

Bill Summary

The Specific Relief (Amendment) Bill, 2017

- The Specific Relief (Amendment) Bill, 2017 was introduced in Lok Sabha by the Minister of Law and Justice, Mr. Ravi Shankar Prasad on December 22, 2017. The Bill seeks to amend the Specific Relief Act, 1963. The Act sets out the remedies available to parties whose contractual or civil rights have been violated. The Act sets out two main remedies to a party whose contract has not been performed: (i) the party may ask the court to compel performance of the contract (specific performance); or (ii) the party may seek monetary compensation instead of performance.
- **Specific performance:** Under the Act, specific performance is a limited right, which may be given by the court at its discretion, in the following circumstances: (i) when monetary compensation is inadequate; or (ii) when monetary compensation cannot be easily ascertained. The Bill seeks to remove these conditions and permit specific performance by courts as a general rule.
- The Act contains a list of persons (i) who may seek specific performance and (ii) against whom specific performance may be sought. This list includes: (i) a party to the contract; or (ii) a company resulting from the amalgamation of two existing companies. The Bill adds a new entity to the list of parties. It now includes 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.
- **Substituted performance:** The Bill gives an affected party (i.e. a party whose contract has not been performed by the other party) the option to arrange for performance of the contract by a third party or by his own agency (substituted performance). The affected party has to give a written notice of at least 30 days before obtaining such substituted performance. The costs in connection with such performance may be recovered from the other party. After obtaining substituted performance, specific performance cannot be claimed.
- **Injunctions:** Under the Act, courts can grant preventive relief (injunctions) to parties. The Act provides circumstances in which injunctions cannot be given, for example, to stop a party from filing a complaint in a criminal matter. The Bill additionally seeks to prevent courts from granting injunctions in contracts related to infrastructure projects, if such an injunction would hinder or delay the completion of the project.
- These projects can be categorized under the following infrastructure sectors and their sub-sectors: (i) transport; (ii) energy; (iii) water and sanitation (iv) communication (such as telecommunication); and (v) social and commercial infrastructure (such as affordable housing). The central government may amend the list through notification.
- **Special Courts:** Under the Bill, 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 related to infrastructure projects. Such cases must be disposed off within 12 months from the date of receipt of summons by the defendant. This period can be extended by the courts for another six months.
- **Recovery of possession:** The Act 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 Bill additionally permits a person through whom the dispossessed got possession of the immovable property, to file a suit for recovery.
- **Experts:** The Bill inserts a new provision for engaging technical experts in suits where expert opinion may be needed. The court will determine the terms of payment of such expert. The payment will be borne by both the parties.

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