

# **NATIONAL JUDICIAL ACADEMY**



**Refresher Course for First Level Commercial Courts**

**[P-1053]**

**(13<sup>th</sup> - 15<sup>th</sup> October, 2017)**

## **PROGRAMME REPORT**

### **PREPARED BY**

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**National Judicial Academy**

## **Overview of the Course**

The National Judicial Academy organized Refresher Course for First Level Commercial Courts from 13<sup>th</sup> - 15<sup>th</sup> October, 2017, which was attended by 23 District Judges/ Commercial Court Judges from across the country.

The objective of the refresher course was to strengthen the capacity of the First Level Commercial Courts presiding officers by way of discussions and deliberations on the contours of jurisdiction of commercial courts vis-à-vis arbitration; disputes apropos Construction and Infrastructure Contracts, Intellectual Property Rights, Distribution and Licensing agreements, Insurance and Re-Insurance agreements.

### **Day 1**

Session 1 - Jurisprudential Charter of Commercial Courts; Commercial Courts: Contours of Jurisdiction

Session 2 - Interpretation of Distribution & Licensing Agreements: Disputes & Resolution

Session 3 - Regulatory Framework of Insurance & ReInsurance in India

### **Day 2**

Session 4 – IPR disputes relating to Copyright and Patent

Session 5 – IPR disputes relating to Trademarks and Design

Session 6 - Commercial Courts vis-à-vis Arbitration; Amendments to CPC in application to Commercial Disputes

### **Day 3**

Session 7 – Construction and Infrastructure Contracts

Session 8 – Procedure for Collection and Disclosure of Data; Case Management under the Act

## **Session 1**

### ***Jurisprudential Charter of Commercial Courts; Contours of jurisdiction of Commercial Courts***

***Speakers: Justice R.V. Easwar and Mr. Anand Desai***

On the theme of *Jurisprudential Charter of Commercial Courts; Contours of jurisdiction of Commercial Courts*, the speaker initiated the session with the 188th Law Commission report for speedy disposal of high value commercial disputes. Thereafter, the 253<sup>rd</sup> Report of the Law Commission of India which 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. Furthermore, the speaker discussed the nature and scope of commercial disputes which are in the jurisdiction of first level commercial courts viz, the commercial disputes [Section 2 (c)] over and above the value of 1 crore or more [Section 2 (i)] falls in the jurisdiction of first level commercial courts.

## **Session 2**

### ***Interpretation of Distribution & Licensing Agreements: Disputes & Resolution***

***Speakers: Justice R.V. Easwar and Mr. Anand Desai***

On the topic of *Distribution and Licensing Agreements: Disputes & Resolution*, the speaker explained at length the types of distribution and licensing agreements:

#### **Supply**

- Food products
- Pharma products
- Convenience products
- Steel, cement, petrol etc.

#### **Supply and Service**

- Electronics
- Automobiles

## **Service**

- Travel services (hotels, flights, cars)
- Technology
- Accounting and legal

Thereafter, the speaker discussed some pertinent case laws:

*Cadbury India Ltd. vs. L. Niranjana, I (2007) CPJ 40 (NC)* before the National Consumer Disputes Redressal Commission (NCDRC): Case of worms in Cadbury chocolates. It was the case of the manufacturer that the liability was with the retailer/vendor under the distribution agreement. NCDRC held that not only Local Authority should take action and verify such chocolates but also it is the duty of the manufacturer that such things do not occur. To prevent this practice Cadbury in their advertisements, as a matter of routine, should make it clear that consumer shall not purchase such chocolates from a retailer who is not having fridge or visi-cooler.

*Gujarat Bottling Co. Ltd. & Ors. vs. Coca Cola Co. & Ors., 1995 SCC (5) 545*: It was held that negative stipulation in an agreement for grant of franchise viz. a commercial agreement where under both the parties have undertaken obligations for promoting the trade for their mutual benefit is enforceable if it operates only during the period the agreement, except in cases where the contact is wholly one sided.

## **Session 3**

### ***Insurance & Reinsurance Agreements: Disputes & Resolution***

***Speakers: Justice R.V. Easwar, Mr. R. Chandrasekaran and Mr. R.K. Nair***

On the theme of *Insurance & Reinsurance Agreements: Disputes & Resolution*, the speaker initiated the session by discussing the history of the modern insurance business which began in the 16<sup>th</sup> century in England's Lloyd's Café (Marine Insurance) and the history of insurance in India which started in 1818 with Oriental Life Insurance Company to cater the needs of the European Community. Thereafter, the speaker discussed in brief the various laws pertaining to insurance in India:

- Insurance Act, 1938
- Life Insurance Corporation of India Act, 1956
- General Insurance Business (Nationalisation) Act, 1972
- Insurance Regulatory and Development Authority Act, 1999

## Session 4

### *Commercial Courts vis-à-vis Arbitration; Amendments to CPC in Application to Commercial Courts*

*Speakers: Justice S. Ravindra Bhat and Justice Prathiba M. Singh*

On the subject of *Commercial Courts vis-à-vis Arbitration*, the speaker initiated the session by discussing the history of arbitration in India and the reasons for Amendment Act 2015. Further, the speaker highlighted the intrinsic link of the commercial courts with arbitration as Section 15 of the Commercial Courts states that “All suits and applications, including applications under the Arbitration and Conciliation Act, 1996, relating to a commercial dispute of a Specified Value shall be transferred to the Commercial Division or the Commercial Court as the case may be”.

Thereafter, the speaker discussed some relevant case laws:

- *Bharat Aluminium Company v. Kaiser Aluminium Technical Services (2012) 9 SCC 552 (BALCO)*: SC held that in cases of international commercial arbitrations, where the seat of arbitration is outside India, Part I of the Act would not apply – heralding a new dawn for Indian arbitration.
- *New Tirupur Area Development Corporation Ltd. v. M/s Hindustan Construction Co. Ltd.*: Held that S. 26 of the Amendment Act, 2015 is not applicable to post arbitral proceedings. Separate application under S. 36 needs to be filed.

On the theme of *Amendments to CPC in Application to Commercial Courts*, the speaker initiated the discussion by explaining Section 16 of the Act which states that “The Commercial Division and Commercial Court shall follow the provisions of the Code of Civil Procedure, 1908, as amended by this Act, in the trial of a suit in respect of a commercial dispute of a Specified Value”.

Thereafter, the speaker discussed at length the amendments to CPC in application to commercial disputes:

#### 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: 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: 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: to be completed within 15 days of completion of inspection or any later date fixed by the Court.
- o Case Management hearing: 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: 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)
- o Written Arguments: 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: 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)

### **Sessions 5 & 6**

#### ***Intellectual Property Rights disputes relating to Copyright, Patent, Trademark & Design***

***Speakers: Justice S. Ravindra Bhat and Justice Prathiba M. Singh***

On the subject of *Intellectual Property Rights disputes relating to Copyright, Patent, Trademark & Design*, the speaker initiated the discussion by providing an overview of the genesis of IPR dealing with International Conventions. Further, the speaker discussed the significance of IPR in daily life and the way we are captivated by it knowingly or unknowingly viz., from toothbrush (Design) to cell phones (Semiconductor chips, designs, patent etc) to clothes (Trademark) to car (Patent, design, etc).

Thereafter, the speaker discussed some significant case laws:

- *S. Syed Mohideen v. P. Sulochana Bai*: A Halwa shop from Tamil Nadu called 'Iruttukadai Halwa' fought right till the Supreme Court to protect its brand. Respondent -registered owner of trademark 'Iruttukadai Halwa'. Appellant opened a shop in the name of 'Tirunelveli Iruttukadai Halwa'. Supreme Court observed that rights conferred by registration are subject to the rights of the prior user of the trademark. Passing off rights are considered to be superior to that of registration rights, registration merely recognizes the rights which are already pre-existing in common law and does not create any rights.
- *Prius Auto Industries Ltd & Ors. v. Toyota Jidosha Kabushiki*: Single Judge of the Hon'ble Delhi High Court awarded permanent injunction against the defendant restraining them from using, in relation to auto parts and ancillaries, the mark PRIUS and other registered trademarks of the plaintiff. The Court also awarded damages of rupees 1 million.
- *Department Of Electronics And Information Technology v. Star India Pvt. Ltd*: As many as 73 websites which were illegally streaming "pirated" videos of cricket matches were banned by the Court. The Court held that Rogue websites are indulging in rank piracy and thus prima-facie the stringent measure to block the website as a whole is justified because blocking a URL may not suffice due to the ease with which a URL can be changed. It would be a gargantuan task for the respondent to keep on identifying each offending URL and especially keeping in view that as and when the respondent identifies the URL and it is blocked by the ISP, the rogue website, within seconds can change the URL thereby frustrating the very act of blocking the URL. It was the "duty of the government" and its agencies to "assist in the enforcement of court orders"

## Session 7

### *Construction & Infrastructure Contracts*

*Speakers: Justice S.J. Mukhopadhaya and Mr. Dinesh Pardasani*

On the theme of *Construction & Infrastructure Contracts*, the speaker initiated the session by discussing the vital clauses in construction contracts:

- Scope of work
- Step down Provisions
- Conditions Precedent
- Obligations of the Parties
- Contract Price
- Payment Terms
- Financial Obligations
- Extension of Time (source of dispute)

- Claims and Procedure of Claims
- Event of Defaults and Cure Period
- Termination & Termination Payments
- Dispute Resolution

Thereafter, the speaker discussed at length the types Public Private Partnership Contracts (PPP):

- build- own- operate- transfer (BOOT)
- build- operate- transfer (BOT),
- design- build- operate- transfer (DBFOT),
- build- lease- transfer (BLT),
- operate- maintain- transfer (OMT),
- management contracts

### **Session 8**

#### ***Procedure for Collection and Disclosure of Data; Case Management under the Act***

***Speakers: Justice S.J. Mukhopadhaya and Justice G.C. Bharuka***

On the theme of *Procedure for Collection and Disclosure of Data; Case Management under the Act*, the speaker initiated the session by discussing Section 17 of the Act which mandates that the number of cases disposed of shall be maintained and updated every month by each Commercial Court, Commercial Division, Commercial Appellate Division and shall be published on the website of the relevant High Court. Subsequently, the speaker explained at length the significance of court and case management and suggested that a judge should manage his docket in such a manner that old matters are given priority but at the same time it should be considered that the new cases does not become old. Lastly, the speaker suggested that the judiciary as an organ of the state stands far behind in the application of technology for swifter justice administration. Therefore, it was felt that litigant oriented use of technology should be adopted by the judiciary to improve the efficiency of courts.

#### **Prominent Suggestions by Participant Presiding Officers of Commercial Courts for achieving the object of the Commercial Courts Act, 2015**

- It was suggested that a judge should be made presiding officer of Commercial Courts exclusively.
- The Act makes certain amendments to CPC but does not amend Order 21; which is quintessential as execution of the decree is the most vital aspect of a proceeding.
- The Act should provide for Expert Opinion as “commercial disputes” are technical in nature. For eg: quantification of damages in IPR infringement cases.