

LIMITATION TO ENFORCE A FOREIGN ARBITRATION AWARD IN INDIA

Arbitrations (domestic as well as International) seated in India, enforcement of foreign arbitration awards passed in a New York convention seat, powers of the courts to grant interim orders in favour of a foreign seated arbitration, Powers of the courts to refer parties to arbitration if there is a valid arbitration agreement between parties and appointment of arbitrators are governed by Arbitration and Conciliation Act, 1996. India does not have two separate legislations for international arbitrations and domestic arbitrations but the above said legislation covers the entire arbitration scope in India.

The Above said Arbitration Act expressly prohibits the applicability of Code of Civil Procedure and the Evidence Act, unless parties decide jointly otherwise. The above said Act itself provides limitation and time lines for various actions under the Act including initiating arbitration after obtaining an interim order from a court in anticipation of an arbitration, completion of arbitration from the date of formation of the arbitration tribunal, challenging an arbitration award etc., With regard to Domestic Arbitration awards after one hundred and twenty days from the date of the arbitration award if not challenged automatically becomes an enforceable court decree. From that date within 12 years at any point of time enforcement proceedings can be initiated.

But the act has not expressly provided any limitation for enforcement of a foreign seated arbitration award in India. It is important to understand the scheme of enforcement of an international arbitration award to have a better understanding of the present article. An international arbitration award can be enforced in different countries where ever the debtor has assets, till the realization of the full award amount. Since enforcement of arbitration awards is a time consuming and expensive procedure, the award holder will not prefer to initiate enforcement proceedings in all places immediately after the award, he will initiate proceedings in the best place and move to other places if the recovery is not sufficient to satisfy the award. The law makers in India must have understood the full scheme of enforcement of arbitration awards and hence did not prescribe any limitation for enforcement of foreign seated arbitration awards in India.

But when some of the debtors raised the issue of limitation during the enforcement proceedings, different high courts in India gave different interpretations to the applicability and the scope of the provisions of the Limitation Act, to the proceedings seeking enforcement of a foreign award in India against an Indian party, using the provisions of New York convention on recognition and enforcement of foreign awards. In those cases, the following issues were raised (a) Whether the provisions of Limitation Act are applicable in a proceeding filed under S.47 of the Arbitration and Conciliation Act, 1996, in the absence of any express provision in the Act (b) If Limitation Act is found applicable which provision of Limitation Act will apply (c) In case of a delay, whether an enforcing court can condone the delay in filing the application seeking enforcement?

The Parties to the contract raised various contentions including the applicability of Limitation Act, in special laws where limitation was not specifically mentioned. In the cases reported as **Rudolf A Oetkar Vs Mohammed Ori 1999 SCC Online Cal**, the Calcutta High Court held that the limitation Act, 1963 would apply in the case. It further held that if a suit is filed seeking to enforce the foreign arbitration award then the residuary Article 113 would apply and if an application seeking enforcement of the arbitration award is filed Article 137 would apply. In both the cases 3 years is the limitation to approach a court in India to initiate an action based on an international arbitration award. In case reported as **Compania Naviera Vs Bharat Refineries Limited AIR2007 Mad 251**, the High Court of Madras held that there is no limitation for enforcement of foreign awards in India since there is no express limitation provided in the Arbitration Act.

In another case **Noy Vallesina Engineering SPA Vs Jindal drugs Limited**, the High Court of Bombay dealt with the issue of limitation by a well-reasoned judgment. In this case the Foreign party tried to enforce a foreign seated arbitration award and Indian party contested that the award is time barred because it was more than three years between the date of pronouncement of the award and the filing of the enforcement proceedings. The Foreign party argued that the Arbitration and Conciliation Act 1996 is a special Act and in such a situation, where there is no express provision for limitation, limitation Act cannot be applied. But the court held that the Limitation Act will apply but the delay can be condoned. Hence to be in the safer side foreign parties should initiate enforcement within 3 years from the date of receipt of the award, to avoid any difficulties.