

Speedy Resolution of Commercial Disputes in India: An Analysis of Recent Reforms

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Abstract- Business transactions are based on reciprocal promises. The non-performance of promise by either party will result in disputes. When the commercial disputes go for adjudication, it consumes considerable time. In the interest of trade and commerce commercial courts were established under the Commercial Courts Act, 2015 to ensure timely disposal of commercial disputes and appeal. The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Ordinance, 2018 was promulgated by the President which came into force from 3rd May, 2018. The government has come forward with the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Bill, 2018 to replace the ordinance. The same has been passed by Lok Sabha on 1st August, 2018. The pecuniary jurisdiction of the commercial courts has been reduced which will help in speedy resolution of commercial disputes. State governments to establish commercial courts at the district level. It will provide an opportunity to the parties to resolve the commercial disputes outside the ambit of the courts. The reforms seeks to improve the ease of doing business in India. The amendments, benefits and issues are analyzed and discussed in this article.

Index Terms- Act, Bill, Commercial Courts, Commercial disputes, Pre-Institution Mediation, Reforms

I. INTRODUCTION

Rise of foreign direct investment and international trade transactions have lead contributed to a substantial rise in the number of commercial disputes in India. Commercial transactions are based on reciprocal promises. The non-performance of promise by either party will result in disputes. Disputes unresolved will have detrimental effect on commerce. There is a grievance that substantial time is consumed before a dispute is resolved. To ensure timely disposal of commercial disputes and appeal commercial courts were established under the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, which was enacted in 2015. To improve the ease of

doing business in India, the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Ordinance, 2018 was promulgated by the President of India which ordinance came into force from 3rd May, 2018. An ordinance is an executive order issued by the President of India on the recommendation of the Union Cabinet that holds the same force as an Act passed by Parliament. A Bill is a draft statute which becomes law after it is passed by both the Houses of Parliament and assented to by the President. All legislative proposals are brought before Parliament in the forms of Bills. The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Bill, 2018 was passed by Lok Sabha on 1st August 2018. The amendments, benefits and issues are analyzed and discussed herein below.

II. BACKGROUND

With the rapid economic development there has been considerable increase in commercial activities and consequent steep rise in number of commercial disputes at domestic and international level. Increase of Foreign Direct Investment (FDI) and overseas commercial transactions have further contributed to a significant increase of commercial disputes.

With a view to address the issue faster resolution of matters relating to commercial disputes and to create a positive image particularly among the foreign investors about the independent and responsive Indian legal system, the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 was enacted and commercial courts were established at District Levels in all jurisdictions, except in the territories over which the High Courts have original ordinary civil jurisdiction. These five

High Courts i.e. the High Courts of Bombay, Delhi, Calcutta, Madras and of Himachal Pradesh, exercise ordinary original civil jurisdiction in regard to territories of cities of Mumbai, Delhi, Kolkata, Chennai and the territory of the State of Himachal Pradesh respectively. In such territories of these High Courts as per proviso to sub-section (1) of section 3 there are no commercial courts at district level and instead Commercial Divisions have been constituted in each of these High Courts. The specified value of such commercial disputes to be adjudicated by the Commercial Courts or the Commercial Division of High Court, as the case may be is Rs.one Crore. The important terms contained in the Principal Act are:

A. Commercial Dispute

Commercial dispute means a dispute arising out of

- i) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;
- ii) export or import of merchandise or services;
- iii) issues relating to admiralty and maritime law;
- iv) transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same;
- v) carriage of goods;
- vi) construction and infrastructure contracts, including tenders;
- vii) agreements relating to immovable property used exclusively in trade or commerce;
- viii) franchising agreements;
- ix) distribution and licensing agreements;
- x) management and consultancy agreements;
- xi) joint venture agreements;
- xii) shareholders agreements;
- xiii) subscription and investment agreements pertaining to the services industry including outsourcing services and financial services;
- xiv) mercantile agency and mercantile usage;
- xv) partnership agreements;
- xvi) technology development agreements;
- xvii) intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits;
- xviii) agreements for sale of goods or provision of services;
- xix) exploitation of oil and gas reserves or other natural resources including electromagnetic spectrum;
- xx) insurance and re-insurance;
- xxi) contracts of agency relating to any of the above; and
- xxii) such other

commercial disputes as may be notified by the Central Government. Section 2(1)(c).

B. Specified Value

Specified Value, in relation to a commercial dispute, shall mean the value of the subject matter in respect of a suit as determined in accordance with section 12 which shall not be less than one crore rupees or such higher value, as may be notified by the Central Government. Section 2(1)(i).

C. Commercial Court

Commercial Court means the Commercial Court constituted under The State Government, may after consultation with the concerned High Court, by notification, constitute such number of Commercial Courts at District level, as it may deem necessary for the purpose of exercising the jurisdiction and powers conferred on those Courts under this Act. Section 3(1).

II. ANALYSIS AND DISCUSSION

A. The crucial aspects of the Bill are

- The Commercial Courts Act, 2015 provides for commercial courts and commercial divisions of high courts to adjudicate commercial disputes. As per Section 6, Commercial Courts can try suits relating to commercial transactions having the “specified value”. The Bill seeks to reduce the specified value limit from rupees one crore to rupees three lakh. This is being done through amendment to Section 2(j) of the Act which defines “specified value”.
- The Bill allows state governments to establish commercial courts at the district level, even in territories where high courts have ordinary original civil jurisdiction. In areas where high courts do not have original jurisdiction, state governments may set up commercial appellate courts at the district level to consider appeals from commercial courts below the level of a district judge.

- Another amendment is that it enables the State Government to set up Commercial Courts at or below the level of District Judges in consultation with the High Court, through amendment to Section 3(3).
- The introduction of Section 12A under new Chapter IIIA pertains to Pre-Institution Mediation process in cases where no urgent, interim relief is contemplated. It will provide an opportunity to the parties to resolve the commercial disputes outside the ambit of the courts through the authorities constituted under the Legal Services Authorities Act, 1987.
- The law will be given prospective effect.
- The Bill also seeks to amend the name of the principal Act as “Commercial Courts Act” from “Commercial Courts, Commercial Divisions and Commercial Appellate Division of High Courts Act”.

B. Benefits

- The Bill reduces the pecuniary jurisdiction of commercial courts from one crore rupees to three lakh rupees. Not only high value disputes but also disputes of lesser value are covered and this will bring in more commercial disputes within the fold of commercial courts.
- The introduction of the pre-institution mediation process in cases where no urgent interim relief is contemplated will provide an opportunity to the parties to resolve the commercial disputes outside the ambit of courts through authorities constituted under the Legal Services Authorities Act. Any mediated settlement assumes the status of a deemed arbitral award under section 30(4) of the Arbitration and Conciliation Act, 1996 and can accordingly be enforced as an arbitral award.
- Since the law will be given prospective effect so that the authority of the judicial forum at

present adjudicating the commercial disputes is not affected.

C. Issues:

- The amendment will widen the scope of Commercial Courts, by bringing in more commercial disputes within its fold. But it may be argued that the transfer of all commercial disputes above three lakh rupees may overburden the commercial courts and defeat the objective with which they were established.
- It is mandatory for parties to a commercial dispute under this Act to be referred to Pre-Instituted Mediation under the Legal Service Authorities Act, 1987 unless the dispute is of urgent matter and requires interim relief. But the bill has not defined Urgent matter and therefore shall be decided on a case to case.
- Though reforms are required to promote mediation in India, and in particular commercial mediation, adequate infrastructure and resources are to be established and made available for successful implementation of pre-institution mediation.

IV. CONCLUSION

The Bill provides for wider pecuniary jurisdiction of commercial courts. But the transfer of all commercial disputes above three lakh rupees may overburden the commercial courts. Reforms for promoting mediation require an enabling environment to succeed. There is lot to be done in this aspect. Hence it remains to be seen how these reforms will work in practice. But the reforms will create a positive image particularly among the foreign investors about the independent and responsive Indian legal system. Sure that this will improve the ease of doing business in India.

REFERENCES

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