IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Aryak Dutt

APOT 70 of 2022
IA NO: GA 1 of 2022

LMJ International Limited
vs.
Concast Steel & Power Limited and Ors.

For the Appellant :Mr. S.N. Mitra, Ld. Advocate General
Mr. D. N. Sharma, Sr. Adv.

For the Respondent No. 1:Mr. Rupak Ghosh, Adv.
Mr. Pourush Bandopadhyay, Adv.
Mr. Rajesh Upadhyay, Adv.

For the Respondent No. 2: Mr. Jayanta Kr. Mitra, Sr. Adv.
Mr. Trilok Bose, Sr. Adv.
Mrs. Suchismita Ghosh, Adv.
Mr. Pradip Kr. Sarawagi, Adv.

Hearing Concluded on : September 03, 2026
Judgement on : September 16, 2026

DEBANGSU BASAK, J.:-

1. Appellant has assailed the judgment and order dated March 8, 2022 passed in IA GA 7 and 8 of 2021 in CS 77 of 2013.

2. For the sake of convenience, the parties before us are referred to in the same order as they have appeared before the learned Single Judge and as in the plaint.

3. Appellant before us is the defendant no. 2 and had filed IA GA 7 of 2021 seeking dismissal of the suit on the ground of abatement. Plaintiff had however filed IA GA 8 of 2022 seeking amendment of the plaint and substitution of the plaintiff consequent upon the liquidator being appointed in respect of the plaintiff.

4. By the impugned judgment and order, learned Single Judge has allowed amendment of the plaint to bring on record the liquidator appointed in respect of the plaintiff. Learned Single Judge has dismissed the application being IA GA 7 of 2021 seeking abatement of the suit.

5. Learned Advocate appearing for the plaintiff has contended that, the subject matter of the dispute between the parties to the suit are commercial disputes within the meaning of Section 2(1)(c)(i) of the Act of 2015. He has referred to the pleadings in the plaint. He has contended that, the cause of action of the plaintiff emanates out of High Sea Sales effected in respect of the metallurgical coke. He has contended that, the tripartite agreement has been sought to be brought about is false and fabricated. Such tripartite agreement according to him has a bearing on the title to the goods concerned. Interpretation of such tripartite agreement has fallen for consideration in the suit. Therefore, the subject matter of the disputes involved in the suit has fallen within the meaning of Section 2(1)(c)(i) of the Act of 2015.

6. Learned Advocate appearing for the plaintiff has contended that, the transactions between the parties are commercial in nature. According to him all ingredients of Section 2(1)(c)(i) of the Act of 2015 have been satisfied.

7. On the second issue, learned Advocate appearing for the plaintiff has contended that, there was no delay on the part of the plaintiff applying for substitution and amendment. He has referred to Order XXII Rule 4 and Rule 8 of the Code of Civil Procedure, 1908. He has also referred to the list of dates. He has contended that, there was no delay on the part of the plaintiff applying for substitution and consequential amendment particularly in view of the intervening COVID period.

8. Learned Advocate appearing for the plaintiff has relied upon ***AIR 1948 Bom 47 (Velji Sivji and Another vs. Mathuradas Haridas)*** and contended that, there was no refusal on the part of the plaintiff to apply for substitution. According to him, Limitation Act, 1963 is not attracted in the facts and circumstances of the present case. He has relied upon ***XLIII ILR ALL 621 (Khunni Lal vs. Rameshar)*** in support of his contention.

9. Learned Senior Advocate appearing for the defendant No. 1 has contended that, the suit does not involve a commercial dispute within the meaning of Section 2(1)(c) of the Act of 2015. According to him, the character of a suit is determined by the substance of the plaint read as whole and not the ancillary relief, the status of the parties or the commercial setting in which the controversy has arisen.

10. Learned Senior Advocate appearing for the defendant No. 1 has contended that, the pleadings in the plaint would demonstrate that the genesis and substance of the suit is a claim founded upon title to and alleged wrongful detention of goods, alleged fraud and fabrication of the tripartite agreement dated March 28, 2012. None of such cause of action pleaded in the plaint, would arise out of any category enumerated under Section 2(1)(c) of the Act of 2015.

11. Learned Senior Advocate appearing for the defendant No. 1 has contended that, Section 2(1)(c) of the Act of 2015 is not attracted because there is no privity of contract between the plaintiff and the defendants. The plaintiff is not a party to any mercantile document. He has contended that, the plaintiff although not a party to the only mercantile document purports to repudiate the same as forged.

12. Learned Senior Advocate appearing for the defendant No. 1 has contended that the ancillary prayer for damages partakes the character of principal relief and cannot independently impress the suit with a commercial character.

13. Learned Senior Advocate appearing for the defendant No. 1 has contended that, the present appeal arises from an order passed in the non-commercial jurisdiction. He has pointed out that, at no point of time the alleged commercial character of the suit was raised. The appellant has not raised such point even in the memorandum of appeal.

14. Learned Senior Advocate appearing for the defendant No. 1 has relied upon ***2020 (15) SCC 585 (Ambalal Sarabhai Enterprises Limited vs. K. s. Infraspace LLP and Another)*** to contend that, the provisions of the Act of 2015 must be strictly construed. He has contended that, any doubtful or fraudulent case must be resolved against the commercial jurisdiction and in favour of the Ordinary Original Civil Jurisdiction.

15. Learned Senior Advocate appearing for the defendant No. 1 has relied upon ***2025 SCC OnLine Ker 1840 (Teliz Realtors vs. JTL Projects Private Limited)*** for the proposition that, the character of the suit is determined by the substance of the plaint. He has relied upon ***2021 SCC Online Bom 13984 (Bharat Huddanna Shetty vs. Ahuja Properties & Developers and others)***, ***2022 (1) Bom CR 527 (Glasswood Realty Pvt. Ltd. and Others vs. Chandravilas Kailashkumar Kothari)***, ***2021 SCC OnLine Cal 4240 (Ladymoon Towers Private Limited vs. Mahendra Investment Advisors Private Limited)***, ***2019 SCC OnLine Del 9954 (Kailash Devi Khanna and Others vs. DD Global Capital Ltd. and Others***), ***2020 SCC OnLine Mad 28051 (R. Kumar and Another vs. T.A.S. Jawahar Ayya and Others***) and ***2022 SCC OnLine Del 3635 (IHHR Hospitality (Andhra) Pvt. Ltd. vs. Seema Swami and Others)*** in this regard. He has contended that, the plaintiff has no cause of action founded on the tripartite agreement, not being party thereto. Its cancellation has been sought only as an ancillary relief.

16. Learned Senior Advocate appearing for the defendant No. 1 has contended that, Section 2(1)(c) of the Act of 2015 is attracted where there is a privity of contract between the plaintiff and the defendants to the suit in respect of a mercantile document. He has relied upon ***2025 SCC OnLine Del 1758 (Meena Vohra vs. Master Hosts Pvt. Ltd. and Others)*** for the proposition that, both the two ingredients of Section 2(1)(c)(i) must exist simultaneously for it to be attracted.

17. Learned Senior Advocate appearing for the defendant no. 1 has contended that, in the event, the suit is treated as one to involve all the commercial disputes within the meaning of the Act of 2015 though, present appeal is not maintainable in view of Section 13 of the Act of 2015. He has relied upon ***2018 (14) SCC 715 (Kandla Export Corporation and Another vs. OCI Corporation and Another)***, ***2020 Volume 4 SCC 234 (BGS SGS Soma JV vs. NHPC Limited)***, ***2023 SCC OnLine Bom 2667 (Bank of India vs. M/s Maruti Civil Works)*** in support of his contention.

18. Relying upon ***2026 SCC OnLine 1264 (Shri Balaji Industrial Engineering Ltd. vs. Steel Authority of India Ltd.)***, learned Senior Advocate appearing for the defendant No.

1 has contended that, where, the parties have participated in the proceeding without raising an objection, then, the same does not affect the jurisdiction of the Court passing the order. The present plaintiff is claiming title to the goods through the original plaintiff. Therefore, according to him, it cannot be said that, the suit does not involve a commercial dispute within the meaning of Section 2(1)(c) of the Act of 2015.

19. Learned Senior Advocate appearing for the defendant no. 1 has contended that, his client is supporting the stand of the plaintiff so far as the substitution of the plaintiff by the Liquidator is concerned.

20. Learned Senior Advocate appearing for the defendant no. 2 has contended that, the disputes involved in the suit are not commercial disputes within the meaning of the Act of 2015. In support of his contention, he has referred to the pleadings and the prayers made in the plaint.

21. Referring to the plaint, learned Senior Advocate appearing for the defendant no. 2 has contended that defendant no. 1 is the clearing agent. Defendant no. 2 has been impleaded although, there is no contractual relationship between the plaintiff and the defendant no. 2.

22. Learned Senior Advocate appearing for the defendant no. 2 has contended that the suit does not survive upon the plaintiff going into liquidation. He has referred to the list of dates. He has pointed out, the plaintiff went into Corporate Insolvency Resolution Process on April 7, 2022. In such proceedings, an order of winding up in respect of the plaintiff was passed on September 26, 2018. A liquidator was appointed in respect of the affairs of the plaintiff. Such liquidator did not take any step to bring itself on record despite being aware of the suit and as such the suit had abated.

23. Learned Senior Advocate appearing for the defendant no. 2 has contended that, the liquidator of the plaintiff was well aware of the pendency of the suit. In support of such contention, he has referred to the order dated January 21, passed by the Appeal Court. He has pointed out that, the application for substitution was filed on January 10, 2022.

24. In support of his contention that, suit stands abated, learned Senior Advocate appearing for the defendant no. 2 has relied upon Order XXII Rule 8 of the Code of Civil Procedure, 1908 and ***1994 1 SCC 235 (State of West Bengal vs. National Builders)***, ***2008 (13) SCC 30 (Entertainment***

Network (India) Limited vs. Super Cassette Industries Limited) and ***2008 (8) SCC 321 (Perumon Bhagvathy Devaswom vs. Bhargavi Amma)***.

25. Two issues have fallen for consideration in the present appeal which are as follows:-

i. Whether the subject matter of the suit falls within the meaning of a commercial dispute under Section 2(1)(c) of the Commercial Courts Act, 2015 or not, and

ii. Whether the learned Single Judge was correct in allowing application for substitution and amendment and rejecting the application for abatement or not.

26. Since, our jurisdiction to hear the present appeal in the non-commercial Division would depend upon the answer to the issue No. I raised in the present appeal, we have to deal with the same first.

27. Plaintiff filed a suit against the appellant and two of the respondents in the present appeal and has sought inter alia for the following reliefs :-

a) A decree for specific delivery of 11, 074.090 MT of coke lying at R-5 SAIL Yard, Visakhapatana and Ripley Godown (EC Bose) at Visakhapatnam by the defendant No. 1;

b) A decree for specific delivery of 5000 MT of the metallurgical coke lying at the defendant No. 2 godown at Sri Munisuvrata Agri International Limited park, near Naval dockyard, Vishakhapatnam – 530028 by the defendant no. 2.

c) Decree for delivery up and cancellation of the alleged tripartite agreement dated March 23, 2012 purportedly entered into between the defendant Nos. 1, 2 and 3, a copy whereof is annexure "C" to the plaint.

d) The orders dated December 5, 2012 and December 6, 2012 passed in A.P No. 933 of 2012 (LMJ international Limited Vs. Sarat Chatterjee & Co. (VSP) Private Limited) and the Orders dated December 21, 2012 and January 31, 2013 in A.P. No. 1068 of 2012 (LMJ International Limited Vs. Sarat Chatterjee & Co. (VSP) Private Limited) be recalled;

e) The orders passed in G.A. no. 289 of 2013 in C.S. no. 17 of 2013 in so far as the same puts any embargo to the plaintiff's claim in this suit be suitably modified.

f) Permanent injunction restraining the defendant no. 1 through its servants, agents, assigns or otherwise howsoever from dealing with, disposing of or in any manner encumbering the metallurgical coke which arrived by the vessel m.v. Filia Joy and m.v. Glovis Master and lying at R-5 SAIL Yard in Vishakhapatnam and Reply Godown (E.C. Bose) also at Vishakhapatnam, except to deliver the same to the plaintiff.

g) Permanent injunction restraining the defendant no.2 whether by itself or through its servants, agents, assigns or otherwise howsoever from dealing with, disposing of or in any manner encumbering the metallurgical coke received by it from the defendant no. 1 lying at defendant no. 2 godown at Sri Munisuvrata Agri International Limited, zone-IX Exim port near Naval Dockyard

Visakhapatnam 530028 except to the extent of making over the same to the plaintiff.

h) In the event, it be found that any part of the metallurgical coke received by the defendant no.2 from the defendant no. 1 has been removed by the defendant no.2 from the defendant no.2 godown at Sri Munisuvrata Agri International Limited Zone IX, Exim Park, near Naval Dockyard, Vishakhapatnam – 530 028, then and in that event, an enquiry into damages and a decree for such sum as may be found due and payable thereupon.

i) Alternatively and enquiry into the damages suffered by the Plaintiff due to the loss in the metallurgical coke that was to be delivered to the plaintiff;

j) Receiver.

k) Injunction.

l) Costs.

m) Further and/or other reliefs;

28. In the suit, plaintiff has claimed ownership of a portion of the imported metallurgical coke. According to the plaintiff, specified quantities of metallurgical coke had been imported through two vessels namely M.V. Filia Joy and M.V. Glovis Master. According to the plaintiff, the defendants have fabricated a tripartite agreement dated March 23, 2012 and collusively obtained orders in AP No. 933 of 2012 and AP No. 1068 of 2012.

29. Averments made in the plaint have relevance for determining as to whether the suit involves a commercial dispute within the meaning of the Act of 2015 or not. In the present case, the suit of the plaintiff was pending when the Act of 2015 had come into effect. Suit had therefore been filed in the non-Commercial Division of the High Court as, Commercial Division of the High Court on the date of filing of the suit was yet to be constituted.

30. On coming into effect of the Act of 2015, the Court before, which the suit was pending, was required to direct transfer of the suit, in the event the disputes in the suit had involved commercial disputes within the meaning of the Act of 2015.

31. In the facts and circumstances of the present case, none of the parties had raised the point of suit involving commercial dispute within the meaning of the Act of 2015 and therefore the suit was required to be transferred to the Commercial Division at the Trial Court stage. The present appeal has been filed by the defendant no. 1 who has contended before us that, the suit does not involve a commercial dispute within the meaning of the Act of 2015. Consequently the Memorandum of Appeal, given the stand of the defendant no. 1 in relation to the dispute involved in the suit is concerned, does not contain a ground that the suit involves a commercial dispute within the meaning of the Act of 2015.

32. However, and in the course of hearing of appeal plaintiff has contended that the suit involves a commercial dispute within the meaning of the Act of 2015 and therefore has requested the Court to invoke jurisdiction under Section 15 of the Act of 2015 to transfer the suit to the Commercial Division.

33. It is in this context of the request of the plaintiff that we have framed the first issue for consideration.

34. The plaintiff had filed the suit in 2013. During the pendency of the suit, IBBI had applied for appointment of an insolvency resolution professional in respect of the plaintiff on November 7, 2017. On January 4, 2018 consequent upon a resolution passed by the Committee of Creditors a liquidator had been appointed in respected of the plaintiff. National Company Law Tribunal had by an order dated September 26, 2018 appointed a liquidator over the affairs of the plaintiff. The liquidator so appointed had issued publication in newspaper on September 29, 2018.

35. The liquidator had appeared in proceeding before the Appeal Court in relation to the suit on August 13, 2019 when, the liquidator wanted time to file an application which was allowed. Liquidator had appeared before the Division Bench on September 3, 2019 and sought time to file an application subject to payment of cost. Liquidator had appeared on December 20, 2019 before the Division Bench. Liquidator had also appeared on January 21, 2020 before the Division Bench where the liquidator was granted opportunity to take steps for impleadment.

36. The liquidator had appeared before the learned Special Officer on January 13, 2021, September 10, 2021 and September 17, 2021.

37. Defendant No. 1 had applied on October 8, 2021 being GA 7 of 2021 for dismissal of the suit on account of appointment.

38. By an order dated November 22, 2021 the liquidator had appeared before the learned Single Judge. Liquidator had affirmed an affidavit-in-opposition to GA 7 of 2021 on December 5, 2021.

39. By an order dated January 5, 2022, the Division Bench had disposed of the appeal with a direction upon the learned Single Judge to dispose of the application as a special case.

40. Liquidator had taken out the application seeking substitution and consequential amendment being GA 8 of 2021 on January 10, 2022.

41. Supreme Court in ***Ambalal Sarabhai Enterprises Limited (supra)*** has held that, averments of the plaint would be relevant for determination as to whether, the suit is required to be tried by the Commercial Court under the Act of 2015 or not. It has also held that, the provisions of the Act of 2015 are to be strictly construed.

42. The Kerala High Court in ***Teliz Realtors (supra)*** has held that, a suit for recovery of money where according to the pleadings in the plaint the only intention of the defendant was to embezzle money of the plaintiff, was held not to be in the nature of a commercial transaction falling within the Act of 2015 but in the nature of fraudulent transaction.

43. Bombay High Court did not find a suit for recovery of money lent and advanced to be one involving a commercial dispute within the meaning of the Act of 2015 in ***Glasswood Realty Pvt. Ltd. and Others (supra)***. In the facts of that case, a friendly loan has been held not to fall within the meaning of commercial dispute under the Act of 2015.

44. Bombay High Court in ***Bharat Huddanna Shetty (supra)*** has held that, a suit for recovery of money in respect of a friendly loan where, the plaintiff had gone beyond the call of business, not to be a commercial dispute within the meaning of the Act of 2015.

45. ***BGS SGS Soma JV (supra)*** has held that, only such orders which are enumerated under Section 37 of the Arbitration and Conciliation Act, 1996 are appealable.

46. On the issue of appealability of an order passed by the Commercial Court of the Commercial Division, the Bombay High Court in ***Bank of India (supra)*** has held that, the order rejecting an application under Order VII Rule 10 and Rule 11(d) of the Code of Civil Procedure, 1908 is not appealable under the Act of 2015.

47. Supreme Court in ***Shri Balaji Industrial Engineering Ltd. (supra)*** has held that, a proceeding under Section 37 of the Act of 1996, even if it involves a commercial dispute and such proceeding was not heard by the Commercial Court, nonetheless, if the Hon'ble Judge had the determination as a Commercial Court, then, such order cannot be faulted on the ground of lack of jurisdiction.

48. In ***Ladymoon Towers Private Limited (supra)***, the suit had involved recovery of loan. The statements in the plaint had evinced that the directors of the plaintiff and the defendant were known to each other which served as reason for the plaintiff to grant a short-term loan. In such circumstances, the Court has held that, suit did not involve a commercial dispute.

49. In ***Kailash Devi Khanna and Others (supra)*** the plaintiff had filed a suit in Commercial Division seeking to recover money lent and advanced. Since, in the facts of that case, the transaction did not involve any mercantile document, the suit was held not to involve a commercial dispute within the meaning of the Act of 2015.

50. In ***Meena Vohra (supra)*** the suit was not based on any transaction involving mercantile documents nor had the plaintiff acted in the capacity of a financer. Therefore, the suit has been held not to involve commercial dispute within the meaning of the Act of 2015.

51. In ***R. Kumar and Another (supra)*** the plaintiff had granted loan and as security thereof, the defendant had offered mortgage of an immoveable property. The transactions as pleaded by the plaintiff had been found not to involve commercial dispute within the meaning of the Act of 2015.

52. In ***IHHR Hospitality (Andhra) Pvt. Ltd. (supra)*** the plaintiff had claimed that its employee had access to various bank accounts of the plaintiff. Such employee had embezzled huge amounts through forge cheques as also by making fraudulent direct transfers from the bank account. The court had held that, since the basic question was recovery of money on account of embezzlement, it cannot be held to be a suit involving a commercial dispute within the meaning of the Act of 2015.

53. All commercial disputes do not come within the definition of the commercial disputes as appearing in the Act of 2015. The Act of 2015 has defined “commercial dispute” in Section 2(1)(c). It is only those commercial disputes which have been defined in Section 2(1)(c) of the Act of 2015 are required to be decided by the Commercial Court or the Commercial Division or the Commercial Appellate Division as the case may be.

54. Authorities cited that the Bar, have required the averments in the plaint to be considered in order to determine whether the disputes in the suit involve a commercial dispute within the meaning of the Act of 2015 or not. Provisions of the Act of 2015 have to be strictly construed. Those suits which involve a commercial dispute but do not fall within the meaning of Act of 2015 are to be decided by a regular Suit Court. In other words, such suits are to be decided by the Courts which are not Commercial Courts or Commercial Division or the Commercial Appellate Division within the meaning of the Act of 2015.

55. The decision as to whether or not the suit involves a commercial dispute within the meaning of the Act of 2015 has to be arrived at on the basis of the averments made in the plaint and on a strict construction of the provisions of the Act of 2015. It would therefore necessarily mean that, the facts of each case would have to be evaluated on the anvil of the averments made in the plaint and the strict constructions of the provisions of the Act of 2015.

56. In the facts and circumstances of the present case, each of the parties are business entities. Plaintiff has claimed title to certain portion of the metallurgical coke which was imported by two vessels on High Sea Sales. Transactions relating to metallurgical coke and in fact, title thereto, would necessarily involve commercial instruments entered into between the legal entities involved in commerce with regard to the metallurgical coke in the suit. That apart, plaintiff has sought a declaration with regard to a tripartite agreement. Such tripartite agreement had been entered into by three legal entities in furtherance of their acts of commerce relating to the portion of the metallurgical coke over which the plaintiff has claimed title.

57. Contention of the plaintiff is that, the subject matter of the suit therefore, falls within the meaning of Section 2(1)(c)(i) of the Act of 2015. Section 2(1)(c)(i) of the Act of 2015 has specified that, commercial disputes means a dispute arising out of the ordinary transactions of merchants, bankers, financers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents.

58. Section 2(1)(c) of the Act of 2015 or any other provisions of the Act of 2015 have not ousted jurisdiction of a Commercial Court or the Commercial Division or the Commercial Appellate Division as the case may be to decide an issue of fraud relating any commercial dispute within the meaning of the Act of 2015.

59. In order a dispute constitutes a commercial dispute under Section 2(1)(c)(i) of the Act of 2015, there must be:-

(a) Ordinary transactions of merchant, bankers, financers and traders, and

(b) Such ordinary transactions must relate to mercantile documents.

Enforcement and interpretation of mercantile documents are included in the scope and ambit of Section 2(1)(c)(i) of the Act of 2015.

60. Therefore under Section 2(1)(c)(i) of the Act of 2015, two essential ingredients must exists simultaneously. The transactions in the suit must be ordinary transaction of merchants, bankers, financers and traders and that, there are mercantile documents with regard to such ordinary transactions between such entities. Section 2(1)(c)(i) of the Act of 2015 encompasses a request for enforcement and interpretation of mercantile documents. It would also allow an issue of fraud relating to such mercantile document to be decided should the same be raised.

61. In the facts and circumstances of the present case, the various mercantile documents have to be considered at the trial to pronounce on the claims made by the plaintiff. Such mercantile documents relate to title to the portion of the metallurgical coke imported by two vessels. While the parties had developed jural relationship amongst each other, they had been acting as ordinary merchants and traders in respect of the acts of commerce, that is, High Sea Sales of metallurgical coke. Parties had acted as merchants and traders while entering into the mercantile documents relating to the goods involved.

62. Plaintiff has claimed title to a portion of the metallurgical coke in respect of which the defendants had entered into jural relationship, on the strength of a scheme of the amalgamation being sanctioned in respect of the original plaintiff. The plaintiff at the time of filing of the suit therefore, had stepped into the shoes of the original plaintiff so far as it related to the portion of the metallurgical coke imported. Therefore by virtue of the sanctioned scheme of Amalgamation which the plaintiff has pleaded, the parties to the suit have jural relationship which require consideration by the suit Court. In our view, jural relationship between the parties to the suit have been established on a meaningful and purposive reading of the plaint.

63. ***Ambalal Sarabhai Enterprises Limited (supra)*** has required the Courts to consider the averments made in the plaint for the purpose of evaluating whether the suit involves a commercial dispute within the meaning of the Act of 2015 or not. On such principles therefore, as has been enunciated in ***Ambalal Sarabhai Enterprises Limited (supra)*** the subject matter of the dispute in the suit, herein, involves a commercial dispute within the meaning of Section 2(1)(c)(i) of the Act of 2015.

64. Prayer (c) of the plaint by which the plaintiff has sought a decree for delivery and cancellation of the tripartite agreement dated March 23, 2012 entered into between the defendants, would necessarily involve interpretation of a mercantile document entered into between the legal entities who have acted as merchants or traders in continuation of their acts of commerce. We hasten to add that, we have not pronounced on the issue that has been raised in prayer (c) of the plaint in any manner whatsoever. Decision on delivery upon cancellation of the tripartite agreement dated March 23, 2012 may be had at the trial of the suit.

65. Availability of an appeal or its absence against an order passed in a suit has no manner of bearing on the decision as to whether or not the disputes involved in the suit is a commercial dispute within the meaning of the Act of 2015. The test to be applied by the Court on a meaningful and purposive reading of the plaint is whether the disputes between the parties to the suit have fallen within the meaning of commercial dispute under Section 2(1)(c) of the Act of 2015 or not. If the answer to such a query is in the affirmative, the suit involves a commercial dispute within the meaning of the Act of 2015 and has to be heard and decided by Commercial Court or a Commercial Division or a Commercial Appellate Division as the case may be.

66. Applying such test to the facts and circumstances of the present case, we are of the view that, the suit involves a commercial dispute within the meaning of Section 2(1)(c)(i) of the Act of 2015.

67. The suit having been filed prior to the Act of 2015 coming into effect in exercise of powers under Section 15 thereof, and at the invitation of the plaintiff, we direct the suit to be transferred from the Non-commercial Division to the Commercial Division of the High Court. Department will transmit records of CS 77 of 2013 along with all connected applications therewith to the Commercial Division of the High Court where it will be renumbered. On such transmission being made, Department will treat CS 77 of 2013 and all connected applications to be disposed of in the Non-commercial Division.

68. In view of the discussions above and the directions issued, issue No. (i) is answered by holding that the subject matter of the suit falls within the meaning of Section 2(1)(c)(i) of the Act of 2015.

69. Having held that, the suit involves a commercial dispute within the meaning of the Act of 2015, and having directed the suit to be transferred to the Commercial Division in exercise of the powers under Section 15 of the Act of 2015, the appeal therefore also has to be necessarily transmitted to the Commercial Division.

70. Department will therefore transmit APOT 70 of 2022 along with IA GA 1 of 2022 to the Commercial Division, and renumber it there. Immediately on transmission and renumbering, Department will treat APOT 70 of 2022 along with all connected applications to be disposed of in the Non-Commercial Appellate Division.

71. Since we have decided that the dispute involved in the suit is a commercial dispute and consequently directed transmission of the records to the Commercial Division, and since, we directed transmission of the appeal to the Commercial Appellate Division we refrain from deciding the second issue.

72. APOT 70 of 2022 along with all connected applications stands disposed of accordingly.

[DEBANGSU BASAK, J.]

73. I agree.

[ARYAK DUTT, J.]