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CLIENT ALERT

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THE SPECIFIC RELIEF ACT (AMENDMENT), 2017

Introduction

The Specific Relief Act, 1963 (“Act”) sets out the remedies available to a party in the event of non-performance of contractual obligations. In general, the two main remedies are either (i) compelling performance of the contract (specific performance); or alternatively (ii) award of damages i.e. compensation for non-performance.

The amendment seeks to incorporate the recommendations of the Expert Committee which are:

- (a) To change the approach, from damages being the rule and specific performance being the exception, to specific performance being the rule, and damages being the alternate remedy.
- (b) To provide guidelines for reducing the discretion granted to Courts and tribunals while granting performance and injunctive reliefs.
- (c) To introduce provisions for rights of third parties (other than for Government contracts);
- (d) To consider addressing unconscionable contracts, unfair contracts, reciprocity in contracts etc., and implied terms.

I. Specific Performance as a general rule

(a) Specific performance of a contract enforceable

Specific performance of a contract was a limited right and was provided at the discretion of the court in the following circumstances: (i) when monetary compensation is inadequate; or (ii) when monetary compensation cannot be easily ascertained¹. The amendment has removed these conditions and specific performance can now be permitted by courts as a general rule².

(b) Compensation in certain cases

Compensation for non-performance of contractual obligations could be claimed either in addition to or in substitution of such specific performance³. The amendment now provides for compensation only in addition to such performance.

(c) Substituted performance

The amendment⁴, now gives the affected party the option to arrange for performance of the contract by a third party or by his own agency (substituted performance).

1. Section 10 of the Act deals with cases in which specific performance of the contract is enforceable.
2. Section 11 of the Act deals with cases in which specific performance of the contract connected with trusts is enforceable.
3. Similar changes have been incorporated in Section 11 of the Act deals with power to award compensation in certain cases.
4. Section 20 of the Act relates to discretion as to decreeing specific performance. However, the said section has been amended and replaced with substituted performance in the amendment.
5. Section 16 of the Act deals with cases of Personal bars to relief.

(d) Personal bars to relief

The Act provided that specific performance cannot be enforced in favour of a person when he would not be entitled to recover compensation for its breach⁵. This provision has now been deleted. Now, specific performance cannot be enforced in favour of a person when the said person has obtained substituted performance of a contract. Moreover, under the same section, a party had to “aver and prove” readiness and willingness, which has now been replaced with only proving the readiness and willingness to perform the essential terms of the contract.

II. Amendments in respect of contracts pertaining to Infrastructure Projects

(a) Infrastructure Projects

Under the Act, preventive reliefs such as injunctions may be granted to parties to the contract and the Act provides circumstances in which injunctions cannot be granted. The amendment⁶ additionally seeks to prevent courts from granting injunctions in contracts specifically related to infrastructure projects, if such an injunction would hinder or delay the completion of the infrastructure project.

It is pertinent to note that the aforesaid amendment was suggested by the Committee in its Report while observing that there is a need to classify diverse Public Utility Contracts as a distinct class recognising their inherent public interest and importance.

(b) Special Courts

Another change brought under the amendment⁷ is that certain civil courts may be designated as Special Courts by the state government, in consultation with the Chief Justice of a High Court. These courts will deal with cases pertaining to infrastructure projects.

(c) Schedule classifying Infrastructure Projects has also been included in the amendment

The amendment also introduces classification of various types of projects pertaining to the infrastructure sector and their sub-sectors including: (i) transport; (ii) energy; (iii) water and sanitation (iv) communication (such as

telecommunication); and (v) social and commercial infrastructure (such as affordable housing).

III. Miscellaneous

(a) Expeditious disposal of suits

The amendment⁸ mandates that a suit filed under the provisions of this Act shall be disposed of within 12 months from the date of service of summons to the defendant, though the period may be extended for another six months after recording reasons in writing for such extension by the court.

(b) Expert opinion

The amendment⁹ has introduced a section for expert opinion to assist on any specific issue involved in the suit. The expert opinion shall also form part of the court record. The court will determine the terms of payment of such expert and such payment will be borne by both the parties.

(c) Who may obtain specific performance

The Act provides a list of persons (i) who may seek specific performance¹⁰ and (ii) against whom specific performance⁵ may be sought¹¹. The list as per the Act includes (i) a party to the contract; or (ii) a company resulting from the amalgamation of two existing companies. Vide the amendment, a limited liability partnership (LLP) formed from the amalgamation of two existing LLPs, one of which may have entered into a contract before the amalgamation has been added to the aforesaid list.

(d) Recovery of possession

The Act under Section 6¹² permits the following persons to file a suit for recovery of possession of immovable property: (i) a person put out of possession (dispossessed person); and (ii) any person claiming through such dispossessed person. The amendment additionally permits a person through whom the dispossessed got possession of the immovable property, to file a suit for recovery.

5. Section 16 of the Act deals with cases of Personal bars to relief.

6. Section 20A has been introduced and deals with Special provisions for contract relating to infrastructure projects.

7. Section 20B has also been introduced and deals with Special Courts to try suits in respect of contracts relating to infrastructure projects.

8. Section 20C has also been introduced and deals with expeditious disposal of suits.

9. Section 14A has been introduced and deals with the Power of the court to engage experts.

10. Section 15 of the Act deals with the list of persons who may obtain specific performance.

11. Section 19 of the Act deals with relief against parties and persons claiming under them by subsequent title.

12. Section 6 of the Act deals with suits by person dispossessed of immovable property.

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