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The Commercial Courts Act, 2015 in India: A thorough Examination of its Role in Enhancing the Efficiency of Commercial Dispute Resolution

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ABSTRACT

This paper conducts an in-depth analysis of the Commercial Courts Act, 2015 in India, with a specific focus on its pivotal role in augmenting the efficiency of commercial dispute resolution. The examination encompasses a thorough review of the Act's key provisions, procedural mechanisms, and the broader legal landscape in which it operates. Through a critical lens, the paper explores the Act's impact on expediting the resolution of commercial disputes, fostering a conducive environment for business, and enhancing overall judicial efficacy. The study combines legal analysis, empirical evidence, and case studies to provide a comprehensive understanding of the Act's implications on the commercial litigation landscape in India. This exploration serves as a valuable resource for legal practitioners, policymakers, and scholars interested in the evolution and effectiveness of commercial dispute resolution mechanisms.

Keywords: *Commercial Courts, Commercial Disputes, Division bench of High Court, Pre-Institution mediation and urgent relief.*

I. INTRODUCTION

The Commercial Courts Act was enacted on October 23, 2015, this enactment was made to fast-track commercial dispute resolution before this act commercial disputes were instituted as regular suits which would often take a very long haul to resolve these disputes. Due to this often many foreign and domestic investors did not consider investing in the Indian markets. To make the Indian markets more lucrative for foreign and domestic investors to improve the business environment in India. this act has played a very crucial role in fast-tracking commercial dispute resolution further, and this has also helped Investors rebuild their confidence in the Indian markets.

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II. HISTORICAL CONTEXT & DEVELOPMENT OF THE COMMERCIAL COURTS

(A) The Imperial Era

During the Imperial rule, the commercial disputes were catered to by the H.C. situated in the presidency towns of Madras, Bombay and Calcutta. These courts had special jurisdiction to handle specific commercial suits. These Imperial courts were based on the principles of English legal systems and procedures. However, the jurisdiction of these courts was quite limited as most of the country at that period did not fall under Imperial rule. These courts were usually burdened with disputes often leading to delays in commercial dispute resolution, in 1775 the imperial rule tried to establish separate commercial courts in Calcutta, but these remained unaddressed². The Law Commission 188th report proposed the establishment of specialized expedited courts outfitted with advanced procedural frameworks to adjudicate commercial disputes characterized by significant financial consequences.

Establishing commercial courts in India has been a topic of ongoing discussion.

(B) 188TH Law Commission's Report

the Law Commission in 2003, on its initiative, addressed the matter of suggesting instituting the Commercial Divisions within the H.C. The Law Commission was in view that due to inordinate delays; the judicial system had collapsed. There was a dire need to make sure that there was a fast disposal system for high-value commercial suits in our country.

The Law Commission conducted a thorough and detailed examination of the commercial courts established in both the UK and the USA, Singapore, and Ireland. Law Commission in its report denoted that it's been almost 100 years since the establishment of commercial courts in the UK which enormously contributed to the growth and commerce in London. In the year 1993, the United States also constituted their commercial courts for fast-track dispute resolution of the commercial courts.³

A subsequent milestone was achieved with the introduction of the 'Commercial Division of High Courts Bill, 2009'. This pivotal bill not only delineated the pecuniary jurisdiction, setting it at Rs. 5,00,00,000 but also proposed a retrospective application of the governing law. This proposition aimed to streamline the resolution of commercial disputes by mandating the transfer of all pending cases to the newly established Commercial Courts.⁴ Consequently, this bill

² Century Law Firm, <https://www.centurylawfirm.in/blog/commercial-courts-act-2015-ultimate-guide-for-businesses-legal-professionals/>, (Jan. 29, 12:15 AM)

³ Law Commission of India, *Need for fast-track, high-tech Commercial Courts in India, Report No. 188 (2003)*, at 20 - 59 (hereinafter "*Law Commission of India, 188th Report*").

⁴ Law Commission of India, *The Commercial Division and Commercial Appellate Division of High Courts and*

assumed precedence over the Civil Procedure Code in instances of conflict.

Furthermore, a significant feature of this bill was its provision allowing any decree or order issued by the Commercial Division to be appealable within the jurisdiction of the Supreme Court,⁵ thus expediting the appellate process for commercial matters. Despite these commendable attributes, the bill encountered hurdles in securing approval from the Rajya Sabha, ultimately leading to its impasse.

However, the recent report issued by the Law Commission has injected fresh momentum into this initiative, hinting at a potential revival and reinvigoration of efforts to establish Commercial Courts.

(C) Law Commission's 253rd Report

The 253rd Law Commission Report was issued on January 29, 2015, by the 20th Law Commission, which was chaired by Justice A.P. Shah. The proposal in this study intended to establish Commercial Courts in India. Additionally, the bill known as 'The Business Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015' (henceforth referred to as the 2015 law) has been suggested to be introduced. This legislation aims to establish these specialized courts to handle specific commercial disputes.⁶

This bill's primary objective is to deal with the huge number of cases that currently exist across courts around the nation at present. The primary objective is to quickly settle these issues with the goal of lowering the backlog. According to the research, the bill's implementation can help the nation's economy improve by resolving important cases. By concentrating on issues regarding mercantile contracts, collaboration, intellectual property rights, partnership agreements, insurance, and other associated subjects, these specializing courts will broaden the realm of civil disputes while offering a specialized forum for resolving conflicts with particular categories.

Additionally, the bill aims to handle high-profile cases and those surpassing certain pecuniary thresholds. The expedited resolution of these cases is deemed beneficial for the country's

Commercial Courts Bill, 2015 (Law Com No 20, 2015) 66 http://lawcommissionofindia.nic.in/reports/Report_No.253_Commercial_Division_and_Commercial_Appellate_Division_of_High_Courts_and__Commercial_Courts_Bill._2015.pdf, (Feb 29, 2024, 11:05 AM)

⁵ Law Commission of India, *The Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015* (Law Com No 20, 2015) 68-69 <http://lawcommissionofindia.nic.in/reports/Report_No.253_Commercial_Division_and_Commercial_Appellate_Division_of_High_Courts_and__Commercial_Courts_Bill._2015.pdf, (Feb. 29, 2024, 11:05 AM)

⁶ Law Commission of India, *The Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015* (Law Com No 20, 2015), (Feb. 28, 2024, 12:10 PM), http://lawcommissionofindia.nic.in/reports/Report_No.253_Commercial_Division_and_Commercial_Appellate_Division_of_High_Courts_and__Commercial_Courts_Bill._2015.pdf

economic advancement.

III. WHAT FALLS UNDER THE CATEGORY OF COMMERCIAL DISPUTES?

A commercial Dispute refers to a dispute which arises within the context of business or commercial transactions. These disputes can encompass various issues related to commercial relationships and often stem from differences regarding contractual obligations, financial transactions, business agreements, or other aspects of commercial interactions. Examples include conflicts over breached contracts, payment disputes, disagreements among business partners, and disputes related to intellectual property. In essence, a commercial dispute involves the resolution of conflicts that arise within the realm of business dealings.

The Supreme Court in its Judgement denoted “disputes arising from agreements concerning immovable property, only those disputes that stem from immovable property exclusively and actively used in trade or commerce shall be classified as 'commercial disputes'.”⁷.

(A) Types of commercial disputes

1. Disputes arising between two business Entities or organisations due to a mere breach of contract or any other contractual issues may lead to disagreement between the Parties.
2. IPR infringements or land disputes between two business entities can also be covered under the purview of the commercial dispute. Still, the said land under dispute must be for commercial use only.
3. Matters related to unfair trade practices could also be covered.

The “Commercial Disputes” are defined in the Sec-2 (C) of The Commercial Court Act 2015

- (i) Regular transactions conducted by merchants, bankers, financiers, and traders, Cover matters concerning commercial documents, encompassing both their enforcement and interpretation.
- (ii) Activities involving the export or import of merchandise or services.
- (iii) Matters pertaining to maritime and admiralty law.
- (iv) Deals involving aircraft, aircraft engines, aircraft equipment, and helicopters, encompassing activities like sales, leasing, and financing.
- (v) Issues related to the carriage of goods.

⁷ *Ambalal Sarabhai Enterprises Ltd. v. K.S. Infraspace LLP*, (2020) 15 SCC 585.

- (vi) Agreements linked with construction and infrastructure projects, including tender processes.
- (vii) Agreements concerning immovable property exclusively utilized in trade or commerce.
- (viii) Contracts involving franchising.
- (ix) Contracts concerning the distribution and licensing of arrangements.
- (x) Agreements about management and consultancy services.
- (xi) Contracts related to joint ventures.
- (xii) Agreements governing shareholders' relationships.

IV. OVERVIEW OF THE ACT

The Act creates the foundation for the establishment of business Divisions, Commercial Appellate Courts, and Commercial Courts in the H.C. for the purpose of resolving business disputes involving a minimum value of Rs. 1 Cr., which has been further decreased to Rs. 1 lakh after the Ordinance. Regarding the High Court with Ordinary Civil Jurisdiction, the State Government is responsible for establishing the Commercial courts at the state level. To exercise jurisdiction under the Act, the Chief Justice must establish a Commercial Division, which may be composed of one or more Benches headed by a Single Judge. In order to use the power and abilities provided by Act, the Chief Justice must also create Commercial Appellate Divisions, each of which must have one or more Division Benches.⁸

(A) Composition of the Commercial Courts In India

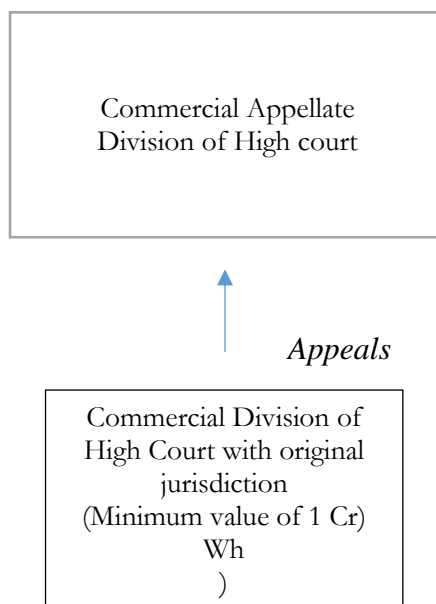
The law also created Commercial Divisions and Commercial Appellate Divisions in High Courts, as well as district-level Commercial Courts in places where they had original jurisdiction, such as Delhi, Kolkata, Mumbai, Madras, and Himachal Pradesh. The district judge is in charge of the Commercial Court in areas where the High Court lacks original jurisdiction, and district courts form Commercial Appellate Courts. Furthermore, District-level establishments comprise Commercial Courts. The Commercial Appellate Divisions of High Courts review appeals from Commercial Courts at the district level as well as Commercial Appellate Courts. The business Courts, Divisions, and Appellate Divisions' monetary jurisdiction is set by the state government; the supplementary 2018 regulation stipulates a

⁸ Ajit Warrier, *The Commercial Courts Act, 2015: Bridging the gap between Promise and Reality*, Bar and Bench (Jan. 25, 2024, 5:11 PM), <https://www.barandbench.com/columns/commercial-courts-act-promise-reality>

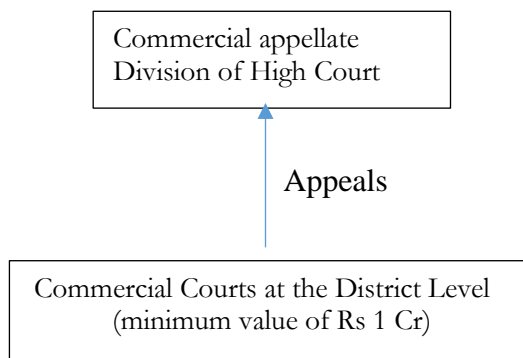
minimum threshold of three lakhs for a "commercial dispute."

Where the High courts have ordinary jurisdiction (2015)

(5 High Court)



Where the High courts do not possess the ordinary civil jurisdiction (2015)



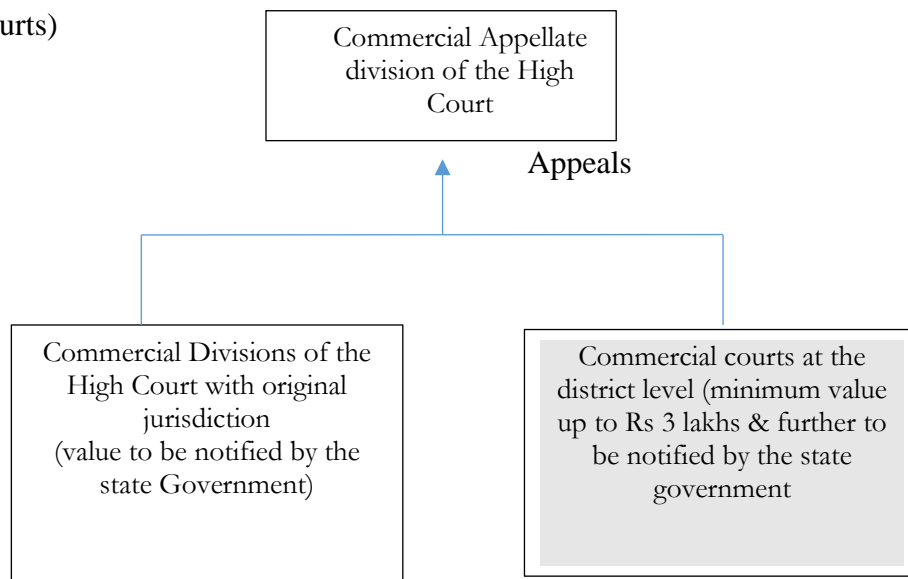
(i) Changes after the 2018 Ordinance

The 2018 law brought about major modifications to the jurisdiction and creation of commercial courts in India. These modifications allowed district-level commercial courts to be established under the jurisdiction of all 24 High Courts. State governments additionally have the authority to determine the monetary jurisdiction of commercial courts in areas under the original jurisdiction of High Courts, provided that the monetary jurisdiction of commercial courts is not greater than that of district courts in those regions and stays below three lakh rupees. Furthermore, where high courts lack original jurisdiction, state legislatures have been given the power to establish commercial courts that have jurisdiction inferior to district courts. Significant changes were made to the jurisdiction and establishment of commercial courts in India by the

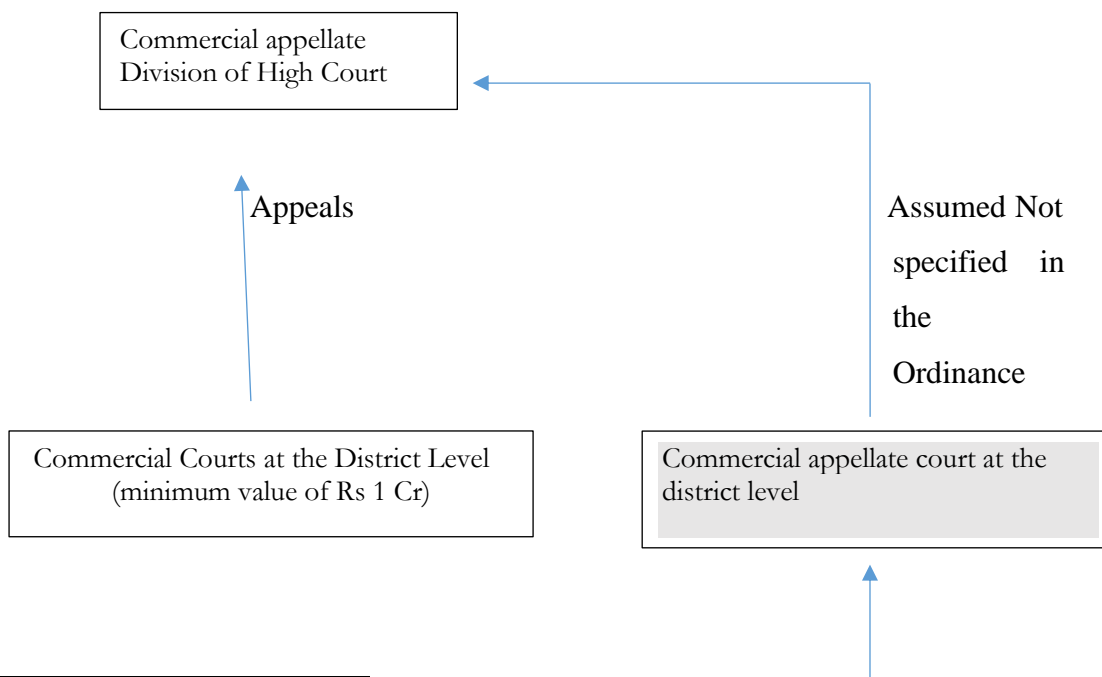
2018 law. These changes made it possible for district-level commercial courts to be created, with all 24 High Courts having authority over them. If the monetary jurisdiction of commercial courts in areas under the original jurisdiction of High Courts is less than three lakh rupees and does not exceed that of district courts in those regions, state governments also have the authority to determine the monetary jurisdiction of commercial courts in those areas. In addition, where high courts do not have original jurisdiction.⁹

Where the High courts have ordinary jurisdiction (after the 2018 Ordinance)

(5 High Courts)



Where High Courts do not have ordinary civil jurisdiction (19 High Courts)



⁹ *The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Bill, 2018* ,(PRS India) , (MAR. 4, 2024, 1:17 PM), <https://prsindia.org/billtrack/the-commercial-courts-commercial-division-and-commercial-appellate-division-of-high-courts-amendment-bill-2018>

Appeals

Commercial courts below the level of a district judge (minimum value of Rs 3 lakh and above)

(B) The procedural journey of the Commercial Courts Act

The proceedings of a commercial lawsuit are regulated by the provisions of the Civil Procedure Code, 1908, as modified by the Commercial Courts Act, 2015. This legislation provides the procedural framework for initiating, managing, and adjudicating commercial disputes in designated Commercial Courts. The Commercial Courts Act introduced specific provisions to expedite commercial litigation, streamline case management procedures, and enhance judicial efficiency in resolving commercial disputes. Through the integration of amendments into the Civil Procedure Code, the Commercial Courts Act seeks to cater to the distinct requirements and intricacies of commercial litigation, while also guaranteeing fairness and swift resolution of disputes.

(C) Initiating a Commercial Suit

The prosecution of commercial cases adheres to the procedures which are outlined in the Civil Procedure Code, 1908,¹⁰ which have been updated and refined by the CCA, 2015. In circumstances where urgent interim relief is deemed necessary, and the pre-institution mediation process is bypassed or unsuccessful, the party initiating the commercial suit must include a Statement of Truth along with their filing. This Statement of Truth serves to affirm the accuracy and authenticity of the claims made in the suit.

Additionally, if the commercial suit involves a claim for interest, the pleadings must provide specific details as prescribed by the relevant provisions. This requirement ensures that all relevant information regarding the claim for interest is accurately and comprehensively presented before the court, facilitating a thorough consideration of the matter at hand.

When a Statement of Truth is required to be incorporated and either the pre-filing mediation procedure has been circumvented or the mediator has reported a failure regarding the filing of a business complaint, an urgent temporary remedy is necessary. By confirming the authenticity and integrity of the accusations mentioned in the lawsuit, the statement facilitates openness and transparency throughout the process of litigation.¹¹

¹⁰ Commercial Court Act 2015, Sec 16, No.4 of 2016, Acts of Parliament 2016 (India)

¹¹ Code of Civil Procedure 1908, Proviso to Sec 26, No.5 of 1908, Acts of Parliament 2016 (India)

If interest is being sought in the Commercial lawsuit, the specific details required by the relevant laws or regulations must be included in the pleadings.¹²

1. Filing the Written Statements

The defendant has a period of one hundred and twenty days from the date the summons was sent out to provide the written statement. The defendant may lose their right to submit the written statement if they violate this deadline. The defendant has one hundred and twenty days from the date the summons was delivered to provide the written statement. The defendant will forfeit their right to file the written statement if they fail to keep up with this deadline.¹³

Mere denials are deemed inadequate. The defendant is required to provide grounds for refuting any of the allegations or pleading that are outlined in the plaint.¹⁴

Any factual accusations in the plaint which is not refuted in the way outlined in Rule 3-A shall be considered to be admitted.¹⁵

2. Disclosure, Discovery and Inspection of Documents

a) Disclosure

The plaintiff must provide the action with an extensive list and copy of any pertinent documents that are in its possession, power, control, or custody, in addition to the plaint.¹⁶

A sworn declaration by the plaintiff confirming that all pertinent records in their possession, authority, control, or custody have been revealed and appended to the plaint is mandatory. The declaration must also state that the plaintiff is in possession of all other documents appropriate for the suit.¹⁷

In addition to the written statement, the party being sued is required to provide a roster and photocopies of any documents relevant to the legal proceeding that are under its control, authority, or custody.¹⁸

The defendant is required to sworn a declaration within the written statement, confirming the disclosure and attachment of all relevant documents within their authority, possession, control, or custody. Additionally, the declaration should assert that the defendant does not possess any

¹² Code of Civil Procedure 1908, Order VII Rule 2-A, No.5 of 1908, Acts of Parliament 1908 (India)

¹³ Code of Civil Procedure 1908, Second proviso to Rule 1 of Order VIII, No.5 of 1908, Acts of Parliament 1908(India)

¹⁴ Code of Civil Procedure 1908 Rule 3-A of Order VII, No.5 of 1908, Acts of Parliament 1908 (India)

¹⁵ Code of Civil Procedure 1908, Second proviso to Rule 5(1) of Order VIII, No.5 of 1908, Acts of Parliament 1908 (India)

¹⁶ Code of Civil Procedure 1908, Rule 1 of Order XI, No.5 of 1908, Acts of Parliament 1908 (India)

¹⁷ Code of Civil Procedure 1908, Rule 3 of Order XI, No.5 of 1908, Acts of Parliament 1908 (India)

¹⁸ Code of Civil Procedure 1908, Rule 7 of Order XI, No.5 of 1908, Acts of Parliament 1908(India)

other documents related to the case.¹⁹

b) Discovery

Either the plaintiff or the defendant may choose to submit written interrogatories to question the other party, subject to the approval of the court. Within seven days after the application is filed, the court must decide on the request for permission to administer interrogatories. The method specified in Order XI Rule 2 of the CPC, 1908 shall be followed in processing the application.

c) Inspection of the Documents

Within 30 days following the filing of the written statement, All the parties must have finished inspecting all revealed documents. If additional time is required, the court may allow an extra thirty days for the extension. The other party may petition the court for an order requiring the provision of such papers for examination if a party refuses to permit scrutiny of such documents. This petition must be evaluated by the court within thirty days of its filing, and if it is approved, the examined papers must be made available to the public within five days of the court's decision. Crucially, without the court's previous approval, a party cannot rely on any document that it omitted to reveal or make accessible for examination.²⁰

3. Admission & Denial of Documents

Each party should provide a declaration stating their acceptance or rejection of all documents revealed and reviewed throughout the proceedings within fifteen days of the document inspection procedure ending.²¹

4. Production of Documents

Any party has the right to issue a notice requesting the production of documents by the opposing party that were not initially disclosed along with their pleadings but are within their control, authority, custody, or possession. Upon receiving such a notice, the other party must either provide the requested documents within a maximum of fifteen days or provide a valid justification for their refusal or inability to do so. Non-compliance with this stipulation could result in the court inferring unfavourably against the party withholding the documents, particularly If the reasons for failing to produce the documents are judged to be inadequate.²²

5. Case Management Hearing

The court must schedule the first case management meeting no later than four weeks after the

¹⁹ Code of Civil Procedure 1908, Rule 9 of Order XI, No.5 of 1908, Acts of Parliament 1908 (India)

²⁰ Code of Civil Procedure 1908, Rule 3 of Order XI, No.5 of 1908, Acts of Parliament 1908 (India)

²¹ Code of Civil Procedure 1908, Rule 4 of Order XI, No.5 of 1908, Acts of Parliament 1908 (India)

²² Code of Civil Procedure 1908, Rule 5 of Order XI, No.5 of 1908, Acts of Parliament 1908 (India)

involved parties to the commercial litigation submit affidavits of admission or denial about relevant documents. The court must issue an Order during this hearing that illustrates numerous procedural factors, including framing the issues, designating witnesses for the parties to cross-examine, identifying witnesses for examination, establishing deadlines for filing affidavits of evidence, recording evidence, cross-examining witnesses, submitting written and oral arguments, and establishing time constraints for participants and their advocates to present oral arguments.

Furthermore, the court must establish the dates in a way that will enable the conclusion of the arguments to occur no later than six months from the date of the first case management hearing. In order to speed up the judicial process, the court is also urged to record verification, including cross-examining of every single witness, on a daily basis.

It is important to note that the court possesses broad powers during a case management hearing to effectively manage the litigation process and ensure its efficient progression.²³

Additional clauses address the recording of testimony and the presenting of arguments.

6. Judgment

The court is required to deliver its judgment within ninety days of the conclusion of arguments²⁴.

7. Costs

Concerning the division of expenses among the parties in commercial lawsuits, the court has broad discretionary power. This power includes figuring out if one party owes another money for costs, estimating how much those costs will be, and setting a deadline for paying those costs. It is vital to acknowledge that these fees are all-inclusive and comprise a range of costs incurred during the legal procedures. These expenses entail a wide range of related charges in addition to direct investment. Among them are the costs associated with summoning witnesses, engaging legal representation, and any other expenditures directly linked to the litigation process. Furthermore, the court has the latitude to consider additional expenses incurred in connection with the proceedings, ensuring that all relevant costs are duly accounted for in its decision. The court's discretionary powers in this regard play a very crucial role in fostering fairness & equity throughout the commercial litigation. By exercising its discretion judiciously, the court can tailor its decisions to the specific circumstances of each case, ensuring that the allocation of costs reflects the principles of justice and proportionality. This approach promotes transparency and accountability while facilitating the efficient resolution of commercial disputes through the legal

²³ Code of Civil Procedure 1908, Order XV-A, No.5 of 1908, Acts of Parliament 1908(India)

²⁴ Code of Civil Procedure 1908, Order XX, No.5 of 1908, Acts of Parliament 1908(India)

system²⁵.

8. Summary Judgment

According to the guidelines outlined in Order XXXVII of the CPC, 1908, a commercial case may be started and began through the process of a summary suit.²⁶

Any party is entitled to summary judgment at any point after the defendant receives service of the summons but before the formal issues in the case are framed in a normal commercial litigation procedure. Summary judgment may be granted by the court against the plaintiff if it determines that the plaintiff has no realistic prospect of winning the case, or against the defendant if it determines that the defendant has no realistic prospect of effectively countering the claim.²⁷ Furthermore, the court, in addition to having the authority to grant or deny the application for summary judgment, exercises discretionary power to partially approve it or issue a conditional order. This conditional order may entail directing the parties to deposit some amount or furnish particular security measures as deemed necessary by the court.²⁸

9. Appeals

The Commercial Court may issue an interlocutory order without requiring a Civil Revision application or petition.²⁹

Any party who finds themselves dissatisfied by a order pronounced by a commercial court is entitled to pursue recourse through the appellate process. This entails filing a suit within a specified timeframe of 2 months or days from the date of the judgment in question. The appeal can be lodged with either the appellate commercial court or the Appellate Division of the Commercial court in the High Court, depending on the jurisdiction & the nature of the case.

Upon filing the appeal, the appellant is typically required to submit a formal document outlining the grounds of appeal and providing relevant legal arguments or authorities to support their case. The appellate court or division will then review the record of proceedings from the commercial court, along with any submissions made by the parties, to determine whether the judgment or order in question was erroneous or unjust. The appellate court has the authority to scrutinize the legal and factual aspects of the case and may either affirm, modify, or reverse the decision of the commercial court. Additionally, the appellate court may issue directions for further proceedings or order a retrial if it deems necessary. It is important to adhere to the prescribed procedural

²⁵ Code of Civil Procedure 1908, Sec-35, No.5 of 1908, Acts of Parliament 1908(India)

²⁶ Code of Civil Procedure 1908, Order XIII-A Rule 1(3), No.5 of 1908, Acts of Parliament 1908(India)

²⁷ Code of Civil Procedure 1908, Order XIII-A Rule-3, No.5 of 1908, Acts of Parliament 1908(India)

²⁸ Code of Civil Procedure 1908, Order XIII-A Rule-6 and 7, No.5 of 1908, Acts of Parliament 1908(India)

²⁹ Commercial Court Act 2015, Sec 8, No.4 of 2016, Acts of Parliament 2016(India)

requirements and timelines when filing an appeal, as failure to do so may result in the appeal being dismissed or deemed inadmissible. Additionally, parties may be required to comply with any specific rules or regulations governing the appellate process in commercial matters, as prescribed by the relevant statutes or court rules³⁰.

V. EXPLORING THE COMPULSORY MEDIATION CLAUSE

Section 12-A of the Commercial Court Act mandates Pre-Institution mediation prior to the initiation of a commercial lawsuit unless the plaintiff is requesting immediate interim relief from the Honourable Court. Furthermore, in circumstances where the plaintiff is not in urgent need of interim relief from the Court, they must submit an application for the Pre-Institution mediation through the District Legal Service Authority (DLSA).

If the arbitration proceedings are not finished within three months of filing, the DLSA is required to conclude the negotiation between the parties within ninety days of the plaintiff's application being submitted. If this is not possible, the mediation process may be extended by an additional two months, but only with the parties involved in the mediation's consent.

The District Legal Services Authority (DLSA) may deem the mediation process failed in some situations, including those in which the opposing party has failed to receive a notice seeking their consent to mediation or declines to participate even after receiving it. The DLSA will subsequently produce a report notifying the applicant and the other party of the ruling. Since the effectiveness of mediation depends on the voluntary collaboration of all parties, this clause is intended to ensure that mediation may only start when all parties are willing participants.³¹

After the plaintiff submits their application, the District Legal Services Authority (DLSA) has ninety days to wrap up the mediation proceedings. However, if all parties agree to the extension, this time period may be prolonged by a further 60 days.

If the other party participates in mediation but the desired outcome is unable to be accomplished in certain cases, the mediator has to submit a report of dissolution with the DLSA.

But if the other party participates in the mediation process and the parties can come to a mutually agreeable resolution, the mediator will have to put the details of the agreement in writing.

By Section 30(4) of the Arbitration and Conciliation Act of 1996, this settlement agreement has the same legal weight and impact as a decision of arbitration on mutually acceptable stipulations.

³⁰ Commercial Court Act 2015, Sec 13, No.4 of 2016, Acts of Parliament 2016(India)

³¹ Commercial Court (Pre- Institution and settlement) Rules 2018, Rule 3(4), No.4 of 2016, Acts of Parliament 2018(India)

In addition, the plaintiff's involvement in pre-institution arbitration processes will not be deducted from the amount of time provided by the Limitation Act of 1963 to file the commercial litigation.

(A) Examining Case laws

Embark on a scholarly voyage as we meticulously dissect the intricate web of case laws and seminal judgments, shedding light on the mandatory mediation landscape. Our research journey traverses the diverse terrain of Indian courts, uncovering their nuanced perspectives and judicial wisdom regarding the compulsory pre-mediation stipulations outlined in the CCA 2015. This academic exploration aims to delve into each legal pronouncement, serving as a cornerstone, shaping our understanding of the evolving dynamics of commercial dispute resolution.

The case of **M/s Patil Automation Pvt. Ltd. & Ors. v. Rakheja Engineers Pvt. Ltd**³², Hrishikesh Roy and Justice K.M. Joseph led the Supreme Court Bench during which they made an important statement on pre-institution mediation. The Commercial Courts Act, 2015 (as revised in 2018) established the framework and goals of pre-institution mediation, which the Court emphasised as essential. With the introduction of Sec. 12A and the legally required word "shall," this addition greatly benefits overburdened courts that are overburdened with cases. The bench further made it clear that a lawsuit filed in violation of Section 12A's requirement would automatically be dismissed by the court in accordance with Order VII, Rule 11 of the Civil Procedure Code (CPC). This decision becomes operative on August 20, 2022.

Therefore, under the aforementioned legislation, it was mandated that any disputes with a valuation of three lakh rupees or more that fall under the definition of "commercial disputes" as defined in Section 2(1)(c) of the 2015 Act cannot be started until the plaintiff has pursued pre-institution mediation compulsorily. Nationally operated Legal Service Institutions will support this mediation procedure. In addition, Section 12A explicitly states that "a suit, which does not involve any Immediate interim relief under this Act, cannot be initiated unless the plaintiff completes the process of pre-institution mediation as per in conformity with the manner and procedure as delineated by rules formulated by the Central Government".

This Act's principal objective is to firmly promote mandatory mediation, especially in cases when the plaintiff does not want immediate interim relief. A focus has been made on the mediation process's ability to reduce the workload for courts; Section 12A, for example, deals with a class of actions that do not require prompt relief, as opposed to those that do. In addition, a string of court decisions has strengthened mediation's requirement as a substitute for litigation to guarantee

³² Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd, (2022) 10 SCC 1

that only valid cases are presented to the court.

In its ruling in the case of **SBI v. Nilesh (2021)**, The plaintiff's claim was rejected by the Delhi High court under Order 7 Rule 11(d) on the grounds that it was not maintainable. The complainant was told to "initiate a new lawsuit after fulfilling the mandatory legal requirements under Section 12A of the Act, considering the applicable period of limitation and legal provisions."

In the discourse of its ruling in **Deepak Raheja v. Ganga Taro Vazirani (2021)**³³, Following the timeline outlined in Section 12A, the High Court of Bombay directed the parties associated to pursue mediation through the Legal Services Authority, treating the situation as though the mediation had been started in accordance with that clause.

On the contrary, in the case of **GSD Constructions Pvt. Ltd v. Balaji Febtech Engineering**³⁴, Due to an irreversible loss, the plaintiff needed immediate interim remedy. As a result, the Madhya Pradesh High Court suggested filing a lawsuit rather than using the mediation procedure.

Furthermore, in the case of **M/s M.K. Food Products v. M/s S.H. Food Products**, The high court in Telangana ruled that the lawsuit was "urgent in nature" and sought a injunction to stop the defendant from violating copyright. As a result, the court decided that mediation could not be ordered for the parties.

In the recent judgment of Delhi High Court in **Bolt Technology OU. v. Ujoy Technology Private Limited & Anr. (2022)**³⁵, It was decided that if one party makes a settlement proposal and the other rejects it in response to a resolution letter, then the requirement for pre-institution mediation under Section 12A of the Commercial Courts Act can be considered met. When seen in combination with Rule 3 of the Commercial Courts (Pre-institution Mediation and Settlement) Rules 2018, this judgment essentially reduces the procedural limitations outlined in Section 12A of the CCA. In addition, the High Court determined that intellectual property rights are valuable to customers and the public as well as the parties involved after reviewing the case's particulars. As a result, many conflicts come within the CCA's Section 12A(1) exemption category for urgent interim relief.

Thus, the essential question that emerges for our investigation is why mediation takes on an obligatory form under Section 12A and how it may function as a workable alternative dispute resolution tool for business conflicts.

³³ Deepak Raheja v. Ganga Taro Vazirani, (2021) 1 HCC (Bom) 685

³⁴ Gsd Constructions (P) Ltd. v. Balaji Febtech Engineering (P) Ltd, (2019) SCC OnLine MP 7122

³⁵ Bolt Technology OU v. Ujoy Technology (P) Ltd., (2022) 5 HCC (Del) 347

VI. HOW EFFECTIVE ARE COMMERCIAL COURT?

Chief Justice of India, N.V. Ramana, has recently voiced apprehensions regarding the inadequate specialized infrastructure supporting commercial courts in our country & their incapacity to adequately tackle the backlog of cases. The envisioned goals of the Commercial Courts have remained unmet due to short-sighted motivations and inconsistent implementation across the nation.

The primary motivation for the establishment of India's commercial courts was to raise the country's rating in the World Bank's Ease of Doing Business Report. India performed badly in the World Bank Report's "enforcing contracts" category in 2014, coming in at 186th place out of 189 nations. The Economic Survey of 2018–19 identified one of the main barriers to enhancing the business climate in India as being the country's difficulty in resolving judicial issues. As a result, the Law Commission suggested in 2015 that a business court system be established, and that same year the Commercial Courts Act was passed. India's noteworthy improvement in the Ease of Doing Business ranking may be attributed in large part to this law, elevating its overall rank from 142 in 2014 to 63 in 2019.³⁶

According to the latest data from the Ministry of Law, there has been a significant decrease in the duration of trial and judgment of commercial disputes in Delhi and Mumbai. In 2020, The World Bank's "ease of doing business" report for India indicated that these procedures take a long time—1,095 days. The Department of Justice said that, as a result of changes, this period has been significantly shortened to 424 days in Delhi and 306 days in Mumbai. In addition, the department highlights how crucial it is to follow time constraints, noting that over half of cases in specialized business courts do so. This speeding has been facilitated by actions like standardizing trial procedures and establishing deadlines for important judicial proceedings. Furthermore, the CPC's Order XVII Rule (1) caps the number of adjournments during hearings at three, with orders only in cases of uncontrolled conditions as stipulated by CPC Rule 2(b) of Order XVII. H.C. located in Delhi, Bombay, Calcutta, and Karnataka has been asked by the Department of Justice to adhere to this three-adjournment norm. Trial times, arguments, and verdicts have therefore decreased in commercial courts in Bengaluru, Delhi, Mumbai, and Kolkata. In order to further assure compliance, the Supreme Court's e-committee has included a feature in the "daily proceedings screen" that notifies judges of case listings. Colour coding is used to show how frequently a case is listed: green denotes fewer than three listings, orange

³⁶ Anindita Pattanayak, *How effective are commercial courts*, Daksh India (Mar.2, 2024, 6:29 PM), <https://www.dakshindia.org/how-effective-are-commercial-courts/>.

denotes three to six listings, and red denotes more than six listings on the same stage.³⁷

(A) Implementation of the model

High Courts' adherence to the mandate that monthly statistics be published varies greatly and is often inadequate. Since July 2018, certain High Courts—such as the High Court of Gujarat—have continuously released monthly statistics on matters that are pending, initiated, and disposed of, whereas other High Courts have only sometimes or never released similar data. For example, the Madras High Court has only revealed information 52.5% of the time, but the Uttar Pradesh subordinate Commercial Courts have revealed information 82.5% of the time. Incomplete data presentation is also prevalent, with statistics often provided in aggregate without specifying individual court details or average disposal times. The Commercial Court Model, aimed at establishing efficient, technology-driven courts, has faced challenges in implementing technical infrastructure and adjusting behaviours among legal practitioners and stakeholders. Despite being envisioned as specialized courts for complex commercial disputes, Commercial Courts often lack judges with specific commercial law expertise, and rotational postings hinder prolonged exposure to such matters. Although training programs exist, they're not consistently proactive or mandatory. Moreover, many district-level Commercial Courts operate within existing infrastructure, sharing resources with civil courts, which complicates their specialization and effectiveness.

The Commercial Court Model's implementation status differs significantly between states, exhibiting a significant disparity in the degree of adherence to the requirement that High Courts provide monthly statistics, which typically falls short of acceptable levels. Notably, since July 2018, several High Courts—like the High Court of Gujarat—have continuously provided thorough statistics., while others have done so intermittently or not at all. Furthermore, even when data is made available, it frequently lacks completeness, often presenting aggregated statistics without delving into specific court details or neglecting to include crucial metrics like average disposal times, which are imperative for evaluating the efficiency of court proceedings. The overarching objective of the model was to establish state-of-the-art fast-track courts equipped with digital records and video conferencing capabilities, initially intended for a select few commercial divisions but later expanded following a 2018 amendment. However, the widespread adoption of this model poses substantial challenges in terms of setting up the necessary technical infrastructure and fostering behavioural adaptations among judges, lawyers, litigants, and

³⁷ From 1,095 days to 306: Govt data shows quicker Disposal of commercial Disputes, <https://economictimes.indiatimes.com/news/india/from-1095-days-to-306-govt-data-shows-quicker-disposal-of-commercial-disputes/articleshow/85533708.cms> (Last visited Apr. 7, 2024)

witnesses who may not be accustomed to virtual proceedings and documentation. Despite being conceptualized as specialized forums for resolving commercial disputes, the absence of specific criteria for appointing judges and the rotational deployment of regular civil judges undermine the expertise required for handling such cases effectively. While training programs are available, there is a pressing need to enhance their scope and mandate to ensure proactive and mandatory participation. Moreover, the lack of a clear legislative mandate mandating dedicated infrastructural facilities for commercial courts results in a majority of district-level Commercial Courts operating within the confines of existing infrastructure, thereby impeding their ability to specialize and optimize their functioning.

VII. CONCLUSION

In February 2022, the cumulative count of pending cases across all commercial courts in Delhi stood at 26,559 by month's end. Among the 2,339 cases filed during that month, 1,456 were successfully resolved. This indicates that only 62% of the cases were settled within the same month they were instituted.³⁸

Between November 2021 and February 2022, The overall number of pending cases has been steadily increasing. This pattern is consistent with what's been seen in West Bengal's four specialized Commercial Courts. In particular, the backlog of ongoing cases at the Commercial Courts in Alipore, Rajarhat, Asansol, and Siliguri is between 100 and 150, while the monthly average of settled cases stays below 10.³⁹ Similarly, the number of cases that are still outstanding in Mumbai's Commercial Courts has increased, going from 2,685 in December 2021 to 2,807 by February. The Commercial Courts (Statistical Data) Rules of 2018 are essential for the better implementation of the Commercial Courts Act of 2015, particularly Section 17.⁴⁰ Commercial Courts, Commercial Appellate Courts, Commercial Divisions, and Commercial Appellate Divisions are required by the Commercial Courts (Statistical Data) Rules of 2018 to provide information on the backlog and status of each commercial case, along with the duration of its resolution, by the tenth of the month. Then, in 2020, these rules were changed to require courts to submit information on how they used different internet services, including how many cases they filed online, how many payments they made online, and how they processed summonses. Furthermore, the corresponding High Courts must now keep and disclose thorough records of

³⁸ Summary of Commercial Cases, Consolidated Report' <https://delhicourts.nic.in/commcourt.html#collapse24>, (last visited Mar. 9, 2022)

³⁹ Statistical Data of 2022 for Commercial Courts of West Bengal, www.calcuttahighcourt.gov.in/Commercial/, (Last Visited Mar. 9, 2022.)

⁴⁰ The Commercial Courts (Statistical Data) Rules 2018, r 3

case management hearings and contentious commercial matters.⁴¹

Only the High Courts in Mumbai, Uttarakhand, Karnataka, Delhi, Rajasthan, and other states have maintained data through February 2022, following the format specified by the 2020 Amendment Rules, out of the twenty-four H.C. On the other hand, the remaining High Courts, including those in Patna, Hyderabad, Madras, Calcutta, and so on, have either released no data at all or have done so in accordance with the 2018 standards.

Although the coming into effect of these fresh laws is anticipated to provide more extensive datasets and improve the usefulness of court statistics, their efficacy in enhancing Only when the intended provisions of the CCA, 2015 have been effectively implemented will the legislation be fully implemented and overseen. implemented with sincerity. The Queen's Bench Division of the High Court of Justice supervises the operations of the Commercial Court in the United Kingdom. It releases an annual report on a regular basis that not only outlines The Commercial Court's performance data are included in the annual report, along with extensive information on the projects and initiatives that have been implemented that will enhance the court's services for litigants and acquaint them with its workings.⁴² As of right now, it is doubtful that the lofty objective of giving performance statistics and thorough details on initiatives done would be realized if the courts are not doing the basic work of data upkeep. Nevertheless, India needs to be prepared to take comparable steps if it is to achieve evidence-based law and policymaking. This guarantees that the CCA Act, 2015 is implemented in accordance with its intended purpose rather than being a theoretical reform.

In an ideal world, these commercial courts would have technical members to support the judicial members, much like the NCLT. Technology must be used for these Commercial Courts to operate efficiently and to reduce the amount of time that cases take to complete. As per the "National Policy and Action Plan for Implementation of Information and Communication Technology (ICT) in the Indian Judiciary - 2005," the E-Courts Project was launched in 2005, which was a noteworthy milestone. Later, on August 7, 2013, the Honourable The Chief Justice of India launched the e-Courts National portal (ecourts.gov.in). However, concentrated efforts are required and essential for the judicial administration information system to be fully implemented. Judges in Commercial Courts must undergo extensive and ongoing training in order to acquire the expertise necessary for settling disputes swiftly and within the required time frames. It is imperative that these courts share their best practices and correspond them with successful

⁴¹ The Commercial Courts (Statistical Data) Amendment Rules 2020, r 2

⁴² The Commercial Court Report 2020-2021 (Including the Admiralty Court Report)', www.judiciary.uk/wp-content/uploads/2022/02/14.50_Commercial_Court_Annual_Report_2020_21_WEB.pdf, (last visited Mar. 9,2022)

models from other countries that have established Commercial courts in order to gain broader recognition and popularity.

Furthermore, the High Courts, not the Ministry, should be principally responsible for the supervision and management of these courts. Finally, while deciding disputes, these commercial courts need to take the economy into account to promote a business-friendly culture.

At the conclusion of the Constitution Day celebrations, Chief Justice of India, CV Ramana, came up an important aspect. He said that the legislature often fails to carry out research or evaluate the consequences of the legislation it passes. He stressed that the backlog of cases would not be cleared by rebranding already-existing courts as business courts without first building a specialized infrastructure.

Originally intended to address high-value commercial cases, the CCA, 2015 gradually expanded its purview to encompass almost all civil litigation. However, meaningful legal reform necessitates substantial investment in reshaping the legal culture among judges, lawyers, and clients, alongside a thorough examination of administrative systems for handling disputes. Without comprehensive changes in both administrative and cultural aspects, any legislative reform risks being perceived as merely cosmetic, akin to old wine in a new bottle.
