

Consolidation of Arbitrations under Different Institutional Rules

Arbitration is a creature of a contract and a right to arbitrate also arises out of a contract. Generally, parties who enter into an arbitration agreement are only entitled to arbitrate amongst themselves. The essence of arbitration is party autonomy which allow the parties to a contract to choose the institution and the law as per their choice to adjudicate upon the disputes between them. However, a party, not a signatory to the contract containing arbitration clause, may also be subjected to arbitration under certain circumstances. Different arbitrations arising out of different contracts may be consolidated and conducted under a single arbitration depending upon the institution or law under which the arbitrations are being carried out.

Due to commercial transactions becoming exceedingly complex, the issues arising out of such a contract have also become complex. Multiple contracts and sub-contracts are entered into in furtherance of a single transaction sometimes separately and sometimes under one mother agreement. Further, when these contracts are drafted there are instances where such agreements have arbitration clauses to be administered by different arbitral institutions. However, there is no provision under the law for consolidation of arbitration proceedings despite the fact that the issues or disputes may be interlinked and may not be properly/holistically adjudicated, if they are adjudicated separately under different arbitrations.

To get rid of the complexities that may arise in aforesaid circumstances, various arbitral institutions and laws allow the consolidation of arbitral proceedings arising out of different contracts. Such consolidation may not be viable under all circumstances, however, in certain situations it may be advantageous to consolidate multiple arbitrations under different contracts into a single arbitral proceeding. Consolidation of proceedings evades the possibility of inconsistencies that may arise if the same issues or overlapping issues are adjudicated differently by different arbitral tribunals.

Below are few arbitral institutions that allow the consolidation of proceedings:

International Chamber of Commerce^[1] (“ICC”):

The arbitration rules allow for consolidation of proceedings if the parties agree to such consolidation or the International Court of Arbitration deems it fit to consolidate the arbitrations based on the facts and circumstances of the case.

Singapore International Arbitration Centre (“SIAC”):

The SIAC rules of arbitration allow both joinder^[2] and consolidation^[3] of arbitral proceedings. However, such request for joinder and consolidation has to be made prior to the constitution of Arbitral Tribunal. The threshold for consolidation under the rules require that all the parties agree to such consolidation and the agreements are compatible, i.e. disputes arise out of the same legal relationship; the disputes arise out of contracts consisting of a

principle contract and its ancillary contract; or the disputes arise out of the same transaction or series of transactions. However, there have been instances where the Registrar has agreed for consolidation and joinder even when one of the parties objects to the same, thus consent is not a *sine qua non* for such consolidation/ joinder.

London Court of International Arbitration (“LCIA”):

LCIA’s latest rules also provide for consolidation^[4] under the additional powers of the Tribunal however, an approval from the LCIA Court needs to be sought and parties need to agree to it in writing. The rules provide that arbitration agreements need to be compatible and involve same disputing parties. However, such consolidation shall be prior to formation of Tribunal or if Tribunal is already in place, the Tribunal should have the same arbitrators.

Delhi International Arbitration Centre (“DIAC”):

The DIAC Rules are one of the few institutional rules in India that allow consolidation^[5] of proceedings. The rules provide that if the disputes are identical and/or between same parties and/or between parties having common interest the arbitrations may be consolidated on the hearing fixed for terms of reference. Additionally, consolidation may also be done if disputes arise out of separate contracts but relate to same transaction.

In the interest of convenience, cost saving and to achieve the purpose of arbitrations i.e. speedy and efficient adjudication of disputes, the courts have also in all major jurisdictions in India and abroad allowed the consolidation of arbitrations or instead allowed the tribunals to adjudicate on this issue if the law or arbitral institutional rules are silent in this regard. That being said, there is no hard and fast rule and consolidation completely depends on the facts and circumstances of a case. Consolidation may not be beneficial at all times and it always depends whether the merits of the case warrant so.

As discussed above, not all arbitral institutions or rules allow consolidation of arbitrations and hence, parties while entering into contracts should keep this in mind while choosing the institution or law as per which the parties wish to get their disputes adjudicated. Consolidation usually reduces the time and costs involved with arbitrations and further avoid duplicity or inconsistency in decisions which decide same or similar disputes, which may sometimes arise out of different agreements or under the same transaction.

^[1] Article 10 of ICC’s Arbitration Rules.

^[2] Rule 7 of SIAC Rules.

^[3] Rule 8 of SIAC Rules.

^[4] Article 22.1 (ix) and (x) of LCIA Rules, 2014.

^[5] Rule 6 of DIAC Rules.