



## AMENDMENTS TO THE SPECIFIC RELIEF ACT, 1963

September 2018

### **Specific performance**

Previously, Indian courts would exercise their discretion in granting specific performance of contracts by non-performing parties by applying principles enshrined in the un-amended Act. However, with the recent amendments the old section 10 has been substituted with a new section, which makes it unambiguous that courts shall now have limited discretion in decreeing specific performance of a contract, which “shall be granted” subject to limitations prescribed in sections 11(2), 14 or 16 of the Act. Accordingly, specific performance of a contract is now the rule rather than exception. Further, section 11 of the Act concerning private trusts has also been amended to replace the words “contract may, in the discretion of the court” with “contract shall” thereby clarifying the renewed legislative intent.

**PSA view:** These amendments are a welcome change for non-defaulting parties who are keen on seeking performance of a contractual bargain by defaulting parties, as now, there are only very limited reasons for courts to deny specific performance. This also acts as a deterrent to parties who would execute contracts, knowing that there is high probability that they will not perform their part of the contract in future. Further, now the onus will be on courts to justify not granting specific performance of a contract covered under section 10. Going forward, this may improve the ease of doing business and also, encourage parties to perform their contractual promises. It is pertinent to note that in case of contracts concerning acts done in performance of a private trust, it is now literally mandatory for courts to grant specific performance provided that the requirements of section 11 are met.

### **Substituted performance**

We now have a new section 20, which states that if a party does not perform its part of a contract, then the aggrieved party shall have the option of seeking substituted performance either through a third party or its own agent. However, such substituted performance can only be availed if a written notice of at least 30 days is furnished to the defaulting party requiring it/him/her to perform its/his/her part of the contract within a specified period, failing which, the aggrieved party may opt for substituted performance. The statute entitles an aggrieved party to recover expenses and other costs actually incurred, spent or suffered by the aggrieved party in effecting the substituted performance, from the defaulting party. It is noteworthy that the party claiming substituted performance forfeits its/his/her right to seek specific performance of the same contract.

**PSA view:** This is a new concept that has been introduced in the Act while allowing parties to contract out of the provision by agreeing otherwise. It is not uncommon for parties to agree to such substituted performance

in property development arrangements in the event the developer abandons development of a real estate project that it had undertaken. Irrespective, it is a step in the right direction as now, there is statutory recognition of the principle along with the fact that an aggrieved party can recover costs and expenses incurred in conducting the substituted performance from the defaulting party, which is in addition to the party's right to claim damages suffered consequent to non-performance of the defaulting party. Of course, we foresee that this amendment may reduce litigation to the extent that parties will always have an option to chose between specific or substituted performance.

### **Special provisions concerning infrastructure projects**

Sections 20A, 20B and 20C have been introduced especially to govern reliefs sought under the Act that are relative to contracts concerning infrastructure projects. Section 20A states that no court shall grant a relief under the Act where it is of the view that doing so would cause an impediment or delay in the progress or completion of such infrastructure project. "Infrastructure Project" is defined in the explanation to section 20A(1) as categories of projects mentioned in the new Schedule to the Act and includes transport, energy, water and sanitation, communication, social and commercial infrastructure, etc. Section 20B captures creation of special courts by state governments to entertain reliefs emanating from this Act with respect to contracts concerning such projects while section 20C stipulates a timeline for disposal of such proceedings.

**PSA view:** The intent here is to ensure that private parties to an infrastructure project do not hinder its progress in the event of a dispute with the government, and if at all there is a dispute, it is resolved in an expeditious manner. It is indeed a proactive measure taken by the legislature to ensure that there is no undue delay in completion of infrastructure projects while the interests of the private party are also protected, perhaps, through special courts that should be designated by the appropriate state government in future. However, time will tell if this has any impact on the timelines for completion of such projects or on the participation of private parties in them.

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