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Commercial courts

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Background

- o India has a population of 130 crores;
- o Pendency of over 3 crore cases
- o The inability of the legal and judicial systems because of well known factors (inadequate judge strength to handle the volume of cases, dilatory tactics adopted by lawyers, inability of the population to secure efficient legal services etc) means that key disputes which have a vital bearing on the nation's *economic* standing globally, as a business friendly country, suffers

Key concepts that drive the Commercial Courts

- ⇒ Sec. 2 (c) 'Commercial Dispute' and brings within its ambit disputes arising out of transactions of merchants, bankers including those relating to mercantile documents, disputes arising out of export or import of merchandise or services, issues relating to admiralty and maritime law, carriage of goods, transaction relating to aircraft, franchising agreement, distributions in licensing agreement, shareholders agreements, partnership agreements, joint venture agreements etc. The definition is exhaustive cover a wide variety of plausible business transactions.
- ⇒ 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

Important provisions

- o Section 3 provides for Commercial Courts, Commercial Divisions and Commercial Appellate Divisions;
- o Proviso to Section 3(1) provides that no Commercial Court shall be constituted for the territory over which the High Court has Ordinary Original Civil Jurisdiction. It is pertinent to note that the High Courts of Delhi, Mumbai, Chennai and Kolkata exercise Ordinary Original Civil Jurisdiction and therefore, for the said States, in terms of the provisions of Section 4(1) of the Act, the Chief Justice of the said High Court may by an order constitute a
- o 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

Important provisions

- ◆ 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.
- ◆ Section 11 of the Act creates for bar of jurisdiction of Commercial Court and Commercial Divisions and provides that they shall not entertain or decide any suit, application or proceeding relating to any commercial dispute in respect of which jurisdiction of the Civil Court is either expressly or impliedly barred under any other law for the time being in force.
- ◆ Section 13 of the Act provides for an Appeal and the Proviso to the said Section provides that Appeal shall lie from orders passed by Commercial Division or a Commercial Court as enumerated under Order XLIII of the Code of Civil Procedure, 1908 ('CPC') as amended by the Act and Section 37 of the Arbitration and Conciliation Act, 1996. The Commercial Appellate Division shall endeavour to dispose off Appeals within a period of 6 months from the date of filing of such Appeal.

Jurisdiction of courts

- ◆ Section 15 of the Act deal with the transfer of pending Suits and the Proviso to Sub Section (2) of Section 15 of the Act clearly provides that no Suit or Application wherein the final judgment has been reserved by the Court prior to the constitution of the Commercial Division or the Commercial Court shall be transferred
- ◆ Section 16 of the Act provides for amendment to the provisions to CPC, in their application to any suit in respect of a commercial dispute of a specified value

Salient features

- o Proceedings Timeline Amendment to Code of Civil Procedure, 1908
- o *Suit/Plaint*
- o Plaintiff may seek leave to file additional documents within 30 days of filing the Suit
- o Order XI(4)
- o Written Statement/ Counter-Claim
- o To be filed within 30 days and not later than 120 days from the date of service of summons.
- o Proviso to Order V Rule 1
- o Inspection/ Filing of Documents
- o Parties to complete inspection of documents within 30 days from the date of filing the Written Statement or Written Statement to the Counter Claim whichever is later. The Court may extend the time limit upon application at its discretion, but not beyond 30 days in any event. (Therefore a maximum of 60 days)
- o Order XI(3)(1)
- o Statement of Admission/ Denial of Documents
- o To be completed within 15 days of completion of inspection or any later date fixed by the Court.

Salient features

- o Order XI(4)(1)
- o Case Management hearing
- o Court shall hold first case management hearing not later than 4 weeks from the date of filing of Affidavit of admission or denial of documents by all the parties to the suit.
- o Order XV-A
- o Framing of issues and conclusion of oral arguments
- o Court shall ensure that arguments are closed not later than 6 months from the date of the first case management meeting.
- o Order XVA(3)

Salient features

o Written Arguments

o Party to submit written arguments 4 weeks prior to commencing oral arguments

o Order XVIII (Substitution in Rule 2 for Sub-Rules (3A) TO (3F))

o Judgment

o Commercial Court, Commercial Division or Commercial Appellate Division shall within 90 days of conclusion of arguments pronounce judgment

o Order XX (Substitution for Rule 1)

◦ **SALIENT FEATURES**

- Creation of a specialized forum for disposal of commercial disputes of a specified value.
- Suitable amendments to the provisions of CPC providing timelines for completion of various processes thereby ensuring that the whole process of adjudication is time bound.
- In terms of the amended provisions of Section 35(2) of CPC as a general rule the unsuccessful party will be ordered to pay costs to the successful party and in case the court seeks to deviate from the general rule then it has to record the reasons for the same in writing.
- **Written Statement has to be filed within a period of 30 days and can be extended by the court to a maximum of 120 days from the date of service of the summons.**
- The provisions regarding making denial of submissions in the Written Statement have been made more stringent by inserting rule 3A to the provisions of Order VIII Rule 3 of the CPC.
- Stringent provisions pertaining to disclosure, discovery and inspection of documents in suits before commercial division of a High Court or a commercial court (Order XI CPC) introduced in order to ensure that all documents in the power, possession, control or custody of the parties is filed along with the Plaint/Written Statement respectively with specific provisions disallowing the Plaintiff/Defendant from relying on documents which were in their power, possession, control and custody but not disclosed along with the Plaint/Written Statement or within the extended period provided with the leave of the court.

- o Each party to submit a statement of admission or denial of documents within 15 days of completion of inspection or any later date as fixed by the Court [Order XI Rule 4(1)].
- o Provisions of Order VIII Rule 1, Order VII Rule 14 and Order VII Rule 1A CPC shall not apply to suits or application before commercial divisions of High Court or commercial Courts.
- o **The Court may decide a claim without recording oral evidence [Order VIII-A Rule 1(1)].**
- o A party may apply for summary judgment at any time after the summon has been served upon the Defendant taking into account the amendment made to Order XIII-A Rule 2 CPC.
- o Amendment to CPC to bring in fresh procedure for dispute resolution by holding management hearings.
- o Courts to hold first case management hearing not later than 4 weeks from date of filing of affidavit of admission or denial by all parties to the suit [Order XV-A Rule 1].
- o **Courts to ensure that all arguments are closed not later than 6 months from the date for the first case management hearing [Order XV -A Rule 3].**

- o Recording of evidence to be carried out on a day to day basis until cross examination of all the witnesses is complete [Order XV-A Rule 4].
- o Stringent provision to the effect that case management hearing shall not be adjourned for the sole reason that advocate appearing on behalf of a party is not present [Order XV-A Rule 7] subject to application for adjournment of hearing being moved in advance and the court adjourning the matter on such an application upon payment of such cost as the court deems fit.

- o Party to file written arguments four weeks prior to commencing oral arguments [Order XVIII Sub-Rule 3A].
- o Commercial Court, Commercial Division or Commercial Appellate Division shall within 90 days of conclusion of arguments pronounce judgment [Order XX (Substitution for Rule 1)].
- o Provisions of Section 8 of the Act provide that no Civil Revision Application or Petition shall be entertained against any interlocutory order passed by the commercial court including an order on the issue of jurisdiction and any such challenge shall be raised only in an appeal against the decree of the commercial court.

- o An appeal against any decision of the commercial court or commercial division is to be filed before the Commercial Appellate Division of the High Court within 60 days from the date of judgment of order.
- o The Commercial Appellate Division shall endeavor to dispose of the appeals filed before it within a period of 6 months from the date of filing of such an appeal.
- o No suit where the final judgment has been reserved shall be transferred to the commercial court/commercial division.

- o Inspection of documents (Order XI Rule 3(1)) disclosed by the parties to be completed within 30 days of filing the Written Statement to the Counter Claim whichever is later. The court may extend this time limit by a maximum of 30 days but not beyond.

Written statement

1. To be filed within 30 days and not later than 120 days from the date of service of summons. (120 days)
2. Parties to complete inspection of documents within 30 days from the date of filing the Written Statement or Written Statement to the Counter Claim whichever is later. The Court may extend the time limit upon application at its discretion, but not beyond 30 days in any event. (Therefore a maximum of 60 days) (150 days)

3. Admission/denial To be completed within 15 days of completion of inspection or any later date fixed by the Court.

3. Court shall hold first case management hearing not later than 4 weeks from the date of filing of Affidavit of admission or denial of documents by all the parties to the suit.

Timelines



Written statement: 30 days, extendable for a total period of 120 days from date of summons



Parties to complete inspection of documents within 30 days from the date of filing the Written Statement or Written Statement to the Counter Claim whichever is later.



Admission/denial To be completed within 15 days of completion of inspection or any later date fixed by the Court.



Courts to ensure that all arguments are closed not later than 6 months from the date for the first case management hearing [Order XV -A Rule 3].



Court shall hold first case management hearing not later than 4 weeks from the date of filing of Affidavit of admission or denial of documents by all the parties to the suit.