

Sanjana Agarwal vs Namoshivai Apparels Private Limited on 24 December, 2024

Author: Vibhu Bakhru

Bench: Vibhu Bakhru

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
% Judgment Pronounced on: 24.12.2024
+ RFA(COMM) 212/2023 APPELLANT
SANJANA AGARWAL
versus
NAMOSHIVAI APPARELS PRIVATE
LIMITED RESPONDENT
+ RFA(COMM) 213/2023 & CM APPL. 49338/2023
SANJANA AGARWAL APPELLANT
versus
NAMOSHIVAI APPARELS PRIVATE
LIMITED RESPONDENT

Advocates who appeared in this case:

For the Appellant : Mr. Pulkit Thareja, Ms. Aerik
and Mr. J.P. Patri, Advocates

For the Respondent : Mr. Febin Mathew Varghese, Mr.
Dhiraj Abraham Philip and Ms.
Agarwal, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

JUDGMENT

TARA VITASTA GANJU, J.:

CM Appl.49338/2023 in RFA (COMM) 213/2023 [Stay]

1. A Coordinate Bench of this Court by an order dated 22.09.2023 passed in RFA(COMM) 213/2023 directed Molmek to deposit 75% of the decretal amount during the pendency of the present Appeals. The report of the Registry is that no decretal amount has been deposited till today by Molmek. In these circumstances, CM Appl. 49338/2023 is dismissed.

RFA(COMM) 212/2023 RFA(COMM) 213/2023

2. The present Appeals filed by Appellant/Plaintiff impugn the judgment dated 07.06.2023, passed by the District Judge, Commercial Court-02, South West, Dwarka Courts, Delhi, in CS (Comm) No.324/2022 & Counter-Claim No.05/2023 [hereinafter referred to as "Impugned Judgment and Decree"], whereby the Suit for Recovery filed by the Appellant/Plaintiff was dismissed and Counter-Claim filed by the Respondent/Defendant was allowed against the Appellant/Plaintiff for an amount of Rs.7,62,930/- alongwith interest at 9% per annum from the date of filing of Counter-Claim till realization.

3. Two Appeals were filed by the Appellant/Plaintiff; RFA(COMM) 212/2023 captioned as Sanjana Agarwal vs. Namoshivai Apparels Private Limited was filed by the Appellant/Plaintiff seeking to set aside the Impugned Judgment and Decree, whereby the Suit for Recovery filed by the Appellant/Plaintiff, in the sum of Rs.74,91,565.70/- along with interest and costs, was dismissed by the learned Commercial Court. The second appeal, i.e., RFA(COMM) 213/2023 captioned as Sanjana Agarwal vs. Namoshivai Apparels Private Limited was filed by the Appellant/Plaintiff against the Impugned Judgment and Decree, whereby the Counter-Claim of the Respondent/Defendant was allowed. Both these appeals seek to impugn the Judgment passed by the learned Commercial Court.

4. Briefly, the facts are that the Appellant/Plaintiff, as the proprietor of a firm called Molmek Enterprises [hereinafter referred to as "Molmek"], filed a Suit for Recovery being CS (Comm) No.324/2022 captioned as Ms. Sanjana Agarwal v. Namoshivai Apparels Private Limited before the learned Commercial Court against the Respondent/Defendant, i.e. Namoshivai Apparels Private Limited [hereinafter referred to as "NAPL"]. Both Molmek and NAPL are engaged in online trading of items like garments, electronics and general products. In August, 2018, Molmek and NAPL entered into an agreement for the supply by Molmek to NAPL, pursuant to which, supplies were made during the period from August, 2018 to February, 2019. In pursuance of this arrangement, Molmek supplied electronic goods to the NAPL against credit notes and invoices from August, 2018 to February, 2019, maintaining a running account in its books.

5. Molmek's case rests on 57 (fifty-seven) invoices raised between August 2018 and June 2020, contending that from August 2020, NAPL began defaulting on payments and failed to maintain financial discipline. Despite a legal notice dated 16.07.2021 and subsequent response from NAPL dated 26.07.2021, no payments were forthcoming, leading to the filing of Suit for Recovery of Rs.74,91,565.70/- with interest at 12% per annum and costs by Molmek.

6. NAPL filed a written statement disputing that there were any amounts due to Molmek. In addition, it filed a Counter-Claim in the sum of Rs.7,62,930/- against Molmek for payments that were due from Molmek for goods supplied by NAPL to Molmek. It is the contention of NAPL that as a part of an understanding between the parties, NAPL also supplied goods to Molmek, raising invoices and maintaining a corresponding running account. The crux of its defence and subsequent Counter-Claim for Rs. 7,62,930/- centres on five specific invoices totalling Rs. 82,35,736.50/-, which NAPL claims Molmek/Plaintiff has failed to account for.

7. By an Order dated 31.01.2023, the learned Commercial Court, framed the following issues:

"1. Whether the plaintiff is entitled for decree of sum of Rs. 74,91,565.70/-, as prayed for OPP

2. Whether the plaintiff is entitled for any interest, if so, on what amount and on what rate OPP

3. Whether the defendant is entitled for decree of sum of Rs. 7,62,930/- , as prayed in the counter claim OPD

4. Whether the defendant is entitled for any interest, if so, on what amount and at what rate OPD

5. Relief"

8. The learned Commercial Court held that it is admitted that there were business transactions between the parties, and the crux of the dispute revolved around 5 invoices numbered 615, 620, 628, 630, and 654 [hereinafter referred to as "5 disputed invoices"] whilst Molmek claimed that these invoices were forged, NAPL asserted that they were genuine. It claimed that goods were supplied against these invoices but the credit was not given by Molmek. NAPL relied on invoices, ledger entries, "e-way bills", GSTR-1 B2B Invoices - Receiver-Wise-Summary, and WhatsApp chats in support of its Counter-Claim.

9. Molmek did not examine any witness. NAPL examined five witnesses, including its Authorized Representative (CCW-1), Accountant of NAPL (CCW-2), a Bank Official who attested bank statements of NAPL (CCW-3), a CGST official (CCW-4), and the driver who delivered goods on behalf of NAPL to Molmek (CCW-5).

10. The learned Commercial Court observed that except for the 5 disputed invoices, all other transactions between the parties were admitted. Neither party brought original books of accounts on record. The learned Commercial Court gave a finding that Molmek had not mentioned receiving any supply from NAPL in its plaint, however entries with regard to purchase of material from NAPL are reflected in the ledger details filed by Molmek on record.

11. The learned Commercial Court found, after examining the evidence as produced by NAPL, including the examination/cross- examination of the witnesses, that although there was no separate delivery receipt with regard to the material supplied by NAPL, "e-way bills" and GSTR-1 B2B Invoices had been filed by NAPL in relation to the delivery of goods.

12. The learned Commercial Court relied on Rule 138 of the Central Goods and Services Tax Rules, 2017 [hereinafter referred to as "CGST Rules"], particularly Sub-rules (11) and (12), which stipulate that if a recipient does not communicate acceptance or rejection within 72 hours of the "e-way bill" details being made available, it shall be deemed that they have accepted the said details. The learned Commercial Court found that Molmek never objected to the generation of "e-way bills", which demonstrated their acceptance of the goods.

13. The learned Commercial Court held that NAPL had successfully proven the deemed acceptance of goods by Molmek against the 5 disputed invoices and GSTR-1- B2B Invoices. Thus, the onus shifted to Molmek to disprove the NAPL's claim, which Molmek failed to do. The learned Commercial Court found that Molmek did not bring on record any GST related documents including GSTR-2B summary to show that it had not claimed an Input Credit for the GST or that Molmek had rejected the goods based on the 5 disputed invoices of NAPL.

14. The learned Commercial Court placed reliance on Sabiha Sultana & Ors. v. Ahmad Aziz & Anr.¹, Om Prakash v. Amit Choudhary & Ors.², Ishwar Bhai C. Patel v. Harihar Behera & Anr.³, and Vidhyadhar v. Manikrao & Anr.⁴, to record that the party setting up a claim must prove its case, and an adverse inference can be drawn if a party does not lead evidence or enter the witness box.

15. The learned Commercial Court also analyzed WhatsApp chats between the parties, which corroborated the NAPL's version of events. It found the Molmek's demand for only Rs. 1,00,000/- on 06.01.2021, was inconsistent with its claim of a much larger outstanding amount.

16. The learned Commercial Court concluded that Molmek failed to prove its claim for recovery of Rs. 74,91,565.70/-. Conversely, it held that NAPL was entitled to its Counter-Claim of Rs. 7,62,930/- and awarded interest at 9% per annum from the date of filing of the Counter- Claim until realization. The parties were directed to bear their own costs. This led to the filing of the present Appeals by Molmek.

2017 SCC OnLine Del 10229 2019 SCC OnLine Del 9311 (1999) 3 SCC 457 AIR 1999 SC 1441
Contentions of Molmek

17. The learned Counsel for Molmek, at the outset, contests that as Counter-Claim was deemed to be a separate and new suit, NAPL were bound by Section 12A of Commercial Courts Act, 2015, to again initiate pre-suit mediation, once it filed its Counter-Claim, and as such the Counter-Claim, was impermissible, in absence of the pre suit mediation. Reliance in this regard is placed on M/s. Patil Automation Private Limited and Ors. Vs Rakheja Engineers Private Limited⁵.

18. In addition, learned Counsel for Molmek contended that NAPL did not prove its statement of account in terms of Section 34 of the Indian Evidence Act, 1872 [hereinafter referred to as "Evidence Act"], and that merely providing the extracts of the accounts without producing the accounts book is insufficient to prove the transactions. Reliance was placed by learned Counsel for Molmek on Ishwar Das Jain (Dead) Through LRs v. Sohan Lal (Dead) by LRs⁶ in this regard.

18.1 It was contended that there was no evidence to prove the delivery of goods to Molmek against the 5 disputed invoices. One of the witnesses of NAPL (CCW2) himself admitted that there is no document showing the receipt of the goods by Molmek. The learned Counsel for Molmek relied on the judgment of the Division Bench of this Court in Harish Mansukhani vs. Ashok Jain⁷ to submit that merely raising of a bill and showing the same in a statement of account is not good evidence without establishing the delivery of the goods.

(2022) 10 SCC 1 (2000) 1 SCC 434 2008:DHC:3069-DB; 2008 SCC OnLine Del 1242 18.2 The learned Counsel for Molmek further submitted that the alleged delivery as per these 5 disputed invoices were done by three vehicles, out of which only one vehicle belonged to NAPL. The learned Counsel for Molmek, further submitted that the Impugned Judgement and Decree has relied on WhatsApp chats to establish the alleged deliveries were made by NAPL, although, the said chats were denied by Molmek.

18.3 The learned Counsel for Molmek submits that (CCW-1) Shri Raghav Kant, the authorized representative of NAPL, during his cross examination, had admitted that that NAPL made payment of Rs.1,00,000/- on 06.08.2020 to Molmek. This shows a contradiction in the testimony of NAPL, since as NAPL who had allegedly to receive payments from Molmek there was no reason for it to make a payment of Rs.1,00,000/- to Molmek.

Contentions of Respondent/NAPL

19. Learned Counsel for NAPL contended that the Impugned Judgment and Decree does not suffer from any infirmity. He contended that the facts are undisputed with respect to the 57 invoices, where goods have been supplied by Molmek, however, Molmek has not taken into account the goods supplied by NAPL to Molmek at their premises at West Punjabi Bagh, New Delhi. It is averred that NAPL also supplied various goods for the period from 20.10.2018 onwards to 08.01.2021 to Molmek. Learned counsel for NAPL has relied on the extract of evidence of (CCW-1), of Mr. Raghav Kant in this regard, which details the goods delivered to Molmek below:

"11. I say that the Counter Claimant Company raised the following invoices/Debit Notes on the Defendant against sale of said goods and products:

S. No.	Date	Invoice No.	Amount
1	20-10-2018	NAPL/2018-19/267	1,90,
2	20-10-2018	NAPL/2018-19/268	6,00,
3	29-10-2018	NAPL/2018-19/269	3,08,
4	02-11-2018	NAPL/2018-19/273	2,01,
5	15-11-2018	NAPL/2018-19/744	2,83,
6	02-01-2019	NAPL/2018-19/934	8,94,
7	09-02-2019	NAPL/2018-19/277	21,76,
8	11-02-2019	NAPL/2018-19/278	2,95,
9	25-02-2019	NAPL/2018-19/1052	22,14,
10	26-02-2019	NAPL/2018-19/1053	3,33,
11	28-02-2019	NAPL/2018-19/1065	7,99,
12	28-02-2019	NAPL/2018-19/1067	18,97,
13	08-03-2019	NAPL/2018-19/1109	3,08,
14	14-03-2019	NAPL/2018-19/1132	1,73,
15	22-03-2019	NAPL/2018-19/1162	15,94,
16	04-04-2019	NAPL/19-20/16	2,65,
17	03-06-2019	NAPL/19-20/264	2,54,
18	04-06-2019	NAPL/19-20/268	4,08,
19	10-06-2019	NAPL/19-20/292	4,44,
20	18-07-2019	NAPL/19-20/375	4,39,
21	18-07-2019	NAPL/19-20/376	5,00,

22	12-08-2019	NAPL/19-20/422	4,43,
23	21-09-2019	NAPL/19-20/476	27,33
24	07-10-2019	NAPL/19-20/486	4,68,
25	10-10-2019	NAPL/19-20/487	6,85,
26	15-10-2019	NAPL/19-20/489	2,80,337
27	25-10-2019	NAPL/19-20/503	2,90,160
28	07-11-2019	NAPL/19-20/513	4,41,649
29	08-01-2020	NAPL/19-20/564	21,59,325
30	16-01-2020	NAPL/19-20/570	23,80,343.
31	18-01-2020	NAPL/19-20/573	22,20,878
32	30-01-2020	NAPL/19-20/588	21,26,754
33	04-02-2020	NAPL/19-20/599	3,62,420
34	04-02-2020	NAPL/19-20/600	2,45,760
35	07-02-2020	NAPL/19-20/609	25,11,600
36	15-02-2020	NAPL/19-20/615	22,65,900
37	24-02-2020	NAPL/19-20/620	24,36,525
38	27-02-2020	NAPL/19-20/621	3,09,360
39	27-02-2020	NAPL/19-20/625	4,73,110
40	28-02-2020	NAPL/19-20/628	5,57,397
41	29-02-2020	NAPL/19-20/630	20,44,302.
42	17-03-2020	NAPL/19-20/652	5,03,030
43	17-03-2020	NAPL/19-20/654	9,31,612.5
44	07-08-2020	NAPL/20-21/020	96,000
45	08-08-2020	NAPL/20-21/021	59,493
46	08-01-2021	NAPL/20-21/092	4,59,000
	Total (Rs.)		4,20,73,07

19.1 NAPL has also averred that for the goods received by it from Molmek, payments aggregating Rs. 1,57,49,516/- were made by NAPL to Molmek. To evidence the same, NAPL produced its bank statement, which was authenticated by its Bank Official (CCW-3). Learned Counsel for NAPL has also relied upon the extract of the affidavit of evidence of the authorized representative of NAPL(CCW-1) in support of its contentions. The said extract is set out below:

12. I say that on account of receiving the goods supplied to the Counter Claimant by the Defendant, Counter Claimant made the following payments to the Defendant:

S. No.	Date of Payment	Amount (Rs.)
1	04-01-2019	4,70,000
2	07-01-2019	10,00,000
3	16-01-2019	9,29,000
4	16-01-2019	71,000

5	06-02-2019	15,00,000
6	16-02-2019	12,00,000
7	06-03-2019	10,00,000
8	06-04-2019	10,00,000
9	06-04-2019	5,00,000
10	06-04-2019	2,06,680
11	16-04-2019	10,00,000
12	07-05-2019	3,80,000
13	07-05-2019	10,00,000
14	17-05-2019	5,00,000
15	17-05-2019	5,50,000
16	30-05-2019	2,50,000
17	06-06-2019	5,00,000
18	06-06-2019	1,84,000
19	17-06-2019	2,33,734
20	16-07-2019	1,50,000
21	06-08-2019	6,50,000
22	09-09-2019	5,00,000
23	30-09-2019	2,00,000
24	07-10-2019	3,00,000

25	16-10-2019	2,25,000
26	07-12-2019	2,00,000
27	07-01-2020	2,00,000
28	06-02-2020	3,00,000
29	06-03-2020	2,00,000
30	08-06-2020	1,00,000
31	07-07-2020	1,50,000
32	06-08-2020	1,00,000
Total (Rs.)		1,57,49,516/-

Copy of bank statement of Counter Claimant is exhibited herewith as Exhibit CCW-1/2."

20. The learned Counsel for NAPL contends that the total value of the goods purchased is Rs.5,70,59,659/-, while the payment made to Molmek is Rs.5,78,22,589.50/-. Thus, the sum of Rs.7,62,930.50/- is due from Molmek. It is contended that the disputes have only arisen with respect to the 5 disputed invoices totalling to Rs.82,35,736.5/- and it is this discrepancy in the running accounts between the parties that has led to an outstanding.

20.1 Learned Counsel for NAPL further contended that payments were made from 04.01.2019 onwards till 06.08.2020, which included the payment referred to on the Whatsapp chat in the sum of Rs.1,00,000/-.

20.2 Learned Counsel for NAPL further submitted that Molmek did not prove any of its invoices as no evidence was led by him before the learned Commercial Court, however, this amount was not disputed by NAPL. Learned Counsel for NAPL further submitted that the summoned CGST official (CCW-4) appeared and brought with him the record of computer generated duly, certified "e-way bills" pertaining to NAPL, which have been placed on record.

20.3 Lastly, it is contended that Molmek has alleged that these bills are false and fabricated only with a view to escape its liability and that no evidence was placed on record by Molmek with respect to this averment.

Analysis and Reasoning

21. The first issue raised by Molmek is with regard to the fact that a separate pre-institution mediation was not initiated for the Counter- Claim. Relying on the judgment of the Supreme Court in M/s. Patil Automation case, Molmek has contended that the pre-institution mediation is also compulsory for instituting a Counter-Claim.

22. The Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018 [hereinafter referred to as "Pre-Institution Mediation Rules"] provides that a party to a commercial dispute is required to initiate mediation prior to the filing of a suit. Sub-rule (8) of Rule 3 of Pre-Institution Mediation Rules provides that the mediation process should be completed within a period of three months.

22.1 A commercial dispute is defined as a dispute referred to in Section 2(1)(c) of Commercial Courts Act, 2015 [hereinafter referred to as "CC Act"]. Section 2(1)(xviii) of the CC Act includes "agreements for sale of goods or provision of services". Concededly, the dispute between the parties is commercial in nature and is subject to the Pre-Institution Mediation Rules.

23. The Supreme Court in the judgment of Yamini Manohar vs. T.K.D Keerthi⁸, relying on the M/s. Patil Automation case, has held that pre-litigation mediation is mandatory unless the suit contemplates urgent relief. It was further held that a plaintiff should not be permitted to file an application for interim relief as a subterfuge to wriggle out of the requirement of mandatory pre-institution mediation. The Court held that in order that the provision is not bypassed, the learned Commercial Court has a role, although a limited one, to examine whether the suit contemplates an urgent relief so as to keep a check that legislative intent behind the enactment of Section 12A of the CC Act is not defeated. The relevant extract of the decision in Yamini Manohar case is set out below:

"11. Having stated so, it is difficult to agree with the proposition that the plaintiff has the absolute choice and right to paralyse Section 12- A of the CC Act by making a prayer for urgent interim relief. Camouflage and guise to bypass the statutory mandate of pre- litigation mediation should be checked when deception and falsity is apparent or established. The proposition that the commercial courts do have a role, albeit a limited one, should be accepted, otherwise it would be up to the plaintiff

alone to decide whether to resort to the procedure under Section 12-A of the CC Act. An "absolute and unfettered right" approach is not justified if the pre-institution mediation under Section 12-A of the CC Act is mandatory, as held by this Court in Patil Automation [Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd., (2022) 10 SCC 1 : (2023) 1 SCC (Civ) 545].

12. The words "contemplate any urgent interim relief" in Section 12- A(1) of the CC Act, with reference to the suit, should be read as conferring power on the court to be satisfied. They suggest that the suit must "contemplate", which means the plaint, documents and facts should show and indicate the need for an urgent interim relief. This is the precise and limited exercise that the commercial courts will undertake, the contours of which have been explained in the earlier paragraph(s). This will be sufficient to keep in check and ensure 2024 (5) SCC 815 that the legislative object/intent behind the enactment of Section 12- A of the CC Act is not defeated."

[Emphasis is ours]

24. In the present case, pre-litigation mediation was initiated by Molmek prior to instituting the suit. Molmek has relied upon the copy of the Non-Starter Report of the authority appointed for pre-institution mediation, South-West, DLSA, Dwarka Courts, New Delhi, dated 15.03.2022 to submit NAPL did not attend the Mediation proceedings as these were closed as a "non-starter". NAPL filed its combined Written Statement and Counter-Claim on 31.08.2022 raising a Counter-Claim of Rs.7,62,930/- against Molmek before the learned Commercial Court.

24.1 The record of the learned Trial Court shows that although an objection was taken by Molmek before the learned Trial Court, it was conceded by Molmek before the learned Commercial Court, on 27.09.2022, that for the filing of the Counter-Claim, NAPL is not required to exhaust the remedy of pre-institution mediation. The order dated 27.09.2022 passed by learned Commercial Court records the following:

"27.09.2022 at 12.15 PM Present: Mr. Vishwajeet Dubey, Ld. Counsel for plaintiff Mr. Samuel David, Ld. Counsel for defendant Ld. Counsel for defendant submits that for filing of the counter claim, the defendant is not required to exhaust the remedy of pre-institution mediation. Ld. Counsel for plaintiff has fairly conceded to the same.

Replication not filed by the plaintiff. Ld. Counsel for plaintiff submits that plaintiff does not want to file replication. This fact is recorded accordingly."

[Emphasis is ours]

25. There is no cavil that under the provisions of the Code of Civil Procedure, 1908, a counter-claim is to be treated as a plaint and governed by the rules applicable to plaint. However, in the case of commercial disputes to say that each counter-claim will be subject to pre-institution mediation process separately when the Plaintiff has already exhausted the remedy of pre-institution mediation,

may not be apposite. The object of the CC Act is to ensure speedy resolution of commercial disputes to accelerate economic growth and improve the international image of the Indian Justice System and to restore the faith of the investors. Once a party has taken steps to exhaust the remedy of pre-institution mediation to then ask the opposite party in a case where the subject matter of dispute is entirely the same, to once again undertake pre-institution mediation, prior to filing its counter-claim would defeat the very purpose of the CC Act and delay adjudication of the commercial dispute between the parties.

25.1 The Supreme Court in *Ambalal Sarabhai Enterprises Ltd. v. K.S. Infraspace LLP*⁹ case has held that the statement of object and reasons for the enactment of the CC Act was the early and speed resolution of the commercial disputes and thus, there was an amendment made and fast track procedure set in place by the CC Act. The relevant extract is set out below:

"31...

The object and purpose of the Commercial Courts Act is to ensure that the Commercial Courts, Commercial Appellate Courts, Commercial Division and Commercial Appellate Division of the High Courts and also to ensure that the commercial cases are disposed of expeditiously, fairly and at reasonable cost to the (2020) 15 SCC 585 litigant.

...

34. The Schedule to the Commercial Courts Act amends various provisions of the Code of Civil Procedure and thereby makes significant departure from the Code. After Order 13 of the Code, Order 13-A -- "Summary Judgment" has been inserted. Order 13-A contains the scope and classes of suits to which Order 13-A applies, grounds for summary judgment, procedure to be followed, evidence for hearing of summary judgment, orders that may be made by Court in such proceedings for summary judgment, etc. After Order 15 of the Code, Order 15-A--"Case Management Hearing" has been inserted. Order 15-A provides for first case management hearing (Rule 1); recording of oral evidence on a day-to-day basis (Rule 4); powers of the court in a case management hearing (Rule 6); adjournment of case management hearing (Rule 7); consequences of non-compliance with orders (Rule 8). By way of amendment, several rules have been incorporated to make the matters of commercial disputes on fast track. In Order 20 of the Code -- "Judgment", Rule 1 has been substituted that within ninety days of the conclusion of arguments, the Commercial Court/Commercial Division/Commercial Appellate Division to pronounce the judgment and copies thereof shall be issued to all the parties to the dispute through electronic mail or otherwise.

35. Various provisions of the Act, namely, case management hearing and other provisions makes the court to adopt a pro- active approach in resolving the commercial dispute. A new approach for carrying out case management and strict guidelines for completion of the process has been introduced so that the adjudicatory process is not delayed. I have referred to the various provisions of the Act and the Schedule bringing in amendments brought to the Civil Procedure Code to deal with the commercial disputes, only to highlight that the trial of the commercial dispute suits is put

on fast track for disposal of the suits expeditiously. Various provisions of the Act referred to above and the amendments inserted to the Civil Procedure Code by the Schedule is to ensure speedy resolution of the commercial disputes in a time bound manner. The intent of the legislature seems to be to have a procedure which expedites the disposal of commercial disputes and thus creates a positive environment for investment and development and make India an attractive place to do business."

[Emphasis is ours] 25.2 The Supreme Court analysed the provisions of the CC Act and based on such analysis held that statutory provisions of the CC Act and the language therein should be interpreted purposefully to facilitate the swift resolution of commercial disputes, thereby benefiting litigants involved in trade and commerce and contributing to the country's economic growth. The relevant extract reads as follows:

"42. The object and purpose of the establishment of Commercial Courts, Commercial Divisions and Commercial Appellate Divisions of the High Court is to ensure that the cases involved in commercial disputes are disposed of expeditiously, fairly and at reasonable cost to the litigants. Keeping in view the object and purpose of the establishment of the Commercial Courts and fast tracking procedure provided under the Act, the statutory provisions of the Act and the words incorporated thereon are to be meaningfully interpreted for quick disposal of commercial litigations so as to benefit the litigants especially those who are engaged in trade and commerce which in turn will further economic growth of the country. On the above reasonings, I agree with the conclusion arrived at by my esteemed Brother A.S. Bopanna, J."

[Emphasis is ours]

26. In the present case, non-starter report which is available shows that the service of the pre-institution mediation was done through email to NAPL and that there was no appearance of NAPL leading to the closure of the pre-institution mediation.

26.1 There is another reason as well. In the present case as both the plaint and the counter-claim emanate from the same series of transactions between the parties. The dispute revolved around the 5 disputed invoices and to that extent the counter-claim is an integral part of NAPL's defence to Molmek's claim as articulated in the plaint. In such a scenario, to relegate the parties a period to a second round of pre- institution mediation would be contrary to the object of the CC Act for a speedy resolution of commercial disputes.

26.2 In any event, as stated above, although initially an objection on this aspect was taken by Molmek before the learned Commercial Court, Molmek conceded that the remedy of pre-institution mediation prior to filing the counter-claim was not requisite. Thus, Molmek is now precluded from raising such a challenge.

27. NAPL, inter alia, has relied upon "e-way bills" and GST Returns to submit that 5 disputed invoices have already been proved by NAPL before the learned Commercial Court. Reliance in this

regard has been placed on the testimony of the authorized representative (CCW-1) of NAPL, the CGST official (CCW-4) and the driver (CCW-5) of the goods.

28. The record reflects that there were two parallel sets of transactions going on between the parties. Molmek was supplying goods to NAPL, and simultaneously, NAPL was also supplying goods to Molmek. Both parties had a running account and that the debit notes were also being raised by both, simultaneously.

29. NAPL has established that between the period 20.10.2018 and 08.01.2021, it supplied goods to Molmek and raised 46 invoices/debit notes totalling to a sum of Rs. 4,20,73,073.50/-, the details of these invoices are set out in paragraph 19 above. It also produced its bank statement to evidence that a sum of Rs. 1,57,49,516/- was paid by NAPL to Molmek, as is set out in paragraph 19.1 above. Thus, the accounts between the two parties were reconciled in the following manner:

S. no	Description	Amount (Rs.)
(i)	Debit notes/invoices of NAPL	Rs. 4,20,73,0
(ii)	Payment made by NAPL	Rs.
(iii)	Goods supplied by Molmek	Rs. 5
(iv)	Total (i + ii) - iii	Rs. 7

30. Molmek in his reply to Counter Claim did not deny that NAPL had business relationship with Molmek which included supply of goods by NAPL to Molmek, however, it is contended that, after 15.02.2022, no goods were supplied by NAPL to Molmek.

30.1 The defence raised by Molmek in its reply to Counter-Claim is that the 5 disputed invoices are false invoices, and that no goods were ever delivered with respect to those invoices.

31. NAPL, on the other hand, has provided both "e-way bills" and GST Returns with respect to the 5 disputed invoices. A tabular representation of the documents filed by NAPL is below:

Date	Invoice No.	Amount(Rs.)	E-Way Bill No.	GST Return
15-2-2020	NAPL/19-20/625	22,65,900	731119869157	Filed 24-2-2020
	NAPL/19-20/620	24,36,525	741121546014	Filed 28-2-2020
	NAPL/19-20/628	5,57,397	711122625974	Filed 29-2-2020
	NAPL/19-20/630	20,44,302	741122625974	Filed 17-3-2020
	NAPL/19-20/654	9,31,612.50	721125443559	Filed Total (Rs.)
		Rs.82,35,736.50/-		

32. The accountant (CCW-2) of NAPL appeared in the witness box and the duplicate copies of debit notes and invoice were exhibited as CCW2/1 (colly) by the learned Commercial Court. The accountant stated, on oath on 24.02.2023 that he had prepared the invoices and that all invoices bear his initials/signatures at Point A. He has further deposed that two of the invoices contained a vehicle number mentioned, while the other two invoices do not, and that he has generated the "e-way bills" for all the invoices including the 5 disputed invoices, in the following manner:

"... I have prepared the invoices ExCCW2/1. I have prepared these invoices as per directions of Mr. Raghav Kant. I never communicated directly with the plaintiff company. All the invoices bear my initials at point A. It is correct that my signatures at point A and B in my affidavit of evidence ExCCW2/A and my initials at point A on all the invoices ExCCW2/1 does not match. Volunteered, in my affidavit ExCCW2/A, I have put my full signatures whereas on the invoices ExCCW2/1, I have put my initials, that is why both are different. It is wrong to suggest that I have not signed any invoice ExCCW2/1(colly). Volunteered, I can prove this facts by putting my initials again on all these documents.

The plaintiff company has not considered and not made the payment of the invoices mentioned at point X-1 to X-5 in my affidavit of evidence Ex.CCW2/A. It is correct that on invoice No. 615, 620 (part of ExCCW2/1) the columns of delivery date, destination, despatch through and despatch document Numbers are blank.

It is correct that in the invoice No. 628, 630 (part of ExCCW2/1) the vehicle number has been mentioned but the remaining columns are blank. It is correct that invoices mentioned at point X-1 to X-5 does not bear signature of plaintiff I have never gone to the premises of the plaintiff company to deliver any material at any point of time. I do not know who has delivered the material against the said invoices. Volunteered, my job is to look after the accounts of the defendant company only.

I did not hand over the said invoices to anyone to take the signatures at the time of delivery. Volunteered, it is not my job as my job was only to prepare invoices of the company bring accountant. I have generated the e-way bills of invoices as mentioned at point X-1 to X-5 on ExCCW2/1. We used to hire the vehicles for transporting the material. I do not know who own the vehicles mentioned in the e- way bills. Again said, the vehicle No. DLILX6372 mentioned in the e- way bill No. 7111 2233 5131 dated 28.02.2020 and e-way bill No. 721125443559 dated 17.03.2020 is owned by one person namely Sonu. I am not aware about the ownership of the other vehicles mentioned in the e-way bills corresponding to the invoices as mentioned at point X-1 to X-5, I have not handed over e-way bills to the transporter. Volunteered, it was not my job as I was working as accountant. I have not placed on record any document to show that the goods were delivered to the plaintiff."

[Emphasis is ours]

33. The authorized representative of the Banker of NAPL (CCW-3) produced the bank statement of NAPL evidencing the payments made to Molmek. NAPL also produced testimony of the driver of the vehicle (CCW-5).

34. The learned Commercial Court after examining the documents and evidence produced also relied on a series of Whatsapp chats, which were not denied by Molmek and the ledger details filed on 17.03.2020 to give a finding that an amount of Rs.84,56,058.70/- was outstanding.

34.1 Molmek had contended that payments aggregating Rs.3.5 lacs were made by NAPL on 08.06.2020, 07.07.2020 and 06.08.2020. There would be no need to make these payments if on those dates amounts were outstanding and payable by Molmek to NAPL. According to Molmek, this established that the invoices raised by NAPL are false. In our view, this contention is not disputed by Molmek that there were simultaneous transactions taking place between the parties. Hence, it is plausible that periodic payments would be made by a party (NAPL) to the other (Molmek). The witnesses of NAPL explained in their testimony that supply of goods were not stopped on account of non-receipt of payments as the accounts used to be reconciled periodically, from time to time.

35. The learned Commercial Court relied on the Whatsapp chat dated 04.01.2021, which was sent by Molmek to NAPL on 04.01.2021 requesting to clear "small acc pending" and held that the contention of the Molmek cannot be correct since it has claimed approximately Rs. 79 lacs were pending at that time.

36. The learned Commercial Court found that NAPL had proved the dispatch/delivery of the goods by the "e-way bills" and forms GSTR-1, and that these goods were not rejected by Molmek. Thus, the Impugned Judgement and Decree found that NAPL had succeeded in proving its Counter-Claim while Molmek had failed to prove its claim for recovery.

37. The contention of the learned Counsel for Molmek that NAPL did not prove its invoices is without merit. Section 34 of the Evidence Act, states that entries in books of accounts are not sufficient by themselves to discharge any liability and reads as follows:

"34. Entries in books of account when relevant.-- [Entries in the books of account, including those maintained in an electronic form], regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability."

37.1 However, NAPL's claim is not founded on book entries alone. In addition to the ledgers, NAPL has led evidence as is discussed above which includes statement of witnesses including a CGST official (CCW-

4). It has established "e-way bills" and produced copies of the GST Returns as well. The reliance placed by Molmek on this provision of the Indian Evidence Act, 1872 is unpersuasive.

38. Rule 138 of CGST Rules provide for the rules for generation of "e-way bills". Sub-Rule (11) and (12) of Rule 138 of the CGST Rules provide that the details of "e-way bills" generated under Rule 138 of the CGST Rules shall be available on the common portal and the supplier or the recipient, as the case may be, shall communicate his acceptance or rejection of the assessment of the goods covered in the "e-way bills". Sub-Rule (12) of Rule 138 of the CGST Rules provides that if a rejection is not made available within 72 hours on the common portal or at the time of delivery, it shall be deemed that the recipient has accepted the goods. Sub-Rule (11) and (12) of Rule 138 of the CGST Rules are reproduced below:

"138. Information to be furnished prior to commencement of movement of goods and generation of e-way bill. ...

(11) The details of the e-way bill generated under this rule shall be made available to the -

(a) supplier, if registered, where the information in Part A of FORM GST EWB-01 has been furnished by the recipient or the transporter; or

(b) recipient, if registered, where the information in Part A of FORM GST EWB-01 has been furnished by the supplier or the transporter, on the common portal, and the supplier or the recipient, as the case may be, shall communicate his acceptance or rejection of the consignment covered by the e-way bill.

(12) Where the person to whom the information specified in sub-

rule (11) has been made available does not communicate his acceptance or rejection within seventy two hours of the details being made available to him on the common portal, or the time of delivery of goods whichever is earlier, it shall be deemed that he has accepted the said details."

[Emphasis is ours] 38.1 NAPL contended that this option was not exercised by Molmek. Although Molmek has denied receipt of these goods, it has not provided any credible explanation regarding compliance with these Rules.

39. NAPL has relied on the "e-way bills", which were produced by its witness (CCW-4), the Inspector from the Customs and Excise Department proved these "e-way bills". These include purchases such as Solar Lantern with Portable Cooler. Molmek has not denied that goods were supplied by NAPL to them. The 5 disputed invoices are at serial nos. 36, 37, 40, 41 and 43 in table reproduced in Paragraph 19 above. The tabular chart extracted in paragraph 19 shows that goods were supplied even thereafter in August, 2020 and August, 2021. The supply of goods happened during, before and after that period. Those supplies have not been denied by Molmek. Therefore, the contention of Molmek that the supply has not been proved by NAPL is misconceived.

39.1 NAPL has placed evidence before the learned Trial Court which remains uncontroverted with respect to the supplies of goods by it to Molmek to show a total number of 46 deliveries between the

period 26.10.2018 and 08.01.2021. NAPL has given invoice numbers, "e-way bill" numbers and all filed requisite evidence. The 5 disputed invoices also form part of its GST returns that were filed. The learned Trial Court has conducted a detailed examination and found that NAPL has proved its delivery.

40. In view of the discussions above, this Court finds no reason to interfere with these findings. The Appeals are accordingly dismissed.

(TARA VITASTA GANJU) JUDGE (VIBHU BAKHRU) JUDGE DECEMBER 24, 2024/ ha/pa/r