DELHI INTERNATIONAL ARBITRATION CENTRE (ARBITRATION PROCEEDINGS) RULES, 2023

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DELHI INTERNATIONAL ARBITRATION CENTRE
(ARBITRATION PROCEEDINGS) RULES, 2023

PART-A: INTRODUCTION

1. Application and Interpretation

1.1 These rules may be called the Delhi International Arbitration Centre (Arbitration Proceedings) Rules, 2023.

1.2 Where parties have agreed to refer their disputes to the DIAC for arbitration (whether before or after a dispute has arisen), or where the Court directs that arbitration be conducted between the parties in accordance with these Rules, or where a reference to arbitration is made to DIAC in accordance with law, the parties shall be deemed to have agreed that the arbitration shall be conducted and administered in accordance with these Rules, as amended from time to time.

1.3 If any of these Rules are in conflict with a mandatory provision of law, such law shall prevail.

1.4 These Rules shall come into force with effect from such date as may be approved by the Chief Justice, High Court of Delhi.

2. Definitions

2.1 In these Rules-

(a) "Act" means the Arbitration and Conciliation Act, 1996 as amended from time to time or the re-enactment thereof.

(b) "Arbitral Award" includes an interim, partial and final award.

(c) "Arbitral Tribunal" or "Tribunal" means a Sole Arbitrator or a Panel of Arbitrators, and includes an Emergency Arbitrator.

(d) "Arbitration Committee" means the Committee constituted under Rule 3 of the Delhi International Arbitration Centre (Internal Management) Rules, 2012, as amended from time to time.

(e) "Centre" or "DIAC" means the Delhi International Arbitration Centre, High Court of Delhi.

(f) "Chairperson" means Chairperson nominated by the Chief Justice of the Delhi High Court under Rule 3 of the Delhi International Arbitration Centre (Internal Management) Rules, 2012.

(g) "Claimant", notwithstanding any nomenclature given to the parties in any Court proceeding between them, means the party which files the Statement of Claim first in point of time. The other party(ies) shall be referred to as "Respondent(s)". The party filing Counter- Claim(s) shall be referred as "Counter-Claimant".

(h) "Coordinator" means the Coordinator appointed under Rule 5 of the Delhi International Arbitration Centre (Internal Management) Rules, 2012.

(i) "DIAC Panel of Arbitrators" or "Panel" means the Panel of Arbitrators prepared by the Arbitration Committee in accordance with Rule 10 of the Delhi International Arbitration Centre (Internal Management) Rules, 2012, as amended from time to time.

(j) "Party(ies)" mean(s) the Claimant(s) and Respondent(s) in a dispute referred to arbitration in accordance with these Rules and shall include legal representative(s) and as the case may be, the successor-in-interest of such party.

(k) "Request" means a written request filed by a party in terms of Rule 4.

(l) "Rules" mean the Delhi International Arbitration Centre (Arbitration Proceedings) Rules, 2023 as amended from time to time.

(m) "Sub-Committee(s)" means Sub-Committee(s) as may be appointed by the Chairperson from amongst the Members of the Arbitration Committee.

(n) "Vice-Chairperson" means the Vice-Chairperson nominated by the Chief Justice of the Delhi High Court under Rule 3 of the Delhi International .

Arbitration Centre (Internal Management) Rules, 2012.

2.2 The words and phrases not defined herein shall have the same meaning as used or defined in the Act, the Delhi International Arbitration Centre (Internal Management) Rules, 2012 or the Delhi International Arbitration Centre (Administrative Costs and Arbitrators' Fees) Rules, 2018 and Schedules appended thereto, as the case may be.

3. Written Communications and the Calculation of Periods of Time

3.1 For the purposes of these Rules, any notice, communication or proposal shall be in writing. Any such Written Communication may be delivered personally or by registered post or courier service, or transmitted by any form of electronic communication (including electronic mail and facsimile), or delivered by any other means that provides a record of its transmission or in any other manner as may be decided by DIAC or the Arbitral Tribunal, as the case may be. It shall be deemed to have been received if it is delivered to-

(a) the addressee personally; or

(b) the addressee's habitual residence, place of business, email or address as specified in the agreement.

3.2 If none of the places referred to in Rule 3.1 above can be found after making a reasonable inquiry, the Written Communication shall be deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered post or by way of an email or by any other means, which provides a record of attempted delivery.

3.3 In the case of electronic communication, it shall be deemed to have been delivered when transmitted, with reference to the recipient's time zone.

3.4 For the purposes of calculating period of time in respect of Written Communications under these Rules, such period shall begin to run on the day following the day

under these Rules, such period shall begin to run on the day following the day when a Written Communication or proposal is received or deemed to have been delivered. When the day next following such date is a non-business day at the place of receipt, the time period commences on the first following business day. If the last day of such period is a non-business day at the place of receipt, the period is extended until the first business day which follows. Non-business days occurring during the running of the period of time are included in calculating the period.

3.5 After the constitution of the Arbitral Tribunal, where any party delivers any Written Communication to the Arbitral Tribunal, it shall simultaneously deliver a copy to all other parties and DIAC, with written intimation to the Arbitral Tribunal.

3.6 No such Written Communication shall be taken on record in the arbitral proceedings unless the concerned party has complied with Rule 3.5.

PART-B: REQUEST AND RESPONSE TO THE REQUEST FOR ARBITRATION

4. Request for Arbitration

4.1 A party shall file with DIAC a written Request for Arbitration, including in cases where a reference to DIAC has been made by any Court/Authority. The request shall, in so far as applicable, and be accompanied by-

(a) provisional terms of reference, if any;

(b) where reference is received from a Court, referral order of the Court;

(c) a request that the dispute be referred to arbitration;

(d) the full terms of the arbitration clause or the separate arbitration agreement that is invoked;

(e) where the arbitration clause or the separate arbitration agreement does not provide that

arbitration shall be conducted under the aegis of DIAC, a duly executed memorandum of understanding stating that both the parties have agreed to submit the dispute for arbitration before DIAC*;

(f) a copy of the contract(s) or other instrument(s) out of or in relation to which the dispute arises;

(g) a disclosure of any other arbitration proceedings between the parties where the disputes or differences therein are identical and between the same parties or between the parties having commonality of interest or where such disputes arise out of separate contracts but relate to the same transaction.

(h) the full names and contact details, including postal address(es), telephone number(s), and Mobile number(s) facsimile number(s) and electronic mail address(es), to the extent known, of the parties to the arbitration and their legal representatives, if any;

(i) a statement briefly describing the nature and circumstances of the dispute and the claims advanced by the Claimant against any other party to the arbitration, each such party being here separately described as the "Respondent", specifying the relief claimed, including the amounts of any quantified claims and, to the extent possible, an estimate of the monetary value of any other claims;

(j) a statement of any matters which the parties have previously agreed to as to the conduct of the arbitration or with respect to which the Claimant wishes to make a proposal (such as the number of Arbitrator(s), the applicable rules of law, the language(s) of the arbitration, the seat of arbitration etc.);

(k) in case of arbitration by Sole Arbitrator, unless the parties have agreed otherwise or an Arbitrator has been named by the Court, the request shall contain a list of five Arbitrators from the Panel as suggested

* Model format of memorandum of understanding (MoU) is appended as Appendix 1.

Arbitrator to the arbitration. In case of arbitration by a Tribunal of three Arbitrators, the party making the request shall nominate an Arbitrator from the Panel on its behalf. The party shall take the consent of the Arbitrator so nominated and also ensure that such Arbitrator does not suffer from any disqualification as mentioned in Section 12(5) of the Act:

Provided that in case the Panel does not include a person possessing requisite qualification as per the arbitration agreement, the parties may nominate an Arbitrator from outside the Panel;

(l) proof of service of the Request for Arbitration and any documents filed there with on the other parties to the satisfaction of DIAC; and

(m) confirmation that the requisite administrative charges have been paid.

4.2 In case no such request in terms of Rule 4.1 is received, no further action will be taken by the DIAC. A request which is inchoate in the opinion of the DIAC will not be considered as a valid request.

4.3 Party making Request for Arbitration may also file Statement of Claim as referred to in Rule 16.1 along with the request.

4.4 The contents of the Request for Arbitration does not prevent a party from subsequently adding, supplementing or amending its pleadings, the matters referred to arbitration or the reliefs claimed:

Provided that where the request is accompanied with the Statement of Claim, such amendment shall only be considered by the Arbitral Tribunal in accordance with Rule 18.

5. Response to the Request for Arbitration

5.1 The other party shall file its response to the Request for Arbitration within thirty days of receipt of such request, failing which it shall be presumed that the party has consented to the arbitration in accordance with these Rules. The response shall contain or be accompanied by-

(a) a confirmation or denial of all or part of the claims, including the Claimant's invocation of the arbitration agreement in support thereof;

(b) the full names and contact details including postal address(es), telephone number(s) and mobile number(s), facsimile number(s) and electronic mail address(es) of the Respondent and its legal representatives and successor(s)-in-interest, if any;

(c) a statement briefly describing the nature and circumstances of the dispute and the defence to the claim, including Counter-Claims, if any, raised specifying the relief claimed, and the amounts of any quantified Counter-Claims and, to the extent possible, an estimate of value of any other Counter-Claims;

(d) any comment in response to any statements contained in the Request for Arbitration, or with respect to which the Respondent wishes to make a proposal, on matters relating to the conduct of the arbitration such as the number of Arbitrator(s), the applicable rules of law, the seat/place of arbitration etc.;

(e) In case of Sole Arbitrator, a list of five nominees from the Panel who may be considered for appointment as an Arbitrator. In case of a three members Arbitral Tribunal, the nominee Arbitrator for the Respondent;

(f) confirmation that copies of the Response and the documents relied on have been or are being served simultaneously on all other parties, specifying the mode of service employed and the date of service, by documentary proof satisfactory to DIAC, of actual delivery (including the date of delivery); and

(g) confirmation that the requisite administrative charges have been paid.

5.2 The Response may also include the Statement of Defence and a Statement of Counter-Claim, as referred to in Rule 17.1.

6. Consolidation Mechanism

On the date fixed for the Terms of Reference, the Arbitral Tribunal may, with the consent of the parties, direct consolidation of two or more arbitral proceedings before it, if the disputes or differences therein are identical and between the same parties or between the parties having commonality of interest, or where such disputes arise out of separate contracts but relate to the same transaction.

PART-C: THE ARBITRAL TRIBUNAL

7. Disclosures and Grounds of Challenge

7.1 Where a person is approached in connection with his possible appointment as an Arbitrator, he shall file disclosure in writing in terms of Section 12 of the Act, as amended from time to time.

7.2 Grounds of challenge and other provisions of Section 12 of the Act shall apply *mutatis mutandis*.

8. Appointment and Confirmation of Arbitrators

8.1 The parties to a dispute are free to determine whether the Arbitral Tribunal shall be constituted by a Sole Arbitrator or by three Arbitrators. In no case, the number of Arbitrators shall exceed three.

Sole Arbitrator

8.2 Failing the determination referred to in Rule 8.1, the Arbitral Tribunal shall consist of a Sole Arbitrator.

8.3 The Arbitrator shall be appointed from the list of Arbitrators who is common in the request for arbitration and the response thereto.

8.4 In case there is no such common name, the Arbitrator shall be appointed by the Chairperson/Sub-Committee.

Three Arbitrators

8.5 Where the agreement provides for the appointment of three Arbitrators, the Claimant shall appoint its Arbitrator at the time of filing the request and the

Respondent shall appoint its Arbitrator at the time of filing of its response to the Request for Arbitration, and the two Arbitrators shall within 21 days, appoint the Presiding Arbitrator.

8.6 Where the parties fail to appoint their respective Arbitrators or where the Arbitrators appointed by the parties fail to appoint the Presiding Arbitrator, in terms of Rule 8.5, then within 21 days thereof, the Chairperson/ Sub-Committee shall appoint the Arbitrator/ Presiding Arbitrator as the case may be:

Provided that in a case of an International Arbitration, where the parties belong to different nationalities, the Presiding Arbitrator may be of a nationality other than the nationalities of the parties.

9. Appointment in case of Multiparty Arbitration

9.1 The parties to a multiparty dispute are free to determine whether the Arbitral Tribunal shall be constituted by a Sole Arbitrator or by three Arbitrators. In no case, the number of Arbitrators shall exceed three.

9.2 Where there are more than two parties to an arbitration, and a Sole Arbitrator is to be appointed, the parties must agree to jointly nominate the Sole Arbitrator. Failing a joint nomination by all the parties to the arbitration, the Sole Arbitrator shall be appointed by the Chairperson.

9.3 Where there are more than two parties to the arbitration, and three Arbitrators are to be appointed, the Claimant(s) shall jointly nominate one Arbitrator and the Respondent(s) shall jointly nominate one Arbitrator. The third Arbitrator, who shall be the presiding Arbitrator, shall be appointed by the two Arbitrators nominated by the parties, failing which, the Arbitrator/Arbitrators shall be appointed by the Chairperson in terms of Rule 8.6.

9.4 In the event of a dispute between the parties in relation to the nomination of any Arbitrator, the Chairperson shall also have the right to appoint the Arbitrator/ Arbitrators, as the case may be.

10. Challenge of Arbitrators

10.1 Any Arbitrator, appointed by DIAC on nomination by a party(ies) or otherwise or by a Court, may be challenged only before the DIAC and only if circumstances exist that give rise to justifiable doubts as to the Arbitrator's impartiality or independence, or if the Arbitrator does not possess any requisite qualification which the parties have previously agreed, or if the Arbitrator becomes *de jure or de facto* unable to fulfil his functions or is not fulfilling those functions in accordance with the Rules or within the prescribed time limits.

10.2 A party may challenge the Arbitrator nominated by him only for reasons of which he becomes aware after the appointment has been made.

10.3 A party who intends to challenge an Arbitrator shall send a notice of challenge within 14 days after the receipt of the notice of appointment of the Arbitrator who is being challenged or within 14 days after the circumstances mentioned in Rule 10.1 and 10.2 become known to that party.

10.4 The notice of challenge shall be submitted to DIAC and be simultaneously sent to the other party, the Arbitrator(s) being challenged and the other members, if any, of the Tribunal. The notice of challenge shall be in writing and shall state the reasons for the challenge. The DIAC may request comments on the challenge from the parties, the challenged Arbitrator and the other members of the Tribunal (or if the Tribunal has yet not been constituted, any appointed Arbitrator) within a period of 10 days from the date of such request.

10.5 The notice of challenge duly submitted as per Rule 10.1 and 10.2 shall be disposed of by the Chairperson/ Sub-Committee within a period of 60 days from the date of receipt of notice in terms of the Rules.

Explanation- Notice of Challenge shall not be acted upon and shall not be treated as received by DIAC unless the party submitting such notice deposits with DIAC a sum of Rs.10,000/- (Rupees Ten thousand) towards processing

costs which may be refunded in case the challenge succeeds. The time for making the Award shall, in terms of section 29A(3) of the Act, stand extended by the period spent between the date of receipt of the application for the challenge and its disposal by the Chairperson/Sub- Committee.

10.6 If the Chairperson or the Sub-Committee appointed by the Chairperson sustains the challenge, a substitute Arbitrator shall be appointed by the Chairperson in accordance with these Rules.

10.7 The Chairperson/Sub-Committee shall have the discretion to impose such costs as may be deemed appropriate in the event that the challenge fails, which shall be recoverable from the party instituting the challenge.

10.8 The Centre shall forthwith communicate to the parties and the Arbitral Tribunal whether the challenge has been sustained or overruled.

10.9 Such challenge shall be decided on the basis of the application and the comment(s)/response(s) thereto, if any, and the record of the Arbitration Proceedings, without any oral hearing unless so directed by the Chairperson/Sub-Committee.

11. Termination and Substitution

11.1 In the event of death, resignation, withdrawal or removal of an Arbitrator as per circumstances mentioned in Section 12 and 14 of the Act and Rule 10 during the course of arbitral proceedings, a substitute Arbitrator shall be appointed by the Chairperson in accordance with these Rules.

11.2 An Arbitrator may also be substituted if in the opinion of the Chairperson/Sub-Committee the Arbitrator is not fulfilling the functions assigned to him in accordance with the Rules or is not proceeding with/completing the arbitration within the prescribed time limits:

Provided that the Chairperson or the Sub-Committee shall make a decision under the abovementioned provision only after the Arbitrator concerned,

the parties and any other members of the Tribunal have had an opportunity to comment in writing, within a reasonable period of time, on the grounds on which substitution is contemplated. Such comments shall be communicated to the parties and to the Tribunal. However, no oral hearing shall be granted unless so directed by the Chairperson/Sub-Committee.

11.3 Unless otherwise directed, further proceedings before the reconstituted Tribunal shall commence from the stage at which they were prior to such reconstitution.

PART-D: FAST TRACK ARBITRATION

12. Fast Track Arbitration

12.1 Notwithstanding anything contained in these Rules to the contrary, the parties may, at any stage before or at the time of appointment of Arbitral Tribunal, mutually agree in writing to adopt the fast track procedure for resolution of their disputes or differences.

12.2 In adopting fast track procedure, the parties shall sign an undertaking in writing to the effect that they shall dispense with oral evidence.

12.3 The Claimant shall submit its Request in terms of Rule 4.

12.4 The other party shall submit its reply in terms of Rule 5.

12.5 If parties fail to reach an agreement with respect to the name of an Arbitrator from the Panel, the Chairperson/ Sub-Committee shall make such appointment within one week after the expiry of period of thirty days of submission of reply as per Rule 12.4.

13. Fast Track Procedure

13.1 The Arbitral Tribunal shall adopt the following procedure while conducting arbitration proceedings under the fast-track procedure-

(a) the Arbitral Tribunal shall decide the dispute on the basis of written pleadings, documents and submissions filed by the parties;

(b) the Arbitral Tribunal shall have the power to call for any further information or clarification from the parties in addition to the pleadings and documents filed by them;

(c) an oral hearing may be held only if all the parties make a request or if the Arbitral Tribunal considers it necessary to have an oral hearing for clarifying certain issues. Such hearing would be limited to oral submissions to be made within a specified time as may be determined by the Arbitral Tribunal;

(d) the Arbitral Tribunal may adopt such procedure, consistent with this Rule, as deemed appropriate for expeditious disposal of the case.

13.2 The award under this Rule shall be made within a period of six months from the date the Arbitral Tribunal enters upon reference.

13.3 If award is not made within the period of six months specified in Rule 13.2, the provisions of sub-sections (3) to (9) of Section 29A of the Act shall apply.

PART-E: EMERGENCY ARBITRATION AND INTERIM RELIEF

14. Emergency Arbitration

14.1 If a party requires urgent, interim or conservatory measures that cannot await the formation of the Arbitral Tribunal under the rules, it may make an application to DIAC, with a simultaneous copy thereof to the other party to the arbitration agreement, for such measures.

14.2 The party making such an application shall-

(a) include a statement briefly describing the nature and circumstances of the relief sought and specific reasons why such relief is required on an emergency basis and the reasons why the party is entitled to such relief;

(b) pay the application fee prescribed for the appointment of the Emergency Arbitrator; and

file proof of service of such application upon the opposite party.

14.3 The fee of the Emergency Arbitrator shall be as prescribed in the Delhi International Arbitration Centre (Administrative Costs and Arbitrators' Fees) Rules, 2018 and the party invoking the provision of Emergency Arbitration shall deposit such fees along with the application.

14.4 The Chairperson/Sub-Committee shall appoint the Emergency Arbitrator within two days of making of such request (excluding non-business days).

14.5 Prior to accepting his appointment, a prospective Emergency Arbitrator shall file disclosure in writing in terms of Section 12 of the Act. Any challenge to the appointment of the Emergency Arbitrator must be made within one business day of the communication by DIAC to the parties of the appointment of the Emergency Arbitrator and the circumstances disclosed.

14.6 An Emergency Arbitrator may not act as an Arbitrator in any future arbitration relating to the dispute unless agreed by all the parties.

14.7 The Emergency Arbitrator so appointed shall schedule a hearing including the filing of pleadings and documents by the parties within two business days of his appointment. The parties shall abide by the schedule, failing which the Emergency Arbitrator may proceed with the arbitration without giving further time to such party.

14.8 The Emergency Arbitrator shall provide a reasonable opportunity of being heard to all the parties before granting any urgent, interim or conservatory measures and proceed to make an order by giving reasons.

14.9 The Emergency Arbitrator shall have the power to order any interim relief that he deems necessary. An order of the Emergency Arbitrator shall be made in writing, with a brief statement of reasons. An order of an Emergency Arbitrator shall be enforceable in the manner as provided in the Act.

14.10 The Emergency Arbitrator shall ensure that the entire process from the date of his appointment to the making of the order shall be completed within fourteen (14) days, failing which the Emergency Arbitrator will not be entitled to any fee.

14.11 The Emergency Arbitrator shall become *functus officio* after 14 days or after the order is made, whichever is earlier, and shall not be a part of the Arbitral Tribunal which may be formed subsequently unless otherwise agreed to by all the parties.

14.12 The order for urgent, interim or conservatory measures passed by the Emergency Arbitrator shall not bind the Arbitral Tribunal on the merits of any issue or dispute that the said Tribunal may be required to determine.

14.13 The order passed by the Emergency Arbitrator shall remain operative for a period of 90 (ninety) days from the date of passing of the order unless modified, substituted or vacated by the Arbitral Tribunal. The Arbitral Tribunal shall also have the power to extend the operation of the order beyond the period of 90 (ninety) days.

14.14 Any order of the Emergency Arbitrator may be confirmed, varied, discharged or revoked, in whole or in part, by order or award made by the Arbitral Tribunal upon application by any party or upon its own initiative.

15. Interim Relief

15.1 A party may, during the arbitral proceedings, apply to the Arbitral Tribunal for an interim measure of protection in respect of the subject matter of the dispute as it may consider necessary, including –

(a) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or

(b) for an interim measure of protection in respect of any of the following matters namely-

(i) the preservation, interim custody or sale of any

goods which are the subject matter of the arbitration agreement;

(ii) securing the amount in dispute in the arbitration;

(iii) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorizing for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorizing any samples to be taken, or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(iv) interim injunction or the appointment of a receiver;

(v) such other interim measures of protection as may appear to the Arbitral Tribunal to be just and convenient;

and the Arbitral Tribunal shall have the same power for making orders, as the Court has for the purpose of, and in relation to, any proceedings before it.

15.2 The Arbitral Tribunal may modify, suspend or terminate an interim measure granted by it, upon an application by a party, if the circumstances so warrant.

PART-F: PLEADINGS

16. Statement of Claim

16.1 Unless already submitted pursuant to Rule 4.3, the Claimant shall, within a period of time to be determined by the Tribunal at the first procedural meeting, file at the Centre with advance copy(ies) to the opposite party(ies) and the Tribunal, a Statement of Claim setting out in full detail-

(a) Name, description, contact details, email ids,

telephone numbers, mobile numbers and correspondence address of Claimant(s) and Respondent(s);

(b) Description of the nature and circumstance of the dispute giving rise to the Claim(s);

(c) Statement of the relief sought along with amount(s) claimed;

(d) Relevant agreements and, in particular, a copy of written arbitration clause or written arbitration agreement;

(e) All supporting and relevant documents shall be filed as attested true copies of the originals, with adequate sets/copies to be supplied to the parties and an additional set for the Centre;

(f) Issues to be adjudicated;

(g) All relevant particulars concerning the Arbitrators, their number, qualifications, if any, prescribed in the arbitration on which parties have already agreed in writing;

(h) Statements as to the applicable rules of law, if any, and the language of the arbitration;

(i) Order of Court, if any, passed in proceedings referred to in Rule 1.2 of these Rules, or the signed joint memorandum (if any);

(j) A statement as to whether any order under Section 9 of the Act has been passed and if so, whether the request for arbitration is being made within the period provided under sub-section (2) of Section 9 of the Act. A copy of the interim order passed shall also be enclosed;

(k) Final terms of reference in furtherance of provisional terms under Rule 4;

(l) Value of each of the relief sought along with a declaration stating the aggregate amount of Claims, quantification of Arbitrator's fee as based on aggregate claims and date of deposit of its

share of fee, if deposited.

Explanation- For the purpose of this Rule, the provisions of Rule 3 shall apply mutatis mutandis.

16.2 If the Claimant fails within the time specified to submit its Statement of Claim, the Tribunal may issue an order for the termination of the arbitral proceedings qua such claims and impose costs or give other directions, as may be appropriate.

17. Statement of Defence, Plea of Set Off and Counter-claim

17.1 The Respondent(s) shall, within the time to be determined by the Tribunal at the first procedural meeting, file Statement of Defence with advance copy to the opposite party(ies) and the Tribunal. The plea of Set-Off and/or Counter-Claim, if any, shall be filed along with the Statement of Defence.

17.2 Subject to the decision of the Tribunal, the failure to adhere to the time limits for filing of pleadings as prescribed by the Arbitrator under Rule 21.2 may result in foreclosure of the right of the Respondent to file Statement of Defence, a plea of Set-Off and/or Counter-Claim.

17.3 The copy of the Statement of Defence, plea of Set-Off and/or Counter-Claim and the documents annexed thereto, shall be sent to the Claimant in advance and proof of service thereof shall accompany the Statement of Defence, plea of Set-Off and/or Counter-Claim submitted to the Centre.

17.4 The Claimant shall file reply to the Counter-Claim and the provisions of sub-rule 1 to 3 of this Rule shall apply *mutatis mutandis*. Subject to the decision of the Tribunal, failure of the Claimant to file his reply to the Counter- Claim within the time stipulated or the extended time may constitute a waiver of the Claimant's opportunity to file such reply.

18. Amendments to the Statement of Claim or Defence

18.1 With the leave of the Tribunal and on such terms as the Tribunal may determine, a party may amend or supplement its Claim, Counter-Claim or other pleadings, unless the Tribunal considers it inappropriate, having regard to the delay in making such request or prejudice to the other party or any other circumstances. However, a Claim or Counter-Claim or pleadings may not be amended or supplemented in such a manner that the amended or supplemented Claim or Counter-Claim or pleadings would, if permitted, fall outside the scope of the arbitration agreement.

18.2 The Coordinator may adjust the Tribunal's fees and DIAC's fees (where appropriate) if a party is permitted to amend or supplement its Claim, Counter-Claim or pleadings.

19. Further Pleadings

19.1 All statements, documents or other information supplied to the Tribunal and DIAC by one party shall simultaneously be supplied to the other party.

19.2 The Tribunal shall decide whether further pleadings shall be required from the parties or may be presented by them. The Tribunal shall fix the periods of time for communicating such pleadings, if any. The Tribunal may further limit the length and scope of written pleadings and written and oral evidence (both fact witnesses and experts).

19.3 The Tribunal may, at any time during the proceedings, if it considers it appropriate, require the parties with its consultation, to prepare an agreed list of issues to be determined by the Tribunal.

PART-G: ARBITRAL PROCEEDING

20. Jurisdiction

20.1 Any objection by a party to the competence of the DIAC to administer an arbitration, before the Tribunal is appointed, shall be placed in the first instance before the Chairperson or the Sub-Committee appointed by the Chairperson for that purpose.

20.2 If the Chairperson or such Sub-Committee sustains the objection, the proceedings shall be terminated. In all other cases, the Tribunal shall decide such objection in accordance with Section 16 of the Act.

21. Conduct of Proceedings

21.1 The Tribunal may conduct the arbitration in such manner as it considers appropriate to ensure avoidance of unnecessary delay and expense, having regard to the complexity of the issues involved and the amount in dispute:

Provided that such procedures ensure fair and equal treatment to the parties and afford them a reasonable opportunity to present their case.

21.2 The Tribunal shall, soon after it is appointed, discuss with the parties and determine such procedure, including the procedural timelines, engagement of transcription/translation services, as deemed appropriate for conduct of proceedings.

21.3 The Tribunal may proceed with the arbitration not with standing the failure or refusal of any party to comply with these Rules or with the Tribunal's orders or directions, or to attend any meetings or hearings, and may take any other appropriate measures, not inconsistent with the Act, in order to preserve the fairness and integrity of the proceedings.

Application for adjournment

21.4 Any party seeking adjournment or change in the timelines fixed for the arbitration proceedings,

shall file a written request supported by sufficient and cogent reasons with necessary documents. In case such application is filed less than fifteen days prior to the date of hearing, the same shall be accompanied by an application fees of Rs.3,000/- (Rupees Three Thousand) payable to DIAC.

21.5 Mere filing of an application shall, however, not result in an automatic adjournment. The application shall be decided by the Arbitral Tribunal on merits and may be accepted subject to such further conditions as the Arbitral Tribunal deems fit.

22. Language

22.1 The language of the arbitration proceedings shall be English.

22.2 If a document is in a language other than English, the Tribunal, or if the Tribunal has not been established, the Coordinator, may direct the party filing such a document to submit a translation thereof

23. Seat and Venue

23.1 Unless the parties expressly agree otherwise, the seat of arbitration shall be New Delhi.

23.2 The Tribunal may, in consultation with the parties, hold hearings, meetings and deliberations by any means and at any venue, it considers expedient or appropriate.

23.3 In case hearings are held at any place outside DIAC, its intimation and copy of proceedings shall be sent to DIAC by the Arbitral Tribunal within 7 (seven) days from the date of hearing.

24. Applicable Law

24.1 Where the place of arbitration is situated in India,-

(a) in an arbitration other than an international commercial arbitration, the Arbitral Tribunal shall decide the dispute submitted to arbitration in

accordance with the substantive law for the time being in force in India;

(b) in international commercial arbitration,-

(i) the Arbitral Tribunal shall decide the dispute in accordance with the law designated by the parties as applicable to the substance of the dispute;

(ii) any designation by the parties of the law or legal system of a given country shall be construed, unless otherwise expressed, as directly referring to the substantive law of that country and not to its conflict of laws/rules;

(iii) failing any designation of the law under sub-Rule (b)(i) by the parties, the Arbitral Tribunal shall apply the rules of law it considers to be appropriate given all the circumstances surrounding the dispute.

24.2 The Arbitral Tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.

24.3 While deciding and making an award, the Arbitral Tribunal shall, in all cases, take into account the terms of the contract and trade usages applicable to the transaction.

25. Evidence

25.1 Ordinarily, the burden of proving the facts relied on to support its Claim, Counter-Claim or Defence, shall be on the concerned party.

25.2 The Tribunal, while determining the admissibility, relevance, materiality and weight of any evidence, shall not be bound by the Indian Evidence Act, 1872 or the Code of Civil Procedure, 1908 or by any strict rules of evidence.

25.3 At any time during the arbitral proceedings, the Tribunal may require the parties to produce documents, exhibits or other evidence within such period of time as the Tribunal shall determine. The Tribunal may also, in consultation with the parties, undertake a site visit.

25.4 In addition, the Tribunal shall have the power to-

(a) conduct such enquiries as may appear to be necessary or expedient;

(b) direct the parties to make available for inspection any property or item;

(c) direct any party to produce for inspection any document(s) in their possession, custody or control which it considers relevant and also direct that copies of such document(s) be supplied to the other parties.

26. Hearings

26.1 (a) Unless the parties have agreed to a fast track arbitration under these Rules, a hearing shall be held if any of the parties so requests or if the Arbitral Tribunal so decides. The Arbitral Tribunal shall give reasonable notice to the parties to appear before it on the date, time and place fixed. The Arbitral Tribunal may after consulting the parties, decide that hearing(s) be conducted in person or remotely by video conferencing, or any other appropriate means of communication.

(b) Notwithstanding sub-Rule 26.1(a), if all the parties so request in writing, the Arbitral Tribunal may conclude the arbitral proceedings without any oral hearing.

26.2 The Tribunal may, in advance of any hearing, notify the parties the questions which it requires them to answer.

26.3 If any party to the proceedings, without sufficient cause, fails to appear at a hearing, the Tribunal may proceed with the arbitration and may pass appropriate orders or make the Award.

26.4 The Tribunal may, at the request of the parties, make appropriate orders binding the parties on the terms of disclosure of documents considered to be sensitive given the nature of the dispute.

27. Witnesses

27.1 Before a hearing, the Tribunal may require any party to give a list of witnesses, including expert witnesses, whom it intends to examine, the subject matter of their testimony and its relevance to the issues.

27.2 The Tribunal shall have the discretion to allow, refuse or limit the number of witnesses intended to be examined by a party.

27.3 The Tribunal shall also have the discretion to restrict the time to be allocated for the oral testimony of a witness.

27.4 The Tribunal may determine the manner in which witnesses are to be examined and may direct that the testimony of any witness be presented in written form.

28. Joinder of Parties

28.1 A party wishing to join an additional party to the arbitration shall submit its written request for arbitration against the additional party (the "Request for Joinder") to the Coordinator. The date on which the Request for Joinder is received by the Coordinator shall, for all purposes, except the time for making the award, be deemed to be the date of the commencement of arbitration against the additional party. No additional party may be joined after the confirmation or appointment of any Arbitrator, unless all parties, including the additional party, otherwise agree in writing.

28.2 The Request for Joinder shall contain the information as specified in Rule 4.1 to the extent applicable.

28.3 In the event of additional party(ies) being joined, DIAC shall determine any additional cost or fees to be paid and the proportion in which the same is to be paid by the parties.

28.4 The rules relating to the Statement of Claim/ plea of Set-Off and/or Counter-Claim shall apply *mutatis mutandis* to the added party.

29. Reference to Mediation

29.1 Parties to an arbitration agreement may, at any time after the commencement of the arbitration proceedings request the Arbitral Tribunal to put the arbitration proceedings on hold to enable the parties to resolve their disputes amicably.

29.2 The parties shall convey their request to the Arbitral Tribunal, or if the Arbitral Tribunal has not been constituted, to the Coordinator.

29.3 The Arbitral Tribunal shall accept the request of the parties and keep in abeyance the arbitration proceedings, enabling the parties to resolve their dispute through Mediation.

29.4 The parties shall have the liberty to appoint a mediator of their choice including from the Panel of the Delhi High Court Mediation and Conciliation Centre.

29.5 The mediation proceedings shall remain confidential and shall not be brought on record in the arbitration proceedings or otherwise, should the mediation fail.

29.6 If the parties settle the dispute through mediation, the settlement agreement executed between the parties shall be forwarded to the Arbitral Tribunal, which shall, on receipt of the settlement agreement, proceed in accordance with Rule 30.

29.7 Unless the parties expressly agree in writing the mediator would be disqualified to act or continue as an Arbitrator.

30 Settlement of dispute

30.1 The Tribunal may encourage settlement of the dispute with the agreement of the parties.

30.2 If during the arbitration proceedings, the parties settle the dispute, the Tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the Tribunal, record the settlement in the form of an Arbitral Award on agreed terms.

30.3 Such Arbitral Award as passed to record settlement between the parties should contain an express statement that it is an award made at the parties' joint request and with their consent.

PART-H: ORDER AND AWARD

31. Arbitral Award

31.1 The Arbitral Tribunal shall make an award within the period of eighteen months from the completion of the pleadings or such period as extended by the Court. However, at least 45 days before the expiry of the said period, the Tribunal shall submit its draft award to the Coordinator for the scrutiny by the Committee constituted for that purpose. In such event, the Coordinator will, on the advice of such Committee, suggest modifications to the draft award without in any manner interfering with the decision of the Tribunal on merit of the dispute. The suggestions, if any, shall be communicated not later than one month after the receipt of the draft award failing which the Arbitrator will proceed to pronounce the final award without waiting for the suggestions. The Tribunal is at liberty to make such changes as it deems fit to the draft award.

Explanation: The above prescribed period of eighteen months includes the extended period of six months for the making of the award as contemplated under section 29A(3) of the Act.

31.2 The Tribunal may make interim and/or partial Awards on different issues at different times.

31.3 The DIAC may publish any Award on its website, in any of its publication, or authorize publication thereof. However, if any of the parties intimates in writing to the Coordinator at any stage prior to the publication of award that the award be retained as confidential, DIAC shall refrain from publishing the same.

PART-I: FEE AND COSTS

32. Costs of the Arbitration

32.1 The fees payable to the Tribunal and the administrative costs of DIAC shall be fixed in accordance with the DIAC (Administrative Costs & Arbitrators' Fees) Rules, 2018.

32.2 The Tribunal shall specify in the award the total amount of the costs of the arbitration. Unless the parties have agreed otherwise, the Tribunal shall determine in the award the apportionment of the costs of the arbitration among the parties.

32.3 Regime for costs

(a) In relation to any arbitration proceeding or a proceeding under any of the provisions of these Rules pertaining to the arbitration, Arbitral Tribunal, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), shall have the discretion to determine -

(i) whether costs are payable by one party to another;
(ii) the amount of such costs; and
(iii) when such costs are to be paid.

Explanation- For the purpose of this Rule, "costs" means reasonable costs relating to- (i) the fees and expenses of the Arbitrators, Centre and witnesses; (ii) legal fees and expenses; and (iii) any other expenses incurred in connection with the arbitral or Court proceedings and the arbitral award.

(b) If the Arbitral Tribunal decides to make an order as to payment of costs.

(I) the general rule is that the unsuccessful party shall be ordered to pay the costs of the successful party; or
(ii) the Arbitral Tribunal may make a different order for reasons to be recorded in writing.

(c) In determining the costs, Arbitral Tribunal shall have regard to all the circumstances, including –

(i) the conduct of all the parties;
(ii) whether a party has succeeded partly in the case;
(iii) whether the party had made frivolous Claims/ Counter-Claims; and
(iv) whether any reasonable offer to settle the dispute is made by a party and refused by the other party.
(v) The Arbitral Tribunal may make any order as to costs under this rule including an order that a party shall pay–
- a proportion of another party's costs;
- a stated amount in respect of another party's costs;
- costs from or until a certain date only;
- costs incurred before proceedings have begun;
- costs relating to particular steps taken in the proceedings;
- costs relating only to a distinct part of the proceedings; and
- interest on costs from or until a certain date.

(d) An agreement which has the effect that a party is to pay the whole or part of the costs of the arbitration, in any event, shall be valid only if such agreement is made after the dispute in question has arisen.

32.4 In making decisions as to costs, the Tribunal may take into account such circumstances as it considers relevant, including the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner.

33. Advance on Costs

33.1 The Centre shall fix the amount of deposits to be made by the parties in accordance with the DIAC (Administrative Costs and Arbitrator's Fees) Rules, 2018.

Unless the Centre directs otherwise, 50% of such deposits shall be payable by the Claimant and the remaining 50% of such deposits shall be payable by the Respondent. The Centre may fix separate advances of deposits for Claims and Counter-Claims, respectively.

33.2 Parties are jointly and severally liable for the deposits as directed by the Centre. Any party is free to pay the whole of the deposits for costs of the arbitration in respect of the claim or the Counter-Claim should the other party fail to pay its share.

33.3 Where the amount of the Claim or the Counter-Claim is not quantifiable at the time payment is due, a provisional estimate of deposits shall be made by the Centre. Such estimate may be based on the nature of the controversy and the circumstances of the case. This may be adjusted in light of such information as may subsequently become available.

33.4 The Centre may from time to time direct parties to make further deposits in accordance with the DIAC (Administrative Costs and Arbitrator's Fees) Rules, 2018.

33.5 If a party fails to make the deposits as directed within thirty days from the date on which it is due, the Centre may either terminate the arbitration where the Tribunal is yet to be constituted or where the Tribunal has been constituted, direct the Tribunal to terminate the arbitration with respect to the Claim or Counter-Claims, as the case may be. This shall however be without prejudice to the party reintroducing the same Claims or Counter-Claims in another proceeding, in accordance with law.

33.6 Fees of the Arbitral Tribunal shall be disbursed in accordance with Schedule F of the DIAC (Administrative Costs and Arbitrator's Fees) Rules, 2018.

33.7 All deposits shall be made to and held by the DIAC. Any interest which may accrue on such deposits may be retained by the DIAC.

PART-J: MISCELLANEOUS PROVISIONS

34. Exclusion and Waiver of Liability

The DIAC, including the Chairperson, members of the Arbitration Committee, Coordinator, officers, employees or any Committee or Sub-Committee, shall not be liable to any person for anything which is done in good faith, done or intended to be done under these Rules.

35. Confidentiality

35.1 Save and except as provided in these Rules, the parties, the DIAC and the Tribunal shall at all times treat all matters relating to the proceedings and the Award as confidential.

35.2 A party or any Arbitrator shall not, without the prior written consent of all the parties, disclose to a third party any such matter except-

(a) for the purpose of making an application to any competent Court of any State to enforce or challenge the Award;

(b) pursuant to the order issued by a Court of competent jurisdiction;

(c) for the purpose of pursuing or enforcing a legal right or claim;

(d) in compliance with the provisions of the laws of any State which are binding on the party making the disclosure;

(e) in compliance with the request or requirement of any regulatory body or other authority; or

(f) pursuant to an order by the Tribunal on application by a party with proper notice to the other parties.

35.3 In this Rule, "matters relating to the proceedings" means the existence of the proceedings and the pleadings, evidence and other materials in the arbitration proceedings and all other documents produced by another party in the proceedings or the Award arising from the proceedings, but excludes any matter that is otherwise in the public domain.

35.4 The Tribunal has the power to take appropriate measures, including issuing an order or Award for costs, if a party breaches the provisions of this Rule.

36. Decisions of the Chairperson, Arbitration Committee and the Secretariat

36.1 Subject to Rule 21.1, the decisions of the members of the Arbitration Committee and the Secretariat with respect to all matters relating to an arbitration shall be binding upon the parties and the Tribunal. The Chairperson, the Arbitration Committee and the Secretariat shall not be required to provide reasons for such decisions.

36.2 In all matters not expressly provided for in these Rules, the Chairperson, the Arbitration Committee, the Secretariat and the Tribunal shall act in the spirit of these Rules and shall make every reasonable effort to ensure fair and expeditious arbitration.

36.3 The Arbitration Committee may, from time to time, issue practice directions to supplement, regulate and implement these Rules for the purpose of facilitating the administration of arbitrations governed by these Rules.

37. Residuary Provisions

The Chairperson may take appropriate decisions as may be deemed necessary in respect of all matters which are not specifically provided in these Rules.