

IP Rights & Pre-Litigation Mediation – Key to Bolt’s Win?

In a recent judgment, the Hon’ble Delhi High Court while hearing ***Bolt Technology OU. vs. Ujoy Technology Private Limited & Anr.***, clarified the contours of Section 12A of the Commercial Courts Act 2015 (‘CCA’) in relation to suits concerning intellectual property (‘IP’) rights.

The Court examined section 12A of CCA along with the object and legislative intent behind the provision as considered by the Supreme Court in *Patil Automation Private Limited & Ors v. Rakheja Engineers Private Limited*¹ and the Division Bench of the Bombay High Court in *Deepak Raheja v. Ganga Taro Vaziran*². The Court reviewed, in detail, the facts of the case and the sequence of events, including the Plaintiff’s plea for urgent interim reliefs, the notice issued by the Plaintiff and the Defendant’s response to the said notice. The Court noted that the present suit involved IP rights and considered the impact of these rights on parties, customers, and the public. Ultimately, the Court held that the requirements of section 12A of CCA had been met.

The Proceedings

Bolt Technology OU had filed a suit for passing off and copyright infringement against the Defendants *Ujoy Technology Private Limited & Anr.* The Plaintiff, an Estonian company, was the registered proprietor of the mark ‘BOLT’ in several jurisdictions used in relation to ride-hailing, food and grocery delivery, rental of cars, e-bikes, scooters and electric vehicle (‘EV’) charging stations/docks worldwide. The Plaintiff objected to the use, by the Defendants, of the word mark and logo BOLT (which was in the same colour scheme as that of the Plaintiff) in relation to a similar business of providing charging points for EVs.

The Defendants sought rejection of the Plaintiff citing non-compliance with Section 12A of CCA by the Plaintiff. The Defendants cited *Patil Automation (supra)*, to submit that the Hon’ble Supreme Court had held that pre-litigation mediation under section 12A of CCA is mandatory. The Defendants further cited *ECL Finance Ltd v. Tashee Nirman Pvt Ltd and Ors*³ which relied upon the decision of the Division Bench of the Bombay High Court in *Deepak Raheja (supra)* to claim that the Courts had previously rejected applications seeking exemption under section 12A of CCA. The Plaintiff contended that the Plaintiff was seeking urgent interim relief and that the Supreme Court’s decision in *Patil Automation* makes an exception for suits seeking urgent interim relief to be filed without complying with the requirement of pre-litigation mediation. The Plaintiff highlighted to the Court that in its legal notice to the Defendant, the Plaintiff had clearly stated that it was willing to resolve the dispute amicably.

The Verdict

¹ [2022] SCC Online SC 1028

² [2021] SCC Online Bom 3124

³ [2021] SCC Online Del 5643

The Court held that the Supreme Court's decision in *Patil Automation* completely settles the legal position with respect to the operation of section 12A of CCA but was clear enough to identify the critical difference between *Patil Automation* and the case before it. The key differentiating factor was the element of 'seeking urgent interim relief.' The Court clarified that in the present case, the Plaintiff had sought urgent interim relief and set out the importance of interim relief in matters concerning IP rights given that they not only involve the rights of the parties but also the interests of consumers and the public.

The Court noted that in the present case, the Plaintiff had addressed a legal notice to the Defendants prior to initiating the suit wherein the Plaintiff had stated that it wished to resolve the matter amicably. The Defendant had responded to the Plaintiff's legal notice, claiming the Plaintiff's notice was frivolous, accusing the Plaintiff of harassment and calling upon the Plaintiff to compensate the Defendants with Rs. 5 crores along with legal costs of Rs. 75,000.

On the basis that the Plaintiff had sought to amicably resolve the dispute which was rejected by the Defendants and that the Plaintiff has sought urgent interim reliefs, the Court held that the provisions of section 12A of CCA had been complied with.

Closing Note

It is interesting to note that the Court in the present case held that the requirements of section 12A of CCA were complied with by the Plaintiff by simply offering to settle the dispute amicably without referring to the term mediation or the provisions of section 12A and without following the procedure set out in the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018.

Another reason for the Court to hold that the provisions of section 12A had been met was on the grounds that the Plaintiff had sought urgent interim reliefs and the importance of urgent interim reliefs in suits concerning IP rights. However, it remains to be seen as to which facts and circumstances in IP rights disputes, the Courts will hold as warranting 'urgent interim reliefs', thereby potentially side-stepping the requirements of section 12A of CCA.