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Carriage of Goods Whether A Commercial Dispute: A Critical Analysis

By

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Abstract

Law of Commercial Contracts and Law of Carriage of Goods are both well-developed fields in international law. The general nature of the former vis-à-vis the specific nature of the latter gives rise to the fundamental question that whether a dispute pertaining to contract of carriage of goods is also a commercial dispute to fall within the ambit of the Law of Commercial Contracts. This presents a legal conundrum that must be analyzed and resolved. The objectives of the present study are firstly to undertake a discussion on how international law defines commercial contracts and contracts of law of carriage, secondly to discuss briefly the meaning and scope of a commercial dispute pertaining to carriage of goods under the Commercial Courts Act, 2015, thirdly to analyze a litany of judicial decisions of Indian Courts on the question of treating disputes pertaining to carriage of goods as commercial disputes and fourthly to suggest a way forward to address the ambiguities in defining disputes pertaining to carriage of goods through parliamentary legislation and judicial interpretation. The paper concludes that disputes pertaining to carriage of goods can be termed as commercial disputes under the prevailing international and domestic laws, as well as supported by the decisions of various Indian Courts.

Key Words: Commercial Contracts, Carriage of Goods, Commercial Dispute, Commercial Courts, Hague Rules, Hague-Visby Rules, Hamburg Rules, Rotterdam Rules, Warsaw Convention.

Introduction

Today's era is defined by multilateral trade, globalization, privatization, liberalisation, international economic integration, cut-throat competition etc. This has significantly increased the dependency of businesses on transportation, communication and logistics. Over the years, transportation has undergone a sea change and today one can safely claim that cutting-edge and state-of-the-art logistics technology and transportation systems have become the game-changers in the business arena by providing the business with the much-needed competitive edge.

India is one of the largest economies in the world and a major emerging market that has a young population, rising investment rates, large domestic demand and globally competitive firms. It is predicted that India will become the third largest economy by the year 2025 after China and the USA and has piqued the interest of investors around the globe. The logistics sector in India has today become a key performance indicator of the economy. One of the primary reasons for it is that years of high growth in the Indian economy has resulted in a significant rise in the volume of freight traffic moved. This large volume of traffic has opened up new growth opportunities in all facets of logistics including transportation, warehousing, freight forwarding, express cargo delivery, container services, shipping services etc. According to the World Bank's Logistic Performance Index (LPI), India is ranked 39th place among 150 countries of the world.

A world-class logistics infrastructure consisting of efficient transportation systems not only helps in competitive positioning of the business in the market but also plays a very crucial role in building a goodwill for the business organisation. Given this importance attached to transportation and carriage when it comes to international commercial dealings and transactions, it became imperative that a body of rules and regulations be developed to govern and regulate the various aspects of carriage of goods. This body of rules has come to be called the 'Law of Carriage of Goods' and consists of both international conventions as well as domestic legislations regulating the fields of carriage by sea, air, rail, road etc. The prominent among these include the Hague Rules[1], Hague-Visby Rules[2], Hamburg Rules[3], Rotterdam Rules[4], Warsaw Convention[5] etc. The domestic laws on the subject incorporate the provisions of the respective international conventions and do not add anything substantive to the law pertaining to the particular carriage.

Law of carriage of goods is one of the niche areas of law in which there exists an intricate interconnection between the international and domestic aspects of the law on the subject. Domestic law on the subject is often a reflection of the international law as far as law of carriage of goods is concerned and therefore any lacunae in the law must be addressed both at the international and domestic levels to settle the question once and for all. One such fundamental question is that whether a dispute concerning carriage of goods is a commercial dispute. The question assumes importance given a number of advantages that classifying a dispute as a commercial dispute bestows upon a contract. This presents a legal conundrum that must be analyzed and resolved.

It is against this backdrop that the present paper attempts to undertake a discussion on how international law defines commercial contracts and contracts of law of carriage, so as to ascertain the question whether a whether a dispute concerning carriage of goods is a commercial dispute. Moving on, the paper sheds light on the domestic facet of the law by discussing in brief the meaning and scope of a commercial dispute pertaining to carriage of goods under the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (hereinafter referred to as the 'Commercial Courts Act, 2015'). Finally, the paper suggests a way forward to address the ambiguities in defining disputes pertaining to carriage of goods through parliamentary legislation and judicial interpretation.

Commercial Contract And Contract Of Carriage Of Goods In International Law

In this section, an attempt has been made at understanding the definition, essential elements, characteristics etc. of commercial contracts under the Law of Commercial Contract and the contract of carriage of goods in order to make a thorough analysis as to whether a contract of carriage of goods does in fact constitute a commercial contract under international law.

[1] The International Convention for the Unification of Certain Rules of Law relating to Bills of Lading ('Hague Rules'), Brussels, 25 August 1924, 120 L.N.T.S. 155.
[2] The Hague Rules as amended by the 1968 Visby Protocol, and the 1979 SDR Protocol ('Hague-Visby Rules').
[3] The United Nations Convention on the Carriage of Goods by Sea, 1978 ('Hamburg Rules').
[4] United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, 2008 ('Rotterdam Rules').
[5] Convention for the Unification of Certain Laws Relating to International Transportation by Air, 1929 ('Warsaw Convention').

Law of Commercial Contracts under the international law is solely applicable in the case of contracts concluded between merchants as it is generally assumed that business people have a certain degree of sophistication in the field of commerce and that they are familiar with the ins and outs of the business world in which they are evolving.[6] "Stated otherwise, merchants acting in the course of their business do not need the same type of legal protection that non-business people need. Therefore, the rules provided in this Law aim at facilitating the conclusion of the contract between business people, more than the basic objective associated with law, i.e. safeguarding the interests of the weaker party.

Although the title of the law, 'Law of Commercial Contracts', may suggest that the contracts contained therein are departing from the general theory of contract law, that is not the case. To the contrary, contracts dealt with in this Law are, as all other contracts, submitted to the general rules of the law of obligation and contract in so far as these general rules have not been modified by the Law of Commercial Contracts.

In fact, the contracts regulated in this Law are some of the most often encountered types of contracts concluded in a business environment, with the result that in looking at the commercial practice, it became apparent that specific provisions were repetitively found in these contracts. In other words, it became possible to clearly identify and then name certain contracts, such as the commercial contract of sale and the contract of carriage of goods.

It is in taking into consideration these specific characteristics attaching to a certain type of contracts that the particular rules found in this Law have been enacted.

The rules found in this Law aim at circumscribing the rights and obligations of the parties and the effect of the contract entered into, with the result that the contracting parties will not have to reiterate these rules in their own contract. It is however important to note that the rules contained in this Law are, with some exceptions, suppletive in nature. That is to say that the parties may modify or depart from them.

As stated above, the parties to the contract may not waive some of the rules provided in the Law. Such rules have been drafted for the purpose of preventing potential abuses by one of the party to the contract. For example, the legal obligation of the vendor to warranty the goods sold to farmer and fisherman.[7]

Commercial contract that do not fit the qualification of the Law are said to be 'sui generis' (of his own kind or class; the only one of its own kind; peculiar). They are 'unnamed contracts' and are regulated under the general provisions of this Law and by the general rules of the law of obligation and the law of contract".[8] Furthermore, certain type of commercial contracts such as loan, commercial lease, mortgage and other type of securities transactions occurring in the commercial world have not been dealt with in this Law because they will be the subject matter of other laws, for example the securities transactions law.

[6] World Trade Organization, Law on Commercial Contracts of April 2001, WTO Doc. WT/MIN(01)/APR/1, 51 ILM 746 (2002) [Hereinafter referred to as 'Law on Commercial Contracts of April 2001'].

[7] Article 30, Law on Commercial Contracts of April 2001.
[8] Chapter 1, Law on Commercial Contracts of April 2001.

"Law of Commercial Contracts applies to contracts made between merchants in the course of their commercial activities. This law does not apply to contracts made by a merchant for personal, family or household purposes unless the other party neither knew, nor should have known, before or at the conclusion of the contract, that the contract was for such non-commercial purposes".[9] Therefore, this law is solely applicable to transactions occurring between persons that are both involved in commercial activities. Both parties to the commercial contract must be business persons. If there are more than two parties to the contract the same principle applies, i.e. all parties have to be merchants or business persons.

Given that commercial contracts can only be concluded between parties that are merchants or business persons, contracts of carriage of goods are certainly commercial contracts since two or more parties involved in the carriage of goods by air, water, rail, road etc. are also business persons who may be assigned different nomenclatures such as the consignor, consignee etc. under the law of carriage. Contracts of carriage of goods often deal with transportation of bulk quantities of goods across international borders involving a web of legal complexities and is thus carried on by registered and certified merchants well-versed with the systems and processes governing such carriage.

Further, Law on Commercial Contracts provides for general provisions applicable to commercial contracts and regulates specifically some of the most encountered types of contracts concluded in a business environment such as contract of sale[10] and transportation[11]. With respect to these contracts the Law qualifies them, gives them a name and regulates them specifically. Other commercial contracts may be regulated specifically in other laws. For example, transfer of securities will be regulated by the Law of Commercial Enterprises of July 2000, loan will be regulated in the Law of Secured Transactions and insurance contract is regulated in the Insurance Law of July 25, 2001. On the basis of the legal principle that is to the effect that specific provisions take precedence over general provisions, i.e. the particular provisions dealing with a particular commercial contract will have to apply first. In this case, the general provisions of the Law on commercial contracts will only be applicable if they are consistent with the provisions of that other law.

The fact that contracts of transportation have been dealt with specifically under the international law on commercial contracts sheds light on the fact that international law treats contracts of carriage of goods as an important subset of the commercial contracts, and therefore inevitably classify disputes of carriage of goods as commercial disputes.

Specific rules are provided permitting to resolve jurisdictional issues that may arise when a contract involves a merchant and a party that is not a merchant ('private party').[12]

It is very interesting to note that Chapter 3 of the said Law is completely dedicated to contracts of carriage of goods, or what is called contract of transportation in WTO law. The factum of the importance attached to contract of carriage of goods as a special class of commercial contracts under the international law is very well established here.

"A contract of carriage is a contract by which one merchant, the carrier, undertakes principally to carry persons or property from one place to another, in return for a price which another merchant, the travel organizer or intermediary thereof, or the shipper or receiver of the

[9] Article 1, Law on Commercial Contracts of April 2001.
[10] Article 21-32, Law on Commercial Contracts of April 2001.
[11] Articles 33-61, Law on Commercial Contracts of April 2001.
[12] Article 10, Law on Commercial Contracts of April 2001.

property, undertakes to pay at the agreed time."[13] This article defines the contract of carriage between merchants. The content of the definition is reiterating the principles of carriage contract found in civil law jurisdiction and that has been used in international conventions. Further, an 'intermediary' means "any merchant who undertakes to perform the contract defined in article 33 in his own name to provide for another, for an inclusive price, a combination of services comprising transportation, accommodation separate from the transportation or any other service relating thereto".[14]

The various essentials of a commercial contract enumerated in the various provisions of the WTO Law on Commercial Contracts of April 2001 have been satisfied by the contract of carriage of goods. Therefore, it can be reasonably concluded that contracts of carriage of goods are certainly commercial contracts if one goes by the WTO Law on the subject. This also implies that disputes pertaining to law of carriage of goods can be resolved as commercial disputes.

Meaning And Scope Of Commercial Dispute Under The Indian Law

In such a niche area of law such as law of carriage of goods where there is an intricate link between the international and the domestic aspects of the law, the domestic law is often a reflection of the international law on the respective area of law. This is true for all major international conventions pertaining to law of carriage, eg Warsaw Convention, Montreal Convention, Hague-Visby rules etc. However since none of these conventions directly deal with the question of whether a dispute pertaining to law of carriage of goods is a commercial dispute, the question remains unanswered and therefore unsettled as far as various Indian laws pertaining to law of carriage of goods are concerned.

Interestingly however the answer to this fundamental question plaguing the law of carriage of goods can be found in another statute that came into being only in 2015. The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 provides an answer to the question that has baffled legal minds for quite some time now. The Commercial Courts Act, 2015 is an important step taken by the Government to expedite the justice delivery system at least as regards commercial disputes.

The Act provides for a separate set of Commercial Courts to be set up by State Governments at the District level to try suits and claims pertaining to "commercial disputes of a value of at least Rs.1 crore and above. In states where the High Court exercises original civil jurisdiction, the High Courts are expected to set up Commercial Divisions to try such commercial disputes. The Act also requires the High Courts to set up Commercial Appellate Divisions within each High Court to hear appeals from the orders of Commercial Courts and Commercial Divisions and endeavour to dispose of them within 6 months of their filing date. The Act also amends the Code of Civil Procedure, 1908 as will be applicable to the Courts, which shall prevail over the existing High Courts Rules and other provisions of the CPC, so as to improve the efficiency and expeditious disposal of commercial cases.

The Act attempts to cover a broad range of disputes within the scope of a 'commercial dispute'. The definition broadly covers commercial disputes arising from ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, export and import of merchandise or service, admiralty and maritime law, transactions relating to aircraft, etc., carriage of goods, construction and infrastructure contracts including tenders, agreements

[13] Article 33, Law on Commercial Contracts of April 2001.
[14] Article 34, Law on Commercial Contracts of April 2001.

relating to immovable property used exclusively in trade and commerce, infringement of Intellectual Property Rights, exploitation of natural resources, insurance, etc. The definition also includes disputes arising out of agreements of franchising, distribution, licensing, management, consultancy, JV, partnership, shareholders, subscription, investment, etc.[15] It also clarifies that a dispute shall not cease to be commercial dispute merely because it may involve action for recovery of immoveable property or for realization of monies out of immovable property given as security or one of the contracting parties is the State or a private body carrying out public functions.[16] To curb litigations on the issue whether a particular dispute is a commercial dispute or not, not only at the Commercial Court level but also in appellate fora, the Act provides that if the Commercial Court were to hold in favour of its jurisdiction and treats a particular dispute as a commercial dispute, such a decision cannot be challenged in the Appellate fora on the basis that such a ruling would not actually cause any prejudice to the opposite party.

Disputes in respect of 'Carriage of Goods' are also 'commercial disputes'.[17] Section 2 (1) (c) of the Commercial Courts Act defines a commercial dispute and includes disputes arising out 'carriage of goods'. Further, Section 2 (i) defines 'specified value' in relation to a commercial dispute, to mean the value of the subject-matter in respect of a suit as determined in accordance with Section 12 which shall not be less than one crore rupees or such higher value, as may be notified by the Central Government.

Under Section 12, the Specified Value of the subject-matter of the commercial dispute in a suit, appeal or application is determined in the following manner –

a) where the relief sought is for recovery of money, the money sought to be recovered in the suit or application inclusive of interest, if any, computed up to the date of filing of the suit or application;
(b) where the relief sought relates to movable property or to a right therein, the market value of the movable property as on the date of filing of the suit, appeal or application;
Disputes arising out of carriage of goods, mostly pertain to recovery of money as compensation towards loss, damage or destruction of goods, or towards indemnity. Some disputes also arise outright to lien of the carrier, or an injunction against the carrier from exercising his right to sell the goods. In such cases, the value of the goods become relevant.

The above implies that though under the Indian law, disputes arising out of carriage of goods are commercial disputes as stipulated under the provisions of the Commercial Courts Act, 2015; however the same must be of a 'specified value' and that in relation to a commercial dispute has been fixed statutorily to mean the value of the subject-matter in respect of a suit as determined in accordance with Section 12 to be not less than one crore rupees or such higher value, as may be notified by the Central Government. Therefore, a dispute arising out of a contract of carriage of goods wherein the value of the subject matter is less than Rs. 1 crores even though the contract fulfils all other conditions of a contract of carriage shall not be deemed as a commercial dispute for the purposes of the Commercial Courts Act, 2015. This further implies that the benefit of expeditious disposal that is conferred by way of classifying any dispute as a commercial dispute is not available to a dispute arising out of carriage of goods when the same does not breach the statutory threshold of Rs 1 crores.

[15] Section 2(1)(c), Commercial Courts Act, 2015.
[16] Explanation 1 to Section 2(1)(c), Commercial Courts Act, 2015.
[17] Section 2(1)(c), Commercial Courts Act, 2015.

Further, Section 6 provides that the jurisdiction of a Commercial Court is to try all suits and applications relating to a commercial dispute of a Specified Value arising out of the entire territory of the State over which it has been vested territorial jurisdiction. Disputes in respect of 'carriage of goods' of the 'specified value' would be triable by Commercial Courts or Commercial Divisions of High Courts, as the case may be".[18] However, Section 11 provides for a bar of jurisdiction of Commercial Courts where the jurisdiction of the civil court is either expressly or impliedly barred under any other law for the time being in force.

Section 6 quite commendably bestows very wide jurisdiction on a Commercial Court to try all suits and applications relating to a commercial dispute of a Specified Value arising out of the entire territory of the State over which it has been vested with powers of territorial jurisdiction. This means that a dispute pertaining to contract of carriage of goods reaching the specific threshold of Rs 1 crore as statutorily mandated would be triable by Commercial Courts or Commercial Divisions of High Courts, as the case may be. However, what has been given by the legislature by one hand has been very conveniently taken away from the other hand by incorporating Section 11 into the act. Section 11, which provides for a bar of jurisdiction of Commercial Courts where the jurisdiction of the civil court is either expressly or impliedly barred under any other law for the time being in force, has come across as a hurdle in the expeditious disposal of commercial disputes as litigating parties and their shrewd counsels often play the this provision of law to their advantage by invoking bar of jurisdiction under various laws such as Limitation Act, 1963 etc.

Therefore, on a thorough analysis of the provisions of the Commercial Courts Act, 2015 it can be concluded that though the legislation is a historic and salutary piece of legislation that aims to improve the efficiency of the Indian legal system by including a vast range of disputes within the ambit of commercial dispute. This also includes disputes arising out of contract of carriage of goods, however the scope of the same remains restricted because of the statutory threshold requirement of minimum value of subject matter to be Rs. 1 crores, as a result of which large number of disputes arising out of contract of carriage of goods remain aloof from the advantages often associated with classifying a dispute as a commercial dispute such as quick and expeditious disposal of cases, positive perception of India as a business friendly destination etc.

This restricted scope and ambit of a commercial dispute pertaining to carriage of goods is quite not in adherence with the international law on the subject that does not prescribe any minimum monetary threshold to classify disputes arising out of carriage of goods as commercial disputes. This also creates fundamental legal problems of forum selection, wherein a contract of carriage of goods the value of whose subject matter may be Rs. 99 lakhs would have to go through the agony of slow and tedious litigation beginning in the civil court at the district level, while a contract of carriage of goods the value of whose subject matter is Rs. 1.1 crores shall have the advantage of expeditious disposal at the Commercial contract under the provisions of the Commercial Contracts Act, 2015. The minimum statutory requirement of Rs. 1 crore certainly creates an artificial barrier in ushering in efficiency of the legal system in dispute resolution in cases of disputes arising out of carriage of goods. This also has a negative impact on the global image of India as an emerging logistics destination and may derail the progress made by India as far as its performance at various indices such as logistics performance index, ease of doing business index etc. is concerned.

[18] Section 6, Commercial Courts Act, 2015.

Judicial Decisions Of Indian Courts

Having already discussed at considerable length the international and domestic dimensions to the question of whether disputes arising out of carriage of goods are commercial disputes, it becomes equally important to analyse the judicial viewpoint on the question. Various High Courts and the Supreme Court have come up with their own findings on the question and they are all relevant for the purposes of the present paper.

In a landmark case before the Bombay High Court pertaining to the question of whether the tax levied by the Assam Act was infringing upon the freedom guaranteed relating to trade, commerce and intercourse throughout the territory of India by Article 301 of the Constitution. Whilst discussing the true import of Article 301, the Court observed

"Trade and commerce do not mean merely traffic in goods, i.e., exchange of commodities for money or other commodities. In the complexities of modern conditions, in their wide sweep are included carriage of persons and goods by road, rail air and waterways, contracts, banking, insurance transactions in the stock exchanges and forward markets, communication of information, supply of energy, postal and telegraphic services and many more activities too numerous to be exhaustively- enumerated which may be called commercial intercourse. Movement of goods from place to place may in some instances be an important ingredient of effective commercial intercourse, but movement is not an essential ingredient thereof. Dealings in goods and other commercial activities which do not import a concept of movement are as much part of trade and commerce as transactions involving movement of goods. The guarantee of freedom of trade and commerce is not addressed merely against prohibitions Every sequence in the series of operations which constitutes trade or commerce is an act of trade or commerce and burdens or impediments imposed on any such step are restrictions on the freedom of trade, commerce and intercourse. What is guaranteed is freedom in its widest amplitude."[19]

In another landmark Supreme Court case in which the question was "whether rendering of consultancy services by RMI for promoting such commercial transaction as consultant under the Agreement is not a 'commercial transaction'. The author is of the view that the High Court was right in holding that the agreement to render consultancy services by RMI to Boeing is commercial in nature and that RMI and Boeing do stand in commercial relationship with each other. While construing the expression 'commercial' in Section 2 of the Act, it has to be borne in mind that the Act is calculated and designed to subserve the cause of facilitating international trade and promotion thereof by providing for speedy settlement of disputes arising in such trade through arbitration and any expression or phrase occurring therein should receive, consistent with its literal and grammatical sense, a liberal construction." [20]

Further relying on the landmark cases of Renusagar Power Co. Ltd. v General Electric Co.[21] and Koch Navigation Inc. v Hindustan Petroleum Corporation Ltd.[22] , the court ruled

"The expression 'commercial' should be construed broadly having regard to the manifold activities which are integral part of international trade today. In the context of Article 301, which assures freedom of trade, commerce and intercourse, it can be safely concluded that trade and commerce do not mean merely traffic in goods, i.e., exchange of commodities for money or other

[19] Kamani Engineering Corporation v Societe de Traction Et AIR 1965 Bom 114.
[20] RM Investments and Trading Co. v Boeing Co. AIR 1994 SC 1136.
[21] Renusagar Power Co. Ltd. v General Electric Co. AIR 1994 SC 860.
[22] Koch Navigation Inc. v Hindustan Petroleum Corporation Ltd. AIR 1989 SC 2198.

commodities. In the complexities of modern conditions, in their wide sweep are included carriage of persons and goods by road, rail, air and waterways, contracts, banking, insurance, transactions in the stock exchanges and forward markets, communication of information, supply of energy, postal and telegraphic services and many more activities - too numerous to be exhaustively enumerated - which may be called commercial inter-course."

This has been quoted verbatim from Justice Shah's observations in another landmark case from 1961, i.e., Ataibari Tea Company Ltd. v State of Assam.[23]

In another landmark decision of the Gujarat High Court, the Court ruled that disputes pertaining to obligations arising under bills of lading inter se shippers, carriers and consignees or purchasers of goods as well bankers and underwriters require to be precisely defined so as to have uniformity thereof in various maritime countries for the benefit of all commercial interests. It is with this end in view that a Code of Rules stipulating the responsibilities and liabilities of a carrier of goods by sea and its rights and immunities was unanimously recommended that every maritime country should give legal sanction to. These disputes arise out of relationship which is essentially 'commercial in nature' and it has been so reorganized by Carriage of Goods by Sea Act, 1925.[24]

The court ruled that

"It cannot be urged successfully without violence to the language that the charter party contract for carriage of goods by sea is not commercial in nature. The term 'commerce' strictly relates to dealings with foreign nations, colonies, etc, (vide. The Webster's Third New International Dictionary at page 456). It is a word of that largest import and takes in its sweep all the business and trade transactions in any of their forms including the transportation, purchase, sale and exchange of commodities between the citizens of different countries.

The Convention with reference to arbitration is for purposes of obtaining award and enforcing it against the party held liable under it, and if the award to be made by a foreign arbitrator is to be made enforceable, it must be a foreign award as denned under the Parent Act, which by Section 3 prescribes that it must be an award on differences between persons arising out of the legal relationship considered as commercial under the law in force in India and made on or after llth Oct., 1960 in pursuance of an agreement in writing for arbitration to which the aforesaid Convention applies and in the territories to which the Convention has been made applicable by the Central Government. In other words, the Contention is that Section 3 has to be read in light of definition Section 2 and unless it is established that the differences arising out of legal relationship are considered as commercial under the law in force in India, no reference can be made and consequently no suit can be stayed, As stated above, it cannot be gainsaid that the charier-party contract is commercial in its nature. The question, whether it is recognized as such in any law in force in India is also not capable of much debate.

The Indian Carriage of Goods by Sea Act, 1925, was put on the statute book with effect from 21st September 1925 for the purpose of amending the law with respect to Carriage of Goods Act pursuant to the unanimous recommendation of the members of the International Conference on Maritime Law held at Brussels in October, 1922 to their respective Governments for the unification of certain rules relating to bills of lading on the basis of the draft convention agreed at the said conference. The Schedule to the said Act prescribes the rules relating to bills of lading. The said

[23] Ataibari Tea Company Ltd. v State of Assam AIR 1961 SC 232.
[24] Union of India v Owners and Parties Interested AIR 1983 Guj 34.

rules apply to the carriage of goods by sea in ships carrying goods from any port in India to any other port whether in or outside India. The rules, inter alia, prescribe for the responsibilities and liabilities of the carriers. The corresponding law to the Indian Carriage of Goods by Sea Act, 1925 in U. K. is the Carriage of Goods by Sea Act, 1924 which is also enacted pursuant to the draft convention produced at Brussels at the International Conference on Maritime Law by the Maritime countries. The legal relationship arising out of the charter-party contract is, therefore, recognized as commercial under the Indian Carriage of Goods by Sea Act, 1925.

In the statement of objects and reasons of the said Act, it has been, inter alia, stated that a bill of lading was originally a receipt for the goods placed on a ship and also a document for transferring the title of the goods to the consignee. With the development of trade, it became recognised as a negotiable instrument in which shippers, the carriers and the consignees or purchasers of the goods as well as bankers and underwriters became increasingly interested. Concurrently with this it became the custom to show on the bill of lading the terms of the contract on which the goods were delivered to and received by the ship, and from time to time new clauses were added usually in the direction of contracting the carrier out of liability for some kind of loss or damage to the goods. There thus arose great diversity between the conditions on which goods were carried by sea and considerable uncertainty about the liabilities which still attached to the carrier.

It will thus be seen that disputes pertaining to the obligations arising under bills of lading inter se shippers, carriers and consignees or purchasers of goods as well bankers and underwriters require to be precisely defined so as to have uniformity thereof in various maritime countries for the benefit of all commercial interests. It is with this end in view that a Code of Rules stipulating the responsibilities and liabilities of a carrier of goods by sea and its rights and immunities was unanimously recommended that every maritime country should give legal sanction to it. These disputes arise out of relationship which is essentially commercial in nature, and it has been so reorganized by Carriage of Goods by Sea Act, 1925."

From the above discussion, few observations can be clearly made out. First and foremost, that while the Commercial Courts Act that for the first-time classified disputes arising out of 'carriage of goods' as commercial disputes got enacted only in 2015, even prior to that there has been a marked tendency among the Indian courts to consider disputes arising out of carriage of goods as commercial disputes. For this, they have relied on the literal rule of interpretation as seen in the case of Kamani Engineering Corporation v Societe de Traction Et and RM Investments and Trading Co. v Boeing Co. At times, they have also relied on the purposive rule of interpretation as seen in the cases of Renusagar Power Co. Ltd. v General Electric Co. Ltd., Koch Navigation Inc. v Hindustan Petroleum Corporation Ltd. and Ataibari Tea Company Ltd. v State of Assam.

In Union of India v Owners and Parties Interested, it was seen that the Gujarat High Court looked into the object and purposes of the statute, i.e., Carriage of Goods by Sea Act, 1925 in the present case to decipher whether disputes pertaining to the obligations arising under bills of lading inter se shippers, carriers and consignees or purchasers of goods as well bankers and underwriters are essentially commercial in nature. The Court finally came to the conclusion that they are in fact essentially commercial in nature, and it is with this end in view that a Code of Rules stipulating the responsibilities and liabilities of a carrier of goods by sea and its rights and immunities was unanimously recommended that every maritime country should give legal sanction to.

Further, the trend of recognizing disputes arising out of carriage of goods as commercial disputes is not only limited to a few high courts but rather prevalent across the various High Courts and even the Supreme Court. This particular judicial opinion that favours treating disputes arising out of carriage of goods as commercial contracts is not even a new one, and has continued to

dominate the Indian judicial mind since a long time as can be gauged from the fact that the Supreme Court since 1961 in the Atiabari Tea Company v State of Assam case has stuck with the viewpoint.

Conclusion And Suggestions

From the foregoing discussion, it has become clear that both international law and the domestic law shows an inclination to recognise disputes arising out of carriage of goods as commercial disputes. At the international plane, contracts of carriage of goods are certainly commercial contracts if one goes by the WTO Law on the subject. This also implies that disputes pertaining to law of carriage of goods can be resolved as commercial disputes.

Looking at the Indian jurisprudence on the issue, while the Commercial Courts Act, 2015 has expressly stipulated disputes arising out of carriage of goods as commercial disputes provided they satisfy the statutory minimum threshold of value of the subject matter being Rs. 1 crore; even prior to 2015 disputes arising out of carriage of goods were being treated as commercial disputes going by the decisions rendered by a number of High Courts and the Supreme Court.

Thus, not only international law and domestic statute but also the judicial viewpoint clearly leans in favour of treating disputes arising out of carriage of goods as commercial disputes. Such a viewpoint finds favour among both the legislative and judicial organs at both the international and domestic levels because of the rationale that for all practical purposes doing so would enhance the efficiency of courts while dealing with disputes arising out of carriage of goods as most jurisdictions around the world have procedural mechanisms in place to expedite proceedings in cases of commercial disputes. At the international level too, doing so improves chances of amicable and expeditious resolution of disputes possible through channels such as international commercial arbitration.

Despite the clear advantages of classifying a dispute as a commercial dispute such as the option to go for international commercial arbitration as a mode of dispute resolution, expeditious disposal under laws of most countries such as Commercial Courts Act, 2015 in India, improvement in various indices such as the logistics performance index, ease of doing business rankings etc. there are still persisting lacunae in the Indian law that need to be addressed, primary among which is the restricted scope of the Commercial Courts Act, 2015 as a result of the statutory threshold requirement of minimum value of subject matter to be Rs. 1 crores. This implies that a large number of disputes arising out of contract of carriage of goods remain aloof from the advantages often associated with classifying a dispute as a commercial dispute such as quick and expeditious disposal of cases, positive perception of India as a business friendly destination etc.

This restricted scope and ambit of a commercial dispute pertaining to carriage of goods is quite not in adherence with the international law on the subject that does not prescribe any minimum monetary threshold to classify disputes arising out of carriage of goods as commercial disputes. This also creates fundamental legal problems of forum selection, wherein a contract of carriage of goods the value of whose subject matter may be Rs. 99 lakhs would have to go through the agony of slow and tedious litigation beginning in the civil court at the district level, while a contract of carriage of goods the value of whose subject matter is Rs. 1.1 crores shall have the advantage of expeditious disposal at the Commercial contract under the provisions of the Commercial Contracts Act, 2015. The minimum statutory requirement of Rs. 1 crore certainly creates an artificial barrier in ushering in efficiency of the legal system in dispute resolution in cases of disputes arising out of carriage of goods. This also has a negative impact on the global image of India as an emerging logistics destination and may derail the progress made by India as far as its performance at various indices such as logistics performance index, ease of doing business index etc. is concerned.

One way to address this legal ambiguity is by incorporating clear provisions that stipulate all disputes arising out of carriage of goods as commercial disputes in all international conventions governing carriage of goods as well as the domestic legislations on the subject. This would ensure that there is no ambiguity on the question and the parties to the dispute can easily go for better dispute resolution alternatives that are often available in cases of commercial disputes. However, such a process would be tedious, time-consuming and cumbersome; and may take few years before a sizeable number of countries ratify and accede to the amendments made. Another way therefore is to remove the minimum statutory threshold requirement of Rs 1 crore as the value of the subject matter to qualify as a commercial dispute under the Commercial Courts Act, 2015. This may not be done for the all heads of disputes under the act, but particularly for disputes arising out of carriage of goods so as to bring parity between the international and the domestic law on the question.