

BY
LAW

THE COMMERCIAL COURTS ACT: EXPEDITING HIGH-VALUE COMMERCIAL DISPUTES

The Indian judicial system can be taxing for litigants. The delays caused by matters not reaching and matters being adjourned are all too familiar for anyone seeking to enforce their rights in court.

The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2016 (the "Act") has recently been enacted in an attempt to reduce judicial delays, at least as far as commercial disputes are concerned.

HIGHLIGHTS OF THE ACT

- Mandates the setting up of specialised courts or divisions of courts, comprised of judges experienced in commercial matters, to hear commercial disputes with a value of Rs. 1 crore (10 million) or more.
- Applies to a very wide range of disputes, including disputes about all commercial agreements such as sale of goods and services, corporate agreements, such as shareholders, joint venture and partnership agreements, all commercial property matters, and all intellectual property matters.
- Also applies to arbitration applications and appeals.
- Seeks to speed up the hearing of these commercial disputes by introducing procedural innovations

The provisions of the Act are being gradually put into effect. Cases in the Bombay High Court, for instance, are to be filed in accordance with the new system from 01 June 2016 and pending matters that fall within the scope of the Act are to be transferred to the new specialised commercial division of the High Court on 18 June 2016.

KEY FEATURES OF THE ACT

Commercial disputes

The Act applies exclusively to commercial disputes, and defines these widely as including disputes arising out of the ordinary transactions of merchants, bankers, financiers and traders, agreements for the sale of goods or provision of services, partnership and joint venture agreements, shareholders agreements, franchising and licensing agreements, construction and infrastructure contracts, commercial property agreements, insurance, subscription and investment agreements, intellectual property rights etc. This includes commercial disputes with the government and government agencies.

Constitution of specialised courts and divisions

The Act mandates the setting up of Commercial Divisions in High Courts that have ordinary original civil jurisdiction (where civil cases can be filed in the first instance), such as the High Courts of Bombay, Delhi, Madras, Calcutta and Himachal Pradesh. In all other districts over which High Courts do not have ordinary original civil jurisdiction, the Act states that Commercial Courts are to be established by the relevant State

Governments. All commercial disputes, as defined in the Act, valued at Rs. 1 crore or more are to be heard by these newly constituted Commercial Courts or Commercial Divisions, as applicable. Appeals are to be heard by Commercial Appellate Divisions, which are to be set up in the High Courts. The judges appointed to these new courts and divisions are to be persons who have experience in dealing with commercial disputes.

Pending matters

Pending matters will also be transferred to the new commercial court system, where they relate to commercial disputes of Rs. 1 crore or more, unless final judgment has been reserved in the matters. Where such matters are pending in a High Court, they are to be transferred to the Commercial Bench in that High Court; where they are pending in any other civil court, they are to be transferred to the corresponding Commercial Court.

Arbitration applications and appeals

Arbitration appeals and applications relating to commercial disputes of Rs. 1 crore or more are also to be heard by the specialised courts or divisions created under the Act, and pending arbitration applications are to be transferred to these courts.

No overlap with tribunals

Matters which do not fall within the jurisdiction of civil courts (such as those within the jurisdiction of specialised tribunals such as the Debt Recovery Tribunals or Company Law Board) will not be transferred to the new Commercial Courts and Commercial Divisions even if they relate to commercial disputes of Rs. 1 crore or higher.

Procedural changes

Other than the establishment of dedicated commercial courts, the most interesting aspect of the Act is the new procedure for hearing matters that it prescribes:

Strict deadlines

The new Act contains strict deadlines for the conduct of cases, such as for filing written statements, filing all documents relevant to the matter and filing written arguments. A failure to comply with these deadlines has serious adverse consequences such as the forfeiture of the right to make a filing or to rely on a document. The Act even imposes a deadline on judges, requiring that judges pronounce judgment within 90 days of the conclusion of final arguments.

Innovations in procedure

The Act also adopts several new procedures intended to expedite hearings. The Act mandates that, in line with the practice in other countries, Commercial Courts and Commercial Divisions will hold case management hearings as part of each matter. A case management hearing is a preliminary hearing at which the court will hear all the parties and then frame the issues to be decided in the matter. The court can also fix specific dates for the various steps involved in a matter, such as the filing of evidence, the cross-examination of witnesses and the date for hearing arguments. The court may also fix time limits for arguments during the case management hearing. Another change in process adopted by the Act is that parties are required to file written arguments in each case well in advance of the oral hearing, in order to allow parties to prepare in advance to counter the other side's arguments.

Costs

The Act contains detailed guidelines with respect to the factors courts should weigh when directing whether one party should bear all or some of another party's legal costs, which include fees and expenses incurred in relation to witnesses and hiring lawyers. The Act states that the unsuccessful party should generally be made to bear the costs of the successful party. The Act also strongly encourages courts to impose costs on parties based on their conduct during the case, by giving consideration to matters such as whether a party has wasted the time of the court, unreasonably refused to settle the matter, or failed to comply with an order passed at the

case management hearing. The Act allows courts to impose unlimited exemplary costs. ***The tougher stand on costs taken in the Act is clearly intended to incentivise parties not to prolong matters without cause; a party is less likely to seek an adjournment if it might have to bear not only its own legal costs but also those of all the other parties.***

Limited appeals

The Act provides a period of 60 days for filing appeals against orders of Commercial Courts and Commercial Divisions. Appeals are to be filed before the Commercial Appellate Division of the appropriate High Court. The Act attempts to expedite the resolution of commercial disputes and states that the Commercial Appellate Division is to "endeavour" to dispose of appeals within six months. The Act also states that parties are only permitted to appeal against specified types of interim orders passed by Commercial Courts and Commercial Divisions.

IN CONCLUSION

The Act appears to be a well-intentioned piece of legislation aimed at reducing delays in high stakes commercial matters. The Act has been critiqued because it does not require that the State Governments use new resources to create commercial courts (in High Courts, the Commercial Division is merely to be designated out of the sitting judges in the High Court) and could thus lead to greater delays in matters that do not fall within the ambit of the Act. However, the Act does seek to introduce some new and potentially beneficial case management procedures.

It remains to be seen how the procedure laid out in the Act will actually work in practice. The efficacy of a large part of the new procedure prescribed depends on whether judges, litigants and lawyers are comfortable with a new method of managing matters. The discretion to discourage delays by imposing costs and sanctions ultimately lies in the hands of the judges. Further, some of the tight deadlines prescribed in the Act may prove unfeasible in practice. Therefore, only time will tell whether the objective of the Act will be fulfilled.

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