

India – Corporate Update

Amendments to the Specific Relief Act – Specific Performance Now a General Remedy

The Specific Relief (Amendment) Act, 2018 (Amendment Act), which amends the existing Specific Relief Act, 1963 (SRA), has introduced significant changes in the law on specific relief in contractual relationships in India.

The Amendment Act flows from the recommendations of an expert committee's report on the SRA. The objective of the committee and the Amendment Act is to revise key provisions of the SRA to make it more effective and business friendly for ease of doing business. The Amendment Act received the assent of the President of India on August 1, 2018 and came into force with effect from October 1, 2018.

Highlights of the Amendment Act

Set out below is a brief overview of the key changes that have been introduced by the Amendment Act.

No Longer at the Discretion of the Court

Under the erstwhile law, the remedy of specific performance was not available to parties to a contract as a matter of right; and was granted based on the discretion of the court. Further, the law expressly stated that if compensation is adequate relief for the non-performance of a contract, such performance could not be specifically enforced.

The Amendment Act has now done away with the discretionary powers given to the courts and has made it mandatory for them to enforce specific performance of a contract, except in certain limited circumstances. The adequacy of monetary compensation is no longer a ground for denying specific performance, with the realisation that proving losses with certainty and, therefore, adequacy of monetary compensation has always been challenging.

This reflects the legislature's intent to give priority to specific performance over damages. With the introduction of the Amendment Act, the remedy of specific performance is expected to be granted as a general rule.

Remedy of "Substituted Performance" Introduced

In case of breach of contract, the non-defaulting party now has an option to have the contract performed through a third party or its agent and recover the expenses and other costs actually incurred, spent or suffered, from the defaulting party. This remedy, termed as "substituted performance", if obtained by the non-defaulting party, prevents it from claiming the relief of specific performance from the defaulting party, although damages for breach can still be claimed by the non-defaulting party. Though framed as an option available to the non-defaulting party, the concept of substituted performance has now received statutory recognition.

No Injunctions for Infrastructure Project Contracts, and Special Courts to Try Matters

Courts are no longer permitted to grant injunction in respect of infrastructure project contracts, where it would cause an impediment or delay in the progress or completion of such projects.

In order to facilitate effective implementation, state governments have been mandated to designate one or more civil courts as special courts to handle matters involving infrastructure projects contracts.

Expeditious Adjudication

To facilitate expeditious disposal of suits by courts, the Amendment Act sets out timelines for cases brought under the SRA, mandating that suits shall be disposed of within 12 months from the date of service of summons, extendable for an aggregate period of six months for reasons to be recorded in writing.

Impact and Applicability

- The Amendment Act has been designed to introduce substantive changes to the law in its objective, interpretation and application, and is a step towards providing greater certainty in enforcement of contracts.
- The obligation imposed on the courts to enforce specific performance of a contract as a rule implies that such remedy will be provided to parties as a matter of right, and will no longer depend on the discretion of the court.

- Special provisions introduced to reduce court intervention in infrastructure projects ensure that public interest attached to such projects is not affected by court proceedings that may impede or delay the progress of completion of such projects, especially the projects in which larger public interest is involved. Further, designation of special courts will help in speedy disposal of cases relating to such contracts.

This is of particular significance given public utility projects in India have been plagued with delays driven by court mandated injunctions and restrictions on involving third parties for completing projects. The Amendment Act's specific attention to these situations is, therefore, expected to promote infrastructure development and also protect investor interests.

- Additionally, with timelines for adjudication hard wired into the statute, it is expected that the time taken for enforcement of contracts will be substantially reduced, giving aggrieved parties an effective channel for remedy.

While the Amendment Act has been introduced in order to streamline the way contracts are enforced in India, compelling specific performance in certain circumstances may not always result in the desired outcome. For instance, if the defaulting party to a contract is on the verge of financial distress, it may be impractical to enforce specific performance of its obligations.

There is also limited clarity on the applicability of the Amendment Act to contracts that were executed prior to October 1, 2018, and, in the absence of any clarification from the legislature, this may eventually be challenged before the courts. As with any overhauling legislation, the impact of the Amendment Act is largely dependent on its effective implementation.

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