ARTICLE

Commercial Courts Act, 2015 - Facilitating Ease of Doing Business

An advantageous business climate is a prerequisite for a country's economic expansion. In terms of commerce, a nation like India, which is among the fastest developing in the globe, has the capacity to overtake the top nations by bringing reforms in business domain to encourage global investors to set up industries in India.

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INTRODUCTION

India is ranked 63 among 190 economies in the ease of doing business, according to the latest World Bank annual ratings. The Ease of Doing Business Index (EoDB or say EoDBI) is a ranking system established by the World Bank Group. In the EoDB index, 'higher rankings' (a lower numerical value) indicate better, usually simpler, regulations for businesses and stronger protections of property rights.

At international level, the World Bank assesses the policies to ease the regulatory burden undertaken by countries across the world through its Ease of Doing Business Index (EDBI). The index uses 10 different indicators that measure various aspects of business regulations which are important to domestic firms and for national competitiveness. Doing Business also measures features of labour market regulations which are reported as a separate section and not included in the ranking. EDBI is considered as a reliable source of information on the business environment of an economy.

EDBI rankings aim to compare the business environment of different countries. Ease of doing business rankings impact the reputation of the countries and hence influence them to initiate important policy reforms to improve the regulatory environment in their economy. Ranking is assessed based on following 10 key parameters:

1. Starting a Business of all.
2. Dealing with Construction Permits.
3. Getting Electricity.
4. Registering Property.
5. Getting Credit.
6. Protecting Minority Investors.
7. Paying Taxes.
8. Trading across Borders.
9. Enforcing Contracts.
10. Resolving Insolvency.

INDIAN PERSPECTIVE

An advantageous business climate is a prerequisite for a country's economic expansion. In terms of commerce, a nation like India, which is among the fastest developing in the globe, has the capacity to overtake the top nations by bringing reforms in business domain to encourage global investors to set up industries in India.

In an attempt to improve the Ease of Doing Business (EoDB) in India, the government launched the Make in India initiative in 2014 with the goal of turning India into a manufacturing hub. This initiative has drawn more foreign and domestic businesses to invest in and conduct business in India.

253RD REPORT OF LAW COMMISSION OF INDIA

Commercial Courts Act, 2015 has been passed based on recommendations of 253rd Report of Law Commission of India. While formulating this draft Bill, the Commission has suggested substantive procedural changes in the form of amendments to the Civil Procedure Code, 1908. These suggestions are aimed at ensuring disposal of cases expeditiously, fairly, and at reasonable cost to the litigants.

Commercial Courts Act, 2015 provides for establishment of Commercial Courts, and Commercial Divisions and Commercial Appellate Divisions in the High Courts in order to ensure speedy disposal of high value commercial suits.

The establishment of commercial courts in India is widely seen as a stepping stone to bring about reform in the civil justice system in India.

THE GOAL OF HAVING A SEPARATE LEGISLATION FOR DEALING WITH COMMERCIAL DISPUTES

A strong dispute resolution system is essential for growth of an economy. The intention behind a separate law is to make sure that lawsuits are resolved fairly, quickly, and at a reasonable expense to the party filing the lawsuit. Not only the litigant, but also the other possible stakeholders gain from the decrease in backlog brought about by the prompt settlement of business disputes. As a result, India will become a more desirable location for business, boost international investment, and continue its economic progress.

It was felt that there is a need to ensure that the adjudication of Commercial Disputes ensures speedy relief to those engaged in trade and commerce so that the lack of efficacious remedies do not impede the growth of trade and commerce by rendering nugatory their rights in law and equity;

It was vital in accordance with international best practices, to create new courts and provide for judicial manpower trained in commercial law to decide Commercial Disputes so as to reduce the growing pendency of commercial disputes and to achieve efficacious and expeditious disposal of such cases.

COMMERCIAL COURTS SET-UP IN INDIA

In order to ensure time bound judicial system, dedicated Commercial Courts for speedier resolution of commercial disputes have been set up with proper infrastructure and exclusive judicial human power under Commercial Courts Act, 2015.

Presently, there are 35 Dedicated Commercial Courts in Delhi, 6 Dedicated Commercial Courts in Mumbai, 8 Dedicated Commercial Courts in Bengaluru city and 2 Dedicated Commercial Courts in Bengaluru Rural areas apart from 2 Dedicated Commercial Courts in Kolkata.

In addition, 23 High Courts have set up designated Special Courts for Infrastructure project contracts disputes as per Section 20B of the Specific Relief (Amendment) Act, 2018. Further, High Courts of Karnataka, Madhya Pradesh, Allahabad and Calcutta have allocated dedicated days in a week/month for hearing of such disputes related to infrastructure project contracts.

High Court of Delhi, Orissa, Andhra Pradesh, Allahabad, Jammu & Kashmir, Sikkim, Patna and Madras have set up Special Benches for dealing with high value commercial disputes i.e. above Rs. 500 crores.

COMMERCIAL COURTS ACT, 2015: AN INTRODUCTION

The Commercial Courts Act, 2015 came in to force on 23rd October, 2015 and applies to whole of India. It is divided in VII chapters and 23 sections. Objective of the Act is to provide for the constitution of Commercial Courts, Commercial Appellate Courts, Commercial Division and Commercial Appellate Division in the High Courts for adjudicating commercial disputes of specified value and matters connected therewith or incidental thereto.

CONDITIONS FOR ADJUDICATION UNDER THIS ACT

Any case requiring adjudication under this Act must fulfil following two conditions:

1. It must be a commercial dispute.
2. Commercial dispute must be of a specified value.

Commercial Dispute:

As defined in Section 2(1)(c) of the Act means a dispute arising out of–

- Ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;
- Export or import of merchandise or services;
- Issues relating to admiralty and maritime law;
- Transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same;
- Carriage of goods;
- Construction and infrastructure contracts, including tenders;
- Agreements relating to immovable property used exclusively in trade or commerce;
- Franchising agreements;
- Distribution and licensing agreements;
- Management and consultancy agreements;
- Joint venture agreements;
- Shareholders agreements;
- Subscription and investment agreements pertaining to the services industry including outsourcing services and financial services;
- Mercantile agency and mercantile usage;
- Partnership agreements;
- Technology development agreements;
- Intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits;
- Agreements for sale of goods or provision of services;
- Exploitation of oil and gas reserves or other natural resources including electromagnetic spectrum;
- Insurance and re-insurance;

- Contracts of agency relating to any of the above; and
- Such other commercial disputes as may be notified by the Central Government.

Explanation appended to the definition aptly makes it clear that –A commercial dispute shall not cease to be a commercial dispute merely because— (a) it also involves action for recovery of immovable property or for realisation of monies out of immovable property given as security or involves any other relief pertaining to immovable property; (b) one of the contracting parties is the State or any of its agencies or instrumentalities, or a private body carrying out public functions.

DETERMINTION OF SPECIFIED VALUE

At present if any commercial dispute is of Specified Value of Rs one crore or more can be adjudicated under the Act. Specified value shall be determined by in the manner provided in Section 12 of the Act as under:

When Relief Sought in suit or application relates to-	**Determination of Value**
Recovery of money	The money sought to be recovered in the suit or application inclusive of interest, if any, computed up to the date of filing of the suit or application, as the case may be, shall be taken into account for determining such Specified Value.
Movable property or to a right therein	The market value of the movable property as on the date of filing of the suit, appeal or application, as the case may be, shall be taken into account for determining such Specified Value.
Immovable property or to a right therein	The market value of the immovable property, as on the date of filing of the suit, appeal or application, as the case may be, shall be taken into account for determining Specified Value.
Other intangible right	Market value of the said rights as estimated by the plaintiff shall be taken into account for determining Specified Value.
Arbitration matters	The aggregate value of the claim and counterclaim, if any as set out in the statement of claim and the counterclaim, if any.

ESTABLISHMENT OF COURTS AND THEIR JURISDICTION

Chapter II of the Act deals with establishment of following courts and their jurisdiction as briefed below:

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i. **Commercial Courts**

The Commercial Court shall have jurisdiction to try all suits and applications relating to a commercial dispute of a Specified Value arising out of the entire territory of the State over which it has been vested territorial jurisdiction.

ii. **Commercial Division of High Court**

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 off by the Commercial Division of that High Court.

Provided that all suits and applications relating to commercial disputes, stipulated by an Act to lie in a court not inferior to a District Court, and filed or pending on the original side of the High Court, shall be heard and disposed of by the Commercial Division of the High Court.

Provided further that all suits and applications transferred to the High Court by virtue of sub-section (4) of Section 22 of the Designs Act, 2000 (16 of 2000) or Section 104 of the Patents Act, 1970 (39 of 1970) shall be heard and disposed of by the Commercial Division of the High Court in all the areas over which the High Court exercises ordinary original civil jurisdiction.

iii. **When a matter relates to Arbitration,** the jurisdiction will be determined as under:

The court in which application or appeal arising out of arbitration has been filed under the provisions of the Arbitration and Conciliation Act, 1996	**The Court where jurisdiction lies**
If such arbitration is an international commercial arbitration, all applications or appeals arising out of such arbitration that have been filed in a High Court.	Commercial Division where such Commercial Division has been constituted in such High Court.

If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration that have been filed on the original side of the High Court.	Commercial Division where such Commercial Division has been constituted in such High Court.
If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration that would ordinarily lie before any principal civil court of original jurisdiction in a district (not being a High Court).	Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted.

BAR ON JURISDICTION

As per Section 11 of the Act a Commercial Court or a Commercial Division shall not entertain or decide any suit, application or proceedings relating to any commercial dispute in respect of which the jurisdiction of the civil court is either expressly or impliedly barred under any other law for the time being in force.

PRE-INSTITUTION MEDIATION AND SETTLEMENT

Section 12A of Chapter IIIA inserted w.e.f. 3/5/2018 requires that *A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.*

This means the plaintiff has to exhaust remedy of pre-institutional mediation before institution of any suit under this Act. This requirement however does not apply where the plaintiff seeks any urgent interim relief.

Other relevant provisions as provided in the aforesaid section read with Commercial Courts (Pre-institution Mediation and Settlement) Rules, 2018 are:

i. The Central Government may, by notification, authorise the Authorities constituted under the Legal Services Authorities Act, 1987, for the purposes of pre-institution mediation.

ii. The Authority authorised by the Central Government shall complete the process of mediation within a period of three months from the date of application made by the plaintiff.

iii. The period of mediation may be extended for a further period of two months with the consent of the parties.

iv. Period during which the parties remained occupied with the pre-institution mediation, such period shall not be computed for the purpose of limitation under the Limitation Act, 1963.

v. If the parties to the commercial dispute arrive at a settlement, the same shall be reduced into writing and shall be signed by the parties to the dispute and the mediator.

vi. The settlement arrived at under this section shall have the same status and effect as if it is an arbitral award on agreed terms under sub-section (4) of section 30 of the Arbitration and Conciliation Act, 1996 .

vii. A party to a commercial dispute may make an application to the Authority in Form 1 for initiation of mediation process under the Act.

viii. Where both the parties consent for the mediation, the Authority shall assign the commercial dispute to a Mediator.

ix. Venue of mediation shall be premises of the Authority.

x. The mediator shall facilitate the voluntary resolution of commercial dispute between the parties and assist them in reaching a settlement.

xi. A party to the dispute may appear before the Authority or Mediator, as the case may be either personally or through his duly authorized representative or counsel.

xii. The Quantum of claim for payment of one-time mediation fee by the parties to be shared equally to the authority was specified in Schedule-II.

Appeals and expeditious disposal:

As per Section 13 and 14 Appellate Jurisdiction will be as below:

i. Any person aggrieved by the judgment or order of a Commercial Court below the level of a District Judge may appeal to the Commercial Appellate Court.

ii. Any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court.

iii. Appeal can be filed within a period of sixty days from the date of the judgment or order.

iv. The Commercial Appellate Court and the Commercial Appellate Division, as the case may be shall endeavour to dispose of appeals filed before it within a period of six months from the date of filing of such appeal.

Act to have overriding effect:

Section 21 of the Act provides that save as otherwise provided, the provisions of this Act shall 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 this Act.

ROLE OF COMPANY SECRETARIES

Company Secretaries having a good legal acumen and business understanding can significantly contribute to the respective Companies in effectively utilise the legal recourses available. Effective drafting of commercial agreements may help resolving commercial disputes in effective and timely manner in least cost. The contracts may have a provision of alternative dispute resolution by way of mediation or arbitration or conciliation. If the contract already has an arbitration clause and the Company has gone through the arbitration process, it will not require to go for mediation process again. However, in other case if company intends to file a suit in commercial court it shall have to exhaust the remedy of mediation. The Company Secretaries can advise the Company to take appropriate action plan so that multi steps could be avoided.

Company Secretary can also help companies in formulating their claims or defences by thoroughly analysing the rights and obligations of the parties under the contact. Effective understanding will also help keeping the evidences ready for establishing the claim or defence or counter claim, as the case may be.

Besides, Company Secretaries may effectively brief the legal counsel about intricacies of particular contract or wherever permitted by law may appear before the Mediator as authorised representative. Besides, Companies may be helped in advising on matters of limitation period, jurisdiction and impleading the right parties against whom relief is sought.

CONCLUSION

It is aptly clear that effective dispute resolution ensures effective enforcement of contract. Effective enforcement of contracts helps protecting economic interest involved in a contract. Protected interest builds confidence in the investors. More investments ensure money inflow and setting up of industries in the Country. Investment and Setting-up of industries by international investors will contribute to the fast growth of the Indian economy resulting in higher GDP, higher national income, creation of more jobs, more economic stability, positive forex rate, enough forex reserves, modernisation and adoption of technologies.

Since it is our collective responsibility to handle and settle business problems amicably through the use of the legal remedies at our disposal. We will undoubtedly reach the aim of "Viksit-Bharat" by 2047 if we professionals assist the industry and the regulator by adopting the greatest degree of professionalism, raising awareness, and using alternative dispute resolution techniques effectively.

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