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OF
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Report No.253

**Commercial Division and Commercial
Appellate Division of High Courts and
Commercial Courts Bill, 2015**

January 2015

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29 January, 2015

Dear Mr. Sadananda Gowda ji,

The establishment of commercial courts in India is widely seen as a stepping stone to bring about reform in the civil justice system in India. As far back as in the year 2003, the Seventeenth Law Commission of India took up the issue of setting up Commercial Divisions in High Courts and submitted its recommendations through its Report No.188 titled "*Proposals for Constitution of Hi-tech Fast Track Commercial Divisions in High Courts*". The Union Cabinet, in the year 2009, approved the proposal for setting up Commercial Divisions in the High Courts and, as a result, the Commercial Division of High Courts Bill 2009 was introduced in the Parliament. This was passed by the Lok Sabha, and after certain amendments suggested by the Select Committee of the Rajya Sabha, and by the Cabinet, a revised Commercial Division of High Courts Bill, 2010 was introduced in the Rajya Sabha. However, the then Union Minister for Law and Justice sought more time from the Rajya Sabha for incorporating

further changes to the Bill to address the concerns raised by many Members of Parliament. Thus, the Bill was referred to the Twentieth Law Commission of India for re-examining various provisions of the proposed Bill, with special emphasis on the scope and definition of 'commercial dispute'.

Appreciating the importance of the matter and the concerns raised within and outside the Parliament alike, the Twentieth Law Commission decided to examine the various provisions of the Bill thoroughly. With this intention in mind, the Commission prepared a discussion paper which was circulated among the members of an Expert Committee comprising sitting judges and specialized legal professionals, constituted to examine the matter meticulously. The Expert Committee after continuous deliberations, came out with a second discussion paper. The second discussion paper was also subjected to an in-depth study and after thoroughly examining the various issues contained therein, the Commission has now come out with its Two Hundred and Fifty Third Report titled **“Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015”**.

The Report, *inter-alia*, recommends the establishment of Commercial Courts, and Commercial Divisions and Commercial Appellate Divisions in the High Courts in order to ensure speedy disposal of high value commercial suits. To this effect,

a new Bill, titled “*The Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015*” has been drafted by the Commission and is attached to the Report as an Annexure. While formulating this draft Bill, the Commission has suggested substantive procedural changes in the form of amendments to the Civil Procedure Code, 1908. These suggestions are aimed at ensuring disposal of cases expeditiously, fairly, and at reasonable cost to the litigants. I believe this 253rd Report of the Commission addresses the concerns of all stakeholders and lawmakers equally. I am enclosing a copy of the Report No.253 for consideration by the Government.

With warm regards,

Yours sincerely,

A. Prakash

[Ajit Prakash Shah]

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Report No.253

Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015

Table of Contents

| Chapter | Title | Page |
|----------------|---|--------------|
| I. | Background of the Report | 1-10 |
| A | The 188 th Report of the Law Commission | 1 |
| B | Scheme of the Provisions of the Commercial Division of High Courts Bill, 2009 | 3 |
| C | Report of the Select Committee on the Commercial Division of High Courts Bill, 2009 | 5 |
| D | Concerns Raised by the Rajya Sabha | 7 |
| E | Mandate of the Present Law Commission | 8 |
| II. | Drawbacks of the Present Bill | 11-33 |
| A | Difficulties in the Implementation of the Bill | 11 |
| (i) | Lack of original jurisdiction in all High Courts | 11 |
| (ii) | Differing pecuniary jurisdictions within the same Court | 12 |
| (iii) | High pendency of cases | 13 |
| (iv) | Delays and arrears in disposal of cases | 20 |
| (v) | Transfer of pending matters across the board to the High Court | 22 |
| B | Difficulties with Procedural Provisions | 23 |
| (i) | Impracticality | 23 |

| | | |
|-------------|--|--------------|
| (ii) | Direct appeal to Supreme Court is not feasible | 24 |
| C | Resistance to Change in the Manner of Conducting Litigation | 25 |
| (i) | The United Kingdom | 28 |
| (ii) | Singapore | 31 |
| D | No Emphasis on Specialisation in the Commercial Division | 32 |
| III. | Need to Update and Reframe the Commercial Division of the High Courts Bill, 2009 | 34-51 |
| A | The Need for Commercial Courts in India | 34 |
| (i) | Economic growth | 34 |
| (ii) | Improving the international image of the Indian justice delivery system | 35 |
| (iii) | Improving legal culture | 36 |
| B | Significant Developments in the Last Five Years | 37 |
| (i) | Model Courts | 37 |
| (ii) | Promised increase in the judicial strength of High Courts | 38 |
| (iii) | Computerisation | 38 |
| C | A Fresh Proposal for the Creation of Commercial Divisions and Commercial Courts | 39 |
| D | Nomination to Commercial Division and Commercial Appellate Division and Appointments to the Commercial Court | 41 |
| E | Institutional Arrangements for Commercial Courts | 42 |
| F | Procedural Improvements | 43 |
| (i) | Special procedure to be followed in Commercial Courts and Commercial Divisions | 43 |

| | | |
|------------|--|--------------|
| (ii) | Costs | 45 |
| (iii) | Court Fees | 47 |
| (iv) | Appeals | 48 |
| (iv) | Additional Provisions | 49 |
| a. | Arbitration | 49 |
| b. | Hearing of writ petitions concerning commercial disputes by Commercial Divisions | 50 |
| c. | Exclusion of Civil Court Jurisdiction by other law | 51 |
| IV. | Conclusions and Summary of Recommendations | 52-59 |
| | Annexure | 60-98 |

Chapter I

BACKGROUND TO THE REPORT

1.1 The Commercial Division of High Courts Bill, 2009 (*hereinafter* “the Bill”) was drafted in 2009 to provide for the constitution of a Commercial Division in the High Courts for adjudicating commercial disputes and for matters connected therewith or incidental thereto.

A. *The 188th Report of the Law Commission*

1.2 In the year 2003, the Law Commission *suo motu* took up the issue of proposing the constitution of Commercial Divisions in High Courts, in view of the vast changes in the economic policies of the country post-1991; the perception that the Indian judicial system had “collapsed” due to inordinate delays; and the need to ensure the fast disposal of high value commercial disputes to provide assurance to domestic and foreign investors.

1.3 In its 188th Report titled “*Proposals for Constitution of Hi-tech Fast-Track Commercial Divisions in High Courts*”, the Commission examined the international practice of setting up commercial courts to deal with high value or complex commercial cases, and the need for such commercial courts in India. Its aim was to give a clear assurance to investors that high value commercial suits would directly go before the Commercial Division to be constituted in all High Courts, which would follow fast track procedures similar to those recommended in the 176th Report on “*Arbitration and Conciliation (Amendment) Bill, 2002*”. These Commercial Divisions would also be equipped with high-tech video conferencing facilities along the lines used in commercial courts abroad.

1.4 The Law Commission carried out an in-depth study of the commercial courts in the United Kingdom (*hereinafter* “UK”); the United States of America, specifically the States of New York and Maryland; Singapore; Ireland; France; Kenya and nine other countries to examine the procedures followed and the kinds of cases handled by the commercial courts in such countries. ¹

1.5 Finding that there was indeed a necessity for such courts in India, the Commission recommended setting up a Commercial Division in each of the High Courts of India. The purpose of the Commercial Division would be to expedite commercial cases of high pecuniary value. Briefly, the salient features of the Commercial Division recommended by the Law Commission in its 188th Report were as follows:²

- a) Each Commercial Division was to be comprised of a Bench of two judges, and there could be more than one such Bench if needed. In fact, the Commercial Division would have as many Benches as may be required to ensure the expeditious disposal of commercial cases
- b) The Commercial Division of a High Court would have jurisdiction over “commercial disputes” which were defined in the Report by adopting and modifying the definition of “Commercial Cause” as contained in Rule 1 of Part D of Chapter III (Part V) of the Delhi High Court (Original Side) Rules, 1967.
- c) The pecuniary jurisdiction of the Commercial Division was to be Rupees One Crore, or a higher figure as

¹ Law Commission of India, *Proposals for Constitution of Hi-tech Fast-Track Commercial Divisions in High Courts*, Report No. 188 (2003), at 20 – 59 (*hereinafter* “Law Commission of India, 188th Report”). These countries were Philippines, Pakistan, United Arab Emirates, Poland, Scotland, Russia, Romania, Ukraine, and Ghana.

² Law Commission of India, 188th Report, *supra* note 1, at 164-180.

determined by the High Court in question, although not in excess of Rupees Five Crore.

- d) A “fast track procedure” was prescribed for the disposal of suits in the Commercial Division, providing timelines for the filing of pleadings; recording of evidence; and delivery of judgment by the Bench.
- e) The judges of the Commercial Division would conduct “case management conferences” with the lawyers for the purposes of filing written submissions and completion of evidence, which would form a part of the procedure adopted by the Commercial Division.
- f) A statutory appeal from the orders and judgments of the Commercial Division could be preferred to the Supreme Court of India.

B. *Scheme of the Provisions of the Commercial Division of High Courts Bill, 2009*

1.6 The Law Commission’s proposal on the constitution of a dedicated Bench of the High Court (the Commercial Division) to decide commercial cases above a certain monetary limit on a fast track basis was considered, and accepted, by the ‘Conference of Chief Ministers of the States and Chief Justices of the High Courts’ on 16th August 2009 in New Delhi.

1.7 On the basis of the above recommendations of the Commission, the Lok Sabha introduced the Bill as “Bill No. 139 of 2009” on 16th December 2009,³ and passed it on 18th

³ The Commercial Division of High Courts Bill, 2009; Parliament of India, *Motion for Consideration of the Commercial Division of High Courts Bill, 2009 (Bill Passed)*, LOK SABHA DEBATES, 16th December, 2009, available at <<http://164.100.47.132/LssNew/psearch/Result15.aspx?dbsl=1230>>.

December 2009.⁴ The Bill contained the following main features:

- a) Clause 3 vested power with the High Court to set up a “Commercial Division” in that High Court comprising of one or more Benches.
- b) All suits relating to “commercial disputes” as defined under the Bill and above the “specified value” of Rupees Five Crores, or a higher value fixed by the Central Government,⁵ were to be filed in the High Court and allocated to the Commercial Division.⁶
- c) All commercial disputes above the specified value, whether pending in the High Court or elsewhere, were to be transferred to the Commercial Division of the High Court as per Clause 11 of the Bill.
- d) Apart from suits, all applications under Sections 34, 36 or 37 of the Arbitration and Conciliation Act, 1996 (*hereinafter* “the A&C Act”) relating to “commercial disputes” of the specified value were also to be decided by the Commercial Division of the High Court.⁷ The A&C Act, 1996 was also amended to change the definition of “Court” and insert a proviso in Section 37 to give effect to the above provisions.⁸
- e) The “specified value” of a suit, necessary to vest jurisdiction in the Commercial Division, was to be determined in the manner provided in the Bill *under* Clause 8.

⁴ Akshaya Mukul and Indrani Bagchi, *This Lok Sabha cleared 17 Bills in less than five minutes*, TIMES OF INDIA, 7th February 2014, available at <<http://timesofindia.indiatimes.com/india/This-Lok-Sabha-cleared-17-of-bills-in-less-than-five-minutes/articleshow/29964406.cms>>.

⁵ Clause 2(1) read with Clause 7(1), Commercial Division of High Courts Bill, 2009.

⁶ Clause 4, Commercial Division of High Courts Bill, 2009.

⁷ Clause 5, Commercial Division of High Courts Bill, 2009.

⁸ Clause 19, Commercial Division of High Courts Bill, 2009.

- f) The procedure to be followed by the Commercial Division was laid down in the Bill, overriding the provisions of the Code of Civil Procedure, 1908 (*hereinafter* the “CPC”) insofar as there was any conflict between the two.⁹
- g) A single Judge sitting in the Commercial Division was also empowered to hold case management conferences *vide* Clause 10 to, *inter alia*, fix time schedules for filing evidence and written submissions. Pertinently, Clause 3(2) of the Bill spoke of “judges” of the Commercial Division and seemed to provide for two-judge Benches in the Commercial Division.
- h) Any decree or order passed by the Commercial Division was appealable directly to the Supreme Court of India under Clause 13.
- i) The jurisdiction of the tribunals and other forums were not to be affected by the jurisdiction of the Commercial Division of High Courts as per Clause 15.

C. *Report of the Select Committee on the Commercial Division of High Courts Bill, 2009*

1.8 The Bill was passed in the Lok Sabha without being referred to Standing Committee. After its passage in the Lok Sabha, the Rajya Sabha took up the Bill for consideration on 22nd December 2009, pursuant to which the Bill was referred to the Select Committee on the Commercial Division of High Courts Bill, 2009 (*hereinafter* “the Select Committee”). The Select Committee presented its Report on 29th July 2010 and

⁹ Clause 9, Commercial Division of High Courts Bill, 2009.

suggested certain changes to the Bill. Some of the major suggested changes were as follows:¹⁰

- a) The definition of “commercial dispute” should be expanded to include joint venture agreements, shareholders’ agreements, subscription and investment agreements, and pertaining to the service industry, including outsourcing of services, business process outsourcing, banking and finance, financial services and the like.
- b) A clarification should be inserted in the Bill that the Commercial Division will not comprise of a bench of two judges, and instead will have a single judge presiding over the commercial cases.
- c) The High Courts should be consulted on the determination of the “specified value” of commercial disputes. Further, the pecuniary jurisdiction of the Commercial Division should be reduced from Rupees Five Crore to Rupees One Crore, in view of the fact that the Bill was already creating two classes of litigants – those with disputes above Rupees Five Crore (or the specified value) who can go straight to the High Court, and the others who have to go to the Civil Court.
- d) The number of years stipulated as the experience required for an advocate to be appointed as a commissioner for recording evidence of parties should be reduced.
- e) Except cases where arguments and trial have been completed, all pending commercial disputes should be

¹⁰ Rajya Sabha Secretariat, *Report of the Select Committee on the Commercial Division of High Courts Bill, 2009 as Passed by Lok Sabha*, Presented to the Rajya Sabha on 29th July 2010, available at <<http://www.prsindia.org/uploads/media/Division%20High%20Courts/Select%20Committee%20Report.pdf>>.

transferred to the Commercial Division as per Clause 11 of the Bill.

D. Concerns Raised by the Rajya Sabha

1.9 Based on the above recommendations of the Select Committee, the Bill was redrafted, accepting all the Select Committee's recommendations, and placed before the Rajya Sabha for its consideration. During the course of the debate on 13th December 2011,¹¹ the following concerns were raised by the Members of the Rajya Sabha about the redrafted Bill:

- a) There did not seem to be a sufficient rationale for the setting up Commercial Divisions in High Courts in India, as described in the Bill or in the Statement of Objects and Reasons annexed to the Bill.
- b) The Bill did not take into account the difficulties currently faced by High Courts in disposing of pending cases before burdening them with more cases relating to "commercial disputes".
- c) The Bill had not taken into account the fact that the High Courts take longer to dispose civil suits than district courts.
- d) The Bill privileged high value commercial disputes over other civil and criminal cases, which were equally important in nature.
- e) By vesting original civil jurisdiction in the High Courts that did not have it, the Bill was contrary to the recommendations of the Malimath Committee and the Satish Chandra Committee, which had recommended

¹¹ Parliament of India, *The Commercial Division of High Courts Bill, 2009*, RAJYA SABHA DEBATES, 13th December, 2011, available <<http://164.100.47.5/newdebate/224/13122011/Fullday.pdf>>.

the abolition of the original jurisdiction of the High Courts.

- f) The procedure as prescribed in the Bill for disposing of cases in the Commercial Division was not feasible and did not adhere to the well-established principles of civil procedure and natural justice.
- g) The Bill seemed to reflect “elitist” concerns by “reserving” a Bench for high value commercial cases and catering to the interests of the corporate sector at the cost of the ordinary litigant.

1.10 Some of these concerns, summarised briefly above, will be examined in greater detail in the next part of this Report.

E. Mandate of the Present Law Commission

1.11 In view of the concerns raised by the Members of the Rajya Sabha, the Government withdrew the Bill. Subsequently, the Ministry for Law and Justice *vide* letter dated 7th March 2013 referred the Bill to the Law Commission in light of the various shortcomings observed in its provisions. The Ministry’s letter expressed the view that certain provisions, especially those regarding the scope of the definition of “commercial dispute”, needed reconsideration and a fresh study. Accordingly, a reference was made to the 20th Law Commission for its views on the proposed Bill.

1.12 The present Report seeks to re-examine and suggest changes to the 2009 Bill, which empowers the Chief Justice of a High Court to set up a dedicated Bench in the High Court for deciding commercial cases above a certain monetary limit. Certain defects have been pointed out in the structure of the Bill, which has prompted the present rethink.

1.13 In order to undertake a study for suggesting amendments to the Bill, the Commission issued a First Discussion Paper listing out the defects in the Bill, and the changes proposed by the Commission. This was circulated to an Expert Committee formed by the Commission, comprising of the Chairman, Justice Ravindra Bhat, Justice Valmiki J. Mehta, Justice Rajiv Endlaw Sahai, Justice S.K. Kathawala, Justice Gautam Patel, Mr. Neeraj Kishen Kaul, Mr. Nitin Thakker, Mr. Arun Mohan, Mr. Alok Prasanna Kumar, and Ms. Madhvi Diwan. In its deliberations, the Commission was also assisted by Mr. Vyom D. Shah, Ms. Nemika Jha, Mr. Brajesh Ranjan, and Mr. N.S. Nappinai.

1.14 Based on the suggestions and feedback received, a Second Discussion Paper was drafted and circulated. This was sent for comments and suggestions to the Bombay, Madras, and Delhi Bar. Responses were received from the Bombay Bar, comprising of Senior Counsels Mr. Milind Sathe (President, Bombay Bar), Mr. Rohit Kapadia, Mr. Nitin Thakker, Mr. Janak Dwarkadas, and Mr. Darius Khambata. Written notes and suggestions were also sent to the Commission by a group of lawyer from Madras comprising of Senior Counsels, Mr. Arvind Datar, Mr. M.S. Krishnan, Mr. M.K. Kabir; advocates, Mr. N.L. Rajah, Mr. Anand Venkatesh, Mr. Anand Sashidharan, Mrs. Gladys Daniel, Mr. Anirudh Krishnan; and student Ms. Radha Raghavan. Mr. Rajshekhar Rao and Mr. Karan Lahiri from the Delhi Bar also sent in helpful suggestions and comments.

1.15 The Commission would also like to place on record its special appreciation for Mr. Alok Prasanna Kumar, Ms.

Nimika Jha, and Ms. Vrinda Bhandari, whose inputs were incisive, vital and require special mention. They played a key role in drafting the Report.

1.16 Thereafter, upon extensive deliberations, discussions and in-depth study, the Commission has given shape to the present Report.

Chapter II

DRAWBACKS OF THE PRESENT BILL

A. *Difficulties in the Implementation of the Bill*

2.1 The Bill, in its present form, poses difficulties in implementation, which need to be rectified in order to provide for a viable commercial court system in India. Some of these difficulties are discussed below.

(i) Lack of original jurisdiction in all High Courts

2.2.1 At present only five High Courts – the High Court of Judicature at Bombay, the High Court of Judicature at Calcutta, the Delhi High Court, the Himachal Pradesh High Court and the High Court of Judicature at Madras – have original civil jurisdiction. The present Bill, seem to empower the High Court to vest itself with original jurisdiction insofar as commercial disputes above a specified value are concerned. This is problematic for two reasons:

2.2.2. *First*, it is unprecedented for any High Court to be given the statutory power to vest jurisdiction in itself. Jurisdiction is vested in a court by virtue of the Constitution, as with the Supreme Court of India and the High Courts, or by statutes such as the CPC and other such legislations. As a result of the exercise of the discretion to constitute a Commercial Division of the High Court, by virtue of Clause 3 of the Bill read with Clauses 4 and 11, all existing civil suits in respect of commercial disputes above the specified value shall stand transferred to that High Court.

2.2.3 *Second*, those High Courts which do not have original jurisdiction at present, namely, all the High Courts apart from the above-mentioned five High Courts, face an additional burden of having to promulgate and apply new sets of rules and procedures and put in place additional infrastructure to handle commercial suits.

2.2.4 Hence, this Report recommends that the power to constitute Commercial Division of the High Court or Commercial Court, as the case may be, shall vest with the Central Government.

(ii) Differing pecuniary jurisdictions within the same Court

2.3.1 There is a wide variance in the pecuniary jurisdiction of the High Courts having original civil jurisdiction. Whereas the Delhi High Court¹² has a pecuniary jurisdiction of Rupees 20 Lakhs or more, the pecuniary jurisdiction of the Madras High Court¹³ and the Himachal Pradesh High Court¹⁴ is above Rupees 25 Lakhs and Rupees 10 Lakhs, respectively. The Calcutta High Court's pecuniary jurisdiction has been increased from Rupees 10 Lakhs to Rupees One Crore, but it is concurrent with the jurisdiction of the City Civil Court.¹⁵ The Bombay High Court's pecuniary jurisdiction has also been enhanced from Rupees 50,000 to Rupees One Crore as a result of an amendment carried out in the year 2012.¹⁶ By specifying the value of Rupees One Crore or more for commercial disputes in a civil case, *without* recommending an increase in the pecuniary jurisdiction in the High Court, the Bill creates an incongruous situation.

¹² Delhi High Court (Amendment) Act, 2003.

¹³ Tamil Nadu Civil Courts and Chennai City Civil Court (Amendment) Act, 2010.

¹⁴ Himachal Pradesh Courts (Amendment) Act, 2001.

¹⁵ West Bengal City Civil Court (Amendment) Act, 2013.

¹⁶ Bombay City Civil Court (Amendment) Act, 2012.

Since there is no provision for transferring the lower value cases out of the High Court, it leaves us with a situation where the same High Court dealing with the same kind of cases, applies two different procedures depending on whether they are above the “specified value” or not. For instance, a commercial dispute pending in the Madras High Court with a specified value of say Rupees 99 Lakhs, will not be before the Commercial Division but a commercial dispute with identical facts and identical issues (and even possibly between same parties) having a value of Rupees One Crore, will automatically be placed before the Commercial Division.

2.3.2 To segregate the same kinds of cases within the High Court on the basis of their purported valuation alone is also unlikely to pass the test of non-discrimination under Article 14 of the Constitution, especially since one set of cases will follow a faster procedure than the others.

2.3.3 Furthermore, even if the Commercial Division takes up all commercial disputes, irrespective of their value, the system is unlikely to work due to the high pendency of cases. Vesting High Courts with the jurisdiction to hear all Commercial Disputes from across the State above Rupees One Crore, will add to their existing burden and only result in further delays in disposal of these cases by the High Courts.

(iii) High pendency of cases

2.4.1 As per the latest figures available publicly on the Supreme Court’s website, the pendency of civil cases in the High Courts in India is as follows:

Table 2.1: Pendency of “civil cases” across High Courts as on 31.03.2014

| S. No. | Name of the High Court | Pendency of civil cases at the end of the quarter | Total % increase or decrease in pendency since 01.01.2014 (negative indicates decrease) |
|---------------|-------------------------------|--|--|
| 1. | Allahabad | 695431 | 1.10 |
| 2. | Andhra Pradesh | 201425 | 1.43 |
| 3. | Bombay | 299931 | 1.06 |
| 4. | Calcutta | 230317 | -8.47 |
| 5. | Chhattisgarh | 29420 | -4.26 |
| 6. | Delhi | 49000 | 0.77 |
| 7. | Gujarat | 51384 | 0.73 |
| 8. | Gauhati | 33534 | 2.09 |
| 9. | Tripura | 4743 | -0.55 |
| 10. | Meghalaya | 1114 | 0.42 |
| 11. | Manipur | 3761 | 5.10 |
| 12. | Himachal Pradesh | 54015 | 1.77 |
| 13. | Jammu & Kashmir | 87794 | 3.14 |
| 14. | Jharkhand | 38001 | 1.93 |
| 15. | Karnataka | 179379 | 3.03 |
| 16. | Kerala | 99573 | 1.20 |
| 17. | Madhya Pradesh | 174665 | 0.30 |
| 18. | Madras | 490383 | 3.00 |
| 19. | Orissa | 168794 | -43.50 |
| 20. | Patna | 79896 | 0.13 |
| 21. | Punjab & Haryana | 200549 | 2.50 |
| 22. | Rajasthan | 244020 | -1.25 |
| 23. | Sikkim | 95 | 36.36 |
| 24. | Uttarakhand | 15269 | 3.10 |
| | Total | 3432493 | -2.91 |

Note: Although the figures for Chandigarh and Punjab & Haryana relate to the same High Court, they are presented separately in the “Court News” publication and the same is reflected here.

Therefore, at present, we find that 34,32,493 civil cases are pending across the 24 High Courts in India.

2.4.2 The Law Commission also sought information from the five High Courts with original jurisdiction with respect to the pendency of civil suits between 2003 and 2013. Extending the analysis of annual filing and disposal for the last ten years provided by the above High Courts, Table 2 shows that except for the Calcutta and Bombay High Court, all the other High Courts (namely, Delhi, Himachal Pradesh and the Madras High Court) have witnessed a consistent increase in the pendency of civil suits. However, the reduction in pendency in the Bombay High Court is a consequence of the increase in its pecuniary jurisdiction from Rs. 50,000 to Rs. One Crore, with the result that many suits were transferred to the City Civil Courts. The pendency as per figures obtained from the High Courts with respect to civil suits is as follows:

Table 2.2: Comparison of pendency of civil suits in 2003, 2008, and 2013 in High Courts with original jurisdiction

| Sl. No. | High Courts | Total number of Civil Suits pending at the end of | | |
|---------|------------------|---|---------------|---------------|
| | | 2003 | 2008 | 2013 |
| 1. | Bombay | 42293 | 41765 | 6081 |
| 2. | Calcutta | 10623 | 7879 | 6932 |
| 3. | Delhi | 7853 | 7815 | 12963 |
| 4. | Himachal Pradesh | 195 | 365 | 354 |
| 5. | Madras | 4300 | 6249 | 6326 |
| | Total | 65,264 | 64,073 | 32,656 |

Table 2.3: Comparison of pendency of civil suits in 2012 and 2013 in High Courts with original jurisdiction

| High Court | Total Number of Civil Suits pending at the end of 2012 | Total Number of Civil Suits pending at the end of 2013 | % increase or decrease in pendency |
|------------------|--|--|------------------------------------|
| Bombay | 4592 | 6081 | 32.40 ¹⁷ |
| Calcutta | 7206 | 6932 | -3.80 |
| Delhi | 12455 | 12963 | 4.07 |
| Himachal Pradesh | 574 | 354 | -31.35 |
| Madras | 5900 | 6326 | 7.22 |
| Total | 30,727 | 32,656 | 6.27 |

¹⁷ In the context of the Bombay High Court, the disproportionate increase of 32.40% over one year may be attributed to the practical difficulties caused by implementing the increase in the pecuniary jurisdiction of the Court to Rupees One Crore.

2.4.3 By and large, in the five High Courts with original jurisdiction, there are 32,656 civil suits pending. This, in fact represents a 6.27% increase in pendency in the previous year, as is evident from Table 3 above.

2.4.4 It may be noted that original side cases in the above High Courts include arbitration appeals and arbitration petitions under the A&C Act, 1996. However, there is no uniformity in the treatment of such appeals and petitions as “civil suits”. In the Bombay High Court, arbitration appeals and petitions have been classified as “civil suits”, whereas in the Delhi High Court, they are classified as “original side” cases, without necessarily being counted as “civil suits”.

2.4.5 The Law Commission also sought data from the five High Courts with original jurisdiction on the pendency of “commercial disputes” as presently defined in the 2009 Bill. A questionnaire with nine specific questions was sent to the five High Courts which currently have ordinary original civil jurisdiction relating to *inter alia*, the pendency of civil suits and the number of commercial disputes. The figures sent by the registries of the five High Courts, as of 31.12.2013 are reproduced below.

Table 2.4: Pendency of “Commercial disputes” in High Courts with original jurisdiction

| High Court | Total Number of Civil Suits pending | Total Number of Commercial Disputes pending | % of Civil Suits that are Commercial Disputes |
|-------------------|--|--|--|
| Bombay | 6081 | 1997 | 32.83% |
| Calcutta | 6932 | 5352 | 77.20% |
| Delhi | 12963 | 3582 | 27.63% |
| Himachal Pradesh | 354 | 88 | 24.8% |
| Madras | 6326 | 5865 | 92.71% |
| Total | 32656 | 16884 | 51.7% |

2.4.6 Of the total of 32,656 civil suits pending in the five High Courts with original jurisdiction in India, we find that a little more than half (16,884) or 51.7% of them are

commercial disputes. This figure would have been far higher if not for the 35,072 suits that were transferred out of the Bombay High Court in 2012 when the pecuniary jurisdiction of the High Court was raised to Rupees One Crore and above.¹⁸

2.4.7 One reason for the large pendency of cases could be the lack of judges allocated to the original side in these High Courts. A cursory examination of the number of cases pending per judge on the original side shows that judges are by and large overburdened on account of the fact that enough judges are not allocated to the original side. Original side jurisdiction in all the five High Courts includes not just civil suits, but also include writ petitions, arbitration petitions and appeals, election petitions, civil contempt petitions, and testamentary cases, among other categories of cases. While the scope of the original side jurisdiction in all these High Courts is not uniform, nevertheless the fact remains that civil suits only form a part of the original side jurisdiction. The following table lists the number of original side cases pending in each High Court.

Table 2.5: Total number of original side cases pending in each High Court with original civil jurisdiction as on 31.12.2013

| High Court | Total Number of Original Side cases pending |
|-------------------|--|
| Bombay | 47924 |
| Calcutta | 36087 |
| Delhi | 17597 |
| Himachal Pradesh | 3734 |
| Madras | 41702 |
| Total | 147044 |

2.4.8 According to the data given by the Madras High Court, only four judges (including the Chief Justice of the High Court) were allocated for the 41,702 cases pending on the original side between 01.01.2013 and 31.12.2013.¹⁹ Even

¹⁸ This is based on the data given by the Bombay High Court to the Law Commission.

¹⁹ It may be noted here that the Madras High Court does not classify writ petitions as “original side cases”.

if all these judges were to deal only with 5865 pending civil suits related to commercial disputes (as per Table 4), each judge would still be required to hear about 1467 cases.

2.4.9 As per the figures given by the Bombay High Court although between fifteen to eighteen judges were allocated to original side work, no more than between three to eight judges were exclusively dealing with original side work. If we assume that the remaining ten judges divided their time between original side and appellate side work equally, we arrive at a figure of eight to thirteen judges. For the purposes of calculation if we take the average of this figure and assume that approximately eleven judges were dealing with original side work (47,924 cases), we still find that each judge had approximately 4356 original side cases on file over the course of a year. This includes not only the civil suits, but also writ petitions preferred on the original side.

2.4.10 Therefore, the above data makes it evident that most High Courts are still grappling with the issue of high pendency of cases on the original side, including writ petitions, arbitration cases etc., and have not been able to reduce the pendency in the last decade. Rather than increasing the burden of the Courts, the focus should be on reducing the number of cases by increasing the pecuniary jurisdictional threshold of civil suits in such High Courts. The jurisdiction of the Bombay and Calcutta High Courts have already been increased to Rupees One Crore. In view of the fact that Commercial Disputes, for the purposes of the new Bill recommended by this Commission, will be defined as those with a specified value above Rupees One Crore, it is desirable that all the five High Courts should have a uniform pecuniary jurisdiction of Rupees One Crore.

2.4.11 The Delhi High Court (Amendment) Bill, 2014 is currently pending consideration in the Parliament and if passed in its current form, it will raise the ordinary original

civil jurisdiction of the Delhi High Court to Rupees Two Crores.²⁰ This may, however, create an anomaly in the implementation of the Bill as it may not be feasible to set up a Commercial Court in Delhi to decide commercial disputes only valued between Rupees One Crore and Two Crores given that such suits would ordinarily be heard by regular civil courts. Moreover, if it is accepted that disputes above the value of Rupees One Crore are likely to involve highly technical issues and should be decided by judges who specialise in such disputes, then it would be incongruous in the case of Delhi to have such disputes be decided by the regular civil courts. Therefore, in order to achieve the objective of the Bill and prevent such anomalies from occurring, the Government may consider enhancing the pecuniary jurisdiction of the Delhi High Court up to Rupees One Crore so as to bring uniformity amongst the five High Courts.

2.4.12 At this stage, it is instructive to notice the data on the pendency of commercial disputes based on the value of the suit:

Table 2.6: Breakup of pending commercial disputes in High Courts with original jurisdiction on the basis of value is as follows:

| High Court | Pendency of Commercial Disputes based on value | | | | Total Number of Commercial Disputes pending | Total number of Cases Above Rs. 1 Crore |
|----------------------|--|---------------------------------|-------------------------------------|-----------------------|---|---|
| | Less than Rs 1 crore | Between Rs 1 crore and 2 crores | Between Rs 2 crores and Rs 5 crores | Rs 5 Crores and above | | |
| Bombay | 721 | 433 | 381 | 462 | 1997 | 1276 |
| Calcutta | 2851 | 583 | 308 | 842 | 5352 | 1733 |
| Delhi | 3346 | 101 | 73 | 62 | 3582 | 236 |
| Himachal Pradesh | 68 | 8 | 8 | 4 | 88 | 20 |
| Madras ²¹ | 6020 | 463 | 274 | 221 | 6978 | 958 |

²⁰ Delhi High Court (Amendment) Bill, 2014.

²¹ Figures given by the Madras High Court include arbitration petitions. However, no break up was given by the Court regarding the number of arbitration petitions that were counted as “commercial disputes”.

2.4.13 If the pecuniary jurisdiction of the Delhi High Court, Calcutta High Court, Madras High Court and the Himachal Pradesh High Court is increased to Rupees One Crore, the pendency of civil suits involving commercial disputes would be reduced substantially by 93.5%, 58.7%, 86%, and 72%, respectively.

(iv) Delays and arrears in disposal of cases

2.5.1 The problems of pendency alluded to above have to be understood in the context of delay and arrears in the disposal of cases. Pendency figures are in part, a product of various factors such as the size of the population and the number of judges – thus, the number of cases pending in Bombay will always be greater than those in Himachal Pradesh. However, such figures do not explain how long, on average, each case has been pending for. To understand the magnitude of the problem of arrears in the High Courts and the delay in the disposal of cases, the Law Commission sought data from the High Courts with original jurisdiction in respect of the time-period for which suits have been pending, broken down into suits which have been pending for less than two years, between two to five years, between five and ten years, and more than ten years. This data has been tabulated below:

Table 2.7: Breakdown of delays in disposal of civil suits in each High Court with original civil jurisdiction.

| High Court | Total Number of Civil Suits Pending | Number of Civil Suits pending broken up on basis of length of pendency | | | | % of Civil Suits pending for more than 2 years |
|------------------|-------------------------------------|--|---------------------------|---------------------------|----------------------|--|
| | | Less than Two years | Between two to five years | Between five to ten years | More than ten years. | |
| Bombay | 6081 | 1268 | 1268 | 1159 | 2386 | 79.14% |
| Calcutta | 6932 | 787 | 800 | 1320 | 4025 | 88.6% |
| Delhi | 12693 | 4707 | 4151 | 2849 | 1256 | 63.66% |
| Madras | 6326 | 1536 | 1451 | 2196 | 1143 | 75.72% |
| Himachal Pradesh | 354 | 75 | 105 | 75 | 99 | 78.82% |
| Total | 32386 | 8373 | 7775 | 7599 | 8909 | 74.99% |

2.5.2 Analysis of the above data shows that of the 32,386 pending civil suits, 16,508 suits, or 50.97%, have been pending disposal for more than five years. The problem seems especially acute in Calcutta High Court which, despite having reduced pendency of civil suits in ten years, still has a significantly large percentage of cases which have been pending for ten years or more, as is evident from a combined reading of Tables 2, 3 and 7.

2.5.3 In its 188th Report, the Law Commission recommended that a time limit of two years be placed on the disposal of civil suits from the date of completion of service on the other side.²² Therefore, an assumption can be made that suits pending for less than two years are not part of the problem, although this would also depend on the type of case pending for less than two years. In any event, focussing our attention only on those suits that have been pending for more than two years, we find that nearly 75% of the suits have been pending for such time and can be classified as “delayed”.

2.5.4 The Law Commission has, in its 245th Report on *Arrears and Backlog Creating Additional Judicial (Wo)manpower* also made a distinction between “arrears” and “delay”. “Arrears” are a subset of “delay” for when the case has been delayed for unwarranted reasons.²³ In the present case, even if we assume that all suits delayed up to five years have largely been delayed for justified reasons (which may not be true), there are still a significant number of suits (more than 50%) which constitute “arrears” that seem to have been delayed beyond reasonable limits.

2.5.5 Therefore, it would stand to reason that for efficient and effective disposal of civil suits, especially those relating

²² Law Commission of India, 188th Report, *supra* note 1, at 176-177.

²³ Law Commission of India, *Arrears and Backlog Creating Additional Judicial (Wo)manpower*, Report No. 245 (2014), at 3-4 (*hereinafter* “Law Commission of India, 245th Report”).

to commercial disputes, any effort to create an exclusive commercial division can only succeed if the High Court's original pecuniary jurisdiction is restricted only to high value commercial disputes.

(v) Transfer of pending matters across the board to the High Court

2.6.1 Vesting original jurisdiction in commercial disputes with High Courts and transferring all such cases to the High Court poses additional problems for the litigants.

2.6.2 In High Courts with original jurisdiction, such as the Bombay High Court, the original jurisdiction is limited to the municipal limits of the city of Mumbai. The territorial aspect of the original jurisdiction in the case of Madras and Calcutta High Courts is also limited to the specified territorial limits of the city of Chennai and Kolkata, respectively. However, the Bill proposes to expand the territorial reach of the original jurisdiction to the whole State thereby dramatically increasing the number of cases, and also adding to the burden on the litigants. At present, a commercial dispute over Rupees One Crore between parties located in say, Pune will be filed in the appropriate civil court in Pune itself where the cause of action arises. However, with the 2009 Bill, such a suit will have to necessarily be filed in the Principal Seat of the Bombay High Court since the Bill vests exclusive jurisdiction in respect of such suits there. Consequently, the litigants will have to face additional travel and other expenses in such cases. Therefore, the proposal for transferring the existing suits to the High Court is unworkable.

B. Difficulties with Procedural Provisions

2.8 The procedural provisions contained in Clause 9 of the Bill also have drawbacks that make it infeasible to follow them for the purposes of disposal of commercial disputes.

(i) Impracticality

2.9.1 Clause 9 which lists out the procedural provisions, which apply to the trial of a commercial dispute before the Commercial Division has a number of defects which creates problems in the implementation of the Bill. These are described below.

2.9.2 *First*, though the provisions of the Bill prevail over the CPC, there is no clarity as to whether they will prevail over the original side rules of the High Courts that have such original jurisdiction. Whereas the Supreme Court in *Vidyawati Gupta v Bhakti Hari Nayak*²⁴ has made it clear that in case of a conflict between the rules of a High Court and the CPC, the rules of the High Court will prevail, the 2009 Bill provides an additional set of procedural rules without clarifying whether the Bill or the High Court rules will prevail in the event of a conflict.

2.9.3 *Second*, the requirement to file the affidavits of the plaintiff and the witnesses at the time of filing the case, as required by sub-clauses (2)(a)(iii) and (iv) of Clause 9 even before the defendants have come forward to accept or refute the claims is impractical and is a needless burden on the litigants. Similarly, the defendant cannot be expected to file statements of witnesses at the time of filing a reply when the points of difference between the parties are not known.

²⁴ (2006) 2 SCC 777.

2.9.4 *Third*, likewise requiring a statement on the draft issues under sub-clause (2)(a)(v) of Clause 9 even before the defendant has filed a response is impractical.

2.9.5 *Finally*, while Clause 9 provides for a “case management conference” to be held by the judge, the Bill does not provide sufficient particulars as to how such a case management conference should be conducted given that a new procedure is being introduced in the course of trial. Additionally, it does not indicate in detail the procedure to be followed, persons who are required to be present at the case management conference, and whether such conference will constitute a separate hearing of the case, or be carried out in chambers. It does not indicate the powers of the judge, while conducting the conference, the consequences of non-compliance and the desired and expected results in such cases. A “case management conference” has different connotations in different jurisdictions and since it is being introduced for the first time in India, it is necessary to clarify the meaning and scope of the term in the Indian context.

(ii) Direct appeal to Supreme Court is not feasible

Notwithstanding any law, rule or provision, the Bill provides for an appeal directly from the Commercial Division to the Supreme Court. This, in effect, turns the Supreme Court into a court of first appeal in every case, adding to the burden of the parties in having to file even interim, interlocutory applications before the Supreme Court, and also increasing the burden (and pendency) of the Supreme Court in having to decide more appeals. This will add to the delay that the commercial cases suffer – both in resolution of the interim orders and final appeals – since every single order of the Commercial Division can (and inevitably, will) be appealed before the Supreme Court. The dispute resolution process will become more costly, time consuming, and less effective.

C. Resistance to Change in the Manner of Conducting Litigation

2.11 While the Bill aims to improve the pace at which litigation is conducted in India, it does not make an effort to fundamentally alter the litigation culture in India. The changes proposed, such as shortening the timelines for filing pleadings and allowing only one forum of appeal, are more cosmetic in nature and do not address the underlying cause for delay. Given that the bill does not propose any real and substantial changes in the Indian civil justice delivery mechanism, it is highly likely that even with the changes proposed, the existing flaws will creep into the Commercial Division as well, defeating the “fast track” purpose of the Commercial Division of High Courts.

2.12 At present, adjournments are granted too frequently and there are no consequences for lawyers who unnecessarily delay the case. In fact, the present culture of charging fees per hearing incentivises lawyers to delay cases. With costs being imposed infrequently and bearing no relation to actual expenses in a case, litigants have little fear of being punished and frequently indulge in delaying tactics.

2.13 This fact has been well-recognised by the Supreme Court in a series of cases, and most recently in 2014 in *Subrata Roy Sahara v Union of India*,²⁵ where the Court took notice of the fact that delays in hearing and passing of repeated orders consumed substantial “judge hours”, both during and beyond Court hours, and resulted in an abuse of the judicial process. In this context, it observed:²⁶

²⁵ (2014) 8 SCC 470.

²⁶ *Subrata Roy Sahara v Union of India*, (2014) 8 SCC 470, at paras 149-153.

“The Indian judicial system is grossly afflicted, with frivolous litigation. Ways and means need to be evolved, to deter litigants from their compulsive obsession, towards senseless and ill-considered claims. One needs to keep in mind, that in the process of litigation, there is an innocent sufferer on the other side, of every irresponsible and senseless claim. He suffers long drawn anxious periods of nervousness and restlessness, whilst the litigation is pending, without any fault on his part.

...In the present setting of the adjudicatory process, a litigant, no matter how irresponsible he is, suffers no consequences. Every litigant, therefore likes to take a chance, even when counsel’s advice is otherwise.

...And there are some litigants who continue to pursue senseless and ill-considered claims, to somehow or the other, defeat the process of law.....When the litigating party understands, that it would have to compensate the party which succeeds, unnecessary litigation will be substantially reduced. At the end of the day, Court time lost is a direct loss to the nation.”

2.14 The Court’s observations are instructive because they reveal a deep malaise within the conduct of litigation in the civil justice system, where parties control the pace and intensity of litigation and the frequency of adjournments. This stems from a failure to recognise (as has been done in the UK) that adjudication is a public service, which is supposed to enforce rights, and reach a correct decision *within* the constraints of time and cost. Just as no person is entitled to the best possible public health service regardless of costs, no person is entitled to the best possible adjudicative outcome regardless of time and costs.²⁷ When litigants delay cases they take up the time and money of the court and hence, the public; the opposing party; and other litigants whose time before the courts’ is therefore reduced.

²⁷ See generally Adrian Zuckerman, ZUCKERMAN ON CIVIL PROCEDURE: PRINCIPLES AND PRACTICE (3rd edn., 2013).

Consequently a change in litigation culture is required in India to shift from a litigant-managed to a court-managed litigation process.

2.15 Change in litigation culture will also require much wider changes across the board, but certain improvements can be achieved through targeted and specific modifications in the procedural rules. In spite of amendments to the CPC in 1976 and in 2002, changes in the manner of conducting civil litigation have been minimal and largely cosmetic. Serious reform requires overhauling the rules governing civil litigation and what is being suggested in this Report is a new approach to civil litigation – by substantially changing the procedures for the resolution of commercial disputes.

2.16 Such substantial change is aimed at ensuring that the rules for conducting commercial disputes are simple and effective, replacing the present ineffective and cumbersome procedures. Such change cannot be brought about by merely designating certain courts as “commercial courts” and stopping the reform process at the mere establishment of Commercial Courts. The example of other jurisdictions such as the UK, discussed below, show that widespread procedural changes are required to ensure that commercial litigation is conducted in a speedy, efficient, and proportionate manner.

2.17 If one examines the manner in which litigation is conducted in the Commercial Courts in England or in Singapore, one finds that the key difference between commercial litigation in India and these countries is not just the mere establishment of commercial courts there, but also of the procedure and manner in which commercial suits are conducted. Everything from the length of pleadings, the manner in which documents are to be submitted, and the consequences of non-compliance with the strictly enforced timelines are followed by parties and counsels. Thus, in the Indian context, much greater normative and practical

changes are required in the conduct of litigation and control of dockets, in addition to legislative amendments to counter the problems plaguing commercial litigation.

2.18 While noting the existence of Commercial Courts in other jurisdictions, the procedural provisions in the Bill by and large stick to the paradigm of the CPC. World over, courts, especially commercial courts are undertaking procedural innovation on the basis of technological developments and real life experience to ensure that trials progress smoothly and efficiently. It would thus be worthwhile to examine briefly the civil procedure laws in the UK and Singapore to understand the nature of the changes that are necessary to make the reforms work.

(i) The United Kingdom

2.19.1 In the UK, the Civil Procedure Act, 1997 and the Civil Procedure Rules that came into force in 1999 govern civil procedure and the conduct of litigation. These laws are a product of a seminal report authored by the then Master of Rolls, Lord Woolf, known as the Access to Justice Report 1996 (*hereinafter* “Woolf Report”) to deal with cases justly and at proportionate cost.²⁸ Part 58 of the Civil Procedure Rules (*hereinafter* “CPR”) and a detailed set of Practice Directions apply specifically to Commercial Courts, whereas Part 62 of the CPR deals with arbitration applications.

2.19.2 The problems of the existing civil justice system in UK, as identified by Lord Woolf were articulated as:

“it is too expensive in that the costs often exceed the value of the claim; too slow in bringing cases to a conclusion and too unequal: there is a lack of equality between the powerful, wealthy litigant and the under resourced

²⁸ Neil Rose, *Civil Procedure Rules: 10 years of change*, THE LAW SOCIETY GAZETTE, 28th May 2009 available at < <http://www.lawgazette.co.uk/50942.article>>.

litigant. It is too uncertain: the difficulty of forecasting what litigation will cost and how long it will last induces the fear of the unknown; and it is incomprehensible to many litigants. Above all it is too fragmented in the way it is organised since there is no one with clear overall responsibility for the administration of civil justice; and too adversarial as cases are run by the parties, not by the courts and the rules of court, all too often, are ignored by the parties and not enforced by the court.”²⁹

2.19.3 The problems, as identified by Lord Woolf, bear an uncanny similarity to the problems facing the civil justice system in India today, and it would therefore be worthwhile to examine what solutions were proposed and how the same have worked in the UK.

2.19.4 The Woolf Report identified principles that a civil justice system must meet to ensure access to justice. According to the Woolf Report, the system should –

- a) “be *just* in the results it delivers;
- b) be *fair* in the way it treats litigants;
- c) offer appropriate procedures at a reasonable *cost*;
- d) deal with cases with reasonable *speed*;
- e) be *understandable* to those who use it;
- f) be *responsive* to the needs of those who use it;
- g) provide as much *certainty* as the nature of particular cases allows; and
- h) be *effective*: adequately resourced and organised.
(Italics in original preserved).”³⁰

2.19.5 Implemented as a result of reforms suggested by Lord Woolf and his committee, one of the revelations of the rules is the “Overriding Objective” embodied in Part 1 of the Rules (CPR 1.1), which states:

²⁹ Lord Woolf, *Overview* in ACCESS TO JUSTICE REPORT (1996), at paras 2-3 available at <<http://webarchive.nationalarchives.gov.uk/+http://www.dca.gov.uk/civil/final/overview.htm>> (hereinafter “Woolf Report”).

³⁰ Woolf Report, *supra* note 29, at para 1.

“(1) These Rules are a new procedural code with the overriding objective of enabling the court to deal with cases justly.

(2) Dealing with a case justly includes, so far as is practicable –

- a) ensuring that the parties are on an equal footing;
- b) saving expense;
- c) dealing with the case in ways which are proportionate –
 - i. to the amount of money involved;
 - ii. to the importance of the case;
 - iii. to the complexity of the issues; and
 - iv. to the financial position of each party;
- d) ensuring that it is dealt with expeditiously and fairly; and
- e) allotting to it an appropriate share of the court’s resources, while taking into account the need to allot resources to other cases.”

2.19.6 In what manner the court should give effect to the overriding objective is also listed out in the Rules.

“1.2 The court must seek to give effect to the overriding objective when it –

- a) exercises any power given to it by the Rules; or
- b) interprets any rule.

The rules are written to be intelligible not just to lawyers but to litigants in person also.”

2.19.7 Great emphasis is placed on the CPR in empowering the judges to manage the cases before them properly and in a time-bound manner. This necessitated vesting of control over litigation with courts to ensure that only relevant issues were agitated before the courts, to prevent a spiralling of costs.³¹ In addition, the Rules also encourage parties to

³¹ Woolf Report, *supra* note 29, at Chapter I, para 3.

undertake settlement of disputes outside the court as far as possible.

2.19.8 These reforms have undoubtedly been very successful as was seen in the immediate drop in the number of cases filed per month before the Queen's Bench Division from 10,000 a month to about 2000 a month, and a significant increase in the number of cases settled before trial.³²

(ii) Singapore

2.20.1 In Singapore, the High Court, a division of the Supreme Court of Singapore, with pecuniary jurisdiction above SGD 250,000, is a court of the first instance. Procedure in the High Court is governed by the Rules of the Court, promulgated by the Rules Committee of the High Court comprising of the Chief Justice, Attorney General, and other judges and lawyers. A few key features of the Rules are:

- a) Court fees increase depending on the number of days taken up for hearing by the parties to the case. For example, no court fees are payable for the first three hearings, SGD 8000 is payable for the first five hearings, SGD 20000 for the first ten hearings and so on. The scale keeps increasing up to the tenth hearing and the court fee goes up to SGD 5000 per hearing from the eleventh hearing onwards.
- b) Pleadings can be struck out by the court at any stage of the hearing if such pleadings do not disclose any cause

³² See Alastair Wyvill, *The Civil Procedure Reforms 10 Years On: Success or Failure?*, available at <<https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CBsQFjAA&url=http%3A%2F%2Fwilliamforster.com%2Fwp-content%2Fuploads%2F2010%2F04%2Fwyvill-the-woolf-civil-procedure-reforms-10-years-on.doc&ei=PQS1U6GuA4-8uASChoLwAw&usg=AFQjCNGh70fZmqAUkaOIAPhKXLQxaBnmaQ&sig2=YJhJSXnScwiACQy7mrFKA&bvm=bv.70138588,d.c2E>> last accessed 18th December, 2014.

of action, are vexatious, delay fair trial, or amount to an abuse of process of the court.³³

- c) A court can direct a “pre-trial conference” between the parties to examine the possibilities of settlement or to ensure smooth conduct of the trial, as the case may be. The directions given by the court to ensure smooth conduct of the trial in such pre-trial conferences are binding on the parties and any default can result in the court striking out a defence or rendering judgment on a point it sees fit. ³⁴
- d) An official record of hearing is made at the end of every hearing, and the parties can apply for and obtain the official transcript thereof.³⁵

2.20.2 These features are only being highlighted to show the importance placed by the courts in the UK and Singapore in ensuring that trial is conducted expeditiously and fairly and at a reasonable cost to the litigants. Whereas the guiding principles evolved by Lord Woolf are worth examining to understand how civil procedure in India can be re-cast, the provisions of the Singapore law provide an interesting model to adopt so as to give effect to these principles.

2.20.3 If the aim is to improve the efficiency and effectiveness of commercial courts in India, it would be prudent to seriously examine the procedural laws adopted in other countries to draw any worthwhile lessons that may be applied to the Indian scenario.

D. *No Emphasis on Specialisation in the Commercial Division*

2.21 The 188th Report of the Law Commission recognises that across the world, commercial courts are manned by

³³ Order 19, Rule 19 of the Rules of Court.

³⁴ Order 43A of the Rules of Court.

³⁵ Order 38A of the Rules of Court.

specialist judges specifically pointing to the examples in the United States, UK and Singapore. Given the extremely technical nature of the disputes that are likely to be argued before the commercial court, specialist judges would be better equipped to dispose of the cases efficaciously. However, the 2009 Bill does not make any provision for any specialisation of the judges who are to be nominated as judges of the Commercial Division by the Chief Justice. Moreover, there is no provision, which requires that the skills of the judges be upgraded during the course of their term as a judge of the Commercial Divisions.

2.22 Though it has been acknowledged that high value commercial disputes involve complex facts and questions of law, there is no effort to ensure that judges with the requisite knowledge and ability in that particular area decide such commercial disputes. The infrastructure to train judges and impart continuous judicial education to help them keep their knowledge updated is already present through the National Judicial Academy in Bhopal and the various state Judicial Academies set up across the country. The Bill however does not make any effort to ensure that such infrastructure is adequately utilised to ensure that judges are properly equipped to handle complex commercial disputes.

2.23 Apart from judicial specialisation, given the rapid pace of developments in law and commerce across the world, there is a need to ensure that judges stay up to date with contemporary global developments. This entails that training at the stage of appointments, and even continuously thereafter. Commercial court judges must also keep abreast with the use of technology to help dispose of the cases efficaciously.

Chapter III

NEED TO UPDATE AND REFRAME THE COMMERCIAL DIVISION OF THE HIGH COURTS BILL, 2009

A. *The Need for Commercial Courts in India*

3.1 The concept of commercial court – a dedicated forum aimed at resolving complex commercial disputes between parties – is an idea that has merit in its own right. This can be seen from the fact that around the world, many nations have adopted commercial courts as a means to ensure speedy delivery of justice in commercial cases. A more elaborate discussion covering many countries that have set up commercial courts can be found in the 188th Report of the Commission and the same is not being repeated here for the sake of brevity. However, it would be worthwhile to briefly restate the justifications for a commercial court in India.

(i) *Economic growth*

3.2.1 The importance of a stable, efficient and certain dispute resolution mechanism to the growth and development of trade and commerce is well established. Quick enforcement of contracts, easy recovery of monetary claims and award of just compensation for damages suffered are absolutely critical to encourage investment and economic activity, which necessarily involves the taking of financial and enforcement risks. A stable, certain and efficient dispute resolution mechanism is therefore essential to the economic development of any nation.

3.2.2 Where the legal institutions such as the Judiciary are not effective, an improvement in substantive law may make very little difference. Studying the transition countries of Eastern and South-Eastern Europe and the former Soviet

Union, it was found that despite the substantial changes in the corporate and bankruptcy laws during the period from 1992 to 1998, there was remarkable improvement in financial markets only in those countries where the legal institutions became more effective.³⁶

3.2.3 Finally, slow or over-burdened judicial systems hamper growth by fostering an inefficient use of (time and monetary) resources and technology; increasing transaction costs such as enforcement costs or delays; and moving countries away from their best possible output. When contract and property rights are not properly enforced, firms may decide not to pursue certain activities, foregoing the opportunity to specialise and exploit economies of scale; and not allocating their production among clients and markets in the most efficient fashion, thus keep resources unemployed.

(ii) Improving the international image of the Indian justice delivery system

As the 188th Report of the Law Commission also discussed in some detail, there is an impression among foreign investors and companies that India is a difficult place to do business, *inter alia*, for reasons of the slowness and inefficiency of the judicial system. This is also reflected in the World Bank's annual "Doing Business" report, which measures business regulations. This report, *inter alia*, looks at the ease or difficulty of enforcing contracts in a given nation.³⁷ Among 189 nations surveyed in the 2014 report, India was ranked 186th in the category of "Enforcing Contracts", unchanged from its 2013 position.³⁸ According to

³⁶ Katharine Pistor, Martin Raiser and Stanislaw Gelfer, *Law and Finance in Transition Economies*, 8(2) ECONOMICS OF TRANSITION 325 (2000).

³⁷ The World Bank, *Doing Business 2014; Economy Profile: India*, available at <<http://www.doingbusiness.org/data/exploreeconomies/~media/giawb/doing%20business/documents/profiles/country/IND.pdf?ver=2>>.

³⁸ The World Bank, *Doing Business 2013: Smarter Regulation for Small and Medium-Size enterprises*, available at

the data collected by the Bank, contract enforcement takes 1,420 days (i.e. nearly four years) and costs of enforcement aggregate to nearly 40% of the value of the claim. Since the World Bank first started the series of reports in 2004, these numbers have not changed, either in terms of number of days it takes to enforce the contract or the costs involved. The Report also finds that there has been no major reform in India in the last six years in contract enforcement.³⁹

(iii) Improving legal culture

3.4.1 The approach of the redrafted Bill as proposed in this Report will therefore be to set up Commercial Courts and Commercial Divisions within High Courts, which will function as model courts establishing new practices and norms of practice in commercial litigation that can, over time, be scaled up and extended to all civil litigation in India. The changes being suggested are not intended to be limited only to high value commercial disputes but should be extended to all disputes over a period of time after assessing the functioning of the Commercial Courts. The Commercial Courts, apart from being ends in themselves, are also a pilot project to reform civil litigation across the country and tackle the twin issues of delay and pendency. Ideally, the Commercial Courts should be a model for the functioning of all civil courts in India and the procedure followed here could be the basis for a larger reform of the CPC. Thus, concerns that commercial courts only serve “elitist” concern will be addressed in the long run.

3.4.2 That India needs commercial courts for the effective and efficient resolution of high value commercial disputes is beyond doubt. The criticism of the 2009 Bill is aimed at the structure and functioning of the commercial courts.

<<http://www.doingbusiness.org/~media/GIAWB/Doing%20Business/Documents/Annual-Reports/English/DB13-full-report.pdf>>

³⁹ World Bank, *supra* note 37, at 90-93.

Nevertheless, the flaws pointed out can be overcome with amendments to procedural laws and other measures as have been recommended below. Commercial courts structured along the lines recommended in this Report are intended to meet the twin objectives of ensuring speedy and quality resolution of commercial disputes and providing a template for reforming the civil justice system in India.

B. *Significant Developments in the Last Five Years*

3.5 The 188th Report of the Law Commission was released in 2004 and the Bill was introduced in 2009. Since then, several changes have taken place, which need to be incorporated into the Bill to make it more effective and meaningful. Some important changes are discussed below:

(i) Model courts

3.6.1 To address some of the problems of the existing judicial system, the advisory council of the National Mission for Justice Delivery and Legal Reform constituted a sub-group on Model Courts under the chairmanship of Justice P.V. Reddi, Chairman, Law Commission with the following members: Justice A.P Shah (Retd. Chief Justice of the Delhi High Court), Prof. N.R. Madhava Menon, Dr. Sam Pitroda and Shri Atul Kaushik (Joint Secretary, Department of Justice). The Report of the Sub-Group on Model Courts (*hereinafter* “Model Court Report”) is the outcome of the deliberations of the abovementioned sub-group.

3.6.2 The Model Court Report came up with the concept of a model court whose core requirements would be efficiency and justice. The five generic principles governing model courts are; (i) it should be citizen friendly in its access to information; (ii) it must be efficient in terms of time for litigants; (iii) it must be fair and just; (iv) the litigants should

be reasonably certain as to when their case would come up for trial; and (v) when it would conclude. Recommendations to achieve this were made in three areas, namely process related reforms; physical and technical infrastructure improvement; and grooming of professional and accountable personnel.

3.6.3 The detailed recommendations laid down in the Model Court Report are not repeated here in the interests of brevity but form a useful set of guidelines and principles to be followed in setting up commercial courts in India, especially since commercial courts are also an effort at promoting efficiency and justice in the present justice delivery system. A commercial court will be better equipped to reach its objective of delivering speedy justice to litigants if it is structured and run like a “Model Court” on the basis of the guidelines and recommendations of the Model Court Report.

(ii) Promised increase in the judicial strength of High Courts

While the 188th Report of the Law Commission had suggested that the number of judges in the High Courts be increased along with the setting up of the commercial courts, no such provision or move was made by the Government at the time. However, a proposal to increase the strength of judges in the High Courts by 25% has been cleared by the Central Government. This also entails the creation of new infrastructure to accommodate the increase in the judge-strength of the High Courts. The proposal for Commercial Courts must therefore take this into account.

(iii) Computerisation

3.8.1 Since the publication of the 188th Report and the introduction of the 2009 Bill, e-courts have been introduced

and have started functioning in a number of locations in the country. At present, the Delhi High Court and the Supreme Court of India, among other courts, permit e-filing of cases and some courtrooms have been designated e-courts where the files and the notings are made by the judges on the e-readers specially used for this purpose. E-courts are useful in ensuring that papers are not lost and records are maintained properly. They are especially useful when the records are voluminous, and help save time in allowing easy access and reference to the judges. In the Bombay Blasts case, where the records were extremely voluminous, the Supreme Court of India computerised all the records and the hearings of the cases were conducted as if it were an e-court.

3.8.2 Commercial Courts, once set up, should take into account the experience of computerisation and digitisation. All commercial courts should be made e-courts to help reduce the need to maintain voluminous records and improve the efficacy of functioning.

C. A Fresh Proposal for the Creation of Commercial Divisions and Commercial Courts

3.9 It is proposed to modify the Bill so to vest the power with the Central Government to: (i) set up Commercial Divisions in High Courts having ordinary original civil jurisdiction, such as in Chennai; (ii) Commercial Courts in those regions to which the original civil jurisdiction of such High Courts having ordinary original civil jurisdiction do not extend, such as Madurai; and (iii) Commercial Courts in States and Union Territories where High Courts do not have original civil jurisdiction in the manner set forth below.

3.10 Given the changes that are being proposed below, it would be appropriate to re-title the Bill as “*The Commercial Division and Commercial Appellate Division of High Courts and*

the Commercial Courts Bill, 2015” (hereinafter the “2015 Bill”). The proposed 2015 Bill has been re-drafted keeping in mind the judicial hierarchy and structure of courts in India, and the need to ensure continuity in such institutions. The institutional changes are only going to be super-imposed on the existing structures without undermining them in anyway. To further clarify the scope and purpose of the commercial courts in India, the Statement of Objects and Reasons has also been re-drafted. A copy of the re-drafted bill is annexed to this Report.

3.11 Commercial Divisions will be set up only in those High Courts that have ordinary original civil jurisdiction and have a pecuniary jurisdiction of not less than Rupees One Crore. As discussed earlier, we suggest that the pecuniary jurisdiction should be Rupees One Crore uniformly across the five High Courts having ordinary original civil jurisdiction. In those States or Union Territories where a High Court does not exercise original civil jurisdiction, it is recommended that the Central Government, in consultation with the concerned State Government and Chief Justice of the concerned High Court, set up Commercial Courts. For instance, Commercial Courts may be set up in cities such as Nagpur or Pune where the original civil jurisdiction of the Bombay High Court does not extend. The territorial jurisdiction of the Commercial Courts to be set up will be determined by the Central Government in consultation with the High Court and the concerned State Government, but the pecuniary jurisdiction of such Commercial Courts will be Rupees One Crore.

3.12 In addition, wherever a Commercial Division is being constituted or where a Commercial Court is being set up, the Central Government should simultaneously constitute a Commercial Appellate Division of the High Court composed of one or more Division Benches of the jurisdictional High Court to hear the appeals from the orders

and decrees of the Commercial Division or the Commercial Court, as the case may be.

D. Nomination to Commercial Division and Commercial Appellate Division and Appointments to the Commercial Court

3.13 In the Commercial Division and Commercial Appellate Division of the High Courts, the Chief Justice of the concerned High Court will nominate an adequate number of sitting High Court judges to the Commercial Division or Commercial Appellate Division who, in the opinion of the Chief Justice, have the requisite experience and expertise in commercial laws. It is advisable that the judges nominated to the Commercial Division or the Commercial Appellate Division deal exclusively with commercial disputes preferably for a period of at least two years.

3.14 So far as the Commercial Courts are concerned, the High Court shall have the power to appoint judges thereby creating a new and separate cadre of judges of the Commercial Courts. It is recommended that this cadre of judges have pay-scale and benefits not less than that of the Principal District Judge in that particular State. The judges in the Commercial Courts shall be selected through a well-defined recruitment process by the relevant High Court. In order to attract better talent, a higher pay-scale and greater perquisites for Commercial Court judges may be considered.

3.15 All judges appointed as judges of the Commercial Court should be required to undergo training in a special program for a period of six months at the National Judicial Academy and/or at the relevant State Judicial Academy. The syllabus for the training will be developed by the National Judicial Academy in consultation with lawyers, academics and judges. This syllabus should not only be useful to the judges of the Commercial Courts but should also assist in the

continuing education of High Court judges if they so choose to avail of it.

E. Institutional Arrangements for Commercial Courts

3.16 As earlier mentioned, the proposal to increase the strength of High Courts has also been accompanied by an initiative to increase and provide for additional infrastructure. The Commercial Division of High Courts must, wherever possible, take benefit of new infrastructure but otherwise should be located in the respective High Court's premises. Commercial courts on the other hand should, as far as possible, have separate infrastructure and registries from regular civil courts.

3.17 Commercial Courts should be structured following the Model Court guidelines recommended by the Model Court Report in so far as physical and technical infrastructure are concerned.

3.18 All the proceedings of the Commercial Courts should be digitised. E-filing and all facilities for audio-visual recording should be available.

3.19 A serious issue highlighted not only by researchers studying the judiciary in India,⁴⁰ but also by the Law Commission,⁴¹ has been the inadequacy of, and poor track record of, keeping the relevant data by courts in India. Systematic collection and publication of data by courts in a uniform format would help in assessing the performance of the Commercial Divisions and the Commercial Courts, and

⁴⁰ Nick Robinson, *The Indian Supreme Court by the Numbers*, LGDI WORKING PAPER NO. 2012-2 (2012) available at <

http://azimpremjiuniversity.edu.in/SitePages/pdf/LGDI_WorkingPaper_14December2012_The%20Indian-Supreme-Court-by-the-Numbers_NickRobinson.pdf>.

⁴¹ Law Commission of India, 245th Report, *supra* note 23, at pages 10-11.

in improving transparency in the functioning of these courts. It is recommended that Commercial Courts, the Commercial Divisions, and Commercial Appellate Divisions be required to publish data relating to number of cases instituted each month, number of hearings conducted, number of cases disposed, and the status of each case in a manner easily accessible to the general public. This will increase the confidence of the general public in the functioning of the judiciary and assist the institution in achieving the purpose for which it was set up.

F. Procedural Improvements

(i) Special procedure to be followed in Commercial Courts and Commercial Divisions

3.20.1 In order to take advantage of the best practices in civil procedure followed in commercial courts across the world, specifically the UK and Singapore, we find that the success of the commercial courts depends on the ease with which the commercial dispute moves through the court system and the powers given to the judge to ensure that the trial is conducted fairly and efficiently. For this reason, it is suggested that amendments, as fully described in Schedule of the proposed Bill, be made to the CPC in its application to Commercial Courts and Commercial Divisions in High Courts.

3.20.2 It is recommended that the redrafted procedural provisions of the 2015 Bill contain a clause, which makes it clear that the provisions of the Bill should prevail over the CPC, State amendments to the CPC, and the applicable High Court rules in case of any conflict. The procedural provisions of the Bill, in all other cases, will be supplementary to the existing CPC and High Court rules, but in case of any conflict, the procedural provisions of the Bill will prevail over other legislations.

3.20.3 Some of the key normative changes being suggested in the 2015 Bill are:

- a) Written statements, which are not filed within the thirty day period prescribed by Orders V and VIII of the CPC, can be filed afterwards (subject to a Court's written order and the payment of costs); however, in no case can they be filed beyond one hundred twenty days from the days of summons. In such cases, the defendants shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.
- b) Pleadings and filing of documents to follow the procedures under the CPC, but subject to stricter timelines, giving the court the power to strike out vexatious and irrelevant pleadings in order to ensure that the trial takes place on relevant issues.
- c) Disclosure and inspection norms that will allow parties to complete discovery of documents efficiently.
- d) A new and separate procedure of "summary judgment" to be introduced where parties can seek judgment of the court summarily at any point of time prior to the commencement of trial, namely at the time of framing of issues.
- e) The court will be empowered to conduct a case management hearing where it will have all the necessary powers required to ensure the proper conduct of a trial within a specified time frame. This will include, *inter alia*, the power to fix dates for hearing, decide which issues are to be tried and witnesses to be summoned. In addition, the Court will be empowered to impose costs and other penalties on parties for failure to follow the directions set out in a case management hearing.
- f) A new regime of costs to be introduced, providing for "costs to follow event".

- g) Time bound oral arguments to be supplemented with written submissions to be filed mandatorily.
- h) Time bound delivery of judgments within ninety days from the conclusion of arguments.

3.20.4 The above normative changes will be supplemented by Practice Directions that will be issued by the High Courts so as to facilitate efficient and smooth functioning of the Commercial Courts and Commercial Divisions. Such Practice Directions shall also serve as guidance to both judges and practicing advocates in respect of the procedures that apply to Commercial Divisions and Commercial Courts.

3.20.5 The Commission's recommendations on case management are consonant with the Supreme Court's directions in *Rameshwari Devi v Nirmala Devi*, where the Court advocated for case management observing that:

*At the time of filing of the plaint, the trial Court should prepare complete schedule and fix dates for all the stages of the suit, right from filing of the written statement till pronouncement of judgment and the Courts should strictly adhere to the said dates and the said time table as far as possible. If any interlocutory application is filed then the same [can] be disposed of in between the said dates of hearings fixed in the said suit itself so that the date fixed for the main suit may not be disturbed.*⁴²

(ii) Costs

3.21.1 As recommended by the Supreme Court of India⁴³ and the Law Commission,⁴⁴ costs will have to follow the event as a meaningful deterrent against frivolous litigation. In the *Sahara* judgment, the Court observed:

⁴² (2011) 8 SCC 249, at para 52.

⁴³ See *Sanjeev Kumar Jain v Raghubir Saran Charitable Trust*, (2012) 1 SCC 455.

⁴⁴ Law Commission of India, *Costs in Civil Litigation*, Report No. 240 (2012).

He [the innocent suffering litigant] spends invaluable time briefing counsel and preparing them for his claim. Time which he should have spent at work, or with his family, is lost, for no fault of his. Should a litigant not be compensated for, what he has lost, for no fault? The suggestion to the legislature is, that a litigant who has succeeded, must be compensated by the one, who has lost. The suggestion to the legislature is to formulate a mechanism, that anyone who initiates and continues a litigation senselessly, pays for the same. It is suggested that the legislature should consider the introduction of a “Code of Compulsory Costs.... The effort is only to introduce consequences, if the litigant’s perception was incorrect, and if his cause is found to be, not fair and legitimate, he must pay for the same.”⁴⁵

3.21.2 In *Rameshwari Devi v Nirmala Devi*, the Supreme Court noted that another factor to be considered while imposing costs is “*for how long the defendants or respondents were compelled to contest and defend the litigation in various courts.*”⁴⁶

3.21.3 Therefore, the proposed 2015 Bill shall also contain a clause ensuring that costs shall necessarily follow the event in all cases, except where the court gives reasons in writing explaining why costs should not follow. The model of costs proposed in the amendments to the A&C Act, 1996 by the Law Commission in its 246th Report will also be adopted in this Bill. This will entail amendments to Section 35 and Section 35-A of the CPC, which govern the award of costs.

3.21.4 As proposed in the amendments to the A&C Act, 1996 in awarding costs, the court/arbitral tribunal will have regard to all circumstances including-

⁴⁵ *Subrata Roy Sahara v Union of India*, (2014) 8 SCC 470, at para 150.

⁴⁶ (2011) 8 SCC 249, at para 55.

- a) The conduct of all parties;
- b) Whether a party has succeeded in part of its case, even if the party has not been wholly successful;
- c) Whether the party had made a frivolous counter claim leading to delay in the disposal of the case;
- d) Whether any reasonable offer has been made by a party to settle; and
- e) Whether the Party had made a frivolous claim and instituted a vexatious proceeding wasting the time of the Court.

3.21.5 “Costs” here will mean reasonable costs relating to:

- a) Fees and expenses of the arbitrators, courts and witnesses;
- b) Legal fees and expenses; and
- c) Any other expenses incurred in connection with the proceedings.

3.21.6 It is proposed to adopt the above model with suitable changes, to empower the Commercial Divisions and Commercial Courts to award costs along the above lines, and to also make it mandatory to give reasons for *not* awarding costs. This, it is intended, will deter parties from making frivolous claims or engaging in vexatious litigation, thereby adding to the burden of pendency and delays.

(iii) Court Fees

3.22 Much like the existing costs regime, the existing court fees regime also does not deter litigants from filing false and vexatious claims or seeking adjournments to delay the proceedings. Litigants who prolong matters and abuse the Court’s process pay the same court fees as litigants who do not indulge in such practices. To remedy the situation, court fees will need to be related to the time consumed by the litigants in the conduct of their case, much like Singapore, as

discussed in the previous Chapter. The State Government may, therefore, consider re-examining the court fee regime in light of its legislative domain under Entry 3, List II of the Seventh Schedule of the Constitution of India.

(iv) Appeals

3.23.1 The Bill presently provides for a direct appeal to the Supreme Court. This is proposed to be replaced with a provision, which mandates that there will be no appeals from orders of the Commercial Division or the Commercial Court save under Order XLIII of the CPC and from final judgments of the Commercial Division or Commercial Court. Such appeals will only be to the jurisdictional Commercial Appellate Division.

3.23.2 It is further recommended that notwithstanding any other law, no civil revision application or petition shall be entertained against an interlocutory order of the Commercial Court, including an order on a jurisdictional challenge. The purpose here is to prevent the time frames stipulated for case management hearing from becoming redundant by the frequent filing of civil revision applications and petitions against every interlocutory order. By removing a potential source of bottleneck of cases, the Bill hopes to ensure the expedited disposal of cases.

3.23.3 Moreover, no appeals will be permitted from a finding of the Commercial Court or Commercial Division that the dispute in question is a commercial dispute inasmuch as there is no real prejudice caused to the parties when the Commercial Court or Commercial Division finds that the dispute is a commercial dispute.

(v) **Additional Provisions**

a. **Arbitration**

3.24.1 The Law Commission, in its 246th Report on the “*Amendments to the Arbitration and Conciliation Act*” has recommended changes to the A&C Act to *inter alia*, reduce the intervention of the Court in arbitration proceedings.⁴⁷

3.24.2 The 246th Report of the Commission has recommended an amendment to definition of “Court” in Section 2(e) of the A&C Act, 1996 to mean “High Court” in the context of all international commercial arbitrations, irrespective of value. Keeping the suggestions and the amendments proposed in that report, we make the following suggestions with respect to arbitrations that involve commercial disputes.

3.24.3 *First*, it is recommended that in case of an international commercial arbitration concerning a commercial dispute of more than Rupees One Crore, any application or appeal arising out of such arbitration under the A&C Act, that has been filed in a High Court will be heard by the Commercial Division of the High Court, where such Commercial Division has been constituted in the High Court. In the absence of the Commercial Division, applications or appeals concerning such international commercial arbitrations will be heard by the regular Bench of the High Court.

3.24.4 *Second*, in the case of domestic arbitrations concerning a commercial dispute of more than Rupees One Crore, applications or appeals may lie either to the High Court or a Civil Court (not being a High Court) depending

⁴⁷ Law Commission of India, *Amendments to the Arbitration and Conciliation Act, 1996*, Report No. 246 (2014).

upon the pecuniary jurisdiction. It is recommended that all applications or appeals arising out of such arbitrations under the A&C Act, that have been filed on the original side of the High Court shall be heard by the Commercial Division of the High Court where such Commercial Division is constituted in the High Court. However, in the absence of a Commercial Division being constituted, the regular Bench of the High Court will hear such applications or appeals arising out of domestic arbitration. If the application or appeal in such domestic arbitration is not within the jurisdiction of the High Court and would ordinarily lie before a Civil Court (not being a High Court) and there is a Commercial Court exercising territorial jurisdiction in respect of such arbitration, then such application or appeal shall be filed in and heard by such Commercial Court.

3.24.5 *Third*, it is recommended that all appeals under the A&C Act in relation to arbitration cases concerning a commercial dispute of more than Rupees One Crore preferred against an order of the Commercial Division or Commercial Court, shall be heard and disposed of by the Commercial Appellate Division, where a Commercial Appellate Division has been constituted in the jurisdictional High Court.

b. Hearing of writ petitions concerning commercial disputes by Commercial Divisions

3.24.6 In addition to the jurisdiction vested with the Commercial Appellate Division above, it is recommended that even commercial disputes which are appealed to the High Court from a tribunal, under a statute such as the Copyright Act, 1957 or the Trade Marks Act, 1999 be heard and disposed of by the Commercial Appellate Division. Where the order of the tribunal relates to a commercial dispute, and such order is challenged before the High Court, either by way of appeal or writ petition, it is recommended that such disputes also be heard and disposed of by the Commercial

Appellate Division. To prevent any ambiguity in the implementation of the provisions, the names of such tribunals will be specified in law and shall include for instance, the Competition Appellate Tribunal or the Intellectual Property Appellate Board.

3.24.7 It may be clarified here that not all writ petitions under Article 226 and/or 227 which relate in some manner to a commercial dispute should automatically be referred to the Commercial Appellate Division. It is possible that a public interest litigation may, on some occasions, refer to a commercial agreement, but such a dispute should not automatically be placed before the Commercial Appellate Division since the issues involved are likely to be wider and may require different considerations. Nevertheless, we leave it open to the Chief Justice of the concerned High Court to place such public interest litigation and other writ petitions, which may involve commercial disputes to an extent to be heard and decided by the Commercial Appellate Division.

c. Exclusion of Civil Court Jurisdiction by other law

3.24.8 The Bill, at present, excludes from the jurisdiction of the Commercial Division any dispute, which is outside the jurisdiction of the Civil Court. It is recommended that this provision be retained.

Chapter IV

CONCLUSIONS AND SUMMARY OF RECOMMENDATIONS

4.1 While the need for commercial courts is obvious in India, the institution of such courts should be seen as a stepping-stone to reforming the civil justice system in India. At the same time, the reforms should be tailored to keep in mind the existing institutions and should focus on improving them within the existing legal framework.

4.2 The Commercial Courts, the Commercial Divisions and the Commercial Appellate Divisions of High Courts that have been recommended are intended to serve as a pilot project in the larger goal of reforming the civil justice system in India. The goal is to ensure that cases are disposed of expeditiously, fairly and at reasonable cost to the litigant. Not only does this benefit the litigant, other potential litigants (especially those engaged in trade and commerce) are also advantaged by the reduction in backlog caused by the quick resolution of commercial disputes. In turn, this will further economic growth, increase foreign investment, and make India an attractive place to do business. Further, it also benefits the economy as a whole given that a robust dispute resolution mechanism is a *sine qua non* for the all-round development of an economy.

4.3 In view of the above, a summary of the key recommendations of the Law Commission are reiterated below:

- a) Commercial disputes should be defined broadly to mean disputes arising out of ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents; joint venture

and partnership agreements; intellectual property rights; insurance and other such areas as have been defined in the proposed 2015 Bill.

- b) Commercial Divisions are to be set up by the Central Government in High Courts that are already exercising ordinary original civil jurisdiction, such as Calcutta, to take up commercial disputes with a specified value of Rupees One Crore or more. Commercial Divisions to exercise jurisdiction over all suits and applications relating to commercial disputes (i) stipulated by statute to lie at a court not inferior to a District Court, and filed on the original side of the High Court and (ii) transferred to the High Court by virtue of Section 22(4) of the Designs Act, 2000 or Section 104 of the Patents Act, 1970.
- c) Commercial Courts are to be set up in (i) States and Union Territories where the High Courts do not have ordinary original civil jurisdiction, such as Bangalore and (ii) in those regions to which the original civil jurisdiction of High Courts (already having original civil jurisdiction) does not extend, such as Pune or Madurai. The minimum pecuniary jurisdiction of such Commercial Courts shall also be Rupees One Crore or more.
- d) Pecuniary jurisdiction of the High Courts having original jurisdiction to be raised uniformly to Rupees One Crore and Commercial Divisions should be set up only when the pecuniary jurisdiction has been so raised. Consequently, Commercial Divisions may be set up in Delhi, Himachal Pradesh, and Madras High Courts once the pecuniary jurisdiction is raised to Rupees One Crore.

- e) No jurisdiction with Commercial Divisions or Commercial Courts to adjudicate matters relating to commercial dispute, where the jurisdiction of the civil court has been either expressly or impliedly barred under law.
- f) The constitution of a Commercial Division or a Commercial Court should take place simultaneously with the constitution of a Commercial Appellate Division. The Commercial Appellate Division will hear the appeals against the orders and decrees passed by the Commercial Divisions or Commercial Courts. The Commercial Appellate Division to not entertain any civil revision applications or petitions against any interlocutory order of a Commercial Court, including an order on the issue of jurisdiction (which can be agitated only in an appeal against a decree). Appeals would lie only against the orders enumerated in Order XLIII of the CPC and Section 37 of the Arbitration and Conciliation Act, 1996 and against no other orders.
- g) The Chief Justice shall nominate sitting judges of the High Court, having expertise and experience in commercial disputes, to the Commercial Division of the High Courts and the Commercial Appellate Division, preferably for a period of two years.
- h) Commercial Courts are to be manned by specially trained judges appointed by the High Court from advocates and judges with demonstrable expertise and experience in commercial litigation.
- i) Notwithstanding anything contained in the CPC, the filing of a counter-claim of specified value in a suit relating to a commercial dispute to result in transferring the suit to the Commercial Court or Commercial Division, as the case may be.

- j) All pending suits and applications relating to commercial disputes above Rupees One Crore in the High Courts and Civil Courts will be transferred to the relevant Commercial Division or Commercial Court as the case may be. In case the transfer cannot be carried out in the manner contemplated by the proposed subsections, the Commercial Appellation Division can pass appropriate orders.
- k) The Bill shall have a streamlined procedure to be adopted for the conduct of cases in the Commercial Division and in the Commercial Court by amending the Code of Civil Procedure, 1908 so as to improve the efficiency and reduce delays in disposal of commercial cases. The amended CPC as applicable to the Commercial Divisions and Commercial Courts will prevail over the existing High Court rules and other provisions of the CPC to the contrary. Some of the important changes proposed to the CPC are listed below:
- i. Order V, Rule 1(1) and Order VIII, Rule 1 to now provide thirty days to the defendants to file their written statements and an additional ninety days, subject to the satisfaction of the Court and on the payment of costs. However, on the expiry of this ninety day time period (which is one hundred twenty days from the date of summons), the defendants to forfeit their right to file the written statement and the Courts to not allow the written statement to be taken on record.
 - ii. Disclosure and inspection norms under Order XI to be amended to allow parties (including by interrogatories) to complete the discovery of documents efficiently and to apply to all documents and photocopies of documents in the

power, possession, control, or custody of the parties. Further, courts to be empowered to impose exemplary costs against defaulting parties for wilful or negligent failure to disclose all documents, or for wrongful or unreasonable withholding of documents for inspection.

- iii. A new procedure for “summary judgment” to be introduced to permit the Courts to decide a claim pertaining to any Commercial Dispute without recording oral evidence, as long as the application for summary judgment has been filed before the framing of issues. Courts are also to be empowered to make “conditional orders” wherever necessary.
- iv. A new costs regime of “costs to follow event” to be introduced, with elaborate directions on what constitutes costs and the circumstances the Courts should have regard to while making an order on costs. A successful party to also have costs imposed on it if, for instance, portions of the claim/defence are proved to be frivolous during trial.
- v. Changes to the procedure where interest is sought in a suit and to the filing of evidence, and further providing for the verification of pleadings in a commercial dispute.
- vi. Elaborate procedures for case management hearing, including consequences for non-compliance with orders to be introduced.
- vii. Time bound oral arguments to be supplemented with written submissions to be filed mandatorily within four weeks prior to the commencement of oral arguments.

- viii. Courts to be empowered to control, redact, or reject evidence for reasons to be recorded in writing.
- ix. Time bound delivery of judgment, within ninety days from the conclusion of arguments, introduced.
- x. For suits that have been transferred to the Commercial Court or Commercial Division, the procedural provisions will be applicable only from the point in the trial at which they have been transferred.
- xi. Procedural rules to be supplemented by Practice Directions issued by the jurisdictional High Courts.
- xii. The Commercial Division and the Commercial Court are to take advantage of new infrastructure, wherever possible, and are to be run as “Model Courts” along the guidelines laid down in the Model Court Report.
- xiii. The National Judicial Academy and the State Judicial Academies shall create necessary facilities for the training and continuous education of judges of the Commercial Court or the Commercial Division or the Commercial Appellate Division in a High Court.
- xiv. All applications or appeals in international commercial arbitrations concerning commercial disputes of specified value that have been filed in

a High Court, are to be heard and disposed of by the Commercial Appellate Division of the High Court where such Commercial Appellate Division has been constituted.

- xv. All applications or appeals in domestic arbitrations concerning commercial disputes of specified value that have been filed on the original side of the High Court, will be heard and disposed of by the Commercial Appellate Division of the High Court where such Commercial Appellate Division has been constituted.
- xvi. All applications or appeals in domestic arbitrations concerning commercial disputes of specified value that would ordinarily lie in a Civil Court (not being a High Court), will be heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitrations.
- xvii. All appeals preferred against any order or decree of the Commercial Division or Commercial Court shall be heard and disposed of by the Commercial Appellate Division of the relevant High Court, preferably within a period of six months from the date of filing of such appeal. The Commercial Appellate Division shall endeavour to dispose of writ petitions, if any filed before it, before it within a similar six-month period.
- xviii. No civil revision application or petition shall be entertained against any interlocutory order of the Commercial Court, including an order on the issue of jurisdiction.

- xix. Writ petitions and appeals filed in a High Court against the orders of certain specified tribunals (such as the Competition Appellate Tribunal or the Intellectual Property Appellate Board) shall be heard by the Commercial Appellate Division, if the subject matter of such writ or appeal relates to a commercial dispute.
- xx. The Law Commission proposes a relook of the court fee regime by the State governments in light of their legislative domain under Entry 3, List II of the Seventh Schedule of the Constitution of India.

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| | <i>A.P. Shah</i> | |
| | [Justice A.P. Shah] | |
| | Chairman | |
| <i>S.N. Kapoor</i> | <i>Mool Chand Sharma</i> | <i>Usha Mehra</i> |
| [Justice S.N. Kapoor] | [Prof. (Dr.) Mool Chand Sharma] | [Justice Usha Mehra] |
| Member | Member | Member |
| <i>S.S. Chahar</i> | <i>P.K. Malhotra</i> | <i>Sanjay Singh</i> |
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| Member-Secretary | Ex-officio Member | Ex-officio Member |

THE COMMERCIAL DIVISION AND COMMERCIAL APPELLATE DIVISION OF HIGH COURTS AND COMMERCIAL COURTS BILL, 2015

A Bill to provide for the constitution of commercial divisions and commercial appellate divisions in High Courts and for the creation of commercial courts in other parts of the country for adjudicating commercial disputes, the procedure to be adopted in deciding commercial disputes and for matters connected therewith or incidental thereto.

1. WHEREAS it has been observed that owing to greater economic activity, the number and value of Commercial Disputes are increasing significantly;
2. WHEREAS it has been observed that high value Commercial Disputes constitute a large proportion of civil disputes that remain pending before High Courts and various civil courts in the country;
3. WHEREAS to ensure further economic growth, greater foreign investment, and to make India an attractive place to do business, it is essential that Commercial Disputes are decided in a fair, effective and timely manner;
4. WHEREAS there is a need to ensure that the adjudication of Commercial Disputes ensures speedy relief to those engaged in trade and commerce so that the lack of efficacious remedies do not impede the growth of trade and commerce by rendering nugatory their rights in law and equity;
5. WHEREAS it is advisable, in accordance with international best practices, to create new courts and provide for judicial manpower trained in commercial law to decide Commercial Disputes so as to reduce the growing pendency of commercial disputes and to achieve efficacious and expeditious disposal of such cases; and
6. WHEREAS it is necessary to provide for substantive changes in the procedural laws that are applicable for deciding Commercial Disputes to achieve these objectives.

NOW THEREFORE BE IT ENACTED IN THE SIXTY-SIXTH YEAR OF THE REPUBLIC.

CHAPTER I

PRELIMINARY

1. Short title, application, and commencement

- (1) This Act may be called the Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Act, 2015.
- (2) It extends to the whole of India, except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions

- (1) In this Act, unless the context otherwise requires, -
 - (a) “**Commercial Dispute**” means a dispute arising out of:
 - i. ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents,
 - ii. export or import of merchandise or services,
 - iii. issues relating to admiralty and maritime law,
 - iv. transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same,
 - v. carriage of goods,
 - vi. construction and infrastructure contracts, including tenders,
 - vii. agreements relating to immovable property used exclusively in trade or commerce,
 - viii. franchising agreements,
 - ix. distribution and licensing agreements,
 - x. management and consultancy agreements,
 - xi. joint venture agreements,
 - xii. shareholders agreements,
 - xiii. subscription and investment agreements pertaining to the services industry including outsourcing services and financial services,
 - xiv. mercantile agency and mercantile usage,

- xv. partnership agreements,
- xvi. technology development agreements,
- xvii. intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits,
- xviii. agreements for sale of goods or provision of services,
- xix. exploitation of oil and gas reserves or other natural resources including electromagnetic spectrum,
- xx. insurance and re-insurance,
- xxi. contracts of agency relating to any of the above, or relating to such other Commercial Disputes which the Central Government may prescribe as per the ensuing sub-clause, and
- xxii. such other Commercial Disputes which the Central Government may prescribe.

Explanation 1 - A Commercial Dispute shall not cease to be a Commercial Dispute merely because it also involves action for recovery of immovable property or for realization of monies out of immovable property given as security or involves any other relief pertaining to immovable property.

Explanation 2 - A commercial dispute shall not cease to be a commercial dispute merely because one of the contracting parties is the State or any of its agencies or instrumentalities, or a private body carrying out public functions.

- (b) “**Commercial Appellate Division**” means the Commercial Appellate Division in a High Court constituted under sub-section (3) of Section 3;
- (c) “**Commercial Court**” means the Commercial Court constituted under sub-section (2) of Section 3;
- (d) “**Commercial Division**” means the Commercial Division in a High Court constituted under sub-section (1) of Section 3;
- (e) “**District Judge**” shall have the same meaning as contained in clause (a) of Article 236 of the Constitution of India;
- (f) “**Document**” means any matter expressed or described upon any substance by means of letters, figures or marks, or electronic means, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter;

- (g) “**Notification**” means a notification published in the Official Gazette and the expression “notify” with its cognate meanings and grammatical variations shall be construed accordingly; and
- (h) “**Specified Value**” shall have the meaning as assigned to it in Section 13.
- (2) Words and expressions used and not defined herein shall have the meanings assigned to them in the Code of Civil Procedure, 1908 and Evidence Act, 1872.

CHAPTER II

CONSTITUTION OF COMMERCIAL DIVISIONS, COMMERCIAL APPELLATE DIVISIONS AND COMMERCIAL COURTS

3. Constitution of Commercial Divisions, Commercial Appellate Divisions and Commercial Courts

- (1) In all High Courts having ordinary original civil jurisdiction, the Central Government may after consultation with the relevant High Court and the relevant State Government, by notification, constitute a division of such High Court having ordinary original civil jurisdiction to be called the “Commercial Division” of that High Court. Such Commercial Division shall comprise of such number of judges as may be determined from time to time by the Chief Justice of such High Court.
- (2) In all States or Union Territories where the High Court does not have ordinary original civil jurisdiction, the Central Government may after consultation with the relevant High Court and relevant State Government, by notification, constitute a Commercial Court having jurisdiction over such area as indicated in such notification. Such Commercial Court shall comprise of such number of judges as may be appointed in accordance with Section 5 of this Act.
- (3) In all States or Union Territories where the High Court has ordinary original civil jurisdiction, the Central Government may after consultation with the relevant High Court and relevant State Government, by notification, constitute a Commercial

Court for such area(s), other than the area over which the High Court exercises ordinary original civil jurisdiction. Such Commercial Court shall comprise of such number of judges as may be appointed in accordance with Section 5 of this Act.

Illustration: The Central Government may constitute a Commercial Division in the Principal Seat of Bombay High Court having ordinary original civil jurisdiction at Mumbai. The Central Government may also constitute a Commercial Court in Pune or Nagpur in accordance with this sub-section.

- (4) The Central Government shall simultaneously with the issuance of a Notification under sub-sections (1), (2) or (3) above, constitute a division in the relevant High Court to be called the “Commercial Appellate Division” of that High Court. Such Commercial Appellate Division shall have one or more division benches as may be determined from time to time by the Chief Justice of such High Court.

4. Nomination of judges to the Commercial Division and Commercial Appellate Divisions in High Courts

- (1) After a Notification under sub-section (1) or sub-section (3) of Section 3 has been issued, the Chief Justice of that High Court shall nominate such number of Judges of the High Court as required, to be Judges of the Commercial Division or Commercial Appellate Division of such High Court.
- (2) Judges to be nominated for the Commercial Division or the Commercial Appellate Division shall have expertise and experience in commercial litigation and such nomination shall preferably be for a period of two years or such other period as may be determined by the Chief Justice of the relevant High Court.

5. Appointment of judges to the Commercial Courts

- (1) Appointment of a judge of a Commercial Court shall be made by the relevant High Court in accordance with such rules as may be prescribed by that High Court.

- (2) Where more than one judge is appointed to a Commercial Court, the senior-most judge shall be designated as “Principal Judge, Commercial Court” and shall have such powers and functions in relation to the Commercial Court, as the Principal District Judge has for the purposes of the administration of the District Court.
- (3) No person shall be eligible to be appointed as a Judge of a Commercial Court unless such person is qualified to be appointed as a District Judge and has demonstrable expertise and experience in Commercial Disputes.
- (4) The State Government or the Central Government, as applicable, in consultation with the relevant High Court, shall prescribe the pay, emoluments and other terms and conditions of service of the judges of the Commercial Court.

Provided that such terms and conditions of service for judges of the Commercial Court shall not be less favourable than that of the post of Principal District Judge or any other post in the judicial service equivalent to Principal District Judge in that State or Union Territory.

6. **Jurisdiction of the Commercial Divisions of High Courts**

All suits and applications relating to Commercial Disputes of a Specified Value filed in a High Court having ordinary original civil jurisdiction shall be heard and disposed of by the Commercial Division of that High Court.

Provided that all suits and applications relating to Commercial Disputes stipulated by statute to lie at a court not inferior to a District Court, and filed on the original side of the High Court shall be heard and disposed of by the Commercial Division of the High Court.

Provided further that all suits and applications transferred to the High Court by virtue of Section 22(4) of the Designs Act, 2000 or Section 104 of the Patents Act, 1970 shall be heard and disposed of by the Commercial Division of the High Court, in all the areas over which the High Court exercises ordinary original civil jurisdiction.

7. Jurisdiction of Commercial Courts

The Commercial Court shall have jurisdiction to try all suits and applications relating to a Commercial Dispute of a Specified Value arising out of the area over which it has been vested territorial jurisdiction by virtue of a notification under sub-section (2) of Section 3.

Explanation - A Commercial Dispute shall be considered to arise out of the area over which a Commercial Court has been vested jurisdiction if the suit or application relating to such Commercial Dispute has been instituted as per Sections 16 to 20 of the Code of Civil Procedure, 1908.

8. Jurisdiction of Commercial Appellate Divisions of High Courts

- (1) Notwithstanding anything contained in any other law in force, any appeal preferred against an order or decree of a Commercial Division of a High Court shall be heard and decided by the Commercial Appellate Division of that High Court
- (2) Notwithstanding anything contained in any other law in force, any appeal preferred against an order or decree of a Commercial Court shall be heard and disposed of by the Commercial Appellate Division of the High Court exercising supervisory jurisdiction over such Commercial Court.

9. Bar against revision application or petition against an interlocutory order

Notwithstanding anything contained in any other law, no civil revision application or petition shall be entertained against any interlocutory order of a Commercial Court, including an order on the issue of jurisdiction and any such challenge, subject to the provisions of Section 13, shall be raised only in an appeal against the decree of the Commercial Court.

10. Transfer of suit if counter-claim in a Commercial Dispute is of Specified Value

- (1) Notwithstanding anything contained in the Code of Civil Procedure, 1908, in the event that a counter-claim filed in a suit

before a civil court relating to a Commercial Dispute is of Specified Value, such suit shall be transferred by the civil court to the Commercial Division or Commercial Court (as the case may be) having territorial jurisdiction over such suit.

- (2) In the event that such suit is not transferred in the manner contemplated in sub-section (1), the Commercial Appellate Division of the High Court exercising supervisory jurisdiction over the civil court in question may, on the application of any of the parties to the suit, withdraw such suit pending before the civil court and transfer the same for trial or disposal to the Commercial Division or Commercial Court (as the case may be) having territorial jurisdiction over such suit, and such order of transfer shall be final and binding.

11. Jurisdiction in respect of arbitration matters

Where the subject matter of an arbitration is a Commercial Dispute of a Specified Value and:

- (1) if such arbitration is an international commercial arbitration, all applications or appeals arising out of such arbitration under the Arbitration and Conciliation Act, 1996 that have been filed in a High Court, shall be heard and disposed of by the Commercial Appellate Division where such Commercial Appellate Division has been constituted in such High Court.
- (2) if such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the Arbitration and Conciliation Act, 1996 that have been filed on the original side of the High Court, shall be heard and disposed of by the Commercial Appellate Division where such Commercial Appellate Division has been constituted in such High Court.
- (3) if such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the Arbitration and Conciliation Act, 1996 that would ordinarily lie before any principal civil court of original jurisdiction in a district (not being a High Court) shall be filed in, and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration, where such Commercial Court has been constituted.

12. Bar to jurisdiction of Commercial Divisions and Commercial Courts

Notwithstanding anything contained in this Act, a Commercial Division or a Commercial Court shall not entertain or decide any suit, application or proceedings relating to any Commercial Dispute in respect of which the jurisdiction of the civil court is either expressly or impliedly barred under any other law for the time being in force.

CHAPTER III

SPECIFIED VALUE

13. Definition and determination of Specified Value

- (1) For the purposes of this Act, the “Specified Value” in relation to a Commercial Dispute shall mean that the value of the subject matter in respect of a suit as determined in accordance with this Section shall not be less than Rupees One Crore or such higher value as the Central Government may, by Notification prescribe from time to time.
- (2) The specified value of the subject matter of the commercial dispute in a suit, appeal or application shall be determined in the following manner:
 - (a) where the relief sought in a suit or application is for recovery of money, the money sought to be recovered in the suit or application inclusive of interest, if any, computed up to the date of filing of the suit or application, as the case may be, shall be taken into account for determining such specified value;
 - (b) where the relief sought in a suit, appeal or application relates to moveable property or to a right therein, the market value of the moveable property as on the date of filing of the suit, appeal or application, as the case may be, shall be taken into account for determining such specified value;
 - (c) where the relief sought in a suit, appeal or application relates to immovable property or to a right therein, the market value

of the immovable property, as on the date of filing of the suit, appeal or application, as the case may be, shall be taken into account for determining specified value;

(d) where the relief sought in a suit, appeal or application relates to any other intangible right, the market value of the said rights as estimated by the plaintiff shall be taken into account for determining specified value; and

(e) where the counter-claim is raised in any suit, appeal or application, the value of the subject matter of the Commercial Dispute in such counter-claim as on the date of the counter-claim shall be taken into account.

(3) The aggregate value of the claim and counter-claim, if any as set out in the statement of claim and the counter-claim, if any, in an arbitration of a Commercial Dispute shall be the basis for determining whether such arbitration is subject to the jurisdiction of a Commercial Division, Commercial Appellate Division or Commercial Court as the case may be.

(4) No appeal or civil revision application under Section 115 of the Code of Civil Procedure, 1908, as the case may be, shall lie from an order of a Commercial Division or Commercial Court finding that it has jurisdiction to hear a Commercial Dispute under this Act.

CHAPTER IV

APPEALS

14. Appeals from orders of Commercial Divisions and Commercial Courts

(1) An appeal shall lie only from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 as amended by this Act and Section 37 of the Arbitration and Conciliation, 1996 and from no other orders.

(2) Notwithstanding anything contained in any law or Letters Patent of a High Court, no appeal shall lie from any order or decree of a

Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act.

15. **Appeals from decrees of Commercial Divisions and Commercial Courts**

An appeal shall lie to the Commercial Appellate Division of the jurisdictional High Court against every decree of a Commercial Division or Commercial Court, including a judgment on a claim.

16. **Appeals or writ petitions in case of tribunals**

An appeal or a writ petition filed in a High Court against the orders of the following tribunals:

- (a) Competition Appellate Tribunal;
- (b) Debt Recovery Appellate Tribunal;
- (c) Intellectual Property Appellate Board;
- (d) Company Law Board or National Company Law Tribunal;
- (e) Securities Appellate Tribunal;
- (f) Telecom Disputes Settlement and Appellate Tribunal

shall be heard and disposed of by the Commercial Appellate Division of such High Court, if the subject matter of such appeal or writ petition relates to a Commercial Dispute.

17. **Expeditious disposal of appeals**

The Commercial Appellate Division shall endeavour to dispose of appeals and writ petitions filed before it within a period of six months from the date of filing of such appeal or writ petition as the case may be.

CHAPTER V

AMENDMENTS TO THE PROVISIONS OF THE CODE OF CIVIL PROCEDURE, 1908

18. **Amendments to the Code of Civil Procedure, 1908 in its application to Commercial Disputes**

- (1) The provisions of the Code of Civil Procedure, 1908 shall, in their application to any suit in respect of a Commercial Dispute of a Specified Value, stand amended in the manner set forth in Schedule to this Act.

- (2) The Commercial Division and Commercial Court shall follow the provisions of the Code of Civil Procedure, 1908 as amended by the Schedule to this Act in the trial of a suit in respect of a Commercial Dispute of Specified Value.
- (3) Where any provision of any Rule of the jurisdictional High Court or any amendment to the Code of Civil Procedure, 1908 by the State Government is in conflict with the provisions of the Code of Civil Procedure, 1908 as amended by the Schedule to this Act, the provisions of the Code of Civil Procedure as amended by the Schedule to this Act shall prevail.

CHAPTER VI

MISCELLANEOUS

19. Transfer of pending cases

- (1) All suits and applications, including applications under the Arbitration and Conciliation Act, 1996, relating to a Commercial Dispute of Specified Value pending in a High Court where a Commercial Division has been constituted, shall be transferred to the Commercial Division.
- (2) All suits and applications, including applications under the Arbitration and Conciliation Act, 1996, relating to a Commercial Dispute of Specified Value pending in any civil court in any district or area in respect of which a Commercial Court has been constituted, shall be transferred to such Commercial Court.

Provided that no suit or application where the final judgment has been reserved by the Court prior to the constitution of the Commercial Division or the Commercial Court shall be transferred either under sub-section (1) or sub-section (2).

- (3) Where any suit or application, including an application under The Arbitration and Conciliation Act, 1996, relating to a Commercial Dispute of Specified Value shall stand transferred to the Commercial Division or Commercial Court under sub-sections (1) or (2) above, the provisions of Part II of this Act shall

apply only to those procedures that were not complete at the time of transfer.

- (4) The Commercial Division or Commercial Court, as the case may be, may hold case management hearings in respect of such transferred suit or application in order to prescribe new timelines and/or issue such further directions as may be necessary for a speedy and efficacious disposal of such suit or application in accordance with Order XIV-A of the Code of Civil Procedure, 1908 (as amended by Part II of this Act).

Provided that the proviso to Sub-rule (1) of Rule 1 of Order V of the Code of Civil Procedure, 1908 (as amended by Part II of this Act) shall not apply to such transferred suit or application and the court may, in its discretion, prescribe a new time period within which the written statement must be filed.

- (5) In the event that such suit or application is not transferred in the manner contemplated in sub-section (1), (2) or (3), the jurisdictional Commercial Appellate Division of the High Court may, on the application of any of the parties to the suit, withdraw such suit or application from the court before which it is pending and transfer the same for trial or disposal to the Commercial Division or Commercial Court (as the case may be) having territorial jurisdiction over such suit, and such order of transfer shall be final and binding.

20. **Infrastructure Facilities**

A Commercial Court or a Commercial Division in a High Court, as the case may be, shall be provided with the requisite physical and digital infrastructure, including facilities under Phase II of the e-Courts project approved by the Supreme Court.

21. **Training and Continuous Education**

The National Judicial Academy and the State Judicial Academies, as the case may be, shall create necessary facilities for the training and continuous education of judges of the Commercial Court, the Commercial Division or the Commercial Appellate Division in a High Court.

22. Collection and disclosure of data by the Commercial Courts, Commercial Divisions, and Commercial Appellate Divisions

Statistical data regarding the number of suits, applications, appeals or writ petitions filed before the Commercial Court, Commercial Division, or Commercial Appellate Division, as the case may be; the pendency of such cases; the status of each case, and the number of cases disposed of, shall be maintained and constantly updated by each Commercial Court, Commercial Division, Commercial Appellate Division and shall be published on the website of the relevant High Court every month.

23. Power of High Court to issue Practice Directions

The High Court may, by Notification, issue Practice Directions to supplement the provisions of Chapter II of this Act or the Code of Civil Procedure, 1908 in so far as such provisions apply to the hearing of Commercial Disputes of a Specified Value.

24. Act to have overriding effect

Save as otherwise provided, the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

25. Removal of difficulties

- (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as may appear to it to be necessary for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

- (2) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.

SCHEDULE:

Amendments to the Code of Civil Procedure, 1908

1. Amendment of Section 26:- In Section 26 of the Code of Civil Procedure, 1908, the following proviso shall be inserted after sub-section (2):

“Provided that such an affidavit shall be in the form and manner prescribed under Order VI Rule 15 A”.

2. Amendment of Section 35:- Section 35 of the Code of Civil Procedure, 1908 shall stand deleted and be substituted by the following Section:

“Section 35: Costs –

(1) In relation to any Commercial Dispute, the Court, notwithstanding anything contained in any other law or Rule, has the discretion to determine:

- (a) whether costs are payable by one party to another;
- (b) the quantum of those costs; and
- c) when they are to be paid.

Explanation — For the purpose of clause (a) above, “costs” shall mean reasonable costs relating to—

- (i) the fees and expenses of the witnesses incurred;
- (ii) legal fees and expenses incurred;
- (iii) any other expenses incurred in connection with the proceedings .

(2) If the Court decides to make an order for payment of costs the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party.

Provided that the Court may make an order deviating from the general rule for reasons to be recorded in writing.

Illustration: The Plaintiff, in his suit, seeks a money decree for breach of contract, and damages. The Court holds that the Plaintiff is entitled to the money decree. However, it returns a finding that the claim for damages is frivolous and vexatious.

In such circumstances the Court may impose costs on the Plaintiff, despite the Plaintiff being the successful party, for having raised frivolous claims for damages.

(3) In making an order for the payment of costs, the Court shall have regard to the following circumstances, including –

- (a) The conduct of the parties;
- (b) Whether a party has succeeded on part of its case, even if that party has not been wholly successful;
- (c) Whether the party had made a frivolous counter claim leading to delay in the disposal of the case;
- (d) Whether any reasonable offer to settle is made by a party and unreasonably refused by the other party; and
- (e) Whether the Party had made a frivolous claim and instituted a vexatious proceeding wasting the time of the Court.

(4) The orders which the Court may make under this provision include an order that a party must pay:

- (a) A proportion of another party's costs;
- (b) A stated amount in respect of another party's costs;
- (c) Costs from or until a certain date only;
- (d) Costs incurred before proceedings have begun;
- (e) Costs relating to particular steps taken in the proceedings;
- (f) Costs relating only to a distinct part of the proceedings; and
- (g) Interest on costs from or until a certain date.

3. Amendment of Section 35A:- In Section 35A of the Code of Civil Procedure, 1908, sub-section (2) shall stand omitted.

4. Amendment of Order V:- In the First Schedule, in Sub-Rule (1) of Rule 1 of Order V of the Code of Civil Procedure, 1908, the second proviso shall be substituted with the following proviso:

“Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons. On expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.”

5. **Amendment of Order VI:** In the First Schedule to the Code of Civil Procedure, 1908, in Order VI,

(i) after Rule 3, the following Rule shall be inserted:

“3A. **Forms of pleading in Commercial Courts** – In a Commercial Dispute, where forms of pleadings have been prescribed under the High Court Rules or Practice Directions made for the purposes of such Commercial Disputes, pleadings shall be in such forms.”

(ii) after Rule 15, the following Rule shall be inserted:

“15A. **Verification of pleadings in a Commercial Dispute:** (1) Notwithstanding anything contained in Rule 15, every pleading in a Commercial Dispute shall be verified by an affidavit in the manner and form prescribed in the Appendix to this Schedule.

(2) An affidavit under sub-Rule (1) above shall be signed by the party or by one of the parties to the proceedings, or by any other person on behalf of such party or parties who is proved to the satisfaction of the Court to be acquainted with the facts of the case and who is duly authorized by such party or parties.

(3) Where a pleading is amended, the amendments must be verified in the form and manner referred to in sub-Rule (1) unless the Court orders otherwise.

(4) Where a pleading is not verified in the manner provided under sub-Rule 1, the party shall not be permitted to rely on such pleading as evidence or any of the matters set out therein.

(5) The Court may strike out a pleading which is not verified by a Statement of Truth, namely the affidavit set out in the Appendix to this Schedule.”

6. **Amendment of Order VII:-** In the First Schedule, in Order VII of the Code of Civil Procedure, 1908 after Rule 2 the following Rule shall be inserted:

“2A. **Where interest is sought in the Suit:** Where the plaintiff seeks interest, the plaint shall contain a statement to that effect along with the details set out under sub-Rules (2) and (3).

(2) Where the plaintiff seeks interest, the plaint shall state whether the plaintiff is seeking interest in relation to a commercial transaction within the meaning of Section 34 of the

Code of Civil Procedure, 1908 and, furthermore, if the plaintiff is doing so under the terms of a contract; or under an enactment, in which case the enactment is to be specified in the plaint; or on some other basis and shall state what that basis is.

(3) Pleadings shall also state the rate at which interest is claimed; the date from which it is claimed; the date to which it is calculated, the total amount of interest claimed to the date of calculation; and the daily rate at which interest accrues after that date.”

7. Amendment of Order VIII: In the First Schedule, in Order VIII of the Code of Civil Procedure, 1908,

(i) in Rule 1 the existing proviso shall be substituted by the following proviso:

“Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons. On expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.”

(ii) after Rule 3, the following Rule shall be inserted:

“3A. Denial by the defendant in suits before the Commercial Division of the High Court or the Commercial Court.

(1) Denial shall be in the manner provided in sub-Rules (2), (3), (4) and (5) of this Rule.

(2) The defendant in his written statement shall state which of the allegations in the particulars of plaint he denies; which allegations he is unable to admit or deny, but which he requires the plaintiff to prove; and which allegations he admits.

(3) Where the defendant denies an allegation of fact in a plaint he must state his reasons for doing so and if he intends to put forward a different version of events from that given by the plaintiff, he must state his own version.

(4) If the defendant disputes the jurisdiction of the Court he must state the reasons for doing so; and if he is able, give his own statement as to which Court ought to have jurisdiction.

(5) If the defendant disputes the plaintiff's valuation of the suit he must state his reasons for doing so; and if he is able, give his own statement of the value of the suit."

(iii) in Rule 5(1), after the first proviso, the following proviso shall be inserted:

"Provided, further, that every allegation of fact in the plaint, if not denied in the manner provided under Rule 3A of this Order, shall be taken to be admitted except as against a person under disability."

(iv) in Rule 10, after the first proviso, the following proviso shall be inserted:

"Provided that no Court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement."

8. Substitution of Order XI:- In the First Schedule, Order XI of the Code of Civil Procedure, 1908 shall be substituted with the following -

"Order XI

DISCLOSURE, DISCOVERY AND INSPECTION OF DOCUMENTS IN SUITS BEFORE THE COMMERCIAL DIVISION OF A HIGH COURT OR A COMMERCIAL COURT

1. Disclosure and Discovery of documents

1) Plaintiff shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the plaint, including:

a) Documents referred to and relied on by the plaintiff in the plaint;

b) Documents relating to any matter in question in the proceedings, in the power, possession, control or custody of the plaintiff, as on the date of filing the plaint, irrespective of whether the same is in support of or adverse to the plaintiff's case;

(c) Nothing in this Rule shall apply to documents produced by plaintiffs:

- i. and relevant only for the cross-examination of the defendant's witnesses, or
- ii. in answer to any case setup by the defendant subsequent to the filing of the plaint, or
- iii. handed over to a witness merely to refresh his memory.

2) The list of documents filed with the plaint shall specify whether the documents in the power, possession, control or custody of the plaintiff are originals, office copies or photocopies. The list shall also set out in brief, details of parties to each document, mode of execution, issuance or receipt and line of custody of each document;

3) The plaint shall contain a declaration on oath from the plaintiff that all documents in the power, possession, control or custody of the plaintiff, pertaining to the facts and circumstances of the proceedings initiated by him have been disclosed and copies thereof annexed with the plaint, and that the plaintiff does not have any other documents in its power, possession, control or custody.

Explanation: A declaration on oath under this sub-rule shall be contained in the Statement of Truth as set out in the Appendix;

4) In case of urgent filings, plaintiff may seek leave to rely on additional documents, as part of the above declaration on oath and subject to grant of such leave by Court, the plaintiff shall file such additional documents in Court, within thirty days of filing the suit, along with a declaration on oath that the plaintiff has produced all documents in its power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by the plaintiff and that the plaintiff does not have any other documents, in its power, possession, control or custody;

5) Plaintiff shall not be allowed to rely on documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with plaint or within the extended period set out above, save and except by leave of Court. Such leave shall be granted only upon the plaintiff establishing reasonable cause for non – disclosure along with the plaint;

6) The plaint shall set out details of documents, which the

plaintiff believes to be in the power, possession, control or custody of the defendant and which the plaintiff wishes to rely upon and seek leave for production thereof by the said defendant;

7) Defendant shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the written statement or with its counter claim if any, including:

(a) Documents referred to and relied on by the defendant in the written statement;

(b) Documents relating to any matter in question in the proceeding in the power, possession, control or custody of the defendant, irrespective of whether the same is in support of or adverse to the defendant's defense;

(c) Nothing in this Rule shall apply to documents produced by defendants:

- i. and relevant only for the cross-examination of the plaintiff's witnesses, or
- ii. in answer to any case setup by the plaintiff subsequent to the filing of the plaint, or
- iii. handed over to a witness merely to refresh his memory.

8) The list of documents filed with the written statement or counter claim shall specify whether the documents, in the power, possession, control or custody of the defendant, are originals, office copies or photocopies. The list shall also set out in brief, details of parties to each document being produced by the defendant, mode of execution, issuance or receipt and line of custody of each document;

9) The written statement or counter claim shall contain a declaration on oath made by the deponent that all documents in the power, possession, control or custody of the defendant, save and except for those set out in sub-Rule 7 (c)(iii) above, pertaining to the facts and circumstances of the proceedings initiated by the plaintiff and/ or in the counter claim, have been disclosed and copies thereof annexed with the written statement or counter claim and that the defendant does not have in its power, possession, control or custody, any other documents;

10) Save and except for sub-Rule 7 (c)(iii) above, defendant shall not be allowed to rely on documents, which were in the defendant's power, possession, control or custody and not disclosed along with the written statement or counter claim, save and except by leave of Court. Such leave shall be granted only upon the defendant establishing reasonable cause for non – disclosure along with the written statement or counter claim;

11) The written statement or counter claim shall set out details of documents in the power, possession, control or custody of the plaintiff, which the defendant wishes to rely upon and which have not been disclosed with the plaint, and call upon the plaintiff to produce the same;

12) Duty to disclose documents, which have come to the notice of a party, shall continue till disposal of the suit.

2. Discovery by Interrogatories:

1) In any suit the plaintiff or defendant by leave of the court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer:

Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose:

Provided also that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross examination of a witness.

2) On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the court, and that court shall decide within seven days from the day of filing of the said application, in deciding upon such application, the court shall take into account any offer, which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the

interrogatories submitted as the court shall consider necessary either for disposing fairly of the suit or for saving costs.

3) In adjusting the costs of the suit inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the court, either with or without an application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault.

4) Interrogatories shall be in the form provided in Form No. 2 in Appendix C to the Code of Civil Procedure, 1908, with such variations as circumstances may require.

5) Where any party to a suit is a corporation or a body of persons, whether incorporated or not, empowered by law to sue or be sued, whether in its own name or in the name of any officer of other person, any opposite party may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation or body, and an order may be made accordingly.

6) Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited *bona fide* for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, or on the ground of privilege or any other ground may be taken in the affidavit in answer.

7) Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary or scandalous; and any application for this purpose may be made within seven days after service of the interrogatories.

8) Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as the court may allow.

9) An affidavit in answer to interrogatories shall be in the form provided in Form No, 3 in Appendix C to the Code of Civil

Procedure, 1908, with such variations as circumstances may require.

10) No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the court.

11) Where any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the court for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer, or to answer further, either affidavit or by *viva voce* examination, as the court may direct.

3. Inspection

1) All parties shall complete inspection of all documents disclosed within thirty days of the date of filing of the written statement or written statement to the counter claim, whichever is later. The Court may extend this time limit upon application at its discretion, but not beyond thirty days in any event.

2) Any party to the proceedings may seek directions from the Court, at any stage of the proceedings, for inspection or production of documents by the other party, of which inspection has been refused by such party or documents have not been produced despite issuance of a notice to produce;

3) Order in such application shall be disposed off within thirty days of filing such application, including filing replies and rejoinders (if permitted by Court) and hearing;

4) If the above application is allowed, inspection and copies thereof shall be furnished to the party seeking it, within five days of such order.

5) No party will be permitted to rely on a document, which it had failed to disclose or of which inspection has not been given, save and except with leave of Court.

6) Court may impose exemplary costs against a defaulting

party, who wilfully or negligently failed to disclose all documents pertaining to a suit or essential for a decision therein and which are in their power, possession, control or custody or where a Court holds that inspection or copies of any documents had been wrongfully or unreasonably withheld or refused.

4. Admission and Denial of Documents

1) Each party shall submit a statement of admissions or denials of all documents disclosed and of which inspection has been completed, within fifteen days of the completion of inspection or any later date as fixed by the Court.

2) The statement of admissions and denials shall set out explicitly, whether such party was admitting or denying:

- (a) Correctness of contents of a document;
- (b) Existence of a document;
- (c) Execution of a document;
- (d) Issuance or receipt of a document;
- (e) Custody of a document;

Explanation: A statement of admission or denial of the existence of a document made in accordance with Sub-rule 3(2)(b) of the modified Order XI will include the admission or denial of the contents of a document.

3) Each party shall set out reasons for denying a document under any of the above grounds. Bare and unsupported denials shall not be deemed to be denials of a document and proof of such documents may then be dispensed with at the discretion of the Court.

4) Any party may however submit bare denials for third party documents of which the party denying does not have any personal knowledge of, and to which the party denying is not a party to in any manner whatsoever;

5) An Affidavit in support of the statement of admissions and denials shall be filed confirming the correctness of the contents of the statement.

6) In the event that the Court holds that any party has unduly

refused to admit a document under any of the above criteria, – costs (including exemplary costs) for deciding on admissibility of a document may be imposed by the Court on such party.

7) Court may pass orders with respect to admitted documents including for waiver of further proof thereon or rejection of any documents.

5. Production of documents

(1) Any party to a proceeding may seek or the Court may order, at any time during the pendency of any suit, production by any party or person, of such documents in the possession or power of such party or person, relating to any matter in question in such suit.

(2) Notice to produce such document shall be issued in the form provided in Form No. 7 in Appendix C to Code of Civil Procedure, 1908.

(3) Any party or person to whom such notice to produce is issued shall be given not less than seven days and not more than fifteen days to produce such document or to answer to their inability to produce such document;

(4) The Court may draw an adverse inference against a party refusing to produce such document after issuance of a notice to produce and where sufficient reasons for such non – production are not given and order costs;

6. Electronic Records

(1) In case of disclosures and inspection of Electronic Records (as defined in the Information Technology Act, 2000), furnishing of printouts shall be sufficient compliance of the above provisions

(2) At the discretion of the parties or where required (when parties wish to rely on audio and / or video content), copies of electronic records may be furnished in electronic form either in addition to or in lieu of printouts.

(3) Where Electronic Records form part of documents disclosed, the declaration on oath to be filed by a party shall

specify:

- (a) Parties to such Electronic Record;
- (b) Manner in which such electronic record was produced and by whom;
- (c) Dates and time of preparation or storage or issuance or receipt of each such electronic record; or
- (d) Source of such electronic record and date and time when the electronic record was printed;
- (e) In case of email ids, details of ownership, custody and access to such email ids;
- (f) In case of documents stored on a computer or computer resource (including on external servers or cloud), details of ownership, custody and access to such data on the computer or computer resource;
- (g) Deponent's knowledge of contents and correctness of contents;
- (h) Whether the computer or computer resource used for preparing or receiving or storing such document or data was functioning properly or in case of malfunction that such malfunction did not affect the contents of the document stored;
- (i) That the printout or copy furnished was taken from the original computer or computer resource;

(4) Parties relying on printouts or copy in electronic form, of any electronic records, will not be required to give inspection of electronic records, provided a declaration is made by such party that each such copy, which has been produced, has been made from the original Electronic Record;

(5) The Court may give directions for admissibility of Electronic Records at any stage of the proceedings.

(6) Any party may seek directions from the Court and the Court may of its motion issue directions for submission of further proof of any electronic record including metadata or logs before admission of such electronic record.

7. Certain provisions of the Code of Civil Procedure, 1908 not to apply

For avoidance of doubt, it is hereby clarified that Order XIII Rule 1, Order VII Rule 14 and Order VIII Rule 1A the Code of Civil Procedure, 1908 shall not apply to suits or applications before the Commercial Divisions of High Court or Commercial Courts.”

9. Insertion of Order XIII-A:- In the First Schedule, after Order XIII of the Code of Civil Procedure, 1908, the following Order shall be inserted:

“Order XIII A – Summary Judgment

1. Scope of and classes of suits to which this Order applies:

(1) This Order sets out the procedure by which Courts may decide a claim pertaining to any Commercial Dispute without recording oral evidence.

(2) For the purposes of this Order, the word “claim” shall include:

(a) part of a claim;

(b) any particular question on which the claim (whether in whole or in part) depends; or

(c) a counter-claim, as the case may be.

(3) Notwithstanding anything to the contrary, an application for summary judgment under this Order shall not be made in a suit in respect of any Commercial Dispute that is originally filed as a summary suit under Order XXXVII.

2. Stage for application for summary judgment:

An applicant may apply for summary judgment at any time after summons has been served on the defendant.

Provided that, no application for summary judgment may be made by such applicant after the Court has framed the issues in respect of the suit.

3. **Grounds for summary judgment:**

The Court may give a summary judgment against a plaintiff or defendant on a claim if it considers that:

- (a) the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be; and
- (b) there is no other compelling reason why the claim should not be disposed of before recording of oral evidence.

4. **Procedure:**

(1) An application for summary judgment to a Court shall, in addition to any other matters the applicant may deem relevant, include the matters set forth in sub-Rules (a)-(f) below:

- (a) The application must contain a statement that it is an application for summary judgment made under this Order;
- (b) The application must precisely:
 - (i) disclose all material facts; and
 - (ii) identify the point of law, if any;
- (c) In the event the applicant seeks to rely upon any documentary evidence, the applicant must:
 - (i) include such documentary evidence in its application, and
 - (ii) identify the relevant content of such documentary evidence on which the applicant relies;
- (d) The application must state the reason why there are no real prospects of succeeding on the claim or defending the claim, as the case may be;
- (e) The application must state what relief the applicant is seeking and briefly state the grounds for seeking such relief.

(2) Where a hearing for summary judgment is fixed, the respondent must be given at least thirty days' notice of:

- (a) the date fixed for the hearing; and
- (b) the claim that is proposed to be decided by the Court at such hearing.

(3) The respondent may, within thirty days of the receipt of notice of application of summary judgment or notice of hearing (whichever is earlier), file a reply addressing the matters set

forth in sub-Rules (a)-(f) below in addition to any other matters that the respondent may deem relevant:

- (a) The reply must precisely:
 - (i) disclose all material facts;
 - (ii) identify the point of law, if any; and
 - (iii) state the reasons why the relief sought by the applicant should not be granted
- (b) In the event the respondent seeks to rely upon any documentary evidence in its reply, the respondent must:
 - (i) include such documentary evidence in its reply; and
 - (ii) identify the relevant content of such documentary evidence on which the respondent relies;
- (c) The reply must state the reason why there are real prospects of succeeding on the claim or defending the claim, as the case may be;
- (d) The reply must concisely state the issues that should be framed for trial;
- (e) The reply must identify what further evidence will be brought on record at trial that could not be brought on record at the stage of summary judgment; and
- (f) The reply must state why, in light of the evidence or material on record if any, the Court should not proceed to summary judgment.

5. Evidence for hearing of summary judgment:

- (1) Notwithstanding anything in this Order, if the respondent in an application for summary judgment wishes to rely on additional documentary evidence during the hearing, the respondent must:
 - (a) file such documentary evidence; and
 - (b) serve copies of such documentary evidence on every other party to the application at least fifteen days prior to the date of the hearing.
- (2) Notwithstanding anything in this Order, if the applicant for summary judgment wishes to rely on documentary evidence in reply to the defendant's documentary evidence, the applicant must:
 - (a) file such documentary evidence in reply; and
 - (b) serve a copy of such documentary evidence on the respondent at least five days prior to the date of the hearing.

(3) Notwithstanding anything to the contrary, sub-Rules (1)-(2) above shall not require documentary evidence to be:

- (a) filed if such documentary evidence has already been filed; or
- (b) served on a party on whom it has already been served.

6. Orders that may be made by the Court:

(1) On an application made under this Order, the Court may make such orders that it may deem fit in its discretion including the following:

- (a) Judgment on the claim;
- (b) Conditional order in accordance with Rule 7 below;
- (c) Dismissing the application;
- (d) Dismissing part of the claim and a judgment on part of the claim that is not dismissed;
- (e) Striking out the pleadings (whether in whole or in part); or
- (f) Further directions to proceed for case management under Order XVA.

(2) Where the Court makes any of the orders as set forth in sub-Rule (1)(a)-(f) above, the Court shall record its reasons for making such order.

7. Conditional Order:

(1) Where it appears to the Court that it is possible that a claim or defence may succeed but it is improbable that it will do so, the Court may make a conditional order as set forth in Rule 6(b) above.

(2) Where the Court makes a conditional order, it may:

- (a) make it subject to all or any of the following conditions:
 - (i) require a party to deposit a sum of money in the Court;
 - (ii) require a party to take a specified step in relation to the claim or defence, as the case may be;

(iii) require a party as the case may be to give such security or provide such surety for restitution of costs as the Court deems fit and proper; or

(iv) impose such other conditions, including providing security for restitution of losses that any party is likely to suffer during the pendency of the suit, as the Court may deem fit in its discretion, and

(b) specify the consequences of the failure to comply with the conditional order, including passing a judgment against the party that have not complied with the conditional order.

8. Power to impose costs:

The Court may make an order for payment of costs in an application for summary judgment in accordance with the provisions of Sections 35 and Section 35A.

10. Deletion of Order XV:- In the First Schedule, Order XV of the Code of Civil Procedure, 1908 shall be omitted;

11. Insertion of Order XV-A:- In the First Schedule, after Order XV of the Code of Civil Procedure, 1908 the following Order shall be inserted

–

“Order XV-A

Case Management Hearing

(1) First Case Management Hearing - The Court shall hold the first ‘Case Management Hearing’, no later than four weeks from the date of filing of affidavit of admission or denial of documents by all parties to the suit.

(2) Orders to be passed in a Case Management Hearing - In a Case Management Hearing, after hearing the parties, and once it finds that there are issues of fact and law which require to be tried, the Court may pass an order:

- (a) Framing the issues between the parties in accordance with Order XIV of the Code of Civil Procedure, 1908 after examining pleadings, documents and documents produced

before it, and on examination conducted by the Court under Rule 2 of Order X, if required,

- (b) Listing witnesses to be examined by the parties,
- (c) Fixing the date by which affidavit of evidence to be filed by parties,
- (d) Fixing the dates on which evidence of the witnesses of the parties to be recorded,
- (e) Fixing the date by which written arguments are to be filed before the Court by the parties,
- (f) Fixing the date on which oral arguments are to be heard by the Court, and
- (g) Setting time limits for parties and/or their advocates to address oral arguments.

(3) Time limit for the completion of a trial - In fixing dates or setting time limits for the purposes of Rule 2 of this Order, the Court shall ensure that the arguments are closed no later than six months from the date of the first case management hearing.

(4) Recording of oral evidence on a day-to-day basis - The Court shall as far as possible ensure that the recording of evidence shall be carried on, on a day-to-day basis until the cross examination of the all the witnesses is complete.

(5) Case Management Hearings during a trial - The Court may, if necessary,, also hold case management hearings anytime during the trial to issue appropriate orders so as to ensure adherence by the parties to the dates fixed under Rule 2 and facilitate speedy disposal of the suit.

(6) Powers of the Court in a Case Management Hearing - (1) In any case management hearing held under this Order, the Court shall have the power to –

- (a) prior to the framing of issues, hear and decide any pending application filed by the parties under Order XIII-A;
- (b) direct parties to file compilations of documents or pleadings relevant and necessary for framing issues;
- (c) extend or shorten the time for compliance with any practice direction or Court order if it finds sufficient reason to do so;

- (d) adjourn or bring forward a hearing if it finds sufficient reason to do so;
 - (e) direct a party to attend the Court for the purposes of examination under Rule 2 of Order X;
 - (f) consolidate proceedings;
 - (g) strike off the name of any witness or evidence that it deems irrelevant to the issues framed;
 - (h) direct a separate trial of any issue;
 - (i) decide the order in which issues are to be tried;
 - (j) exclude an issue from consideration;
 - (k) dismiss or give judgment on a claim after a decision on a preliminary issue;
 - (l) direct that evidence be recorded by a commission where necessary in accordance with Order XXVI.
 - (m) reject any affidavit of evidence filed by the parties for containing irrelevant, inadmissible or argumentative material.
 - (n) strike off any parts of the affidavit of evidence filed by the parties containing irrelevant, inadmissible or argumentative material.
 - (o) delegate the recording of evidence to such authority appointed by the Court for this purpose
 - (p) pass any order relating to the monitoring of recording the evidence by a commission or any other authority.
 - (q) order any party to file and exchange a costs budget;
 - (r) issue directions or pass any order for the purpose of managing the case and furthering the overriding objective of ensuring the efficient disposal of the suit.
- (2) When the Court passes an order in exercise of its powers under this Order, it may –
- (a) make it subject to conditions, including a condition to pay a sum of money into Court; and
 - (b) specify the consequence of failure to comply with the order or a condition.
- (3) While fixing the date for a Case Management Hearing, the Court may direct that the parties also be present for such case management hearing, if it is of the view that there is a possibility of settlement between the parties.

- (7) Adjournment of Case Management Hearing** – (1) The Court shall not adjourn the case management hearing for the sole reason that the advocate appearing on behalf of a party is not present.

Provided, an adjournment of the hearing is sought in advance by moving an application, the Court may adjourn the hearing to another date upon the payment of such costs as the Court deems fit, by the party moving such application.

(2) Notwithstanding anything contained in this Rule, if the Court is satisfied that there is a justified reason for the absence of the advocate, it may adjourn the hearing to another date upon such terms and conditions it deems fit.

- (8) Consequences of non-compliance with orders** - Where any party fails to comply with the order of the Court passed in a Case Management Hearing, the Court shall have the power to:

- (a) condone such non-compliance by payment of costs to the Court, or
- (b) 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
- (c) dismiss the plaint or allow the suit where such non-compliance is wilful, repeated and the imposition of costs is not adequate to ensure compliance.”

12. Amendment of Order XVIII:- In the First Schedule, in Order XVIII, for sub-rules (3A), (3B), (3C)and (3D) of Rule 2 the following shall be substituted:

“(3A) A party shall, within four weeks prior to commencing the oral arguments, submit concisely and under distinct headings written arguments in support of his case to the Court and such written arguments shall form part of the record.

(3B) The written arguments shall clearly indicate the provisions of the laws being cited in support of the arguments and the citations of judgments being relied upon by the party and

include copies of such judgments being relied upon by the party.

(3C) A copy of such written arguments shall be furnished simultaneously to the opposite party.

(3D) The Court may, if it deems fit, after the conclusion of arguments, permit the parties to file revised written arguments within a period of no more than one week after the date of conclusion of arguments.

(3E) No adjournment shall be granted for the purpose of filing the written arguments unless the Court, for reasons to be recorded in writing, considers it necessary to grant such adjournment.

(3F) It will be open for the Court to limit the time for oral submissions having regard to the nature and complexity of the matter.”

Further, in Order XVIII, after sub-rule (1) of Rule 4, the following shall be inserted:

1A) The affidavits of evidence of all witnesses whose evidence is proposed to be led by a party shall be filed simultaneously by that party at the time directed in the first case management hearing.

1B) A party shall not lead additional evidence by the affidavit of any witness (including of a witness who has already filed an affidavit) unless sufficient cause is made out in an application for that purpose and an order, giving reasons, permitting such additional affidavit is passed by the Court.

1C) A party shall however have the right to withdraw any of the affidavits so filed at any time prior to commencement of cross-examination of that witness, without any adverse inference being drawn based on such withdrawal.

Provided however, that any other party will be entitled to tender as evidence and rely upon any admission made in such withdrawn affidavit.

13. Amendment to Order XIX:- In the First Schedule, in Order XIX, the following Rules shall be inserted after Rule 3:

4. **Court may control evidence**

(1) The Court may, by directions, regulate the evidence as to issues on which it requires evidence and the manner in which such evidence may be placed before the Court.

(2) The Court may, in its discretion and for reasons to be recorded in writing, exclude evidence that would otherwise be produced by the parties.

5. Redacting or rejecting evidence

A Court may, in its discretion, for reasons to be recorded in writing

(1) redact or order the redaction of such portions of the affidavit of examination-in-chief as do not, in its view, constitute evidence;

(2) return or reject an affidavit of examination-in-chief as not constituting admissible evidence;

6. Format and guidelines of affidavit of evidence

(1) An affidavit must comply with the form and requirements set forth below:

(a) Such affidavit should be confined to, and should follow the chronological sequence of, the dates and events that are relevant for proving any fact or any other matter dealt with.

(b) Where the Court is of the view that an affidavit is a mere reproduction of the pleadings, or contains the legal grounds of any party's case, the Court may, by order, strike out the affidavit or such parts of the affidavit, as it deems fit and proper.

(c) Each paragraph of an affidavit should, as far as possible, be confined to a distinct portion of the subject.

(d) An affidavit shall state:

(i) which of the statements in it are made from the deponent's own knowledge and which are matters of information or belief, and

(ii) the source for any matters of information or belief.

(e) An affidavit should:

(i) have the pages numbered consecutively as a separate document (or as one of several documents contained in a file);

- (ii) be divided into numbered paragraphs;
- (iii) have all numbers, including dates, expressed in figures;
and
- (iv) if any of the documents referred to in the body of the affidavit are annexed to the affidavit or any other pleadings, give the annexures and page numbers of such documents that are relied upon.”

11. **Amendment of Order XX:-** In the First Schedule, in Order XX, for Rule 1 the following shall be substituted:

“The Commercial Court, Commercial Division, or Commercial Appellate Division as the case may be, shall, within ninety days of the conclusion of arguments, pronounce judgment and copies thereof shall be issued to all the parties to the dispute through electronic mail or otherwise.”

APPENDIX

STATEMENT OF TRUTH

(Under First Schedule, Order VI Rule 15A and Order X Rule 1)

STATEMENT OF TRUTH BY [party position and name of party in full]

I, the deponent above-named, do hereby solemnly affirm and declare as under:

1. I am [name of party and relevant details] in the above suit and competent to swear this affidavit.
2. I am sufficiently conversant with the facts of the case and have also examined all relevant documents and records in relation thereto.
3. I say that the statements made in [mention specific paragraph numbers] paragraphs are true to my knowledge and statements made in [mention specific paragraph numbers] paragraphs are based on information received which I believe to be correct and statements made in [mention specific paragraph numbers] are based on legal advice.
4. I say that there is no false statement or concealment of any material fact, document or record and I have included information that is according to me, relevant for the present suit.
5. I say that that all documents in my power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by me have been disclosed and copies thereof annexed with the plaint, and that I do not have any other documents in my power, possession, control or custody.
6. I say that the above-mentioned pleading comprises of a total of [number of pages] pages, each of which has been signed by me.
7. I state that the Annexures hereto are true copies of the documents referred to and relied upon by me.
8. I say that I am aware that for any false statement or concealment, I shall be liable for action taken against me under the law.

Place

Date

DEPONENT

VERIFICATION

The statements made above are true to my knowledge.

Verified at [place] on this [date]

DEPONENT