



Will India Get Its Commercial Courts?

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The judicial system of the state is the eventual and ultimate security that any foreign or domestic investor has to protect its investment. The Indian judicial setup, however, has failed to provide such protection on account of the courts being overburdened with the heavy case load causing inordinate delays in the resolution of disputes. As on March 31, 2014, more than 3 million civil cases were pending in the High Courts. Excessive delays have also, to an extent, allowed

the defaulting party to remain defiant, lowering the possibility of a settlement between the parties. In fact, such delays have caused the Indian proceedings to be classified as a fight for an interim order. Another adverse implication of such delay is seen from the case of White Industries. Here the Tribunal ruled that the delay in the Indian Courts constituted a breach of India's obligation under investment treaty to provide effective means of asserting claims.

Thus, there has been a long standing demand for specifically designed courts, to quickly resolve commercial disputes, and which adopt the best practices and latest technologies available across the globe. It now appears that the Modi led government may soon offer such solution.

The Hon'ble Finance Minister during his budget speech had specifically mentioned of establishment of commercial courts in India. Now in a press release issued on April 22, 2015, it has been stated that the Union Cabinet has approved the introduction of the Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015 ("Bill") in the current session of the Parliament. The Bill as provided under the 253rd Report by the Law Commission of India provides for setting up of commercial divisions in High Courts which exercise original jurisdiction and commercial courts for dealing with commercial disputes in an effective and expeditious manner.

Salient Features of the Proposed Commercial Divisions and Commercial Courts:

Jurisdiction of Commercial Courts: The proposed commercial courts would deal with commercial disputes above the value of Rs. 1,00,00,000/- (approximately USD 150,000). Commercial disputes would include disputes arising out of a very wide range of activities including trade, investment and intellectual property.

Infrastructure facilities: It is envisaged that the commercial courts will have leading technologies available in the court room for expedited disposal of cases. The Bill stipulates that the commercial courts will have facilities as contemplated under the phase II of the e-Courts project which has been approved by the Supreme Court.

Appellate Body: The Bill provides for the constitution of a Commercial Appellate Division in the High Courts to hear appeals from the Commercial Courts and commercial divisions of the High Courts. Furthermore, the Bill prescribes that appeals and more significantly writ petitions against the orders of the Securities Appellate Tribunal, Company Law Board,

Competition Appellate Tribunal, Intellectual Property Appellate Board, Debt Recovery Appellate Tribunal and Telecom Disputes Settlement & Appellate Tribunal are to be heard by the Commercial Appellate Division. The Bill envisions that such appeals or writs would be disposed off within a period of six months from filing.

Costs: Across the globe, costs are awarded as a norm in favour of the successful party. Such practice has dissuaded litigants from putting forth unfounded claims or defenses, lest they be required to bear the costs. However, non-imposition of such costs on the unsuccessful party has allowed litigation proceedings in India to be initiated, continued and/or delayed by a litigant. The Bill now suggests that costs should mandatorily follow the event and an unsuccessful party should normally be ordered to pay up the costs. While there are several important parameters for the court to take into consideration while awarding costs, one of the key parameters is an unreasonable refusal of a reasonable offer made by a party.

Strict Timelines: The bill provides for strict timelines to be adhered to by the parties through the course of the proceedings. In fact the Bill prescribes that post 120 days from the date of service of summons from the Court, the party forfeits its right to file a written statement. The court is specifically prohibited from extending the period further. There are other prescribed timelines as well such as a period of six month from the date of the first case management hearing for completion of trial.

The Bill clearly provides for a major overhaul of the Indian judicial setup and is a commendable piece of legislation. It would surely provide a fillip to the sentiments of both foreign and domestic enterprises that are clearly weary of the current environment. However, this is not the first time that such bill was introduced in the parliament. On December 18, 2009, the Commercial Division of High Courts Bill, 2009 was approved by the Lok Sabha. The bill though did not receive the approval from the Rajya Sabha and subsequently lapsed. The Modi led government though has brought forth an opportunity to bring about seminal reforms which the earlier fragmented government did not offer.

A perennial issue now clearly identified with the Indian judiciary is the lack of judges. The opposition previously faced by the Bill was on this account itself. The earlier Bill contemplated commercial divisions being constituted in each High Court, thus raising concern about judges being assigned to such commercial divisions at the cost of litigants having disputes which are not commercial in nature.

However, the Law Commission has in its 253rd Report discussed and addressed the said problem. Certain changes have also been made in the structure of Commercial Courts such as now a person qualified to be appointed as a District Judge with demonstrable expertise and experience in Commercial Disputes could be appointed as a Commercial Court judge. Therefore, such concerns should no longer impede the passage of this Bill into law. Further, as identified in the 253rd Report of the Law Commission, more than 50% of the civil suits pending in the five High Courts having original jurisdiction in India are in the nature of commercial disputes. In such circumstances constitution of separate commercial divisions in the High Courts with original jurisdiction is in fact an urgent requirement. Internationally, in New York, Singapore, U.K. and other jurisdictions, the constitution of commercial courts has observed to have assisted the growth of trade and commerce and has been a highly successful exercise.

It is also to be understood that the Law Commission has not merely proposed constitution of separate courts and divisions in the High Courts, but has also suggested numerous procedural changes in the conduct of litigation. These changes are focused at bringing a seminal change in the litigation culture and significantly reducing the time lapse in conduct of the litigation. The alteration to the costs regime would also reduce the number of vexatious and frivolous litigations. Thus, the problem of pendency of cases would only be assisted by implementation of this Bill. It is hence imperative that the present government and the parliament work towards an early enactment and notification of this Bill.