stands disposed of.

<u>CS(COMM) 1006/2025</u>

15. Let the plaint be registered as a suit.

16. Issue summons.

17. Summons are accepted by Mr. Susmit Pushkar, counsel appearing on behalf of the defendant no.1.

18. Let summons be issued to the defendant no.2 through all permissible modes.

19. The summons shall state that the written statement(s) shall be filed by the defendants within thirty (30) days from today. Along with the written statement(s), the defendants shall also file affidavit(s) of admission/denial of the documents of the plaintiff, without which the written statement(s) shall not be taken on record.

20. Liberty is given to the plaintiff to file replication(s), if any, within thirty (30) days from the receipt of the written statement(s). Along with the replication(s) filed by the plaintiffs, affidavit of admission/denial of the documents of the defendants be filed by the plaintiff.

21. The parties shall file all original documents in support of their respective claims along with their respective pleadings. In case parties are placing reliance on a document, which is not in their power and possession, its detail and source shall be mentioned in the list of reliance, which shall also be filed with the pleadings.

22. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

23. List before the Roster Bench on 29th October, 2025.

<u>I.A. 23754/2025 *(u/O XXXIX Rules 1 and 2 of CPC, 1908)*</u>

24. By way of the interim application, the plaintiff seeks following reliefs:

> *"(a) An ex parte ad interim order directing Defendant No. 1 to restore full and uninterrupted access to the SAP Marketplace and the OSS (Online Service System), available at https://service.sap.com, as existed prior to July 24, 2025.*
>
> *(b) An ex parte ad interim order directing Defendant No. 1 to provide all necessary SAP hardware keys for new hardware installation, as well*

as the SSCR (Software Change Registration) keys for customization or migration of the SAP Software installed by the Plaintiff pursuant to the Agreements, thereby restoring the status as it stood before July 24, 2025.

(c) An ex parte ad interim order directing Defendant No.1 to reinstate SAP support services in the form of availability of SAP's functional and technical expert, as provided prior to July, 24,2025, including for timely resolution of incidents.

(d) An ex parte ad interim order restraining Defendant No. 1, including its partners, agents, assigns, and all individuals acting on their behalf, from interfering in any manner with the Plaintiff's right to access and continued use of the SAP Software and Services provided under the Agreements, including but not limited to Order Form 1, Order Form 2, Order Form 3, and the SAP Delivered Support Agreement."

25. The plaintiff and the defendant no.1 had entered into Software License and Support Agreements between 2017 to 2020, in terms of which, certain software was licensed by the defendant no.1 to the plaintiff. This was followed by another agreement, SAP Delivered Support Agreement dated 29th March, 2019 (hereinafter 'Support Agreement'), which provided for additional support services including access to the SAP Support Portal, Online Service System (OSS) notes, patches, license key generation, and expert assistance, to be procured by the defendant no.1 through its partner, *i.e.* the defendant no. 2.

26. On 24th July, 2025, the defendant no.1 sent an e-mail to the plaintiff stating that the license of the plaintiff has become inactive due to certain 'export issue'. Another e-mail was sent on the same date informing the plaintiff that since the plaintiff is currently subject to the EU sanctions, the defendant no.1 is unable to provide services under the Support Agreement.

27. The aforesaid communication was responded to by the plaintiff *vide* e-mail communication on 29th August, 2025, calling upon the defendant no.1

to resume the support services.

28. The defendant no.1 responded to the aforesaid e-mail on 2nd September, 2025, informing the plaintiff that in view of the fact that the plaintiff has been listed in the EU sanctions list, the defendant no.1 is compelled to suspend all transactions with the plaintiff company. The relevant extracts from the said e-mail communication are set out below:-

> *"**In light of the addition of Nayara Energy Limited among others, to the EU sanctions list by the Council of the European Union {Regulation {EU) No 269/2014 concerning restrictive measures in respect of actionsundermining or threatening the territorial integrity, sovereignty and independence of Ukraine as amended by Council Implementing Regulation (EU) 2025/1476 of 18 July 2025}, SAP, as an EU-headquartered company, is compelled to take immediate steps to ensure compliance with these applicable laws and regulations.***
> *It has come to our attention, based on publicly available information, that your company is the same legal entity as the sanctioned entity referenced above.*
> ***For this reason, SAP is compelled to immediately suspend all transactions with your company, including but not limited to the provision of goods, software, technology, or services, until further notice. Rest assured that SAP values our relationship and regret having to take this action."***

29. Mr. Rajiv Nayar and Mr. Dayan Krishnan, senior counsel appearing on behalf of the plaintiff submit that in terms of the Support Agreement, which is between two Indian companies, *i.e.* the plaintiff and the defendant no.1, the defendant no.1 cannot suspend support services on account of sanctions imposed by the EU. It is further submitted that the Agreement (Document D-7) is governed by Indian law and the services are to be provided in India, therefore sanctions imposed by the EU would not be applicable.

30. Attention of the Court has also been drawn to the Council Regulation No.269 of 2014, which has been referred to in the e-mail communication of

2nd September, 2025, to submit that the aforesaid regulations will not apply to the plaintiff for services in India. The plaintiff has relied on Article 17 of the Council Regulations (EU) No.269 of 2014, which is set out below:-

Article 17

This Regulation shall apply:

(a) within the territory of the Union, including its airspace;
(b) on board any aircraft or any vessel under the jurisdiction of a Member State;
(c) to any person inside or outside the territory of the Union who is a national of a Member State;
(d) to any legal person, entity or body, inside or outside the territory of the Union, which is incorporated of constituted under the law of a Member State;
(e) to any legal person, entity or body in respect of any business done in whole or in part within the Union."

31. Reference is also made to the FAQs on the implementation of Council Regulation No.269/2014 to submit that the sanctions will not apply in respect of entities that are incorporated in other countries, which shall be governed by the laws of the host country. It is submitted that the aforesaid FAQs are the updated versions up until 8th September, 2025.

32. It is submitted on behalf of the plaintiff that the support of the defendants is needed as the plaintiff has to transition to the GST 2.0 Regime, which became effective as on 22nd September, 2025.

33. Mr. Amit Sibal, senior counsel and Mr. Susmit Pushkar, counsel appearing on behalf of the defendant no.1, submit that the defendants are unable to provide support services to the plaintiff under the Support Agreement in view of the sanctions imposed by the European Union *via* Council Regulation. Attention has also been drawn to the following Articles of the Council Regulation (EU) No.269/2014, which are set out below:-

"Article 1
For the purposes of this Regulation, the following definitions apply:
(a)…
(b)…
(c)…
(d) 'economic resources' means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but may be used to obtain funds, goods or services;

Article 2
1. …
2. ***No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies, or natural or legal persons, entities or bodies associated with them, as listed in Annex I.***

Article 9
1. It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibitions set out in this Regulation, including by participating in such activities without deliberately seeking that object or effect but being aware that the participation may have that object or effect and accepting that possibility.

Article 15a
Natural and legal persons, entities and bodies shall undertake their best efforts to ensure that any legal person, entity or body established outside the Union that they own or control does not participate in activities that undermine the restrictive measures provided for in this Regulation."

34. Annexure 1, referred to in Article 2 of the EU Regulation as set out above, records the name of the plaintiff as one of the sanctioned entities. The same is set out below:

ANNEX I

List of natural and legal persons, entities and bodies referred to in Article 2

	Name	*Identifying Information*	*Reasons*	*Date of listing*
639.	*Nayara*	*Address: 5th Floor, Jet Airways*	*Nayara Energy Limited is an*	*19.7.2025*

	Energy Limited	*Godrej BKC, Plot No. C-68 G Block, Bandra Kurla Complex, Badra East, Mumbai – 400 051, Maharashtra, India.* *Type of Entity : Limited Liability Company* *Place of registration : India* *Date of registration: 11.9.1989* *Corporate Identification Number (CIN) : U11100GJ1989PLC032116*	*entity established in India and operating an important refinery in Vadinar. That refinery is 49% owned by the Russian State oil company Rosneft, and is a major refiner of Russian crude oil. The energy sector, in particular the oil sector, is a sector providing substantial revenue to the Russian Government.* *Therefore, Nayar Energy is involved in an economic sector providing a substantial source of revenue to the Government of the Russian Federation, which is responsible for the annexation of Crimea and the destablisation of Ukraine.*	

35. It is submitted that in terms of Article 15a, which came into effect only on 24th February, 2025, all legal entities, which would include subsidiaries of companies incorporated in the EU, would also be covered by the said EU Regulation. Since the defendant no.1 is a wholly owned subsidiary of a European entity *i.e.* SAP Group, Germany, it would be covered under the ambit of Article 15a.

36. In relation to Article 17, it is submitted that the plaintiff would be covered under sub clause (e) of Article 17 as it is doing business with the SAP Group, Germany.

37. Attention of the Court has also been drawn to the relevant provisions of the SAP Delivered Support Agreement between the parties (Document 'D-10') to submit that the said Agreement could only be processed with the

support of the SAP Group, which would also include the parent company of the defendant no.1 in Germany. The relevant clauses of the said Agreement are set out below:

"RECITAL

WHEREAS, SAP provides, through employees of the SAP Group and third party contractors, software support services and End User wants to order such software support services from SAP.

1. DEFINITIONS AND INTERPRETATIONS.
1.1 Definitions
1.1.5 "Export Law" means all constitutions, laws, statutes, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits restrictive measures, trade sanctions, embargos and other legally binding requirements of all federal, country, international, state and local governmental authorities relating to export, reexport or import.

1.1.10 "SAP Group" means SAP Parent and any of its Associated Companies.

1.1.13 "SAP Parent" means SAP, a European company (Societas Europaea), located at Dietmar-Hopp-Allee 16 in 69190 Walldorf, Germany and registered at the commercial register of Mannheim under the registration number HRB 350269.

13.5 Regulatory Matters. The Software, SAP Delivered Support, Documentation and SAP Materials as well as parts of any of these (e.g. new versions, releases, updates, upgrades, patches, fixed or correction of a software product) are subject to Export Laws of various countries, including, without limitation, the laws of the United States, the EU, Ireland, Australia and Germany
Neither SAP nor any other member of the SAP Group assumes any responsibility or liability:
c) if the delivery of and/or granting of access to Software, SAP Delivered Support, Documentation and SAP Materials or parts of any of these is prevented due to applicable Export Laws; and
d) if access to SAP Delivered Support or other services has to be limited, suspended or terminated due to applicable Export Law."

38. In light of the aforesaid provisions, it is submitted that since the

defendant no.1 belongs to the SAP Group, Germany, the defendant no.1 would be exposed to criminal sanctions in Germany if it acts in violation of the aforesaid recitals.

39. I have heard the counsel for the parties.

40. On a *prima facie* reading of the aforesaid provisions of the Support Agreement as well as the relevant provisions of the EU Regulation set out above, I am of the view that an ad interim order cannot be granted in favour of the plaintiff at this stage. An opportunity has to be given to the defendants to file reply.

41. Issue Notice.

42. Notice is accepted by Mr. Susmit Pushkar, counsel appearing on behalf of the defendant no.1.

43. Let notice be issued to the defendant no.2 through all permissible modes.

44. Reply(ies) be filed within two (2) weeks from today.

45. Rejoinder, thereto, if any, be filed within two (2) weeks thereafter.

46. List before the Roster Bench on 29th October, 2025.

AMIT BANSAL, J

SEPTEMBER 23, 2025

Vivek/-