



## KEY AMENDMENTS TO THE SPECIFIC RELIEF ACT, 1963

### **Introduction**

India's Specific Relief Act, 1963 (the "Act") permits a party to seek specific performance of a contract as an alternative to seeking damages for breach of contract or failure to perform the contract under the Indian Contract Act, 1872.

On January 28, 2016, the Indian government constituted an expert committee to examine the Act and suggest changes to the law on specific performance in India. The expert committee submitted its recommendations to the Ministry of Law and Justice on June 20, 2016, following which the Ministry tabled the Specific Relief (Amendment) Act, 2018 (the "Amendment Act") in Parliament. The Amendment Act was made effective from August 1, 2018.

This update discusses the implications of the Amendment Act on the availability of specific performance as a remedy in case of breach of contract.

### **Key amendments to the Act**

#### *Specific performance is now a general rule*

Section 10 of the Act provided that a court could grant specific performance, at its own discretion, in instances where monetary compensation was not an adequate remedy or if ascertaining the quantum of damages was difficult.

The Amendment Act takes away the discretion of the court and makes it mandatory for the court to grant specific performance of a contract. This obligation is subject to, among others, the following exceptions: (i) contracts entered into by a trustee in excess of its powers; (ii) contracts which are not specifically enforceable under Section 14 of the Act (which has also been amended by the Amendment Act), i.e., contracts which can be terminated or contracts requiring continuous performance which the court may not be able to supervise; or (iii) contracts in which the party seeking specific performance is not entitled to recover damages for breach, as for instance, in case the recovery of damages is limited by law or if the party is also in breach of the contract.

With this change, the Indian government has made specific performance (as opposed to monetary compensation) a general rule in contract enforcement cases. This change will bring certainty to an action for specific performance as it reduces the scope of the court's discretion in granting specific performance.

#### *Parties can now seek substituted performance*

The Amendment Act has brought in the concept of substituted performance. Now, a non-defaulting party can seek performance of the contract by itself or through a third party subject to a prior notice of thirty (30) days to the defaulting party to perform the contract, and can also recover the expenses for substituted performance of the contract from the defaulting party. For instance, if party A agrees to sell cotton yarns to party B by August 31, 2018 but fails to do so, party B can give a notice of thirty (30) days



to party A and call upon party A to perform the contract. If party A fails to deliver the cotton yarns in this extended time-period as well, party B can purchase the cotton yarns from party X.

Once the contract has been performed by substitution by the non-defaulting party on its own or through a third party, the defaulting party will not be required to specifically perform the contract, although the non-defaulting party will still be entitled to seek damages from the defaulting party. The contracting parties can exclude the applicability of the right to substituted performance under the contract.

This alternative will benefit parties to commercial contracts where the non-defaulting party may not have the time or financial resources to wait for an order of specific performance from the court and may want to achieve the purpose of the contract if substitutes are available. However, if the obligations of the non-defaulting party under the contract are special and not substitutable, then this right may not be of much use. It will become important to assess this provision on a per contract or transaction basis and exclude it, if necessary.

#### *No injunctions for specified infrastructure projects*

The Amendment Act prohibits grant of injunctions for infrastructure projects for transport, energy, water and sanitation, communication, and other social and commercial infrastructure projects, if the injunction will result in delays in the progress and completion of the project. The list of infrastructure projects provided in the Amendment Act can be revised by the Indian government from time-to-time. The Amendment Act also provides that certain courts will be designated as special courts and will handle applications seeking injunctions for infrastructure projects.

The Indian government has been attempting to boost the manufacturing sector, and the lack of good infrastructure has set India behind in this regard. Infrastructure development in India is besieged with numerous delays, and disputes with contractors for various reasons are the norm. This change will boost faster, if not timely, completion of infrastructure projects.

#### *Timeline for disposal of proceedings under the Act*

In order to expedite the disposal of suits for specific performance, the Amendment Act has set a timeline of twelve (12) months from the date of service of summons on the defendant, which may be extended by a further six (6) months after recording reasons for the extension. This change is aimed at faster disposal of applications for specific performance and will ensure that parties look at specific performance as an effective remedy for breach of contract, provided the power of extension of this timeline is used by courts judiciously and sparingly.

#### **Our Comments**

In the index on “Enforcement of Contracts” in the World Bank’s Doing Business Report of 2018, India has been ranked 164 out of 190 countries. Contract enforcement remains a challenge given the vast backlog of cases in Indian courts, the wide network of appellate jurisdictions and the flexible or non-existent timelines for resolution of disputes. The Amendment Act seeks to bring a small change in the regime for contract enforcement, particularly specific performance. In our view, the Amendment Act sets a positive



tone for future amendments to ensure that enforcement of contracts is quicker, involves less paperwork and is cost-effective.