

NATIONAL JUDICIAL ACADEMY



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National Seminar on Commercial Laws

[10th – 11th February, 2024]

Programme Report

PROGRAMME CO-ORDINATORS

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The National Judicial Academy organised a two day National Seminar for district judges on Commercial Laws from 10th to 11th February, 2024 at the NJA. The seminar facilitated deliberations among participant judges on contemporary issues and recent developments in commercial disputes. The discourse explored topics such as the jurisprudential framework, jurisdictional scope of commercial courts, and normative issues concerning Pre-institution Mediation and Settlement. Additionally, discussions covered intersections between the Commercial Courts Act, 2015, and the Arbitration and Conciliation Act, 1996, as well as matters related to Construction and Infrastructure Contracts in the context of commercial law. The programme facilitated discussion on issues and problems arising during adjudication of commercial disputes and identified and proposed effective measures.

Session: 1 Jurisprudential Framework and Jurisdictional Scope of Commercial Courts

Speakers: Justice Debangsu Basak & Justice Somasekhar Sundaresan

The session highlighted the crucial role of the Commercial Courts Act, 2015 (CCA), in addressing delays in commercial dispute resolution in India. It was highlighted that CCA was a response to the Law Commission's 188th report, which recommended creating commercial divisions in High Courts to handle high-value cases more efficiently. Effective from January 1, 2016, the CCA set up Commercial Courts at the district level and Commercial Divisions and Appellate Divisions in High Courts. The goal was to speed up proceedings, reduce backlogs, and meet international standards. Amendments refined the Act, including lowering the value threshold for disputes from Rs. 1 crore to Rs. 3 lakhs in 2018. The Act defines the specified value, considering factors like recovery of money, market value of property, and other rights. District-level Commercial Courts handle these disputes, while higher-value cases are managed by Commercial Divisions and Appellate Divisions in High Courts.

It was highlighted that the Act requires streamlined procedures and timelines, promotes Alternative Dispute Resolution (ADR), and empowers courts to issue summary judgments and manage cases proactively. It was accentuated that Section 12-A, CCA introduced mandatory pre-institution mediation, though there was initial confusion leading to varied interpretations until it was clarified to be mandatory. However, challenges remain, such as parties treating

mediation as a formality, needing better mediator training and infrastructure, and the complexity of executing settlements.

The session further stressed that the jurisdiction of Commercial Courts is governed by CCA and other statutes, ensuring alignment with existing legal frameworks. The CCA, is vital for developing an effective commercial dispute resolution system in India. Addressing challenges, improving mediation awareness, refining procedures, and ensuring swift execution of settlements are key to its success. The session ended with a call for the judiciary to embrace these changes, improve mediation practices, and work towards a more efficient, investor-friendly legal environment.

Session: 2 Pre- Institution Mediation and Settlement

Speakers: Dr. Justice Sudhir Kumar Jain & Justice Somasekhar Sundaresan

The session delved into the transformative impact of the CCA, particularly after its 2018 amendments which introduced mandatory pre-institution mediation under Section 12-A. It was stressed that this provision was a bold step towards resolving disputes outside courtrooms, aiming to streamline the process and cut down on time and costs. However, the rollout of this initiative was not that smooth. There was a notable language discrepancy between the Act and the associated 2018 Rules—the former mandating mediation with "*shall*," while the latter suggested it was optional with "*may*," if both parties agreed. This inconsistency led to varied interpretations across different High Courts, muddling the application until the Supreme Court stepped in with a clarifying judgment in *Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd.*, 2022 SCC OnLine SC 1028. The ruling of the Supreme Court was pivotal, affirming that mediation was mandatory unless urgent interim relief was necessary. This decision emphasized the potential of mediation to significantly reduce judicial workload and resolve conflicts efficiently. The Court also stressed the need for well-structured mediation training and robust infrastructure to support the systemic demands.

Additionally, it was highlighted that the Supreme Court addressed the nuances of 'urgent interim relief' in *Yamini Manohar v. T.K.D. Keerthi*, 2023 SCC OnLine SC 1382, establishing strict guidelines to prevent its misuse as a loophole to skip mandatory mediation. On another front, the session highlighted procedural reforms within the Code of Civil Procedure aimed at accelerating trials, with a target to conclude them within six months from the initial

management hearing. It was noted that the execution processes for mediated settlements under Section 12-A remained undefined, which could slow down the actual resolution of disputes. The later part of the discourse acknowledged the strides made by the CCA in improving the legal framework for commercial dispute resolution in India. The discussion also recognized that despite significant advancements, several challenges remain:

- ✓ **Implementation and Enforcement:** Ensuring consistent enforcement of mandatory mediation across all jurisdictions is crucial.
- ✓ **Infrastructure and Training:** There is a pressing need for better mediation infrastructure and professional training programs for mediators.
- ✓ **Execution of Settlements:** Improving the processes for executing settlements achieved through mediation is essential to expedite final dispute resolution.

It was concurred that enhancing these areas was crucial for realizing the full potential of CCA and that continuous collaboration among the judiciary, legal professionals, and business communities was essential to refine these processes and foster a swifter and effective dispute resolution.

Session: 3 Intersection between Commercial Courts Act, 2015, and Arbitration and Conciliation Act, 1996: Legal Synergy

Speakers: Justice Senthilkumar Ramamoorthy & Dr. Justice Sanjeeb K. Panigrahi

The session commenced by emphasizing that CCA was primarily designed to ensure the just and expedient resolution of commercial disputes by incorporating several key features. It established specialized courts to handle complex commercial cases, necessitating expertise in commercial law. Additionally, CCA mandated pre-institution mediation in an effort to reduce the caseload and encourage settlements before formal litigation. Strict timelines were set for different stages of the legal process to accelerate the handling of cases, and provisions for summary judgments were introduced. CCA also restricted the scope of appeals to prevent prolonged litigation and included measures regarding the imposition of costs and compensatory costs to deter frivolous lawsuits and ensure that litigants consider the financial risks of unnecessary legal actions. Whereas, the Arbitration Act is primarily focused on promoting alternative dispute resolution as a means to alleviate the burden on traditional courts and provide a more efficient resolution process for parties involved in disputes. Key

features of the Act include limited judicial intervention, which upholds the principle that courts should not interfere unnecessarily in the arbitration process. The session thereafter, focused on the intersection between the Commercial Courts Act, 2015, and the Arbitration and Conciliation Act, 1996, emphasizing the legal synergy between these two significant legislations. The discussion explored how these Acts, each with distinct objectives, interact and complement each other to streamline dispute resolution mechanisms in India.

The discussion thereafter, delved into the role of Arbitration and Conciliation Act in promoting alternative dispute resolution methods, particularly arbitration, as a means to achieve swift and effective resolution. The emphasis of the Act on limited judicial intervention, party autonomy, and time-bound resolutions was highlighted as instrumental in fostering a conducive environment for commercial arbitration. A key focus of the session was the intricate interplay between the jurisdictional provisions of CCA and the arbitration proceedings governed by the Arbitration and Conciliation Act. The discussion examined how Section 10 of CCA delineates jurisdiction for arbitration matters, particularly concerning commercial disputes of specified value, and its implications for the adjudication process. For international commercial arbitration, the Commercial Division is designated as the appropriate court under Section 10(1). Other arbitration matters are directed to the Commercial Division if filed before the original side, as per Section 10(2). However, if the dispute would typically fall under the jurisdiction of the principal civil court of original jurisdiction, it falls under the jurisdiction of the Commercial Court with territorial authority over the arbitration, as outlined in Section 10(3). It was underscored that Commercial Courts are tasked with adjudicating all suits and applications related to commercial disputes of a specified value across the entire territory of the State where it holds jurisdiction, as specified in Section 6 CCA. Meanwhile, the Commercial Division handles suits and applications concerning commercial disputes of a specified value filed in a high court with ordinary original civil jurisdiction. If such cases are required to be filed in a court no lower than a district court and are filed on the original side of the high court, the provisions of Section 7 and its proviso apply. The jurisdictional question hinges on two key factors - which disputes qualify as commercial disputes and what constitutes the specified value.

The impact of Sections 3 and 10 of CCA is significant, especially concerning arbitration matters. Section 10 applies when the subject matter of an arbitration pertains to a commercial dispute of a specified value, with Section 10(3) specifying that matters ordinarily falling under

the principal civil court's jurisdiction must be filed, heard, and disposed of by the commercial court. This poses a potential conflict with Section 2(1)(e) of the Arbitration Act, which defines the term "court" differently. However, the ruling in *Jaycee Housing (P) Ltd. & Ors. v. Registrar (General), Orissa High Court, Cuttack & Ors.*, (2023) 1 SCC 549 clarifies that Sections 3 and 10 of the Commercial Courts Act shall prevail. Regarding the concept of the seat of arbitration, as per Section 20 of the Arbitration Act, once the seat is designated, it holds significant jurisdictional implications, as seen in precedents like *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services (Balco)*, (2012) 9 SCC 552 and *Indus Mobile Distribution Private Limited v. Datawind Innovations Private Limited* (2017) 7 SCC 678. However, conflicts may arise with Section 42 of the Arbitration Act, which mandates that only one court shall have jurisdiction over all applications related to an arbitration agreement. Nevertheless, the combined effect of Section 10 and 15 of CCA, alongside the ruling in *Kandla Export Corporation v. OCI Corporation*, (2018) 14 SCC 715, implies that Section 42 would be superseded in commercial disputes of specified value. Regarding transfer of suits it was stressed that under Section 15, all suits related to commercial disputes of specified value must be transferred to commercial courts or the commercial division once constituted. However, with regard to question regarding suits filed before 03.05.2018 (prior to Act 42 of 2018) with a value less than rupees one crore. Sub-section (5) of Section 15 allows parties to seek a transfer from the Commercial Appellate Division if the case has not been transferred. Notably, in the case of *Satyanarain Khandelwal v. Prem Arora*, 2022 SCC OnLine Del 2142, the Delhi High Court held that Act 42 of 2018 is prospective, and suits cannot be transferred retroactively.

Furthermore, international commercial arbitration under Section 2(1) (f) involves at least one party being a non-Indian national or a company incorporated outside India. As for execution petitions, while neither the Arbitration Act nor CCA specifically address execution, the ruling in *Sundaram Finance Limited v. Abdul Samad*, (2018) 3 SCC 622 establishes that an award may be executed anywhere in the country. Significant judicial precedents, such as *Jaycee Housing (P) Ltd. & Ors. v. Registrar (General), Orissa High Court, Cuttack & Ors.*, (2023) 1 SCC 549; *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services (Balco)*, (2012) 9 SCC 552; *Indus Mobile Distribution Private Limited v. Datawind Innovations Private Limited* (2017) 7 SCC 678; were cited to illustrate how conflicts between these Acts are resolved, underscoring the need for a harmonious legal framework to effectively manage commercial disputes.

Session: 4 Construction and Infrastructure Contracts vis-à-vis Commercial Courts Act

Speakers: Justice A.K. Goel & Mr. Mohit Saraf

The session commenced by focusing on the crucial role of infrastructure in economic growth, particularly through the lens of Indian contractual framework challenges and legal intricacies as compared to other countries like China. The session began with a stark comparison between the per capita incomes of India and China over the decades, highlighting the pivotal role of infrastructure in economic disparities. Despite India having a higher per capita income than China in 1980, by 2022, China had surged ahead significantly. This was attributed to China's efficient execution of infrastructure projects, which underpin its soaring economic performance. The session further delved into the necessity of establishing a robust contractual framework for infrastructure projects. Key principles such as risk allocation, back-to-back risk coverage, and fixed-term, fixed-price contracts were discussed as vital for the success of these projects. However, the challenges such as delays, cost overruns, and contractual enforcements that often derail project finance mechanisms in India were pointed out.

The session further examined landmark judgments that have shaped the interpretation and enforcement of contracts in India. Notably, the Supreme Court ruling in *Nabha Power Ltd. vs. PSPCL*, (2018) 11 SCC 508 stressed the importance of adhering to contract terms strictly, introducing a "five condition test" for integrating implied terms into contracts. Another critical discussion centered on the critique by the Supreme Court in *SEAMEC LTD. v. Oil India Ltd.*, (2020) 5 SCC 164 case, where it reversed an arbitral decision by advocating for a literal contract interpretation over a liberal one was highlighted.

The concept of *Force Majeure* (FM) and its legal implications during unforeseen events like the Covid-19 pandemic were also thoroughly analyzed. The judgment in *MEP Infrastructure Developers Limited v. South Delhi Municipal Corporation*, (2020) SCC OnLine Del 728 was highlighted to illustrate how FM clauses and the doctrine of frustration under the Indian Contract Act are invoked to address contract impossibilities during such crises.

The evolving jurisprudence on "Time is of the Essence" was emphasised upon by discussing the following cases - *State of Gujarat vs. Kothari Associates* (2016) 14 SCC 761 ; *K.K. Krishnan Kutty v. Green Tree Homes and Ventures Pvt. Ltd.*, MANU/TN/4722/2019: (12.06.2019 - MADHC); *Haryana State Industrial Development Corporation Ltd. v. Shushil Kumar Rout*, MANU/DE/0925/2019: (26.02.2019 - DELHC); *S. Daya Singh v. Som Datt Builders Pvt. Ltd.*, MANU/DE/2261/2019: (16.07.2019 DELHC); *Devender Kumar v.*

Parsvnath Realcon Pvt. Ltd., MANU/RR/0012/2020: (16.01.2020 - RERA Delhi). A significant portion of the discussion was dedicated to the specifics of delay events in construction projects, categorized as excusable, non-excusable, compensable, non-compensable, critical, non-critical, concurrent, and parallel delays. The implications of each type of delay on project timelines and compensation were dissected to provide a clear framework for stakeholders to manage and mitigate such issues effectively.

Moreover, the importance of timely notice for extensions of time and additional compensation claims was emphasized, with reference to contractual provisions under International Federation of Consulting Engineers [FIDIC] conditions and relevant case law. The session underscored the habitual provision of provisional extensions by project owners without a proper delay analysis and how such practices could be rectified through expert delay analysis. The session wrapped up with a discussion on the amendments to the Specific Relief Act, 1963, particularly the prohibition of injunctions that delay projects, reinforcing specific performance as a rule and detailing the establishment of special courts for infrastructure-related disputes. It was discoursed that this legal framework aims to streamline contract enforcement and facilitate faster completion of infrastructure projects, thus driving economic growth more effectively.

Session – 5 Adjudication of Disputes under the Act: Navigating Challenges and Offering Solutions

Speakers: Justice A.K. Goel & Justice Anubha Rawat Choudhary

The session commenced by exploring the intricacies involved in defining and adjudicating commercial disputes under CCA. It was highlighted that Section 2(c) of the CCA broadly defines a commercial dispute across 22 specified categories, ensuring a comprehensive coverage that includes conflicts involving public entities, real estate transactions, and other commercial activities. Judicial precedents such as *Ladymoon Towers Private Limited v. Mahendra Investment Advisors Private Limited* (2021 SCC OnLine Cal 4240) underscored that disputes must primarily serve economic interests to qualify as commercial, emphasizing the necessity for transactions to exhibit a commercial intent rather than merely incidental profit or personal dealings, as clarified in cases like *R. Kumar v. T.A.S. Jawahar Ayya* (C.S. No. 431 of 2019)

The session identified key challenges in the adjudication process, notably the interpretation of what constitutes a commercial dispute in nuanced cases involving financial transactions or real estate. Achieving judicial consistency in applying the criteria in CCA emerged as crucial for fostering clarity and predictability in legal outcomes. To address these challenges and expedite dispute resolution, strategies centered on pre-institution mediation were highlighted. Section 12A of the Act mandates a mediation period of up to five months before formal litigation, encouraging parties to explore settlement options. The enforceability of mediated agreements under Section 30 of the Arbitration and Conciliation Act was emphasized, providing legal validity akin to arbitral awards and promoting amicable resolutions.

The procedural framework under the Code of Civil Procedure (CPC), particularly in commercial courts, was outlined to illustrate the structured approach to handling disputes. Starting with the filing of a plaint under Order VII, followed by the submission of a written statement by the defendant within a specified timeframe, the process ensures systematic discovery, document inspection, and efficient case management through hearings designed to streamline proceedings and manage court calendars effectively. The session also delved into the utility of summary judgments under Order XIII-A of the CPC, enabling courts to decide cases based on documentary evidence without a full trial, as exemplified in cases such as *Christian Louboutin Sas v. Abubaker*, 2018 SCC OnLine Del 9185 and *Bright Enterprises (P) Ltd. v. MJ Bizcraft LLP* (2016 SCC OnLine Del 442). This expedited process aims to uphold procedural fairness while facilitating swift resolutions in straightforward disputes. The session underscored the importance of clear definitions, structured procedures, and innovative approaches like pre-institution mediation and summary judgments to enhance the efficiency and effectiveness of commercial dispute resolution.