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COMMERCIAL COURTS, COMMERCIAL DIVISION
AND COMMERCIAL APPELLATE DIVISION OF THE
HIGH COURTS ACT, 2015



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INTRODUCTION



The Indian Government has been quite vocal and serious in their program of 'Make in India' and boosting the 'ease of doing business in India'. The speedy and efficacious enforcement of contracts, recovery of monetary claims and award of just compensation for damages suffered are absolutely critical to encourage investment and economic activity. The enactment of the Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts Act, 2015 (the "**Act**"), will act as a catalyst for achieving the objective of its pet programme. The Government also appears to be serious to make litigation less cumbersome and expeditious by introduction of the Act. The Act mirrors and affirms similar principles of law reflected in various statutes of developed countries which ensure a speedy legal recourse. The Act received assent of the President of India on December 31, 2015. However, in view of Ordinance¹, the Act is deemed to be in force since October 23, 2015.

- The Act essentially introduces setting up of a Commercial Court at District level and a Commercial Division in the High Court, having ordinary original civil jurisdiction to deal with *Commercial Dispute*² of a *Specified Value*³, not being less than Rs.1,00,00,000 or such higher value as may be notified by the Central Government. All appeals from the orders of the Commercial Court/Commercial Division would lie before the Commercial Appellate Divisions to be set-up in all High Courts.

¹ The President had promulgated the Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts Ordinance, 2015, on October 23, 2015.

² As defined in the Act.

³ Interestingly, Section 12 of the Act also defines as to how the value of the subject matter of a Commercial Dispute is to be determined.

COMMERCIAL DISPUTES

The term 'Commercial Dispute' has been given an inclusive definition, with the intent to, include almost all disputes that could entail with respect to a 'commercial transaction' understood in the most generic way. As such the definition broadly includes disputes relating to transactions between merchants, bankers, financiers, traders, etc. and also includes disputes in relation to shareholders agreements, mercantile documents, partnership agreements, joint venture agreements, intellectual property rights, insurance, etc.



CONSTITUTION OF COMMERCIAL COURTS, COMMERCIAL DIVISION AND COMMERCIAL APPELLATE DIVISION

- The Act constitutes a two layer set-up., i.e.
 - I The Commercial Courts/Commercial Divisions; and
 - II The Commercial Appellate Divisions.
 - Except where High Courts have ordinary original civil jurisdiction the State Governments are to set-up Commercial Courts at the District level; and wherever the High Courts have ordinary original civil jurisdiction, the Chief Justice is to set-up a Commercial Division bench presided by a single Judge;
 - The Commercial Appellate Division presided by bench of two Judges is to be constituted by the Chief Justice of each of the High Courts, to hear appeals from decisions of the Commercial Court or Commercial Division.
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COMMERCIAL COURTS VIS- À-VIS ARBITRATION

- Arbitration matters, involving a Commercial Dispute of subject matter of value of more than Rs.1,00,00,000, including applications or appeals arising out of such arbitration is to be heard and disposed by the - (i) Commercial Court, in case of matter, which would ordinarily lie before any principal civil court; or (ii) Commercial Division of the High Court, in case of matter which would ordinarily lie before the original jurisdiction of the concerned High Court.
- In view of the Arbitration and Conciliation Act, 1996, (*as Amended*), all matters pertaining to international commercial arbitrations involving disputes of subject matter of value of more than Rs.1,00,00,000, have been brought within the ambit of the High Courts and thus such matters pertaining to international commercial arbitrations are to be heard and disposed by the Commercial Division.

APPEALS

- Appeals from the decision of the Commercial Court or Commercial Division of a High Court are to lie before the Commercial Appellate Division of the concerned High Court, within a period of sixty days from the date of the judgment or order as the case may be. The Act also mandates that Commercial Appellate Division shall endeavour to dispose of such an appeal within a period of six months from the date of filing of such Appeal.
- Interestingly, the Commercial Courts have been made equivalent to the Commercial Division of a High Court as an appeal from the order of such Commercial Court is directed to Commercial Appellate Division of the concerned High Court.

BAR ON REVISION APPLICATIONS

- The Act puts a bar on civil revision application or petition against an interlocutory order of a Commercial Court and the same is to be raised only in an appeal against the decree of the Commercial Court. However there is certain ambiguity in respect of the same.
 - The Act for some reason lays bar on civil revision application or petition against an interlocutory order of the Commercial Court only and not the interlocutory order of the Commercial Division.
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AMENDMENTS TO CPC

In order to streamline the procedure of trial to be followed by the Courts in respect to a Commercial Dispute and expedite the proceedings, the Civil Procedure Code, 1908 ("**CPC**"), that is to be applicable to the Commercial Disputes is also be amended to the extent as specified in the schedule of the Act. Some of the important amendments are highlighted herein below:-

- Strict timelines for filing written statement and forfeiture of right to file written statement after completion of one twenty days of the service of summons is prescribed. Furthermore, denials in the written statement are to be made in the prescribed manner, which includes particulars of the allegation that Defendant denies but requires the Plaintiff to prove and the ones that he admits. The Defendant is also to state reasons for denying any fact and put forward his version of event.



Highlights of the Act

- **Wide definition of Commercial Dispute.**
- **Judges of the Commercial Courts, Commercial Division and Commercial Appellate Division to be presided by Judges having experience in dealing Commercial Dispute.**
- **Applications and appeals related to international commercial arbitration to be heard by the Commercial Division of the concerned High Court.**
- **Determination of Specified Value of the subject matter of Commercial Dispute.**
- **Timely disposal of Commercial Disputes and appeals.**
- **Amendments to the Civil Procedure Code, 1908, as applicable to Commercial Disputes.**
- **Application for summary judgment in respect of certain claim of Commercial Disputes.**

- Any party can apply for summary judgment, in respect to a claim (*or part thereof*) which can be decided without recording oral evidence, at any time before the issues are framed.
 - Timely procedure for disclosures, discovery and inspection of documents are prescribed.
 - Statement of admission and denial of all documents is to be completed within fifteen days from completion of inspections or any later date as fixed by Court.
 - Provisions of imposing cost for frivolous suits and counter claims are provided.
 - Concept of case management hearing, which includes framing of issues, fixing of procedure and timelines are to be followed in a suit (*including setting timeline for parties/advocate to address written and oral arguments*). Closure of arguments not later than six months from the date of first case management hearing are prescribed.
 - Recording of evidence (*including conducting cross-examination*) on day to day basis.
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- Affidavit of evidence of all witnesses to be led by parties is now required to be filed simultaneously.
 - Filing of written arguments by parties is made compulsory.
 - Pronouncement of judgment is to be completed within ninety days of conclusion of arguments.

The Act also clarifies that in case of conflict with any of the provisions of CPC, as amended by this Act, with any provisions of any rule of jurisdictional High Court or any state amendment to the CPC, the provisions of CPC, as amended by this Act, is to prevail.

CONCLUSION



The Act could, in the long run, change the reasons why the Courts in India are frowned upon such as its long drawn and cumbersome processes. It shall not only change the speed at which Commercial Disputes will attain finality, but also improve the perception of investors about India as an investment destination. The concept of the ‘case management hearing’ is akin to the procedure followed by international arbitration centre wherein timelines are fixed at the outset, which has to be appreciated. A few amendments of the CPC applicable to the Act, in our view, should be made applicable to all Courts in India. While the need for commercial courts is obvious in India, the institution of such courts should be seen as a stepping-stone to reforming the civil justice system in India. We hope that the Act is implemented in its true spirit by all the states and High Courts of the Country, so that it achieves its object.

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This update only contains a summary/ limited description of the topic dealt with hereinabove for general information purposes and should not be construed as a legal opinion or be relied upon in absence of specific legal advice. For further information or legal advice please feel free to contact us.

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