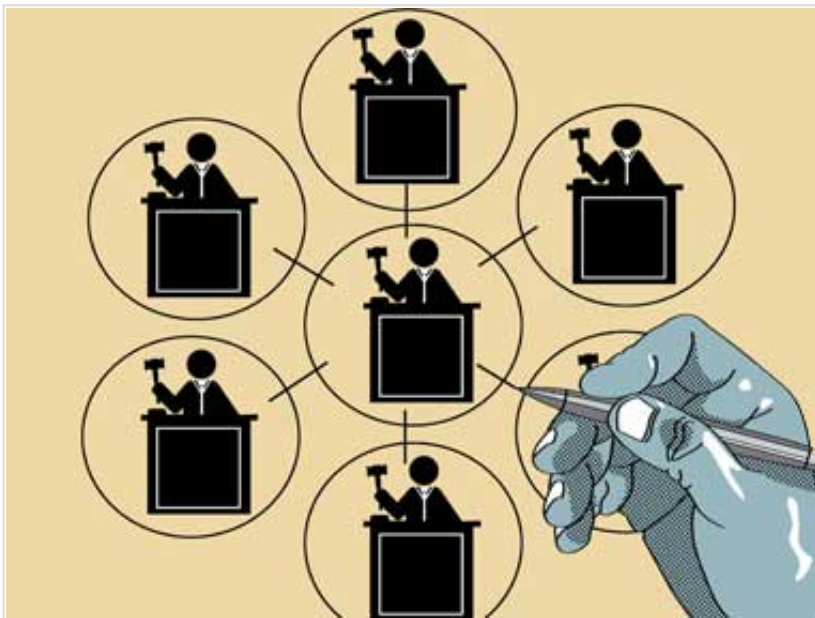


Business Standard

Making commercial courts work

Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, sets the stage for creation of new commercial courts in the country. However, states hold the key to

N Sundaresha Subramanian January 10, 2016 Last Updated at 21:25 IST



The success of the new commercial courts system that seeks to expedite settlement of commercial disputes and improve ease of doing business is critically dependent on how well the states respond to the need for setting up new courts and divisions. The financial threshold, which some litigants feel is too low for such cases, and a wide range of issues that are brought under their ambit could also pose challenges, say stakeholders.

The framework for these courts has been laid down under the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, which was passed by Parliament in

the winter session. The President gave his nod to the Act early this month. The law creates commercial courts at the district level to deal with commercial disputes. These courts would be equivalent to the district courts and serve as the courts of original jurisdiction for all commercial disputes. For the high courts of Bombay, Delhi, Calcutta, Himachal and Madras, which are vested with original jurisdiction for commercial disputes over a certain value, the new law contemplates the setting up of a special commercial division to exercise such jurisdiction. "This has the effect of streamlining the dispute resolution process as well as cutting down the time for which a dispute may be pending in the system," a recent note by Cyril Amarchand Mangaldas said.

The magnitude of the problem

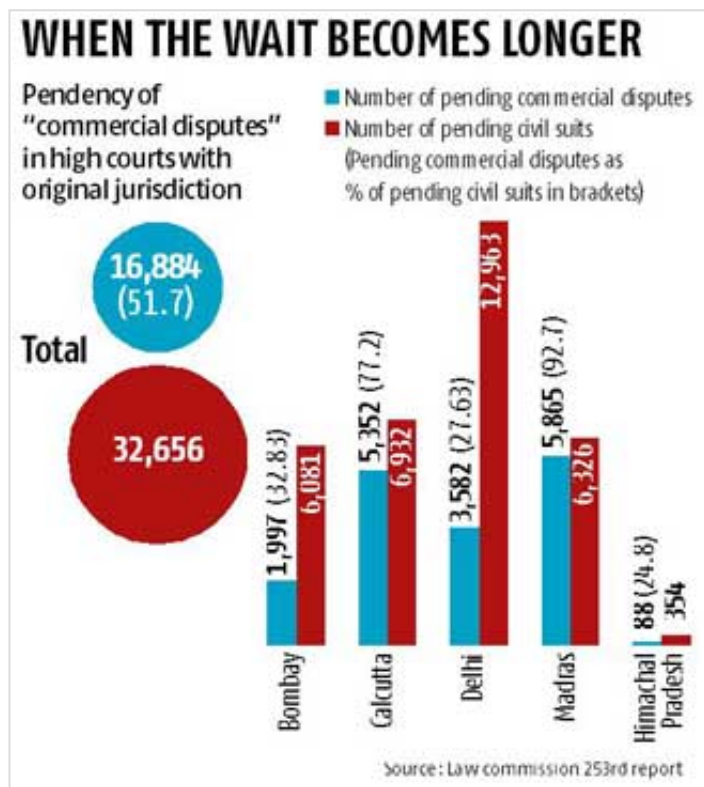
The 253rd report of the Law Commission submitted in January last year lays down the magnitude of the task before the courts. "Of the total of 32,656 civil suits pending in the five High Courts with original jurisdiction in India, we find that a little more than half (16,884) or 51.7 per cent of them are commercial disputes," the report said, adding that this figure would have been far higher if not for the 35,072 suits that were transferred out of the Bombay High Court in 2012 when the pecuniary jurisdiction of the high court was raised to Rs 1 crore and above.

The commission observed that "the above data makes it evident that most high courts are still grappling

with the issue of high pendency of cases on the original side, including writ petitions, arbitration cases etc, and have not been able to reduce the pendency in the last decade. Rather than increasing the burden of the courts, the focus should be on reducing the number of cases by increasing the pecuniary jurisdictional threshold of civil suits in such high courts."

The commercial courts Act has fixed a pecuniary threshold of Rs 1 crore. According to the Law Commission report, this limit, which was as low as Rs 50,000 earlier, alone would reduce the pendency in the five high courts of original jurisdiction namely Bombay, Delhi, Calcutta, Madras and Himachal Pradesh from around 17,000 cases to about 4,200 cases.

Rajneesh Chopra, managing partner, C&C Associates, which counts cricketer MS Dhoni among its clients, said, "Implementation will remain a challenge, as right amount of infrastructure will be required to back up the intent and to ensure that the timelines as provided for are adhered to. This is paramount in making the law effective, and not letting it follow the patterns of other such attempts."



Where will the money come from?

Though the statute itself does not provide for any specific financial allocation for setting up of these courts, it puts the onus on the state governments. "The state government shall provide necessary infrastructure to facilitate the working of a commercial court or a commercial division of a high court. The state government may, in consultation with the high court, establish necessary facilities providing for training of Judges who may be appointed to the commercial court, commercial division or the commercial appellate division in a high court," the Commercial Court Act, 2015 said.

Ashish Kabra of Nishith Desai Associates, a Mumbai-based law firm, said, "It is expected that the commercial courts will have facilities as contemplated under the Phase-II of the eCourts project, which has been approved by the Supreme Court of India." The government recently approved

implementation of Phase-II of the eCourts project with a budget estimate of Rs 1,670 crore, and a four-year time frame, he added.

The Delhi High Court was the first off the blocks designating four of its benches as commercial division in March, based on the Law Commission recommendations in January 2015. It added two more benches to the division in November, soon after the Centre passed the commercial courts Ordinance in October. Lawyers feel that considering that 11 states have the same political party in power as the Centre, the passage of the law would be an opportunity for states to demonstrate their willingness to add to ease of doing business in the region. These states are likely to soon constitute such commercial courts in the region.

"The High Court of Bombay has also designated judges for the divisions. The other high courts with original jurisdiction such as, Madras-Chennai, Calcutta-Kolkata are also expected to follow soon. For other states, given the recent competition to attract business, constitution of commercial courts should be

of high priority," Kabra said.

Other practical issues

Riaz Thingna, partner, Walter Chandiok & Co LLP, feels even the pecuniary threshold of Rs 1 crore is too low. "One of the biggest problems could be the threshold Rs 1 crore. This is too small." Thingna said this limit could mean that there would still be too many cases for the commercial courts to handle. The number of cases could drop to around 1,600 if the threshold was raised to Rs 5 crore. Even this might take years to clear. "If not Rs 50 crore, it should be at least Rs 20-25 crore so that the bigger cases get quicker decisions," says Thingna.

Secondly, the huge coverage area, "it covers just about everything", could be an issue, according to Thingna. The law lists some 20 areas ranging from carriage of goods to intellectual property rights that could produce 'commercial disputes' that come under the ambit of commercial courts besides adding a residual clause, which says "any other disputes so notified by the Central government."

There could also be teething issues for various stakeholders. Kabra of Nishith Desai said, "A key challenge is acceptance and adoption of the new regime and global practices introduced by all the stakeholders including the judiciary and lawyers. As there are new processes and cost regime being introduced, it is crucial that all stakeholders quickly understand and implement the law, in letter and spirit."