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Commercial Courts, Commercial Division & Commercial Appellate Division of High Courts Act, 2015

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PUBLISHED 16 January 2016

PART I – ESTABLISHMENT OF COURTS AND DIVISIONS FOR COMMERCIAL DISPUTES

Introduction

The Commercial Courts, Commercial Division & Commercial Appellate Division of High Courts Act, 2015 ("Act") was enacted on 1 January 2016 with effect from 23 October 2015[1]. The 253rd Law Commission of India Report[2] states that this Act has been brought in force to improve India's legal culture and to ease the backlog of pending litigation.

Currently, the World Bank has ranked India No. 130 out of 189 nations in ease of doing business, and No. 178 for enforcement of contracts. This Act may be viewed as one of several steps that India has been taking to better the international impression regarding doing business in India.

Salient features of the Act

1. *Definition of "commercial dispute" :* The Act defines "commercial dispute" extensively to include ordinary transactions of merchants, bankers, financiers and traders, commercial contracts, construction and infrastructure contracts, contracts pertaining to maritime, carriage of goods, technology development agreements, intellectual property rights; exploitation of natural resources including electromagnetic spectrum, insurance and re-insurance etc. The Act clarifies that a commercial dispute will not cease to be a commercial dispute for the reason that one of the contracting parties is either the State (contracting directly or indirectly through its agencies or instrumentalities), or a private body carrying out public functions.

The said definition also includes agreements relating to immovable property used exclusively in trade or commerce. The Act clarifies that even an action for recovery of immovable property or for realization of monies out of immovable property given as security or an action involving any other relief pertaining to immovable property come under the purview of commercial dispute.

2. *Determination of Specified Value of Dispute:* The Specified Value of the subject-matter of the commercial dispute must be more than Rs.1 crore or such higher amount as notified by Central Government. The Specified Value has to be determined as per the relief sought in the following manner:

• Where relief sought is recovery of money – the money sought to be recovered in the suit or application will also include interest computed up to the date of filing of the suit or application.

• Where relief sought is in relation to movable property – the market value of the movable property as on the date of filing of the suit, appeal or application.

• Where relief sought is in relation to immovable property – the market value of the immovable property, as on the date of filing of the suit, appeal or application.

• Where relief sought is in relation to any other intangible right – the market value of the said rights as estimated by the plaintiff shall be taken into account for determining Specified Value.

• In case of counterclaim – the value of the subject-matter of the commercial dispute in such counterclaim as on the date of the counterclaim.

• In case of arbitration – the aggregate value of the claim and counterclaim, if any as set out in the statement of claim and the counterclaim.

3. *Commercial Courts at District Level:* The Act provides for the establishment and functioning of commercial courts at the district level, where the High Court does not have ordinary original civil jurisdiction.

The jurisdiction of these commercial courts in relation to a commercial dispute of a Specified Value will be based on the provisions of territorial jurisdiction provided under Sections 16 to 20 of the Code of Civil Procedure, 1908 ("CPC").

4. *Commercial Division of High Courts:* A commercial division would be set up in all the High Courts having ordinary civil jurisdiction. All suits and applications relating to commercial disputes of a Specified Value filed in such High Court will be heard by its Commercial Division. At present only five High Courts – the High Court of Judicature at Bombay, the High Court of Judicature at Calcutta, the Delhi High Court, the Himachal Pradesh High Court and the High Court of Judicature at Madras – have original civil jurisdiction.

5. *Appellate Authority:* All appeals arising from the decisions of Commercial Courts or Commercial Divisions of the High Court will lie before the newly established Commercial Appellate Division (having one or more division bench) of that High Court. Such appeals have to be filed within a period of 60 days from the date of the impugned judgment or order.

In a bid to reduce the lag in resolving litigation, the Act has prescribed a time limit for disposing off the appeals within a period of six months from the date of its filing. However, there is no mechanism to deal with the failure to dispose of the appeals within the

prescribed limit.

6. *Bar on Revision Petition:* No civil revision application or petition shall be entertained against any interlocutory order of a Commercial Court, including an order on the issue of jurisdiction, and any such challenge. Any challenge to the decree of a Commercial Court can be raised only in an appeal before the Commercial Appellate Division of that High Court. The intention of the legislature is to minimize the delay in time by preventing frequent filing of civil revision applications and petitions against every interlocutory order.

7. *Bar on Objection regarding Jurisdiction:* If the Commercial Court or a Commercial Division of the High Court is satisfied that it has jurisdiction to hear a commercial dispute under this Act, no appeal or civil revision application under section 115 of the CPC shall lie from their order before the High Court.

8. *Transfer of pending suits:* The Act also provides for transfer of pending suits and applications of the civil courts to the Commercial Courts. The pending suits and applications of the High Courts will be transferred to the Commercial Division of such High Courts.

The above pending suits and applications would also include applications or appeals pertaining to arbitration under the Arbitration and Conciliation Act, 1996 where the dispute is of Specified Value.

First, in case of application or appeal pertaining to international commercial arbitration that has been filed in a High Court will be heard by the Commercial Division of the High Court, where such Commercial Division has been constituted in the High Court.

Second, in the case of application or appeal pertaining to domestic arbitrations that have been filed on the original side of the High Court shall be heard by the Commercial Division of the High Court where such Commercial Division is constituted in the High Court. If the application or appeal in such domestic arbitration is not within the jurisdiction of the High Court and would ordinarily lie before a Civil Court (not being a High Court) and there is a Commercial Court exercising territorial jurisdiction in respect of such arbitration, then such application or appeal shall be filed in and heard by such Commercial Court.

[1] *The Act repeals the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Ordinance, 2015*

[2] *External Link*