



THE BUZZ

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Monthly Newsletter By Team Ayana Legal

Levels of Commercial Courts

As per the Act, the State Government, may after consultation with the concerned High Court, by notification, constitute such number of Commercial Courts at:

- District level
- District judge level (where High courts have ordinary original civil jurisdiction)
- Commercial Appellate Courts at District Judge level (in territories where High Court does not have ordinary original civil jurisdiction)
- In all High Courts, having ordinary original civil jurisdiction, the Chief Justice of the High Court may, by order, constitute a Commercial Division and Commercial Appellate Division.

COMMERCIAL COURTS ACT, 2015

Created with the intention of setting up separate courts for adjudication of commercial disputes, this issue of 'The Buzz' takes a dive into some of the provisions of the Commercial Courts Act of 2015.

Definition

Section 2(c) of the Commercial Courts Act, 2015 provides an exhaustive definition of what a “commercial dispute” would include. It may include issues pertaining to ordinary transactions of merchants, bankers, financiers and traders; export or import of merchandise or services; issues relating to admiralty and maritime law; intellectual property rights; agreements for sale of goods or provision of services etc.

Valuation

Valuation of the suit depends on its subject matter which has been explained under Section 12. Section 2 (i) states that the value of a suit shall not be less than 3 lakh rupees or such higher value as specified by the Central Government.

Bar on Jurisdiction

A Commercial Court or a Commercial Division 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.

A Commercial Dispute Includes...

Explanation to Section 2(c) states that a commercial dispute would also include:

- action for recovery of immovable property or for realisation of monies out of immovable property given as security or involves any other relief pertaining to immovable property;
- Where one of the contracting parties is the State or any of its agencies or instrumentalities, or a private body carrying out public functions

Thank You

We at Ayana Legal thank you for your continued support and patronage to our newsletter and capsules. We look forward to being back with our next edition soon.

Disclaimer

This newsletter is solely for the purpose of providing information and the content provided is not and should not be construed as legal advice.

Pre-Institution Mediation

Section 12A states that no suit shall be instituted without first exhausting the remedy of pre-litigation mediation provided that the suit does not contemplate any urgent interim relief. Sub-clause (3) states that the mediation process shall be completed within a period of 3 months from the date on which the plaintiff makes the application for the same. The period of mediation may be extended for a further period of two months with the consent of both parties. It further states that any settlement arrived at under this provision shall have the same effect as an arbitral award. Section 12A states that the onus is on the plaintiff to make the application for mediation. As per the Commercial Courts (Pre-institution Mediation and Settlement) Rules, 2018 the Authority constituted under the Legal Services Authorities Act, 1987 authorized to conduct pre-litigation mediation shall then send notice to the opposite to party “to appear and give consent to participate in the mediation process” within ten days from the date of issuing the notice. If the opposite fails to reply, another notice will be sent. If the notice is not acknowledged or if the opposite party refuses to participate in the mediation proceedings, then the mediation will be treated as a non-starter and a non-starter report to that effect will be endorsed to both the applicant and the other party.

The Supreme Court in the case of **Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd, 2022 SCC OnLine SC 1028** held that the requirement of pre-litigation mediation being exhausted by the plaintiff is mandatory, noting that – “Each time the plaintiff is compelled to go in for mediation under Section 12A there is a ray of hope that the matter may get settled” resulting in a win-win for all present if it is successful. The Court has clarified that non-compliance with the section will lead to the plaint being rejected under Order VII Rule 11 of the Code of Civil Procedure.