

Interplay Between Commercial Courts Act 2015 And Arbitration & Conciliation Act, 1996

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OVERVIEW

To promote efficiency in dispute resolution through arbitration, the Arbitration & Conciliation Act, 1996 was amended vide Arbitration & Conciliation (Amendment) Act 2015 – 23/10/2015



Some of the amendments:

- **Section 9**
 - **Arbitral proceedings shall be commenced within a period of ninety days from the date of such order**

Some of the amendments:

- **Section 17**
 - **Any order issued by the arbitral tribunal under this section shall be deemed to be an order of the Court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908, in the same manner as if it were an order of the Court**

Some of the amendments:

- **Section 17**
 - **Once the arbitral tribunal has been constituted, the Court shall not entertain an application under Sec. 9, unless the Court finds that circumstances exists which may not render remedy provided under Section 17 efficacious**

Some of the amendments:

- **Section 29A**
 - **Prescribes a time frame of 12 months or an extended period of 18 months for the making of an award**

Some of the amendments:

- **Section 29B**
 - **Agree in writing to have their dispute resolved by fast track procedure**
 - **The award shall be made within a period of six months**

Some of the amendments:

- **Section 36**
 - **Where the time for making an application to set aside the arbitral award under section 34 has expired, then such award shall be enforced in accordance with the provisions of CPC in the same manner as if it were a decree**

Some of the amendments:

- **Section 36**
 - **Where an application to set aside the award has been filed under 34, the filing shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the arbitral award**

These amendments will only make the arbitration process effective

COMMERCIAL COURTS ACT

To remedy this lacuna the Commercial Courts Act was enacted and the same came into force on 23/10/2015



COMMERCIAL COURTS ACT

Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015

Commercial Courts Act, 2015, as per the Amendment in 2018, which came into force on the 03/05/2018



COMMERCIAL COURTS ACT

“Specified Value”, of a commercial dispute which will bring the matter within the jurisdiction of the Commercial Court was not less than Rupees one crore under the 2015 Act. This was amended to not less than Rs. 3 lakhs by the 2018 amendment.



COMMERCIAL COURTS ACT

**To expand the scope of commercial courts in India.
Contribute towards improving India's ranking on the
'ease of doing business index' released by the World Bank**



COMMERCIAL COURTS ACT

The 2018 Amendment introduced Commercial Courts even in jurisdictions where the concerned High courts have Ordinary Original Civil Jurisdiction, introduced Commercial Appellate Courts, and split Commercial courts in two types.



COMMERCIAL COURTS ACT

Commercial Courts in Jurisdictions where High Courts have Ordinary Original Civil Jurisdiction:

Earlier, commercial divisions of High Courts, consisting of single Judge, were established in places where High Courts have OOC Jurisdiction. These divisions dealt with commercial disputes of specified value i.e. Rupees One crore or higher



COMMERCIAL COURTS ACT

Commercial Courts in Jurisdictions where High Courts have Ordinary Original Civil Jurisdiction:

- **Specified value is now reduced to Rupees Three lakhs**
- **Now commercial courts at the level of district judge even in places where High Courts exercise OOC Jurisdiction**



COMMERCIAL COURTS ACT

Commercial Courts in jurisdictions where high courts have no ordinary original jurisdiction:

Constitution of two types of commercial courts

- **Commercial courts at the level of District Judge**
- **Commercial courts below the level of District Judge**



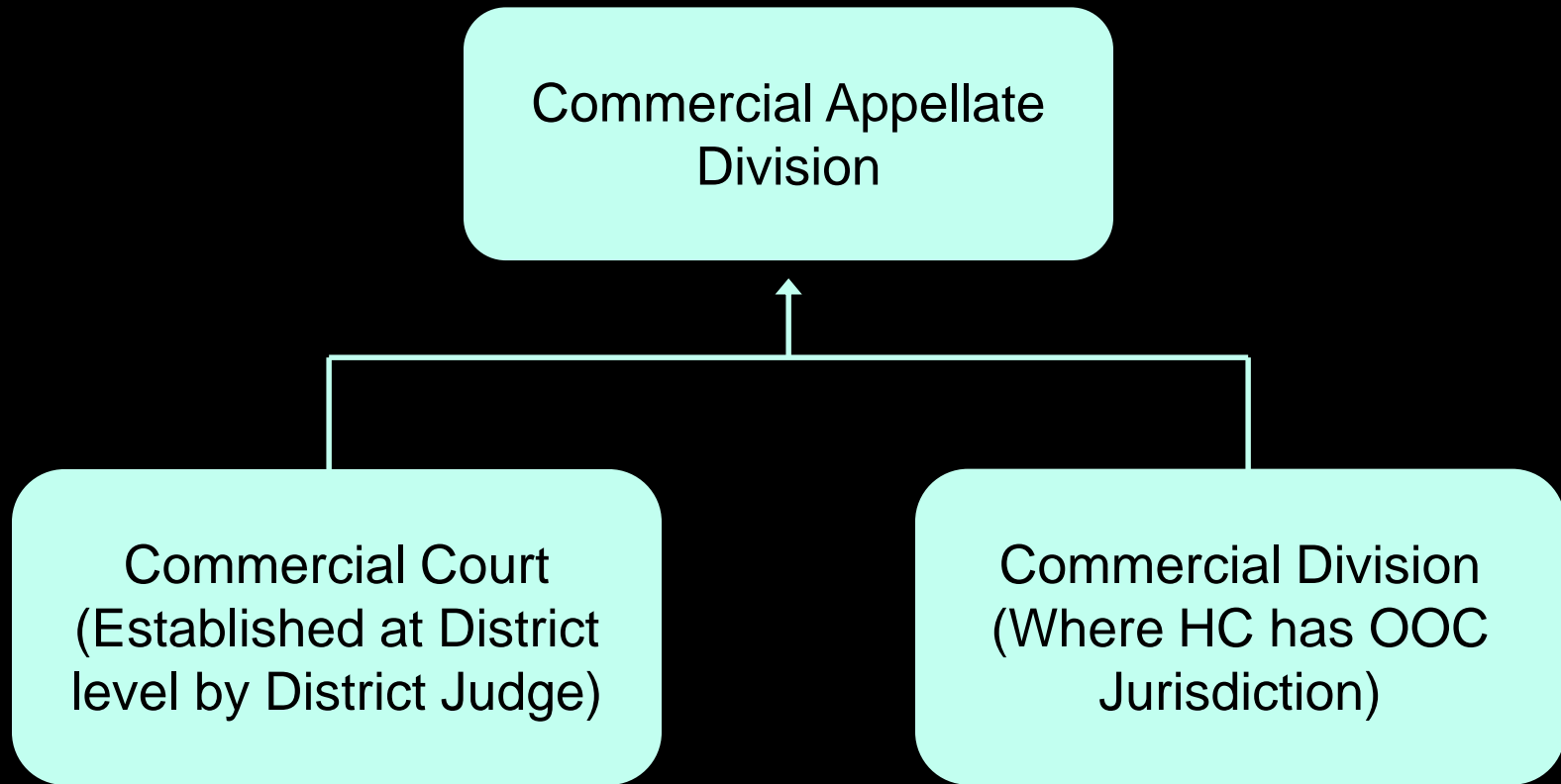
COMMERCIAL COURTS ACT

Commercial Courts in jurisdictions where high courts have no ordinary original jurisdiction:

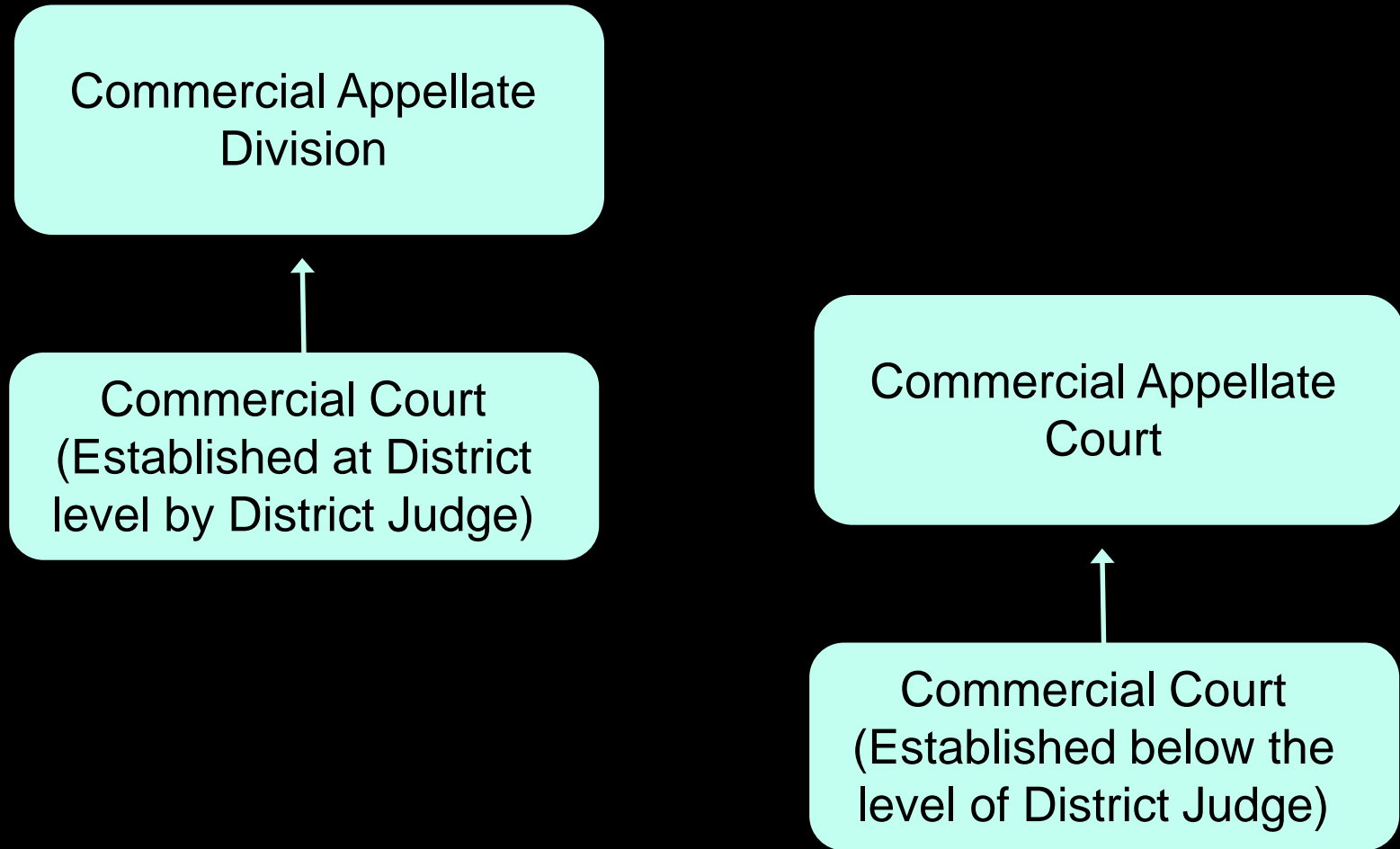
- Appeals from commercial courts below the level of district judge shall lie before the Commercial Appellate Court
- Appeals from Commercial Courts at the District Judge level would continue to lie before the Commercial Appellate Division



COMMERCIAL COURTS ACT



COMMERCIAL COURTS ACT



COMMERCIAL COURTS ACT

Arbitration matters under Commercial Courts jurisdiction:

- **In international commercial arbitration, all applications or appeals arising out of such arbitration shall be heard and disposed of by the Commercial Division**



COMMERCIAL COURTS ACT

Arbitration matters under Commercial Courts jurisdiction:

- **In Domestic Arbitration, all applications or appeals arising out of such arbitration, that have been filed on the original side of the High Court, shall be heard and disposed of by the Commercial Division**



COMMERCIAL COURTS ACT

Arbitration matters under Commercial Courts jurisdiction:

- **In Domestic Arbitration, all applications or appeals arising out of such arbitration, that have been filed before any principal civil court of original jurisdiction in a district shall be filed before the Commercial Court**



COMMERCIAL COURTS ACT

Introduction of Mandatory Pre-institution Mediation

- **2018 Amendment inserted Section 12A, where it entails that where a suit does not contemplate urgent interim relief, the plaintiff has to undergo pre-institution mediation**
- **But this is not applicable for arbitration matters**



A&C ACT & COMMERCIAL COURTS ACT

There were certain inconsistencies in the procedures when it relates to arbitration as under the Arbitration Act (as amended in 2015) and the Commercial Courts Act

- **Section 13(1) – Provides for appeal against the judgment or order of a Commercial Court below the level of a District Judge to the Commercial Appellate Court within a period of sixty days**



A&C ACT & COMMERCIAL COURTS ACT

There were certain inconsistencies in the procedures when it relates to arbitration as under the Arbitration Act (as amended in 2015) and the Commercial Courts Act

- **Section 13(1A) – Provides for appeal against the judgment or order of a judgment or order of a Commercial Court at the level of District Judge or the Commercial Division of a High Court to the Commercial Appellate Division of that High Court within a period of sixty days**



A&C ACT & COMMERCIAL COURTS ACT

Kandla Export Corporation and Another v OCI Corporation and another (2018 (2) Scale 368)

- **The Supreme Court held that there was no further right of appeal under section 13(1) of the Commercial Courts Act in the matter of arbitration where such right of appeal is not provided under the Arbitration Act**



A&C ACT & COMMERCIAL COURTS ACT

D.M. Corporation Pvt. Ltd. Vs. The State of Maharashtra and Ors. (2018(4) MHLJ 457)

- **If the subject matter of arbitration is a 'commercial dispute' of a 'specified value', it has to be held that, Commercial Court will alone have the jurisdiction to entertain an application under Sec. 9 of the Arbitration Act**



A&C ACT & COMMERCIAL COURTS ACT

With the proper interplay between the Arbitration Act and the Commercial Courts Act, the entire arbitration process, right from its commencement, interim applications, challenge of award and enforcement of awards becomes effective and efficient so as to make India a preferred seat of Arbitration



Thank You



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