

Commencement & Limitation in Institution administered Arbitrations.

Limitation law in India provides for a three years' limitation period to initiate/ commence a legal action from the date of breach of the contract or the date on which the continuing breach came to an end (Article 55 of the Limitation Act). It is the duty of the arbitrator or the court to determine if the claims of the claimant are time barred or not before granting any relief, even if the opposite party has not raised any objection. It is the settled law that even if the defendant or the respondent has not raised the issue of limitation in their defense, still the arbitrator requires to decide the same before going into the merits of the case since it is an issue pertaining to the jurisdiction of the arbitral tribunal. Hence if the arbitration is commenced beyond the said three years' time, the claim raised in the arbitration will become time barred. In such a situation, even if the claim is sustainable on the merits of the case, technically it is not maintainable.

Always, there is a confusion even among the lawyers, what is the point, where the limitation period starts running, in contract matters. In contract matters, normally disputes arise from a cause of action. The examples of causes of action include termination of a contract or non-payment of a bill, rejection of a variation claim in an infrastructure contract or a delay in entering a contract after the tender process is complete or non-payment of a running bill. Examples like termination of a contract or non-payment of a bill or a rejection of a variation claim is a cause of action that entitles an aggrieved party to initiate arbitration proceedings seeking compensation or damages. That means those are the breaches of a party to the contract that can result in an arbitration award. In these cases, once the limitation starts, it cannot be stopped or renewed, unless the other party makes a part payment or confirms the liability in writing. If the other party makes a payment or it confirms the liability, then the starting point gets shifted to either the date of part payment or to the date of confirmation. If no such thing happens it is the duty of the injured party to make the claim within a maximum of three years from the date of breach, if not it will become an unenforceable claim.

In case of examples like delay in signing the contract after the tender process or non-payment of a running bill, the cause of action is a continuing cause of action. A running bill will get added to the next running bill, if payment is not made and this process will continue till the final bill is raised. But the said continuing cause of action will stop on the final bill date. Hence the arbitration should be commenced within three years to the date, the final bill becomes payable. In the same way, if an employer is ignoring the date specified in the tender for entering a contract and delaying the execution of the contract, the cause of action starts from the starting of the delay till the contract is entered belatedly. Once the contract is entered, the continuing cause of action comes to an end. The date on which it came to an end is the date on which the limitation starts running. Hence an aggrieved party, requires to commence the arbitration within the said limitation period.

Commencement of Arbitration as per Indian Arbitration and conciliation Act,1996 happens when the notice seeking arbitration issued by a party to an arbitration agreement is received by the respondent under S.21. That means to have an enforceable claim, the injured party should issue a notice so that the respondent receives it within 3 years. But the S. 21 Section specifically states, unless otherwise agreed by the parties and hence parties are free to agree on a different procedure for the commencement of the arbitration proceedings. In such a situation, if parties choose an arbitral

institution to administer their arbitration under the Rules of that institution, then the parties must fulfill the requirements of the rules of the arbitral institution to start the arbitration. In a recent case, **Adhani Global Private Limited Vs MMTC Limited 2018 SCC Online Del 8182** Delhi high court pronounced an interesting judgment dealing with the legal requirements to commence an arbitration proceeding. In the said case, the arbitral institution chosen by the parties was Indian Council of Arbitration (ICA). In the said case the petitioner issued a general notice to the respondent and filed a notice arbitration belatedly in the arbitral institution. The relevant clause of ICA Rules are reproduced below:

Rule 15(e). The arbitration shall be deemed to have commenced on the day the application for arbitration, registration fees and Statement of claim are received in the office of the council.

The Arbitral tribunal consisting of three Former Supreme Court judges rejected the claim as time barred, which was upheld by the Delhi High Court. Hence, it is very important in complying with the requirements of the Institutional Rules, to commence the arbitration proceedings, as per law.