



DSK Legal 
True Value, True Values

Jurisprudential Charter of Commercial Courts

October 13, 2017

Presentation by

Anand Desai
Managing Partner, DSK Legal

JURISPRUDENTIAL CHARTER

- An Act to provide for the constitution of Commercial 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
- The Act seeks to enable:
 - Fast track resolution of commercial disputes
 - Accelerate economic growth
 - Improve the international image of the Indian justice delivery system and
 - Impose investor faith in the Indian judicial system

BRIEF HISTORY

- December 2003 - Proposed in the 188th Law Commission of India Report for speedy disposal of high value commercial disputes
- January, 2015 - The Law Commission of India, in its 253rd Report recommended the establishment of Commercial Courts, Commercial Division and the Commercial Appellate Division in the High Court for disposal of commercial disputes of a specified value
- The Commercial Court, Commercial Division and Commercial Appellate Division of the High Courts Bill, 2015 received the assent of the President on December 31, 2015, and is applied with retrospective effect from October 23, 2015

PENDENCY OF COMMERCIAL DISPUTES

Pendency of “Commercial Disputes” in High Courts with Original Jurisdiction

High Court	Total Number of Civil Suits pending	Total Number of Commercial Disputes pending	% age of Commercial Disputes
Madras	6326	5865	92.71%
Calcutta	6932	5352	77.20%
Bombay	6081	1997	32.83%
Delhi	12963	3582	27.63%
Himachal Pradesh	354	88	24.8%
Total	32656	16884	51.7%

Seventy-eighth Report of the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, on the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015

COMMERCIAL DISPUTE RESOLUTION IN INDIA

- Over the years, compared to international counter parts, India has not emerged as a preferred destination to adjudicate upon commercial disputes
- Foreign investors find India a difficult place to undertake business – including in view of delays faced by them in enforcing commercial contracts
- As against a few months in Singapore and certain other countries, it takes several years in India to enforce a contract

DOING BUSINESS IN INDIA

- The World Bank Doing Business Index 2016 ranks India
 - Overall at 130 out of 190
 - For Enforcing Contracts at 172 out of 190 (up 6 places from 2015 when India was at 178)

IMPROVE TRADE AND COMMERCE

- An efficient dispute resolution mechanism will improve trade and commerce and repose trust in investors
- Expeditious enforcement of contracts and adequate security of their contractual rights/investments and consequent efficacious judiciary will encourage investment
- Adjudication of disputes in an expeditious and efficient manner by appointing dedicate judges who have experience in dealing with commercial disputes

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

COMMERCIAL COURTS AND DIVISIONS

- **COMMERCIAL COURTS AT THE DISTRICT LEVEL:** State governments may set up Commercial Courts, equivalent to District Courts, after consulting with their respective high courts. However, a Commercial Court must not be set up in an area where the High Court exercises ordinary original civil jurisdiction. In such event, a commercial division will be constituted in the High Court exercising ordinary original civil jurisdiction.
- **COMMERCIAL DIVISIONS IN HIGH COURTS:** Commercial divisions may be set up in those High Courts which exercise ordinary original civil jurisdiction, that is, the High Courts of Delhi, Bombay, Calcutta, Madras and Himachal Pradesh. They will be set up by the Chief Justice of that particular High Court.

COMMERCIAL DISPUTE AND SPECIFIED VALUE

- **COMMERCIAL DISPUTE:** Any dispute related to transactions *inter alia* between merchants, bankers, financiers, traders, etc. Such transactions deal with mercantile documents, partnership agreements, intellectual property rights, etc. The list is exhaustive, as set out under Section 2(c) of the Act.
- **SPECIFIED VALUE OF A DISPUTE:** The specified value of a commercial dispute that will be dealt with by commercial divisions in High Courts and Commercial Courts will be an amount **not below one crore rupees**, and will be specified by the central government.

COMMERCIAL COURTS AND DIVISIONS

- **COMMERCIAL APPELLATE DIVISIONS:** Commercial appellate divisions may be set up in all High Courts to hear appeals against: (i) orders of commercial divisions of High Courts; (ii) orders of Commercial Courts; and (iii) appeals arising from domestic and international arbitration matters that are filed before the High Courts. Such commercial appellate divisions in High Courts will be set up by the Chief Justice of that High Court.
- **COMMERCIAL DIVISIONS IN HIGH COURTS:** Commercial divisions may be set up in those High Courts which exercise ordinary original civil jurisdiction, that is, the High Courts of Delhi, Bombay, Calcutta, Madras and Himachal Pradesh. They will be set up by the Chief Justice of that particular High Court.

COMMERCIAL COURT JUDGES

- **APPOINTMENT OF COMMERCIAL COURT JUDGES:** Judges to a Commercial Court will be appointed by the State Government after concurring with the Chief Justice of the concerned High Court. These Judges will be appointed from the cadre of the higher judicial service in the state, and have experience in dealing with commercial disputes.
- **NOMINATION OF HIGH COURT JUDGES TO THE COMMERCIAL DIVISIONS AND APPELLATE DIVISIONS:** The Chief Justice of the High Court will nominate those High Court judges with experience in commercial matters to be judges of the commercial division and appellate division of that High Court. The commercial divisions will comprise of one or more Benches consisting of a single judge. The commercial appellate divisions will comprise of one or more benches consisting of two Judges.

TRAINING JUDGES

- Section 20 of the Act empowers the State Government, in consultation with the High Court, to set up facilities for training judges who may be appointed to the Commercial Court, Commercial Division or the Commercial Appellate Division of a High Court.

COMMERCIAL APPEALS

- Appeals to the commercial appellate division must be made within a period of sixty days of the order of the lower court.
- The commercial appellate division is to endeavour to dispose of appeals within a period of six months.

TRANSFER OF PENDING SUITS

- All suits of a value of rupees one crore or more that are pending in the High Court shall be transferred to the commercial division, after it is constituted.
- Similarly, suits currently pending in the District Courts, with a value of Rupees One Crore or more would be transferred to the Commercial Court. However, a suit will not be transferred if a final judgment on the matter is pending.

COLLECTION AND DISCLOSURE OF DATA

- Under Section 17 of the Act, statistical data regarding the number of proceedings filed before the Commercial Court, Division or Appellate Division and the pendency, status and number of cases disposed of shall be maintained and published on each High Court's website. This should also include cases transferred after the introduction of the Act.

PERTINENT AMENDMENTS TO THE CODE OF CIVIL PROCEDURE, 1908

- **Amendments to ORDER V:** The time limit to file Written Statements in commercial disputes is 120 days. On the expiry of the said period, a Defendant shall forfeit its right to file a Written Statement, and the Court shall not allow any Written Statement to be taken on record.
- **Amendment to ORDER VI:** Where the Plaintiff seeks interest, the plaint must state whether the same is (i) in relation to a commercial transaction within the meaning of Section 34 of the Code of Civil Procedure, 1908; (ii) under the terms of a contract; (iii) under a particular Act. The pleadings must also state (i) the rate at which the interest is claimed; (ii) the date from which the same is being claimed; (iii) the date to which the same is being calculated; (iv) the total amount of interest claimed; and (v) the daily rate at which interest accrues after that date.

PERTINENT AMENDMENTS TO THE CODE OF CIVIL PROCEDURE, 1908 (CONTINUED)

- **Amendments to ORDER XI:** Plaintiff to submit all documents in his possession, even if the same are adverse to the Plaintiff's case.
- **ORDER XIII-A (SUMMARY JUDGMENT):** Order XIII-A has been inserted after Order XIII setting out the procedure by which a Court may decide any claim pertaining to a Commercial Dispute without recording oral evidence. The Court may grant such a Summary Judgment on a claim if it considers that: (a) Plaintiff has no real prospect of succeeding in the claim or Defendant has no real prospect of defending the claim; and (b) there is no other compelling reason why the claim should not be disposed of before recording oral evidence.
- The above provision will save unnecessary expenses and hardship caused to the parties from going through the entire trial, and consequently result in saving time of the Court.

PERTINENT AMENDMENTS TO THE CODE OF CIVIL PROCEDURE, 1908 (CONTINUED)

- **ORDER XV-A (CASE MANAGEMENT HEARING):** Order XV-A has been inserted after Order XV providing for a Case Management Hearing to be held by the Court no later than 4 (four) weeks from the date of filing of affidavit of admission or denial of documents by all parties to the Suit. During such hearing, the Court may pass an order:
 - Framing the issues between the parties
 - Listing witnesses to be examined
 - Fixing the date for filing of the (a) affidavit of evidence, and (b) written arguments
 - Fixing the date for recording of evidence
 - Fixing the date for oral arguments to be heard, and
 - Setting time limits for parties for addressing oral arguments

PERTINENT AMENDMENTS TO THE CODE OF CIVIL PROCEDURE, 1908 (CONTINUED)

- **ORDER XV-A (CASE MANAGEMENT HEARING):** Where a party fails to comply with the order passed during a Case Management Hearing, the Court shall have the power to:
 - Condone the delay
 - Foreclose the non-compliance party's right under such Case Management Hearing, and
 - Dismiss the plaint or allow the suit, when the non-compliance is willful, repeated, and the imposition of costs is not adequate to ensure the compliance.

PERTINENT AMENDMENTS TO THE CODE OF CIVIL PROCEDURE, 1908 (CONTINUED)

- **Amendments to ORDER XVIII:** a party shall file written arguments within 4 (four) weeks prior to commencing oral arguments, concisely and under different heads. Further, parties shall file the affidavits of evidence of all witnesses at the time directed at the first case management hearing. Parties shall not be allowed to lead additional evidence, unless sufficient cause is made out.
- **Amendment to ORDER XIX:** the Court may regulate the evidence as to issues on which it requires evidence, and the manner in which the same may be placed before the Court. The Court may exclude evidence that could otherwise be produced by the parties.
- **Amendment to ORDER XX:** the Court shall pronounce its judgment and issue copies of the same to all parties through electronic mail or otherwise within 90 (ninety) days of the conclusion of and conclude arguments.

THANK YOU

Comments and feedback: anand.desai@dsklegal.com

Mumbai Office:

1203, One Indiabulls Centre, Tower 2,
Floor 12-B, 841, Senapati Bapat Marg,
Elphinstone Road,
Mumbai 400013
Tel +91 22 6658 8000
Fax +91 22 6658 8001

Mumbai Office (Litigation Group):

C-16, Dhanraj Mahal,
Chhatrapati Shivaji Marg,
Apollo Bunder,
Mumbai 400001
Tel +91 22 6152 6000
Fax +91 22 6152 6001

Delhi Office:

4, Aradhana Enclave,
R.K Puram, Sector 13,
Opposite Hotel Hyatt,
New Delhi 110 066
Tel +91 11 6661 6666
Fax +91 11 6661 6600

Pune Office:

301, Power Point,
Lane No.6, Koregoan Park,
Pune 411 001
Tel + 91 20 6900 0930

For more details: www.dsklegal.com

Disclaimer

The contents of this document are privileged and confidential and not for public circulation. This document is for general information of our clients and others to whom it is specifically provided. The information contained in this document is derived from public sources, which we believe to be reliable but which, without further investigation, cannot be warranted as to their accuracy, completeness or correctness and we are not obligated to update or amend the same. The information contained in this document is not intended to be nor should be regarded as legal advice and no one should act on such information without appropriate professional advice. DSK Legal accepts no responsibility for any loss arising from any action taken or not taken by anyone using this material.