

## Impact of Covid-19 on Arbitration Proceedings in India

written by Chandni Arora | March 27, 2020



### Impact of COVID Outbreak on Arbitration Proceedings

The world is reeling under the impact of Covid-19, a global pandemic that has caused lockdowns in many countries. With the outbreak showing no signs of abating, the worldwide disruption in all facets of life seems set to continue. The legal system of India is no exception including the Alternate Dispute Resolution Mechanism, which has also been adversely affected.

The Supreme Court of India, taking suo moto cognizance of the difficulties faced by litigants throughout the country, on account of the Covid-19 Virus with respect to the period of limitation under various laws passed an order dated March 23, 2020. It was held that the period of limitation in all proceedings before any Court or any Tribunal [whether under the general law or

Special Laws] shall stand extended w.e.f. March 15, 2020, till further orders are passed.

The challenge to arbitral proceedings in the present scenario and the implications of Section 29A

The situation of complete lockdown in the country prevents the physical conduct of arbitral proceedings. Non-conduction of proceedings gives rise to its own set of problems. Section 29A which was inserted by the Arbitration and Conciliation (Amendment) Act in the year 2015, fixes the time-period for passing the arbitral award at twelve months from the date of reference to the arbitral tribunal (i.e. when notice of appointment is

received by the arbitrator)

and is extendable by another six months with the consent of the parties. Any further extensions can only be granted by the concerned court, either prior to or after the expiry of the time period, failing which the mandate of the arbitral tribunal shall terminate.

Hence, Section 29A, though enforcing a strict timeline for the conclusion of arbitration proceedings, also provides a saving grace which may be resorted to

in situations such as the present one.

In order to seek an extension

of the statutory timeline for completion of arbitration proceedings, both the parties (jointly) or either of the parties individually can file an application

before the concerned court *within a reasonable period* from either before or after the expiry of 12 months.

The pending arbitration

proceedings where the stipulated time period is expiring within the lockdown period as mandated by the Government of India may take recourse to Section 29A for extension of time upon reopening of the courts of law.

Further, in line with

the direction of the Hon'ble Supreme Court dated March 23, 2020, the statutory

timelines for filing pleadings as well as conduction of all other proceedings stand extended and may be referred to in the application for an extension being

filed. The order dated March 23, 2020, is all-encompassing and is applicable to

all Courts and Tribunals which includes an Arbitral Tribunal as well.

Litigation proceedings arising out of the Arbitration & Conciliation Act

Statutory timelines

enumerated under the Arbitration & Conciliation Act wherein a Court of law is mandated to be approached such as under Section 27, seeking Court assistance

for evidence or under Section 34 for challenging an arbitral award, also stand

affected in the present scenario. However, the order of the Hon'ble Supreme Court dated March 23, 2020, provides relief in extending the limitation period

for all such stipulated timelines codified in the Act.

Modernized procedures in International Commercial Arbitration to lead the way

The Indian Council of

Arbitration (ICA) is a leading arbitral institution in India

administering the conduct of arbitration proceedings including international commercial arbitration. The ICA has been set up through the initiatives of the

Government of India and handles a vast number of arbitration cases. The ICA has

framed and adopted the International Commercial Arbitration Rules which govern

international commercial arbitration carried out by the ICA and serve as a guideline to other arbitral institutions as well.

The rules of the ICA

mandate that the Arbitral Tribunal has the power to conduct arbitration proceedings by video conference, telephone or any such other means of communication as may be feasible and deemed fit. Since in international commercial arbitration, the parties are often residents of different countries,

in order to enable the cost-effective arbitration proceedings and to meet the strict statutory timelines, the use of modern technology is a necessity more than a preference.

Since the virtual

conduct of proceedings is already an established norm in international commercial arbitration, domestic arbitration proceedings will do well taking a

leaf out of their book and applying it to today's tumultuous situation.

Continuity of Arbitration

Proceedings in the time of Corona

Despite the increasing

restrictions and complete lockdown in the country, some arbitral proceedings, which are of urgent nature, may be conducted virtually. Section 19 of the Arbitration & Conciliation Act, 1996 states that the Arbitral Tribunal shall not be bound by the Code of Civil Procedure, 1908 nor the Indian Evidence Act,

1872. The parties to the arbitration proceeding or the Arbitral Tribunal may decide on the procedure to be followed in the conduct of such arbitration proceedings.

While the Arbitration

& Conciliation Act, 1996 is silent on the conduct of arbitration proceedings through video conferencing, Section 19 certainly empowers the Arbitral Tribunal to allow the same. The Arbitral Tribunal can direct the parties to the arbitration proceedings to file pleadings through electronic mail and conduct proceedings through the means of video conferences aiding social distancing with minimal loss of productivity.

In fact, Arbitral

Tribunals in consonance with the changing technology and the strict statutory timelines enumerated in the Arbitration & Conciliation Act, 1996 may even resort to video conferencing in routine circumstances for convenience as well as cost-effectiveness even in domestic arbitration proceedings.

Contributed By - Mirza Aslam Beg, Partner

& Chandni Arora, Senior Associate

King Stubb & Kasiva,

Advocates & Attorneys

[Click Here to Get in Touch](#)

[New Delhi](#) | [Mumbai](#) | [Bangalore](#) | [Chennai](#) | [Hyderabad](#) | [Kochi](#)

Tel: [+91 11 41032969](tel:+911141032969) | Email: [info@ksandk.com](mailto:info@ksandk.com)