



Online arbitration process how it works

S Ravi Shankar¹

Arbitration has become the most convenient and popular dispute resolution process for the resolution of commercial disputes. The arbitration clause is incorporated not only in high-value commercial contracts but also in small size contracts. This is because of the procedural simplicity, time bound the results and enforceability. Even in international contracts parties prefer to incorporate arbitration clauses because of the possibility of selecting a neutral seat, neutral laws, simplicity in procedure and enforceability of international arbitration awards globally due to the New York convention² 1958. But not all the disputes arise from high value contracts, the disputed amounts may be less in quantum and hence resorting to regular arbitration procedure will become not economically viable. Hence, many parties do not initiate arbitration proceedings even though they have disputes with the other party, keeping in mind the potential costs of arbitration. Hence, online arbitration is becoming popular these days. They are less expensive than regular arbitrations and simple in procedure. We are examining the process of online arbitration in this article. The article is based on the arbitration platform of “IDAC India³” an arbitration center, providing online arbitration.

Arbitration clause for an online arbitration: Online arbitrations are provided by the platforms provided by arbitral institutions and hence it is necessary to incorporate the name of the arbitral institution in the arbitration clause. The clause also should specifically state that the arbitration between the parties shall be an online arbitration. It is preferable to choose an arbitration center having its office in the seat of arbitration, so that the center is aware of the procedural law applicable in the seat. It is also advisable to, not to choose a foreign law, as the substantive law in an online arbitration. This is because mostly the arbitral tribunal shall be consisting of one member and it is an unnecessary complication added to the process. Hence parties are advised to choose both procedural law and substantive law from the seat of arbitration only.

Appointment of Arbitrator: All the online arbitrations are administered by arbitral institutions hence there is no ad hoc arbitration in online arbitration system. Hence the procedure governing the online arbitration is governed by the rules of the arbitral institution. Normally, the aggrieved party shall send the request for arbitration to the arbitral institution empowered to administer the arbitration, specifying the arbitration clause between the parties, list of disputes, quantum of disputes etc and to seek for an appointment of an arbitrator. The party seeking arbitration may be asked to deposit part of the costs at that point of time. The arbitral institution shall share three choices of arbitrators to be appointed for the case, to both the parties, seeking their preference. After receiving their preferences

¹ The author is an Arbitration expert lawyer and senior partner of Law Senate law firm

² Convention on the Recognition and Enforcement of Foreign Arbitral awards, 1958

³ www.idacindia.org is an arbitral institution recommended by Government of India for online dispute resolution.

or after the time prescribed to give the preference is over, the arbitral institution shall have the right to appoint the arbitrator. Mostly in online arbitrations, only a sole arbitrator is appointed.

Filing and Completion of Pleadings: After the appointment of Arbitrator, the Arbitrator, parties and their counsels shall be provided with the login ID and password to enter the arbitration platform of the arbitral institution. With the help of the above said username and password, the parties and their counsels can access to the page which deals with the particular case. The said page can be accessed only by the Institution, Parties, counsels & Arbitrator. For each case, separate and exclusive pages are provided in the platform. The said page provides facility for uploading of Claims, Statement of Defense, rejoinder if any, affidavits, applications etc., Once a party uploads a document all parties, counsels, arbitrator and Institution are notified. One set of original documents should be sent to the Arbitral Institution by courier /post.

Document only Arbitrations: most of the online arbitrations or only document only arbitrations. Hence the requirement of examining of oral witnesses doesn't arise. Mostly there won't be any oral hearings, unless insisted by parties. If oral argument is allowed by the arbitrator, the arguments shall be heard by the arbitrator online. The parties shall reply to the issues finalized by the arbitrator in writing, which is called as "written submissions". The arbitrator shall study both the submissions and take the final decision.

Domestic Arbitrations: The online arbitration process is very convenient and less expensive for finance companies, supply contractors, banking companies, leasing companies etc., where the documents and complex factual disputes are there. The Parties can attend the arbitration hearings from their office only. Hence it is less expensive and simple.

Passing of the award: The arbitrator shall consider the documents and pleadings filed by the parties, written submissions and the oral hearings (if any) and pass the final award. The hard copy and soft copies of the award shall be sent to parties on payment of required court fee. The awards passed in online arbitrations are enforceable as the regular arbitration awards.