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THE SPECIFIC RELIEF (AMENDMENT) ACT, 2018: OVERVIEW & IMPLICATIONS

1. INTRODUCTION

The Specific Relief (Amendment) Act, 2018 (the “**Amendment Act**”)¹ amending the provisions of the Specific Relief Act, 1963 (the “**Act**”)² came into force on August 1, 2018. The Amendment Act aims at improving India’s global ranking on the *enforceability of contracts* and the *ease of doing business* indices.

Broadly, the Amendment Act seeks to address the issue of delay in relation to the enforceability of contracts. It further seeks to provide additional remedies to parties whose contractual rights have been violated.

2. KEY FEATURES OF THE AMENDMENT ACT

Some of the key features of the Amendment Act are highlighted below.

2.1 Specific performance will be a general rule rather than a limited right

The Amendment Act minimizes the *discretion* of the courts in cases seeking specific performance of contracts and grants a right to an aggrieved party to seek specific performance of a contract³ in certain cases, subject to the provisions contained in Sections 11(2), 14 and 16 of the Act. The Amendment Act also grants an additional right, which appears to be in alternative and without prejudice to other rights under the Act and the Indian Contract Act, 1872, to have the option of substituted performance through a third party, and recover the expenses and other costs actually incurred, spent or suffered by such aggrieved party, from the party committing the breach of the contract.⁴

Previously, under Section 10 of the Act, specific performance of a contract was a *discretionary* remedy which could be granted only when:

- (a) the actual damage caused due to the non-performance of the action could not be ascertained; or
- (b) when monetary compensation would not be adequate relief for the non-performance of contract.

However, the Amendment Act now minimizes the discretion of a court to grant specific performance of a contract, *unless* the contract, specific performance of which is sought, falls within the categories of contracts

¹ The Specific Relief (Amendment) Act, 2018, available at <http://www.egazette.nic.in/WriteReadData/2018/187919.pdf>.

² The Specific Relief Act, 1963, available at <https://indiacode.nic.in/acts/10.%20Specific%20Relief%20Act,%201963.pdf>.

³ Please refer to Sections 3 and 4 of the Amendment Act, which amend Sections 10 and 11 of the Act.

⁴ Please refer to Section 10 of the Amendment Act, which amends Section 20(1) of the Act.

specified in the amended Section 14 of the Act, or if the aggrieved party seeking such relief falls within the category of persons listed in the amended Section 16 of the Act. Further, the amended Act expressly permits the aggrieved party to seek compensation for the breach of a contract *in addition* to seeking specific performance of such contract (whereas prior to amendment, such claim for compensation was either in addition to or in substitution of seeking specific performance.)⁵

2.2 No injunction against infrastructure projects

The Amendment Act prevents the courts from granting an injunction in suits where the contracts relate to infrastructure projects, if such an injunction would cause impediment or delay in the progress or completion of such a project.⁶ These projects are categorized under the following sectors (subject to amendments by the Central Government):

- (a) transport;
- (b) energy;
- (c) water and sanitation;
- (d) communication, such as telecommunication; and
- (e) social and commercial infrastructure, such as affordable housing.⁷

The intent is to reduce court intervention in infrastructure projects and also, to ensure that public interest attached to such projects is not affected by court proceedings which may impede or delay the progress of completion of such projects, especially the projects in which larger public interest is involved.

2.3 Special courts and a defined timeline for case disposal

Pursuant to the amendment, certain civil courts are to be designated as special courts, which will deal with a suit filed under the Act in respect of contracts relating to infrastructure projects.⁸ The Amendment Act also introduces a timeline of 12 months for the disposal of all cases filed under the Act, to be calculated from the date of the receipt of summons by the defendant. The said period may be extended by the courts up to a maximum of further 6 months, after recording reasons in writing for such extension.⁹

⁵ Please refer to Section 11 of the Amendment Act, which amends Section 21 of the Act.

⁶ Please refer to Section 10 of the Amendment Act, which amends Section 20A of the Act.

⁷ Please refer to Section 14 of the Amendment Act, which inserts the Schedule to the Act.

⁸ Please refer to Section 10 of the Amendment Act, which amends Section 20B of the Act.

⁹ Please refer to Section 10 of the Amendment Act, which inserts proviso to Section 20C in the Act.

2.4 Engagement of experts

The Amendment Act inserts a new section in the Act¹⁰ for engaging technical experts in suits where the court considers it necessary to get an expert opinion to assist the court on any specific issue involved in the suit. Courts will determine the terms of payment of such experts, and the payment will be borne by the parties to the suit in such proportion, and at such time, as the court may direct.

2.5 Recognition to limited liability partnerships

By introducing sub-section (fa) in Section 15 of the Act¹¹, the Amendment Act added *limited liability partnerships* to the list of parties who may seek specific performance.

2.6 Substituted performance

The Amendment Act also amends Section 20 of the Act to provide for *substituted performance*. In the event of a breach of a contract, the aggrieved party is entitled to arrange for the performance of the contract by a third party or by his own agency, and, to recover the costs and expenses actually incurred. This however does not prevent the aggrieved party from claiming compensation from the defaulting party.¹² It appears logical though that, once such *substituted performance* is sought, the aggrieved party would not be entitled to seek specific performance of the contract.¹³

2.7 Contracts not specifically enforceable

Pursuant to the Amendment Act, specific performance *cannot* be enforced for the following types of contract:¹⁴

- (a) a contract where a party has obtained *substituted performance* of the contract in accordance with the provisions of Section 20 of the Act;
- (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, by its nature, is determinable.

¹⁰ Please refer to Section 5 of the Bill, which inserts Section 14A in the Act.

¹¹ Please refer to Section 6 of the Amendment Act, which inserts Section 15(fa) in the Act.

¹² Please refer to Section 10 of the Amendment Act, which inserts Section 20(4) in the Act.

¹³ Please refer to Section 5 of the Amendment Act, which inserts Section 14(a) in the Act.

¹⁴ Please refer to Section 5 of the Amendment Act, which amends Section 14 of the Act.

3. IMPLICATIONS OF THE AMENDMENT ACT

Although the Amendment Act aims to: (i) remove difficulties in the enforcement of contracts, and; (ii) provide for an expeditious disposal of cases filed under the Act, the language of the amended provisions expressly takes away the powers of a civil court to grant injunction in respect of all disputes arising out of a contract relating to an infrastructure project. While the object behind such amendment is stated to be the prevention of any impediment or delay in progress or completion of such projects which are generally in larger public interest, the possibility of the courts refusing to entertain an injunction application in bonafide cases cannot be ruled out and such an embargo, raises interesting public policy concerns.

Further, the Amendment Act may affect the jurisdiction of the courts under the Commercial Courts Act, 2015, with potential overlap between the jurisdiction of the special courts envisaged to adjudicate contracts relating to infrastructure projects and general commercial disputes relating to construction and infrastructure contracts. Clarity in relation to this will no doubt, be necessary.

4. CONCLUSION

Seeking to improve India's track record on the enforceability of contracts and accelerate the time taken to dispose of pending cases, the Amendment Act aims at protecting contractual expectations and wiping out uncertainties.

Although several of the provisions introduced by the Amendment Act, such as the appointment of experts and substituted performance are common contractual terms, they are nevertheless, a welcome statutory addition.

However, compelling specific performance in certain circumstances might be impractical, in particular, where the defaulting party to a contract is on the brink of financial distress or potential insolvency proceedings under the Insolvency & Bankruptcy Code.

Likewise, the alternative of monetary compensation may be meaningless in such circumstances, *unless* a third-party guarantor underwrites the obligations of the defaulting party.

While the intention to compress the court proceedings to a period of 18 months is a laudable aim, it begs the question as to what would happen at the end of that time period.

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