

OVERVIEW OF COMMERCIAL COURTS ACT¹

A. Introduction:

The huge pendency of cases in India is widely known and a trend was observed by the Law Commission of India through its 188th report in 2003 that many courts in UK and USA assumed jurisdiction and applied the principle of ‘forum non-conveniens’ stating that Indian courts were an inconvenient forum and would typically take 2 decades to decide on a case². The need for speedy recovery of commercial suits was observed and the Seventeenth Law Commission submitted its recommendations for setting up of Commercial Divisions in High Courts in the year 2003 which were accepted by the Union Cabinet in the year 2009.³ The statistical data collected in the year 2013 demonstrated that a total of 32,656 cases were pending before the high courts in India out of which 51.7% were commercial disputes.⁴ To meet the objectives of establishing separate courts to deal with commercial matters, the Commercial Courts Act was passed in the year 2015 and further amended in the year 2018 (hereinafter referred to as “Act”).

B. Commercial Dispute:

This Act defines the specific commercial disputes⁵ such as disputes arising out of carriage of goods, construction and infrastructure contracts, including tenders, management and consultancy agreements, joint venture agreements, shareholders agreements, technology development agreements, franchising agreements, agreements for sale of goods or provision of services, intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits and such other commercial disputes as may be notified by the Central Government.

¹ The article reflects the general work of the authors and the views expressed are personal. No reader should act on any statement contained herein without seeking detailed professional advice.

² 188th report.pdf (lawcommissionofindia.nic.in)

³ The Law Commission of India, Report 253

⁴ The statistical data available in the Law Commission of India, Report 253

⁵ Section 2(c)

C. Specified Value:

The Act defines a specific value of a dispute to fall within the provisions under section 2(i) to state that “Specified Value”, in relation to a commercial dispute, shall mean the value of the subject-matter in respect of a suit as determined in accordance with section 12 [which shall not be less than Three Lakhs rupees] or such higher value, as may be notified by the Central Government.

Only **commercial disputes** which are over the Specified Value can be filed under this Act. By a notification⁶ dated July 03, 2019, the Government of Maharashtra, after consultation with the High Court of Bombay, has specified the pecuniary value at Rs. 50,00,000/- (Rupees Fifty Lakhs only) for the whole of State of Maharashtra. However, for City Civil Courts in Mumbai, the pecuniary value is Rs. 3,00,000/- (Rupees Three Lakhs only) as per the Act.

D. Constitution of Courts:

The Act provides for the constitution of commercial courts under various provisions:

Section 3	Constitution of Commercial Courts
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- State government may constitute such number of Commercial Courts at District level, as it may deem necessary.

Section 4	Constitution of Commercial Division of High Court
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- High Courts having ordinary original civil jurisdiction, the chief justice of the High Court may constitute Commercial Division having one or more Benches consisting of a single Judge.

Section 5	Constitution of Commercial Appellate Division
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- Chief Justice of the concerned High Court shall, by order, constitute Commercial Appellate Division having one or more Division Benches

E. Pre-institution Mediation and Settlement:

Under Section 12A of this Act, it is mandatory for an applicant to apply for pre-institution mediation without which a matter/ dispute cannot be proceeded to the Commercial Court except any such case which requires urgent interim relief. Once the matter is referred to the Pre-institution mediation by the plaintiff, the concerned

⁶ Law and Judiciary Department (Mumbai) under The Commercial Courts Act, 2015 (Amendment Act 2018) SPC 1319/162/C.R.36/IX

authority shall complete the process within 3(three) months from the date of application made by the plaintiff. However, the abovementioned period of completing the process can be extended upto 2 (two) months subject to consent of parties to dispute.

It is pertinent to note that, the time consumed under the pre-institution mediation process between the Parties, shall not be computed for the purpose of limitation under the Limitation Act, 1963. In the event parties arrive at a settlement the same shall be agreed in writing and signed by both the parties and shall have the status and effect of a mediation Award as under section 30 (4) of the Arbitration and Conciliation Act, 1996.

Further, in the year 2018, The Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018 were introduced which specifically cover the mediation process, role of mediator, procedure for mediation, confidentiality, mediator's responsibilities with respect to such pre-institution mediation.

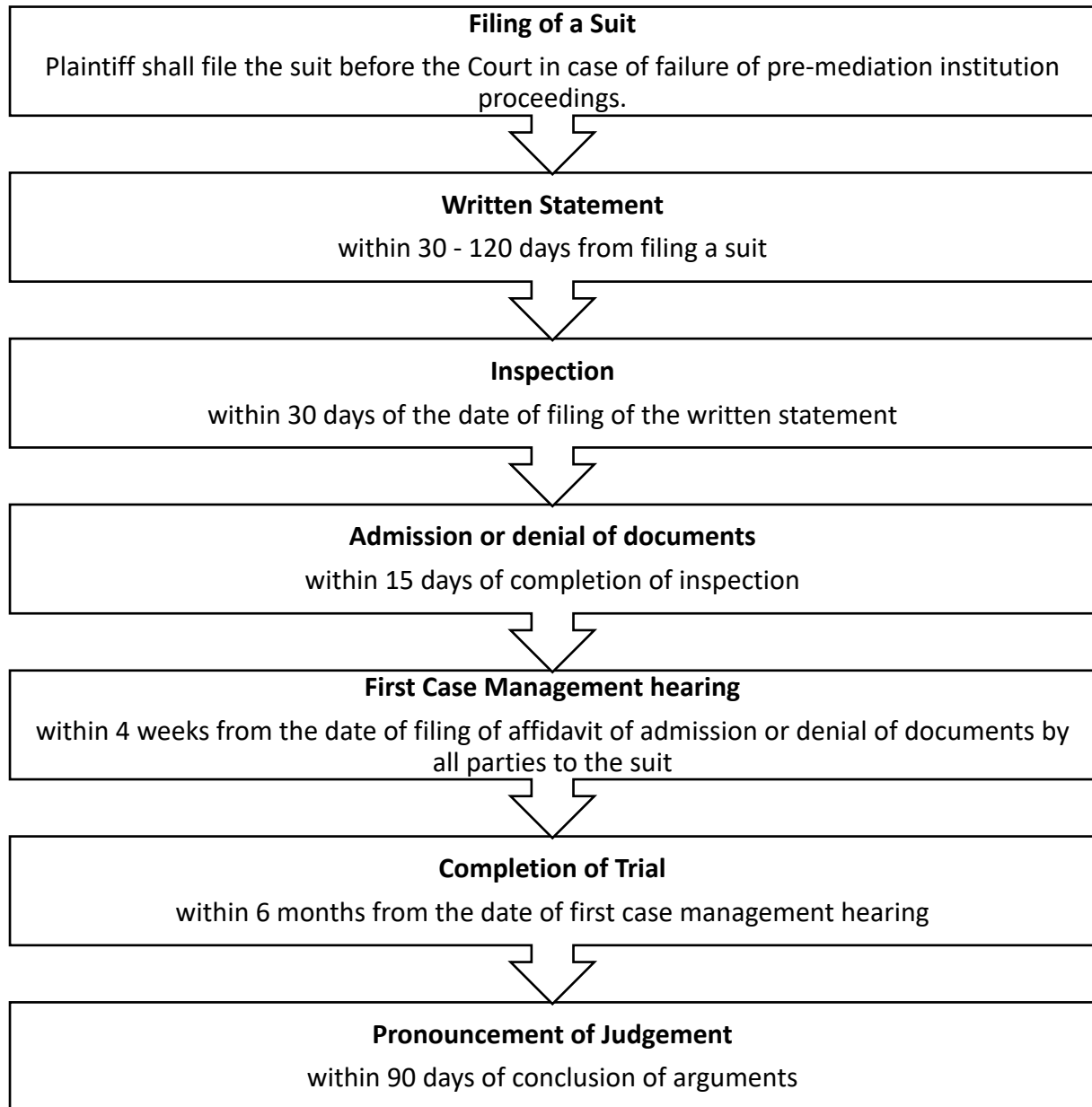
F. Case Management Hearing:

Order XV-A as incorporated by the amendment of Code of Civil Procedure of 1908 provides for the case management hearing which forms a distinct feature and plays vital role in fast disposal of cases. It provides for the specific timelines for each step defined under the Act for proceeding the case and such fixed timelines help in speedy recovery of the commercial disputes. Apart from the process explained below, it is the responsibility of Court to ensure recording of trial on a day-to-day basis till completion of cross examination of witnesses. The Case Management Hearings during a trial can be held at Court's discretion to issue appropriate orders so as to ensure adherence by the parties to the dates fixed and facilitate speedy disposal of the suit.

Further, the distinctive feature of this Act that boosts the disposal of cases is the main aspect of Court's limitation on non-adjourment of the Case Management Hearing. Section 7 restricts the court's right to grant adjournments and states that the Court does not have the right to adjourn the case solely due to non-appearance of advocate of a party unless such adjournment is sought in advance by moving an application to

the Court and such adjournment of hearing will attract payment of costs as the Court deems fit. However, if the Court is satisfied with respect to the reason for advocate's non-appearance, it may adjourn the hearing to another date as per terms and conditions deemed fit.

The process of case management hearing includes:



In case of a party's failure to comply with the order passed in Case Management Hearing the Court may –

- i. Condone the non-compliance by payment of costs to the Court

- ii. foreclose the non-compliant party's right to file affidavits, conduct cross-examination of witnesses, file written submissions, address oral arguments or make further arguments in the trial, as the case may be, or
- iii. dismiss the plaint or allow the suit where such non-compliance is willful, repeated and the imposition of costs is not adequate to ensure compliance.

G. Amendments to Code of Civil Procedure, 1908-

The Code of Civil Procedure, 1908 was amended when the Act came into force. Some of the salient amendments were made with respect to:

- Section 35 – Costs;
- Introduction of Order XV-A - Case management hearing;
- Order XX – This states that the judgement and decree passed by Commercial Court, Commercial Appellate Court, Commercial Division, or Commercial Appellate Division (as the case may be) shall be passed within ninety days of the conclusion of arguments and copies thereof shall be issued to all the parties to the dispute through electronic mail or otherwise.

H. Landmark Judgements

- a. In a recent judgement passed by Supreme Court of India, **M/S. Patil Automation Private Limited and Ors. v/s Rakheja Engineers Private Limited**⁷, the question arose with respect to whether the statutory pre-litigation mediation stated under section 12A of the Commercial Courts Act as amended by the Amendment Act of 2018 is mandatory? The Supreme Court answered the question affirmatively and declared that *“Section 12A cannot be described as a mere procedural law. The design and scope of the Act, as amended in 2018, by which Section 12A was inserted, would make it clear that Parliament intended to give it a mandatory flavor. It was further held by the Supreme Court that Section 12A of the Act is mandatory and that any suit instituted violating the mandate of Section 12A must be visited with rejection of the plaint under Order VII Rule 11. This power can be exercised even suo moto by the Court”*.

⁷ Civil Appeal No. 005333 / 2022, (Arising out of SLP (C)No. 14697 of 2021)

- b. **Satyanarayan Khandelwal v/s Prem Arora & other connected matters**⁸, had been filed before the Delhi High Court for transfer of civil suit from Additional District Judge to designated Commercial Court after the Amendment to Commercial Courts Act was passed. However, the Court is of the opinion that *“the Amending Act shall not apply retrospectively and is, therefore, not inclined to transfer the civil suits pending before the Additional District Judge to the designated Commercial Court”*.

I. Conclusion:

It is evident that the Act was introduced to meet the objective of speedy disposal of cases through special adjudication of commercial disputes by imposing a mandatory requirement of pre-institution mediation. Thus, constitution of Commercial Court plays a constructive role for both; the Companies that get benefited with a speedy disposal of their dispute and the Courts which deals with matters related to commercial disputes only thereby minimizing the burden on the regular courts of law.



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⁸ TR.P.(C) 47/2021 & other connected matters