

INTRODUCTION

As per the latest reports¹, more than 3 crores cases are pending adjudication / disposal throughout the country. Litigation in this country is a protracted affair, which creates misgivings amongst the parties to such a process as well as public at large. It also has an effect on the business environment prevailing in the country and affects its growth trajectory.

India is the 7th largest country by landmass and is the 2nd most populous country after China having a population of approximately 1.3 billion as on date². It is therefore, imperative for our country to ensure a high growth rate in order to provide basic amenities and in the same measure employment opportunities to its citizens. To achieve the aforesaid goal, it becomes essential that the Government create a sound business environment throughout the country so as to attract both domestic as well as foreign investors. One of the steps, which the Government can take to ensure the creation of a sound business environment is by bringing clarity to the legal regime governing the conduct of business in the country and also at the same time ensuring that the litigation process is smooth, fair and time bound.

The Governments, both at, the Central as well as State level have from time to time sought to amend the existing law and pass new legislations to ensure that the whole process of litigation becomes smoother and less protracted, and the promulgation of The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 ('Act') is a step taken by the Central Government for achieving the aforesaid goals.

Infact, the urgency of putting measures in place to stimulate the growth of business can be gauged from the fact that the Central Government went through the Ordinance route to ensure that there is no delay in initiating the process for setting up 'Commercial Courts' for Adjudication of 'Commercial Disputes'. The Ordinance came into effect on 23.10.2015 and thereafter was passed by both the Houses of Parliament and was assented by the President and became an Act. The Act envisages setting up of Commercial Courts to adjudicate upon Commercial Disputes having a specified value of not less than Rs. 1 Crore or such higher value as may be notified by the Central Government.

IMPORTANT SECTIONS / PROVISIONS

- Section 2(c) of the Act defines 'Commercial Dispute' and brings within its ambit disputes arising out of transactions of merchants, bankers including those relating to mercantile documents, disputes arising out of export or import of merchandise or services, issues relating to admiralty and maritime law, carriage of goods, transaction relating to aircraft, franchising

¹ <http://www.ndtv.com/india-news/more-than-3-crore-court-cases-pending-across-country-709595>

² <http://countrymeters.info/en/India>

agreement, distributions in licensing agreement, shareholders agreements, partnership agreements, joint venture agreements etc. The definition is clearly exhaustive in nature and tends to cover a wide variety of plausible business transactions.

- Section 2(i) of the Act defines ‘specified value’, which is the value of the subject matter in respect of a suit as determined in accordance with Section 12 of the Act and which shall not be less than Rs. 1 Crore or such higher value as may be notified by the Central Government.
- Section 3 of the Act provides for constitution of Commercial Courts, Commercial Divisions and Commercial Appellate Divisions. As per the provisions of Section 3(1) of the Act, the State Governments after consultation with the concerned High Court by notification constitute Commercial Courts at District level. Section 3(3) of the Act further provides that the State Government with the concurrence of the Chief Justice of the High Court appoint one or more person having experience in commercial disputes to be the judge or judges of a Commercial Court from amongst the cadre of Higher Judicial Service in the State.
- The Proviso to Section 3(1) provides that no Commercial Court shall be constituted for the territory over which the High Court has Ordinary Original Civil Jurisdiction. It is pertinent to note that the High Courts of Delhi, Mumbai, Chennai and Kolkata exercise Ordinary Original Civil Jurisdiction and therefore, for the said States, in terms of the provisions of Section 4(1) of the Act, the Chief Justice of the said High Court may by an order constitute a Commercial Division having one or more Benches consisting of a Single Judge for the purpose of exercising the jurisdiction and powers conferred on it under the Act.
- Section 5(1) of the Act provides that after issuance of notification under Sub-Section (1) of Section 3 or order under Sub-Section (1) of Section 4, the Chief Justice of the High Court by an order constitute a Commercial Appellate Division having one or more Division Benches for exercising the jurisdiction and powers conferred under the Act.
- Section 8 of the Act provides that no civil revision application or Petition shall be entertained against any interlocutory order of a Commercial Court including an order on the issue of jurisdiction, subject to the provisions of Section 13 of the Act and any challenge to such orders shall be raised only in an Appeal against the decree of the Commercial Court.

Clearly, the aforesaid provision has been put in place to ensure that no delay can be caused by any party by challenging interlocutory orders, which at times causes significant delay in the final adjudication of the

dispute as parties are able to obtain interim relief(s) in such challenges, which directly affect the final adjudication of the dispute.

- Section 10(1) and (2) of the Act provides that where the subject matter of an arbitration is a Commercial Dispute of a specified value then for all applications or appeals arising out of such arbitration (international commercial arbitration or otherwise) under the provisions of the Arbitration and Conciliation Act, 1996 shall be heard and disposed off by the Commercial Appellate Division of the said High Court.
- Section 11 of the Act provides for bar of jurisdiction of Commercial Court and Commercial Divisions and provides that they shall not entertain or decide any suit, application or proceeding relating to any commercial dispute in respect of which jurisdiction of the Civil Court is either expressly or impliedly barred under any other law for the time being in force.
- Section 13 of the Act provides for an Appeal and the Proviso to the said Section provides that Appeal shall lie from orders passed by Commercial Division or a Commercial Court as enumerated under Order XLIII of the Code of Civil Procedure, 1908 ('CPC') as amended by the Act and Section 37 of the Arbitration and Conciliation Act, 1996. The Commercial Appellate Division shall endeavour to dispose off Appeals within a period of 6 months from the date of filing of such Appeal.
- The provisions of Section 15 of the Act deal with the transfer of pending Suits and the Proviso to Sub Section (2) of Section 15 of the Act clearly provides that no Suit or Application wherein the final judgment has been reserved by the Court prior to the constitution of the Commercial Division or the Commercial Court shall be transferred.
- Sub-Section (5) of Section 15 of the Act provides that where a Suit or Application is not transferred in terms of the provisions of Section 15 of the Act, then in such an eventuality the Commercial Appellate Division of the High Court on an Application by any of the parties to the Suit may withdraw such Suit or Application from the Court before which it is pending and transfer the same for trial or disposal to the Commercial Division or Commercial Court.
- Sub-section 1 of Section 16 of the Act provides for amendment to the provisions to CPC, in their application to any suit in respect of a commercial dispute of a specified value.
- Section 22(1) of the Act gives the Central Government power to remove difficulty.

IMPORTANT AMENDMENTS TO CPC AND PROJECTED TIMELINE OF LITIGATION

Proceedings	Timeline	Amendment to Code of Civil Procedure, 1908
Suit/ Plaint	Plaintiff may seek leave to file additional documents within 30 days of filing the Suit	Order XI(4)
Written Statement/ Counter-Claim	To be filed within 30 days and not later than 120 days from the date of service of summons.	Proviso to Order V Rule 1
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)	Order XI(3)(1)
Statement of Admission / Denial of Documents	To be completed within 15 days of completion of inspection or any later date fixed by the Court.	Order XI(4)(1)
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.	Order XV-A
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	Order XVA(3)
Written arguments	Party to submit written arguments 4 weeks prior to commencing oral arguments	Order XVIII (Substitution in Rule 2 for Sub-Rules (3A) to (3F))
Judgment	Commercial Court, Commercial Division or Commercial Appellate Division shall within 90 days of conclusion of arguments pronounce judgment	Order XX (Substitution for Rule 1)

SALIENT FEATURES

- Creation of a specialized forum for disposal of commercial disputes of a specified value.
- Suitable amendments to the provisions of CPC providing timelines for completion of various processes thereby ensuring that the whole process of adjudication is time bound.
- In terms of the amended provisions of Section 35(2) of CPC as a general rule the unsuccessful party will be ordered to pay costs to the successful party and in case the court seeks to deviate from the general rule than it has to record the reasons for the same in writing.
- Written Statement has to be filed within a period of 30 days and can be extended by the court to a maximum of 120 days from the date of service of the summons.
- The provisions regarding making denial of submissions in the Written Statement have been made more stringent by inserting rule 3A to the provisions of Order VIII Rule 3 of the CPC.
- Stringent provisions pertaining to disclosure, discovery and inspection of documents in suits before commercial division of a High Court or a commercial court (Order XI CPC) introduced in order to ensure that all documents in the power, possession, control or custody of the parties is filed along with the Plaint/Written Statement respectively with specific provisions disallowing the Plaintiff/Defendant from relying on documents which were in their power, possession, control and custody but not disclosed along with the Plaint/Written Statement or within the extended period provided with the leave of the court.
- Inspection of documents (Order XI Rule 3(1)) disclosed by the parties to be completed within 30 days of filing the Written Statement to the Counter Claim whichever is later. The court may extend this time limit by a maximum of 30 days but not beyond.
- Each party to submit a statement of admission or denial of documents within 15 days of completion of inspection or any later date as fixed by the court (Order XI Rule 4(1)).
- Provisions of Order VIII Rule 1, Order VII Rule 14 and Order VIII Rule 1A CPC shall not apply to suits or application before commercial divisions of High Court or commercial courts.
- The court may decide a claim without recording oral evidence (Order VIII – A Rule 1(1)).

- A party may apply for summary judgment at any time after the summons has been served upon the Defendant taking into account the amendment made to Order XIII-A Rule 2 CPC.
- Amendment to CPC to bring in fresh procedure for dispute resolution by holding management hearings.
- Courts to hold first case management hearing not later than 4 weeks from date of filing of affidavit of admission or denial by all parties to the suit (Order XV – A Rule 1).
- Courts to ensure that all arguments are closed not later than 6 months from the date of the first case management hearing (Order XV – A Rule 3).
- Recording of evidence to be carried out on a day to day basis until cross examination of all the witnesses is complete (Order XV – A Rule 4).
- Stringent provision to the effect that case management hearing shall not be adjourned for the sole reason that advocate appearing on behalf of a party is not present (Order XV – A Rule 7) subject to application for adjournment of hearing being moved in advance and the court adjourning the matter on such an application upon payment of such cost as the court deems fit.
- Party to file written arguments four weeks prior to commencing oral arguments (Order XVIII Sub-Rule 3A).
- Commercial Court, Commercial Division or Commercial Appellate Division shall within 90 days of conclusion of arguments pronounce judgment (Order XX (Substitution for Rule 1)).
- Provisions of Section 8 of the Act provide that no Civil Revision Application or Petition shall be entertained against any interlocutory order passed by the commercial court including an order on the issue of jurisdiction and any such challenge shall be raised only in an appeal against the decree of the commercial court.
- An appeal against any decision of the commercial court or commercial division is to be filed before the Commercial Appellate Division of the High Court within 60 days from the date of judgment of order.
- The Commercial Appellate Division shall endeavour to dispose of the appeals filed before it within a period of 6 months from the date of filing of such an appeal.
- No suit where the final judgment has been reserved shall be transferred to the commercial court/ commercial division.

CONCLUSION

The Act in question is an effort on behalf of the Government to streamline the process of ease of doing business in this country. An endeavour has been made to provide strict timelines for completion of processes so that the adjudicatory process as a whole is not a protracted affair. Stringent rules have been laid down to ensure that parties do not abuse the process of law and the Act further envisages imposition of cost where the court finds that the claim put forward by any of the party is frivolous and vexatious.

A new procedure for carrying out case management hearings has been introduced by amending the CPC so as to ensure that the process of adjudication is not delayed. The case management hearing would encompass framing of issues, leading of evidence and fixing dates for oral arguments to be advanced by the parties. The court has been especially mandated at the time of fixing dates to ensure that the arguments are closed not later than 6 months from the date of the case management hearing.

It may however, be noted that previously also efforts were made to amend the CPC to streamline various processes and ensure that the whole process of adjudication was completed in a time bound manner. Vide Act 22 of 2002, the provisions of limitation were introduced to Rule 1 of Order VIII of CPC. The said provision provided for the Defendant to file its Written Statement within 30 days from the date of service of summons which could be extended by the Court to a maximum of 90 days. The Hon'ble Supreme Court in the matter of *Kailash Vs. Nankhu & Ors.*³ had the occasion to consider whether the time limit contained in the said provision should be construed as directory and not mandatory. The Hon'ble Supreme Court finally held that the provisions of Order VIII Rule 1 of CPC being in the domain of procedural law are held to be directory and not mandatory.³

The Act in question has made amendments which are primarily in the domain of procedural law and therefore, it is still to be seen as to how far the said law would be effective and what far reaching consequence would it have on giving a fillip to the business environment prevailing in the country. It may also be noted that the bill to the said effect was introduced in the counsel of states and thereafter referred to a parliamentary standing committee. The Act as can be seen from the preceding paragraphs has brought major amendments to the CPC and creates a new forum for adjudication of commercial disputes.

³ [Kailash Vs. Nankhu & Ors., cited at 2005 \(4\) SCC 480](#)