



OCD-8

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE DIVISION
COMMERCIAL DIVISION
ORIGINAL SIDE**

**APOT/233/2025
WITH
CS-COM/677/2024**

**MODERN ROADWAYS CORPORATION
VS
SIMPLEX INFRASTRUCTURES LIMITED**

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

-AND-

The Hon'ble JUSTICE MD. SHABBAR RASHIDI

For the Appellant : Mr. Sujit Banerjee, Adv.
Mr. Nilay Sengupta, Adv.
Ms. Sunanda Samanta, Adv.
Mr. Modit Gupta, Adv.

For the Respondent : Mr. Aurin Chakraborty, Adv.
Mr. A. Kr. Pandit, Adv.

HEARD ON : 17.04.2026

DELIVERED ON : 17.04.2026

DEBANGSU BASAK, J.:-

1. Appeal is directed against an order dated July 25, 2025 passed by the learned Single Judge in GA-COM/4/2024.
2. By the impugned order, the learned Single Judge, directed the plaint filed by the appellant to be returned to the appellant with liberty to the appellant to file the same before the appropriate Court.



3. Learned Advocate appearing for the appellant submits that, the subject matter of the suit, involves a commercial dispute within the meaning of Section 2 (1) (c) (xviii) of the Commercial Courts Act, 2015. In support of such contention, he submits that, the parties entered into a contract under which, the appellant was required to provide transport services to the respondent. Appellant provided the same. Bills were raised. Bills remaining unpaid, the appellant approached the National Company Law Tribunal under the provisions of Insolvency and Bankruptcy Code. He refers to the orders passed in such proceedings. He submits that, the settlement dated March 1, 2022 was entered into during the pendency of such proceedings. By way of such settlement, respondent agreed to pay the quantified amount in full and final settlement of the claim of the appellant. The respondent did not pay in terms of such settlement. The proceedings before the National Company Law Tribunal, under the Insolvency and Bankruptcy Code were sought to be revived. He submits that, the appellant filed a suit for recovery of the amount remaining outstanding subsequent to the settlement dated March 1, 2022 being entered into.
4. Learned Advocate appearing for the respondent submits that, the Memorandum of Appeal does not contain any ground that, the suit involves a commercial dispute. He refers to the impugned order. He submits that, the appellant sought return of the plaint to be filed before the appropriate Court. In the Memorandum of Appeal, the ground is that, a correct mechanism for return of the plaint was not



put in place rather than, that the suit involves a commercial dispute within the meaning of the Act of 2015.

5. Learned Advocate appearing for the respondent relies upon **AIR 2003 CAL 178 (Bhaskar Aditya Vs. Smt. Minati Majumdar And Ors.)** for the proposition that, the appeal court cannot travel beyond the scope of the appeal.
6. Appellant as the plaintiff filed a civil suit for recovery of money. In plaint of such suit, appellant pleaded that, there was an agreement between the appellant and the respondent under which, the appellant was required to provide transport services to the respondent. Appellant provided such transport services. Appellant raised value bills on the respondent for the transport services rendered. The bills remained unpaid. Appellant, therefore, applied under the Insolvency and Bankruptcy Code as against the respondent before the National Company Law Tribunal, Kolkata.
7. The plaint case of the appellant is that, during the pendency of such proceedings, a settlement dated March 1, 2022 was entered into. By such settlement, the respondent acknowledged the appellant as the operational creditor of the respondent and agreed to pay a specified amount. Subsequent to such settlement, a portion of the settled amount was paid, leaving the balance amount unpaid. Consequently, the appellant filed the civil suit for recovery of the outstanding amount.
8. Section 2 (1) (c) (xviii) of the Act of 2015 classifies an agreement for the sale of goods or provision of services as a commercial dispute.



The plaint case, taken for the purposes of Order VII Rule 11 of the Code of Civil Procedure, 1908 or even for the purposes of Order VII Rule 10 thereof, establishes that, the claim of the plaintiff arises out of an agreement for service that is a transport service. The subject matter of the suit therefore, involves a commercial dispute within the meaning of Section 2 (1) (c) (xviii) of the Act of 2015.

9. Ratio laid down in **Bhaskar Aditya (supra)** is not attracted in the facts and circumstances of the present case, since, the issue is whether, the Court vested with jurisdiction to try a commercial dispute abdicated such jurisdiction by passing the impugned order or not.
10. Under the procedural regime put in place by the Act of 2015, it is for the Court reviewing the plaint that the subject matter of the suit involves a commercial dispute of the specified value within the meaning of the Act of 2015. Once it is so, then subject to the compliance of Section 12A of the Act of 2015 suit is to be heard by the Commercial Court or the Commercial Division as the case may be.
11. It is trite law that, consent of the parties cannot confer jurisdiction in a Court which the Court does not possess. The impugned order does not return a finding that the subject of the suit does not involve a commercial dispute. It proceeds on the basis of agreement of the parties. As noted above, parties by consent cannot confer jurisdiction which it does not possess.



- 12.** Since, the suit was filed by the appellant, after an attempt for mediation within the meaning of Section 12A of the Act of 2015 failed, cannot be classified to be improperly filed before an inappropriate forum, and since the subject matter of the suit involves a commercial dispute within the meaning of the Act of 2015, the Court receiving the suit in the Commercial Division was the appropriate Court to receive the same.
- 13.** In such perspective, learned Single Judge erred in exercising discretion under VII Rule 10 of the Code of Civil Procedure, 1908.
- 14.** In such view, the impugned order dated July 25, 2025 is set aside. GA-COM/4/2024 in CS-COM/677/2024 is dismissed.
- 15.** APOT/233/2025 is disposed of, without any order as to costs.
- 16.** In view of the restoration of the suit before the learned Single Judge in the Commercial Division, all orders subsisting as on the date of the impugned order stand revived.

(DEBANGSU BASAK, J.)

- 17.** I agree.

(MD. SHABBAR RASHIDI, J.)