

Dispute Resolution Hotline

January 04, 2010

SPEEDY DISPOSAL OF COMMERCIAL DISPUTES - SOON A REALITY IN INDIA

Pursuant to the 188th Report of the Law Commission of India, 2003(“**Report**”),¹ recently, the *Commercial Division of High Courts Bill, 2009* (“**Bill**”)² 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 Division³ 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**”)⁴.

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.⁵

Salient Features of the Bill

COMMERCIAL DISPUTE:

Under the Bill, a comprehensive definition of “Commercial Dispute”⁶ 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:

1. suits relating to Commercial Disputes of Specified Value and any execution proceedings arising thereof
2. 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
3. appeals against interim orders passed in suits by subordinate courts to the High Court where the Commercial Dispute is of Specified Value
4. 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.⁷

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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"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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