

\$~17

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

*Date of Decision: 29<sup>th</sup> August, 2022*

+ **CS (COMM) 582/2022 & I.As.13529-32/2022**

**BOLT TECHNOLOGY OU** ..... Plaintiff

Through: Ms. Swathi Sukumar, Ms. Essenese Obhan, Ms. Taarika Pillai, Ms. Mehak Dhingra, Ms. Himangi Kapoor, Ms. Ayesha Guhathakurta, Mr. Ritik Raghuvanshi and Mr. Naveen Nagarjuna, Advocates.  
(M:9971851064)

versus

**UJOY TECHNOLOGY PRIVATE LIMITED & ANR.....** Defendants

Through: Mr. Naman Maheshwari and Mr. Garv Malhotra, Advocates.  
(M:9717503706)

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J.(Oral)**

1. This hearing has been done through hybrid mode.

**I.As.13531/2022, 13532/2022 (for exemption)**

2. Allowed, subject to all just exceptions. ***I.A.13531/2022*** and ***I.A.13532/2022*** are disposed of.

**I.A.13530/2022 (u/S 12A of CCA)**

3. This is an application filed on behalf of the Plaintiff seeking exemption from instituting pre-litigation mediation, in accordance with Section 12A of the Commercial Courts Act, 2015 (*hereinafter*, "CCA").

4. The present suit has been filed by the Plaintiff - Bolt Technology OU seeking permanent injunction restraining the Defendants, passing off of

trademark, infringement of copyright, unfair competition, rendition of accounts, damages, and other reliefs. The Plaintiff claims to be the registered proprietor of the mark ‘BOLT’ used in relation to ride-hailing, food and grocery delivery, rental of cars, e-bikes and scooters, Electric Vehicle (EV) charging stations/docks, worldwide. The Plaintiff has obtained various registrations for the mark ‘BOLT’ in several jurisdictions and the details of the same are set out in the *Plaint*. It is the case of the Plaintiff that the Defendants are using the identical mark ‘BOLT’, along with the logo thereof, in relation to an identical business of provision of charging points for EVs. The competing logos used by the Plaintiff and the Defendants are depicted below:

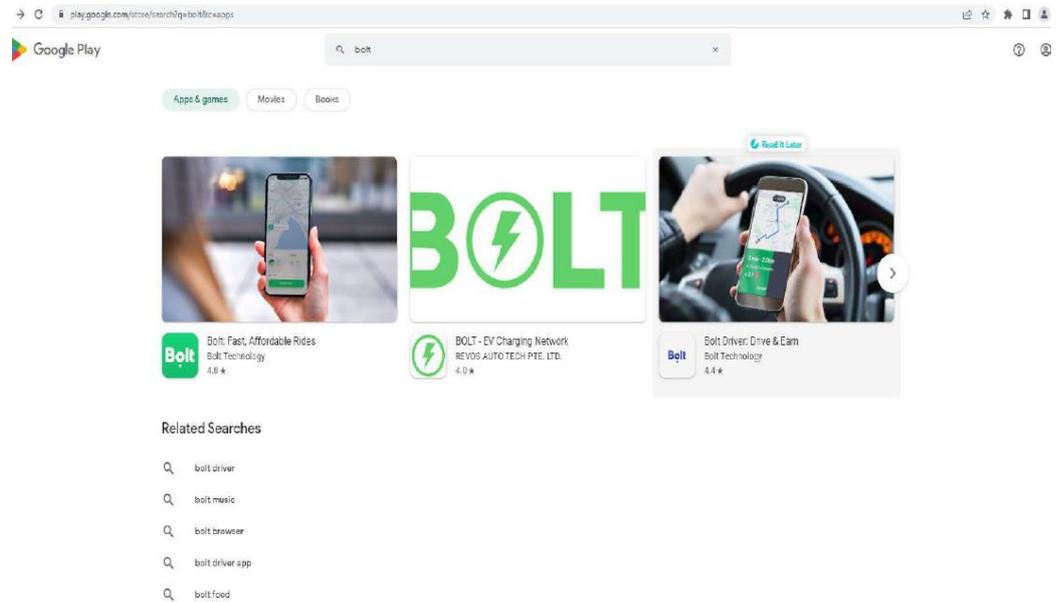
Plaintiff's Marks	Defendants' Marks
BOLT	BOLT
	

5. As set out in the *Plaint*, the Plaintiff is an Estonia-based company and claims to be a global market leader in transportation and mobility services that include vehicles for hire, micro mobility, car-sharing, Electric Vehicle

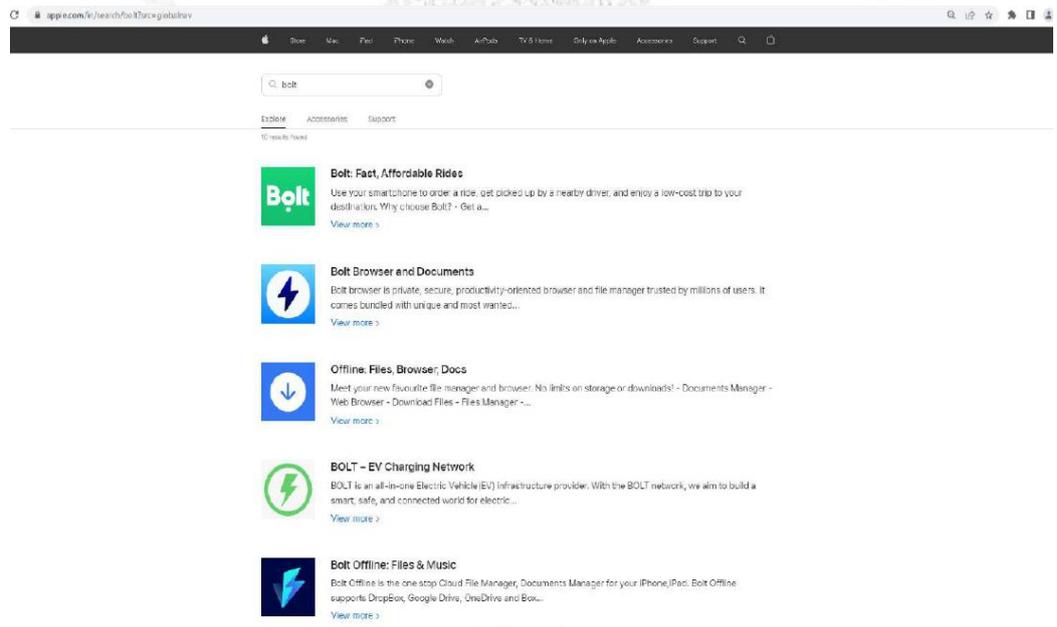
charging stations/docks and various food and grocery delivery services, etc. It operates in more than 400 cities in over 45 countries in Europe, Africa, Western Asia, South and Latin America. The Plaintiff also claims to have more than 100 million customers globally and more than 2.5 million drivers are stated to be using the 'BOLT' Driver platform to offer rides. The Plaintiff claims reputation in the mark 'BOLT' and the logo thereof, which was adopted by it in the year 2018. As per the Plaintiff, the mark 'BOLT' is not only used as a trademark but is also an essential feature of the corporate name of the Plaintiff. The Plaintiff advertises and promotes its services through its website, namely '<https://bolt.eu/>' which can be accessed worldwide, as also, various social media platforms such as Facebook, Instagram, LinkedIn, and Twitter. The Plaintiff's mobile application under the mark 'BOLT' is available, both on the Google Play Store and Apple App Store. A search for the mark 'BOLT' on the Google Play Store and the Apple App Store shows the competing applications of the Plaintiff and the Defendants. The two competing applications, as shown in the search results, are reflected as under:

भारतमेव जयते

## Google Play Store:



## Apple App Store:



6. Ms. Sukumar, Id. Counsel appearing for the Plaintiff submits that the Defendants are using the identical mark 'BOLT' with an identical colour scheme for the business of Electric Vehicle charging points, which is similar

to one of the services provided by the Plaintiff. She submits that the use of the mark 'BOLT' by the Defendants is completely violative of the global reputation and goodwill which has been acquired by the Plaintiff, and would constitute passing off. She further submits that the Plaintiff has around 100 registrations in more than 50 countries. Accordingly, an urgent interim injunction is sought in the matter.

7. On the other hand, Mr. Naman Maheshwari, Id. Counsel appearing for the Defendants has raised a preliminary objection seeking rejection of the Plaint for non-compliance of Section 12A of the CCA. Reliance is placed upon the following judgments:

- i. Judgment of the Supreme Court in *Patil Automation Private Limited & Ors. v. Rakheja Engineers Private Limited [Civil Appeal Nos.5333-34/2022 decided on 17th August, 2022]*, to argue that pre-litigation mediation under Section 12A of CCA is mandatory;
- ii. Order dated 8th September passed by the Id. Single Judge of this Court in *ECL Finance Ltd. v. Tashee Nirman Pct. Ltd. and Ors. [I.A.11348/2021 in CS(COMM) 415/2021 decided on 8th September, 2021]*, wherein, relying upon the judgment of the Bombay High Court in *Ganga Taro Vazirani v. Deepak Raheja [2021 SCC OnLine Bom 195]*, the Court rejected the application seeking exemption under Section 12A of CCA.

8. On the basis of the above judgments, it is submitted by the Defendants that, with effect from 20<sup>th</sup> August, 2022, the Supreme Court has held that pre-litigation mediation under Section 12A is mandatory and that no suit can be entertained without having resorted to pre-litigation mediation

in accordance with Section 12A of the CCA.

9. In response to this preliminary objection, Ms. Sukumar, Id. Counsel for the Plaintiff makes the following submissions:

- i. Paragraph 81 of the judgment of the Supreme Court in *Patil Automation (supra)* clarifies that when an urgent interim relief is being sought, the suit can be filed without resorting to pre-litigation mediation.
- ii. In the present case, a legal notice dated 24th May, 2022 was served upon the Defendants whereby the Plaintiff has clearly informed the Defendants that the Plaintiff is willing to amicably resolve the dispute. However, no such sentiment was reflected by the Defendants in their reply dated 5th June, 2022 to the said legal notice.
- iii. The Defendants' mobile application is available for downloading on a daily basis, and hence, urgent relief ought to be granted in the present case, restraining the Defendants from using the mark 'BOLT' and the accompanying logo.

10. Heard Id. Counsels for the parties. This Court has considered the preliminary objection raised by the Defendants under Section 12A of the CCA and perused the record.

11. Section 12A of the CCA reads as under:

***“12A. Pre-Institution Mediation and Settlement—(1)  
A suit, which does not contemplate any urgent  
interim relief under this Act, shall not be  
instituted unless the plaintiff exhausts the  
remedy of pre institution mediation in  
accordance with such manner and procedure as  
may be prescribed by rules made by the Central***

**Government.**

- (2) *The Central Government may, by notification, authorise the Authorities constituted under the Legal Services Authorities Act, 1987 (39 of 1987), for the purposes of pre-institution mediation.*
- (3) *Notwithstanding anything contained in the Legal Services Authorities Act, 1987 (39 of 1987), the Authority authorised by the Central Government under sub-section (2) shall complete the process of mediation within a period of three months from the date of application made by the plaintiff under sub-section (1):*  
*Provided that the period of mediation may be extended for a further period of two months with the consent of the parties:*  
  
*Provided further that, the period during which the parties remained occupied with the pre-institution mediation, such period shall not be computed for the purpose of limitation under the Limitation Act, 1963 (36 of 1963).*
- (4) *If the parties to the commercial dispute arrive at a settlement, the same shall be reduced into writing and shall be signed by the parties to the dispute and the mediator.*
- (5) *The settlement arrived at under this section shall have the same status and effect as if it is an arbitral award on agreed terms under sub-section (4) of section 30 of the Arbitration and Conciliation Act, 1996 (26 of 1996).]*”

12. Insofar as the object and legislative intent behind Section 12A of CCA is concerned, the same was examined by the Supreme Court in the recent judgment in *Patil Automation (supra)*, wherein it was observed as follows:

“61. Timelines are contemplated, both in the matter of pleadings and also other steps to be taken. They are geared to ensure an expeditious culmination of the proceedings. Originally, the specified value within the meaning of Section 2(i) was fixed as ‘which shall not be less than one crore rupees’. Within three years of the birth of the Act, Parliament found that it was necessary to reduce the specified value from the sum of Rs. 1 crore to Rs. 3 lakhs, which is what is reflected in the present avatar of the definition of the word ‘specified value’. **It is simultaneously with the reduction of the specified value and by the same amendment that Section 12A came to be inserted. We have already noticed the Statement of Objects and Reasons, which led to the amendment.** On a conspectus of the Act, as from its birth till the Law-giver stepped-in with the amendment in 2018, the Act read with the Rules represent an economic experiment as much as it deals more directly with a vital aspect of administration of justice. Commercial disputes have been clearly identified. The value has been fixed. Courts, at different stages, have been contemplated. Timelines are contemplated. **The whole object of the law is clear as day light. Disputes of a commercial hue, must be extinguished with the highest level of expedition. The dispute resolution would witness a termination of the lis between the feuding parties. But even, more importantly, it would prepare the ground for the country becoming a destination attracting capital by enhancing the ease of doing business. It does not require much debate to conclude that there is a direct relationship between ease of doing business and an early and expeditious termination of disputes, which may arise in commercial matters. The speed with which the justice delivery system in any country**

responds to the problem of docket explosion, particularly in the realm of commercial disputes can be regarded as a very safe index of the ease of doing business in that country. The Act, therefore, is, in the said sense, a unique experiment to push the pace of disposal of commercial disputes. It is in this background that the Court must approach the issue of whether Section 12A has been perceived as being a mandatory provision. We say this for the reason that the decisive element in the search for the answer, in the interpretation of such a Statute, must be to ascertain the intention of the Legislature. The first principle, of course, must be the golden rule of interpretation, which means, the interpretation in conformity with the plain language, which is used. There cannot even be a shadow of a doubt that the language used in Section 12A is plainly imperative in nature. However, we will not be led by the mere use of the word 'shall'. Even going by the sublime object of the Act, as we have unravelled, we are fully reinforced in our opinion that the pre-institution mediation is intended to produce results, which has a direct bearing on the fulfilment of the noble goals of the Law-giver. It is apparent that the Legislature has manifested a value judgment. We are not called upon to decide the constitutionality of the provision. Parliament is presumed to be aware of the felt necessities of the times. It best knows the manner in which the problems on the ground are redressed. Section 89 of the CPC, does contemplate mediation ordered by a Court. However, it must be noticed that Section 12A contemplates mediation without any involvement of the Court as it is done prior to the institution of the suit.”

13. Similarly, with regards to the object of Section 12A, the Division

Bench of the Bombay High Court in *Deepak Raheja v. Ganga Taro Vazirani* [2021 SCC OnLine Bom 3124] has also observed as under:

**“14. The scheme of Section 12A of the Act (reproduced earlier) is thus. A commercial suit of the specified value that does not contemplate any urgent interim relief shall not be instituted unless the party exhausts the remedy of pre-institution mediation in accordance with such manner and procedure as may be prescribed by Rules. The Central Government will authorise the authorities constituted under the Legal Services Authorities Act, 1987 for the purposes of pre-institution mediation. The mediation process is to be completed within a period of three months from the date of application. The period may be extended for a further period of two months with the consent of the parties. The period of pre-institution mediation shall not be computed for the purpose of limitation under the Limitation Act, 1963, and Section 12A(3) excludes the period taken for mediation from the limitation period for filing the suit. Under this Section, the settlement arrived at shall have the same status and effect as if it is an arbitral award under Arbitration and Conciliation Act, 1996.**

XXX

**19. Section 12A was introduced by way of Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Act, 2018. The Statement of Objects of the (Amendment) Act, 2018 generally stated that the global economic environment has since become increasingly competitive and to attract business at the international level, India needs to further improve its ranking in the World Bank's 'Doing Business Report, which, inter alia, considers the dispute resolution environment in the country as one of the parameters for doing business. It**

referred to the economic development, which has prompted initiating legislative measures for speedy settlement of commercial disputes. Early resolution of commercial disputes even of lesser value will create a positive image amongst the investors about the Indian legal system. The object was also to reduce the specified value of commercial disputes and constitute commercial courts at the district level. As regards the introduction of Section 12A, the Statement of Objects and reasons specifically stated as follows.

(v) to provide for compulsory mediation before institution of a suit, which no urgent interim relief is contemplated and for this purpose, to introduce the Pre-Institution Mediation and Settlement Mechanism and to enable the Central Government to authorise the authorities constituted under the Legal Services Authorities Act, 1987 for this purpose. (emphasis supplied)

XXX

26. Section 12A does not come into play if the suit contemplates an urgent relief. If a commercial suit (of specified value) contemplates urgent relief, it can be instituted in the court straightaway. Therefore, two classes of commercial disputes are contemplated under Section 12A. One in which an urgent interim relief is not contemplated and second where urgent interim relief is contemplated. Section 12A provides different schemes for these two classes of disputes. Where there is no urgent interim relief to first exhaust the remedy of pre-institution mediation. Where there is an urgent interim relief contemplated to approach the court directly. The emphasis is that for a particular type of dispute particular kind of remedy is more appropriate. Section 12A segregates commercial

disputes depending on their urgency. Making segregation at the inception of a commercial dispute is a considered legislative instrument to speed up the disposal of commercial disputes. Court adjudication is not the only type of dispute resolution mechanism. Negotiations and mediation also resolve the dispute by finding a mutually acceptable solution. The parties can negotiate themselves or through a private person or machinery provided under the statute. Once the authority conducts the mediation under Section 12A, the mutually acceptable outcome can be enforced like an arbitral award. For some disputes with urgent interim reliefs, adjudication in courts can be a suitable remedy, while for some disputes, resolution through mediation can be more appropriate. Section 12A is recognition of this fact by the legislature. A clear legislative intent emerges from the plain reading of Section 12A that commercial dispute which contemplates an urgent interim relief, dispute resolution by Courts is primary, when there is no such interim relief contemplated, pre-institution mediation for mutual resolution of disputes to be attempted first should be appropriate.  
XXX”

14. As to the manner in which Section 12A of CCA would operate, the recent judgement of the Supreme Court in *Patil Automation (supra)* has completely settled the legal position in this regard. The relevant observations of the Supreme Court in the said judgment are as under:

“81. In the cases before us, the suits do not contemplate urgent interim relief. As to what should happen in suits which do contemplate urgent interim relief or rather the meaning of the word ‘contemplate’ or urgent interim relief, we

need not dwell upon it. The other aspect raised about the word 'contemplate' is that there can be attempts to bypass the statutory mediation under Section 12A by contending that the plaintiff is contemplating urgent interim relief, which in reality, it is found to be without any basis. Section 80(2) of the CPC permits the suit to be filed where urgent interim relief is sought by seeking the leave of the court. The proviso to Section 80(2) contemplates that the court shall, if, after hearing the parties, is satisfied that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to the court after compliance. Our attention is drawn to the fact that Section 12A does not contemplate such a procedure. This is a matter which may engage attention of the lawmaker. Again, we reiterate that these are not issues which arises for our consideration. **In the fact of the case admittedly there is no urgent interim relief contemplated in the plaints in question.**

XXX

92. Having regard to all these circumstances, we would dispose of the matters in the following manner. **We declare that Section 12A of the Act is mandatory and hold that any suit instituted violating the mandate of Section 12A must be visited with rejection of the plaint under Order VII Rule 11.** This power can be exercised even suo moto by the court as explained earlier in the judgment. We, however, make this declaration effective from 20.08.2022 so that concerned stakeholders become sufficiently informed. Still further, we however direct that in case plaints have been already rejected and no steps have been taken within the period of limitation, the matter cannot be reopened on the basis of this declaration. Still further, if the order of rejection

*of the plaint has been acted upon by filing a fresh suit, the declaration of prospective effect will not avail the plaintiff. Finally, if the plaint is filed violating Section 12A after the jurisdictional High Court has declared Section 12A mandatory also, the plaintiff will not be entitled to the relief.”*

15. In the said case before the Supreme Court, the Court has clearly observed that the suits therein did not contemplate urgent interim reliefs. Thus, the question that remains is as to the urgent interim relief that is being sought in the present case and whether exemption ought to be granted from going into pre-litigation mediation. The Court will have to go into the question as to whether such ‘urgent interim relief’ means only such relief which is sought due to immediate past events or can it be urgent interim relief which the Plaintiff seeks in the overall facts and circumstances of a particular case.

16. The importance of an interim injunction in intellectual property matters has been emphasised in the judgment in ***Laxmikant v. Patel v. Chetanbhai Shah & Anr. [(2002) 3 Supreme Court Cases 65]***. The relevant observations of the Court in the said judgment are extracted below:

*17. We are conscious of the law that this Court would not ordinarily interfere with the exercise of discretion in the matter of grant of temporary injunction by the High Court and the Trial Court and substitute its own discretion therefor except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely or where the order of the Courts under scrutiny ignores the settled principles of law regulating grant or refusal of interlocutory injunction. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not*

*reassess the material and seek to reach a conclusion different from the one reached by the court below solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion [(see [Wander Ltd. v. Antox India \(P\) Ltd.](#) and [N.R. Dongre v. Whirpool Corpn.](#)]. However, the present one is a case falling within the well-accepted exceptions. Neither the Trial Court nor the High Court have kept in view and applied their mind to the relevant settled principles of law governing the grant or refusal of interlocutory injunction in trade mark and trade name disputes. **A refusal to grant an injunction in spite of the availability of facts, which are prima facie established by overwhelming evidence and material available on record justifying the grant thereof, occasion a failure of justice and such injury to the plaintiff as would not be capable of being undone at a latter stage. The discretion exercised by the Trial Court and the High Court against the plaintiff, is neither reasonable nor judicious. The grant of interlocutory injunction to the plaintiff could not have been refused, therefore, it becomes obligatory on the part of this Court to interfere.***

17. As per the experience seen in intellectual property cases, the relief of interim injunction, including at the *ex-parte* stage and *ad-interim* stage, is extremely important. Such matters do not merely involve the interest of the Plaintiff and the Defendants, which are the contesting parties before the Court, but also involve the interest of the customers/consumers of the

products and services in question. Intellectual property cases relate to a wide gamut of businesses such as - medicines, FMCG, food products, financial services, technology, creative works such as books, films, music, etc. Recent trends also point towards large scale misuse on the internet. In some cases, due to misuse of known marks and brands, the consumers are being duped into parting with large sums of money. The rights of the parties are affected almost on a daily basis as there is continuous manufacturing, selling, and offering of services or goods to the customers. The ambit of urgent interim relief that may be required to be granted is extremely varied and depends on the facts of each case. Such reliefs are usually granted by Courts not merely for protection of statutory and common law rights, but also in order to avoid confusion, deception, unfair and fraudulent practices, etc., in the marketplace.

18. It is also the settled legal position that delay by itself does not disentitle a Plaintiff to the grant of urgent interim relief. This position of law was reiterated by the Supreme Court in *Midas Hygiene Industries (P) Ltd. & Anr. v. Sudhir Bhatia & Ors. [(2004) 3 Supreme Court Cases 90]*, wherein it was observed as under:

“5. *The law on the subject is well settled. In case of infringement either of trade mark or of copyright, normally an injunction must follow. **Mere delay in bringing action is not sufficient to defeat grant of injunction in such cases.** The grant of injunction also becomes necessary if it prima facie appears that the adoption of the mark was itself dishonest.*

6...

7. *In our view on the facts extracted by the learned Single Judge, this was a fit case where in*

*an interim injunction should have been granted and should have been continued. **In our view the Division Bench was entirely wrong in vacating that injunction merely on the ground of delay and laches.** Under the circumstances, the impugned order is set aside and that of the trial court is restored. It is clarified that all observations made by the High Court and by this Court are prima facie and shall not be taken into consideration at the time of the trial of the suit.”*

19. Similar is the view taken by the Id. Single Judge of this Court in *Bayerische Motoren Werke Ag v. Om Balajee Automobile (India) Private Limited [2020 SCC OnLine Del 484]*, wherein the Court relied upon the judgment in *Midas Hygiene (supra)* and held as under:

*“26. The last plea raised by learned counsel for defendant was that the defendant has been manufacturing the said E-Rickshaws using the said brand DMW since 2013. It is claimed that the plaintiff was aware of this. Hence, the present suit is barred by delay, laches and limitation.*

*27. Factually, the said contention of learned counsel for defendant is erroneous as in the plaint, the plaintiff states that the defendant got knowledge of the use of the trademark by the defendant on or around 01.07.2016. Immediately, thereafter, on 12.07.2016 a Cease and Desist notice was sent to the defendant. The suit has been filed in 2017 itself.*

**28. In this context, reference may be had to the judgment of the Supreme Court in *Midas Hygiene Industries (P) Ltd. v. Sudhir Bhatia, (2004) 3 SCC 90* where the Supreme Court held as follows:**

**“5. The law on the subject is well settled. In cases of infringement either of trade**

**mark or of copyright, normally an injunction must follow. Mere delay in bringing action is not sufficient to defeat grant of injunction in such cases. The grant of injunction also becomes necessary if it prima facie appears that the adoption of the mark was itself dishonest.”**

**Hence, even if there was delay on the part of the plaintiff in filing of the present suit as has been claimed by the defendant, the same delay would not be sufficient to deter grant of injunction in favor of plaintiff.**

29. *The plaintiffs have made out a prima facie case. Balance of convenience is in favour of the plaintiff and against the defendant. An ad interim injunction is passed restraining the defendants, its officers, agents etc. from manufacturing, exporting, importing or offering for sale, advertising or in any manner dealing with goods not limited to E-Rickshaws bearing the mark DMW or any other mark which are identical or deceptively similar to the plaintiff's BMW marks.”*

20. Thus, the present case would have to be looked at, in the background of the above legal position, particularly in relation to intellectual property matters. The Plaintiff claims to be a globally renowned company using the mark ‘BOLT’ along with the logo thereof, for its services being provided globally. The mobile application of the Plaintiff is available for downloading in India and it is nigh possible that the persons travelling from India, who may have downloaded the Plaintiff’s mobile application in India itself, may be using the Plaintiff’s services internationally. The Defendants are using an identical mark ‘BOLT’ in an identical colour scheme and have made their

mobile application continuously available, both on Google Play Store, as also, on Apple App Store. The consumers and mobile users can download the Plaintiff's mobile application, as also, the Defendants' mobile application, almost on a minute-to-minute basis. Thus, this Court is of the opinion that the Plaintiff would be entitled to seek urgent interim relief in the present case. However, it is made clear that the question as to whether the interim relief, as sought in the present suit ought to be granted or not, is a question on merits and is not being gone into in the present application.

21. It deserves to be noted that the Plaintiff issued a legal notice dated 24th May, 2022 upon the Defendants, and it was clearly stated therein as under:

*"Consequently, we on behalf of our Client, demand that you refrain from all further use of the marks*

*"BOLT", "  " or any other name, mark, or logo identical or deceptively similar to our Client's Bolt marks. **Without prejudice to the above, our Client would prefer to resolve this matter amicably, if such a resolution can be reached promptly.** In order to do that, we must have immediate written confirmation that you will comply with the following terms:*

- 1. Stop using, directly, indirectly, through any third party or otherwise, the impugned marks and any other name, mark or logo which consists in whole, or part, of the elements "BOLT", as a mark, a corporate name, entity name or in any form whatsoever or making any reference, directly or indirectly, depicting it to be deceptively similar to the mark "BOLT" as mentioned above, by using it for any associated products (including but not limited to the website, social media pages and third party websites).*
- 2. Provide us with a written confirmation that the same has been adhered to and that any products or services*

*which have the impugned marks have been amended or destroyed. Additionally, provide us with an undertaking that "BOLT" at any time in the future or any mark which is similar to the mark and trade identity "BOLT", including but not limited to "Bolt Technology OÜ" shall not be used, in any manner whatsoever.*

*3. Surrender to our Client or to us on its behalf for destruction by our Client all advertisements, websites and/or any usage on internet services and on any other electronic media or any other document or product bearing the impugned mark in any form for stationary, uniforms, banners, or any associated products.*

*4. Withdraw all advertisements/ hoardings across all mediums which have any reference to the impugned marks, in any form, whatsoever."*

22. The above legal notice dated 24<sup>th</sup> May, 2022 was served upon the Defendants both by speed post, courier and email. The Defendants did not reply leading to a reminder to the said legal notice being sent by the Plaintiff on 1st June, 2022. Finally, a reply by the Defendants was issued on 5th June, 2022, which was received by the Plaintiff on 9th June, 2022. In the said reply, the Defendant clearly took a stand that it is entitled to use the mark 'BOLT' for various reasons as set out in the said reply. The concluding paragraph of the reply dated 5<sup>th</sup> June, 2022, is highly indicative of the Defendants' intent, and reads as under:

**"Otherwise, in view of the frivolous notice sent by you against my clients which is against the law and facts, I therefore, do hereby send you reply to your notice dated 24.05.2022 as above. Since you have harassed my clients unnecessarily without verifying the facts as regards their liability in a "passing off" action, you are liable to pay a**

*compensation of INR 5,00,00,000/- (Rupees five crores only) to my client within a period of 15 (fifteen) days from the date of receipt of this notice along with the additional cost of INR 75,000/- (Rupees seventy five thousand only) for legal costs. Thus, you are liable to pay a total of INR 5,00,75,000/- (Rupees five crores seventy five only) to my clients within a period of 15 (fifteen) days from date of receipt of this notice.”*

23. In the opinion of this Court, the above reply to the legal notice clearly violates the letter and spirit of Section 12A of CCA, which was introduced with the intent to encourage mediation, as discussed hereinabove.

24. It is notable that while the Plaintiff suggests an amicable resolution of the dispute, the Defendants sought to term the legal notice as a “*frivolous notice*”. The Defendants also claimed that they were being “*harassed without verification of facts*”. The ultimate icing was that the demand of compensation of Rs.5 crores, along with legal costs of Rs.75,000/- from the Plaintiff.

25. A perusal of the correspondence, extracted hereinabove, leaves no doubt in the mind of the Court that the Defendants were in no way interested in an amicable resolution of the dispute. Instead, the hand of mediation which was lent by the Plaintiff was met with a tight slap. The Defendant’s conduct clearly is not in the spirit of any amicable resolution – let alone mediation. Hence, the requirement of Section 12A of the CCA duly stands satisfied on both counts, in the following manner:

- i. Firstly, the Plaintiff had attempted an amicable resolution which was clearly refuted, rejected and condemned by the Defendants;
- ii. Secondly, the Plaintiff has also sought urgent interim relief before

this Court and is entitled to maintain the present suit.

26. The preliminary objection raised by the Defendants is, thus, liable to be rejected, along with payment of costs of Rs.10,000/-. Let the said costs be paid by the Defendants to the Plaintiff, within one week.

27. Accordingly, **I.A.13530/2022** is disposed of in the above terms.

28. It is made clear that the observations made in the present application shall not affect the merits of the application under Order XXXIX Rules 1 & 2 CPC.

**CS (COMM) 582/2022**

29. Let the Plaint be registered as a suit.

30. Issue summons in the suit to the Defendants. Summons is accepted by Mr. Naman Maheshwari, Id. Counsel on behalf of the Defendants.

31. Let the written statement(s) to the Plaint be positively filed by the Defendants within 30 days. Along with the written statement(s), the Defendants shall also file an affidavit of admission/denial of the documents of the Plaintiff, without which the written statement shall not be taken on record.

32. Liberty is given to the Plaintiff to file replication(s) within 15 days of the receipt of the written statement(s). Along with the replication, if any, filed by the Plaintiff, an affidavit of admission/denial of documents of the Defendants, be filed by the Plaintiff, without which the replication shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

33. List before the Joint Registrar for marking of exhibits on **12<sup>th</sup> October, 2022**. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

**I.A.13529/2022 (under O XXXIX R 1 & 2 CPC for stay)**

34. This is an application filed on behalf of the Plaintiff seeking urgent interim relief in the present suit. Issue notice to the Defendants.

35. Mr. Naman Maheshwari, Id. Counsel on behalf of the Defendants accepts notice.

36. In the background of the facts recorded above, there is doubt as to when the mobile application of the Defendants was launched. The claim of the Defendants is that the said application was launched in August, 2021. The report dated 26th October, 2021 published by Deccan Herald placed on record by the Plaintiff seeks to suggest that the Defendants were earlier using the mark 'REVOS' and then changed over to the mark 'BOLT' in October, 2021. Be that as it may, since the Court is yet to consider the application seeking interim injunction on merits, as also, in view of the fact that the Id. Counsel for the Defendants has stated today that the Defendants are willing to explore an amicable resolution of the dispute, the matter is being referred to mediation under the aegis of the Delhi High Court Mediation and Conciliation Centre.

37. Accordingly, Mr. Sudhanshu Batra, Senior Advocate is appointed as the Id. Mediator. Parties to appear before the Delhi High Court Mediation Centre either virtually or physically, subject to convenience of all concerned. It shall be ensured that competent officials on behalf of the Plaintiff and the Defendants shall be present in the mediation proceedings.

38. The reference is being made with a strict timeline to the effect that if the matter is not resolved amicably, within one week, the application seeking urgent interim relief would be considered, on the next date of hearing.

39. List before the Id. Mediator on **30th August, 2022**, at **4:00 pm**.
40. List before the Court for reporting the outcome of mediation or for hearing of the application on **12th September, 2022**.
41. Order *Dasti*.

**PRATHIBA M. SINGH, J.**

**AUGUST 29, 2022/dk/ad**

