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Review Document

Commercial Courts Act, 2015

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COMMERCIAL COURTS ACT, 2015¹

ACT NO. 4 OF 2015

[31 December 2016]

SIGNIFICANCE OF THE ACT

The debate on setting up exclusive commercial courts or benches was first brought forward in the 188th Report of the Law Commission of India in 2003.²

The intention of the Government in introducing this bill was to make an attempt to take our country forward so that our ranking goes up in the Ease of Doing Business Index of the world.

OBJECT OF THE ACT

The Commercial Courts Act, 2015 (“Act”) was enacted in December 2015. The main objective was to enable a speedy redressal of commercial disputes in India. It emphasized the need “to expedite the disposal of high stakes’ commercial disputes, and thereby, enhance investor confidence.”³

IMPORTANT PROVISIONS

Meaning of Commercial Dispute

Section 2(c) of the Commercial Courts Act, 2015 defines “Commercial dispute” as it is a dispute arising out of the following matters:

1. The dispute in enforcement and interpretation of documents in ordinary transactions of merchants, bankers, financiers and traders.
2. Export or import of merchandise or services.
3. Issues in admiralty and maritime law.
4. The transaction relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same.

¹ Commercial Courts act, 2015 (Act No. 4 of 2015) accessed on http://legislative.gov.in/sites/default/files/A2016-4_1.pdf

² 5 Law Commission of India, ‘188th Law Commission Report: Proposals for Constitution of Hi-tech Fast Track Commercial Divisions in High Courts’ accessed 30 August 2019.

³ See, Statement of Objects and Reasons, “The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015” <https://www.prindia.org/sites/default/files/bill_files/Commercial_courts_bill%2C_2015_dec_0.pdf> accessed on 30 August, 2020

5. Carriage of goods.
6. Contract related to construction and infrastructure, including tenders.
7. Agreements relating to immovable property used in commerce.
8. Franchising agreements.
9. Distribution and licensing agreements.
10. Management and consultancy agreements.
11. Joint venture agreements.
12. Shareholders agreements.
13. Subscription and investment agreements pertaining to the services industry including outsourcing and financial services.
14. Mercantile agency and mercantile usage.
15. Partnership agreements.
16. Technology developments agreements.
17. Intellectual property rights relating to trademarks, copyright, patent, domain names, geographical indications and semiconductor integrated circuits.
18. Agreements for the sale of goods or provision of services.
19. The exploitation of oil and gas reserves or other natural resources including the electromagnetic spectrum.
20. Insurance and reinsurance.
21. Contract of agency related to any of the above.
22. Other commercial disputes notified by the Central Government.

Composition of Commercial Courts, Commercial Divisions and Commercial Appellate Divisions

As per Section 3, 4 and 5 respectively, Commercial Courts, Commercial Divisions and Commercial Appellate Divisions; has to be constituted at District level by the State Government after taking consultation with the High Court of the State. In case the High Court has Ordinary Original Civil Jurisdiction, then no Commercial Courts will be constituted. As per the provisions laid down in Section 4(1) of the Act, the Chief Justice of the said High Court may by passing an order constitute a Commercial Division having one or more Benches consisting of a Single Judge for the purpose of exercising the jurisdiction and powers conferred on it under the Act.

Jurisdiction

Jurisdiction of Commercial Courts: Section 6 states that the Commercial Courts will have jurisdiction to try all suits and applications relating to a commercial dispute of a Specified value which arises out of the entire territory of the State over which it has been vested territorial jurisdiction. Section 2(i) of the Act defines 'specified value', which is the value of the subject matter in respect of a suit as determined in accordance with Section 12 of the Act and which shall not be less than Rs. 1 Crore. A commercial dispute shall be related to Section 16-20 of the Code of Civil Procedure, 1908.

Jurisdiction of the commercial division of High Courts: Section 7 states that the Commercial Courts will have jurisdiction to try all suits and applications relating to commercial disputes of a Specified Value filed in a High Court having ordinary original civil jurisdiction shall be heard and disposed of by the Commercial Division of that High Court. All suits and applications transferred to the High Court under Section 22(4) of the Design Act, 2000 or Section 104 of the Patents Act, 1970 shall be heard and resolved by the Commercial Division of the High Court. But as per Section 11, the jurisdiction of Commercial Courts and of the Commercial Division of High Courts will be barred where the Civil Court has expressly barred it under any other law for the time being in force.

Section 8 of 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.

Section 10(1) and (2) of the Act provides that where the subject matter of an arbitration is a Commercial Dispute of a specified value, then for all applications or appeals arising out of such arbitration (international commercial arbitration or otherwise) under the provisions of the Arbitration and Conciliation Act, 1996 shall be heard and disposed off by the Commercial Appellate Division of the said High Court.

Appeals

As per the provisions of Section 13,

- Appeal from an order of Commercial Court below District level Judge will lie before the Commercial Appellate Division and must be filed within 60 days.

- Appeal from an order of Commercial court at District Judge level exercising original civil jurisdiction or as the case may be, Commercial Division of the High Court will lie before Commercial Appellate Division of that High Court be filed within 60 days of such order.
- No appeal shall lie from any order/ decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of the Act.

Section 14 states that the Commercial Appellate Court and the Commercial Appellate Division shall try to dispose of appeals filed within a period of six months from the date of filing of such appeal.’

Transfer of Suits

Section 15 of the Act, throws light on the transfer of suits and clearly provides that no suit or application wherein the final judgements has been reserved by the Court prior to the Commercial Division or Commercial Court shall be transferred.

Amendment to CPC

The Act introduced amendments to the CPC which includes unique provisions such as case management hearings and summary judgments. The Bombay High Court in the case addressing the review petition against its own Judgment passed in the case of *Axis Bank Ltd. v. Mira Gehani*,⁴ and observed that the Section 16 of the Commercial Courts Act begs the interpretation that the provisions of CPC shall, in their application to any suit in respect of a commercial dispute *of a Specified Value*, stand amended in the manner as specified in the Schedule to the Commercial Courts Act and that this Commercial Division, shall follow the provisions of the CPC as amended by the Commercial Courts Act, in the trial of a suit in respect of a commercial dispute *of a Specified Value*. In its exact words, the Court held that “*Amendments introduced to CPC by the Commercial Courts Act are only applicable to Commercial Disputes of a Specified Value and not Commercial Disputes not of a Specified Value such as the present suit; Amendment to CPC mandating that a Written Statement in a Commercial Suit has to be filed within 120 days, will not apply to Commercial Disputes of a Specified Value.*”

⁴*Axis Bank Ltd. v. Mira Gehani*, 2019 SCC OnLine Bom 358

AMENDMENT TO THE ACT

The Government, on May 3, 2018, in an attempt to expand the scope of commercial courts in India, promulgated an Ordinance (**Ordinance**) amending the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (**Act**).⁵

This Ordinance made an amendment to section 1(1) of the Act, which now states, “this Act may be called the Commercial Courts Act, 2015.” The name of the Act prior to the amendment was **Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015**.

The Ordinance amended the "specified value" as defined under Section 2(2)(i) of the Act, and reduced the value from Rs. 10,000,000 to Rs. 300,000.

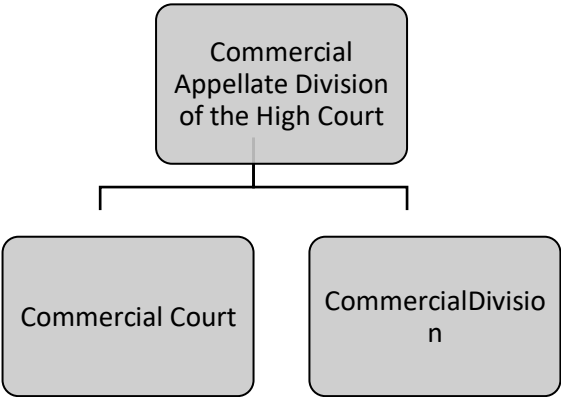
With respect to High Courts having ordinary original civil jurisdiction, the amendment has empowered the State Governments to constitute commercial courts at the district level and to specify such pecuniary value of commercial disputes which shall not be less than Rs. three lacs and not more than the pecuniary jurisdiction of the district courts. The amendment has empowered the State Governments to designate such number of Commercial Appellate Courts at District level and to exercise appellate jurisdiction over the commercial courts below the district judge level, except the territories over which High Courts have ordinary original civil jurisdiction.

The amendment aims to split the appellate process, under Section 13, between the Commercial Appellate Courts at the District Courts and the Commercial Appellate Divisions at the High Courts. The Ordinance (i) introduces Commercial Courts even in jurisdictions where the concerned High courts have Ordinary Original Civil Jurisdiction (ii) introduces Commercial Appellate Courts, and (iii) splits Commercial courts into two types.

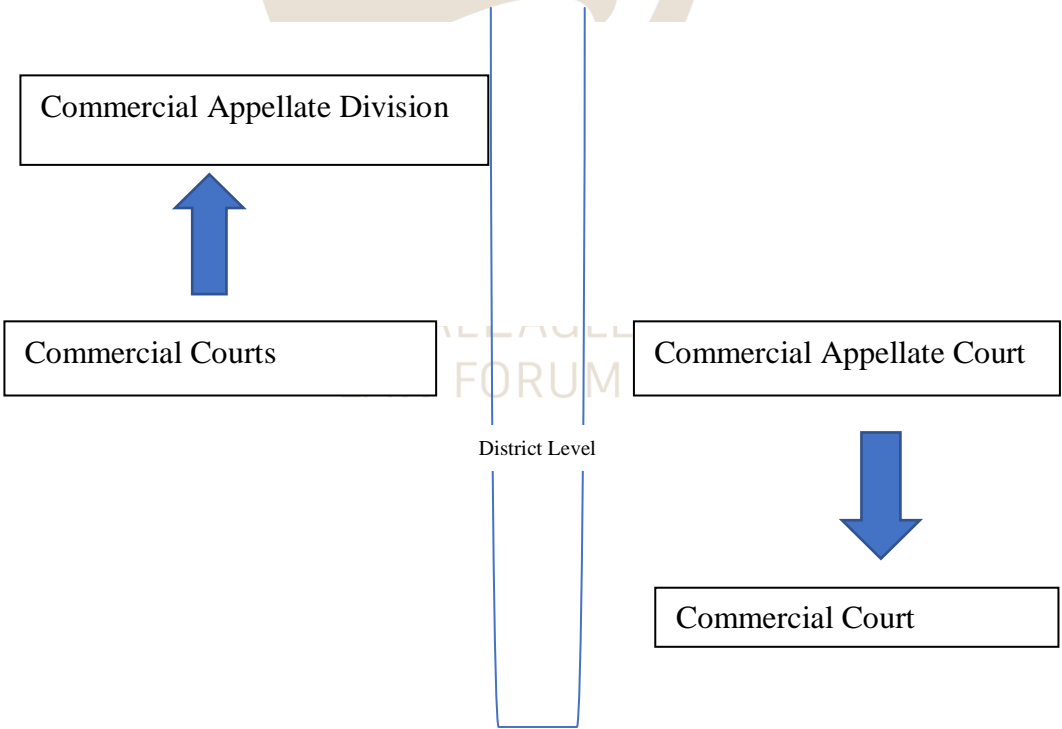
⁵ Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (Act No. 28 of 2018), accessed on <http://egazette.nic.in/WriteReadData/2018/188688.pdf>

POST AMENDMENTS HIERARCHY

(Cases where High Courts have ordinary original jurisdiction)



(Cases where high courts do not have ordinary original jurisdiction)



The Act also inserted Chapter III-A (Section 12-A) which deals with “Pre-institution Mediation and Settlement”. The amendment makes mediation compulsory/ mandatory before the institution of a suit, where no urgent relief is contemplated and for this purpose.

- Section 12A(1): a suit which does not require any urgent remedies shall not be instituted unless the plaintiff involves in remedies of pre-institution mediation in such a manner prescribed by the Central Government.
- Section 12A(2): the central government authorised authorities constituted under the Legal Services Authorities Act 1987.
- Section 12A(3): time taken for resolving the dispute by mediation should be 3 months from the date of application made by the plaintiff. Provided that time period can be extended to 2 months with the consent of the parties. The period under proceeding of mediation will not be considered as limitation under the Limitation Act, 1963.
- Section 12A(4): After commercial dispute came to a solution or settlement, it should be signed by both the parties along with mediator.

Section 12 A of the Act provides that the remedy of pre-institution mediation has to be exhausted before a plaintiff files a suit that does not contemplate any urgent interim relief and has to be conducted by the authority constituted under the Legal Services Authorities Act, 1987, the process of which, will have to be in conformity with the rules notified by the Central Government.

The issue regarding axing of pre-institutional meditation has raised concerns since the provision specifies that in cases where a suit contemplates an urgent interim relief, one is not required to compulsorily go through pre-institution mediation.

Also, another issue concerning the kind of suits that fall under the purview of suits contemplating relief was answered by the Telangana High Court in the case of *M/s M.K. Food Products v M/s S.H. Food Products*, where a civil petition was filed against an order of the Commercial Court. The Commercial Court had returned the plaint and instructed the parties to go for pre-institution mediation on the ground that the suit didn't contemplate any urgent interim relief. The suit was concerned with an injunction on copyright infringement. The Telangana High Court held that a suit of such a nature would fall under the category of suit contemplating urgent interim relief and the plaint should not have been rejected on the ground of non-exhaustion of pre-institution mediation. Similarly, in another case of the case

of *GSD Constructions Pvt. Ltd v Balaji Febtech Engineering*⁶, the court held that the plaintiff was running against time and seeking urgent interim relief hence, he doesn't need to exhaust the option of pre-institution mediation. Thus, If a court is sufficiently convinced that the relief sought by a plaintiff is not of urgent nature and the plaintiff must go for pre-institution mediation, it can refuse to issue summons and also reject the plaint as being barred under Order VII Rule 11(d) CPC.

CONCLUSION

Just like all the other Acts, this Act too, is more of a mixed bag and has both advantages and disadvantages of its own. One of the major drawbacks to the Act and its amendment is that it has been proposed, designed and enacted with an aim to be at par with an external ranking index by ignoring the real issue of a litigation culture and systemic challenges within the Indian judiciary when it comes to commercial cases. Secondly, the Act stands silent with respect to provisions prescribing a time frame for completing the summons process. This implies that the Act is in need of procedural reform is required to bring more clarity for proper implementation.

Clearly there are positive changes as well such as commercial courts being constituted to rectify the problem of pending civil cases of commercial nature. The amendment has also reduced the threshold of the specified amount bringing within the ambit of the Act, more and cases of lower value and introduction of pre-institution mediation. Although the position with respect to pre-institutional mediation still needs more clarity and interpretation.

⁶MA No. 4081/2019

About the Author



Ria Garg is a final year law student at Alliance University, Bangalore, pursuing BBA LL.B with honors in Finance and International Law. Her interest in law peaked at a very young age. Always been eager to learn new tasks, she has interned at a few law firms and with different practicing Advocates in the Bombay High Court where she was mainly engaged in legal research and drafting. She has developed reasonable skills in this position and aspires to develop her research experience and enhance knowledge. She believes that life is a learning journey and is always looking for more opportunities to take in.