

Effective Handling Of ICC International Arbitration

S Ravi Shankar¹

International Chamber of Commerce (ICC) is the most important and effective International organisation established after 2nd world war to promote international trade and Commerce. ICC has helped the international business community by promoting business friendly policies to various countries, through institutions like UNCITRAL. The flag ship service provided by ICC is ICC arbitration service, which carries the hallmark of the ICC International Court of Arbitration; a world leader in resolving international commercial disputes. Since its creation in the year 1923, the ICC court has administered over 20,000 cases from across the world. It is important to understand that ICC International Court of Arbitration is not a National or International court, it is a body which administers the arbitrations on the strength of the authority given to ICC by the parties through their arbitration agreement. The author endeavours in this article to give practical tips to the parties to cut down the costs of arbitration and to conclude the proceedings faster.

Seat of Arbitration in an ICC arbitration need not be in Paris. There is a common apprehension among the parties that the seat of arbitration is Paris for all ICC arbitration cases since ICC head office is in Paris, which is not true. ICC Court administers Asia seated arbitrations through its Hong Kong office and the arbitrations seated in Americas through its New York office. Seat of arbitration for ICC arbitrations can be anywhere in the world, as decided by the parties in their arbitration agreement. Hence unlike many other arbitral institutions, it is important to understand that ICC does not have any default seat of arbitration in its rules. For example, if parties select Hong Kong International Arbitration Centre (HKIAC) as the administering arbitral institution to administer the arbitration and fail to specify a seat of arbitration then the default seat specified in HKIAC rules will apply. As per the HKIAC Rules the default seat of arbitration shall be Hong Kong and hence Hong Kong will automatically become the seat of arbitration. BUT ICC Arbitration Rules do not have any default arbitration seat and hence the arbitral tribunal has to determine the most appropriate seat, by taking into consideration various factors, which will take some time. Hence the first point for effective handling of an ICC arbitration is specifically stating the applicable laws in the arbitration clause itself.

Request for arbitration is the first step by which parties initiate arbitral proceedings under ICC rules. Such a request, requires only little information which include details of the parties, quantified claims, reasons for the disputes, relief sought for, arbitration agreement, applicable laws and the applicable fee of USD 3000. But if the claimant can file a detailed statement of claim at that point itself, it will help the opposite party to properly evaluate

¹ The author is an International Arbitration lawyer and Senior Partner of Lawsenate arbitration law firm from India having its offices in New Delhi & Mumbai

the merits and decide if they wish to settle the matter. It will also help the proceedings to move faster.

The answer to the request for arbitration and counter claims of the defending party need not be elaborate as per the ICC Rules. But by filing a detailed and final answer to the claim and predict the detailed final claim the defendant can effectively assist the claimant to o the possible outcome of the case. Such a detailed answer may lead to a settlement because both the parties would be able to appreciate the strength and weakness of their cases.

Breaking of the preliminary issues, in an early stage of arbitration may help parties to reduce the costs. This is because in many cases issues like Jurisdiction of the tribunal, limitation, governing law etc., if decided in the early stage, it may not be necessary for the parties to undergo the entire proceedings. For example, in a time barred case, if a tribunal comes to a conclusion that the claim is barred by time, it need not go into the merits of the case. Hence in such matters where there is a possible disposal of the entire matter, in an early stage, the parties can seek the arbitration tribunal for breaking of the preliminary issues and decide them without going into the merits of the substantive contract disputes.

Limitation to Document production is another important issue which involve substantial time and cost. The ICC Rules of Arbitration contain no specific provision governing the document production. Article 19 of the Rules allows the parties to agree upon the procedure to be followed and empowers the tribunal to decide in the absence of an agreement between the parties. Article 22(4) requires the arbitral tribunal to ensure that each party has a reasonable opportunity to present its case. Hence In-house counsel and party representatives should consider and decide the extent of document production on the basis of the facts of the case and the claims of the parties. In some cases, parties spend millions of dollars in document discovery without any acceptable reason, on wrong legal advice.

Need of the fact witnesses is an important point, which is a major cost and ignored by the parties. Article 25(1) of the ICC Rules of Arbitration requires the arbitral tribunal to establish the facts of the case by all means. This include the hearing of fact witnesses. However, Article 25(6) allows the arbitral tribunal to decide the case solely on documents. This would permit an arbitration with no hearing and no fact witnesses. But the discretion of the parties must be exercised by parties taking into consideration of the

Expert witness is one another aspect which is a major cost and time consuming process. Article 25(3) of the ICC rules contemplates the possibility of experts appointed by the parties, while Article 25(4) provides that the arbitral tribunal may appoint one or more experts, after consulting the parties. The parties should decide the necessity of examining the expert witnesses, since even in technical matters, disputes need not be technically complex. Even in the requirement of expert witnesses, they can go for a tribunal appointed technical experts than going for a party appointed expert.

www.lawsenate.com

B3/73, Safdarjung Enclave, Lower Ground Floor, New Delhi - 110029 India.

403, Tardeo A/C Market(4th floor), Tardeo Road , Mumbai-400034 India

+91-11-26102873, +91-11-26104773

contactus@lawsenate.com, info@lawsenate.com

Copyright © 2015 Law Senate. All rights reserved

One of the major complaints against international arbitration is high costs and all the stake holders should do their bit to make it client friendly.



www.lawsenate.com

B3/73, Safdarjung Enclave, Lower Ground Floor, New Delhi - 110029 India.

403, Tardeo A/C Market (4th floor), Tardeo Road, Mumbai-400034 India

+91-11-26102873, +91-11-26104773

contactus@lawsenate.com, info@lawsenate.com

Copyright © 2015 Law Senate. All rights reserved