
LIMITATION FOR MAKING A COUNTER CLAIM IN INDIA

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Law of Limitation applies to Arbitration proceedings also and S.43 of the Arbitration and Conciliation Act,1996 expressly provides for the same. Counter claim is the claim filed by a respondent against the claimant in the arbitration proceedings, after the claimant initiated arbitration proceedings. Mostly counter claims are filed along with the Statement of Defense by the Respondent or even later. These counter claims mostly arise out of the contract period and some of them even after the contract period. The Respondent might not have chosen to claim the amounts by seeking for an appointment of arbitrator for various reasons including size of the amount, to avoid dispute or not to provoke the other party etc., But once the other party chose to invoke arbitration the respondent, may also would like to make its claims by way of a counter claim. Hence many a times, a confusion arise whether the counter claim is within the limitation period and how to calculate the limitation period.

Normally Limitation starts from the date on which the cause of action arose and to be within the limitation as per Indian law, the action must be initiated within 3 years from the date of the cause of action Panchu Gopal Bose Vs Board of Trustees of Port of Kolkatta (1993) 4 SCC 338.As per S.3(2)(b) of the Limitation Act, the date of institution of the suit in the court shall be the date of commencement of the counter claim. That means the counter claim should be filed before the arbitral tribunal within three years from the date of cause of action, to be within the limitation period. Hence in normal cases S.21 of the Arbitration and Conciliation Act,1996 does not apply to cases relating to counter claims.

But another situation is also possible in the matter of a counter claim, in which the respondent in the present arbitration also issued a notice seeking arbitration earlier. But since the other party went ahead with the appointment procedure and got the arbitrator appointed, it became the claimant. In this case, both the parties, issued notice for arbitration the claimant initiated appointment of arbitrator proceeding, the claimant filed the claim, the other party has become the respondent and making its claims against the claimant by way of counter claims. In case with similar facts, State of Goa Vs Praveen Enterprises reported as (2012)12SCC 581, Supreme Court of India held that in such cases the respondent also can have the advantage of taking the date of notice as the date of commencement of proceedings.

Even in a recent Judgment in the case of Pawan Hans Helicopters Limited Vs IDEB Projects private Limited reported as 2017 SCC online 7560 High Court of Delhi followed the above said law laid down by the Supreme Court and confirmed the Arbitration award in a challenge to set aside the award.

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