

# Dispute Resolution Hotline

January 04, 2010

## SPEEDY DISPOSAL OF COMMERCIAL DISPUTES - SOON A REALITY IN INDIA

Pursuant to the 188<sup>th</sup> Report of the Law Commission of India, 2003(“**Report**”),<sup>1</sup> recently, the *Commercial Division of High Courts Bill, 2009* (“**Bill**”)<sup>2</sup> was passed by the Lok Sabha on December 18, 2009 and has been referred to a select committee for further discussions by the Rajya Sabha. The main object of the Bill is to provide for the establishment of dedicated divisions called the Commercial Division<sup>3</sup> in each High Court of India, for the purpose of speedy disposal of commercial disputes valued at not less than INR 5,00,00,000 (Rupees Fifty millions) or such higher amount as the Central Government may notify in consultation with the concerned State Government (“**Specified Value**”)<sup>4</sup>.

### BACKGROUND

The suggestion for the constitution of hi-tech fast-track commercial divisions in High Courts in India was first proposed by the Report, which aimed at addressing two major issues. Firstly, though the radical changes in the policies of the Government since 1991 for liberalization promoted privatization, globalization and foreign investment, it also gave rise to a number of commercial disputes involving high stakes in India. This fortified the need to establish a speedy, cost effective and efficient dispute resolution mechanism. Secondly, this step was also necessary to oppose and counter the recent practice of some foreign Commercial Courts assuming jurisdiction in commercial disputes even where no cause of action arose in those countries. These courts cited *forum non-conveniens* as the reason owing to the dilatory process in India where the courts sometimes take upto twenty years or more in deciding the cases.<sup>5</sup>

Salient Features of the Bill

### COMMERCIAL DISPUTE:

Under the Bill, a comprehensive definition of “Commercial Dispute”<sup>6</sup> has been provided which means

*“a dispute arising out of ordinary transactions of merchants, bankers and traders such as those relating to enforcement and interpretation of mercantile documents, export or import of merchandise, affreightment, carriage of goods, franchising, distribution and licensing agreements, maintenance and consultancy agreements, mercantile agency and mercantile usage, partnership, technology development in software, hardware, networks, internet, website and intellectual property such as trademark, copyright, patent, design, domain names and brands and such other commercial disputes which the Central Government may notify”.*

The explanation to the definition clarifies that a dispute, which is inherently commercial, shall not cease to be a Commercial Dispute merely because it also involves an action for recovery of immovable property, for realization of monies out of immovable property given as security or for taking any other action against immovable property.

Further, a dispute will be deemed to be a commercial dispute if the immovable property involved in the dispute is used for trade or any commercial use. Also, an application under section 34 or section 36 or an appeal under section 37 of the Arbitration and Conciliation Act, 1996 shall be deemed to be a commercial dispute if the amount in dispute or claim relates to a Specified Value.

Therefore, the Bill proposes a wide, exhaustive and exclusive definition of Commercial Dispute which encompasses within its scope disputes not only between tradesmen but also relating to commercial property, both immovable and movable including intangible property like patents, copyrights, trademarks, etc. It also empowers the Central Government to add to the list of Commercial Disputes as and when necessary.

### JURISDICTION:

As per the provisions of the Bill, the Commercial Division of the High Court shall exercise its jurisdiction in the following cases:

- suits relating to Commercial Disputes of Specified Value and any execution proceedings arising thereof
- suits, applications, appeals (including appeals from single judge of High Court) or proceedings relating to Commercial Disputes of Specified Value pending in the High Court or the courts subordinate to the High Court and transferred to the Commercial Divisions
- appeals against interim orders passed in suits by subordinate courts to the High Court where the Commercial Dispute is of Specified Value
- applications under Sections 34 and 36 and appeals under Sections 37(1)(a) or (2) of the Arbitration and Conciliation Act, 1996, provided they are of Specified Value.

Further, the Bill also proposes to amend the Arbitration and Conciliation Act, 1996 appropriately to include Commercial Divisions within the definition of Court.<sup>7</sup>

However, Commercial Disputes on which other Courts or Tribunals have exclusive jurisdiction will not go before the Commercial Division.

Procedure:

The manner of determination of the Specified Value in a suit, appeal or application is specified in Section 8 of the Bill which overrides any conflicting provision for valuation under any law for the time being in force. Depending on the subject matter of the suit, appeal or application, for determining the specified value the following shall be taken into account:

- the money sought to be recovered under suit plus interest if any, or
- the market value of the moveable property or immoveable property, or
- the market value of the intangible rights as estimated by the plaintiff, or
- the value of the commercial dispute in the counter-claim

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The suits, appeals or applications arising under the Bill are to be adjudicated upon by the judges of High Court and the procedure to be followed by the Commercial Divisions is the same as specified in the Code of Civil Procedure, 1908 (“**CPC**”), except to the extent otherwise provided under this Bill.<sup>8</sup>

The Bill specifies the documents<sup>9</sup> to be filed along with the plaint and allows the service of summons on the defendant through electronic mail.

Specific timelines for filing of written statement, counter claims and rejoinder have been stipulated to speeden the proceedings. The Commercial Division may also appoint a Commissioner<sup>10</sup> for conducting the cross examination and re-examination of witness and parties. The Bill also empowers a single judge of the Commercial Division to hold case management conferences, fix schedules for finalization of issues, cross-examination of witnesses, filing of written statements and oral submissions, record evidence and appoint Commissioners. All parties must file the written submission before commencement of oral submissions.

The Commercial Division is required to pronounce the judgment within 30 days of the conclusion of the argument. In case of an application arising under Section 34 or 36 and appeals under Section 37(1) (a) and (2) of the Arbitration and Conciliation Act, 1996, the Commercial Division would need to make efforts to dispose the matter within one year of serving notice on the opposite party.

Appeals against the order and decree passed by the commercial division are to lie before the Supreme Court.

## ANALYSIS

The Bill is undoubtedly a step forward to enable fast and efficient delivery of justice in India and has manifold advantages. This Bill seeks to bring in uniformity across the country with regard to Commercial Disputes of a Specified Value as such disputes would be dealt with by the Commercial Divisions of High Courts. This will help reduce the burden on the District Courts and facilitate the speedy disposal of cases in India.

The structure of the Bill is set out in a manner to meet the object of adjudicating Commercial Disputes effectively and efficiently within a time period not exceeding two years as proposed by the Report. A laudable provision in the Bill is that it mandates the plaintiff to file documents like inter alia affidavits containing his as well other witnesses’ statements in examination- in-chief, application for discovery and production of documents and all other material considered necessary by him at the time of filing the plaint itself to quicken the process. Under the normal court procedure, these documents are usually filed at the time of trial and would add to the delay owing to the several adjournments taken by the parties to file the same.

Further the provision of allowing a single judge of the Commercial Division to fix schedules for finalization of issues, cross-examination of witnesses, filing of written statements and oral submissions, record evidence etc. during case management conferences is a radical change introduced by this Bill and will help the object of disposing the matter in an efficient manner within 2 years. Also empowering the same court i.e. the Commercial Divisions with power to execute its own decrees and orders would further hasten the process.

Another positive step is the provision empowering the Commercial Division to appoint a Commissioner with considerable experience to conduct the cross examination and re-examination of parties and witnesses. Delegating the process of cross examination and re-examination will speed up the hearing of the case. The Bill also emphatically mandates the Commercial Divisions to pronounce judgment within 30 days from the conclusion of arguments which gives hope of timely justice to the aggrieved. A direct appeal to the Supreme Court also avoids the long and often perilous appeals procedure under the CPC.

The Bill has derived further impetus from revolution in technology and has allowed the service of summons and issuance of copies of the judgments via email. Currently, under the CPC only foreigners without an agent in India could be served via email. However, for Commercial Disputes, the Bill has broadened the scope and has legalized service of summons through email on any defendant.

Establishment of commercial courts in UK and US (especially London and New York) are undoubtedly some of the most successful and enduring instances of judicial administration and have been applauded by the business community. A step in the same direction by India not only projects its determination to fast track justice but also to meet the demanding world standards. This should fortify the trust of foreign investors in the Indian Judicial system and further encourage foreign investment.

## - Litigation Practice Group

<sup>1</sup> 188th Report of the Law Commission of India, 2003, “*Proposals for Constitution of Hi-Tech Fast – Track Commercial Divisions in High Courts*”[http://lawcommissionofindia.nic.in/reports/188th report.pdf](http://lawcommissionofindia.nic.in/reports/188th%20report.pdf).

<sup>2</sup><http://www.prsindia.org/uploads/media/Division%20High%20Courts/The%20Commercial%20Division%20of%20High%20Courts%20Bill%202009.pdf>

<sup>3</sup> Section 2(1) (b) of the Bill.

<sup>4</sup> Section 2(1) (e) read with Section 7 of the Bill.

<sup>5</sup> *Supra n. 1*, Chapter II at p. 10.

<sup>6</sup> Section 2 (1) (a) of the Bill.

<sup>7</sup> Section 19 of the Bill.

<sup>8</sup> Section 9 of the Bill.

<sup>9</sup> Section 9 (2) (a) states that-

“*the plaintiff shall file along with the plaint,—*

*(i) the documents on which he sues or relies;*

*(ii) as many copies of the plaint and documents referred to in this clause as to the number of defendants;*

*(iii) an affidavit containing his statement in examination-in-chief;*

*(iv) affidavits containing statements of other witness in examination- in-chief;*

*(v) brief issues that are likely to arise;*

*(vi) list of interrogatories, if any;*

*(vii) application for discovery and production of documents, if any, maintaining their relevancy;*

*(viii) such other material as the plaintiff may consider necessary;*

*(ix) full address, including e-mail, fax and telephone number of all the claimants and defendants to the extent known to the plaintiff;*

<sup>10</sup> Section 9 (3) of the Bill states that-

*"For the purposes of recording of statement in cross-examination and re-examination of parties and witnesses, the Commercial Division may appoint an advocate of not less than twenty years standing at Bar or a Judicial Officer not below the rank of Senior Civil Judge as Commissioner.*

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