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EXPLORING THE LEGISLATIVE INTENT AND IMPLICATIONS OF REDUCING THE MINIMUM SUIT VALUE IN THE INDIAN COMMERCIAL COURTS¹

AUTHORED BY - ARK SHARMA

Abstract

The research paper examines the evolution and implications of India's Commercial Courts Act, 2015, and its significant 2018 amendment. The Act, designed to expedite commercial dispute resolution, underwent key changes, including a reduction in the specified value of disputes and measures to enhance accessibility and efficiency. The paper scrutinizes these changes, focusing on the decentralization of adjudication, state governments' role in specifying jurisdiction, and the introduction of Pre-Institution Mediation (PIM). It delves into the legislative intent behind these amendments, highlighting India's proactive approach in attracting global businesses. The paper also offers suggestions for improvement, addressing concerns related to pecuniary jurisdiction, judicial appointments, PIM implementation, infrastructure, and technology usage. It concludes by emphasizing the need for ongoing refinement and effective implementation of the Act to strengthen India's position as a preferred destination for commercial enterprises.

Keywords

1. Commercial Courts
2. India
3. Pre-Institution Mediation
4. The Act
5. The Amendment

Introduction to the commercial courts system

India's economic growth has been remarkable, especially since the implementation of the Liberalization, Privatisation, and Globalization policy in 1991. This policy has attracted a significant number of foreign businesses to India and has also led to the establishment of

¹ Authored by Ark Sharma, 1182200110- Ft.Y BBA.LLB MIT WPU SOL

numerous Indian businesses. One of the outcomes of this economic growth was the long-debated establishment of dedicated commercial courts in India. This idea was realized with the introduction of The Commercial Courts Act of 2015, which came into effect on October 23, 2015. The primary aim of this Act is to provide a specialized judicial mechanism for the swift and efficient resolution of commercial disputes.

The Act establishes a system of commercial courts within the existing civil court structure. These courts are empowered with the necessary procedural authority to resolve high-value business disputes swiftly and efficiently. The Act defines a “commercial dispute” as any disagreement arising from regular business transactions between traders, bankers, financiers, and merchants, including the import or export of goods or services. This broad definition encompasses almost all potential disputes that could arise from business transactions, including issues related to insurance, intellectual property rights, product carriage, franchise agreements, license agreements, joint venture agreements, shareholders’ agreements, admiralty, and marine law, among others.

The Act also provides for the establishment of a commercial division in the high court with ordinary original jurisdiction to handle business disputes of a certain value. In cases where the high court lacks ordinary jurisdiction, a commercial court at the district level is established. Furthermore, the Act calls for the creation of a Commercial Appellate Division to handle appeals. The Act sets a specific value of Rs. 3,00,000 and a maximum value of Rs. 1,00,00,000 for cases and applications related to a commercial dispute to be tried by the Commercial Courts or the Commercial Divisions.

Section 12A of the Commercial Courts Act of 2015 introduces the concept of Pre-Institution Mediation and Settlement. This section mandates that all commercial disputes undergo a pre-institution mediation process, unless there is an urgent interim requirement, such as in cases of patent infringement. The purpose of this provision is to offer parties an alternative dispute resolution mechanism through discussions and negotiations, facilitated by a mediator. As per the Supreme Court of India’s ruling, the plaintiff must initiate mediation before filing a lawsuit, making the pre-litigation mediation provision under Section 12A of the 2015 Act mandatory. Therefore, any business complaint filed in a commercial court under the 2015 Act without first exhausting the remedy of pre-litigation mediation will be dismissed under the 1908 Code of Civil

Procedure.

The 2018 Amendment

The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Act, 2018, brought about significant changes to the original Act of 2015. The amendments were notified on August 21, 2018, but were made effective retrospectively from May 3, 2018.

Firstly, the Act was renamed from the “Commercial Courts, Commercial Divisions, and Commercial Appellate Division of the High Court Act” to the “Commercial Courts Act, 2015”. This change in nomenclature signified a shift in focus towards the establishment and functioning of Commercial Courts as distinct entities, rather than merely divisions within the High Court.

One of the most substantial modifications introduced by the amendment was the reduction of the specified value of a commercial dispute from Rs. One crore to Rs. three lakhs. This revision significantly broadened the Act’s scope, enabling a wider range of disputes to be classified as commercial disputes. This change was aimed at making the commercial courts more accessible to small and medium enterprises and individuals involved in lower-value disputes, thereby promoting a more inclusive and equitable system of commercial dispute resolution.

The amendment also provided for the establishment of Commercial Appellate Courts. Any individual aggrieved by a judgment or order of a Commercial Court below the level of a District Judge may appeal to the Commercial Appellate Court within 60 days of the date of such judgment or order. Similarly, any person aggrieved by a judgment or order of a Commercial Court at the District Judge level exercising original civil jurisdiction, or the Commercial Division of a High Court, may appeal to the Commercial Appellate Division of that High Court within 60 days of the date of the judgment or order. This provision ensured that parties have an avenue for challenging the decisions of the Commercial Courts, thereby promoting fairness and accountability in the process.

Following the passage's amendments, significant restructuring occurred within the commercial courts system. Prior to the alterations, the state government had the ability to collaborate with the relevant high courts to set up commercial courts at the district judge level for areas under the high

courts' ordinary original civil jurisdiction. Additionally, the state government gained the power to determine a minimum amount of INR 3 lakhs or a greater sum for the entire or partial state regarding the establishment of these courts. These modifications aimed to distribute the resolution of business conflicts more efficiently and adaptively to regional requirements by delegating the decision-making process to lower levels.

Moreover, the state government received authorization to designate individuals experienced in handling commercial cases as judges of a Business Court, either at the district judge level or a tribunal below that position. This clause acknowledged the requirement for particular information and competence when settling sophisticated legal and factual concerns frequently present in commercial disputes.

Lastly, the amendment introduced a Pre-Institution Mediation (PIM) process in cases where no urgent, interim relief is contemplated². This was done to provide parties with an opportunity to resolve their disputes amicably outside the court system, through mediation conducted by authorities constituted under the Legal Services Authorities Act, 1987. This development underscored the growing recognition of alternative dispute resolution mechanisms as effective tools for resolving commercial disputes.

The Intent

The enactment of the Commercial Courts Act, 2015, was a strategic move by the Indian legislature to bolster India's appeal as a favourable business hub for international enterprises. The cornerstone of this legislation was the provision of an expedited mechanism for the resolution of commercial disputes, thereby fostering a conducive business environment. The 2018 amendment to the Act further fortified this intent. The primary objective behind these modifications was to enhance India's standing on the global stage, particularly in terms of the 'Ease of Doing Business' index. By streamlining the dispute resolution process and reducing the threshold for commercial disputes, the amendment aimed to project India as a more business-friendly jurisdiction. This legislative manoeuvre was not merely about improving a ranking; it was a calculated attempt to attract more businesses and foreign corporations to India. By demonstrating a commitment to

² Quintype-Migrator, 'Amendments to the Commercial Courts Act' (Bar and Bench - Indian Legal news) <<https://www.barandbench.com/columns/amendments-commercial-courts-act>> accessed 23 November 2023

efficient and effective dispute resolution, the Indian legal system sought to assure potential investors of its readiness to handle the complexities of modern commercial transactions. Thus, the Commercial Courts Act, 2015, and its subsequent amendment in 2018, serve as testament to India's proactive approach towards creating a robust and responsive legal framework for commercial dispute resolution.

The 2018 amendment to the slashing of specified value of the commercial court was to adhere to several measuring parameters used internationally, particularly those outlined in the World Bank's Ease of Doing Business Report. The Ease of Doing Business Report by the World Bank serves as a comparative assessment of economies worldwide, ranking them based on the conduciveness of their regulatory environments for business operations. A crucial metric used in this report to evaluate an economy's efficiency is the enforceability of contracts. The disputes considered for this metric are those with a claim value equivalent to 200% of income per capita or \$5,000, whichever is higher. Before the 2018 amendment, the data from the city civil court was used to assess the efficiency of contract enforcement in India. This was due to the pecuniary jurisdiction of the commercial courts and divisions, established under the Act, which started from INR 1 Crore (approximately USD 150,000). This amount was significantly higher than the claim value considered by the World Bank. The 2018 amendment brought a substantial change by reducing the specified value of a commercial dispute from INR 1 Crore to INR 3 Lakhs (approximately USD 4,500). This adjustment was in sync with the claim value considered by the World Bank and allowed a broader range of disputes to fall within the purview of commercial courts. This change anticipated that the data from the Commercial Courts, constituted under the Act, would now be used for the World Bank's report, as the pecuniary jurisdiction of these courts now begins from INR 300,000. This strategic move was aimed at enhancing India's position on the 'ease of doing business index.'

Another salient feature of this amendment was the provision for the constitution of Commercial Courts at the District Judge level. Prior to this amendment, commercial courts were established at the level of High Courts³. However, the amendment facilitated the decentralization of the adjudication process for commercial disputes, thereby establishing commercial courts at the

³ 'The Commercial Courts, Commercial Division and Commercial Appellate ...' (PRS) <[https://prsindia.org/files/bills_acts/bills_parliament/2018/The%20Commercial%20Courts,%20Commercial%20Division%20and%20Commercial%20Appellate%20Division%20of%20High%20Courts%20\(Amendment\)%20Bill,%202018%20Bill%20T ext.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2018/The%20Commercial%20Courts,%20Commercial%20Division%20and%20Commercial%20Appellate%20Division%20of%20High%20Courts%20(Amendment)%20Bill,%202018%20Bill%20T ext.pdf)> accessed 25 November 2023

district level. This decentralization aimed to make the dispute resolution process more accessible to the parties involved by bringing it closer to their local jurisdictions. Furthermore, it allowed for the optimal utilization of existing infrastructural and human resources at the district level, thereby alleviating the burden on High Courts.

Another significant change introduced by the amendment was the empowerment of the State Government to specify the pecuniary jurisdiction of these courts. The amendment stipulated that the specified value for the jurisdiction of these courts could not be less than 3 lakh rupees or such higher value as determined by the State Government for the whole or part of the State. This provision essentially provided the State Government with the discretion to determine the monetary threshold for disputes that could be adjudicated by the commercial courts within its territory. This change was instrumental in ensuring that commercial courts were equipped to handle a broad spectrum of disputes, ranging from relatively small claims to high-value disputes. By setting a lower limit for the pecuniary jurisdiction, the amendment ensured that even small and medium enterprises had access to the commercial courts for the resolution of their disputes. The 2018 amendment to the Commercial Courts Act, 2015, in India ushered in a significant shift in the appointment process of judges to these Commercial courts. Previously, the concurrence of the Chief Justice of the High Courts was required for such appointments. However, the amendment empowered the State Government to appoint individuals with experience in handling commercial disputes as judges of a Commercial Court, either at the level of District Judge or below. This modification had two primary implications. First, it facilitated the appointment of judges possessing specialized expertise in commercial disputes. Given the complex and technical nature of commercial disputes, which necessitate a profound understanding of commercial laws and practices, this change aimed to ensure that these disputes are adjudicated by individuals proficient in commercial law, thereby enabling more informed and effective judgments. Second, this change sought to expedite the appointment process of judges to the Commercial Courts. By vesting the appointment power with the State Government, the amendment aimed to circumvent the often-protracted process of securing the concurrence of the Chief Justice of the High Courts. This was anticipated to result in a swifter appointment of judges, thereby contributing to the expeditious resolution of commercial disputes.

Introduction of the Pre-Institution Mediation (PIM) process, marked a paradigm shift in India's approach to commercial dispute resolution. The introduction of PIM was driven by the intent to

facilitate early, amicable resolution of disputes, thereby alleviating the burden on courts and conserving valuable resources. Mediation, being a flexible and collaborative approach, enables parties to work together towards a mutually acceptable resolution. The PIM process is time-bound, to be completed within three months from the date of application by the plaintiff, extendable by two months with mutual consent. This ensures that mediation does not cause undue delay in dispute resolution. If a settlement is reached during PIM, it is documented and signed by the parties and the mediator. The settlement then holds the same status and effect as an arbitral award on agreed terms under the Arbitration and Conciliation Act, 1996. However, if a settlement is not reached through PIM, parties retain the right to institute a suit in the commercial court. Thus, PIM provides an additional avenue for dispute resolution before resorting to litigation.

Suggestions

The Commercial Courts Act, 2015, and its subsequent amendment in 2018, represent significant strides in the evolution of India's legal framework for commercial dispute resolution. However, as with any legislative instrument, there is always scope for refinement and enhancement. Here are some suggestions for potential improvements:

- **Pecuniary Jurisdiction:** The 2018 amendment notably reduced the specified value of a commercial dispute from INR 1 Crore to INR 3 Lakhs. While this broadened the ambit of commercial courts, it also escalated their caseload, potentially decelerating the resolution of relatively higher-value cases. It is crucial to strike a balance between enhancing the accessibility of the courts and ensuring their operational efficiency.
- **Appointment of Judges:** The amendment conferred upon the State Government the authority to appoint judges to the Commercial Courts. While this expedited the appointment process, it also sparked concerns about the potential compromise of judicial independence. Instituting a more transparent and impartial appointment process could help assuage these concerns.
- **Pre-Institution Mediation (PIM):** The introduction of PIM was a commendable step, but there is a need for greater clarity on its implementation. For instance, the Act could provide more comprehensive guidance on the qualifications and training of mediators, the conduct of the mediation process, and the enforcement of settlement agreements.
- **Infrastructure and Resources:** The establishment of commercial courts at the district level necessitates adequate infrastructure and resources. The Act could incorporate more specific provisions regarding the infrastructure requirements of these courts to ensure their effective functioning.

- **Training of Judges:** Commercial disputes often entail complex and technical issues that require a nuanced understanding of commercial laws and practices. The Act could provide for more comprehensive training programs for judges to equip them with the necessary expertise to adjudicate such disputes.
- **Use of Technology:** The Act could advocate for the greater use of technology in the conduct of proceedings, such as e-filing, video conferencing, and online dispute resolution. This could enhance the efficiency of the process and make it more accessible to a wider range of litigants.

Conclusion

In conclusion, the legislative intent behind the reduction of the minimum suit value in Indian Commercial Courts was multifaceted. It aimed to enhance accessibility, improve efficiency, and align with international standards. This reduction expanded the scope of commercial courts, enabling a larger number of disputes to be classified as commercial. However, it also raised concerns about potential manipulation and forum shopping. Measures have been implemented to prevent such misuse, ensuring fair and efficient dispute resolution. The effectiveness of these changes is a testament to India's proactive approach towards creating a robust and responsive legal framework for commercial dispute resolution. Proper implementation of the act is crucial for maintaining an equal workload for the courts and ensuring speedy trials. Like any legislation, there is always room for further refinement and enhancement. Future amendments and reforms should continue to focus on improving the ease of doing business in India, thereby bolstering India's standing as a favourable destination for commercial enterprises.