

DAC (Arbitration Proceedings) Rules

THE DELHI INTERNATIONAL ARBITRATION CENTRE (DAC) (ARBITRATION PROCEEDINGS) RULES PRELIMINARY

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PRELIMINARY

1. Title and scope -

- (1) These rules may be called Delhi International Arbitration Centre (DAC) (Arbitration Proceedings) Rules [for short, DAC (Arbitration) Rules].
- (2) These rules shall apply where the parties have agreed in writing, that any dispute(s), which has arisen or which may arise between them, in respect of a defined legal relationship, whether contractual or otherwise, shall be arbitrated under the DAC (Arbitration) Rules.
- (3) These rules shall also apply where the parties sign a joint memorandum agreeing to their dispute(s) being resolved by arbitration in accordance with the DAC (Arbitration) Rules, in any proceedings in any Court, including:
- (a) under section 89 of the Code of Civil Procedure, 1908; or
 - (b) under sections 11, 8 or 9 of the Arbitration and Conciliation Act, 1996.

2. Definitions -

- (1) In these rules, unless the context otherwise requires,-
- (a) “Act” means the Arbitration and Conciliation Act, 1996 and the amendments thereto or the reenactment thereof.
 - (b) “Arbitral Award” includes an interim, partial and preliminary award;
 - (c) “Arbitrator” means a person appointed as an arbitrator from the DAC Panel of Arbitrators and includes an arbitrator appointed in terms of Rule 10(5) of the Delhi International Arbitration Centre (Internal Management) Rules **and an emergency Arbitrator.**
 - (d) “Centre” means Delhi International Arbitration Centre (DAC).
 - (e) “Chairperson” means Chairperson nominated by the Chief Justice of the Delhi High Court under Rule 3 of the Delhi International Arbitration Centre (DAC) (Internal Management) Rules.
 - (f) “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 (DAC) (Internal Management) Rules.
 - (g) “Confirming Party” means a party to an arbitration agreement and who has signed the Terms of Reference.
 - (h) “Advisory Counsel” means the counsel constituted under Rule 8 of the Delhi International Arbitration Centre (Internal Management) Rules.
 - (i) “DAC Panel of Arbitrators” means the Panel of Arbitrators (for short, the Panel) prepared by Arbitration Committee in accordance with Rule 10 of the Delhi International Arbitration Centre (Internal Management) Rules.
 - (j) “Dispute” includes differences.

(k) "Arbitration Committee" means the Arbitration Committee of the Delhi International Arbitration Centre (DAC).

(l) "Joint Memorandum" means a memorandum jointly signed by the parties as contemplated in Rule 1(3) and in the form as prescribed in Schedule II of these Rules.

(m) "Party" means a party to an arbitration agreement.

(n) "Request" means a written communication to the Centre to commence the arbitration in accordance with these Rules.

(o) "Rules" mean the DAC (Arbitration) Rules.

(2) The words and phrases not defined here shall bear the same meaning as used or defined in the Act, the Delhi International Arbitration Centre (DAC) (Internal Management) Rules and Delhi International Arbitration Centre (Administrative Cost and Arbitrators' Fees) Rules.

PART I- ARBITRATION PROCEDURE

3. Request for arbitration -

(1) Any person desirous to commence an arbitration under these Rules shall submit his Request in writing for Arbitration (the –Request) to the Secretariat addressed to the Coordinator, with a simultaneous copy to the Respondent(s).

(2) The Request shall, *inter alia*, contain the following information:

(a) Name in full, description, contact details and address of each of the parties;

(b) description of the nature and circumstances of the dispute giving rise to the claim(s);

(c) statement of the relief sought, including, to the extent possible, an indication of any amount(s) claimed and all supporting documents;

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

(e) provisional "Terms of Reference" and the issues to be adjudicated;

(f) all relevant particulars concerning the arbitrators, their number, qualifications, if any prescribed in the arbitration agreement on which parties have already agreed in writing;

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

(h) order of Court, if any, passed in proceedings referred to in Rule 1(3) of these Rules, along with the signed joint memorandum.

(3) The Request shall be accompanied by all relevant documents.

(4) The party making such Request, may file its Statement of Claim, along with the Request but in any event, shall do so within fifteen days thereof or within such time, as may be specified by the Coordinator, along with all documents in support of the claim.

(5) The Claimant shall submit sufficient number of copies of the Request and the Statement of Claim, and also soft copy thereof being one copy for the Centre, one copy for each arbitrator(s) (if the number of arbitrators is mentioned in the arbitration agreement) and one copy for each of the Respondent(s).

(6) The Claimant shall also make an advance payment of his share of Administrative Costs, miscellaneous expenses and arbitrators' fees, as the Coordinator may require in terms of Rule 25 of these Rules, determined in accordance with the Delhi International Arbitration Centre (Arbitrators' Fees) Rules in force on the date the Request is submitted. In the event the Claimant(s) fails to comply with any of the aforesaid requirements, the Coordinator may fix a time limit within which the Claimant must comply, failing which, the file shall be closed without prejudice to the right of the Claimant to submit the claims at a later date by way of a fresh Request.

(7) The Coordinator shall send a copy of the Request, Statement of Claim and the documents annexed thereto, at the earliest to the Respondent(s) for his Reply to the Request.

4. Reply to Request -

(1) Within thirty days from the date of receipt of the Request and the Statement of Claim, from the Secretariat, the Respondent shall send his written response (the –Reply) to the Secretariat addressed to the Coordinator, which shall *inter alia*, contain the following information and be accompanied by:-

- (a) his name in full, description, contact details and address;
- (b) confirmation or denial of all or part of the Claim(s) made by the Claimant in the Statement of claim;
- (c) comments in response to the nature and circumstances of the dispute giving rise to the Claim(s) contained in the Request;
- (d) response to the relief sought in the Request;
- (e) statement describing the nature and circumstances giving rise to any Counter-claim(s), if any, including all relevant or supporting documents;
- (f) provisional “Terms of Reference” and the issues to be adjudicated;
- (g) comments, if any, concerning the number of arbitrators and their choice in light of the Claimant’s proposals; and
- (h) statements, if any, as to the applicable rules of law and the language of the arbitration.
- (i) to deposit with the Centre in advance 50% share of Arbitrator’s fee, on the Claim amount and the Miscellaneous Expenses within 30 days.

(2) The Coordinator may, on sufficient grounds in writing explaining the delay, grant an extension of time for filing the Reply and/or Counter- claim to the Respondent, upon payment of such costs as may be deemed appropriate and within such time as may be specified;

Provided, that the request for extension of time shall be entertained only once and such extension shall not exceed thirty days. If the Respondent fails to file his Reply and/or Counter-claim, the Coordinator shall proceed further in accordance with the Rules.

(3) Failure of the Respondent to file his Reply and/or Counter-claim within the time stipulated or the extended time shall constitute a waiver of the Respondent’s opportunity to file the Reply.

(4) Reply and/or Counter-claim shall be supplied to the Secretariat in sufficient number of copies **and also soft copy thereof** being one copy for the Centre, one copy each for arbitrator(s) (if the number of arbitrators is mentioned in the arbitration agreement) and one copy each for the Claimant(s).

(5) If the Respondent(s) files a Counter-claim he shall make an advance payment of his share of Arbitrators’ fee as the Coordinator may require in terms of Rule 25 of these Rules, determined in accordance with the Delhi International Arbitration Centre (DAC) (Arbitrators’ Fees) Rules in force on the date the Request is submitted.

(6) A copy of the Reply or Counter-claim and the documents annexed thereto shall be communicated by the Coordinator to the claimant(s).

(7) The Claimant(s) shall file a Reply to any Counter- claim within 30 days from the date of receipt of the Counter-claim communicated by the Coordinator.

(8) The Coordinator may, on sufficient grounds in writing explaining the delay, grant the Claimant an extension of time for filing the Reply only upon payment of costs as may be deemed appropriate;

Provided, that the request for extension of time shall be entertained only once and such extension cannot exceed thirty days.

(9) Failure of the Claimant(s) to file his Reply to Counter-claim within the time stipulated or the extended time shall constitute a waiver of the Claimant's opportunity to file the Reply to Counter-claim.

5. Representation and assistance -

(1) Each party shall advise, in writing, the other party and the Coordinator of-

(a) the names and addresses of persons who will represent or assist him or her, and

(b) the capacity in which those persons will act.

(2) Once the Arbitral Tribunal has been established, the parties or their representatives may communicate in writing directly to the Arbitral Tribunal, with a copy of the communication addressed to the Coordinator.

6. Written Notices or Communications -

(1) All notices or communications from the Coordinator and the Arbitral Tribunal shall be in writing and deemed to have been duly delivered when sent at the last known address of the party or its duly notified representative. Such notice or communication may be made by delivery against receipt, registered post, courier, facsimile transmission, telex, telegram or any other means of tele-communication that provides a record of the sending thereof.

(2) The parties shall file with the Coordinator a copy of any notice, communication or proposal concerning the arbitration proceedings. Any such notice or communication may be sent by such party to all the other parties to the proceedings as well as to the Arbitral Tribunal and the Coordinator by registered post, courier, electronic mail, facsimile or any other means of tele-communication that provides a record of the sending thereof.

7. Advisory Counsel to compile documents -

The Advisory Counsel shall compile all documents and divide them into separate volumes e.g.;

(a) one volume for orders and pleadings (Request and Reply thereto, Claims and Reply thereto and Counter-claims and Reply thereto);

(b) one volume for evidence by way of affidavits filed by the parties;

(c) one volume for all documents filed by the parties in support of their respective claims, etc. and shall forward a copy to each member of the Arbitral Tribunal and maintain a separate copy thereof for the record of the Centre.

8. Terms of Reference and Arbitration Schedule -

(1) Within fifteen days of the Arbitral Tribunal having received the compilation of documents from the Advisory Counsel, it shall draw up, in the presence of the parties, on the basis of their pleadings, that is to say Claim(s) and Reply thereto, Counter-claim(s) if any and Reply thereto and Evidence by way of affidavit including the provisional terms of reference, if any suggested by the parties, in the light of their most recent submissions, a document defining the Terms of Reference. This document shall include the following particulars:

- (a) Full names and descriptions of the parties;
- (b) Addresses of the parties to which notices and communications arising in the course of the arbitration may be made;
- (c) Summary of the parties' respective claims and of the relief sought by each party, with an indication to the extent possible of the amounts claimed or counterclaimed;
- (d) Issues to be determined by the Arbitral Tribunal;
- (e) full names, descriptions and addresses of the arbitrators;
- (f) particulars of the procedural rules mutually agreed between the parties and if required reference to the power conferred upon the Arbitral Tribunal to act as *amiable compositeur* or to decide *ex aequo et bono*.

2(a) The Terms of Reference shall be signed by all the parties and members of the Arbitral Tribunal.

2(b) The Arbitral Tribunal may secure consent of the parties to the terms of reference as finally drawn up by means of video conferencing or confirm the same in writing through electronic mails, facsimile or such other means of telecommunications which will provide a record of the consent of the parties.

(3) If any party refuses to take part in the drawing up of the Terms of Reference and to sign the same, the arbitral proceedings shall continue in respect of the claims or counter-claims of parties who have signed the Terms of Reference and any claims or Counter-claims made by the party who so refuses to participate or sign shall not be considered but shall be bound by the orders and award of the Arbitral Tribunal.

(4) Soon after the Terms of Reference have been drawn up by the Arbitral Tribunal, the Advisory Counsel shall prepare, in consultation with the Arbitral Tribunal and the parties, a timetable for the conduct of the arbitration and shall communicate it to each of them. The time-table shall specify:-

- (a) the period within which the parties would file statement of witnesses by way of affidavit to be treated as their statements made in examination-in-chief;
- (b) the dates when the Arbitral Tribunal shall record oral evidence to be adduced by the parties by way of cross-examination of the witnesses who tendered their affidavit evidence (treated as their statement in examination-in-chief deposition) and such other oral depositions as the Arbitral Tribunal may permit.
- (c) the dates when the parties would address their arguments before the Arbitral Tribunal.

(5) The time-table so fixed shall remain firm and binding on all concerned.

(6) The Arbitral Tribunal shall communicate the time-table to the Coordinator and also the time period for publication of the award.

(7) The Arbitral Tribunal shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).

(8) In the absence of any specific provision in these Rules the parties are free to agree on the procedure to be followed by the Arbitral Tribunal in conducting its proceedings.

(9) Failing any agreement referred to in sub-rule (8), the Arbitral Tribunal may conduct the proceedings in the manner it considers appropriate.

(10) The power of the Arbitral Tribunal under sub-rule (9) includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

(11) The Arbitral Tribunal may, where necessary, secure agreement of parties to dispense with formal proof of documents, except in case of questioned documents.

9. Consolidation of proceedings -

On the date fixed for 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.

9A. Joinder of Additional Parties -

Arbitral Tribunal may implead a party to the arbitral proceedings with the written consent of all the parties to the arbitration agreement and written consent of the party to be impleaded.

The proportionate Administrative Costs and Arbitral Tribunal's fee prescribed in the respective schedule shall be payable by the newly added party.

The Arbitral Tribunal will determine the proportionate share of Administrative Costs and fee.

10. Additional Claims or Counter-claims -

After the Terms of Reference have been signed or approved by the Arbitral Tribunal, no party shall make any Additional Claims or Counter-claims which fall outside the limits of the Terms of Reference unless it has obtained authority to do so from the Arbitral Tribunal, which shall consider the nature of such new Claims or Counter-claims, the stage of the arbitration and other relevant circumstances and thereafter issue necessary orders.

11. Hearing Procedure -

(1) Unless agreed between the parties in writing, the Arbitral Tribunal shall hold oral hearings.

(2) Unless the Arbitral Tribunal decides to undertake site inspection or for any reason as it may deem necessary all hearings shall take place in the Centre at Delhi.

(3) If the Arbitral Tribunal fixes the date, time and place of hearing other than in the Centre at Delhi, it shall give the parties reasonable notice of such hearings and communicate its decision to the Coordinator.

(4) All meetings and hearings shall be in private unless the parties agree otherwise or the Arbitral Tribunal directs otherwise.

(5) The Centre shall provide a translator, if necessary, subject to costs being borne by the parties.

(6) After the conclusion of evidence and hearing, the Arbitral Tribunal shall fix a date in the presence of the parties, for pronouncement of the award.

12. Decision making by Arbitral Tribunal -

(1) In arbitral proceedings with more than one arbitrator, any decision of the Arbitral Tribunal shall be made by a majority of all its members.

(2) Notwithstanding sub-rule (1), if authorized by the parties or all the members of the Arbitral Tribunal, questions of procedure may be decided by the Chairperson of the Arbitral Tribunal.

13. Settlement of dispute -

- (1) The Arbitral Tribunal may encourage settlement of the dispute with the agreement of the parties.
- (2) If during the arbitration proceedings, the parties settle the dispute, the Arbitral Tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the Arbitral Tribunal, record the settlement in the form of an Arbitral Award on agreed terms.

PART II- FORMATION OF ARBITRAL TRIBUNAL

14. Appointment of Arbitrators -

- (1) The parties to a dispute are free to determine the number of arbitrators, provided that such number shall not be an even number and in case there are only two parties to a dispute such number shall not exceed three. In case of more than two parties to a dispute, the number of arbitrators may be more than three, but in no case it shall exceed five.
- (2) Failing the determination referred to in sub-rule (1), the Arbitral Tribunal shall consist of a sole arbitrator.

15. Where the number of arbitrators is specified in the agreement -

- (1) Where the agreement provides for the appointment of a sole arbitrator the parties shall appoint such arbitrator from amongst the members on the DAC panel of arbitrators, within thirty days of intimation of filing of the Request. Where the parties fail to agree upon the sole arbitrator from the DAC panel within the said period, the Chairperson shall appoint a sole arbitrator.
- (2) Where the agreement provides for appointment of three arbitrators the Claimant and Respondent shall appoint their individual arbitrators within thirty days of intimation of filing of the Request and the third arbitrator shall be appointed by the Chairperson and such third arbitrator shall Chair the Arbitral Tribunal, Provided that in a case of International Arbitration the Third arbitrator shall not be of the Nationality of either of the parties.

16. Appointment in case of multiparty arbitration -

- (1) Where disputes arise amongst more than two parties out of a defined legal relationship or out of a series of interconnected contracts (including “chain” or “string” contracts), the parties may agree that the Arbitral Tribunal shall consist of three members, one to be nominated by each of the parties (supporting parties will be grouped together and treated as one party for the purpose of such nomination of the arbitrator) and the third arbitrator shall be appointed by the Chairperson and such third arbitrator shall Chair the Arbitral Tribunal.
- (2) If the parties to a dispute are required to be grouped in three groups, each such group will nominate one arbitrator each and the three members of the Arbitral Tribunal shall nominate one out of themselves to Chair the Arbitral Tribunal. If the members fail to so nominate, the Chairperson shall nominate anyone of them to Chair the Arbitral Tribunal within fifteen days of the constitution of the Arbitral Tribunal.

(3) If the parties to a dispute are required to be grouped in four groups, each such group will nominate one arbitrator and the Chairperson will appoint an independent arbitrator from the panel who shall Chair the Arbitral Tribunal.

(4) If the parties to a dispute are required to be grouped in five groups, each such group will nominate one arbitrator each and the five members of the Arbitral Tribunal shall nominate one out of themselves to Chair the Arbitral Tribunal. If the members fail to so nominate, the Chairperson shall nominate anyone of them to Chair the Arbitral Tribunal within fifteen days of the constitution of the Arbitral Tribunal.

(5) All efforts shall be made to ensure that such grouping of parties shall not exceed five. In case the groups are more than five, the Chairperson shall adopt such procedure for the appointment of arbitrators as may be deemed appropriate, in view of the facts and circumstances of the case, but in no case shall the number of arbitrators comprising the Arbitral Tribunal shall exceed five.

17. Confirmation of Arbitrators -

(1) Soon after the arbitrator(s) has been appointed, the Coordinator shall send an official communication to that effect to the parties and to the arbitrator(s).

(2) The arbitrator(s) so appointed shall give a declaration in the format prescribed in Schedule IV of these Rules.

PART III- SUMMARY PROCEDURE

18. Summary Procedure -

(1) Notwithstanding anything contained hereinbefore, the parties may mutually agree, in writing, adopting the summary procedure for resolution of their disputes or differences.

(2) In adopting the summary procedure the parties shall sign an undertaking (Schedule III) in writing to the effect that they shall dispense with the necessity of oral evidence.

(3) The Claimant shall submit documents in support alongwith the Request, in terms of Rule 3 of these Rules, to the Secretariat addressed to the Coordinator and supply a simultaneous copy to the other party.

(4) The other party shall, within fifteen days of the receipt of the documents referred to in sub-rule (3), submit its Reply, in terms of Rule 4 of these Rules, to the Secretariat addressed to the Coordinator, together with documents in support of the Reply.

(5) The parties may appoint a sole arbitrator from the DAC panel of arbitrators within a period of fifteen days after the expiry of the date specified in sub-rule (4) and communicate the same to the Coordinator. If parties fail to reach an agreement, the Chairperson shall make such appointment within one week after the expiry of said period of fifteen days.

(6) The parties shall notify the Coordinator their estimate of time required to be spent by the Arbitral Tribunal to hear oral address by the parties. Based on such estimate, the Advisory Counsel shall determine the time-table, in consultation with the arbitrator(s) and notify the parties.

(7) Any relevant document that could not be filed at the stage as provided under sub-rules (3) and (4), for the reason that either the party was not aware of its existence or was unable to locate the same despite reasonable efforts, may be filed at a later stage, if permitted by a written order of the Arbitral Tribunal subject to payment of costs, as may be determined. The Arbitral Tribunal before taking the documents on record must satisfy

itself that the document is relevant, material and necessary for the resolution of the dispute(s) before it;

Provided, that no such document may be filed after the Terms of Reference have been drawn up by the Arbitral Tribunal.

(8) Soon after appointment of the sole arbitrator, the Advisory Counsel, in consultation with the Arbitral Tribunal, shall notify the parties, the date of hearing which should not be later than fifteen days.

(9) On the date of hearing, the Arbitral Tribunal shall settle Terms of Reference in consultation with parties and same shall be signed by parties as well as by the Arbitral Tribunal. The parties shall thereafter proceed to address oral argument based on records of case.

(10) The Arbitral Tribunal is expected to make its Award within thirty days after conclusion of oral address by the parties.

11(1) The sole arbitrator's fee shall be as prescribed in Schedule 'B, C, and D' respectively of the Delhi International Arbitration Centre (Administrative costs and Arbitrators' Fees) Rules.

11(2) The emergency Arbitrator's fee shall be as prescribed in schedule 'E' of Delhi International Arbitration Centre.

PART III-A EMERGENCY ARBITRATION

18A. Emergency Arbitrator -

(1) If a party is in requirement of urgent interim or conservatory measures, that cannot await formation of the Arbitration Tribunal, it may make an application to the Secretariat addressed to the Coordinator, with a simultaneous copy thereof to the other parties to the arbitration agreement for such measures.

(2) The party making such an application shall

a) describe the circumstances and the nature of the urgency and the measures sought

b) pay the relevant application fee for appointment of the Emergency Arbitrator

c) file proof of service of such application upon the opposite parties.

(3) The party invoking the provision of Emergency Arbitrator shall deposit cash and fees prescribed in the schedule.

(4) The Secretariat with the consent of the Chairperson shall appoint the Emergency Arbitrator within two days of making of such request (excluding non-business days).

(5) The Emergency Arbitrator so appointed shall schedule a hearing including filing of pleadings and documents by the parties within two business days of his appointment. The Emergency Arbitrator shall provide 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. The parties shall comply with any order made by the Emergency Arbitrator.

(6) The Emergency Arbitrator shall ensure that the entire process from the appointment of the Emergency Arbitrator to making the Order shall be completed within seven (7) days (excluding non-business days).

(7) The Emergency Arbitrator shall become functus officio after the Order is made and shall not be a part of the Arbitral Tribunal, which may be formed subsequently and in accordance with Rule 14, unless otherwise agreed to by the parties.

(8) 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.

(9) The order passed by the Emergency Arbitrator shall remain operative for a period of two months from the date of passing of the order unless modified, substituted or vacated by the Arbitral Tribunal. The Arbitral Tribunal will also have the power to extend the order beyond the period of two months.

PART III B - INTERNATIONAL ARBITRATIONS

18B. Laws applicable to the substance of the dispute -

The Arbitration Tribunal shall decide the dispute in accordance with the rules of law designated by the parties as applicable to the substance of the dispute.●

18C. Laws applicable to the arbitration proceedings

Unless otherwise agreed by the parties the law governing the arbitration proceedings shall be the laws in force in India.●

18D. Language -

(1) The parties are free to agree upon the language or languages to be used in the arbitration proceedings.

(2) Failing any agreement referred to in sub rule (1), the arbitration tribunal shall determine the language or languages to be used in the arbitration proceedings.

(3) The agreement or determination, unless otherwise specified, shall apply to any written statement by a party, any hearing or any arbitral award, decision or other communication by the arbitral tribunal.

(4) The arbitral tribunal may order that any pleadings/ documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by arbitration tribunal.

18E. Applicability of other Parts

These rules and particularly the rules under the titles Preliminary, Part- I Arbitration Procedure, Part- II- Formation of Arbitral Tribunal, Part-III- Summary Procedure, Part III- A- Emergency Arbitration and Part- IV- General Provisions herein as also the Delhi International Arbitration Centre (Administrative Costs and Arbitrators' Fees) Rules shall mutatis mutandis apply to all international commercial arbitrations. Separate Fee Schedule-D shall apply to International Commercial Arbitration.

PART III C - MED ARB

18F. Reference to Med-Arb -

- 1) Parties to an arbitration agreement may, at any time before the commencement of the arbitration proceedings or while the arbitration proceedings are in progress, opt for mediation, and request the arbitral tribunal to put the arbitration proceedings on hold to enable the parties to resolve their disputes amicably.
- 2) The parties should convey their request to the arbitral tribunal, or if the arbitral tribunal is not in session, to the coordinator.
- 3) The arbitral tribunal shall accept the request of the parties and keep in abeyance the arbitration proceedings, relegating the parties to Med-Arb.
- 4) The Mediators on the panel of the Delhi High Court Mediation Centre shall be deemed to be the mediators for the purpose of the reference to Med-Arb. The parties shall have liberty to appoint the mediator of their choice and proceed with the mediation proceedings expeditiously.
- (5) The mediation proceedings shall be conducted in accordance with the mediation rules of the Delhi High Court Mediation Centre, which shall be deemed to have been incorporated herein and as an integral part of these rules.
The proceedings before the mediators shall remain confidential and shall not be brought on record in the arbitration proceedings, should the mediation fail.

PART IV- GENERAL PROVISIONS

19. Interim measures ordered by Arbitral Tribunal -

- (1) The Arbitral Tribunal may, at the request of a party, order a party to take any interim measure of protection in respect of the subject- matter of the dispute, as it may consider necessary.
- (2) The Arbitral Tribunal may require a party to provide appropriate security in connection with a measure ordered under sub-rule (1).
- (3) The party requesting for Interim Measures under sub rule (1) shall satisfy the Arbitral Tribunal that there is a reasonable possibility that it is likely to succeed on the merits of its claim and that it may suffer irreparable damage, i.e. while granting interim measure the Arbitral Tribunal is satisfied that the party seeking interim measure has a prima facie case, the balance of convenience is in its favour and that non granting of interim measure will result in irreparable loss or damages, which cannot be compensated in terms of money. The determination of Arbitral Tribunal in respect of such request shall not affect the discretion of the Arbitral Tribunal in making subsequent determination.
- (4) 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.

20. Default of parties -

(1) If any party to an arbitration agreement fails to participate at any stage before the signing of terms of reference, then such party shall be proceeded *ex-parte* and a notice to this effect shall be sent to the defaulting party alongwith a copy to the other Party(s).

(2) If any confirming party refuses or fails to take part in the arbitration proceedings, the Arbitral Tribunal shall proceed *ex- parte*, after a written notice is served on the defaulting party.

(3) If a confirming party is proceeded *ex-parte*, the Coordinator shall send an intimation in writing to this effect to the defaulting party as well as the other confirming party(s). However, this shall not preclude such party from participating in any subsequent stage of the arbitration proceedings.

21. Default of arbitrators -

When after the constitution of the Arbitral Tribunal, an arbitrator fails to participate in two hearings, without sufficient cause, his mandate to act as an arbitrator shall stand terminated and the Chairperson shall appoint another arbitrator.

22. Place of arbitration -

Ordinarily the place of arbitration shall be Delhi and the venue shall be Delhi International Arbitration Centre, unless otherwise agreed upon by the parties.

23. Appointment of Experts -

(1) The Arbitral Tribunal may, unless otherwise agreed to by the parties in writing,:

(a) appoint one or more experts to report to it on specific issues to be determined by the Arbitral Tribunal, and

(b) require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for inspection.

(2) If a party so requests or if the Arbitral Tribunal deems it necessary, the expert shall, after delivery of his written or oral report, participate in an oral hearing where the parties have the opportunity to put questions to him.

(3) The expert shall, on the request of a party, make available to that party, for examination all documents, goods or other property in the possession of the expert with which he was provided in order to prepare his report.

(4) The fees and costs of any expert appointed by a party shall be borne by the party appointing him. If the expert is appointed by the Arbitral Tribunal the fees and costs of such appointment, unless otherwise directed by the Arbitral Tribunal, shall be shared equally by all the parties.

24. Application for adjournment -

(1) Any party seeking adjournment or change in the time-table fixed for the arbitration proceedings shall file a written request, supported by sufficient and cogent reasons and necessary documents, if any, at least thirty days prior to the date for which such adjournment is sought alongwith costs by way of Demand Draft in the name of Delhi International Arbitration Centre for a sum of Rs. 25,000/-. The Arbitral Tribunal may accede to such request after recording its reasons in writing.

(2) If a request for adjournment could not be made at least thirty days prior to the date for which it is sought, then the same may be entertained only if it is made in writing and

supported by sufficient and cogent reasons and necessary documents, subject to payment of costs as given below:

Time Bracket	Cost
30 to 26 days (both inclusive) prior to fixed date	Rs. 25,000/- <i>plus</i> 10% i.e. Rs. 27,500/-
25 to 21 days (both inclusive) prior to fixed date	Rs.25,000/- <i>plus</i> 20% i.e. Rs. 30,000/-
20 to 16 days (both inclusive) prior to fixed date	Rs. 25,000/- <i>plus</i> 30% i.e. Rs. 32,500/-
15 to 11 days (both inclusive) prior to fixed date	Rs. 25,000/- <i>plus</i> 40% i.e. Rs. 35,000/-

Provided, that no request for adjournment shall be entertained ten days before the scheduled date, unless supported by special or exceptional reasons or in cases of emergency. The percentage of additional costs may be decided by the Chairperson in such cases, including the power to exempt the imposition of additional costs, original costs to remain unaffected. In all such cases the Chairperson shall record special reasons in writing.

(3) The Chairperson may, for reasons to be recorded in writing, exempt a party from depositing costs for seeking adjournment or may reduce the amount of costs.

(4) For removal of doubts, it is clarified that the Arbitral Tribunal may, in addition to the above costs payable to the Centre, determine costs, if any, payable by the party seeking adjournment to the opposite party(s).

25. Deposits -

(1) The Coordinator may require the parties, before referring the case to the Arbitral Tribunal, to deposit in advance in one or more installments, such sums of money as he deems necessary to defray miscellaneous expenses and arbitrator's fee.

(2) The deposits shall be called for in equal shares from the Claimant(s) and the Respondent(s). The Coordinator may, during the course of the arbitration proceedings, require further sums to be deposited by the Parties or anyone of them to meet the costs of the arbitration.

(3) When one of the parties neglects or refuses to make the deposit, the Coordinator may require such deposit, whether in relation to a Claim or a Counter-claim, to be made by the other Party to the dispute (Claimant or Respondent as the case may be). Should the whole or part of the deposit be not made by the Parties or any one of them, the Coordinator shall inform the Parties or the Party concerned that the Claim or Counter-claim, as the case may be, will not be the subject matter of the reference.

(4) The Arbitral Tribunal shall proceed only in respect of those Claims or Counter-claims for which the deposits have been duly paid to the Centre and otherwise may order the suspension or termination of the arbitral proceedings.

(5) All deposits towards miscellaneous expenses and fees shall be made with the Centre and no payment shall be released to the arbitrators directly by the parties. The deposit made by the parties shall be taken into account by the Arbitral Tribunal in apportioning the costs while making the Arbitral Award. Any deposit made in excess shall be refunded to such party(s) as the Arbitral Tribunal may direct.

(6) The Centre shall have a lien on the Arbitral Award for any unpaid costs of the Arbitration including adjournment cost, miscellaneous expenses and the fees of the Arbitrator and the Award will not be notified to the parties unless all such costs have been fully paid to the centre by the parties or by one of them.

26. Additional Fees and Expenses -

The Arbitral Tribunal shall be entitled to allow fees and expenses of witnesses, expenses connected with the selection and carriage of sample and examination of goods, if required, conveyance, hire, cost of legal or technical advice or proceedings in respect of any matter arising out of the arbitration incurred by the Arbitral Tribunal, and any other incidental expenses and charges in connection with or arising out of the reference or award as the Arbitral Tribunal shall, in its absolute discretion, think fit.

27. Form and contents of Arbitral Award -

(1) An arbitral award shall be made in writing and shall be signed by the members of the Arbitral Tribunal.

(2) For the purposes of sub-rule (1), in arbitral proceeding with more than one arbitrator, the signatures of the majority of all the members of the Arbitral Tribunal shall be sufficient so long as the reason for any omitted signature is stated.

(3) The arbitral award shall state the reasons upon which it is based, unless-

(a) The parties have agreed that no reasons are to be given, or

(b) The award is an arbitral award on agreed terms under Rule 13 of these Rules.

(4) The Arbitral Award shall state its date and the place of arbitration and the award shall be deemed to have been made at that place.

(5) After the Arbitral Award is made, a signed copy shall be delivered to each party.

(6) The Arbitral Tribunal may, at any time during the arbitral proceedings, make an interim Arbitral Award on any matter with respect to which it may make a final Arbitral Award.

(7) In case of monetary claims the award shall specify the amount awarded.

(8) Unless otherwise agreed to by the parties, -

(a) The costs of an arbitration shall be fixed by the Arbitral Tribunal

(b) The Arbitral Tribunal shall specify-

i) The party entitled to costs,

ii) The party who shall pay the costs,

iii) The amount of costs or method of determining that amount, and

iv) The manner in which the costs shall be paid.

(9) On termination of the proceedings, the Arbitrator may pass a direction and hand over the original record alongwith the proceedings, to either of the parties, as he may deem fit and proper, subject to submission of digitized version of the entire record and proceedings by the concerned party, one copy each, for the Arbitrator, for the Centre and for the other party(ies). Such copies shall be signed digitally.

Explanation - For the purpose of clause (a), –costsll means reasonable costs relating to-

1) The fees and costs of the arbitrators and witnesses,

2) Legal fees and expenses,

3) The Miscellaneous Expenses

4) Any other expenses incurred in connection with the arbitral proceeding and the arbitral award.

28. Interest on sums awarded -

(1) Unless otherwise agreed to by the parties, where and in so far as a Arbitral Award is for the payment of money, the Arbitral Tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of

the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the Arbitral Award is made.

(2) The Arbitral Award shall also provide the rate of interest to be paid from the date of the award to the date of payment.

29. Termination of proceedings -

(1) The arbitral proceeding shall be terminated by the final Arbitral Award or by order of the Arbitral Tribunal under sub- rule (2).

(2) The Arbitral Tribunal shall issue an order for the termination of the arbitral proceedings where-

(a) The Claimant withdraws his claim, unless the Respondent objects to the order and the Arbitral Tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute,

(b) The parties agree on the termination of the proceedings, or

(c) The Arbitral Tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) Subject to Rule 30 of these Rules and sub-section (4) of section 34 of the Act, the mandate of the Arbitral Tribunal shall terminate with the termination of the arbitral proceedings.

30. Correction and interpretation of award; additional award -

(1) Within thirty days from the receipt of the Arbitral Award, unless another period of time has been agreed upon by the parties-

(a) A party, with notice to the other party, may request the Arbitral Tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award;

(b) If so agreed by the parties, a party, with notice to the other party, may request the Arbitral Tribunal to give an interpretation of a specific point or part of the award.

(2) If the Arbitral Tribunal considers the request made under sub-rule (1) to be justified, it shall make the correction or give the interpretation within thirty days from the receipt of the request and the interpretation shall form part of the arbitral award.

(3) The Arbitral Tribunal may correct any error of the type referred to in sub-rule (1) clause (a) on its own initiative, within thirty days from the date of the Arbitral Award.

(4) Unless otherwise agreed to by the parties, a party with notice to the other party, may request, within thirty days from the receipt of the Arbitral Award, the Arbitral Tribunal to make an additional Arbitral Award as to claims presented in the arbitral proceedings but omitted from the Arbitral Award.

(5) If the Arbitral Tribunal considers the request made under sub-rule (4) to be justified, it shall make the additional Arbitral Award within sixty days from the receipt of such request.

(6) The Arbitral Tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional Arbitral Award under sub-rules (2) or (5).

(7) Rules 27 and 28 of these Rules shall apply to a correction or interpretation of the Arbitral Award or to an additional Arbitral Award made under this Rule.

31. Waiver -

A party which proceeds with the arbitration without raising its objection to a failure to comply with any of provision of these Rules, or of any other rules applicable to the proceedings, any direction given by the Arbitral Tribunal, or any requirements under the arbitration agreement relating to the constitution of the Arbitral Tribunal, or to the conduct of the proceedings, shall be deemed to have waived its right to object.\

32. Amendment of Rules -

These Rules may be amended by the Chief Justice of the Delhi High Court in consultation with the Delhi High Court Arbitration Committee.

33. Residuary Provision -

The Arbitration Committee may take appropriate decisions, as it considers necessary in respect of all matters, which are not specifically provided in these Rules.