

COMMERCIAL COURTS ACT, 2015: AN APPRAISAL

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ABSTRACT

The act was enacted by the Parliament for the formation of commercial divisions in the different high courts, and commercial courts at concerned district level. The act is a kind of ascendancies of Make in India regime for speedy execution of commercial disputes. Beholding to the unresolved litigation in India, there is a requirement for swift mechanism for recovery of claims and the compensation for damages suffered. This article is an attempt to highlight such grey areas which imbibe under the commercial regime and lay down the relevant provisions of the act which acts as a saviour in the present times governing commercial disputes and claims.

KEYWORD

Agreement, Commercial, Courts, Disputes, Value

INTRODUCTION

The act was enacted by the Parliament for the formation of commercial divisions in the different high courts, and commercial courts at concerned district level. The act is a kind of ascendancies of Make in India regime for speedy execution of commercial disputes. Beholding to the unresolved litigation in India, there is a requirement for swift mechanism for recovery of claims and the compensation for damages suffered. The enactment of Commercial Courts, Commercial Division and Commercial Appellate Division of the High Court's Act, 2015, will act as a way to undertake the said objective. The Act is expected to lighten the encumbrance

of litigation on courts making it less cumbersome and more efficientⁱ. The President of India gave his assent to the act on 31st December, 2015. The Act came into force on 23rd October, 2015.

The act was enacted to stipulate for the composition of Commercial Courts, Commercial Division and Commercial Appellate Division in the High Courts for settling commercial disputes for a determinate specified value and matters connected thereto.ⁱⁱ

*In Kandla Export Corporation v. Oci Corporation*ⁱⁱⁱ, the *raison d'être* for the enactment of the Commercial Courts Act is that commercial disputes involving high amounts of money should be speedily decided. Given the objects of both the enactments, if we were to provide an additional appeal, when Section 50 does away with an appeal so as to speedily enforce foreign awards, we would be turning the Arbitration Act and the Commercial Courts Act on their heads. Admittedly, if the amount contained in a foreign award to be enforced in India were less than Rs. one crore, and a Single Judge of a High Court were to enforce such award, no appeal would lie, in keeping with the object of speedy enforcement of foreign awards. However, if, in the same fact circumstance, a foreign award was to be for Rs. one crore or more, if the Appellants are correct, enforcement of such award would be further delayed by providing an appeal under Section 13(1) of the Commercial Courts Act^{iv}. Any such interpretation would lead to absurdity, and would be directly contrary to the object sought to be achieved by the Commercial Courts Act, viz., speedy resolution of disputes of a commercial nature involving a sum of Rs.1 crore and over. For this reason, also, Section 13(1) of the Commercial Courts Act must be construed in accordance with the object sought to be achieved by the Act. Any edifice of Section 13 of the Act, which would cause any further delay, as an alternative of a quick implementation of a foreign award should, therefore, be shunned.

COMMERCIAL DISPUTES

Section 2(c) of the act^v defines commercial dispute as arising out of following:

- Transactions relating to mercantile documents concerning merchants, bankers, financiers and traders and interpretation of such documents^{vi}
- export and import of any merchandise or services
- concerns involving admiralty and maritime laws

- monetary dealings concerning aircrafts, aircraft engines, aircraft equipment and helicopters, plus sales, leasing and financing
- carriage of any goods^{vii}
- contracts relating to construction and infrastructure, including any such tenders
- agreements involving immovable property which are used solely in trade and commerce^{viii}
- agreements relating to franchising
- agreements linked to distribution and licensing
- agreements relating to management and consultancy
- agreements relating to joint venture
- agreements relating to shareholder's
- agreements relating to subscription and investment which are affecting the service industry with outsourcing and financial services.
- mercantile agency and usages^{ix}
- agreements concerned with partnership^x
- agreements relating to technology development
- intellectual property rights connecting to registered and unregistered trademarks, copyrights, patents, designs, domain names, geographical indications and semiconductor integrated circuits
- agreements regarding sale of goods and provision of services
- utilization any oil and gas reserves and natural resources comprising electromagnetic spectrum
- agreements relating to insurance and re-insurance
- contracts of agency concerning above-mentioned^{xi}
- any other commercial disputes which may be notified by the Central Government in this regard.

In Qatar Airways v. Airports Authority of India & Anr^{xii}, the Legislature, in the Commercial Courts Act has not defined commercial disputes as disputes arising out of all commercial transactions. Instead, the Legislature has opted to specify the 22 transactions listed in clauses (i) to (xxii) of Section 2(1)(c) of the Commercial Courts Act, as the transactions, disputes

arising wherefrom will constitute a commercial dispute. That being the position, every dispute arising from a commercial transaction, without the same falling in any of the clauses, cannot constitute a commercial dispute within the meaning of Commercial Courts Act.

SPECIFIED VALUE:

Section 2(i) of the act^{xiii} explains the word specified with relation to commercial dispute as the value of the subject-matter of a suit as determined with accordance to section 12 of the said act which shall not be less than one crore rupees or such higher value which may be notified by the Central Government in this regard.

In Shriram EPC v. Rioglass Solar SA^{xiv}, Section 2(1)(c) supra in Clauses (i) to (xxii) thereof lists the transactions dispute arising out of which qualify as a commercial dispute. With respect to such commercial disputes, vide Section 7 read with Section 2(1) of the Commercial Courts Act, if the valuation of the subject matter is not less than Rs.1 crore, this Court as the Commercial Division of the High Court would have jurisdiction. Once a plaintiff seeks to bring a suit, which otherwise is below the minimum pecuniary jurisdiction of this Court for original civil disputes, to this Court claiming the same to be arising out of a commercial dispute, it is the bounden duty of the plaintiffs to establish that it is so.

CONSTITUTION OF COMMERCIAL COURTS:

Section 3 of the act^{xv} states that State Government after consultation with the High Court shall constitute adequate number of Commercial Courts at District level, for the perseverance of exerting the jurisdiction and powers which are conferred by this act. Providing that no such Commercial Court will be established over the territory on which the High Court has ordained with original civil jurisdiction.^{xvi}

The State Government has been devolved with the power after due consultation with the concerned High Court to specify the local limits within which the Commercial Court shall exercise jurisdiction and such jurisdiction may be extended, reduced or altered from time to time. The State Government after with the correspondence with the Chief Justice of the concerned High Court may appoint one or more persons having knowledge in dispensing with

commercial disputes to be the Judge or Judges, of the said Commercial Court, amid the unit of Higher Judicial Service in the concerned State.

CONSTITUTION OF COMMERCIAL DIVISION OF HIGH COURT:

Section 4 of the act^{xvii} states that all the High Courts which are having ordinary civil jurisdiction, the Chief Justice of such High Court by order shall establish such Commercial Division having one or more Benches comprising of a single Judge for the said purpose of exerting the jurisdiction and powers conferred by this act.

The Chief Justice of such High Court will appoint such Judges of the High Court who have knowledge in dealing with matters of commercial disputes^{xviii} to be appointed as Judges of the Commercial Division.

CONSTITUTION OF COMMERCIAL APPELLATE DIVISION:

Section 5 states that after notification is issued under sub-section (1) of section 3 of the act or any order under sub-section (1) of section 4 of the act, the Chief Justice of the High Court will constitute Commercial Appellate Division having one or more than one Division Benches for the determination of applying the jurisdiction and powers conferred by this act.^{xix}

The Chief Justice of the High Court is empowered to nominate such Judges of the High Court who have knowledge in apportioning with such commercial disputes to be appointed as Judges of such Commercial Appellate Division in the High Court.

JURISDICTION OF COMMERCIAL COURT:

Section 6 states that the Commercial Court are conferred with the exclusive jurisdiction to try such suits and applications which are concerning to a commercial dispute of a Specified Value which arise out of the whole territory of the State over which it has been bestowed with territorial jurisdiction.^{xx}

JURISDICTION OF COMMERCIAL DIVISIONS OF HIGH COURTS:

Section 7 of the act states that all suits and applications which are concerned with commercial disputes of a Specified Value shall be filed in a High Court having such ordinary original civil jurisdiction which thereby will be heard and dealt by the Commercial Division of such High Court: ^{xxi}

Providing that all such suits and applications related to commercial disputes, specified by an act to lie in such a court not inferior to that of a District Court, and which are filed or are pending on the original side of such High Court, will be heard by the Commercial Division of such High Court:

It is further stated that all suits and applications which are conveyed to the High Court by virtue of sub-section (4) of section 22 of the Designs Act, 2000 or under section 104 of the Patents Act, 1970 will be heard by the Commercial Division of such High Court in all the areas over which the concerned High Court shall exercises ordinary original civil jurisdiction.^{xxii}

In Samsung Leasing Ltd. v. Samsung Electronics Co. Ltd. & Anr^{xxiii}, Section 7 of the Act in clear and categorical terms states that Commercial Division of the High Court has jurisdiction to hear and dispose of all suits and applications relating to commercial disputes of a specified value, having ordinary original civil jurisdiction. Thus, Section 7 confers exclusive jurisdiction to the Commercial Division of the High Court in respect of commercial disputes of specified value.

BAR AGAINST REVISION APPLICATION OR PETITION:

Section 8 of the act^{xxiv} states that despite whatsoever covered in any other law for the time being which is in force, no such civil revision application or petition will be entertained in contradiction of any such interlocutory order of a Commercial Court, embracing an order on the issue of jurisdiction of the court, and any such defy, subject to the provisions of section 13 of the act, will be nurtured only through an appeal beside the decree of such Commercial Court.

TRANSFER OF SUIT:

Section 9 of the act^{xxv} stipulates that nonetheless anything comprised in the Code of Civil Procedure, 1908, in an occurrence that a counterclaim preferred in a suit before a civil court

concerning a commercial dispute is of Specified Value, such suit will be assigned by the civil court to the Commercial Division or Commercial Court, having such territorial jurisdiction over the suit.

In a scenario when such suit is not reassigned in the manner envisioned as stated in sub-section (1), the Commercial Appellate Division of such High Court applying supervisory jurisdiction over any civil court may^{xxvi}, on the request of any of the parties to such suit, revoke such suit which is pending before the civil court and convey the same suit for trial to the Commercial Court or Commercial Division or, as may be specified, conferring territorial jurisdiction over such suit, and such order will be considered final and binding.

JURISDICTION IN RESPECT OF ARBITRATION MATTERS

Section 10 of the act states that if an arbitration is an international commercial arbitration as specified and detailed, all applications or appeals which are arising out of such arbitration under the pretext of the Arbitration and Conciliation Act, 1996 that have been preferred in a High Court,^{xxvii} will be heard and dealt by such Commercial Division where Commercial Division has been established in such concerned High Court.

However, if such arbitration is other than an international commercial arbitration, all applications or appeals which are arising out of such arbitration under the context of the Arbitration and Conciliation Act, 1996 which have been preferred on the original side of such High Court, will be heard and dealt by the Commercial Division where Commercial Division has been created in the High Court.

Yet, if such arbitration is other than an international commercial arbitration, all applications or appeals which are arising out of such arbitration under the necessities of the Arbitration and Conciliation Act, 1996 that will normally lie in any principal civil court of original jurisdiction in a concerned district not being any High Court will be preferred and heard by the Commercial Court exerting such territorial jurisdiction over arbitration where such Commercial Court has been formed.^{xxviii}

In Simplex Infrastructure Ltd vs Energo Engineering Projects Ltd^{xxxix}, consequently under Section 10 (2) of the Act of the Commercial Courts Act, all applications under Section 9 of the A&C Act are to be heard by a learned Single Judge, i.e., the Commercial Division and not by the DB i.e. the Commercial Appellate Division. Further, the Commercial Courts Act was retrospective with effect from 23rd October 2015, i.e., the date on which the 2015 Ordinance was promulgated.

BAR OF JURISDICTION:

According to Section 11 of the act^{xxx}, a Commercial Court or any Commercial Division is not empowered to accommodate or resolve any specified suit, application or proceedings linking to a commercial dispute in reverence of which the jurisdiction of any such civil court in express or implied manner barred by any other law for the time being in force in the territory.

DETERMINATION OF SPECIFIED VALUE:

According to Section 12 of the act, the Specified Value concerning the commercial dispute will be established in the following manner:^{xxxi}

- when the relief prayed is for recovery of any money, the money which is sought to be recovered inclusive of any underlying interest shall be calculated up to the date of filing of such suit or application and will be taken in consideration for regulating the Specified Value;
- when the relief prayed narrates to movable property or any right accruing therein, the market value of such movable property as on the date of filing will be taken into consideration for regulating such Specified Value;^{xxxii}
- when the relief prayed is related to an immovable property or any right accruing therein, the market value of the immovable property, as on the date of filing will be taken into consideration for determining such Specified Value;^{xxxiii}
- when the relief prayed relates to any intangible right^{xxxiv}, the market value of the rights that will be assessed by the plaintiff will be taken into consideration for considering the Specified Value; and

- when the counterclaim is preferred, the total value of the subject-matter of the dispute in such counterclaim as specified on the date of the counterclaim will be taken into consideration.

APPEALS FROM DECREES OF COMMERCIAL COURTS AND COMMERCIAL DIVISIONS

Under Section 13 of the act^{xxxv}, any party aggrieved by the pronouncement of the Commercial Court or Commercial Division of a High Court as the case may be can appeal to the Commercial Appellate Division of that concerned High Court within a stipulated period of sixty days from the date of such judgment.^{xxxvi}

Providing that an appeal shall lie be preferred from any such orders or judgments conceded by a Commercial Division or a Commercial Court as the case may be which are unambiguously detailed under the Order XLIII of the Code of Civil Procedure, 1908 and section 37 of the Arbitration and Conciliation Act, 1996.

EXPEDITIOUS DISPOSAL OF APPEALS

Section 14 of the act states that the Commercial Appellate Division will strive to dispose of appeals preferred before it inside a phase of six months commencing from the date of filing of such appeal.^{xxxvii}

TRANSFER OF PENDING CASES

According to Section 15 of the act^{xxxviii}, all suits and applications, comprising applications under the Arbitration and Conciliation Act, 1996, linking to a commercial dispute of a Specified Value pending before the High Court where a Commercial Division has been established, will be conveyed to the Commercial Division. However, all suits and applications, embracing applications under the Arbitration and Conciliation Act, 1996, describing to a commercial dispute of a Specified Value pending before any civil court in any concerned district or area in particular to which a Commercial Court has been instituted^{xxxix}, will be assigned to such Commercial Court:

Providing that no such suit or application when the final judgment has been reserved by the concerned court erstwhile to the constitution of such Commercial Division or the Commercial Court as case may be shall be conveyed under sub-section (1) or sub-section (2) of Section 15 of the act. When any suit or application, incorporating an application under the Arbitration and Conciliation Act, 1996, concerning the commercial dispute of Specified Value will be stand transferred to such Commercial Division or Commercial Court as specified^{xl} under sub-section (1) or sub-section (2) of Section 15 of the act, the provisions of this act will be applicable to those measures that were not completed at such time of transfer.

In Hpl (India) Limited & Ors vs Qrg Enterprises and Another^{xli}, it is also well settled that the right of appeal is a creation of the statute. In other words, the provision for an appeal has to be found in the statute itself. The said Act is a special Act pertaining to commercial disputes of a specified value as defined in Section 2(1) of the said Act. Therefore, the provision for an appeal would have to be located in the said Act itself. This is so particularly because Chapter IV of the said Act specifically deals with 'Appeals'. Section 21 of the said Act clearly stipulates that save as otherwise provided, the provisions of the said Act would have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law for the time being in force other than the said Act. This clearly means that where the provisions for appeals are provided in the said Act, if there is any other provision for appeal in any other law for the time being in force which is inconsistent with what is provided in the said Act, the provisions for appeals in the said Act would have overriding effect.

AMENDMENTS

The Government of India, on 3rd May 2018, enacted an Ordinance amending the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015. These amendments were promulgated to enlarge the scope of commercial courts in India.

AMENDMENTS TO THE CODE OF CIVIL PROCEDURE, 1908 VIS-A-VIS COMMERCIAL DISPUTES.

The Code of Civil Procedure, 1908 shall, in its application to any suit related to commercial dispute of a Specified Value, will stand amended in the manner as enumerated in the Schedule of the act. The Commercial Division and Commercial Court will be following the provisions of the Code of Civil Procedure, 1908, as amended by this Act, in the respect of a suit which is connected to a commercial dispute of a Specified Value. Whereby any concerned provision of the Rules of the jurisdictional of High Court or any such amendment to the Code of Civil Procedure, 1908, by the concerned State Government is in divergence to the provisions of the Code of Civil Procedure, 1908, the provisions of the Code of Civil Procedure will prevail.

AMENDMENTS TO THE MAIN ACT OF 2015 (COMMERCIAL COURTS, COMMERCIAL DIVISION AND COMMERCIAL APPELLATE DIVISION OF HIGH COURTS ACT).

Amendments are as follows:

1 Name of the Act

The name of the said act earlier to the amendment was Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015. It produced misperception as to whether these courts were just a separate division of the concerned High Courts or were the new courts. If they were considered merely as a separate division of the High Courts, then the Act was not able to bring any substantial changes stated that the High Courts were previously working with said commercial benches.^{xlii} With the alteration in name as the Commercial Courts Act, 2015^{xliii}, it will insinuate an unblemished meaning that there is provision of separate courts with special procedures established for settling commercial disputes.

2 Specified Value

The amendment remarkably amends the specified value as expressed under Section 2(2)(i) of the said Act^{xliv}, whilst plummeting the value from INR 10,000,000/- (Rupees one crore) to INR 300,000/- (Rupees Three lacs).^{xlv} This will ultimately bring a huge number of disputes within the realm of the commercial courts which were hitherto outside their span.

3 Hierarchy

The enactment further initiates (i) Commercial Courts similar in jurisdictions where the concerned High courts are exercising Ordinary Original Civil Jurisdiction (ii) commences Commercial Appellate Courts, and (iii) rifts Commercial courts in two kinds. These changes are determined below-

Commercial Courts in Jurisdictions where High Courts have Ordinary Original Jurisdiction

Previously, commercial divisions of High Courts were formed at places wherein the High Courts have Ordinary Original Jurisdiction. These separations dispensed with commercial disputes of stated specified value i.e. INR 10,000,000 (Rupees 1 crore) or higher. Though, the specified value is now abridged to INR 300,000 (Rupees Three lacs). Correspondingly, the Regulation promptly creates commercial courts at the level of district judge even at places where the concerned High Courts exercise Ordinary Original Jurisdiction.^{xlvi} The state government has been conferred with the authority to stipulate the pecuniary jurisdiction of such Commercial Courts so established. Conversely, the state government is not entitled to specify an amount which is less than three lac rupees and more than the pecuniary jurisdiction of the said District Courts in the stated areas.^{xlvii}

Commercial Court below the level of District Judge in jurisdictions where high courts have no ordinary original jurisdiction

The promulgation makes a provision for establishment of two sorts of commercial courts in jurisdictions wherein the high court does not exercise any ordinary original civil jurisdiction being as follows:

- 1 commercial courts established at the level of a district judge; and
- 2 commercial court constituted below the level of a district judge.

Commercial Appellate Court

The Ordinance auxiliary envisions the formation of commercial appellate courts in jurisdictions wherein the high court doesn't exercise Ordinary Original Civil Jurisdiction. Appeals from the level of commercial courts which are below the level of district judge will be placed before the Commercial Appellate Court. The Appeals from Commercial Courts at the level of District Judge level will be preferred before the Commercial Appellate Division.

4 Appointment of Judges of Commercial Courts

One of the utmost analytical variations initiated through the Ordinance is with regard to the appointment of the judges to the commercial courts. Formerly, the state government had the power to appoint those judges only with the concomitance of Chief Justice of the concerned High Court. However, after the said amendments, the state government has been conferred with the power to appoint such number of judges even exclusive of the consensus of the chief justice of the said high courts.

5 Introduction of Mandatory Pre-institution Mediation

The Ordinance supplements Section 12A of the Act^{xlviii} by adding that when a suit does not envisage exigent interim relief, the plaintiff is entitled to undergo a pre-institution mediation. With this regard, authorities established under Legal Services Authorities Act, 1987 will be acquainted and such authority has to complete the process of mediation within the period of three months from the date of such application.^{xlix} It further necessitates that the settlement reached through such mediation will not be considered an arbitral award under the context of section 30(4) of the Arbitration and Conciliation Act, 1996.

6 No transfer of suit on account of counter-claim

The Ordinance obliterates Section 9 of the act and analogous section 12(e) of the act. Section 9 stipulated for the transfer of such suit to commercial courts if the counter-claim is stated of the Specified Value.

CONCLUSION

The Commercial Courts Act, as per Statement of Objects and Reasons, was enacted to provide for speedy disposal of high value commercial disputes involving complex facts and question of law and to fulfil the need for early resolution of such disputes to create a positive image to the investor world about the independent and responsive Indian legal system. The said statement of objects and reasons for enactment of the law would be defeated, if doors of Commercial Courts / Commercial Division of the High Courts were to be open too wide by giving an extensive interpretation to Section 2(1)(c) of the Commercial Courts Act defining what is a commercial dispute. This is said so because then the Commercial Courts and the

Commercial Divisions of the High Courts would be inundated and which would put breaks on the objective of speedy resolution of such disputes. The whole purpose of classifying commercial disputes and specifying the value thereof shall then be lost.

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