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ahead of the curve

# Guide to Litigation in India

A Cyril Amarchand Mangaldas Thought Leadership Publication



**Guide to Litigation in India**

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**A Thought Leadership Publication**

We now present this guide to enable readers to have an overview of the systems and legal rules and regulations that are essential for business operations in India.

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## INTRODUCTION

Since the turn of the century, India has continued to witness an upward growth trajectory. With the Indian Government's promise to improve the ease of doing business and its 'Make in India' or 'AatmaNirbhar Bharat' (for a self-reliant India) initiative, comes the obligation to ensure that the rule of law is upheld and contracts are efficiently enforced. The Government recognizes the correspondent obligation that the Indian legal regime and judiciary must facilitate and support the litigation process. This includes a streamlined process for the enforcement of contracts, as well as domestic and foreign judgments, and arbitral awards in a timely and efficient manner.

Despite India becoming a heavy contributor to the global economy, it suffers the drawback of an overburdened judiciary, with an ever-increasing caseload. The consequent delay in the judicial process has contributed to the perception that it is difficult to successfully prosecute a claim or enforce a judgment or arbitral award in India. Efforts to improve the process in the last few years include major amendments to the Indian arbitration regime, the setting up of commercial courts and divisions to adjudicate 'Commercial Disputes' of 'Specified Value', and matters connected therewith, including incidental amendments to the Code of Civil Procedure, 1908.

Other notable reforms include the repeal of the Companies Act, 1956 with the introduction of the Companies Act, 2013 ("**Companies Act**"). This also brought along with it a complete overhaul of the liquidation and bankruptcy process with the Insolvency and Bankruptcy Code, 2016 (the "**IBC**"), consolidating various legislations which deal with insolvency of individuals, partnerships and limited liability partnerships into one single legislation thereby making the process more streamlined and efficient. Jurisdiction for matters under the IBC has been exclusively conferred on the National Company Law Tribunal (the "**NCLT**"), thus relieving the burden on High Courts and providing redressal to financial and operational creditors in relation to non-performing assets.

Recognising that the Government is the most prolific litigant before Indian courts, in a bid to improve the judicial landscape and make India an attractive investment destination, the Government introduced the Vivad se Vishwas II (Contractual Disputes) scheme for the settlement of disputes involving government entities. It applies to disputes where the claim was raised on or before September 30, 2022 and includes cases at different stages of proceedings, from the time of invocation of an arbitration to pending challenges to arbitral awards. Depending on the stage of the dispute / legal proceeding, a

percentage is ascribed for the settlement of a claim made by private entities against the government and / or government / public entities. It is hoped that the Vivad se Vishwas II scheme will help free up government funds which would otherwise likely be tied up for decades in litigation, whilst aiding private companies / individuals in recovery of awarded amounts, and easing the caseload in courts – a testament to the Government’s intent once again, to ensure an efficient determination of disputes.

Building on the path of liberalisation, with the backing of the Government, in March 2023 the Bar Council of India notified rules permitting the entry of foreign lawyers in India, entitling them to practice in specified “non-litigious” areas once they are registered under the Rules. Foreign lawyers and firms can also continue to practice on a fly in, fly out basis as permitted earlier.

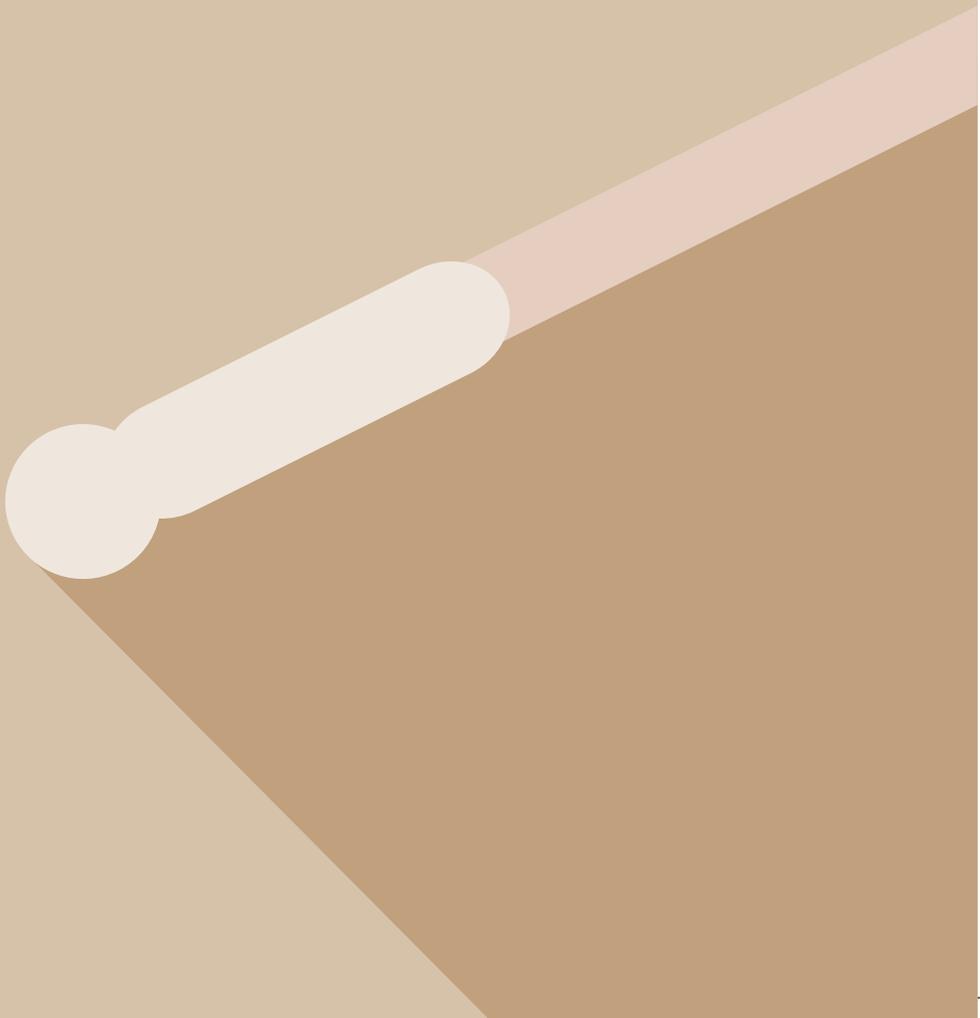
These reforms go towards cementing India’s position as a commercial hub, optimising it as a destination for investment, business and arbitration. Underpinning these reforms therefore is the unceasing effort to make access to justice easier and reduce the concerns of foreign investors and trading partners.

Doing business in a foreign country can be fraught with uncertainties and unpredictable outcomes. The support of a

robust legal regime and familiarisation with the process can lessen such unpredictability. These reforms and an overview of the dispute resolution process in India – with a focus on litigation is further discussed in the relevant chapters of this Guide / Handbook, which we present to our readers in the hope that this will give them a reasonable understanding of the process.

**IMPORTANT NOTE:** *All information given in this handbook has been compiled from credible, reliable sources. Although reasonable care has been taken to ensure that the information in this handbook is true and accurate, such information is provided as is, without any warranty, express or implied, as to the accuracy or completeness of any such information. Cyril Amarchand Mangaldas will not be liable for any losses incurred by any person from any use of this publication or its contents. This handbook has been prepared for informational purposes only and nothing contained in this handbook constitutes legal or any other form of advice from Cyril Amarchand Mangaldas. Readers should consult their legal, tax and other advisors before making any investment or other decision with regard to any business in India.*

# A. LITIGATION IN CIVIL COURTS





## 01 India – A Common Law System

India is primarily a common law jurisdiction. There are certain personal laws based on customary practice that are applicable to some religious communities. Indian law is largely similar to English common law in many aspects because of the long period of British colonial influence during the British Raj period. Indeed, several legislations were framed by the British based on their own laws, some of which continue to this day, for example, contract law, penal laws, evidence, general civil procedure etc. Some laws that operate on personal / familial relationships, are based on custom or religion of individuals covered thereby, typically in relation to marriage and succession.

In India, the common law system, which is based on the principle that it is unfair to treat similar facts differently on different occasions, earlier decided cases are treated as binding precedents on lower courts and of persuasive value in courts with the same or superior jurisdiction. There are several pieces of legislation that were enacted pre-independence by the Imperial Legislative Council, such as: the Indian Penal Code, 1860 (“**IPC**”), the Indian Contract Act 1872, the Evidence Act 1872, etc.

The Constitution of India, 1950 adopts a quasi-federal structure. The 7th Schedule allocates subjects between the Parliament and the state legislatures into

3 lists (i.e. Union, State and Concurrent Lists).

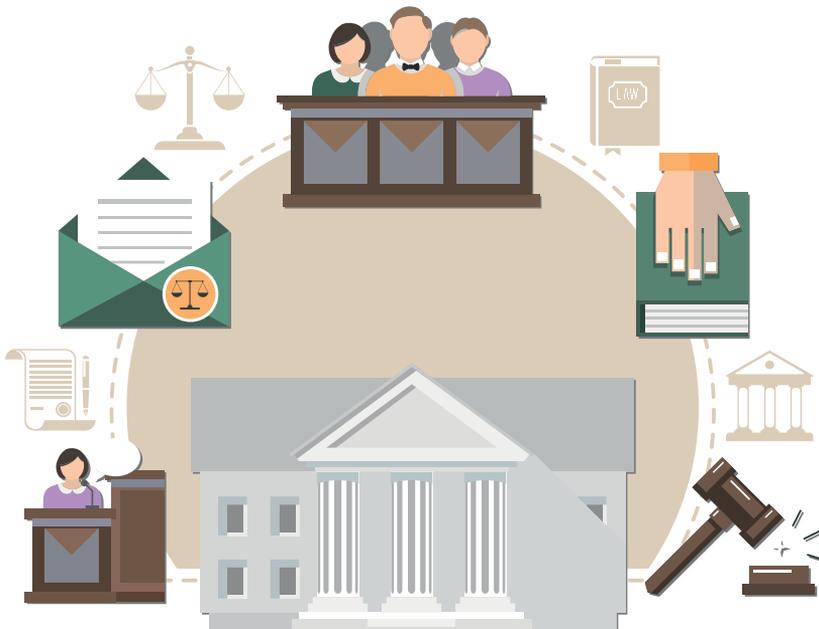
The Parliament, the apex legislative body, consists of 2 houses and is empowered to enact laws on subjects in the Union List. The state legislatures are empowered to enact laws on subjects in the State List. Both the Parliament and the state legislatures may enact laws on subjects mentioned in the Concurrent list but in case of a conflict, the law enacted by the Parliament prevails. Laws enacted by the Parliament and the state legislatures are binding, as also, laws pronounced by the Supreme Court (by way of judicial pronouncements).

Laws enacted by the Parliament are published in the Gazette of India, whereas laws enacted by the state legislatures are published in their respective state gazettes. The Parliament as well as the state legislatures are empowered to enact legislation having retrospective effect, apart from criminal legislation. Laws are generally applicable prospectively, unless specifically mentioned otherwise.

Indian court proceedings are adversarial, i.e. where parties present their case before a judge who must remain impartial and refrain from acting as an inquisitor (as he may in a civil law jurisdiction). The court may, to effectively rule on an issue (on matters of both law

and fact), put questions to a witness, or direct parties to lead evidence on certain aspects. In the late 1960s, India abolished the jury system for civil and criminal proceedings, except for matrimonial disputes relating to the ‘Parsi’ community.

Civil courts in India are governed by the procedure set out in the Code of Civil Procedure, 1908 (“**CPC**”). Criminal offences are covered by the IPC, and criminal courts are governed by the procedure set out in the Code of Criminal Procedure, 1973 (“**CrPC**”).



## 02 India's Judicial System

The Indian Constitution is federal in form but quasi-federal in spirit - the Constitution is supreme and there is a division of power between the Union and States i.e. the Constitution provides for a union list, state list and a concurrent list. The judiciary is wholly independent of the legislature and executive, and historically, has been a very activist judiciary.

India's judicial system is broken up into three distinct streams, i.e. criminal, civil cases and other cases which may be referred to specific statutorily constituted courts and tribunals depending on subject matter and the status concerned. Jurisdiction of a court is dependent on its territorial and pecuniary limits and may also be circumscribed by subject matter. Some courts or tribunals are conferred with exclusive

jurisdiction over matters and disputes of a particular subject matter.

The principal court of original jurisdiction is the City Civil Court (in metropolitan areas) and the Court of Civil Judge, Senior Division (in non-metropolitan areas). There are 25 High Courts covering the 28 States and 8 Union Territories of India. The High Court is the court of appeal and has supervisory jurisdiction over all lower courts and tribunals in the State / Union Territory over which it has territorial jurisdiction. The High Courts of Bombay, Delhi, Calcutta, Madras and Himachal Pradesh, also have original jurisdiction.

The Supreme Court of India has overall superintendence over all High Courts and lower courts and tribunals in India, and is the final court of appeal.

## 7 Supreme Court:

Under the Constitution of India, the role of the Supreme Court is that of a federal court, guardian of the Constitution and the highest / final court of appeal, having overall supervisory jurisdiction over State High Courts and all lower courts and tribunals in India. The Supreme Court is established under Article 124 of the Constitution and has a sanctioned strength of 34 judges who can sit singly or in benches of 2 or more judges. Matters involving a substantial question of law as to the interpretation of the Constitution are heard by larger benches comprising 5 or more judges (up to even 13 judges).

In its original writ jurisdiction, the Supreme Court is empowered to enforce fundamental rights guaranteed under the Constitution by issuing directions, orders, or writs (including writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto*, and *certiorari*). It may also adjudicate upon disputes between the Union and one or more States, or a dispute, inter se, between two or more States, where the dispute involves any question (whether of law, or of fact), on which the existence, or extent of a legal right depends.

The Supreme Court is also empowered to transfer any civil or criminal cases from one High Court to another, if

satisfied that they involve similar questions of law. If it believes that such questions are of substantial general importance, the Supreme Court may withdraw a case from the High Court or High Courts to entertain and dispose of such case, itself.

The Supreme Court's appellate jurisdiction can be invoked in respect of any judgment, decree, or final order of a High Court (in both civil and criminal cases). Invocation of its appellate jurisdiction is on the basis of a certificate from the High Court concerned that the case involves a substantial question of law as to the interpretation of the Constitution, or of general importance which needs to be decided by the Supreme Court. In criminal cases, an appeal lies to the Supreme Court if the High Court has reversed an order of acquittal and sentenced a person to death, or imprisonment for at least 10 years, or certified that the case is fit for appeal to the Supreme Court. The appellate jurisdiction of the Supreme Court can also be invoked from the decisions of some tribunals, for instance, the NCLAT and the SAT.

In fit cases, on important issues of law, the Supreme Court may be approached for special leave to appeal, against any judgment, or order of any court in India (not including a court constituted by, or under any law relating to the Armed

Forces), including in respect of one against which there is no statutory right of appeal.

### 7 High Courts:

The High Court is the supreme judicial authority at the State level and generally the last court of regular appeals. Judges in the High Court, either sit singly, or in benches of two or more judges. There are currently 25 High Courts in the country (the oldest being the Calcutta High Court), established under Article 214 of the Constitution of India.

The Constitution confers on every High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction (except those constituted by any law relating to the armed forces).

The High Courts of Bombay, Madras, Calcutta, Delhi and Himachal Pradesh have original jurisdiction, i.e. a case may be instituted before them in the first instance. These Courts also have a pecuniary limit, below which they may not exercise original jurisdiction.<sup>1</sup>

The remaining High Courts have only appellate jurisdiction, over orders and



judgments passed by lower courts and tribunals over which they exercise jurisdiction.

In its writ jurisdiction, a High Court is empowered to enforce fundamental rights and for any other purpose guaranteed to each citizen of India under the Constitution and remedy any violation thereof. For this purpose, the High Court may issue directions, orders, or writs (including of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*).

In its appellate jurisdiction, a High Court is the highest court of appeal in a State and the final court of appeal (except in specific cases where the Supreme Court has been statutorily conferred with appellate jurisdiction).

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<sup>1</sup> As of April 2023, the pecuniary jurisdiction of these High Courts is for a claim above:  
INR 10,000,000/- in the Bombay High Court  
INR 1,000,000/- in the Calcutta High Court  
INR 10,000,000/- in the Madras High Court  
INR 20,000,000/- in the Delhi High Court  
INR 10,000,000/- in the Himachal Pradesh High Court

The High Court also exercises testamentary and intestate jurisdiction, for probates, challenging a will, issuance of letters of administration and succession certificates etc. for administration of the estate of a deceased person.

The High Courts in the coastal states of Gujarat, Maharashtra, West Bengal, Andhra Pradesh, Telangana, Karnataka, Kerala, Orissa and Tamil Nadu exercise admiralty jurisdiction. This jurisdiction extends over any ship that is present in their territorial waters (irrespective of whether or not she is a national of, or registered in India, regardless of residence, or domicile of her owners). In India, an action *in rem* lies in a High Court against a foreign-owned ship, for a cause of action arising from tort, or a breach of obligation under a contract for carriage of goods from a port in India to a foreign port.

#### ▮ District Courts:

In metropolitan areas, the principal court of original jurisdiction is the City Civil Court and the High Court of the relevant State is the court of appeal. In non-metropolitan areas, the Court of Civil Judge, Senior and Junior Divisions, is the principal court of original jurisdiction and the District Court is the court of appeal. The principal court of criminal jurisdiction in a State is the Sessions Court below which lie the Chief Judicial Magistrate

and the Judicial Magistrate (First and Second class).

#### ▮ Small Causes Court:

The Small Causes Courts in India may be broadly classified as Presidency Small Causes Courts in Mumbai, Chennai and Kolkata enacted under the Presidency Small Causes Courts Act, 1882 (“**Presidency Act**”) and Provincial Small Causes Courts enacted under the Provincial Small Cause Courts Act, 1887 (“**Provincial Act**”). The Provincial Act governs small causes courts in places other than Mumbai, Chennai, and Kolkata.

Each State has the power to amend the Provincial or Presidency Acts to fix the pecuniary and territorial jurisdiction of small causes courts to suit its own requirements. Broadly, these acts provide for small causes courts to deal with matters within their pecuniary jurisdiction as fixed by the aforementioned governing acts, as modified by the State. The idea as the name suggests is for matters which are of relatively small value to be decided by these courts, though the pecuniary jurisdiction of the small causes courts, vary from State to State.

The small causes courts also have exclusive jurisdiction to adjudicate proceedings under rent control laws, municipality laws, election petitions, anti-corruption matters, debt relief

laws, motor vehicles laws, motor accident claims, payment of wages etc. as have been granted by various state amendments. As a result of the subject matter jurisdiction, in practice small causes courts also hear high value matters relating to matters such as rent disputes which tend to be hotly contested.

### 7 Commercial Courts:

The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 which was amended in 2018 to be called the Commercial Courts, Commercial Appellate Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (“**Commercial Courts Act**”), came into force on October 23, 2015 (coincidentally, with the 2015 amendments to the Arbitration & Conciliation Act, 1996). Specialized commercial courts and divisions were set up for expeditious resolution of the growing number of commercial cases, pursuant to the Government’s

stated intent to improve India’s ability to enforce contracts. The Commercial Courts Act envisaged the setting up of special commercial courts to adjudicate commercial disputes in a time bound manner. Consequently, civil cases in relation to commercial disputes and claims above a certain specified value (originally INR 10 million, but reduced in 2018 to INR 0.3 million), which would have been otherwise adjudicated by an ordinary court, now fall under the jurisdiction of the Commercial Court and the Commercial Division of High Court, respectively. Appeals arising out of such disputes lie before the Commercial Appellate Division of the High Court.

Pursuant to amendments made in 2018, commercial courts are being established at the district level even in territories where the State High Court exercises original jurisdiction (where the relevant High Court would have a Commercial Division).

## 03 Structure of Legal Profession

The Bar is unified and qualified lawyers enrolled with any State Bar Council can appear before any Indian court. However, in order to represent and appear for a party in any legal proceeding before a District Court, High Court, or the Supreme

Court, an advocate, or law firm must be registered with the concerned State Bar Council.

An advocate of at least 10 years standing may be designated a “Senior Advocate”

by the Supreme Court or the High Court with which he is registered if, in the opinion of the Supreme Court or that High Court the advocate possesses expertise and character befitting the status. Such a designated Senior Advocate plays a role quite similar to that of a Queen's Counsel.

The distinction between 'solicitors' and 'advocates' was removed in 1976. Nevertheless, the Bombay Incorporated Law Society, under the aegis of the Bombay High Court, conducts the qualification examination for solicitors. Solicitors have the same right of audience as advocates.

Under Indian law, specifically, the Advocates Act, 1961, only qualified advocates enrolled with the Bar Council of India are permitted to practice law in India. Insofar as foreign lawyers are concerned, given the rise in the number of international commercial arbitrations involving foreign parties, the Supreme Court of India in *Bar Council of India v. A K Balaji & Ors.* (2018) 5 SCC 379 held that foreign lawyers are entitled to give legal advice on foreign law involving diverse international legal issues on 'casual' visits to India. This was on the basis that such casual visits would not amount to the 'practice of law', which would include appearances in courts, giving of opinions, drafting of instruments and participation in conferences involving legal discussion. Recognising that international

arbitration would lend itself to such casual visits, the Apex Court noted that foreign lawyers could fly in and fly out to conduct arbitration proceedings, however, they will be governed by the code of conduct applicable to the legal profession in India, and the Bar Council or Union of India are at liberty to frame rules.

Building on this judgment, on March 10, 2023 the Bar Council of India (BCI) notified the Bar Council of India Rules for Registration and Regulation of Foreign Lawyers and Foreign Law Firms in India, 2022, regulating the entry of foreign lawyers and foreign law firms in India on a reciprocal basis. Foreign lawyers or firms can continue to practice law on a 'fly in fly out' basis to provide legal advice "*regarding foreign law and on diverse international legal issues*" and if: (i) the advice is procured by the client in a foreign country; (ii) the foreign lawyer or firm does not maintain an office in India; and (iii) the practice in India does not cumulatively exceed 60 days in any period of 12 months.

A foreign lawyer or firm can practice law in India in non-litigious matters only, subject to exceptions laid down in the Rules. Foreign lawyers will be permitted to represent foreign parties in international commercial arbitrations, but not in domestic arbitrations or litigations before any Indian court or tribunal.

## 04 Appointment of Judges

Only an Indian citizen may be appointed as a member of the judiciary. Appointments to the lower judiciary must qualify by clearing the Civil Services (Judicial) Exam conducted by the Union Public Service Commission. A citizen, having held judicial office for at least 10 years, or an advocate, registered as an advocate of a High Court (or of two or more High Courts in succession) for more than 10 years may be appointed as a Judge of a High Court. To be appointed a judge of the Supreme Court, the citizen must have served as a judge of a High Court (or of two or more High Courts in succession) for more than five years, or have practised as an advocate of a High Court (or of two or more High Courts in

succession) for more than ten years, or must, in the opinion of the President of India, be a distinguished jurist. The age of retirement of a High Court judge, is 62 years, while a Supreme Court judge is required to retire at the age of 65 years. There have been proposals to increase the retirement age, but these have not yet been put through.



## 05 Jurisdiction of Courts

Jurisdiction of Indian courts is limited by territory, pecuniary value of the claim / dispute and / or subject matter. A court would have territorial jurisdiction over a dispute if the defendant habitually resides, carries on business, or works for gain within its territory, or, if the cause of action arose, or immovable property which is the subject matter of the claim lies, within the territorial limits of such court.

The pecuniary jurisdiction of courts is determined by the relevant State in which

the court is situated. The valuation of a plaintiff's claim (and defendant's counter-claim, if any), determines which court would have pecuniary jurisdiction over the case.

Subject matter also plays a part, and exclusive jurisdiction may be statutorily conferred upon certain courts or tribunals, to the exclusion of regular civil courts and/or arbitral tribunals<sup>2</sup>, depending on the type of claims or dispute (as more particularly explained below).

<sup>2</sup> See *Vidya Drolia v. Durga Trading Corpn.*, (2021) 2 SCC 1.

## 06 Exclusive Jurisdiction Clauses

Indian courts recognize the contractual right of parties to stipulate exclusive jurisdiction provisions in their contracts. Most of the judicial pronouncements on jurisdiction clauses relate to exclusive jurisdiction of one Indian court over others and these stipulations have been uniformly enforced subject to the exception that parties, by contract, cannot confer jurisdiction upon a court which would ordinarily not have jurisdiction under Indian law. This does not apply to arbitration clauses, where the seat of the arbitration, though not otherwise having any connection to the parties or subject matter, would nevertheless confer jurisdiction upon the courts of the seat.

However, in relation to provisions conferring exclusive jurisdiction on

foreign courts, while the principle is recognised, Indian courts may refuse to give up jurisdiction on the grounds of *forum non conveniens*, balance of convenience, the interests of justice and



## 07 Governing Law Clauses

Parties are free to choose a foreign law to govern their relationship, where at least one party is a foreign party. In such cases, Indian courts will apply the law chosen by the parties to such a contract, subject to the foreign law being pleaded and proved as a fact (including through expert evidence, if required). If not so proved, it will be assumed that the legal position under the foreign law is the same as that existing under Indian law.

Insofar as governing law is concerned in a contract between Indian parties where there is no foreign element, while there is no specific case law on the issue, it is possible that should the parties for some reason decide to subject the contract to foreign law, an argument may be taken that such contracting out of Indian law would be contrary to public policy.

## 08 Court Fees

Court fees are payable by a plaintiff at the time of filing a suit, under the Court Fees Act, 1870, although some States have their respective State Acts and the court fees vary from State to State. The Court fees may be capped at a maximum amount (for example, Court fees in the Bombay High Court are a maximum of INR

0.3 million), or may be *ad valorem*, without a cap, (for example, the Delhi High Court levies court fees on an *ad valorem* basis depending on the value of the claim). Court fees may also be paid for filing other applications or petitions, which are at a capped fixed fee.

## 09 Period of Limitation

The Limitation Act, 1963, prescribes the time limit within which an aggrieved person can approach a court for redressal. The period of limitation is computed from the date of accrual of the cause of action, or in the case of a continuing cause of action, from each such day on which it accrues. Limitation for civil actions and suits for which no period of limitation is prescribed is generally 3 years. Limitation for claims on tortious liability is generally 1 year. Limitation for suits to recover possession of immovable property is 12 years. Limitation for execution of a decree is also 12 years. Limitation for suits by, or on behalf of the government is 30 years. Limitation for filing an appeal varies between 30 days to 90 days.

Limitation may be extended under certain circumstances, for instance, where there has been a part-payment or acknowledgment in writing of a debt

before the expiry of the prescribed period of limitation, or where a party has wrongly (but bona fide), pursued an action in a court which does not have jurisdiction.

Courts do not have the power to extend the period of limitation; a suit filed after its expiration is bound to be dismissed even if limitation has not been taken up as a defence. A court may however, under certain limited circumstances, condone delay in filing appeals.

In light of the spread of the Covid-19 pandemic, the Supreme Court in exercise of its powers under Article 142 of the Constitution suspended the period of limitation for all claims for nearly 24 months, thereby permitting such claims to be brought even after the strict period of limitation had lapsed, subject to certain rules for the calculation of such limitation.

## 10 Civil Proceedings against the State

The State is not immune and cannot claim immunity from civil proceedings, except in respect of certain sovereign functions. Prior to initiating any suit in respect of an official act against the Government of India, or any State, or a public officer, at least two month's advance written notice must be issued with the intention to file a suit, with sufficient details of the dispute and claim. Where there is a need for urgent relief, the suit may be instituted without the full two months' notice, with the leave of the Court, but no relief shall be granted unless a reasonable

opportunity has been given to the defendant to show cause in respect of the relief prayed for.

Public sector undertakings (including Government controlled, or owned corporations) are distinct from the Government and suits may be instituted against such undertakings without prior notice.

Specific statutory functionaries may be granted immunity from civil proceedings in respect of official acts undertaken by them.

## 11 Civil Proceedings against a Foreign State

Written consent of the Indian Government is required before instituting civil proceedings against a foreign state, which consent will be withheld unless the foreign state has subjected itself to the jurisdiction of an Indian court. Such submission to jurisdiction may be by instituting proceedings in the Indian court against the person requesting consent to sue, or the foreign state trading within the court's jurisdiction or, holding immovable property within the court's jurisdiction, and the consent to sue is requested with

reference to such trade, or property. Consent may also be granted if the foreign state has, impliedly, or expressly waived immunity. However, as an exception to this rule, consent of the Government is not required where a tenant of immovable property sues a Foreign State from whom he holds or claims to hold the property.

No decree can be executed against the property of any Foreign State except with the consent of the Government of India, certified in writing by a Secretary to that Government.

## 12 Suits by Foreign Entities and Foreign States

A foreign entity, being an 'alien friend', or an 'alien enemy residing in India with the permission of the Central Government' may institute civil proceedings in Indian courts as if they were citizens of India. An alien enemy is a person residing in a foreign country whose government is at war with India and who carries on business in such country without a licence in that behalf granted by the Government of India. An alien enemy

residing in India without the permission of the Government of India or residing in a foreign country but not holding the requisite license, cannot institute civil proceedings in India.

A Foreign State may sue in any competent Indian Court provided that the object of the suit is to enforce a private right vested in the ruler of such Foreign State or in any officer of such Foreign State in his public capacity.

## 13 Institution of Civil Proceedings (Civil Courts)

A suit is commenced by the filing of a plaint, which must contain the following particulars:

- i. name of the court;
- ii. name, description and place of residence of the plaintiff(s) and the defendant(s);
- iii. the cause of action;
- iv. the facts showing that the court has jurisdiction;
- v. the facts showing that the suit is filed within the period of limitation;
- vi. the relief claimed;
- vii. where the plaintiff has allowed a set-off, or relinquished a portion of the claim, the amounts so allowed, or relinquished;



- viii.a statement of the value of the subject matter of the suit for the purposes of jurisdiction and of court fees; and
- ix. The plaint should have annexed to it a list of documents referred to and/or relied upon by the plaintiff, which are relevant to the dispute and the claim.

A suit must include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action. If a plaintiff omits to sue in respect of, or intentionally relinquishes any portion of their claim, they are precluded from afterwards suing in respect thereof (unless they have obtained leave of the court for the purpose). The plaint must be supported by an affidavit deposed by the plaintiff verifying the correctness of facts.

Once the suit is filed, the court issues a writ of summons (accompanied by the plaint), to the defendant calling upon them to appear and answer the claim of the plaintiff by filing their statement of defence (written statement). The defendant must appear (either through legal representation or in person), on the date stipulated in the summons, and must file a written statement within 30 days from the date of service of summons extendable to 90 days. Pleadings may be amended with the leave of the court.

## 14 Procedure

7 **Disclosure:** At a preliminary hearing the court issues directions in relation to disclosure under oath, of documents referred to and relied upon. The counterparty is entitled to take inspection of the documents disclosed. If a party's disclosure is inadequate, or the party does not provide inspection, the other party has the right to request the court to direct disclosure, or inspection. A party also has the right to request the court for directions against the other party to provide particulars, or to answer interrogatories. A court may non-suit a plaintiff, or strike-out the defence of a defendant who has failed to comply with an order for discovery, or inspection, or to answer interrogatories.



7 **Framing of issues:** On completion of disclosure, the court, in consultation with the parties, frames issues for determination in the suit.

- 7 **Evidence:** Oral testimony and witness evidence in chief is filed by way of an affidavit of evidence in chief, with a right of cross-examination by the counter-party.
- 7 **Hearing:** The plaintiff, ordinarily, has the right to begin, and the other parties reply in turn. The party beginning has the right to reply generally on the whole case after all parties have stated their case.

## 15 Civil Proceedings under the Commercial Courts Act

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All cases filed in relation to ‘Commercial Disputes’<sup>3</sup> of a ‘Specified Value’<sup>4</sup> are required to be filed before the relevant Commercial Court / Commercial Division having the relevant territorial jurisdiction. The ‘Specified Value’ may differ from State to State, being prescribed by the relevant State Government in consultation with the concerned High Court, but will be above INR 0.3 million. This figure was decreased

from INR 10 million so as to bring more commercial disputes within the Courts’ jurisdiction, by the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Act, 2018. The said Amendment Act also provided for establishment of commercial courts at the district court level for the territories in respect of which the concerned High Courts have original jurisdiction.

## 16 Pre-action conduct requirements

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The CPC does not prescribe any pre-action conduct requirements for ordinary civil suits.

Under the Commercial Courts Act, pre-institution mediation and settlement in accordance with procedure under the Commercial Courts (Pre-Institution Mediation & Settlement) Rules, 2018 is mandated prior to the plaintiff instituting a commercial suit. This pre-condition is mandatory in nature and commercial

suits filed without following this step, are liable to be rejected.<sup>5</sup>

A dispute settled through such court sanctioned mediation can be decreed in Court, making it enforceable immediately in execution. However, this pre-condition is not compulsory where urgent interim relief has been applied for by the plaintiff.

In case of a suit filed in respect of an official act against the Government of India, or any State, or a public officer, at

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<sup>3</sup> Definition of ‘commercial dispute’ is set out in End Note.

<sup>4</sup> The manner of determination of ‘specified value’ is set out in the End Note.

<sup>5</sup> *Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd.*, (2022) 10 SCC 1.

least two month's advance written notice of the intention of filing such suit is required to be issued to the relevant Government entity, containing sufficient details of the dispute and the claim. However, with the leave of the court, such a suit may be instituted even without the full two months' notice. Urgent relief will be granted only after giving the Defendant a reasonable opportunity to defend itself.

In case of civil proceedings against a foreign state, the Indian Government's

written consent is required prior to its institution. Consent will be granted only if the foreign state has subjected itself to the jurisdiction of an Indian court. Such submission to jurisdiction may be by the foreign state instituting proceedings in the Indian court against the proposed plaintiff, or the foreign state trading within the court's jurisdiction or, holding immovable property within the court's jurisdiction - provided that the consent to sue is requested in relation to such trade, or property.

## 17 Institution of Civil Proceedings before Commercial Courts

The Commercial Courts Act has made several amendments to the CPC to simplify and speed up resolution of cases. While some of the procedure is similar to the procedure for filing suits before a regular civil court (for instance, a suit is commenced by filing a plaint containing the particulars as set out above), there are certain differences, some of which include:

- i. A suit which does not contemplate any urgent relief, cannot be instituted unless the plaintiff exhausts the remedy of pre-institution mediation and settlement in accordance with procedure under the Commercial Courts (Pre-Institution Mediation & Settlement) Rules, 2018. A dispute settled through such court sanctioned mediation, can be decreed in Court, so making it enforceable immediately in execution.
- ii. The Plaintiff must file a list of all documents in its power, control, custody or possession "*pertaining to the suit*" along with copies thereof, with the Plaint, when filing the same.
- iii. The defendant must file its Written Statement within 30 days and no later than 120 days from the date of service of summons, failing which, its right to file a written statement is forfeited.
- iv. Parties are required to complete inspection within 30 days from filing of the Written Statement or Written Statement to the Counter Claim, whichever is later. The Court may

extend the time for a further period not exceeding 30 days. Exemplary costs may be levied against a party who deliberately fails to disclose all relevant documents which are in their power, possession or control. Parties are required to file affidavits of admission and denial of documents disclosed and inspected within 15 days of completion of inspection or any later date fixed by the court.

- v. A case management hearing is required to be held no later than 4 weeks from the date of filing of affidavit of admission or denial of documents by all parties to the suit. At the case management hearing, the Court may pass orders framing issues, listing witness(es) to be examined by the parties, fixing dates for leading of evidence, fixing dates for filing of written arguments by the parties, fixing dates and time limits for oral arguments to be advanced by the parties etc. Should the party fail to

comply with any order passed in a case management hearing, the court may, levy costs for such non-compliance; foreclose the non-complainant party's right to file affidavits, conduct cross examinations of witnesses, file written submissions, address oral arguments or make further arguments in trial; or, dismiss the plaint or allow the suit where such non-compliance is wilful, repeated and imposition of costs is not adequate to ensure compliance.

- vi. Parties are required to submit written arguments, 4 weeks prior to commencing oral arguments, followed by revised written arguments, if any, within 1 week of completion of oral arguments. Arguments are required to be closed no later than 6 months from the date of the first case management meeting. Judgment is required to be pronounced within 90 days of conclusion of arguments.

## **18 Summary Suits in Civil Proceedings under Order 37 of the CPC<sup>6</sup>**

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A plaintiff may file a summary suit for monetary claims upon negotiable instruments (such as bills of exchange, hundis and promissory notes), or for recovery of debt or liquidated demand arising on a written contract, or on a guarantee. No relief other than a

monetary decree may be claimed in such a suit. Where any other relief is sought, the plaintiff must file a regular civil suit under ordinary civil procedure.

Where a suit is instituted as a summary suit, the defendant is not entitled to

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<sup>6</sup> Order 37, Rules 1-3 are set out in the End Note.

defend as a matter of right, but must apply to the court for leave to defend and while so applying, be able to establish a prima facie defence in his favour. If he / she establishes a defence to the satisfaction of the court, the defendant is granted leave to defend and the summary suit is transferred to the list of

commercial causes to be tried as an ordinary suit. Leave to defend may be unconditional, or conditional upon deposit by the defendant of the whole, or part of the claim amount. If no defence is made out, the court may pass summary judgment on the suit.

## 19 Summary Judgments under the Commercial Courts Act

A party may apply for a summary judgment, at any time after the writ of summons is served on the defendant but prior to framing of issues.

The court may give a summary judgment against a plaintiff or defendant, if the court considers that, (a) the plaintiff has no real prospect of succeeding in its claim or the defendant has no real prospect of successfully defending the claim; and (b) there is no other compelling reason why the claim should not be disposed of before recording of oral evidence.

Either party may submit documentary evidence for consideration and the court

may make its decision without recording oral evidence.

The court may pass such orders as deemed fit including:

- i. judgment on the claim;
- ii. conditional order;
- iii. dismissing a part of the claim and judgment on the remainder;
- iv. striking out pleadings;
- v. directions to proceed to case management; and
- vi. costs.

## 20 Class Actions

Various Indian statutes including Companies Act and the Consumer Protection Act, 2019, have codified the law on class actions. The CPC also provides for a remedy by way of a representative action (similar to a class

action). However, class action jurisprudence in India is still developing and remains largely untested as on date.

Under the Companies Act, a minimum number of members or depositors of a

company<sup>7</sup> (other than a banking company), may seek redressal as a class, from the NCLT, against the company, its directors, auditors, experts, advisers or consultants for any fraudulent, unlawful or wrongful acts that are prejudicial to the interests of the company, or its members or depositors, or are against public interest.

Under the Consumer Protection Act, one or more consumers having a common interest in relation to any goods sold or services provided, and seeking relief on behalf of or for the benefit of the group, may file a class action on behalf of such group, with the permission of the relevant consumer dispute redressal commission at the District, State or National level.<sup>8</sup> The Central and State

Governments are also empowered to file a complaint either in their individual or representative capacity for the interests of consumers at large.

Additionally, Order 1 Rule 8 of the CPC enables a group of plaintiffs to collectively file a civil suit, with the permission of the court, in a representative capacity for the benefit of a group or class of persons having a common interest in the subject matter of the suit. This provision is an exception to the general rule that all persons interested in a suit should be made parties thereto.

A decree passed by the court is binding on all interested persons forming part of the group or class.



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<sup>7</sup> Section 245(3) of the Companies Act read with Rule 2 of the National Company Law Tribunal (Second Amendment) Rules, 2019

- i) In respect of a company with share capital:
  - a. the lesser of 5% of the total number of members of the company or 100 members; or
  - b. in a listed company – members holding at least 2% of the issued share capital; or
  - c. in an unlisted company – members holding at least 5% of the issued share capital.
- ii) In respect of a company without share capital – at least  $\frac{1}{5}$  (one-fifth) of the total number of members;
- iii) In case of an action by depositors:
  - a. the lesser of 5% of the total number of depositors or 100 depositors of the company; or
  - b. such number of depositors to whom the company owes 5% of the total deposits.

<sup>8</sup> Section 35(1) read with section 49(1) and 59(1) of the Consumer Protection Act.

## 21 Evidence

The Indian Evidence Act, 1872, contains provisions governing admissibility of any evidence in the Indian courts. Evidence may be documentary (digital records and email communications are also admissible), or oral, through witness testimony. Witness testimony must be direct and hearsay evidence is inadmissible, except in certain limited circumstances.

Evidence in chief is led by the witness filing an affidavit of evidence. The court may however, for reasons recorded in writing, allow evidence in chief to be led by examination of the witness in open court. A witness who is outside the jurisdiction of the Court or cannot attend Court may also be examined by way of a commission. The counter-party has the right to cross-examine the witness (although this right may be waived). The Court also has the power to put questions to the witness. Re-examination of a

witness is permissible only under limited circumstances and in relation to questions arising directly out of the cross-examination.

Witnesses must testify under oath before the court and may be liable for the offence of perjury under the Indian Penal Code 1860 if they testify falsely.



## 22 Interim Relief:

### 22.1 Powers of the court to grant Interim Relief

Indian courts have extensive powers to grant interim relief as a measure of protection to preserve some property or the rights of a party pending the final disposal of a suit. A party seeking interim relief should satisfy the court of the following three conditions:

- i. there is a *prima facie* case in favour of the party seeking the order;
- ii. irreparable damage defeating the very purpose of the suit may be caused to the party if the relief is not granted; and
- iii. the balance of convenience lies with the party requesting the order.

## 22.2 Types of Interim Reliefs

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- a. **Attachment before Judgment:** The court, if satisfied that the defendant, with intent to obstruct, or delay the execution of any decree that may be passed against it, is about to abscond, or leave the local limits of the court's jurisdiction; or, remove / dispose of the whole, or any part of its property from the jurisdiction of the court, it may require the defendant to furnish security to produce and place at the disposal of the court when required, the property, or the value of the same as may be sufficient to satisfy the decree. In making such an order, the court may direct conditional attachment of the whole, or any portion of the property of the defendant. If the defendant fails to show cause against attachment, or fails to furnish the security required, the court may order that property (sufficient to satisfy any decree which may be passed in the suit) be attached.
- The attachment will not affect rights over assets or properties which were in existence prior to the attachment, of persons not parties to the suit (for example a tenancy).
- b. **Injunction:** A court may pass orders of temporary injunction restraining a defendant from taking some action, where it is satisfied that the property in dispute in the suit is in danger of waste, damage, alienation, or that the defendant threatens, or intends to remove, or dispose of its property with a view to defraud its creditors.
- c. **Status quo Order:** *Status quo* generally refers to the existing state of affairs, or circumstances. In some respects, similar to an injunction, a *status quo* order may be issued to prevent any of the parties involved in a suit from taking any action that may alter the existing state of things. The intent of such an order is to prevent harm, or preserve the existing conditions, so that a party's position is not prejudiced in the interim.
- d. **Receiver:** A court is empowered to appoint a receiver of any property when it is just and convenient to do so. In a mortgagee's suit for foreclosure, or sale, where the mortgagee is entitled to enter into possession on default of payment of the mortgage money, the mortgagee is *prima facie* entitled to the appointment of receiver.
- e. **Other Orders:** A court may pass such interim orders as may be necessary to preserve the subject matter of the dispute or the rights of the parties, for example, disclosure of assets, furnishing of security, etc.

### 22.3 Ex-Parte Orders in case of urgency

In cases of urgency, such as where the rights of a plaintiff may be defeated should such relief not be granted immediately, a court may pass an ad-interim order granting relief, on an ex parte basis, without directing notice to be

issued to the defendant. In such an event, the defendant may apply for vacation / modification of the order passed and after hearing the parties, the order may be vacated, modified, or confirmed.

### 22.4 Undertaking by a party applying for interim relief to pay damages

Certain courts, for instance the Bombay High Court, mandate a party to whom interim relief has been granted, to provide a written undertaking before such order granting interim relief is

issued, to pay damages as the court may award to compensate the other party in the event the other party is affected or prejudiced by such order.

## 23 Substantive / Final Relief

Indian courts have wide powers to mould the reliefs and to make such orders as may be necessary to meet the ends of justice and to award substantive relief. Such relief includes declarations of title,

or status, specific performance of contracts, permanent injunctions, damages, accounts, etc. Punitive or exemplary damages may be awarded in exceptional circumstances.



## 24 Specific Performance

### ▮ Prior to the Specific Relief (Amendment) Act, 2018 (“SR Amendment Act”)

Prior to the SR Amendment Act, the grant of specific performance of a contract under the Specific Relief Act, 1963, was discretionary. Specific performance could be granted only where, (a) there existed no standard for ascertaining actual damage caused by the non-performance of the act agreed to be done and of which specific performance was sought; or (b) when the act agreed to be done is such that compensation in money for its non-performance would not afford adequate relief.

Certain contracts could not be specifically enforced, such as contracts where, (a) the non-performance of which compensation would be an adequate relief; (b) the contract runs into such minute or numerous details or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms; (c) the contract is, in its nature determinable; and (d) the performance of which involves the performance of a continuous duty which the court cannot supervise.

### ▮ After the SR Amendment Act

The SR Amendment Act came into force on October 1, 2018. It limits the court’s discretion by making specific relief mandatory as opposed to discretionary. The Court may grant specific performance of contracts (a) in which there exist no standards to ascertain the actual damage caused by non-performance of such contracts, or (b) wherein the act agreed to be done is such that monetary compensation for non-performance would not afford adequate relief to the party suffering breach. Further, a rebuttable presumption is created that breach of contract for transfer of immovable property cannot be adequately relieved by monetary compensation, whereas breach of contract for transfer of movable property may be relieved by monetary compensation, except *inter alia*, when the subject matter of the contract is not an ordinary article of commerce, or is of special value to the buyer, or consists of goods which are not readily obtainable in the market. The Act in its present form gives a discretionary power to the courts to award specific performance only in exceptional cases, with monetary compensation being the norm.

The nature of contracts for which specific performance may be denied has been made narrower, i.e. in the following circumstances: (a) where a party to the contract has obtained substituted performance; (b) where directing specific performance would involve the performance of a continuous duty which a court cannot supervise; (c) where the contract is so dependent on the personal qualifications of the parties that the court cannot enforce specific performance of its material terms; (d) where a contract is determinable in nature.

#### ▮ Substituted Performance

The concept of allowing the innocent party to obtain substituted performance from a third party or its own agency and recover expenses and costs actually incurred or suffered, from the breaching party, has been introduced by the SRA Amendment Act. Once such substituted performance has been obtained, the

innocent party is not entitled to seek specific performance.

#### ▮ Special status to Infrastructure projects

An all new section provides that in case of contractual disputes relating to infrastructure projects, the court shall not grant an injunction in any suit, where it would cause hindrance or delay in the continuance or completion of the infrastructure project.



## 25 Costs

Indian law recognises the principle that costs follow the event i.e. the costs of legal proceedings are awarded to the successful litigant. Courts are also empowered to direct payment of compensatory costs by a party who frivolously delays proceedings, or knowingly raises false, or vexatious

claims, or defences. The awarding of costs is up to the discretion of the court and the court has the power to determine by whom, or out of what property and to what extent such costs are to be paid. In practice the costs awarded are substantially lower than the costs actually incurred, although the new

Commercial Courts Act provides for a general rule for payment of costs by the judgment debtor and sets out the basis of awarding costs.

Indian courts may order security for costs from a plaintiff not resident in India, if it does not possess sufficient immovable property, or assets in India to satisfy any decree that may be passed against him. In cases where the subject of the suit is immoveable property, courts will direct such plaintiffs, who do not possess sufficient immovable property in India, to furnish security for any anticipated costs on the defendant. The quantum of such anticipated costs and required security is left to the discretion of the courts. Where such security is directed to be furnished by a plaintiff, the suit may be dismissed if such security is not provided.

The amendments made to the CPC by the Commercial Courts Act ensures that the commercial court has wide discretion to determine, whether costs are payable, by whom and what quantum. Certain points that may be kept in mind are:

- ⌋ Costs shall mean ‘reasonable costs’, relating to fees and expenses of witnesses, legal fees and expenses, any other expenses incurred in connection therewith.
- ⌋ Cost to follow event mechanism – “... *the general rule is that the unsuccessful party shall 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”.*

- ⌋ Various considerations while granting costs, including, conduct of parties, whether a party has succeeded; whether a frivolous counter-claim has been made leading to delay; whether a reasonable offer to settle is made, which is unreasonably refused.
- ⌋ Courts are now also beginning to impose costs for filing of frivolous proceedings. For instance, in *Vijay Karia v. Prysmian Cavi E Sistemi SRL*,<sup>9</sup> the appellants applied to the Supreme Court for special leave to appeal (under Article 136 of the Constitution of India), against the Bombay High Court’s order to enforce a foreign award. The Apex Court passed this order by observing that the Appellants were “*indulging in a speculative litigation with the fond hope that by flinging mud on a foreign arbitral award, some of the mud flung would stick*”, and given that the Court’s time was unnecessarily taken up, imposed exemplary costs of INR 50 lakhs on the appellants.



<sup>9</sup> *Vijay Karia v. Prysmian Cavi E Sistemi SRL* (2020) 11 SCC 1.

## 26 Third Party Funding

In its purest form, the third party funding of a dispute is an arrangement between a funder and a litigant in which the funder ‘funds’ or provides monetary support to a litigant for pursuing and / or enforcing a claim, in exchange for a share in any ensuing award or settlement. The funding provided is ‘non-recourse’ and the funder is repaid the funded amount (its investment) along with its profit, only upon a successful outcome of the action, and not otherwise. The investment or the asset is the litigant’s claim or award.

While there is no express legislation or regulation around litigation financing (as it is also known) in India, there have been several decisions by superior courts which endorse the view that third party funding of disputes is not barred under Indian law.<sup>10</sup> However, although the principles of maintenance and champerty are not applicable in India, agreements which are found to be extortionate and unconscionable, for instance completely one-sided and usurious – say a majority share in the recoveries made, may be treated as being contrary to public policy.<sup>11</sup>

The CPC, which governs the procedure of civil actions in courts, was amended in the states of Maharashtra and Madhya Pradesh and Gujarat, so as to empower a court to implead a third-party financier in a suit as a plaintiff (in certain

circumstances). The financier may be required to give security for the payment of all costs incurred and likely to be incurred by any defendant. This amendment, made more than two decades ago, carries the implicit assumption that a plaintiff has been funded in its civil litigation (and that therefore, litigation financing, is permitted).

The Arbitration Act, as amended in 2015, also contains an implied recognition that there may be cases funded by a party not otherwise concerned with the dispute. A potential arbitrator is required to disclose any circumstances, which are likely to give rise to justifiable doubts as to his independence or impartiality.

In its landmark decision, in *Bar Council of India v. A K Balaji & Ors.* (in relation to foreign lawyers being permitted to



<sup>10</sup> *Ram Coomar Coondoo v. Chunder Cato Mookerjee*, [1876] 4 IA (PC) 23, and *Bar Council of India v. A.K. Balaji*, (2018) 5 SCC 379.

<sup>11</sup> *Ram Coomar Coondoo*, [1876] 4 IA (PC) 23. See also *G, A Senior Advocate*, (1955) 1 SCR 490, *Rattan Chand Hira Chand v. Askar Nawaz Jung*, (1991) 3 SCC 67, *Nuthaki Venkataswami v. Katta Nagi Reddy*, AIR 1962 AP 457.

practice in India), the Supreme Court of India, observed (as obiter) that that third-party funding was permissible in India, stating. “*There appears to be no restriction on third parties (non-lawyers) funding the litigation and getting repaid after the outcome of the litigation.*”<sup>12</sup>

As noted in Bar Council of India, Indian lawyers cannot take up cases on a contingency or success fee basis, inasmuch as the Bar Council of India Rules, 1961 explicitly prohibit Indian lawyers from acting in cases where they have any financial interest.<sup>13</sup>

## 27 Binding Effect of Judgments

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A decision of the Supreme Court and decisions of the Privy Council, which do not conflict with any decision of the Supreme Court, rendered prior to 1950 (when the Supreme Court was established), are binding on all High Courts, lower courts and tribunals in India. Decisions of a High Court are binding within that State; a decision of the High Court of one State is only persuasive in other States. The decision of larger benches of the Supreme Court would be binding on smaller benches (e.g.

A decision rendered by a three judge bench would be binding on a proceeding before a two judge bench). This principle of judicial discipline also applies to High Courts.

The CPC recognises the principle of *res judicata* and a final decision on any matter by a competent court is binding on the parties to the litigation and persons claiming under, or through the parties. The same issue cannot be further litigated in subsequent proceedings.

## 28 Decisions of Foreign Courts

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Rulings of foreign courts are of persuasive value and not binding on Indian courts. Decisions of courts of Commonwealth Countries (most often, the UK), are often cited before High Courts and the Supreme Court in the absence of any binding decision of Indian

courts. Decisions of US courts, in constitutional matters, administrative principles, antitrust matters, and intellectual property or technology matters are also occasionally cited for persuasive value.

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<sup>12</sup> *Bar Council of India v. A K Balaji & Ors.* (2018) 5 SCC 379 at Paragraph 35.

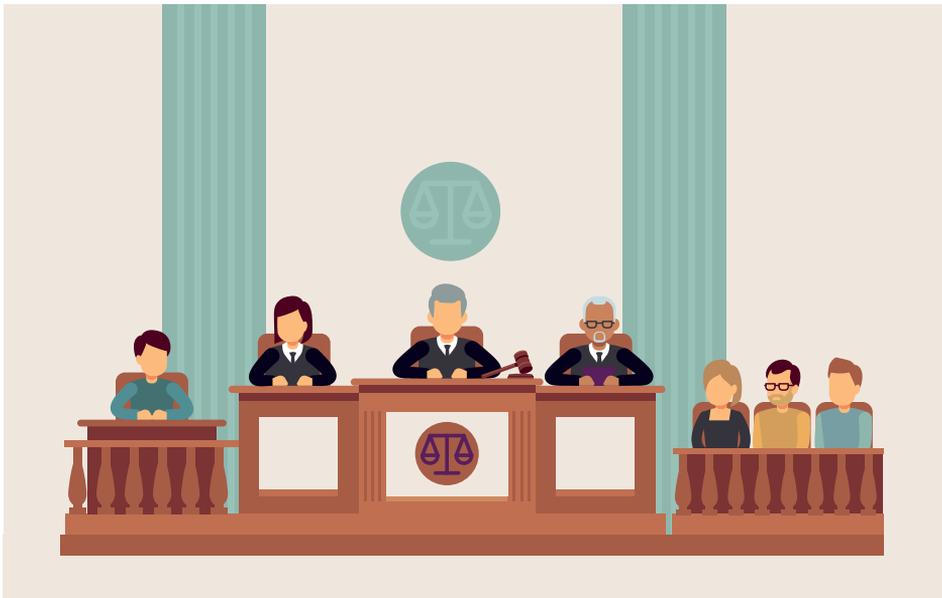
<sup>13</sup> See Rule 10, Rules on Professional Standards, available at <http://www.barcouncilofindia.org/about/professional-standards/rules-on-professional-standards/>

## 29 Enforcement of Judgments/Decrees and Orders

A judgment or decree may be enforced in execution proceedings.<sup>14</sup> Money decrees are executed by attachment and sale of the judgement debtor's properties - movable and immovable. Certain properties are immune from execution (e.g. personal ornaments which cannot be parted with by any woman by virtue of religious usage / apparel, tools of artisans, books of account, stipends and gratuities received from a government servant, provident fund, etc.). In exceptional circumstances, Indian courts will allow money decrees to be executed by the arrest and detention in civil prison of the judgement debtor.

The court may require the judgement debtor to be examined on oath to ascertain the assets available for execution and may, if required, appoint a receiver over such assets pending execution.

Under the Contempt of Courts Act, 1971, wilful disobedience of a court order amounts to 'civil contempt' and is punishable with a fine of up to INR 2000, or with simple imprisonment of up to six months, or both.



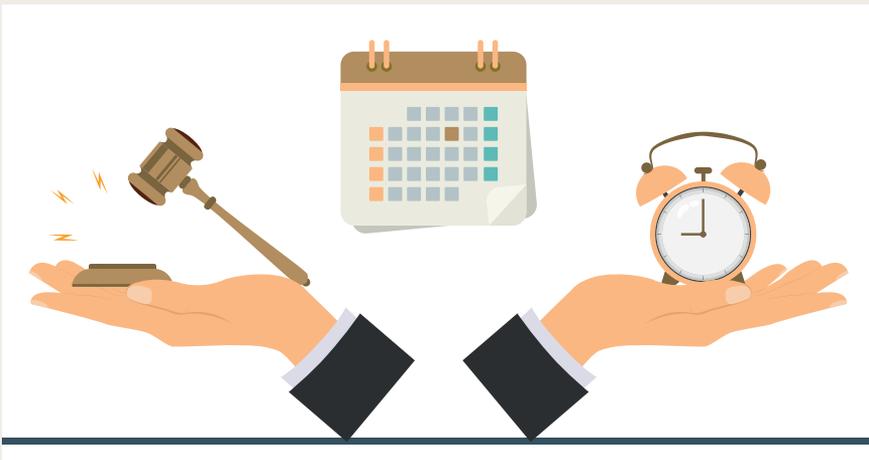
<sup>14</sup> The procedure for execution of decrees is set out in the End Note.

### 30 Enforcement of Foreign Judgments

The Government of India has notified certain countries as reciprocating territories<sup>15</sup> and subject to certain restrictions, a final judgment of a court of a reciprocating territory may be enforced in India between the parties, as a judgment of an Indian court by filing an execution application. Where the judgment is issued by a court of a non-reciprocating territory, it may be enforced by instituting a suit on such judgment. A foreign judgment would be enforceable except where it has not been pronounced by a court of competent jurisdiction, or is not on merits of the case (for example, a default judgment or a summary judgment without the judgment

debtor entering appearance or where no opportunity to lead evidence is given), or is founded on an incorrect view of international law, or a refusal to recognise Indian law in cases in which such law is applicable, or was obtained in proceedings opposed to natural justice / obtained by fraud or it sustains a claim which is founded on a breach of any law in force in India. Once a foreign judgment is held to be enforceable, it will be enforced in the same manner as a decree of an Indian court.

There is no provision under Indian law for enforcement of interim orders of a foreign court that do not conclusively decide an issue.



### 31 Appeals from Decrees

Every original decree may be challenged in appeal, unless an appeal is precluded by statute. An appeal also lies against certain original orders specified in the CPC. The first appeal may include grounds of both questions of fact and/or law. Unless barred by statute, second appeals lie to the High Court only on substantial questions of law.

The judgment, or decree, or final order of a High Court may be appealed before the Supreme Court if the High Court concerned certifies that the matter involves a substantial question of law of general importance; or believes that the matter needs to be decided by the Supreme Court.

Where there is no further right to appeal, the Supreme Court may, on the application of an aggrieved party and in its sole discretion, grant special leave to appeal against any order of a court or

tribunal, if it feels that the matter involves a substantial question of law.

Note that execution of a decree is not suspended while an appeal is pending. The appeal court may however, for reasons to be recorded, stay the impugned decree and / or execution thereof, pending the appeal. While doing so, it may also direct the judgement debtor to deposit the decretal amount in court pending hearing of the appeal.

In so far as cases pertaining to Commercial Disputes under the Commercial Courts Act are concerned, an appeal lies to the Commercial Appellate Division of the concerned High Court, which must be preferred within a period of 60 days from the date of the order / judgment. The Commercial Appellate Division must endeavour to dispose of appeals within a 6 month period.

### 32 Appeals from Orders

Only certain orders passed during the course of civil proceedings may be challenged by way of appeal. No appeal lies from an order not specified in the CPC. An unsuccessful litigant may however avail of the alternate remedies of civil revision, review and in limited

circumstances, invocation of the High Court's writ and supervisory jurisdiction. Where an order is appealed, the appellate court may, if sufficient cause is made out, stay the impugned order pending disposal of the appeal.

### 33 Revision

Where there is no appeal provided for, the High Court has the power by revision to examine the record of any case decided by a subordinate court where there is a mistake, illegality, or material irregularity in the exercise of jurisdiction by such subordinate court. In the course

of revision, the High Court is empowered to pass any order it deems fit. A revision does not operate as a stay of any other suit, or proceeding then pending, unless the High Court specifically stays such other suit or proceeding.

### 34 Review

Where either no appeal is provided for, or no appeal is preferred, the parties can apply to the court passing the decree to review its decision. A review lies when:

- i. The aggrieved party has discovered a new and important matter of evidence which, after the exercise of due diligence, was not within their knowledge, or could not have been produced by them at the time when the decree was passed; or
- ii. There is some mistake, or error apparent on the face of record; or
- iii. There is any other sufficient reason. The reason should be serious enough and it is only when the Court would have reason to believe that if re-examination or reconsideration of the decree is not done, there would be a miscarriage of justice, the discretionary power of review would be exercised.

### 35 Reference

Where, at the time of or prior to hearing a suit or an appeal in which the decree is not appealable, or at the time of execution of such decree, the court trying the suit or appeal or executing the decree, has a reasonable doubt as to any question of law, such court may either *suo motu* or on an application by any of the parties, refer the matter for the decision of the High Court. The court making such reference must draw up a statement of the facts of the case and the particular point of law on which there is a

doubt, and refer such statement with its own opinion on the matter to the High Court for its decision.

The court making the reference may either stay the proceedings or continue hearing the case, notwithstanding the reference, and proceed to pass a decree or an order contingent upon the High Court's decision. However, such decree or order shall only be executed on the receipt of the High Court's judgment on the referred matter.

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry, no matter how small, should be recorded to ensure the integrity of the financial data. This includes not only sales and purchases but also expenses, income, and any other financial activities.

The second part of the document provides a detailed breakdown of the accounting process. It outlines the steps from recording transactions to the preparation of financial statements. This includes identifying the accounts affected by each transaction, debiting and crediting the appropriate accounts, and ensuring that the accounting equation remains balanced.

The third part of the document focuses on the preparation of financial statements. It explains how the data from the accounting records is used to create the balance sheet, income statement, and statement of cash flows. Each statement provides a different perspective on the company's financial performance and position.

The fourth part of the document discusses the importance of internal controls. It describes how a system of internal controls can help prevent errors and fraud, and ensure that the financial records are accurate and reliable. This includes procedures for separating duties, requiring approvals, and conducting regular audits.

The fifth part of the document covers the topic of tax accounting. It explains how the accounting records are used to calculate the company's tax liability and how the company can take advantage of various tax deductions and credits to reduce its tax burden.

The sixth part of the document discusses the role of the accountant in the business. It describes how the accountant provides valuable information to management and other stakeholders, and how they can help the company make informed financial decisions.

The seventh part of the document covers the topic of financial reporting. It explains how the financial statements are prepared and how they are used to communicate the company's financial performance to investors, creditors, and other stakeholders.

The eighth part of the document discusses the importance of ethical behavior in accounting. It describes how accountants should adhere to a code of ethics and how they can help the company maintain its reputation and integrity.

The ninth part of the document covers the topic of financial planning. It explains how the accounting records are used to develop a budget and other financial plans, and how these plans can help the company achieve its long-term goals.

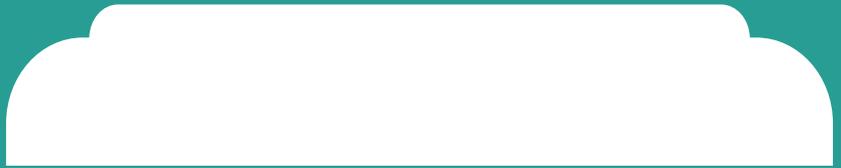
The tenth part of the document discusses the role of the accountant in the future. It describes how the accountant's role is evolving and how they can continue to provide valuable services to the business in the years ahead.

# B. TRIBUNALS

Certain statutes exclude civil court jurisdiction, whilst rendering certain subject matter non-arbitrable<sup>16</sup>, and confer exclusive jurisdiction on statutorily constituted tribunals or quasi-judicial bodies (as a result these disputes may also not be arbitrable).

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<sup>16</sup> See *Vidya Drolia v. Durga Trading Corpn.*, (2021) 2 SCC 1.



## 01 National Company Law Tribunal (“NCLT”) and National Company Law Appellate Tribunal (“NCLAT”)

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On and from June 1, 2016, the erstwhile Company Law Board (“**CLB**”) constituted under the Companies Act, 1956, was dissolved and the NCLT and NCLAT were constituted in its place under the Companies Act, 2013 (which replaced the Companies Act, 1956).

The purpose of the NCLT and NCLAT is to avoid multiplicity of litigation before various forums (such as High Courts, the erstwhile Company Law Board (“**CLB**”), Board for Industrial & Financial Reconstruction (“**BIFR**”), Appellate Authority for Industrial & Financial Reconstruction (“**AAIFR**”), and instead to consolidate all corporate jurisdiction into one forum. So for instance, all matters relating to schemes of compromise, arrangement, amalgamation and reconstruction, insolvency and bankruptcy proceedings, shareholders disputes relating to oppression, mismanagement etc., are now heard by the NCLT, with appeals being heard by the NCLAT (instead of a High Court).

The jurisdiction of the NCLT / NCLAT is exclusive and the Companies Act, 2013 mandates that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter

which the said Tribunals are empowered to determine. The NCLT thus also reduces the burden of District Courts and High Courts which have huge backlogs and frees up judges to hear other matters.

The NCLT has its Principal Bench in New Delhi and 15 other Benches across India.<sup>17</sup> The NCLAT has its Principal Bench in New Delhi and one other Bench in Chennai.

All proceedings pending before the BIFR and the AAIFR, constituted under the Sick Industrial Companies (Special Provisions) Act, 1985 (which was also repealed in 2016)), stand abated, although the concerned company in respect of which such proceeding stands abated, has the liberty of initiating fresh proceedings before the NCLT under the Insolvency and Bankruptcy Code, 2016.

Orders of the NCLT are appealable to the NCLAT. Additionally, the NCLAT also hears appeals against orders passed by the Insolvency and Bankruptcy Board of India, the Competition Commission of India and the National Financial Reporting Authority. An order from the NCLAT can be appealed to the Supreme Court if it is in respect of a question of law.

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<sup>17</sup> As of April 2023, 16 Benches of NCLT, have been set up: two at New Delhi (being the Principal bench and the New Delhi Bench) and one each at Ahmedabad, Allahabad, Bengaluru, Chandigarh, Chennai, Guwahati, Hyderabad, Kolkata, Jaipur, Kochi, Cuttack, Amaravati, Indore and Mumbai.

## 02 Proceedings under the Insolvency and Bankruptcy Code, 2016 (“IBC”)

IBC was enacted with a view to consolidate the regime for re-organization and insolvency resolution of corporate persons, partnership firms and individuals<sup>18</sup> in a time bound manner (180 days extendable to 270 days, although practically most cases take much longer), reduce stressed assets and enhance credit availability in the market.

The NCLT has exclusive jurisdiction over all proceedings arising under the IBC, such as applications for insolvency / liquidation, schemes for reconstruction, amalgamation and revival plans for financially distressed companies etc. Any ‘financial creditor’, ‘operational creditor’ or ‘corporate debtor’ is entitled to initiate the Corporate Insolvency Resolution Process (“**CIRP**”). The IBC also provides for voluntary liquidation by a corporate entity.

Under the Companies Act, 2013 a company may be wound up and liquidated by the NCLT, if:

- i) the company has passed a special resolution that it should be wound up by the Tribunal, i.e. a voluntary liquidation;
- ii) the company has acted against the interests of the sovereignty and integrity of India, public order, decency or morality;
- iii) if the NCLT believes that it is just and equitable that the company should be wound up;
- iv) the affairs of the company have been conducted in a fraudulent manner; or, the company was formed for fraudulent and unlawful purpose or the persons concerned in its formation or management have been guilty of fraud, misfeasance or misconduct in connection therewith; or
- v) if the company has made a default in filing with the Registrar of Companies its financial statements or annual returns for immediately preceding 5 consecutive financial years.



<sup>18</sup> As of April 2023, the provisions for insolvency resolution of individuals and partnership firms have only been notified qua personal guarantors of corporate debtors (and not for other individuals and partnership firms).

A financial default of at least INR 10 million can trigger the CIRP.<sup>19</sup> Upon an application for CIRP being admitted by the NCLT, all other legal proceedings are automatically stayed by a moratorium period of 180 days, extendable by a further 90 days. The declaration of moratorium on the company prohibits any institution or continuation of litigation against the concerned company, mandates maintenance of status quo of the assets by the company including prohibition on any transferring, encumbering, alienating or disposing of such assets and requires the creditors to refrain from enforcing any security interest against the corporate debtor.

During the statutory moratorium period, an Interim Resolution Professional (and thereafter a final Resolution Professional), is appointed and a Creditors Committee (comprising financial creditors, secured or unsecured), is constituted to decide (with at least 66% majority) on a revival plan, if revival is possible, of the corporate debtor. The Resolution Professional manages the affairs of the corporate debtor and operates its business as a going concern under the broad directions of the Creditors' Committee. Operational creditors do not possess the right to participate in the resolution process and the decision of the Creditors' Committee is binding on them. Once approved by the NCLT, the plan is binding on all stakeholders; the corporate debtor, its

employees, shareholders, members, guarantors and creditors. The NCLT is vested with the discretion to finally approve or reject the resolution plan.

Alternatively, if during the insolvency resolution process, the resolution professional informs the NCLT that the Committee of Creditors has not been able to agree on a resolution plan or has decided to liquidate the corporate debtor/ concerned company, the NCLT may then pass an order for such liquidation.

Secured creditors have the right to either, relinquish their security interest and receive proceeds from the sale of assets by the liquidator, or to realize their security interest independently, although it may approach the NCLT to facilitate the realization of the security interest if required.

The entire liquidation process should be completed within 1 year. After the assets of the corporate debtor have been completely liquidated, the liquidator makes an application to the NCLT for the dissolution of the corporate debtor and the NCLT passes an order declaring that the corporate debtor stands dissolved from the date of such order.

The IBC further provides that the proceeds from the assets in the liquidation trust shall be distributed in the following order of priority: a) *first*, the insolvency resolution process costs and

<sup>19</sup> The minimum pecuniary threshold for initiating CIRP under IBC has been increased from INR 0.1 million to INR 10 million vide Notification no. S.O. 1205(E) dated March 24, 2020.

liquidation costs in full; (b) *second*, workmen's dues for the period of twenty four months preceding the liquidation commencement date and debts owed to a secured creditor if such creditor has relinquished its security interest, on a *pari passu* basis; (c) *third*, wages and any unpaid dues owed to employees other than workmen for the period of twelve months before the liquidation commencement date; (d) *fourth*, financial debts owed to unsecured creditors; (e) *fifth*, any amounts owed to the state government and the central government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Funds of a State, if any, in respect of the whole or part of the period of two years preceding the liquidation commencement date and debts owed to a secured creditor for any unpaid amounts following the enforcement of security interest, on a

*pari passu* basis; (f) *sixth*, any remaining debts and dues (including debts and dues of operational creditors); (g) *seventh*, any preference shareholders; and (h) *eighth*, equity shareholders or partners, as the case may be.

Voluntary liquidation is also available to a corporate person if it is a 'going concern' and has no debt / is able to show that it can repay its debt in full from the proceeds of the assets sold in voluntary liquidation. The prior approval of two-thirds of its members and two-thirds (in value), of its creditors is also required. As is the case with the regular liquidation procedure, the liquidator is to make an application to the NCLT in the place where the affairs of the corporate person have been completely wound up and the NCLT will pass an order stating that the corporate debtor shall stand dissolved from the date of such order.



### 03 Debt Recovery Tribunal (“DRT”) and Debt Recovery Appellate Tribunal (“DRAT”)

#### ▮ Recovery actions by Banks and Financial Institutions

The DRT and DRAT have been constituted under the provisions of the Recovery of Debts and Bankruptcy Act, 1993 (“**RDB Act**”), for establishment of Tribunals for expeditious adjudication and recovery of debts due to Banks and Financial Institutions and for matters connected therewith. There are 39 DRT’s and 5 DRAT’s functioning in India.

The DRT has exclusive jurisdiction (to the exclusion of all other courts), to decide cases filed by banks and financial institutions for recovery of debts exceeding INR 2 million. (If the claim is less than INR 2 million, it would have to be filed before a regular civil court). On a successful application the DRT issues a recovery certificate in favour of the applicant bank / financial institution, pursuant to which the debt may be recovered through various measures such as attachment and sale of moveable or immoveable properties, arrest of the debtor, detention to prison and appointment of receiver.

Appeals against orders of the DRT may be filed before the DRAT. Orders of the DRAT and/or the DRT cannot be challenged before a civil court.

However, this prohibition does not exclude the writ jurisdiction of a High Court or the ability to apply to the Supreme Court for special leave to appeal against any order.

#### ▮ Jurisdiction under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (the “SARFAESI Act”)

The DRT also has jurisdiction in relation to applications filed by or against a defaulting borrower / mortgagor / guarantor in relation to actions of a Secured Creditor (such as Banks / Financial Institutions) initiated under the SARFAESI Act, for enforcement of security interest (i.e. security including mortgage or charge on immovable properties given for due repayment of a loan).

The SARFESI Act is unique in that it empowers banks and other financial institutions to issue demand notices to defaulting borrowers and guarantors calling upon them to discharge their dues in full within 60 days from the date of the notice. If the borrower does not comply and fails to repay the loan, Banks / Financial Institutions can without any intervention of Court / Tribunal, resort to either of the following three courses of action:

- i) take possession of the security;
- ii) take over the management / administration of the security asset; and
- iii) put the property for lease, sale, or appoint a person to manage the asset concerned.

The SARFAESI Act also provides for sale of a debtor’s financial assets by

Banks / Financial Institutions, to Asset Reconstruction Companies (“**ARCs**”). The Act provides for the establishment of ARCs which are regulated by the Reserve Bank of India (the “**RBI**”), India’s banking regulator, with a mandate to securitize the acquired financial assets.



#### **04** Securities & Exchange Board of India (“SEBI”), and Securities Appellate Tribunal (“SAT”)

SEBI was set up to protect interests of investors in securities and to promote the development of and regulate the securities market. It regulates the business in stock exchanges, any other securities markets and matters connected therewith including registration of entities, promotion, regulation etc. of intermediaries

associated with securities in any manner, exercising power under the Securities Contracts (Regulation) Act, 1956, as may be delegated to it by the Central Government etc. It has 3 functions rolled into one body: (i) quasi-legislative - it issues regulations in its legislative capacity, (ii) quasi-executive - it conducts investigation and enforcement action,

and (iii) quasi-judicial - it passes rulings and orders, and can *inter alia*, restrict a person from accessing the securities market and suspend trading of any security in a recognized stock exchange.

All orders passed by SEBI may be appealed before the SAT. The orders of SAT

are appealable before the Supreme Court.

SEBI and SAT have exclusive jurisdiction and no civil court may entertain any proceeding in respect of a matter that is within their jurisdiction.

## 05 Competition Commission of India (“CCI”)

The CCI was constituted under the Competition Act, 2002, to *inter alia*, monitor and regulate anti-competitive agreements, abuse of dominant positions and merger control.

The CCI is empowered to hear complaints and pass orders prohibiting any agreement that it considers anti-competitive, or an abuse of a dominant position. All mergers / amalgamations which satisfy certain threshold provisions under the Act, are mandatorily to be notified to the CCI, which has the

power to modify the terms thereof, should it find that the transaction will have an appreciable adverse effect on competition in India. It may also impose a penalty on the offending party.

In 2017 the Government abolished the Competition Law Appellate Tribunal (COMPAT) in response to criticism in relation to the multiplicity of tribunals and shifted all appeals from the CCI to the NCLAT instead. An appeal may be filed against an order of the NCLAT before the Supreme Court.



## 06 Telecom Regulatory Authority of India (“TRAI”) and Telecom Disputes Settlement and Appellate Tribunal (“TDSAT”)

TRAI was constituted to regulate telecom services, including fixation/revision of tariffs for telecom services which were earlier vested in the Central Government. TRAI is empowered to issue directions, orders and regulations covering a wide range of subjects including tariff, interconnection and quality of service. TRAI is also vested with the power to issue directions to Service Providers.

Appeals from orders of the TRAI lie before the TDSAT. The TDSAT also adjudicates disputes between a licensor and a licensee, between two or more service

providers, between a service provider and a group of consumers.

The TDSAT exercises jurisdiction over telecom, broadcasting, information technology and airport tariff matters, under the TRAI Act, 1997, the Information Technology Act, 2000 and the Airport Economic Regulatory Authority of India Act, 2008. TDSAT exercises original as well as appellate jurisdiction in regard to telecom, broadcasting information technology and airport tariff matters. In regard to cyber matters the TDSAT exercises only the appellate jurisdiction.

## 07 Real Estate Regulatory Authority (“RERA”)

The Real Estate (Regulation and Development) Act, 2016 (“**RERA Act**”) was enacted in order to set up a RERA in every State for regulating the real estate sector and to provide consumers/home buyers a specific tribunal for adjudication of property disputes. The RERA Act casts obligations upon real estate agents, promoters of projects and regulates the registration and conduct of real estate projects. Appeals from orders of RERA may be filed before Real Estate Appellate Tribunal (“**REAT**”). Presently, only a few states in India have established permanent REATs.



## 08 Tax Tribunals

A hierarchy of tribunals commencing from the Assessing Officer to the Commissioner Appeals and finally the Income Tax Appellate Tribunal (“ITAT”) has been set up under the Income Tax Act, 1961 to adjudicate income tax related disputes. Appeals from ITAT lie to the High Court.

Separately, the Customs Excise and Service Tax Appellate Tribunal (“CESTAT”) adjudicate appeals from decision of Revenue Authorities under the Customs Act, 1962, Central Excise Act, 1944, Finance Act 1994 and the Customs Tariff Act, 1975.

A Goods and Services Tax Appellate Tribunal is also intended to be set up as



an appellate body over decisions of the assessment authorities on the applicability and assessment of Goods and Services Tax (GST) on a taxpayer.

## 09 Consumer Dispute Forums/Commissions

Under the Consumer Protection Act, 2019, a quasi-judicial machinery has been set up at the district, state and central levels, to provide a speedy and simple redressal of consumer disputes and complaints against goods or service providers, in relation to goods and services purchased by consumers. Depending on the value of the goods, or services and compensation claimed, a complaint may be filed before the District Commission, State Commission, or National Commission which has pecuniary and territorial jurisdiction over the matter.<sup>20</sup> This statute does not confer exclusive

jurisdiction on these fora, and is an additional remedy available to the consumer. As such, it is open to a consumer / complainant to file a regular civil suit in a civil court in respect of the cause of action.



<sup>20</sup> Under the Consumer Protection Act, the District Consumer Dispute Redressal Commission is empowered to hear complaints where the value of the goods or services paid as consideration does not exceed INR 10 million. The State Consumer Dispute Redressal Commission is empowered to hear complaints where the value of the goods or services paid as consideration exceeds INR 10 million but does not exceed INR 100 million. The National Consumer Dispute Redressal Commission is empowered to hear complaints where the value of the goods or services paid as consideration exceeds INR 100 million.

## 10 Central Electricity Regulatory Commission and Appellate Tribunal for Electricity

The Central Electricity Regulatory Commission (“**CERC**”) was set up to *inter alia* determine tariffs for electricity, adjudicate disputes involving generating companies or transmission licensees in relation to imposition of tariffs, quality, quantity and access to services for providing electricity. The Electricity Act, 2003 also constitutes state regulatory commissions and joint commissions to decentralize the working of the CERC.

The Appellate Tribunal for Electricity (“**APTEL**”) has the jurisdiction to look into appeals from the CERC, State Regulatory Commissions, the Adjudicating Authority and Joint commissions constituted under the Electricity Act, 2003. It is conferred with original jurisdiction to hear petitions and issue directions to any appropriate commission for performance of its statutory functions.

## 11 Labour Courts & Industrial Tribunals

Labour Courts and Industrial Tribunals are set up under the provisions of the Industrial Disputes Act, 1947. Conciliation Officers are charged with the duty of mediating in and promoting the settlement of industrial disputes.

Labour Courts adjudicate industrial disputes concerning issues such as those related to standing orders, discharge, or

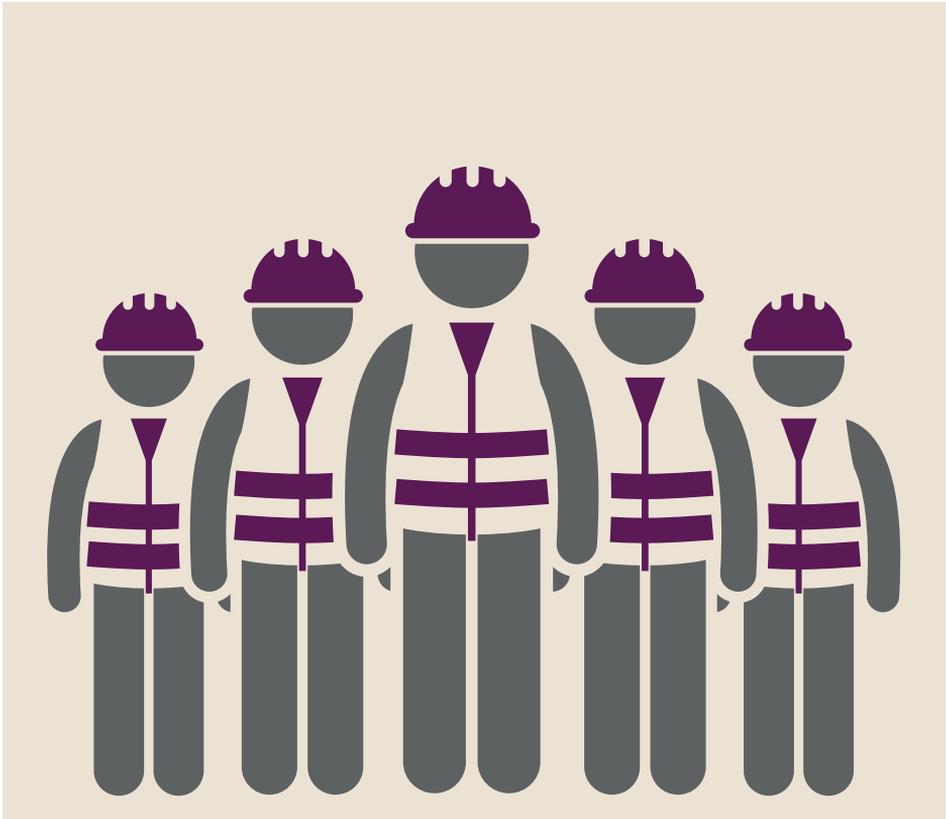
dismissal of workers, illegality, or otherwise of strikes and lockouts etc. Industrial Tribunals deal with collective disputes such as wages, hours of work, leave, retrenchment, closure etc. (although, if the number of workmen are likely to be affected is 100 or less, a Labour Court may adjudicate these matters).



## 12 National Green Tribunal (“NGT”)

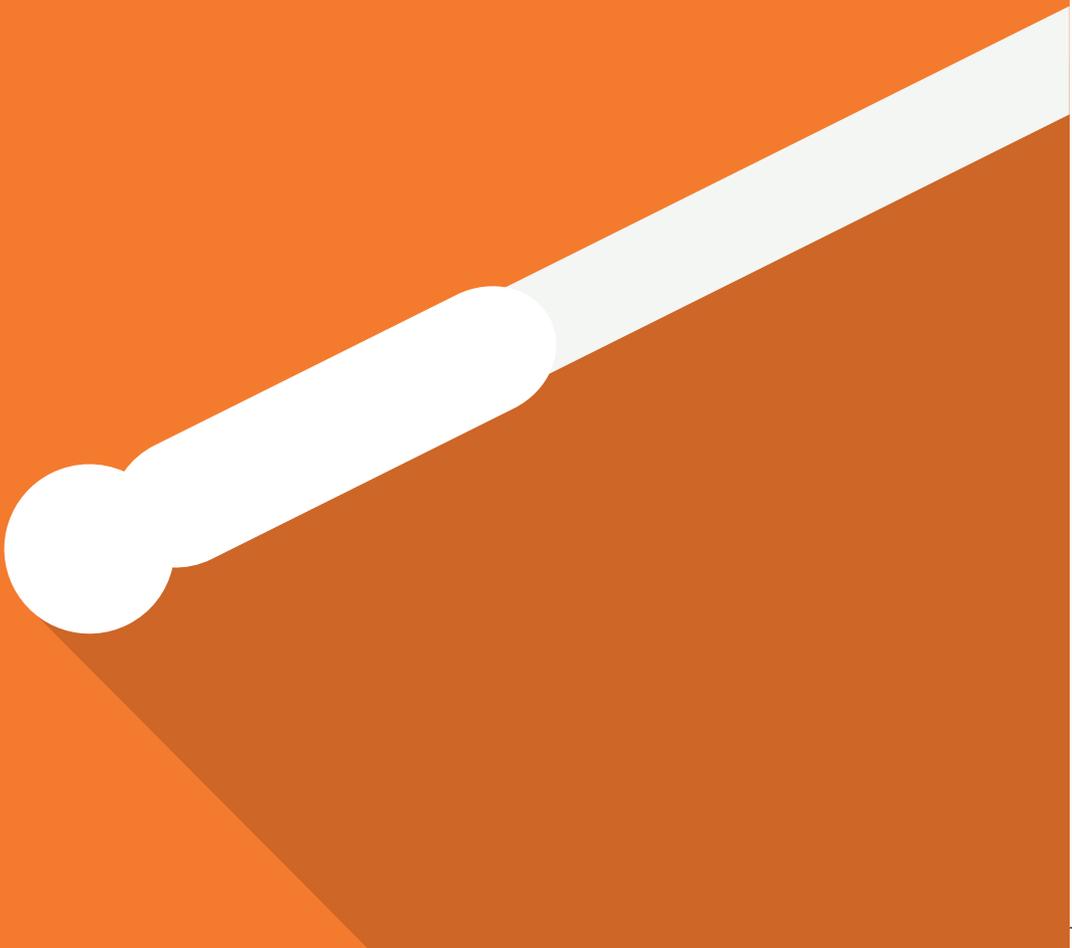
The NGT was established under the National Green Tribunal Act, 2010 to deal with cases relating to environmental protection, conservation of forests, safeguarding natural resources, and

matters connected therewith. The NGT has benches in various cities, with the principal bench in Delhi. Appeal from orders of the NGT lie with the Supreme Court.





# End Notes / Important Terms





| No. | Term  | Meaning  |
|-----|---|--|
| 1.  | <p><b>Advocate General</b></p> <p><b>Attorney General</b></p> <p><b>Solicitor General</b></p> | <p>Every State appoints an Advocate General to advise and represent the State in matters pertaining to and/or involving the State.</p> <p>The Attorney General of India is the Government of India's Chief Legal Advisor, and its primary lawyer in the Supreme Court of India.</p> <p>The Solicitor General assists the Attorney General, along with four Assistant Solicitor Generals.</p>   |
| 2.  | <b>Cause of action</b>  | <p>A cause of action (sometimes called a claim) is a set of facts sufficient to justify a right to sue. It is a bundle of essential facts, which are necessary for the plaintiff to prove before he can succeed. A cause of action generally encompasses both the legal theory (the legal wrong the plaintiff claims to have suffered) and the remedy (the relief a court is asked to grant).</p>  |
| 3.  | <b>Chamber Summons</b>  | <p>Miscellaneous interlocutory applications which are heard before a judge in chambers (and not in open court), as specified in the Rules of each Court.</p> <p>Chamber Summons originated from the time when attorneys/solicitors did not have a right of audience before a court.</p>  |
| 4.  | <b>Commercial Dispute (Section 2(1)(c) of the Commercial Courts Act)</b>                      | <p>Section 2 (1) (c):</p> <p>"commercial dispute" means a dispute arising out of-</p> <ul style="list-style-type: none"> <li>(i) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;</li> <li>(ii) export or import of merchandise or services;</li> <li>(iii) issues relating to admiralty and maritime law;</li> <li>(iv) transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same;</li> <li>(v) carriage of goods;</li> <li>(vi) construction and infrastructure contracts, including tenders;</li> <li>(vii) agreements relating to immovable property used exclusively in trade or commerce;</li> <li>(viii) franchising agreements;</li> <li>(ix) distribution and licensing agreements;</li> <li>(x) management and consultancy agreements;</li> </ul> |

| No. | Term  | Meaning   |
|-----|---|---|
|     |   | <p>(xi) joint venture agreements;</p> <p>(xii) shareholders agreements;</p> <p>(xiii) subscription and investment agreements pertaining to the services industry including outsourcing services and financial services;</p> <p>(xiv) mercantile agency and mercantile usage;</p> <p>(xv) partnership agreements;</p> <p>(xvi) technology development agreements;</p> <p>(xvii) intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits;</p> <p>(xviii) agreements for sale of goods or provision of services;</p> <p>(xix) exploitation of oil and gas reserves or other natural resources including electromagnetic spectrum;</p> <p>(xx) insurance and re-insurance;</p> <p>(xxi) contracts of agency relating to any of the above; and</p> <p>(xxii) such other commercial disputes as may be notified by the Central Government.</p> <p>Explanation. -- A commercial dispute shall not cease to be a commercial dispute merely because---</p> <p>(a) it also involves 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;</p> <p>(b) one of the contracting parties is the State or any of its agencies or instrumentalities, or a private body carrying out public functions;</p> |
| 5.  | <p><b>National Company Law Tribunal (“NCLT”)</b><br/>                     [erstwhile Company Law Board (“CLB”)]</p> | <p>The NCLT was constituted under the Companies Act, 2013, with effect from June 1, 2016, with exclusive jurisdiction for adjudication of company law matters and matters under the Insolvency and Bankruptcy Code, 2016.</p> <p>All cases pending with the CLB have been transferred to the NCLT and the CLB stands dissolved.</p> <p>Appeals from the NCLT lie before the National Company Law Appellate Tribunal (“<b>NCLAT</b>”).</p> <p>[Note: The CLB was constituted by the Central Government as an independent quasi-judicial body under the Companies Act, 1956].</p>   |

| No. | Term  | Meaning   |
|-----|---|---|
| 6.  | <b>Coram</b>                                | The sitting Judge(s) before whom a matter is listed for hearing/directions etc.   |
| 7.  | <b>Court Receiver</b>                       | An officer of the High Court appointed during the pendency of proceedings in order to safeguard and prevent misuse of the disputed property.  |
| 8.  | <b>Execution of decrees (Order 21, CPC)</b> | <p>The procedure for execution of a decree is as under:</p> <ul style="list-style-type: none"> <li>- An application for execution is required to be filed by the applicant / judgment creditor and notice thereof given to the defendant/judgment debtor.</li> <li>- The court will then issue its process for execution in accordance with the nature of the application. The process specifies a date before which it is to be executed, as also a returnable date.</li> <li>- Notice of the process is served through the court to the defendant.</li> <li>- On the returnable date, the process may be made absolute by the court and a warrant issued for attachment of the defendant's property (which includes directions prohibiting the defendant from alienating, or charging the property in any manner).</li> <li>- An application must then be made by the applicant for a warrant for sale of the property and a warrant for sale issued by the court. The warrant for sale requires the defendant to attend the court office on a specified date to settle the terms of the sale and proclamation thereof.</li> <li>- The terms of the sale (usually by way of public auction), are fixed in the presence of both parties.</li> <li>- Public notice of the sale must be given in at least two newspapers, at least 15 days before the date of the auction. If required by the court, notice must also be served on the defendant.</li> <li>- After the public auction, the court will make an order confirming the sale, whereupon the sale becomes absolute. An order will also be passed by the court directing that the decretal amount be paid over to the applicant and balance remaining, if any, be paid over to the defendant.</li> <li>- It may be noted that at any time during the above procedure the defendant may tender the decretal amount either directly to the applicant, or through the court, in which case the execution process will be dropped.</li> </ul> |



| No. | Term   | Meaning   |
|-----|--|---|
| 9.  | <b>Execution of decrees passed by Courts in reciprocating territory (Section 44A, CPC)</b> | <p>1) Where a certified copy of a decree of any of the superior Courts of any reciprocating territory has been filed in a District Court, the decree may be executed in India as if it had been passed by the District Court.</p> <p>2) Together with the certified copy of the decree shall be filed a certificate from such superior Court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment.</p> <p>3) The provisions of section 47 shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court executing a decree under this section, and the District Court shall refuse execution of any such decree, if it is shown to the satisfaction of the Court that the decree falls within any of the exceptions specified in clauses (a) to (f) of section 13.</p> <p><i>Explanation 1.</i>— "Reciprocating territory" means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purposes of this section; and superior Courts, with reference to any such territory, means such Courts as may be specified in the said notification.</p> <p><i>Explanation 2.</i>— "Decree" with reference to a superior Court means any decree or judgment of such Court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, but shall in no case include an arbitration award, even if such an award is enforceable as a decree or judgment.</p> |

| No. | Term                                    | Meaning  |
|-----|---|--|
| 10. | <b>Lok Adalat</b>                       | <p>Lok Adalat, is loosely translated as “peoples’ court”. It is set up under the Legal Services Authority Act, 1987 and may be organised at such intervals and places and for exercising such jurisdiction and for such areas as deemed fit.</p> <p>The procedure is consensual-and is a form of ADR used in India and litigating parties may be referred by a court to the Lok Adalat where the court believes that there is some chance of settlement. Lok Adalat is mandated to act with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by the principles of justice, equity, fair play and other legal principles. A compromise or settlement recorded by the Lok Adalat being their award is deemed to be a decree of a civil court. Failing settlement, the parties continue to litigate.</p> |
| 11. | <b>Notice of Motion</b>                 | An interim application for injunction, appointment of receiver, attachment/arrest before judgement and other ad-interim/interim reliefs in a suit, appeal, or any other proceedings.   |
| 12. | <b>Official Liquidator</b>              | An officer appointed by the High Court / NCLT as the custodian of assets of a company under liquidation. The liquidator takes charge of the assets and liabilities and disburses the amount to the creditors and claimants as per the orders of the High Court.  |
| 13. | <b>Official Assignee</b>                | Officer appointed by the High Court as the custodian of the assets of an insolvent for disposing them and distributing pro-rata share as per the directions of the Court.  |
| 14. | <b>Ordinary/ Appellate Jurisdiction</b> | Original jurisdiction is the right to hear a case for the first time as opposed to appellate jurisdiction, where a court has the right to sit in appeal over the decision of a previous, lower-court.  |
| 15. | <b>Originating Summons</b>              | The executors / administrators of a deceased person; the trustees of a trust and any person interested in the relief sought as creditor, devisee, legatee, heir, or legal representative, or as the beneficiary of the trust, may apply for issue of an originating summons returnable before a judge in chambers, for determination of questions, or matters as is set out in Rule 238 of the Bombay High Court (Original Side).  |

| No. | Term   | Meaning  |
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| 16. | <b>Prothonotary &amp; Senior Master Registrar</b>      | Administrative Head of the Original Side of the High Court. Also discharges certain quasi-judicial functions in terms of the High Court Rules.<br>The Administrative Head of the Appellate Side of the High Court.   |
| 17. | <b>Rule Nisi</b>                                       | Issued in Writ Petitions, by which one party through the Court, calls upon another to show cause as to why the relief set forth in the Writ should not be made final by the court. If no cause is shown, the court will enter an order rendering "absolute" (i.e. final) the relief, thereby requiring whatever was sought to be accomplished by the relief.   |
| 18. | <b>Securities &amp; Exchange Board of India (SEBI)</b> | SEBI, constituted under the Securities & Exchange Board of India Act, 1992, is the Regulator for the Securities Market in India. SEBI has three functions rolled into one body - quasi-legislative, quasi-judicial and quasi-executive. It drafts regulations in its legislative capacity, it conducts investigation and enforcement action in its executive function and it passes rulings and orders in its judicial capacity. An appeal from an order of SEBI lies to the SAT and a second appeal from the SAT lies directly with the Supreme Court. The Union Cabinet has approved the proposal for the creation of the post of Technical Member in the SAT, Mumbai. Creation of this post will assist in having an additional bench in SAT, Mumbai. |
| 19. | <b>Specified Value</b>                                 | Specified value in relation to a commercial dispute, means the value of the subject-matter in respect of a suit as determined (in accordance with Section 12 of the Commercial Courts Act), which shall not be less than INR 0.3 million (earlier INR 10 million), or such higher value, as may be notified by the Central Government.<br>Section 2 (i) of the Commercial Courts Act provides:<br>(i) - "Specified Value" , in relation to a commercial dispute, shall mean the value of the subject-matter in respect of a suit as determined in accordance with section 12 which shall not be less   |



| No. | Term | Meaning  |
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|     |      | <p>than three lakh rupees or such higher value, as may be notified by the Central Government.</p> <p>Section 12 provides:</p> <p>(1) The Specified Value of the subject-matter of the commercial dispute in a suit, appeal or application shall be determined in the following manner:--</p> <p>(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;</p> <p>(b) where the relief sought in a suit, appeal or application relates to movable property or to a right therein, the market value of the movable 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;</p> <p>(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 ; 1[and]</p> <p>(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; 2[***]</p> <p>3[***]</p> <p>(2) The aggregate value of the claim and counterclaim, if any as set out in the statement of claim and the counterclaim, 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.</p> <p>(3) No appeal or civil revision application under section 115 of the Code of Civil Procedure, 1908 (5 of 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.</p> |

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| 20. | Summary Procedure<br>(Order 37, CPC)<br>Regular civil suits | <p><b>1. Courts and classes of suits to which the Order is to apply:</b></p> <p>(1) This Order shall apply to the following Court, namely:-</p> <p>(a) High Courts, City Civil Courts and Courts of Small Causes; and</p> <p>(b) other Courts;</p> <p>Provided that in respect of the Courts referred to in clause (b), the High Court may, by notification in the Official Gazette, restrict the operation of this Order only to such categories of suits as it deems proper and may also, from time to time, as the circumstances of the case may require, by subsequent notification in the Official Gazette, further restrict, enlarge, or vary, the categories of suits to be brought under the operation of this Order as it deems proper.</p> <p>(2) Subject to the provisions of sub-rule (1) the Order applies to the following classes of suits, namely:-</p> <p>(a) suits upon bills of exchange, hundies and promissory notes;</p> <p>(b) suits in which the plaintiff seeks only to recover a debt, or liquidated demand in money payable by the defendant, with, or without interest, arising,-</p> <p>(i) on a written contract, or</p> <p>(ii) on an enactment, where the sum sought to be recovered is a fixed sum of money, or in the nature of a debt other than a penalty; or</p> <p>(iii) on a guarantee, where the claim against the principal is in respect of a debt, or liquidated demand only.</p> <p><b>2. Institution of summary suits</b></p> <p>(1) A suit, to which this Order applies, may, if the plaintiff desires to proceed hereunder, be instituted by presenting a plaint which shall contain,-</p> <p>(a) a specific averment to the effect that the suit is filed under this Order;</p> <p>(b) that no relief, which does not fall within the ambit of this rule, has been claimed in the plaint;</p> <p>(c) the following inscription, immediately below the number of the suit in the title of the suit, namely:-</p> <p>“(Under Order XXXVII of the Code of Civil Procedure, 1907).”</p> <p>(2) The summons of the suit shall be in Form No. 4 in Appendix B, or in such other form as may, from time to time, be prescribed.</p> |

| No. | Term | Meaning   |
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|     |      | <p>(3) The defendant shall not defend the suit referred to in sub-rule (1) unless he enters an appearance and in default of his entering an appearance the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, up to the date of the decree and such sum for costs as may be determined by the High Court from time to time by rules made in that behalf and such decree may be executed forthwith.</p> <p><b>3. Procedure for the appearance of defendant</b></p> <p>(1) In a suit to which this Order applies, the plaintiff shall, together with the summons under rule 2, serve on the defendant a copy of the plaint and annexure thereto and the defendant may, at any time within ten days of such service, enter an appearance either in person, or by pleader and, in either case, he shall file in Court an address for service of notices on him.</p> <p>(2) Unless otherwise ordered, all summons, notices and other judicial processes required to be served on the defendant, shall deemed to have been duly served on him if they are left at the address given by him for such service.</p> <p>(3) On the day of entering the appearance, notice of such appearance shall be given by the defendant to the plaintiffs pleader, or, if the plaintiff sues in person, to the plaintiff himself, either by notice delivered at, or sent by pre-said letter directed to the address of the plaintiffs pleader, or of the plaintiff, as the case may be.</p> <p>(4) If the defendant enters an appearance, the plaintiff shall thereafter serve on the defendant a summons for judgment in Form No. 4A in Appendix B for such other Form as may be prescribed from time to time, returnable not less than 10 days from the date of service supported by an affidavit verifying the cause of action and the amount claimed and stating that in his belief there is no defence to the suit.</p> <p>(5) The defendant may, at any time within ten days from service of such summons for judgment, by affidavit, or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit and leave to defend may be granted to him unconditionally, or upon such terms as may appear to the Court, or Judge to be just:</p> |

| No. | Term  | Meaning   |
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|     |   | <p>Provided that leave to defend shall not be refused unless the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise, or that the defence intended to be put up by the defendant is frivolous, or vexatious:</p> <p>Provided further that, where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in Court.</p> <p>(6) At the hearing of such summons for judgment,-</p> <p>(a) if the defendant has not applied for leave to defend, or if such application has been made and is refused, the plaintiff shall be entitled to judgment forthwith; or</p> <p>(b) if the defendant is permitted to defend as to the whole, or any part of the claim, the Court, or Judge may direct him to give such security and within such time as may be fixed by the Court, or Judge and that on failure to give such security with the time specified by the Court, or Judge, or to carry out such other directions as may have been given by the Court, or judge, the plaintiff shall be entitled to judgment forthwith.</p> <p>(7) The Court, or Judge may, for sufficient cause shown by the defendant, execute the delay of the defendant in entering an appearance, or in applying for leave to defend the suit.</p> |
| 21. | <p><b>Summary judgment (Order 13-A, CPC) Commercial court</b></p> | <p>Order 13-A has been inserted by the Commercial Courts Act, 2015, to deal with summary judgment.</p> <p><b>SUMMARY JUDGMENT</b></p> <p>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.</p> <p>(2) For the purposes of this Order, the word claim shall include—</p> <p>(a) part of a claim;</p> <p>(b) any particular question on which the claim (whether in whole or in part) depends; or</p> <p>(c) a counterclaim, as the case may be.</p> <p>(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.</p>   |

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|     |      | <p><b>2. Stage for application for summary judgment.</b>—An applicant may apply for summary judgment at any time after summons has been served on the defendant:</p> <p>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.</p> <p><b>3. Grounds for summary judgment.</b>—The Court may give a summary judgment against a plaintiff or defendant on a claim if it considers that—</p> <p>(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</p> <p>(b) there is no other compelling reason why the claim should not be disposed of before recording of oral evidence.</p> <p><b>4. Procedure.</b>—(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-clauses (a) to (f) mentioned hereunder:—</p> <p>(a) the application must contain a statement that it is an application for summary judgment made under this Order;</p> <p>(b) the application must precisely disclose all material facts and identify the point of law, if any;</p> <p>(c) in the event the applicant seeks to rely upon any documentary evidence, the applicant must,—</p> <p>(i) include such documentary evidence in its application, and 16</p> <p>(ii) identify the relevant content of such documentary evidence on which the applicant relies;</p> <p>(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;</p> <p>(e) the application must state what relief the applicant is seeking and briefly state the grounds for seeking such relief.</p> <p>(2) Where a hearing for summary judgment is fixed, the respondent must be given at least thirty days' notice of:—</p> <p>(a) the date fixed for the hearing; and</p> <p>(b) the claim that is proposed to be decided by the Court at such hearing.</p> |

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|     |      | <p>(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 clauses (a) to (f) mentioned hereunder in addition to any other matters that the respondent may deem relevant:—</p> <p>(a) the reply must precisely—</p> <p>(i) disclose all material facts;</p> <p>(ii) identify the point of law, if any; and</p> <p>(iii) state the reasons why the relief sought by the applicant should not be granted;</p> <p>(b) in the event the respondent seeks to rely upon any documentary evidence in its reply, the respondent must—</p> <p>(i) include such documentary evidence in its reply; and</p> <p>(ii) identify the relevant content of such documentary evidence on which the respondent relies;</p> <p>(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;</p> <p>(d) the reply must concisely state the issues that should be framed for trial;</p> <p>(e) the reply must identify what further evidence shall be brought on record at trial that could not be brought on record at the stage of summary judgment; and</p> <p>(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.</p> <p><b>5. Evidence for hearing of summary judgment.—</b>(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:—</p> <p>(a) file such documentary evidence; and</p> <p>(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.</p> <p>(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:—</p> |

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|     |      | <p>(a) file such documentary evidence in reply; and<br/>                     (b) serve a copy of such documentary evidence on the respondent at least five days prior to the date of the hearing.<br/>                     (3) Notwithstanding anything to the contrary, sub-rules (1) and (2) shall not require documentary evidence to be:—<br/>                     (a) filed if such documentary evidence has already been filed; or<br/>                     17<br/>                     (b) served on a party on whom it has already been served.</p> <p><b>6. Orders that may be made by Court.</b>—(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:—<br/>                     (a) judgment on the claim;<br/>                     (b) conditional order in accordance with Rule 7 mentioned hereunder;<br/>                     (c) dismissing the application;<br/>                     (d) dismissing part of the claim and a judgment on part of the claim that is not dismissed;<br/>                     (e) striking out the pleadings (whether in whole or in part); or<br/>                     (f) further directions to proceed for case management under Order XVA.<br/>                     (2) Where the Court makes any of the orders as set forth in sub-rule (1) (a) to (f), the Court shall record its reasons for making such order.</p> <p><b>7. Conditional order.</b>—(1) Where it appears to the Court that it is possible that a claim or defence may succeed but it is improbable that it shall do so, the Court may make a conditional order as set forth in Rule 6 (1) (b).<br/>                     (2) Where the Court makes a conditional order, it may:—<br/>                     (a) make it subject to all or any of the following conditions:—<br/>                     (i) require a party to deposit a sum of money in the Court;<br/>                     (ii) require a party to take a specified step in relation to the claim or defence, as the case may be;<br/>                     (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;</p> |

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|     |                          | <p>(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</p> <p>(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.</p> <p><b>8. Power to impose costs.</b>—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 35A of the Code.</p> <p><b>Note:</b> Order 13-A provides however, that an application for summary judgment under shall not be made in a suit in respect of any Commercial Dispute that is originally filed as a summary suit under Order 37.</p> |
| 22. | <b>Writ of Summons</b>   | A Summons issued in prescribed form by the court calling upon the defendant to enter appearance and file its written statement of defence within the stipulated time.  |
| 23. | <b>Writ Jurisdiction</b> | Under the Indian Constitution, the Supreme Court and High Courts can issue writs for the enforcement of fundamental rights, administrative action and judicial or quasi-judicial action.   |
| 24. | <b>Vakalatnama</b>       | Letter of appointment issued by a party to a legal proceeding, appointing an advocate, or a firm of advocates to act, appear and plead on its behalf in such proceeding.   |





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**presence also in hyderabad and chennai**

