

SPECIFIC RELIEF (AMENDMENTS) ACT, 2018

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INTRODUCTION

The Specific Relief (Amendment) Bill, 2017 ("the Bill") was introduced by the Minister of Law and Justice, Mr. Ravi Shankar Prasad on 22nd December 2017 and was passed by the Lok Sabha on 15th March 2018.

- **ENACTMENT**

The Bill received assent of President of India on 1st August, 2018.

- **ENFORCEMENT**

It has come into force with effect from 1st October, 2018.

SECTION 6 : SUIT BY PERSON DISPOSSESSED OF IMMOVABLE PROPERTY

BEFORE AMENDMENT	AFTER AMENDMENTS
<p>Sub Section (1) :-</p> <p>If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person <i>*insertion</i> claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.</p>	<p>Insertion after the words “he or any person”, the words :</p> <p><i>“through whom he has been in possession or any person”</i></p>

SECTION 10 : SPECIFIC PERFORMANCE IN RESPECT OF CONTRACTS

BEFORE AMENDMENT	AFTER AMENDMENTS
<p>Specific performance of any contract may be enforced <u>at the discretion</u> of court when :</p> <p>(a) when there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done; or</p> <p>(b) when the act agreed to be done is such that compensation in money for its non-performance would not afford adequate relief.</p>	<p><i>The specific performance of a contract <u>shall be enforced by the court</u> .</i></p> <p><i>Exceptions:</i></p> <ol style="list-style-type: none"><i>1. sub-section (2) of section 11,</i><i>2. section 14 and</i><i>3. section 16.</i>

SECTION 11: CASES IN WHICH SPECIFIC PERFORMANCE OF CONTRACT CONNECTED WITH TRUSTS ENFORCEABLE

BEFORE AMENDMENT	AFTER AMENDMENTS
Section 11(1):- Except as otherwise provided in this Act, specific performance of a <u>contract may</u> , be enforced when the act agreed to be done is in the performance wholly or partly of a trust.	Section 11(1):- Except as otherwise provided in this Act, specific performance of a <u>contract shall</u> , be enforced when the act agreed to be done is in the performance wholly or partly of a trust.

For example: 'A' holds certain stock in trust for 'B'. In a situation if 'A' disposes those stock wrongfully then the law provides for an obligation on 'A' to restore the same quantity to 'B' and 'B' can enforce the remedy of specific performance on 'A' for this Obligation.

SECTION 14: CONTRACT NOT SPECIFICALLY ENFORCEABLE (substituted)

- (a) [where a party to the contract has obtained substituted performance of contract in accordance with the provisions of section 20] ;
- (b) a contract, the performance of which involves the performance of a continuous duty which the court cannot supervise;
- (c) a contract which is so dependent on the personal qualifications of the parties that the court cannot enforce specific performance of its material terms; and
- (d) a contract which is in its nature determinable.

SECTION 14A: POWER TO ENGAGE EXPERTS (Inserted)

- **Sub-section (1):-** Where the court considers it necessary to get expert opinion to assist it on any specific issue, it may engage one or more experts and direct to report to it on such issue and may secure attendance of the expert for providing evidence, including production of documents on the issue.
- **Sub-section (2):-** The court may require or direct any person to give relevant information to the expert or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

Sub-section (3):- The opinion or report given by the expert shall form part of the record of the suit; and with the permission of the court the parties to the suit, may examine the expert personally in open court on any of the mentioned in his report.

Sub-section (4):- The expert shall be entitled to such fee, cost or expense as the court may fix, which shall be payable by the parties in such proportion, and at such time, as the court may direct.”

SECTION 16 : PERSONAL BARS TO RELIEF

- **Section 16 (a):-** *who has obtained substituted performance of contract under section 20;*
 - **Section 16 (c),—** for the words “*who fails to aver and prove*”, the words “*who fails to prove*” is substituted;
- AND in the *Explanation*, in clause (ii), for the words “*must aver*”, the words “*must prove*” is substituted.

SECTION 15: WHO MAY OBTAIN SPECIFIC PERFORMANCE

AFTER AMENDMENTS

After clause (f), the following clause is inserted, namely :-

Section 15 (fa):- when a limited liability partnership has entered into a contract and subsequently becomes amalgamated with another limited liability partnership, the new limited liability partnership which arises out of the amalgamation.

SECTION 19: RELIEF AGAINST PARTIES AND PERSONS CLAIMING UNDER THEM BY SUBSEQUENT TITLES

AFTER AMENDMENTS

The following clause is inserted, namely:—

Section 19 Clause (c) (ca):- when a limited liability partnership has entered into a contract and subsequently becomes amalgamated with another limited liability partnership, the new limited liability partnership which arises out of the amalgamation.

SECTION 20: DISCRETION AS TO DECREERING SPECIFIC PERFORMANCE

1. Where the contract is broken due to non-performance of promise by any party, the party who suffers by such breach shall have the option of **substituted performance** through a third party or by his own agency, and, recover the expenses and other costs actually incurred, spent or suffered by him, from the party committing such breach.
2. Unless the party who suffers such breach has given a **notice** in writing, of not less than **thirty days**, calling them to perform the contract within such time as specified in the notice, and on his refusal or failure to do so, he may get the same performed by a third party or by his own agency.

3. Upon the performance of contract by third parties or his agent, the party suffering shall not be entitled to claim relief of specific performance against the party in breach

4. Party suffering breach of contract can **claim compensation** from the party in breach

SECTION 20-A: SPECIAL PROVISION FOR CONTRACT RELATING TO “INFRASTRUCTURE PROJECT”

1. No injunction shall be granted where granting injunction would cause impediment or delay in the progress or completion of such infrastructure project.

- Affordable Housing (including a housing project using at least 50% of the Floor Area Ratio (FAR)/Floor Space Index (FSI) for dwelling units with carpet area of not more than 60 square meters.

SECTION 41: INJUNCTION WHEN REFUSED

AFTER AMENDMENTS

The following clause (ha) is inserted, namely:-

Section 41 clause (h) (ha):- if it would impede or delay the progress or completion of any **infrastructure project** or interfere with the continued provision of relevant facility related thereto or services being the subject matter of such project.

SECTION 20-B: SPECIAL COURT

The State Government, in consultation with the Chief Justice of the High Court, shall designate, by notification published in the Official Gazette, one or more **Civil Courts as Special Courts**, within the local limits of the area to exercise jurisdiction and to try a suit under this Act in respect of contracts relating to **infrastructure projects**.

SECTION 20-C: EXPEDITIOUS DISPOSAL OF SUITS

Notwithstanding anything contained in the Code of Civil Procedure, 1908, a suit filed under the provisions of this Act shall be disposed of by the court within a period of **twelve months** from the date of service of summons to the defendant.

Provided that the said period may be extended for a further period not exceeding **six months** in aggregate after recording reasons in writing for such extension by the court.

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SECTION 21: POWER TO AWARD COMPENSATION IN CERTAIN CASES

AMENDMENT

(1) In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach, in addition to , such performance.

THE COMMERCIAL COURTS ACT, 2015

[As amended with retrospective effect from 03-05-2018]



PRELIMINARY

Earlier Provision

An Act to provide for the constitution of Commercial Courts, Commercial Division and Commercial Appellate Division in the High Courts for adjudicating commercial disputes of specified value and matters connected therewith or incidental thereto.

Amended Provision

After words “Commercial Courts” the words “*Commercial Appellate Courts*” are inserted.

SECTION 1: SHORT TITLE AND COMMENCEMENT

Earlier Provision	Amended Provision
<p>Sub - Section (1) This Act may be called the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015.</p>	<p>This Act may be called the Commercial Courts Act, 2015</p>



SECTION 2 : DEFINITIONS

Earlier Provision

Section 2 (1) (i) :-

“Specified Value” - mean the value of the subject-matter in respect of a suit as determined in accordance with section 12 *which shall not be less than one crore rupees* or such higher value, as may be notified by the Central Government.

Amended Provision

Substituted as :

"which shall not be less than three lakh rupees"



CHAPTER – II (Section 3-11)

Earlier Provision	Amended Provision
<p>CHAPTER - II <i>CONSTITUTION OF COMMERCIAL COURTS, COMMERCIAL DIVISIONS AND COMMERCIAL APPELLATE DIVISIONS</i></p>	<p>Heading, substituted, namely:- "COMMERCIAL COURTS, <u>COMMERCIAL APPELLATE COURTS,</u> COMMERCIAL DIVISION AND COMMERCIAL APPELLATE DIVISIONS"</p>

Amended Section 3: Constitution of commercial courts and section 3A: designation of commercial appellate courts

- State government by notification and after consultation with High Court constitute Commercial Court at District level.
- Specify Pecuniary Value greater than or equal to 3 lakh.



SECTION 4 : CONSTITUTION OF COMMERCIAL DIVISION OF HIGH COURT

Earlier Provision	Amended Provision
<p>Sub-section(1) - In all High Courts, having <i>ordinary civil jurisdiction</i>, the Chief Justice of the High Court may, by order, constitute Commercial Division having one or more Benches consisting of a single Judge for the purpose of exercising the jurisdiction and powers conferred on it under this Act.</p>	<p>Substituted as <i>“ordinary original civil jurisdiction”</i></p>

Omitted

- **Section 9 states that :-**

1. In the event that a counterclaim filed in a suit before a civil court relating to a commercial dispute is of Specified Value, such suit shall be transferred by the civil court to the Commercial Division or Commercial Court, as the case may be, having territorial jurisdiction over such suit.

2. If such suit is not transferred, the Commercial Appellate Division of the High Court on the application of any of the parties to the suit, withdraw such suit pending before the civil court and transfer the same for trial or disposal to the Commercial Court or Commercial Division or, as the case may be, having territorial jurisdiction over such suit, and such order of transfer shall be final and binding.

AMENDED SECTION 12: DETERMINATION OF SPECIFIED VALUE

- In Section 12 of the principle Act, in sub-section (1) Clause (e) has been omitted.

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

Omitted.

INTRODUCED “CHAPTER IIIA” PRE-INSTITUTION MEDIATION AND SETTLEMENT



Section 12-A: PRE-INSTITUTION MEDIATION AND SETTLEMENT

- (1) A suit, which does not contemplate any **urgent interim relief** shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation
- (2) The Central Government may authorize the Authorities for the purposes of pre-institution mediation.
- (3) The Authority authorized by the Central Government shall complete the process of mediation within a period of **three months** from the date of application made

(4) If the parties to the commercial dispute arrive at a settlement, it shall be reduced into writing and shall be signed by the parties to the dispute and the mediator.

(5) The settlement arrived at shall have the same status and effect as if it is an arbitral award on agreed terms.

SECTION 13: Appeals from decrees of Commercial Courts and Commercial Divisions

Amended Provision

For sub-section (1) following sub-section has been substituted :-

Sub-section (1) - Any person aggrieved by the judgment of Commercial Court below level of District Judge may appeal to the Commercial Appellate Court within a period of sixty days.

And

Sub-section (1A) – Any person aggrieved by the judgment of Commercial Court at the level of District Judge or Commercial Division of High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of the judgment or order.

**ARBITRATION AND
CONCILIATION (AMENDMENTS)
BILL, 2018**

INTRODUCTION

On **10 August 2018**, the Lok Sabha passed the Arbitration and Conciliation (Amendment) Bill 2018 with the aim of further:

- improving the arbitration regime;
- particularly institutionalise arbitration, in India.

The Bill is premised on the Report of the High Level Committee to Review the Institutional Arbitration Mechanism in India chaired by Justice B.N. Sri Krishna (Committee).

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Section	Proposed amendment
• S 43C	Creation of Arbitration Council of India (ACI)
• S11(3A)	Appointment of arbitrators . (Eighth schedule - qualification)
• 29A	Relaxing the time limit for arbitral award.
• S42A and S42B	Confidentiality of proceedings

Section - 43C – COMPOSITION OF ACI

	Criteria
(a) Chairperson	Who has been a Judge of the Supreme Court or, CJ or Judge of a High Court or, an eminent person, to be appointed by the Central Government in consultation with the CJI ;- Chairperson
(b)Chief Executive Officer (CEO)	Member-Secretary.

Criteria

(c) Members

- (i) having substantial knowledge and experience in institutional arbitration, both domestic and international, to be nominated by the Central Government.
- (ii) having experience in research and teaching in the field of arbitration and alternative dispute resolution laws, to be appointed by the Central Government.
- (iii) In the Department of Legal Affairs, Ministry of Law and Justice or his representative not below the rank of Joint Secretary.
- (iv) In the Department of Legal Affairs, Ministry of Law and Justice or his representative not below the rank of Joint Secretary.
- (v) One representative of a recognized body of commerce and industry, chosen on rotational basis by the Central Government.

SECTION 43-D DUTIES AND FUNCTIONS – ACI

- (a) **FRAME POLICES** governing the grading of arbitral institutions;
- (b) **RECOGNIZE** professional institutes **PROVIDING ACCREDITATION** of arbitrators;
- (c) **REVIEW** the grading of arbitral institutions and arbitrators;
- (d) **HOLD TRAINING, WORKSHOPS AND COURSES** in the area of arbitration in collaboration of law firms, law universities and arbitral institutes;
- (e) set up, **REVIEW** and **UPDATE NORMS** and ensure satisfactory level of arbitration and conciliation;
- (f) **ACT AS A FORUM** for exchange of reviews and techniques to be adopted for creating a platform to make India a robust centre for domestic and international arbitration and conciliation;

- (g) **MAKE RECOMMENDATIONS** to the Central Government on various measures to be adopted to make provision for easy resolution of commercial disputes;
- (h) **PROMOTE** institutional arbitration by strengthening arbitral institutions;
- (i) **CONDUCT EXAMINATION AND TRAINING** on various subjects relating to arbitration and conciliation and award certificates thereof;
- (j) **ESTABLISH AND MAINTAIN DEPOSITORY** of arbitral awards made both in India and overseas;
- (k) **MAKE RECOMMENDATIONS** regarding personnel, training and infrastructure of arbitral institutions;
- (l) such **OTHER** functions as may be decided by the Central Government

SECTION 11:- APPOINTMENT AND QUALIFICATION - ARBITRATOR

Sub-Sec (3A) :

- For **INTERNATIONAL ARBITRATION, APPOINTMENTS** will be made by the institution designated by the **SUPREME COURT**.
- For **DOMESTIC ARBITRATION, APPOINTMENTS** will be made by the institution designated by the concerned **HIGH COURT**.
- If there are **NO ARBITRAL INSTITUTIONS AVAILABLE**, the **Chief Justice** of the concerned **High Court** may maintain a **panel of arbitrators** to perform the functions of the arbitral institutions.

Sec 11(5):

The appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court which is required to be disposed of within 30 days.

Qualification of arbitrator (Eighth schedule)

- A person who:

- (i) is an **ADVOCATE** or a **CHARTERED ACCOUNTANT** or a having **TEN YEARS** of practice experience; or

- (ii) has been an **OFFICER OF THE INDIAN LEGAL SERVICE**; or

- (iii) has been **AN OFFICER WITH LAW DEGREE** or having **ten years of experience** in the legal matters in the Government, Autonomous Body, PSU or at a senior level managerial position in private sector; or

- (iv) Has been an Officer with **ENGINEERING DEGREE** having **TEN YEARS OF EXPERIENCE** or;

- (v) has been an **officer having senior level experience of administration**; or

- (vi) in any **other** case, having educational qualification at degree level with ten years of experience in scientific or technical stream in the fields of telecom, IT, IPR or as the case may be.

Section 29-A: RELAXING THE TIME LIMIT FOR ARBITRAL AWARD

- Sub-Sec(1) to *exclude international commercial arbitrations from the timeline* and to provide that the time limit for arbitral award in other arbitrations shall be within **12 months** from the completion of the pleadings of the parties. (with a **six months extension** to be granted if parties agree).

Sec 23: STATEMENT OF CLAIM AND DEFENSE

Sub-section (4) The statement of claim and defense or Written submission shall be completed within a period of *six months* from the date the arbitrator or all the arbitrators, as the case may be, received notice, in writing, of their appointment."

CONFIDENTIALITY OF PROCEEDINGS

- **Sec 42A** The arbitral institution and the parties to the arbitration agreement shall keep confidentiality of all arbitral proceedings except award where its disclosure is necessary for the purpose of implementation and enforcement of award.
- **Sec 42B** No suit or other legal proceedings shall lie against the arbitrator for anything which is in good faith done or intended to be done under this Act.

APPLICABILITY OF Arbitration and Conciliation Act, 2015:

- The Bill clarifies that the 2015 Act shall only apply to arbitral proceedings which started on or after October 23, 2015.

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