

## ON COMMERCIAL COURTS IN INDIA



The Commercial Courts Act, 2015 ("Act") was enacted to establish a distinct procedural framework for dealing with commercial disputes above a certain specific value. The main objective of the Act is to enable a speedy redressal of commercial disputes in India. The present FAQ's deal with the constitution of commercial courts and the procedure for dealing with commercial disputes in India.

**1. What is a commercial dispute?**

Commercial disputes include any dispute arising out of commercial relationship between parties such as mercantile documents, export and import of merchandise or services, admiralty, maritime law, aviation, infrastructure, immovable property, franchising, distributions, joint venture, managements, shareholders, partnership agreements, intellectual property rights, insurance, etc., its interpretation and enforcement. Further, the Act also clarifies that a commercial dispute shall not cease to be a dispute merely because of the presence of state or its instrumentalities as one of the contracting parties.

**2. What is the jurisdiction of the commercial court?**

A commercial court has jurisdiction to deal with any suit or application dealing with a commercial dispute arising within its territorial jurisdiction where the value of the specified subject matter in a dispute ("Specified Value") exceeds INR 300,000 (INR Three Hundred Thousand) or approximately USD 4,000 (US Dollars Four Thousand).

**3. How is Specified Value of a commercial dispute determined?**

The method of determination of Specified Value is case specific and related to the relief in question in a dispute.

Recovery of Money- the amount in dispute will be calculated along with interest up to the date of filing the suit

Movable Property- The market value of the property on the date of filing will be Considered

Immovable property- The market value of the property on the date of filing will be considered

Any intangible right - The market value as estimated by the plaintiff will be considered.

Counterclaim- the market estimated value of such claim on the date of raising such claim will be considered

**4.. How are commercial courts constituted under the Act?**

The Act provides that the respective State Government may constitute commercial courts at district level after consulting with the concerned High Court having territorial jurisdiction over the state. Additionally, the State Government may also constitute commercial courts at the High Court level in cases where a High Court exercises original civil jurisdiction.

**5. What is original ordinary civil jurisdiction of a High Court?**

Most High Courts in India act as appellate courts in civil matters and therefore deal with appeals from lower courts. However, five High Courts, namely the High Courts of Delhi, Bombay, Calcutta, Madras and Himachal Pradesh exercise ordinary original civil jurisdiction over a limited geographical territory. Thus, the original division of such High Courts have jurisdiction to entertain fresh civil cases such as suits and to adjudicate them as the court of first instance.



For example, the original jurisdiction of the High Court of Bombay extends to the area of Greater Bombay as provided under the Bombay High Court (Original Side) Rules, 1980. Therefore, the Original Side of the High Court of Bombay has jurisdiction to entertain commercial disputes over which it has territorial jurisdiction.

**6. Is mediation compulsory before initiating litigation under the Act?**

The Act mandates that parties are required to make attempts to resolve their commercial disputes through mediation before initiating proceedings before the commercial court. However, in cases where the party initiating the dispute seeks any interim relief from the commercial court, there is no requirement to refer the matter to mediation. The mediation is administered by the authorities under the Legal Services Authorities Act, 1987 ("Authority").

**7. What is the procedure to start a mediation process?**

An application is to be made by a party to the commercial dispute as per Form-1 specified in Schedule 1 of the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018 ("Mediation Rules") to the Authority. Once the Authority determines that it has the territorial and pecuniary jurisdiction and whether the dispute is of commercial nature, it will issue a notice to the counter party for appearing and consenting to the mediation process. If the counter party provides its consent to mediation, the Authority will proceed to appoint a mediator. However, if the counter party refuses to participate in the mediation process or fails to provide its response, the Authority will inform the party applying for mediation. Thereafter, the party may initiate proceedings before the commercial court for adjudication of the dispute.

**8. What is the process of mediation of commercial disputes?**

Once the Authority appoints the mediator, the mediator will decide the date and time of each mediation sitting after consulting with both the parties, which may be held jointly or separately. During the course of the mediation proceedings, both parties will make settlement proposals to the mediator. The parties can instruct the mediator regarding the extent of disclosure of their proposal by the mediator to the opposite party. Further the proposed settlement can be exchanged with the opposite party either orally or in a written format. If the parties are able to reach a mutually agreeable settlement with respect to the dispute, the terms of the settlement will be reduced to writing and it will have the same status as an arbitral award.

The mediation process is required to be completed within three months from the date on which the party makes an application for mediation. A two-month extension may be granted for the process, if required.





**9. Is a mediator bound by any ethical guidelines under the Act?**

The Mediation Rules provide that the mediator shall be bound by the following conditions:

- a. The mediator must uphold the integrity and fairness of the mediation process and be faithful to the relationship of trust and confidentiality reposed in him by the parties.
- b. The mediator shall ensure that the parties are informed about the procedural aspects of the mediation process and must conduct the mediation in accordance with the applicable laws.
- c. The mediator is required to disclose any financial or other interest in the subject matter of the commercial dispute to the parties.
- d. The mediator must avoid impropriety while communicating with the parties and refrain from promises or guarantees of results.
- e. The mediator must recognise that the mediation is based on the principles of self-determination by the parties and their ability to reach a voluntary agreement.
- f. The mediator should not meet or communicate with the parties or their representatives / counsels privately except during the mediation sittings within the premises of the Authority.
- g. The mediator should not interact with the media or publicise the details of any dispute under mediation or any other allied activity performed by him as a mediator, which may prejudice the interests of the parties to the commercial dispute.

**10. What is the procedure adopted by a commercial court for adjudicating commercial disputes?**

The commercial courts are required to adjudicate a commercial dispute as per the procedure laid down under the Code of Civil Procedure, 1908 ("CPC"), as amended by the Schedule to the Act. Therefore, a number of procedural stipulations are applicable to commercial disputes which are aimed at conducting the process in an efficient and expedited manner.

**11. How and when can an appeal be made against the order of a commercial court?**

The appeal from the order of a commercial court below the district level lies to the commercial appellate court at district level. Further, the order from a commercial court at a district level or the commercial division of a High Court can be appealed to the commercial appellate division of the High Court. The Act provides that an appeal will lie from a 'decision' of the Commercial Court or Commercial Division of a High Court to the Commercial Appellate Division of that High Court within a period of sixty days from the date of 'judgment' or 'order', as the case maybe. The Act also stipulates that the court dealing with an appeal against an order passed by a commercial court must endeavour to dispose off the same within a period of six months from the date of filing of such appeal.

**12. What is a Commercial Appellate Court?**

Commercial Appellate Courts deal with appeals arising from an order / judgment of a commercial court. The State Government, in consultation with the concerned High court, sets up commercial appellate courts at District level as well High Court level.

**13. Can there be revision application or petition against the interlocutory order passed in commercial court?**

The Act bars any sort of civil revision application or petition against an interlocutory order passed in the commercial court. Any grievance that may arise out of an interlocutory order of a commercial court, including the issue of jurisdiction, can be raised only in an appeal against the decree of a commercial court.

**14. What is the procedure for collection and disclosure of the data under the Act?**

The Act provides for systematic collection and publication of data by courts in a uniform format. This is further governed by the Commercial Courts (statistical data) Rules, 2018. The provisions mandate High Courts to maintain and publish statistical data regarding the number of suits, applications, appeals, or writ petitions filed under the Act





**15. What is summary judgment under the Act?**

The procedure of summary judgment allows the court to decide a commercial dispute without recording oral evidence. The court may give a summary judgment only if the plaintiff or the defendant has no real prospect of succeeding in its claim or defense respectively and no other compelling reasons exist for the court to record oral evidence.

**16. What is case management hearing under the Act?**

Once the parties have filed their affidavit of admission or denial of documents, the court is required to fix a prospective timeline for conducting the trial by way of a case management hearing. During the course of the case management hearing, the court will fix the date for various landmarks of the trial such as:

- a. The date on which the affidavit of evidence is to be filed by the parties.
- b. The date on which the oral evidence of witnesses is to be recorded before the court.
- c. The date on which written arguments are to be filed before the court by the parties.
- d. The date on which oral arguments are to be addressed by the parties before the court.
- e. The time limits for parties and their advocates for addressing oral arguments.

While determining the time lines, the court must ensure that the arguments are closed by the parties within six months from the date of first case management hearing.

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