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ABOUT US



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

APPLICABILITY OF THE LAW OF LIMITATION TO APPOINTMENT OF ARBITRATORS IN INDIA

AUTHORED BY - GURDEV SINGH TUNG & SAHI BAJAJ

INTRODUCTION

The Law of Limitation is an essential component of court procedures, ensuring that claims are filed within a reasonable period. It is based on the principle that the law serves the vigilant, not those who sleep over their rights - *vigilantibus non dormientibus jura subveniunt*. The purpose of the law of limitation is to enforce an existing right by imposing a bar after a predetermined amount of time, rather than to grant a right where none previously existed.

In India, this is accomplished by the Limitation Act, 1963 (hereinafter referred to as the "Limitation Act"), which applies to both arbitration and litigation. It establishes time limits for filing lawsuits in India related to civil cases. The Hon'ble Supreme court (hereinafter "Court") observed in *SC Prashar vs Vasant Sen*¹ that the Statute of limitation is a statute of repose, peace, and justice.

It is important to recognize that the Law of Limitation serves as an essential safeguard to stop legal disputes from being endlessly prolonged, not just a procedural formality. If time restrictions weren't imposed, parties might be obliged to defend allegations based on long-since-past incidents, for which it's possible that recollections have deteriorated and the evidence has gone. By doing this, it strikes a balance between the rights of those who want justice and the necessity for stability and resolution in the judicial system on behalf of society.

APPLICABILITY OF THE LIMITATION ACT TO ARBITRATION

Section 43(1) of the Arbitration and Conciliation Act, 1996 (hereafter referred to as the "Arbitration Act"), explicitly requires the application of the Limitation Act to arbitration procedures in the same way that it does to court proceedings, guaranteeing consistency between various dispute resolution mechanisms.

¹ SC Prashar vs Vasant Sen, 1963 AIR 1356.

In *SBP & Co. v. Patel Engineering Ltd.*,² the Court stated that in order to avoid drawn-out and costly arbitration processes for claims that are time-barred, the question of limitation must be resolved at the pre-reference stage. This guarantees that, similar to court proceedings, the arbitration process is not overburdened with cases that have become obsolete over time. One of the main reasons parties prefer arbitration over traditional litigation is its efficiency and timeliness, which the courts have attempted to preserve by applying the Law of Limitation to arbitration.

Section 11 of the Arbitration Act provides for the appointment of arbitrators for arbitration proceedings in India.³ However, the same gives rise to two issues, (i) What is the time limit of the application for appointment of an Arbitrator under Section 11(6) of the Arbitration Act? and (ii) What is the cause of action for establishing when the Limitation Act's time limit started?

- (i) Regarding the first issue, the Court decided in *Grasim Industries vs. The State of Kerala*⁴ that the Arbitration Act would be subject to Article 137 of the Limitation Act. This meant that any application made under Section 11 of the Arbitration Act, including those seeking an arbitrator's appointment under Section 11(6), would need to be filed within three years of the date the cause of action first emerged. The court in *Geo Miller vs. Rajasthan Vidyut Nigam*⁵ adopted a similar position and made it clear that communication between the parties, such as letters or reminders, would not extend the limitation period. Later on, the same was reaffirmed by the Court in *Geo Miller and Company Private Limited v. Chairman, Rajasthan Vidyut Utpadan Nigam Limited*.⁶
- (ii) With regard to the second matter, the Court in *Geo Miller vs. Rajasthan Vidyut Nigam*⁷ determined that the time frame for referring to arbitration under the Arbitration Act may be extended to include the period in which the parties were genuinely negotiating an amicable settlement, citing the cases of *Major (Retd.) Inder Singh Rekhi*⁸ and *Hari Shankar Singhania*.⁹ But in certain situations, every negotiating thread between the parties needs to be explicitly argued and entered into the record. After carefully

² *SBP & Co. v. Patel Engineering Ltd.*, (2005) 8 SCC 618.

³ Arbitration & Conciliation Act, 1996 (India) § 11.

⁴ *Grasim Industries v. The State of Kerala*, (2018) 14 SCC 265.

⁵ *Geo Miller v. Rajasthan Vidyut Nigam*, 2019 SCC OnLine SC 1137.

⁶ *Geo Miller and Company Private Limited v. Chairman, Rajasthan Vidyut Utpadan Nigam Limited*, (2020) 14 SCC 643.

⁷ *Geo Miller v. Rajasthan Vidyut Nigam*, supra note 5.

⁸ *Major (Retd.) Inder Singh Rekhi vs. Delhi Development Authority*, AIR 1988 SCC 1007.

⁹ *Hari Shankar Singhania & Ors v. Gaur Hari Singhania & Ors.*, (2006) 4SCC 658.

examining this past, the Court needs to determine the "breaking point", i.e., the time at which a reasonable party would have given up trying to reach a settlement and thought about sending the case to arbitration.

LATEST DEVELOPMENT

Recently, in March 2024, the Court provided important clarifications on the aforementioned matter in *Arif Azim Co. Ltd. v. Aptech Ltd.*¹⁰ Citing other precedents, such as *Geo Miller and Company Private Limited v. Chairman, Rajasthan Vidyut Utpadan Nigam Limited*¹¹ and *SBP & Co. v. Patel Engineering Ltd.*¹² the court upheld the applicability of the Limitation Act to arbitration proceedings under the Arbitration Act.

The Court clarified that once a valid notice of arbitration has been sent and the opposing party has either failed or refused to choose an arbitrator, the limitation period for submitting an application to appoint an arbitrator begins. This position was supported by the *Bharat Sanchar Nigam Limited v. Nortel Networks India Private Limited*¹³ case.

Therefore, The Arif Azim ruling offers much-needed clarification regarding the start of the limitation period for applications filed in arbitration. It emphasizes that rather than beginning on the date of the underlying cause of action, the statute of limitations begins on the date the respondent fails to act upon the notification requesting arbitration.

CONCLUSION

In conclusion, the Law of Limitation is essential to the prompt settlement of disputes in India, both through the judicial system and arbitration. The Limitation Act's applicability to arbitration procedures has been further defined by the Supreme Court's recent ruling in Arif Azim, offering parties to such disputes much-needed direction. A just and timely settlement of disputes can be ensured by parties by being aware of and abiding by the specified limitation limits, which reduces the possibility that their claims would be time-barred due to delay.

¹⁰ *Arif Azim Co. Ltd. v. Aptech Ltd.*, (2024) 3 S.C.R. 73.

¹¹ *Geo Miller and Company Private Limited v. Chairman, Rajasthan Vidyut Utpadan Nigam Limited*, supra note 6.

¹² *SBP & Co. v. Patel Engineering Ltd.*, supra note 2.

¹³ *Bharat Sanchar Nigam Limited v. Nortel Networks India Private Limited*, (2021) 5 SCC 738.