

Legal Updates

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Fast Track resolution of Commercial Disputes – Commercial Division of High Courts in India

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Where India is going global, the judiciary system in India also intends to pick cues from the global judiciary system. Since the time of liberalization, globalization and privatization the commercial and industrial sector of the country has witnessed humungous growth and development and so has there been an increase in the commercial disputes involving high stakes. To keep pace with the growth and development trajectory need for effective mechanism for speedy resolution of such disputes has been felt. The Law Commission of India in its 188th Report on “Proposals for Constitution of Hi-Tech Fast Track Commercial Division in High Courts” has recommended the constitution of Commercial Division in each High Court.

The Commercial Division of High Court Bill, 2009, Bill No. 139 of 2009 passed in Lok Sabha on 18th December, 2009 is a significant move towards constitution of Commercial Division of High Court for speedy disposal of Commercial Disputes of Rs. 5,00,00,000 (Rupees Five Crores) or more (**Specified Value**). The minimum threshold limit of the specified value may be enhanced by the Central Government in consultation with the State Government and the High Court and be notified.

Commercial Dispute has been defined in the Bill and includes disputes which involve action for recovery of immovable property or for realisation of monies out of immovable property given as security or for taking any other action against immovable property. Disputes will be deemed to be commercial disputes when the immoveable property involved in the dispute is put to trade or commercial use. Applications under section 34 and section 36 and appeal under section 37 will be deemed to be commercial dispute if it exceeds the ‘specified value.’ Therefore the Bill provides for a wide coverage of issues which would include not only disputes relating to traders, merchants and bankers, but also includes disputes arising out of commercial property, intellectual property rights, IT etc.

The Commercial Division is required to dispose of cases within 30 days from the conclusion of argument. In case of application or appeal referred to Commercial Division pursuant to section 34, 36 and 37 of the Arbitration and Conciliation Act, 1996, the Bill provides for disposing the matter within one year from the date of service of the notice to the opposite party. The procedure for adjudicating upon the cases would be the same as specified in the Code of Civil Procedures. Commercial Disputes wherein other Courts or

Tribunals have exclusive jurisdiction will not go before the Commercial Division. Appeals against the order or decree of the Commercial Division is to be made before the Supreme Court (Section 13(1))

Chapter IV of the Bill lays down the fast track procedure to be observed by such courts, wherein interestingly service of summons on the defendants can be via electronic mail. Specific timelines have been provided for written statements, counterclaims, affidavits, rejoinders etc. This would do away with the delaying tactics adopted by the parties in order to bargain time during pendency of the proceedings.

The Bill is a positive move towards attaining fast track justice and meeting the world standards.