

NOTICE

The High Court of Delhi is in the process of framing High Court of Delhi Arbitration Rules. The "Draft High Court of Delhi Arbitration Rules, 2023" are enclosed herewith. The objections, if any on the said Draft Rules may be sent through e-mail at **jr-rules.dhc@gov.in** latest by 05.07.2025.

Sd/-
Registrar General
High Court of Delhi

INDEX

S. NO.	PARTICULARS	PAGE NO.
1.	Draft High Court of Delhi Arbitration Rules, 2023	1-20
2.	Relevant Practice Directions	21-40
(i)	Practice Direction dated 07.12.2009	21
(ii)	Practice Direction dated 07.04.2010	22
(iii)	Practice Direction dated 30.08.2010	23
(iv)	Practice Direction dated 16.01.2015	24-25
(v)	Practice Direction dated 28.04.2016	26-33
(vi)	Practice Direction dated 19.08.2019	34
(vii)	Practice Direction dated 03.12.2019	35
(viii)	Practice Direction dated 08.12.2020	36
(ix)	Practice Direction dated 15.02.2022	37
(x)	Practice Direction dated 16.12.2022	38-40
3.	Scheme for Appointment of Arbitrators, 1996	41-44
(i)	Amendment dated 18.08.2003	45
(ii)	Amendment dated 09.11.2009	46
(iii)	Amendment dated 23.07.2010	47
(iv)	Amendment dated 08.05.2013	48
4.	Recent Judgments/ Orders of the Hon'ble High Court of Delhi issuing relevant procedural directions	49-65
(i)	Gammon India Limited v. NHAI [2020 SCC OnLine Del 659]	49-62
(ii)	Union of India v. Pragathi Construction Consultants [Order dated 16.07.2021 in O.M.P (COMM) 196/2021] Picasso Digital Media Private Limited v. Pick A Cent	63
(iii)	Education and Consultancy Services Limited [Order dated 06.10.2021 in O.M.P (COMM) 165/2021]	64-65

DRAFT HIGH COURT OF DELHI ARBITRATION RULES, 2023

THE HIGH COURT OF DELHI ARBITRATION RULES, 2023

New Delhi, [date, month, year]

Whereas the Delhi High Court Act, 1966 was enacted to provide for the constitution of a High Court for the Union territory of Delhi, and for matters connected therewith.

And whereas the Arbitration and Conciliation Act, 1996 was enacted to consolidate and amend the law relating to domestic arbitration, international commercial arbitration, and enforcement of foreign arbitral awards and to define the law relating to conciliation and for matters connected therewith or incidental thereto.

Now, therefore, in exercise of the powers conferred by Section 82 of the Arbitration and Conciliation Act, 1996 and Section 7 of the Delhi High Court Act, 1966, and all other powers enabling it, the High Court of Delhi hereby makes the following Rules, with respect to practice and procedure for the law relating to the matters governed by the Arbitration and Conciliation Act, 1996.

CHAPTER I

GENERAL

1. Short Title and Commencement.

- (1) These Rules may be called the 'High Court of Delhi Arbitration Rules, 2023'.
- (2) The Rules shall come into force on such date as the Chief Justice of the High Court of Delhi may notify in the Official Gazette.

Provided that different dates may be appointed for different provisions of these Rules and any reference in any such provision to the commencement of these Rules shall be construed as a reference to the commencement of that provision.

2. Definitions.

For the purposes of these Rules, unless the context otherwise requires—

- (1) 'Act' shall mean the Arbitration and Conciliation Act, 1996.
A reference to the Act or any other law in these Rules shall be construed as a reference to the Act or such law as re-enacted, re-designated, amended, or extended from time to time, except as otherwise provided in these Rules;
- (2) 'Commercial Courts Act' shall mean the Commercial Courts Act, 2015;
- (3) 'Court' shall mean either the High Court of Delhi or any Court subordinate thereto, unless the context otherwise requires.

CHAPTER II
PROCEEDINGS UNDER PART I OF THE ACT

3. Pleadings and Exhibits.

- (1) Any party moving an application before the Court under the provisions of Part I of the Act shall, to the extent applicable, furnish/state the following—
 - i. a synopsis with a list of dates;
 - ii. seat of the arbitration;
 - iii. a clear typed copy of the arbitration clause as a separate annexure;
 - iv. an undertaking that no other application on the same cause of action has been filed before any other Court;
 - v. whether there are any other proceeding(s) initiated under the provisions of the Act that are pending or finally adjudicated upon in respect of the same subject-matter/dispute arising out of the same contract, or the same series of contracts, between the parties, or for matters connected herewith or incidental thereto, and the stage of the said proceeding(s), and the forum(s) where the said proceeding(s) are pending or have been finally adjudicated upon.
- (2) In addition to the applicable requirements under Rule 3(1), any party filing an application under Section 8 of the Act shall state the details of when it received summons from the Court.
- (3) In addition to the applicable requirements under Rule 3(1), any party moving an application under Section 9 of the Act shall, to the extent applicable, furnish/state the following—
 - i. whether the application is being filed at the pre-arbitration stage, during the pendency of the arbitration proceedings, or after an arbitral award has been rendered by the arbitral tribunal;

- ii. whether the application is being filed under Section 9(1)(i) or Section 9(1)(ii);
 - iii. reason(s) why the Court is being approached for interim reliefs instead of the arbitral tribunal in case the arbitration proceedings are ongoing;
 - iv. details of the property sought to be preserved, its nature and its location; or such other measure of protection being sought before the Court.
- (4) In addition to the applicable requirements under Rule 3(1), any party moving an application under Section 11 of the Act shall, to the extent applicable, furnish/state the following—
- i. the specific sub-section of Section 11 of the Act under which the application is being filed;
 - ii. names of the parties to the arbitration agreement with their complete addresses and contact details;
 - iii. names and addresses of the persons, if any, proposed to be appointed as arbitrator(s) by the parties along with a copy of the Declaration(s) made by such arbitrator(s) concerned under the Sixth Schedule to the Act, where such a Declaration(s) has been furnished;
 - iv. name(s) and address(es) of the person(s) or institution, if any, to whom/which any function has been entrusted by the parties to the arbitration agreement under the appointment procedure agreed upon by them;
 - v. qualifications, if any, required of the arbitrators comprising the arbitral tribunal by agreement between the parties;
 - vi. a brief statement describing the general nature of the disputes and the points at issue;
 - vii. valuation of the claims;
 - viii. relief sought;

- ix. whether an arbitral tribunal stands constituted for adjudication of the claims of either party arising out of the same contract, or the same series of contracts, along with a copy of the Declaration(s) under the Sixth Schedule to the Act made by the arbitrators comprising the said arbitral tribunal, if any.

(5) In addition to the applicable requirements under Rule 3(1), any party moving an application under Section 14 and/or Section 15 of the Act shall, to the extent applicable, furnish/state the following—

- i. name and contact details of each of the arbitrator(s) comprising the arbitral tribunal;
- ii. the manner of the appointment of the arbitral tribunal;
- iii. Declaration under the Sixth Schedule to the Act as provided by the arbitrators comprising the said arbitral tribunal;
- iv. stage of the arbitral proceedings;
- v. last date of hearing and the next date of hearing before the arbitral tribunal;
- vi. total number of sittings held by the arbitral tribunal;
- vii. the arbitral record, including details of all the pleadings relating to the application before the arbitral tribunal, correspondence between the parties and the arbitral tribunal, and the order(s) passed by the arbitral tribunal, if any, in case an application seeking a similar prayer was filed before the arbitral tribunal;
- viii. all relevant communications exchanged with the arbitral tribunal and the parties *inter se* in relation to the grounds made out under Section 14 and Section 15;
- ix. provisions from the Fifth Schedule and/or the Seventh Schedule to the Act being relied upon by the applicant in support of the application.

- (6) In addition to the applicable requirements under Rule 3(1), any party moving an application under Section 17(2) of the Act shall, to the extent applicable, furnish/state the following—
- i. names and addresses of the parties and the arbitral tribunal;
 - ii. the general nature of the claim(s) and the reliefs sought before the arbitral tribunal;
 - iii. reasons as to why assistance of the Court is required;
 - iv. a copy of the order of the arbitral tribunal of which enforcement is sought;
 - v. whether the order of the arbitral tribunal of which enforcement is sought is under challenge, or has been challenged before any Court, and the particulars of such proceedings, if any.
 - vi. stage of the arbitral proceedings.
- (7) In addition to the applicable requirements under Rule 3(1), any party moving an application under Section 27(1) of the Act shall, to the extent applicable, furnish/state the following—
- i. names and addresses of the parties and the arbitral tribunal;
 - ii. the general nature of the claim(s) and the relief sought before the arbitral tribunal;
 - iii. the name/address of the witness(es) along with a statement of the subject-matter of the testimony required;
 - iv. a description of any document to be produced or property to be inspected;
 - v. reasons as to why assistance of the Court is required;
 - vi. a copy of the order of the arbitral tribunal directing the production of the witness(es) in question;
 - vii. substantive law governing the arbitration proceedings,

especially the rules governing evidence, if mentioned;
viii. stage of the arbitral proceedings.

(8) In addition to the applicable requirements under Rule 3(1), any party moving an application under Section 27(5) of the Act shall, to the extent applicable, furnish/state the following—

- vii. names and addresses of the parties and the arbitral tribunal;
- viii. general nature of the claim(s) and the reliefs sought before the arbitral tribunal;
- ix. reasons as to why the assistance of the Court is required;
- x. a copy of the order of the arbitral tribunal directing the production of the witness(es) in question;
- xi. substantive law governing the arbitration proceedings, especially the rules governing evidence, if mentioned;
- xii. stage of the arbitral proceedings.

(9) In addition to the applicable requirements under Rule 3(1), any party moving an application under Section 29A of the Act shall, to the extent applicable, furnish/state the following—

- i. date on which the arbitral tribunal entered upon reference;
- ii. number of sittings held by the arbitral tribunal;
- iii. stage of the arbitration proceedings;
- iv. number of non-effective sittings, adjournments sought and details of the party seeking such adjournments, delays for reasons attributable to the arbitral tribunal, and reasons thereof;
- v. details of any interlocutory applications decided, or pending adjudication before the arbitral tribunal;
- vi. costs, if any, imposed by the arbitral tribunal upon any party for reasons of acting with delay during the course of the proceedings;

- vii. date of completion of the pleadings;
- viii. whether the parties had mutually agreed to extend the period under Section 29A(3) before approaching the Court, and the relevant pleadings submitted, correspondences exchanged, and orders passed by the arbitral tribunal.

(10) In addition to the applicable requirements under Rule 3(1), any party moving an application under Section 34 of the Act shall, in addition to annexing the impugned arbitral award, and to the extent applicable, furnish/state the following—

- i. whether and before which forum an application under Section 36 of the Act, if any, has been filed by any of the parties in relation to the impugned arbitral award;
- ii. if any other application under Section 34 of the Act relating to the same subject-matter/dispute arising out of the same contract, or the same series of contracts, between the parties is pending or has been finally adjudicated upon by the High Court or any other Court;
- iii. a synopsis of the dispute along with a list of dates as stated in Rule 3(1)(i), disclosing the following information in addition thereto—
 - (a) the nature of the dispute before the arbitral tribunal;
 - (b) the findings of the arbitral tribunal *qua* the claims and/or the counterclaims with which the applicant is aggrieved;
 - (c) the reasoning of the arbitral tribunal with respect to the said claims and/or counterclaims;
 - (d) why the impugned arbitral award merits interference and under which specific sub-provisions of Section 34 of the Act, given the parameters of jurisdiction of the Court under Section 34 of the Act.

(11) In addition to the applicable requirements under Rule 3(1), any party moving an application under Section 36 of the Act shall, in addition to annexing the arbitral award made by the arbitral tribunal, furnish/state the following—

- i. an undertaking that the limitation period prescribed under Section 34(3) of the Act for filing an application for setting aside the arbitral award in question has expired;
- ii. if an application under Section 34 of the Act has been filed by either party and the particulars of such proceedings.

(12) In addition to the applicable requirements under Rule 3(1), any party moving an appeal under Section 37 of the Act shall, to the extent applicable, furnish/state the following—

- i. whether the appeal is being filed under Section 37(1) or Section 37(2) of the Act;
- ii. if the appeal is being filed under Section 37(1)(a), the appellant shall furnish/state the details as stipulated under Rule 3(2) along with a copy of the impugned order passed by the Court in the application under Section 8 of the Act, and the pleadings filed by the parties before the Court whose order is being impugned;
- iii. if the appeal is being filed under Section 37(1)(b), the appellant shall furnish/state the details as stipulated under Rule 3(3) along with a copy of the impugned order passed by the Court in the application under Section 9 of the Act;
- iv. if the appeal is being filed under Section 37(1)(c), the appellant shall furnish/state the details as stipulated under Rule 3(10) along with a copy of the impugned order passed by the Court in the application under Section 34 of the Act,
- v. if the appeal is being filed under Section 37(2)(a) or Section 37(2)(b),

the appellant shall disclose all relevant documents including the parties' pleadings, and the orders passed by the arbitral tribunal in relation to the application(s) which have resulted in the impugned order;

- vi. if the appeal is being filed under Section 37(2)(b), the appellant shall in addition disclose—
 - (a) where the impugned order relates to Section 17(1)(i), the name and address of the guardian and their relationship with the minor or the person of unsound mind, as the case may be;
 - (b) where the impugned order relates to Section 17(1)(ii), the specific clause under Section 17(1)(ii) to which the impugned order relates to, along with the details of the property sought to be preserved, its nature and its location, or such other measure of protection sought before the arbitral tribunal;
- vii. if any other appeal under Section 37 of the Act relating to the same subject-matter/dispute arising out of the same contract, or the same series of contracts, between the parties is pending or has been finally adjudicated upon by the High Court or any other Court, and the particulars of such proceedings;

(13) In addition to the applicable requirements under Rule 3(1), any party moving an application under Section 39(2) of the Act shall, to the extent applicable, furnish/state the following—

- i. the order or any other communication from the arbitral tribunal recording that the arbitral award has been made and is ready to be delivered;
- ii. the amount owed to the arbitral tribunal along with the details of the party that owes the said amount;
- iii. whether the fees demanded have been fixed by written agreement

between the arbitral tribunal and the party making the application.

4. Institutional Arbitration.

Unless stated to the contrary by any party, upon being approached for appointment of an arbitral tribunal, an endeavor shall be made to refer the parties to arbitration under the aegis of an arbitral institution.

5. Manner of appointment in certain cases.

Unless stated to the contrary by any party, if an arbitral tribunal already stands constituted for adjudication of the claims of either party arising out of the same contract, or the same series of contracts, and the said arbitration proceedings are at an initial stage, an endeavor shall be made to refer the matter to the same arbitral tribunal, *albeit* as a separate reference.

6. Fee of the Arbitral Tribunal.

The fee of an arbitral tribunal appointed by the High Court in exercise of its powers under Section 11 and/or Section 15 of the Act shall be governed by the Fourth Schedule to the Act, unless otherwise directed by the High Court or unless an agreement to the contrary exists between the parties. In the case of a reference to an arbitral institution, the fee schedule of the arbitral institution shall be applicable.

7. Maintenance of Arbitral Record.

An arbitral tribunal presiding over an arbitration seated in Delhi, or which is otherwise amenable to the territorial jurisdiction of the Courts at Delhi, shall maintain the complete arbitral record in a chronological manner, complete with a proper index and pagination, so that the same may be sent to the High Court or any other Court under its supervisory jurisdiction whenever the same is required. An up-to-date electronic copy of the said arbitral record shall also be maintained by the arbitral tribunal concerned.

CHAPTER III
PROCEEDINGS UNDER PART II CHAPTER I OF THE ACT

8. Pleadings and Exhibits.

- (1) Any party moving an application before the Court under the provisions of Part II Chapter I of the Act shall, to the extent applicable, furnish/state the following—
 - i. a synopsis of the dispute along with a list of dates;
 - ii. seat of the arbitration;
 - iii. governing/substantive law;
 - iv. the original arbitration agreement or a duly certified copy thereof, as prescribed under Section 47(1)(b) of the Act, as a separate annexure;
 - v. nationality of the applicant(s); and
 - vi. nationality of the respondent(s).
- (2) In addition to the applicable requirements under Rule 8(1), any party filing an application under Section 45 of the Act shall furnish details and proof of when it received summons from the Court.
- (3) In addition to the applicable requirements under Rule 8(1), any party filing an application for enforcement under Sections 47 and 48 of the Act shall, to the extent applicable, furnish/state the following—
 - i. status of the parties in relation to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958;
 - ii. original arbitral award or a copy thereof duly authenticated in the manner required by the law of the country in which it was made;
 - iii. date on which the arbitral award was received by the parties;
 - iv. evidence as may be necessary to demonstrate that the arbitral award is a foreign award;

- v. where the arbitral award is in a foreign language, the translation of such an arbitral award in the manner provided for under Section 47(2) of the Act; and
 - vi. whether the arbitral award is under challenge, or has been challenged, in any jurisdiction outside India, and the particulars of such proceedings, if any.
- (4) In addition to the applicable requirements under Rule 8(1), any party objecting to the enforcement of the foreign award under Section 48 of the Act shall specify the findings of the arbitral tribunal *qua* the claims and/or counterclaims with which it is aggrieved, and the grounds available under Section 48 of the Act that it is seeking to invoke.
- (5) In addition to the applicable requirements under Rule 8(1), any party moving an appeal under Section 50 of the Act shall, to the extent applicable, furnish/state the following—
- i. whether the appeal is being filed under Section 50(1)(a) or Section 50(1)(b) of the Act; and
 - ii. details as stipulated under Rule 8(2) along with a copy of the impugned order passed by the Court in the application under Section 45 of the Act, and the pleadings filed by the parties before the said Court, if the appeal is being filed under Section 50(1)(a).
 - iii. details as stipulated under Rule 8(3) along with a copy of the impugned order passed by the Court in the application under Sections 47 and 48 of the Act, and the pleadings filed by the parties before the said Court, if the appeal is being filed under Section 50(1)(b).

CHAPTER IV**PROCEEDINGS UNDER PART II CHAPTER II OF THE ACT****9. Pleadings and Exhibits.**

- (1) Any party moving an application before the Court under the provisions of Part II Chapter II of the Act shall, to the extent applicable, furnish/state the following—
 - i. a synopsis of the dispute along with a list of dates;
 - ii. seat of the arbitration;
 - iii. governing/substantive law;
 - iv. a clear typed copy of the arbitration clause as a separate annexure;
 - v. nationality of the applicant(s); and
 - vi. nationality of the respondent(s).
- (2) In addition to the applicable requirements under Rule 9(1), any party filing an application under Section 54 of the Act shall, to the extent applicable, furnish details and proof of when it received summons from the Court.
- (3) In addition to the applicable requirements under Rule 9(1), any party filing an application for enforcement under Sections 56 and 57 of the Act shall furnish/state the following—
 - i. status of the parties in relation to the Geneva Convention on the Execution of Foreign Arbitral Awards, 1927;
 - ii. the original arbitral award or a copy thereof duly authenticated in the manner required by the law of the country in which it was made;
 - iii. date on which the arbitral award was received by the parties;
 - iv. evidence as may be necessary to demonstrate that the arbitral award is a foreign award;
 - v. evidence as may be necessary to demonstrate that the arbitral award

has become final. If the arbitral award is under challenge, or has been challenged in any jurisdiction outside India, the applicant shall provide particulars of such proceedings;

- vi. where any document as mentioned under Section 56(1) is in a foreign language, the translation of such document in the manner provided for under Section 56(2) of the Act; and
- vii. evidence, as may be necessary, to prove that the conditions mentioned under Section 57(1) of the Act stand satisfied.

(4) In addition to the applicable requirements under Rule 9(1), any party objecting to the enforcement of a foreign arbitral award under Section 57 of the Act shall specify the findings of the arbitral tribunal *qua* the claims and/or counterclaims with which it is aggrieved, and the grounds available under Section 57(2) of the Act that it is seeking to invoke.

(5) In addition to the applicable requirements under Rule 9(1), any party moving an appeal under Section 59 of the Act shall, to the extent applicable, furnish/state the following—

- i. whether the appeal is being filed under Section 59(1)(a) or Section 59(1)(b) of the Act; and
- ii. details as stipulated under Rule 9(2) along with a copy of the impugned order passed by the Court in the application under Section 54 of the Act, and the pleadings filed by the parties before the said Court if the appeal is being filed under Section 59(1)(a).
- iii. details as stipulated under Rule 9(3) along with a copy of the impugned order passed by the Court in the application under Sections 56 and 57 of the Act, and the pleadings filed by the parties before the said Court if the appeal is being filed under Section 59(1)(b).

CHAPTER V
MISCELLANEOUS

10. Advance Service.

Any party moving an application before the Court under the provisions of any part of the Act shall serve an advance copy thereof on the opposite party, along with a letter stating that the matter is likely to be listed in Court shortly, and annex proof of such service along with an undertaking that service has been duly affected in the said manner. Service by e-mail would be considered as an adequate service. If the Respondent(s) has filed a caveat, service by e-mail should be made at least 48 hours before the date of the first listing of the case. In cases where the opposite party is the Union of India, a State Government, a Statutory Authority, a Public Sector Undertaking, or a Government Department, an advance copy shall be served through the respective standing/nominated counsel.

11. Filing Format.

All applications filed under the Act are to be placed in one consolidated format and with one consolidated index in a manner similar to those pertaining to writ petitions being filed before the High Court.

12. Affidavits and Statements of Truth.

Any application filed before the Court under the provisions of any part of the Act, and any reply or rejoinder thereto, shall be supported with an Affidavit, or a Statement of Truth in cases falling under the Commercial Courts Act, 2015, of the party concerned.

13. Territorial and Pecuniary Jurisdiction.

- (1) Any application filed before the Court under the provisions of any part of the Act shall clearly specify how the Court concerned has the requisite

territorial and pecuniary jurisdiction to entertain the said application.

- (2) In matters falling within the scope of the Commercial Courts Act, 2015, there shall be a specific endorsement in the paragraph dealing with pecuniary jurisdiction that the subject-matter of the application is a 'commercial dispute' as defined under Section 2(1)(c) of the Commercial Courts Act, 2015.

14. Listing of connected Matters.

Subject to the orders of the Judge-in-Charge, Original Side, the Registry of the High Court shall endeavor to list the following connected matters between the same parties before the same Bench of the High Court:

- i. cross-challenges to an arbitral award under Section 34 of the Act;
- ii. proceedings under Section 34 of the Act in respect of different arbitral awards but involving the same subject-matter/dispute arising out of the same contract, or the same series of contracts, between the parties.
- iii. cross-appeals under Section 37 of the Act;
- iv. application challenging an arbitral award under Section 34 of the Act, and application for enforcement of the said arbitral award under Section 36 of the Act, and an application for interim measures under Section 9 of the Act pertaining to the said arbitral award, or *vice-versa*; and
- v. application seeking appointment of an arbitrator under Section 11 of the Act, and application for interim measures under Section 9 of the Act in relation to the said arbitration agreement, or *vice-versa*.

15. Filing and Nomenclature to be adopted for filing.

The filing of applications under the Act shall be under the following categories with the nomenclature given below:

Type of Application	Matters falling within the scope of the Commercial Courts Act, 2015	Other matters
Under Section 11 of the Act	ARB. P. (COMM.)	ARB. P.
Under Section 34 of the Act	O.M.P. (COMM.)	O.M.P.
Under Section 9 of the Act	O.M.P. (I) (COMM.)	O.M.P. (I)
Under Section 17(2) and Section 36 of the Act	O.M.P. (ENF.) (COMM.)	O.M.P. (ENF.)
Under Section 37(2)(b) of the Act	ARB. A. (COMM)	ARB. A.
Under Section 27 (1) of the Act	O.M.P. (E.) (COMM.)	O.M.P. (E.)
Under Section 27(5) of the Act	O.M.P. (CONT.)	O.M.P. (CONT.)
Under Sections 14 and 15 of the Act	O.M.P. (T.) (COMM.)	O.M.P. (T.)

Under Section 48 and Section 57 of the Act	O.M.P. (EFA.) (COMM.)	O.M.P. (EFA.)
Under Section 29(A) and Section 39(2) of the Act	O.M.P. (MISC.) (COMM.)	O.M.P. (MISC.)

16. Filing of Written Submissions and Timelines for Oral Submissions.

The Court may direct the filing of written submissions in advance prior to the date fixed for oral arguments, or after the conclusion of oral arguments. The Court may also fix specific time slots and defined time-limits for oral arguments, as deemed appropriate.

17. General Clause.

Procedures not specifically provided for in these Rules shall, in general, be governed by the Commercial Courts Act, 2015, the Delhi High Court (Original Side) Rules, 2018, and the Arbitration and Conciliation Act, 1996.

18. Power to Amend.

The Chief Justice of the High Court of Delhi or her/his designate may, from time to time, amend by way of addition or variation any provision of these Rules.

19. Repeal and Savings.

All practice directions and notifications in relation to matters under the Arbitration and Conciliation Act, 1996 which have been published prior to the date on which these Rules come into force, and which govern the

subject-matter of the present Rules and are repugnant thereto, as also the Scheme for appointment of Arbitrators, 1996 dated 29.01.1996, are hereby repealed prospectively.

DRAFT

HIGH COURT OF DELHI, NEW DELHI

No. 16/Rules/DHC

Dated: 07.12.2009

PRACTICE DIRECTION

Hon'ble the Chief Justice has been pleased to issue the following practice directions :

In a Petition filed under Section 9 of the Arbitration & Conciliation Act, 1996, it shall be mandatorily mentioned that no other petition on the same cause of action has been filed in any other Court.

The Practice Direction will come into force immediately.

By order
Sd/-
(RAKESH KAPOOR)
REGISTRAR GENERAL

HIGH COURT OF DELHI, NEW DELHI

No. 20 /Rules/DHC

Dated: 07/04/10

PRACTICE DIRECTIONS

Hon'ble the Chief Justice has been pleased to issue the following practice directions :

Petitions filed under Section 34 of the Arbitration & Conciliation Act, 1996 be listed two working days after an advance copy of the Petition has been served on the opposite side.

The Practice Direction will come into force immediately.

By order


(RAKESH KAPOOR)
REGISTRAR GENERAL

Endst. No. 11415 - 35 /Rules/DHC

Dated: 07/04/10

Copy forwarded for information and necessary action to :-

1. Secretary (Law & Justice), Govt. of NCT of Delhi, Delhi Secretariat, I.P. Estate, New Delhi.
2. The District & Sessions Judge, Delhi.
3. The Secretary Bar Council of India, Delhi.
4. The Secretary Bar Council of Delhi, Delhi.
5. The President/Secretary, Supreme Court Bar Assn., Supreme Court of India, New Delhi.
6. The President/Secretary, Delhi High Court Bar Assn., Delhi High Court, New Delhi.
7. The President/Secretary, Bar Association, Tis Hazari Courts/Patala House Courts/ Karkardooma Courts/Rohini Courts/Dwarka Courts.
8. The Secretary, Supreme Court Legal Aid & Advice Committee.
9. The Member Secretary, Delhi Legal Services Authority, Patiala House Courts, New Delhi.
10. The Secretary, High Court Legal Aid & Advice Committee.
11. The Secretary, District Court Legal Aid & Advice Committee, Tis Hazari, Delhi.
12. Librarian, Tis Hazari Courts/Patala House Courts/Karkardooma Courts/Rohini Courts/ Dwarka Courts
13. PAs to Registrar General/ Registrar (Admn)/ Registrar (Protocol)/ Registrar (Vig.)/ Registrar (Org.)/ Registrar (Appl.)/ Registrar (Gen. Admn.), Delhi High Court, New Delhi.
14. Registrar-cum-Secretary to Hon'ble the Chief Justice.
15. All Joint Registrars/Deputy Registrars/Assistant Registrars, Delhi High Court.
16. Registrar (Computers) for uploading the Notification on the website of this Court.
17. Private Secretaries to Hon'ble Judges for kind perusal of His Lordships.
18. Librarian, Delhi High Court.
19. Administrative Officers (Judicial)/Court Masters, Delhi High Court.
20. Guard File.
21. Notice Board.

*So submitted as
webinar immediately
m. B. Gaur*

L. K. Gaur
(L.K. GAUR)
Joint Registrar (Rules)

HIGH COURT OF DELHI, NEW DELHI

No. 26 /Rules/DHC

Dated: 30/08/10

PRACTICE DIRECTION

Hon'ble the Chief Justice has been pleased to issue the following practice direction :-

As soon as notice is issued in the petitions filed under Section 34 of the Arbitration & Conciliation Act, 1996, the Registry shall send a letter of request to the Arbitrator to transmit the record of arbitral proceedings as well as award to this Court after the conclusion of arbitration.

This Practice Direction will come into force immediately.

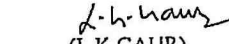

(RAKESH KAPOOR)
REGISTRAR GENERAL

Endst.No. 25842-61 /Rules/DHC

Dated: 30/08/10

Copy forwarded for information to:-

1. The District Judge -1 & Sessions Judge, Delhi.
2. The Secretary, Bar Council of India, Delhi.
3. The Secretary, Bar Council of Delhi, Delhi.
4. The President/Secretary, Supreme Court Bar Association, Supreme Court, New Delhi.
5. The President/Secretary, Delhi High Court Bar Association, Delhi High Court, New Delhi.
6. The President/Secretary, Bar Association, Tis Hazari Courts/Patala House Courts/
Karkardooma Courts/Rohini Courts/Dwarka Courts.
7. The Secretary, Supreme Court Legal Aid & Advice Committee.
8. The Member Secretary, Delhi Legal Services Authority, Patala House Courts, New Delhi.
9. The Secretary, High Court Legal Aid & Advice Committee.
10. The Secretary, District Court legal Aid & Advice Committee, Tis Hazari, Delhi.
11. Chairman, District Court Website Committee, for uploading practice direction on the website of the District Courts.
12. PAs to Registrar General/Registrar(Admn.)/Registrar(Org.)/Registrar(Vig.)/ Registrar
(Genl. Admn.)/ Registrar(Appl.)/Registrar (Protocol), Delhi High Court.
13. Registrar-cum-Secretary to Hon'ble the Acting Chief Justice.
14. All Joint Registrars/Deputy Registrars/Assistant Registrars, Delhi High Court.
15. Registrar (Computers) for uploading the practice direction on the website of this Court.
16. Private Secretaries to Hon'ble Judges, for kind perusal of His Lordships.
17. Librarian, Delhi High Court.
18. Administrative Officers (Judicial)/Court Masters, Delhi High Court.
19. Guard File.
20. Notice Board


(L.K. GAUR)
Joint Registrar (Rules)

HIGH COURT OF DELHI AT NEW DELHI

No. 31/Rules/DHC

Dated : 16.01.2015

PRACTICE DIRECTIONS

Hon'ble the Chief Justice, on the recommendations of the Hon'ble Judges of the Original Side, has been pleased to issue following practice directions for information and compliance by all concerned :-

1. In a Petition filed under Section 9 of the Arbitration & Conciliation Act, 1996, where the arbitration proceedings have commenced, an advance copy of petition shall be supplied to private parties and in all the petitions under Section 9 of the Act whether before, during or after passing of the award in cases where the opposite party is Union of India, State Government, Statutory Authority, Public Sector Undertaking or Govt. Department, advance copy shall be served through the respective standing/nominate/empanelled counsel.
2. In a petition filed under Section 11 of the Arbitration & Conciliation Act, 1996, for appointment of Arbitrators, an advance copy of petition shall be served upon the opposite party, where opposite party is Union of India, State Government, Statutory Authority, Public Sector Undertaking or Govt. Department through the respective standing/nominated counsel.
3. In a petition filed under Sections 14 & 15 of the Arbitration & Conciliation Act, 1996, for termination of mandate and substitution of the arbitrator, an advance copy of petition shall be served upon the opposite party or their counsel appearing in the arbitration proceedings.
4. In a petition filed under Section 27 of the Arbitration & Conciliation Act, 1996, for Court's assistance in taking evidence, an advance copy of petition shall be served upon the opposite party or their counsel appearing in the arbitration proceedings.
5. In a petition filed under Section 34 of the Arbitration & Conciliation Act, 1996, for setting aside arbitral award, an advance copy of petition shall be served upon the opposite party or their counsel who appeared last in the arbitral proceedings.
6. In an appeal filed under Section 37 of the Arbitration & Conciliation Act, 1996, an advance copy of petition shall be served upon the opposite party or their counsel appearing in the arbitral proceedings.

In all such above matters, a letter will also be served on the other side stating that the matter will be listed in Court shortly. The acknowledgment of service will be enclosed with the petition at the time of filing.

All the Officers and Dealing Assistants at the Filing Counter are requested to ensure that advance copies in the above mentioned petitions filed under Sections 9, 11, 14, 15, 27, 34 and 37 of the Arbitration & Conciliation Act, 1996 are served upon the opposite parties and the acknowledgment of service is enclosed with the petitions at the time of their filing.

These Practice Directions shall come into force immediately.

By Order
Sd/-
(VINOD GOEL)
REGISTRAR GENERAL

HIGH COURT OF DELHI AT NEW DELHI

No. 41/Rules/DHC

Dated : 28.04.2016

PRACTICE DIRECTIONS

Hon'ble the Chief Justice, on the recommendations of the "Rules Committee under section 123 of CPC" of this Court has been pleased to issue following practice directions for information and compliance by all concerned :-

With reference to Notice dated 10.01.1995, Practice Direction (Regarding Notice of Motion) No. 1/2002 dated 01.10.2002 and Practice Directions No. 31/Rules/DHC dated 16.01.2015 (copies enclosed), it is further directed that whenever an advance copy of a Writ Petition, Petition/Application under Arbitration and Conciliation Act, 1996 as well as in other Original and Appellate Jurisdiction is required to be served upon an opposite party which is Union of India, State Government, Statutory Authority, Public Sector Undertaking or Government Department having Sr./Standing Counsel/Nominated/Empanelled Counsel, such an advance copy shall be served through the respective Sr./Standing Counsel/Nominated/Empanelled Counsel and shall not be served directly upon the concerned department so that there is no delay in transmission of briefs to the Sr./Standing Counsel/Nominated/Empanelled Counsels.

These Practice Directions shall come into force immediately.

By Order
Sd/-
(VINOD GOEL)
REGISTRAR GENERAL

HIGH COURT OF DELHI: NEW DELHI

January 10, 1995

NOTICE

The Counsel for the parties and the litigants are hereby informed that w.e.f. 16.01.1995, whenever an Application (C.M.) in Appellate Side cases and an Interlocutory Application (I.A.) in Original Side cases is filed in a pending case, the following requirements will be complied with by them :-

- a) where the Respondent/Defendant/Opposite party is represented by Counsel, a copy of the Application (C.M./I.A.) shall be served on the Counsel against receipt:
- b) The Applicant shall furnish to the Registry, name or names of all the Counsel for the Respondent/Defendants/Opposite parties so that these may be shown in the Cause List when the Application is listed for hearing:
- c) The Applicant shall inform by way of letter the Counsel for the Opposite Party about the likely date of hearing of the Application.

It is further notified that in a case where a copy of the Application (C.M./I.A.) has been served on the Counsel for the Respondent/Defendant/Opposite parties, fresh notice of the Application (C.M./I.A.) will not be issued to the non-applicants of their counsel and appropriate orders will be passed at the first hearing of the Application (C.M./I.A.)

Note: Service sent by way of certificate
of posting will not be considered as
sufficient compliance with this notice.

The Registry shall ensure compliance of the aforesaid requirements.

BY ORDER
Sd/-
REGISTRAR

HIGH COURT OF DELHI : NEW DELHI

PRACTICE DIRECTION

(Regarding Notice of Motion)

No.1 of 2002 Dated 01.10.2002

1. In accordance with Rule 1-A in Part-II (Civil), Chapter 4-F(b), High Court Rules and Orders, Volume -V, an advance copy of a writ petition proposed to be filed is required to be served on the Nominated Counsel for certain designated authorities. (Notification No.495/Rules/DHC dated 17.11.1995).
2. In addition thereto, a Notice of Motion in the Form Annexure "A" shall be served on the Nominated Counsel stating the proposed date of first hearing of the writ petition. (As per amendment made in the aforesaid Rule 1-A vide Notification No. 119/Rules/DHC dated 01.10.2002).
3. If for any reason the writ petition is not listed for hearing on the specified date or within 3 days of the specified date, a fresh Notice of Motion in the Form Annexure "B" must be served on the Nominated Counsel stating the proposed new date of hearing.
4. Service of Notice of Motion and advance copy :
 - a. Service by UPC will not be accepted by the Registry as adequate proof of service.
 - b. Service on the opposite counsel/party by Registered post A/D, speed post or courier service will be accepted by the Registry as adequate proof of service, effective three clear days after the last date of despatch.

Consequently, if the last date of despatch is, say, the 5th of July, then the writ petition will be listed on or after the 9th of July.
5. An urgent case filed for listing the next day will be accepted only if the Notice of Motion and the advance copy are personally served on the opposite counsel/party.
6. Ordinary listing will be a minimum of 7 clear days after removal of objections, if any. Consequently, if a writ petition is filed on, say, the 5th of July for ordinary listing, then it will be listed on or after the 13th of July.
7. Service of Notice of Motion and advance copy in compliance with these Practice Directions will be deemed to be adequate service for all purposes and no further notice shall be given to the opposite counsel.
8. When a Notice of Motion and advance copy are personally served on a Nominated Counsel, the office of such a Nominated Counsel will clearly acknowledge receipt by giving the date of receipt and a diarised receipt number. The office of the Nominated Counsel is expected to maintain a register/diary for this purpose.

9. The contents of these Practice Directions will apply, mutatis mutandis to the Original Jurisdiction and the Appellate Jurisdiction of this Court and for all miscellaneous applications in pending or decided cases in relation to Nominated Counsel of designated authorities. (Notices dated 18.7.1994 and 10.1.1995).

The above Practice Directions will come into effect w.e.f. 1st October, 2002.

By Order
Sd/-
(Bharat Bhushan)
Registrar General

ANNEXURE "A"

IN THE HIGH COURT OF DELHI : NEW DELHI

NO. _____ OF _____

In the matter of:

A.B.C.	Plaintiff/ Petitioner/ Appellant(s)
--------	-----	-----	---

versus

D.E.F.	Defendant/ Respondent(s)
--------	-----	-----	-----------------------------

NOTICE OF MOTION

TAKE NOTICE that the accompanying petition/application will be listed before Court on _____ 2002 at 10.30 O'Clock in the forenoon, or so soon thereafter as may be convenient to the Court.

New Delhi
Dated:

(Name, Advocate)
Address
Computer Code No.

To

1. (Name)
Advocate for _____
2. (Name)
Advocate for -----
3. (Name)
Advocate for -----

ANNEXURE "B"

IN THE HIGH COURT OF DELHI : NEW DELHI

_____ NO. _____ OF _____

In the matter of:

A.B.C. Plaintiff/Petitioner/Appellant(s)

versus

D.E.F. Defendant/Respondent(s)

NOTICE OF MOTION

Vide Notice of Motion dated _____ 2002 in the aforesaid matter, you were intimated that the aforesaid matter would be listed on _____ 2002.

NOW TAKE NOTICE that the matter will be listed on _____ 2002 at 10.30 O'Clock in the forenoon, or so soon thereafter as may be convenient to the Court.

New Delhi

Dated:

(Name, Advocate)

Address

Computer Code No.

To

1. (Name)
Advocate for _____

2. (Name)
Advocate for -----

3. (Name)
Advocate for -----

HIGH COURT OF DELHI AT NEW DELHI

No. 31/Rules/DHC

Dated : 16.01.2015

PRACTICE DIRECTIONS

Hon'ble the Chief Justice, on the recommendations of the Hon'ble Judges of the Original Side, has been pleased to issue following practice directions for information and compliance by all concerned :-

1. In a Petition filed under Section 9 of the Arbitration & Conciliation Act, 1996, where the arbitration proceedings have commenced, an advance copy of petition shall be supplied to private parties and in all the petitions under Section 9 of the Act whether before, during or after passing of the award in cases where the opposite party is Union of India, State Government, Statutory Authority, Public Sector Undertaking or Govt. Department, advance copy shall be served through the respective standing/nominate/empanelled counsel.
2. In a petition filed under Section 11 of the Arbitration & Conciliation Act, 1996, for appointment of Arbitrators, an advance copy of petition shall be served upon the opposite party, where opposite party is Union of India, State Government, Statutory Authority, Public Sector Undertaking or Govt. Department through the respective standing/nominated counsel.
3. In a petition filed under Sections 14 & 15 of the Arbitration & Conciliation Act, 1996, for termination of mandate and substitution of the arbitrator, an advance copy of petition shall be served upon the opposite party or their counsel appearing in the arbitration proceedings.
4. In a petition filed under Section 27 of the Arbitration & Conciliation Act, 1996, for Court's assistance in taking evidence, an advance copy of petition shall be served upon the opposite party or their counsel appearing in the arbitration proceedings.
5. In a petition filed under Section 34 of the Arbitration & Conciliation Act, 1996, for setting aside arbitral award, an advance copy of petition shall be served upon the opposite party or their counsel who appeared last in the arbitral proceedings.
6. In an appeal filed under Section 37 of the Arbitration & Conciliation Act, 1996, an advance copy of petition shall be served upon the opposite party or their counsel appearing in the arbitral proceedings.

In all such above matters, a letter will also be served on the other side stating that the matter will be listed in Court shortly. The acknowledgment of service will be enclosed with the petition at the time of filing.

All the Officers and Dealing Assistants at the Filing Counter are requested to ensure that advance copies in the above mentioned petitions filed under Sections 9, 11, 14, 15, 27, 34 and 37 of the Arbitration & Conciliation Act, 1996 are served upon the opposite parties and the acknowledgment of service is enclosed with the petitions at the time of their filing.

These Practice Directions shall come into force immediately.

By Order
Sd/-
(VINOD GOEL)
REGISTRAR GENERAL

HIGH COURT OF DELHI AT NEW DELHI

No. 63/Rules/DHC

Dated: 19.08.2019

PRACTICE DIRECTIONS

Hon'ble the Chief Justice, on the recommendations of the Hon'ble Judges of the Original Side has been pleased to issue following Practice Direction for information and compliance by all concerned:-

"In petitions under Section 34 of the Arbitration and Conciliation Act, 1996, all the annexed documents be arranged in ascending chronological order. The filing index with regard to the annexures / documents shall mention its date, its author and its recipient / addressee."

This Practice Direction shall come into force with immediate effect.

By Order

Sd/-

(DINESH KUMAR SHARMA)
REGISTRAR GENERAL

HIGH COURT OF DELHI AT NEW DELHI

No. 68/Rules/DHC/2019

Dated: 03.12.2019

PRACTICE DIRECTIONS

Hon'ble the Chief Justice, on the recommendation of the Hon'ble Judges of the Original Side, has been pleased to direct issuance of the following Practice Direction:

“While filing fresh suits/arbitration or other filings in the Ordinary Original Civil Jurisdiction of this Court, advance copy of paper book/filing wherever required to be served on the opposite party/counsel, may also be effected by e-mail and the same be accepted by the Registry as adequate proof of service, provided such suits/arbitration or other filings is accompanied with an affidavit of the filing counsel/party to the effect that the e-mail address at which e-mail has been sent is that of the concerned party/counsel and that the e-mail has been delivered and has not bounced back. The affidavit shall also set out the date and time of the e-mail sent and the e-mail address at which it has been sent. The e-mail shall also specify the actual date when the fresh filing is to be listed. In case there are defects and re-filings, the final filing to be accompanied with affidavit of service of e-mail of the fresh date of listing.”

By Order

Sd/-

(DINESH KUMAR SHARMA)
REGISTRAR GENERAL

HIGH COURT OF DELHI, NEW DELHI

No.73/Rules/DHC

Dated: 08.12.2020

CIRCULAR

In compliance of the directions of this Court in OMP (COMM) 540/2020 & I.As. 10478,10479/2020 titled "*National Highways Authority of India (NHAI) Vs. GVK Jaipur Expressway Pvt. Ltd*", all advocates and litigants in person are to ensure that the petitions specially under *Sections 9, 34 and 37 of the Arbitration and Conciliation Act, 1996* are accompanied by a synopsis and list of dates.

By Order

Sd/-

(MANOJ JAIN)

REGISTRAR GENERAL

HIGH COURT OF DELHI AT NEW DELHINo. ~~2836-X~~ /DHC/OS/2022

Dated: February 15, 2022

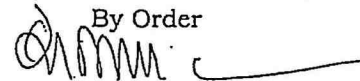
PRACTICE DIRECTIONS

In compliance of the directions passed by the Hon'ble Court dated 04.02.2022 passed in OMP(I)(Comm) 42/2022 titled Arcelor Mittal Nippon Steel India Limited. Vs. Mideast Integrated Steels Limited, it is hereby notified that while filing petitions under Arbitration & Conciliation Act, 1996, the counsels shall specifically indicate, over the index accompanying the petition:

- (i) The details of any connected petition or appeal, arising out of the same agreement or arbitral award, if any, pending before this Court.
- (ii) The Bench before which petition is listed, and
- (iii) The next date of hearing in the connected matter.

These practice directions shall come into effect immediately.

By Order



(MANOJ JAIN)

REGISTRAR GENERAL

Endst.No. ~~2837-X~~ - 2843-X

Dated: 15.02.2022

Copy forwarded for information to:-

1. The Registrar-cum-Secretary to Hon'ble the Chief Justice and CJ Secretariat.
2. All Registrars / Joint Registrars / Joint Registrars (J) / Deputy Registrars / Assistant Registrars.
3. Joint Registrar-cum-P.A. to Registrar General, Delhi High Court.
4. Joint Registrar (IT) with the request to upload the Practice Directions on the Intranet and website of this Court.
5. Private Secretaries to Hon'ble Judges for kind perusal of His Lordships.
6. President/Secretary, Delhi High Court Bar Association - with a request to bring the contents of this Practice Directions to the notice of the Members of the Bar.
7. Guard File.



JOINT REGISTRAR (ORIGINAL)

HIGH COURT OF DELHI: NEW DELHINo. 21151-I /Original/DHC

Dated: 16.12.2022

CIRCULAR

Hon'ble the Chief Justice, on the recommendations of the Hon'ble Judges on the Original Side, vide orders dated 15.12.2022 has been pleased to direct as under:-

- 1) That all fresh IP Division matters [other than suits and petitions u/s 47, 57 & 125 of The Trade Marks Act, 1999; petitions u/s 64 and 71 of The Patents Act, 1970 and petitions u/s 27 of The Geographical Indications of Goods (Registration and Protection) Act, 1999] and all petitions which are filed under the Arbitration and Conciliation Act, 1996 / Arbitration Act, 1940 are placed in one consolidated format and in a manner similar to those pertaining to writ petitions;
- 2) The aforesaid directions shall come into effect from 4th January, 2023;
- 3) All concerned to ensure that the aforesaid modifications are duly published and made known to counsel, the respective Bar Associations and other stakeholders.

By Order


Registrar General21152-I-21187-I

Endst.No. _____ /Original/DHC

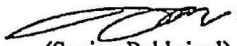
16.12.2022

Copy forwarded for information and necessary action to:-

1. The Principal District & Sessions Judge (HQ), Tis Hazari Courts, Delhi.
2. The Principal District & Sessions Judge, South District, Saket Courts, New Delhi.
3. The Principal District & Sessions Judge, East District, Karkardooma Courts, Delhi.
4. The Principal District & Sessions Judge, South-West District, Dwarka Courts, New Delhi.
5. The Principal District & Sessions Judge, Shahdara District, Karkardooma Courts, Delhi.

6. The Principal District & Sessions Judge, South-East District, Saket Courts, New Delhi.
7. The Principal District & Sessions Judge, West District, Tis Hazari Courts, Delhi.
8. The Principal District & Sessions Judge, New Delhi District, Patiala House Courts, New Delhi.
9. The Principal District & Sessions Judge, North West District, Rohini Courts, Delhi.
10. The Principal District & Sessions Judge, North District, Rohini Courts, Delhi.
11. The Principal District & Sessions Judge, North-East District, Karkardooma Courts, Delhi.
12. The Principal District & Sessions Judge-cum-Special Judge, CBI (PC Act), Rouse Avenue District Court Complex, New Delhi.
13. The Principal Judge, Family Courts (HQ), Dwarka Courts Complex, Dwarka, New Delhi with a request to forward a copy of the circular to all the Principal Judges, Family Courts.
14. Director, Delhi Judicial Academy, Integrated Complex for Delhi Judicial Academy and National Law Univ., Sector 14, Dwarka, New Delhi-110 078.
15. Coordinator, Delhi International Arbitration Centre (DIAC), Delhi High Court.
16. Addl. Coordinator, Delhi International Arbitration Centre (DIAC), Delhi High Court.
17. Mediation and Conciliation Centre, Delhi High Court
18. The Principal Secretary (Law, Justice & LA), Govt. of NCT of Delhi, Delhi Secretariat, I.P. Estate, New Delhi.
19. The Secretary, Bar Council of India, 21, Rouse Avenue, Institutional Area, New Delhi-110 002.
20. The Secretary, Bar Council of Delhi, 2/6, Siri Fort Institutional Area, Khel Gaon Marg, New Delhi-110 049.
21. The President/Secretary, Supreme Court Bar Association, Supreme Court, New Delhi.
22. The President/Secretary, Delhi High Court Bar Association, Delhi High Court, New Delhi.
23. The President/Secretary, Bar Association Tis Hazari Courts/Patiala House Courts / Karkardooma Courts / Rohini Courts / Dwarka Courts / Saket Court Complex.
24. The Secretary, Supreme Court Legal Services Committee.
25. The Member Secretary, Delhi State Legal Service Authority, Patiala House Courts, New Delhi with a request to forward a copy of the circular to the Secretaries of all District Legal Services Authorities.
26. The Member Secretary, Delhi High Court Legal Services Committee, Delhi High Court.
27. The Chairman, District Court Website Committee, Tis Hazari, Delhi for uploading the Circular on the website of Delhi District Court.
28. Registrar-cum-Secretary to Hon'ble the Chief Justice.
29. All Registrars/OSDs/Joint Registrars/Deputy Registrars/Assistant Registrars.
30. Joint Registrar-cum-P.A. to Registrar General, Delhi High Court.
31. Joint Director (IT) with the request to upload the Circular on the Internet & Intranet of this Court.
32. Librarian, Delhi High Court.
33. Private Secretaries to Hon'ble Judges for kind perusal of His Lordships.

34. Administrative Officers (Judicial)/Court Masters, Delhi High Court.
35. Librarian, Judges Library, Tis Hazari Courts/Patiala House Courts/Karkardooma Courts / Rohini Courts/Dwarka Courts/Saket Court Complex/Rouse Avenue Complex.
36. Guard File.

 16/12/22
(Sanjay Pokhriyal)
Joint Registrar (Original)
16.12.2022

Scheme for
Appointment of
Arbitrators, 1996

Notification No.16/Rules

Dated : 29th January, 1996

In exercise of the power conferred by sub-section (10) of Section 11 of the Arbitration and Conciliation Ordinance, 1996 (hereinafter referred to as 'Ordinance'), the Chief Justice of the High Court of Delhi hereby makes the following Scheme :-

Short Title:

1. This Scheme may be called the Scheme for appointment of Arbitrators, 1996.

Submission of request:

2(i) The request under sub-section (4) or sub-section (5) or sub-section (6) of section 11 of the Ordinance shall be made in writing in the form prescribed in Appendix I and shall be accompanied by:

- (a) The original arbitration agreement or a true copy thereof;
- (b) An affidavit supported by the relevant documents or true copies thereof to the effect that the condition to be specified under sub-section (4) or sub-section (5) or sub-section (6) of section 11 of the Ordinance, as the case may be, before making request to the person designated by the Chief Justice, has been satisfied.

(ii) The request referred to in sub-para 2 (i) of this para shall be accompanied by as many copies of the request together with items (a) and (b) of sub-para 2 (i), as the number of parties to the arbitration agreement or such number which the person designated in para 3 of the scheme may direct.

(iii) In case the person making the request does not have the original arbitration agreement or a copy thereof, he shall file an affidavit giving relevant facts in that behalf and request that the opposite party may be directed to produce the original or a copy thereof.

Authority to deal with the request.

3(i) For the purpose of dealing with the request made under para 2, the Chief Justice hereby designates :

- (a) the Civil Judge where the value of the subject matter does not exceed Rs. 1 lakh.
- (b) the District Judge/Additional District Judge where the value of the subject matter does not exceed Rs. 5 lakh and
- (c) the Judge of the High Court exercising ordinary original civil jurisdiction, where the value of the subject matter exceeds Rs. 5 lakh.

3(ii) The requests falling under sub para (a) of para 3 shall initially be placed before Senior Civil Judge for appropriate allotment; the requests falling under sub-para

(b) of para 3 shall initially be placed before the District Judge for appropriate allotment; and the request made under sub-para (c) of para 3 shall initially be placed before the Judge-in-charge on the Original Side of the High Court for appropriate allotment.

Seeking further information.

4.(i) The person designated under para 3 may seek such further information or clarification or documents from the party making the request under this scheme, as he may deem fit.

(ii) The party making the request shall file as many copies of the written information or clarification or copies of documents as may be required to be filed by the person designated in para 3 of this Scheme.

Rejection of request.

5. Where the request made by any party under paragraph 2 is not in accordance with the provisions of this Scheme, the person designated in para 3 may reject the same.

Notice to affected person.

6. Subject to the provisions of paragraph 5, the person designated in para 3 shall direct that a notice of the application be given to all the parties to the arbitration agreement and to such other person or persons as may seem to him likely to be affected by such request to show cause, within the time specified in the notice, as to why the appointment of the arbitrator(s) or the measures proposed to be taken should not be made or taken and such notice shall be accompanied by copies of all documents referred to in para 2 or, as the case may be, by the information or clarification, or copies of documents, if any, sought under paragraph 4.

Intimation of action taken on request.

7. The appointment made or measures taken by the person designated in para 3 in pursuance of the request under paragraph 2 shall be communicated in writing to :-

- (a) the parties to the arbitration agreement;
- (b) the arbitrators, if any, already appointed by the parties to the arbitration agreement;
- (c) the person or institution, if any, to whom or to which any function has been entrusted by the parties to the arbitration agreement under the appointment procedure agreed upon by them.
- (d) the arbitrator appointed in pursuance of the request.

Requests and communications to be sent to Authorised Officer.

8. All requests under the Scheme and communications relating thereto shall be presented to the Officer authorised by 'the person designated in para 3 and the said Officer shall maintain a separate register of such requests and communications'.

Whenever requests under para 2 are received, the authorised Officer shall, as soon as may be, place the same before the persons designated in para 3.

Delivery and receipt of written communication.

9. The provisions of sub-sections (1) and (2) of section 3 of the Ordinance shall, so far as may be, apply to all written communications received or sent under this Scheme.

Costs for processing request.

10. The party making a request under this Scheme shall, along with the request for arbitration pay an amount of Rs.250/- in case the request is made to the person designated under para 3 (a) of this Scheme; Rs.500/- in case request is made to a person designated under para 3 (b); and Rs.1000/- in case the request is made to a person designated under para 3 (c).

Interpretation.

11.(i) If any question arises with reference to the interpretation of any of the provisions of this Scheme before a person designated under para 3 (c) of this Scheme, it shall be decided by that person.

(ii) In case the question arises before the person designated under para 3 (a) and (b) of this Scheme, the said person shall formulate the question and refer the same for decision of the Chief Justice or a Judge of the Court of Delhi designated by the Chief Justice.

(iii) The decision by the person to whom the question is referred to as stated in para 11 (i) or (ii) shall be final.

Power to amend the Scheme.

12. The Chief Justice may from time to time, amend by way of addition or variation or deletion, any provision of this Scheme.

BY ORDER OF HON'BLE THE
CHIEF JUSTICE
M.A.KHAN, REGISTRAR

APPENDIX - I

BEFORE

ARBITRATION APPLICATION NO: OF 1996

1. Provision under which the application is filed
2. Name(s) of the applicant(s) with complete address(es)
3. Name(s) of other parties to the arbitration agreement with complete addresses
4. Names and addresses of the arbitrators, if any, already appointed by parties.
5. Name and address of the person or institution, if any, to whom any function has been entrusted by the parties to the arbitration agreement under the appointment procedure agreed upon by them.
6. Qualification required, if any of the arbitrator by the agreement of the parties.
7. A brief written statement describing the general nature of the disputes and the points at issue.
8. Valuation of the subject matter.
9. Relief or the remedy sought.

Signature of the applicant

Signature of the Advocate, if any

Date :

Notification No.174/Rules/DHC

Dated : 18.8.2003

In exercise of the power conferred by Sub-Section (10) of Section 11 of the Arbitration and Conciliation Act, 1996 (No.26 of 1996) read with Rule 12 of the Scheme for Appointment of Arbitrators, 1996 notified vide Notification No.16/Rules dated 29.1.1996, Hon'ble the Chief Justice of High Court of Delhi hereby makes , the following amendment in Rule 3(i)(a)(b)(c) of the said Scheme :-

AMENDMENT

For the existing Rule 3(i)(a)(b)(c) of the Scheme for Appointment of Arbitrator, 1996 , the following shall be substituted, namely :-

“Authority to deal with the request

3(i) For the purpose of dealing with the request made under para 2, the Chief Justice hereby designates :-

- (a) The Civil Judge where the value of the subject matter does not exceed Rs.3 lakh.
- (b) the District/Judge/Additional District Judge where the value of the subject matter does not exceed Rs.20 lakh and
- (c) the Judge of the High Court exercising ordinary original civil jurisdiction, where the value of the subject matter exceeds Rs.20 lakh.”

Note : The above amendment shall come into force w.e.f. 16.7.2003.

BY ORDER OF THE COURT

Sd/-
(BHARAT BHUSHAN)
REGISTRAR GENERAL

HIGH COURT OF DELHI: NEW DELHI

NOTIFICATION

No.391/Rules/DHC

Dated: 09.11.2009

In exercise of the powers conferred by Sub-Section (10) of Section 11 of the Arbitration and Conciliation Act, 1996 (No.26 of 1996) read with Para 12 of the Scheme for Appointment of Arbitrators, 1996 notified vide Notification No. 16/Rules dated 29.1.1996 and further amended vide Notification No. 174/Rules/DHC dated 18.8.2003, Hon'ble the Chief Justice of High Court of Delhi hereby makes the following amendment in Para 10 of the said Scheme:-

AMENDMENT

In Para 10, the words and figures "Rs. 250/-", "Rs. 500/-" and "Rs. 1000/-" shall be substituted by the following words and figures "Rs. 5,000/-", "Rs. 7,500/-" and "Rs. 10,000/-" respectively.

NOTE: THIS AMENDMENT SHALL COME INTO FORCE FROM THE DATE OF ITS PUBLICATION IN THE GAZETTE.

BY ORDER OF THE COURT
Sd/-
(RAKESH KAPOOR)
REGISTRAR GENERAL

HIGH COURT OF DELHI: NEW DELHI

NOTIFICATION

No. 253/Rules/DHC

Dated: 23.07.2010

In exercise of the powers conferred by Sub-Section (10) of Section 11 of the Arbitration and Conciliation Act, 1996 (No.26 of 1996) read with Para 12 of the Scheme for Appointment of Arbitrators, 1996 notified vide Notification No. 16/Rules dated 29.1.1996 and further amended vide Notification No. 174/Rules/DHC dated 18.8.2003 & Notification No.391/Rules/DHC dated 9.11.2009, Hon'ble the Chief Justice of High Court of Delhi hereby makes the following amendments in Paras 3, 4(i) and 10 of the said Scheme:-

1. The following shall be substituted for the existing Para 3:-
 - "3(i) All the Judges of the High Court exercising ordinary civil jurisdiction stand designated under Section 11(6) of the Arbitration and Conciliation Act, to take necessary measures for the purpose of dealing with the request made in para 2.
 - (ii) The request so made shall initially be placed before the Judge Incharge of the Original Side for appropriate allocation."
2. The following shall be substituted for the existing Para 4(i):-
 - "4.(i) The Judge to whom allocation has been made under para 3(ii) may seek further information or clarification or production of documents from the party making a request under this Scheme as he may deem fit."
3. The following shall be substituted for the existing Para 10:-
 - "10. The party making request under para 2 of this Scheme shall along with the request for arbitration pay administrative cost according to following scales:-

Amount or value of subject matter	Proper administrative cost
Upto Rs. 5 lac	Rs. 2,000/-
Rs. 5 lac upto 50 lac	Rs. 5,000/-
Above Rs.50 lac	Rs.10,000/-

NOTE: THESE AMENDMENTS SHALL COME INTO FORCE FROM THE DATE OF THEIR PUBLICATION IN THE GAZETTE.

BY ORDER OF THE COURT

Sd/-
(RAKESH KAPOOR)
REGISTRAR GENERAL

HIGH COURT OF DELHI : NEW DELHI**NOTIFICATION**

No. 711/Rules/DHC

Dated : 08.05.2013

In exercise of the powers conferred by Sub-Section (10) of Section 11 of the Arbitration and Conciliation Act, 1996 (No. 26 of 1996) read with Para 12 of the Scheme for Appointment of Arbitrators, 1996 notified vide Notification No. 16/Rules/DHC dated 29.01.1996 and further amended vide Notification No. 174/Rules/DHC dated 18.08.2003, Notification No. 391/Rules/DHC dated 09.11.2009 and Notification No. 253/Rules/DHC dated 23.07.2010, Hon'ble the Chief Justice of High Court of Delhi hereby makes the following amendment in Para 10 of the said Scheme :-

1. Para 10 shall stand deleted.

NOTE : THIS AMENDMENT SHALL COME INTO FORCE FROM THE DATE OF ITS PUBLICATION IN THE GAZETTE.

BY ORDER OF THE COURT
Sd/-
(SANGITA DHINGRA SEHGAL)
REGISTRAR GENERAL

Amendment stands published in Delhi Gazette Extraordinary, Part IV, No.77 (NCTD No.30) dated 08.05.2013

**Recent Judgments/
Orders of the Hon'ble
High Court of Delhi
issuing relevant
procedural directions**

OMP 680/2011

Gammon India Ltd. v. National Highways Authority

2020 SCC OnLine Del 659 : AIR 2020 Del 132

In the High Court of Delhi at New Delhi
(BEFORE PRATHIBA M. SINGH, J.)

Gammon India Ltd. and Another ... Petitioners;

Versus

National Highways Authority of India ..., Respondent.

OMP 680/2011 (New No. O.M.P. (COMM) 392/2020) & I.A. 11671/2018

Decided on June 23, 2020, [Reserved on: 10th January, 2020]

Advocates who appeared in this case :

Dr. P.C. Markanda, Senior Advocate with Mr. Chirag Shroff and Ms. Neiha Dogra,
Advocates. (M: 9811032077)

Ms. Padma Priya and Mr. Dhruv Nayar, Advocates. (M: 9810026319)

The Judgment of the Court was delivered by

PRATHIBA M. SINGH, J.:— Arbitration was to be the panacea for the woes of litigation. As an 'alternate dispute resolution' mechanism, arbitration has however become complex, owing to several reasons such as long delays, challenges in enforcement, high costs etc., One other reason rendering arbitral processes complex is 'MULTIPLICITY' - multiple invocations, multiple references, multiple Arbitral Tribunals, multiple Awards and multiple challenges, between the same parties, in respect of the same contract or the same series of contracts. Repeated steps have been taken in judgments and by amendments to the law, to make the system efficient, but more needs to be done.

Brief Facts

2. In the present case, a contract was executed between Gammon-Atlanta JV, a Joint Venture of Gammon India Ltd. and Atlanta Ltd. (*hereinafter "Contractor"*) and National Highways Authority of India (*hereinafter "NHA"*) on 23rd December, 2000 for the work of widening to 4/6 lanes and strengthening of existing 2 lane carriageway of NH-5 in the State of Orissa from km 387.700 to 414.000 (Khurda to Bhubaneswar) Contract Pkg. OR-1 (*hereinafter "Project"*). The value of the work was approximately Rs. 118.9 crores. The date of commencement of the contract was fixed as 15th January, 2001 and the project was to be executed within 36 months i.e., by 14th January, 2004.

3. The Project was not executed within the prescribed time. Extensions for completing the Project were granted till 31st December, 2006. Vehicular traffic was allowed on the main carriageway in March, 2007 and according to the Contractor, this amounted to a deemed 'taking over' of the carriageway by NHA and hence completion.

Award No. 1 - 5th October, 2007

4. During the course of execution of the Project, disputes had arisen between the parties in respect of some claims. The same were raised both by the Contractor and by NHA. On 1st August, 2004, the Disputes Review Board (*hereinafter "DRB"*) was constituted in terms of sub-clause 67.1 of the Conditions of Particular Application (*hereinafter, "COPA"*). The DRB is stated to have expressly communicated its inability to resolve issues pertaining to a period earlier to its constitution. The DRB thus did not

resolve the issues and accordingly, the Contractor invoked arbitration under sub-clause 67.3 of COPA vide notice dated 27th January, 2005. The relevant claims referred for arbitration are as under:

"Claim 2.1: Compensation for losses incurred on account of overhead and expected profit

Claim 2.2: Compensation for reduced productivity of machinery and equipment deployed.

Claim 2.3: Revision of rates to cover for increase of cost of materials and labour during extended period over and above the relief available under escalation (price adjustment) provision in the agreement."

5. The Arbitral Tribunal, consisting of Mr. P.B. Vijay, Mr. C.C. Bhattacharya and Mr. R.T. Atre, was appointed and the award was rendered on 5th October, 2007 (*hereinafter "Award No. 1"*). The findings in Award No. 1 with respect to Claim Nos. 2.1, 2.2 & 2.3 are as under:

- Claim No. 2 was found to not be barred by limitation as even though the DRB was constituted on 1st August, 2004, it expressed its inability to give its recommendation only on 17th November, 2004. Thus, the limitation period of 56 days was considered to begin from 17th November, 2004, making the notice dated 27th January, 2005 within the prescribed limitation period.
- The Contractor claimed compensation on the basis of the following six alleged breaches by NHAI: (1) Late appointment of key personnel, (2) Delay in payments, (3) Virtual suspension of BC work from December, 2003 to March, 2005, (4) Failure to sanction adequate extension of time, (5) Failure to constitute Dispute Review Board and (6) Delay in handing over of site.
- As regards the first five alleged breaches, the Arbitral Tribunal (*hereinafter, "AT"*) found that the actions of NHAI either did not materially affect the progress of the work, the Claimant's preparedness itself was inadequate or that alternate relief is available/has been availed by the Contractor. It was therefore held that the Contractor did not deserve any compensation on these grounds.
- As regards the sixth alleged breach, the AT concluded that the initial work of the Contractor was affected by NHAI's inability to fulfill its obligations under Clause 42.01, however, once the hindrances were removed, the Contractor was not able to accelerate the progress of the work. The Contractor's claim for compensation was therefore restricted to the initial contract period during which time approximately Rs. 37/- crores worth of work is estimated to have been affected.
- With respect to Claim 2.1, since the Contractor's deployment of resources on overheads and their underutilization was admitted to the extent of 14.28%, compensation of Rs. 5.28/- cores ($14.28/100 \times 37$) was awarded to the Contractor. The claim for loss of profits was, however, rejected on the ground that the Contractor is still executing the work and will earn profit/loss commensurate with the work done.
- With respect to Claim 2.2, the AT held that though work worth Rs. 37 crores was affected during the initial contract period, since the Contractor itself was responsible for underutilization of machinery and equipment, compensation of only 5% i.e., Rs. 1.85/- crores ($5/100 \times 37$), could be awarded.
- With respect to Claim 2.3, it was observed that this sub-claim had not been mentioned in the list of claims included in the notice dated 27th January, 2005 invoking arbitration, followed by letter dated 21st February, 2005. Claim 2.3 was therefore considered outside the AT's terms of reference.

6. Thus, as per Award No. 1, Claim Nos. 2.1 and 2.2 were allowed and Claim No. 2.3 was rejected on the ground that it was outside the terms of reference.

7. Award No. 1 was challenged by the Contractor and by NHA in OMP 99/2008 and OMP 107/2008. In OMP 99/2008, the Contractor withdrew the challenge in respect of Claim No. 2.3, which was rejected and sought liberty to approach the 2nd Arbitral Tribunal. Vide order dated 13th March, 2009, the same was permitted in the following terms:

"The petitioner seeks to withdraw the challenge to the claim 2.3 with liberty to agitate the same before the arbitrator. The counsel for the respondent without prejudice to the rights and contentions of the respondent, to take pleas qua the said claim before the arbitrator has no objection to the amendment being allowed.

Accordingly, the application is allowed. The grounds XVI and XVII raised with regard to claim 2.3 and the prayer paragraph also in relation to claim 2.3 is allowed to be amended in the aforesaid terms with liberty to the petitioner to pursue the said claim before the Arbitral Tribunal and without prejudice to the rights of the respondent to take all pleas in opposition thereto before the Arbitral Tribunal."

8. Award No. 1 was thereafter upheld by a Id. Single Judge of this Court on 15th November, 2016. Two Id. Division Benches also upheld the award vide judgments dated 18th January, 2017 and 20th February, 2017. Two SLPs, being SLP (C) No. 17022/2017 and 22663/2017, were dismissed on 8th August, 2017 and 11th September, 2017 respectively. Thus, Award No. 1 attained finality.

Award No. 2 - 21st February, 2011 (Impugned Award)

9. In 2007, the Contractor had invoked the jurisdiction of the DRB in respect of payment of Tack Coat under bill of quantities (hereinafter, "BOQ") item No. 4.02 (b). The DRB rejected the said claim. Thus, the said claim, along with certain other claims, were referred to the Arbitral Tribunal consisting of three members, namely, Mr. Sarup Singh, Mr. C.C. Bhattacharya and Justice E. Padmanabhan (Retd.). This Tribunal was constituted on 2nd January, 2008. Claim 2.3 of Award No. 1 was then filed before this AT owing to the permission granted by the Court on 13th March 2009. Vide award dated 21st February, 2011 (hereinafter, "Award No. 2") by a 2:1 majority, claims of the Contractor were rejected. The minority award granted the claims of the Contractor.

10. The various claims referred to the second Arbitral Tribunal, which rendered Award No. 2, are as under:

- "1. Compensation for losses incurred on account of extra expenditure incurred on increased cost of materials, labour, POL etc. for the balance work executed beyond the stipulated date of completion - Rs. 1456.83 lacs (Claim 2.3 in AT 1)*
- 2. Payment of tack coat - Rs. 49,17,00,822/-*
- 3. Interest pendente lite and future @ 18% p.a. of the award sum under claim No. 1 and claim No. 2.*
- 4. Cost of Arbitration proceedings."*

11. The findings of the majority award in respect of Claim No. 1 are set out herein-below:

- That claim no. 1 is not barred by limitation. The finding of the Arbitral Tribunal is as under:

"1.41 The claim was referred to DRB on 17.11.2004 (C-94). DRB could not make recommendations within 56 days. The contractor invoked the Arbitration clause on 25.1.2002 (C-98) for certain claims including Claim No. 2.3 (which is claim no. 1 here). The first AT ruled that the said claim was outside the reference made to Tribunal. This observation/order is recorded in the award dated 05-10-2007 (C-101). This claim is for seeking compensation for losses incurred on account of extra expenditure incurred on increased cost of material, labour, POL etc. beyond 14-01-2004. The contractor invoked Arbitration clause on 25-1-2005, i.e. when the work was still in progress. This period is well within the

provision of Article 137 of Limitation Act. This Claim has not been adjudicated upon by the 1st Tribunal."

- On merits, the 2nd AT held that the delay of two weeks in the appointment of the engineer and delay of five weeks, by the NHAI, in intimating the Contractor, was a short delay and did not affect the progress of the work.
- That there was a delay in providing a hindrance-free work site to the Contractor by NHAI.
- The 2nd AT further analysed that the total value of the work was approximately Rs. 118.90 crores. Work worth Rs. 5031.43 lakhs was carried out by January, 2004 i.e., the stipulated period for completion of the contract. This constituted 42.3% of the work in monetary terms. The balance work was 57.7%, for which a hindrance-free site was already available. To execute this work, the Contractor took 4 years. Thus, there was clearly a low level of performance by the Contractor despite the site being available, which is, in fact, recorded in minutes dated 15th June, 2004.
- Insofar as delay in payment was concerned, there were three bills which were to be paid. Payments in respect thereof were released on 15th October 2003, 16th December, 2003 and 6th March, 2004. It was held that the delay in payment was very small and did not cause hindrance in the work. It was further observed that in any case, under clause 60.8, the Contractor was entitled to interest for the delayed period.
- The ground taken that there was suspension of the entire BC work due to delays by NHAI was rejected after a detailed factual analysis of the Arbitral Tribunal. The Arbitral Tribunal also relied upon Award No. 1, which dealt with this very issue, to reject the claim of the Contractor for compensation.
- Non-grant of time extension was not considered in Award No. 2 as the same was pending before the DRB.
- The 2nd AT held that there was no delay in constitution of the DRB.
- In view of the above findings, the Arbitral Tribunal in Award No. 2 considered Clause 70.3 and 70.2 of the contract. The said clauses are extracted herein below:

"Sub-Clause 70.2: Other changes in cost

To the extent that full compensation for any rise or fall in the costs to the Contractor is not covered by the provisions of this or other clauses in the Contract, the unit rates and prices included in the Contract shall be deemed to include amounts to cover the contingency of such other rise or fall in cost.

Sub-Clause 70.3: Adjustment formula

The adjustment to the Interim Payment Certificates in respect of changes in cost and legislation shall be determined from the following formula:

$$P_n = A + b \frac{L_n}{L_o} + c \frac{M_n}{M_o} + d \frac{F_n}{F_o} + \frac{B_n}{B_3}$$

Where:

P_n is a price adjustment factor to be applied to the amount for the payment of the work carried out in the subject month, determined in accordance with Sub-Clause 60.1(d), and with Sub-Clauses 60.1(e) and (f), where such variations and Daywork are not otherwise subject to adjustment.

A = 0.50, b = 0.15, c = 0.25, d = 0.10

L_n, M_n, F_n, Etc., are the current cost indices or reference prices of the cost elements in the specific currency for month "n" determined pursuant to Sub-Clause 70.5, applicable to each cost element: and

Lo. Mo. Fo. Etc. are the base cost indices or reference prices corresponding to the above cost elements at the date specified in Sub-Clause 70.5. The amounts, determined as payable to the contractor as a price adjustment factor in a currency or currencies other than the Indian Rupee. Will be converted from Indian Rupees to the currency or currencies of payment at the exchange rate (s), as determined by the Reserve Bank of India, on the date of current index and not at the rate (s) established in the Appendix to Bid, if any."

• After analysing the two clauses, the Arbitral Tribunal arrived at the following conclusion:

"1.49 Every contract for construction work has some inbuilt uncertainties. Such uncertainties arise during construction period due to lack of complete and timely fulfilment of the obligations by the claimant and the respondent towards the other party. It leads to delay in the completion of work. The financial effect of some of such uncertainties cannot be truly quantified. Therefore it is regulated by making certain provision/conditions in the contract agreement.

1.50 The 1st AT has awarded Rs. 5.28 crores and Rs. 1.85 crores towards claim 2.1 and claim No. 2.2 respectively. Apparently the provisions of section 55 of Indian Contract Act, where ever applicable, stand covered through the award order passed by 1st AT.

1.51 With the provisions under clause 70.2 of the contract agreement, statement of the witness CW-1 during cross examination does not provide any support to the claimant.

1.52 The Arbitral Tribunal holds that under the provisions of Sub Clause 70.2, this claim does not succeed. Nothing more is admissible for payment beyond the provisions of sub clause 70.3. Hence amount awarded is Rs. Nil only."

12. The present petition challenges Award No. 2.

Award No. 3 - 20th February, 2012

13. NHA imposed liquidated damages on the Contractor for the delay caused. Seven disputes were referred to the DRB on 24th March, 2008. However, dissatisfied with the recommendations of the DRB, a third arbitration was invoked by the Contractor vide letter dated 23rd December, 2008. The following claims were referred to the Arbitral Tribunal consisting of Mr. RH Tadv, Mr. V. Velayutham and Mr. V.S. Karandikar:

- "1. Recovery of alleged Liquidated Damages
2. Recovery of Building and other construction Workers Welfare Cess
3. Recovery of Alleged Penalty for not providing vehicles to the Engineer
4. Premature recovery of discretionary advance
5. Interest on Discretionary Advance
6. Earthworks pertaining to Clearing and Grubbing
7. Claim for payment of interest due to premature deductions of secured advance by the Respondent.
8. Interest pendente lite and future
9. Cost of Arbitration Proceeding"

14. Vide award dated 20th February, 2012 (hereinafter, "Award No. 3") the Contractor's claim for recovery of amounts paid as liquidated damages was allowed. The findings in Award No. 3 in respect of Claim No. 1 are summarised below:

- Claim 1: The Contractor was allowed a refund of the entire amount of liquidated damages imposed. Refund was given on the ground that the Contractor was entitled to a further extension of time and hence the imposition of liquidated damages was illegal. It was observed that NHA could not impose liquidated damages on the Contractor when it had failed to provide a hindrance-free site

and had also taken over the road. It was also found that in contravention of the contract, prior notice for imposition of liquidated damages was not issued. Furthermore, since certified payments to the Contractor were withheld, it was held that the Contractor had the right to slow down the rate of work as per the terms of the contract. The Contractor was also awarded interest @10% p.a. compounded monthly for the payments withheld against the liquidated damages. A declaratory award, prohibiting the imposition of further liquidated damages, was also given.

15. Award No. 3 has been upheld by a Id. Single Judge and a Id. Division Bench of this Court. NHA has paid the awarded sum and the award has attained finality.

Procedural History of the Present Petition

16. The present petition was filed in August, 2011. Initially itself, it was submitted by the Contractor that it does not press objections *qua* Claim No. 2 i.e., payment of tack-coat. This was recorded in order dated 20th September, 2011 as under:

"Learned counsel for the petitioner, on instructions, submits that the petitioner does not press the objections to the award made on claim No. 2. Mr. Bansal also submits that another arbitration proceeding in relation to levy of liquidated damages under the same contract, by the respondent, is pending disposal before another tribunal. Arguments have been heard and the award has been reserved in those proceedings."

17. The petition was then dismissed for non-prosecution on 20th January, 2017. The same was, however, restored on 15th March, 2017. Vide order dated 6th August, 2019, the counsel for the parties, on a query from the Court, submitted as under:

"Dr. P.C. Markanda, Id. senior counsel for the Petitioner submits that according to his client, the indices were frozen as in the original contract period. He relies on a few letters which have been placed on record. Hence according to him, no escalation was in fact paid."

On the other hand, Id. counsel for NHA submits that the escalation as per Clause 70.3 has been paid to the Petitioner to the tune of Rs. 15,29,15,363/- up to the last IPC No. 94.

In view of the Full Court Reference, further hearing is deferred to 4th September, 2019."

18. Thus, the only claim to be considered in this petition is Claim No. 1, wherein the case of the Contractor is that the revision of rates did not take place and hence, the Contractor is entitled to additional amounts.

Submissions of Id. Counsels

19. Mr. Markande, Id. Senior Counsel appearing for the Contractor, has raised a two-fold argument. First, it is submitted that the finding in Award No. 3 that NHA was responsible for the delay would bind the present proceedings as well. Secondly, that even otherwise, the delay was clearly caused by NHA and the Contractor is entitled to escalation/compensation for the losses due to the said delays. The submission is that there were delays in the appointment of the engineer and handing over of the site and delays caused due to non-payment of dues, placing of variation order which had to be executed by the Contractor, non-grant of extension of time to the Contractor and default/delay in constituting the DRB.

20. The findings of the Arbitral Tribunal in Award No. 2 with respect to Claim No. 1 are that the consequences for uncertainties and delays during construction work are fully provided for in the contract itself. Insofar as any damages/compensation are concerned, which the Contractor may be entitled to claim under Section 55 of the Indian Contract Act, 1872 (*hereinafter, "ICA"*), the same were found to be covered by Award No. 1 which awarded Rs. 5.28 crores and Rs. 1.85 crores towards Claims 2.1

and 2.2 of the Contractor. Submission of Mr. Markande, Id. Senior Counsel, is that the claim has been confused by the Arbitral Tribunal as being an award under Section 55 of the ICA whereas, in fact, Claim No. 1 was not a claim under Section 55.

21. It is further argued by Mr. Markande, that in Award No. 3 there was a clear finding that NHAI had caused a delay on various counts and hence, in view of the finding in Award No. 3, this claim ought to be automatically allowed. Reliance is placed on the minority award of the 2nd AT to argue that the minority award clearly distinguishes between compensation payable under Section 55 and Section 73 of the ICA. He urges this Court to uphold the minority award under which the Contractor has been awarded the following sum:

- "In the result there will be an Award in the following terms:
- I. The Respondent is directed to pay to the Claimant the sum of Rs. 49,17,00,822/- with subsequent interest @ of 18% P.A. on Rs. 32,97,36,489/- from 22.10.2007 till date of payment towards tack-coat work executed falling under BOQ entry 4.02(b).
 - II. The Claimant is entitled to the relief of declaration declaring that the Claimant is entitled to payment for the balance of work falling under BOQ entry 4.02(b) Tack-coat as and when executed at the rate of Rs. 400/sq.m.
 - III. The Respondent is directed to pay Rs. 1456.83 Lakhs to the Claimant towards loss incurred on account of extra expenditure incurred on increased cost of materials, labour, POL etc. with interest @ 12% P.A from 01.02.2005 the date of claim and till the date of payment.
 - IV. The relief of declaration prayed for as to compensation for the future period and balance of work executed during such period is left open to be agitated in future.

And

- V. Both the parties shall bear their respective costs in the present proceedings throughout."

22. On the other hand, on behalf of NHAI, Ms. Padma Priya, Id. Counsel, submits that Award No. 2 is detailed. The Contractor had multiple opportunities before the Arbitral Tribunal and has lost on both counts. The minority award is of no consequence once the majority award has rejected the claims of the Contractor. Id. Counsel further submits that there was no reason as to why this Claim was not included in the reference leading to Award No. 1. This claim according to her is barred. It is further submitted by Id. Counsel that escalation has in fact been granted under Clause 70.3. She further urges that the findings by the DRB, 1st AT and the 2nd AT are consistent and thus the petition is liable to be dismissed.

Analysis and Findings

23. The chronology of facts set out above shows that the parties had appointed three Arbitral Tribunals which adjudicated different disputes and claims. There were three Awards. Award No. 1 and 3 have attained finality. In this petition, the challenge is to Award No. 2. The Contractor's submission is that the findings in Award no. 3 be relied upon, for setting aside Award no. 2. The question that arises is whether it is permissible for the Contractor to jettison the findings in Award No. 3 to argue that Award No. 2 ought to be set aside and the claims of the Contractor ought to be allowed. Before going into the challenge to Award no. 2, the legal position on multiple arbitrations and multiple awards needs to be analysed.

24. A perusal of the provisions of the Arbitration and Conciliation Act, 1996 shows that the statute envisages that disputes can be raised at different stages and there can be multiple arbitrations in respect of a single contract. By way of illustration, Section 7(1), Section 8(3) and Section 21, can be seen, which read:

"7. Arbitration agreement.— (1) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

8. Power to refer parties to arbitration where there is an arbitration agreement -

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.

21. Commencement of arbitral proceedings.— Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent."

25. Under Sec. 7 the agreement to arbitrate could be for 'all or certain disputes which have arisen or which may arise'. Under Sec. 8 if a particular proceeding is pending in court and there is a *lis* as to whether a particular dispute is arbitrable, for other disputes, arbitration can be commenced or continued and even the award can be made. This means that, if the court, thereafter comes to the conclusion that the dispute is arbitrable, after the first reference is either pending or concluded, a second reference can be made. The commencement of proceedings under Section 21 is to be construed in respect of a particular dispute. Thus, if there are multiple disputes which have been raised at different times, the commencement of proceedings would be different *qua* each of the disputes. All these provisions show that there can be multiple claims and multiple references at multiple stages.

26. Filing of different claims at different stages of a contract or a project is thus permissible in law, inasmuch as the contract can be of a long duration and the parties may wish to seek adjudication of certain disputes, as and when they arise. Despite this permissibility, multiplicity ought to be avoided as discussed hereinafter.

27. The endeavour of Courts in the domain of civil litigation is always to ensure that claims of parties are adjudicated together, or if they involve overlapping issues, the subsequent suit is stayed until the decision in the first suit. It is with the intention of avoiding multiplicity that the principles enshrined in Order 2 Rule 2 CPC, Section 10 CPC and Res Judicata are part of the Code of Civil Procedure from times immemorial. However, since arbitral proceedings are strictly not governed by the Code of Civil Procedure, 1908, it is possible for parties to invoke arbitration as and when the disputes arise, but should the same be permissible without any limitation and ignoring the principles of public policy as enshrined in these provisions.

28. Multiple arbitrations before different Arbitral Tribunals in respect of the same contract is bound to lead to enormous confusion. The constitution of multiple Tribunals in respect of the same contract would set the entire arbitration process at naught, as the purpose of arbitration being speedy resolution of disputes, constitution of multiple tribunals is inherently counter-productive.

29. Typically, in construction contracts, the claims may be multiple in number but the underlying disputes about breach, delays, termination etc., would form the core of the disputes for almost all claims. As is seen in the present case, parties have invoked arbitration thrice, raising various claims before three different Tribunals which have rendered three separate Awards. Considering that a previously appointed Tribunal was already seized of the disputes between the parties under the same contract, the constitution of three different Tribunals was unwarranted and inexplicable. A situation where multiple Arbitral Tribunals parallelly adjudicate different claims arising between the same parties under the same contract, especially raising overlapping issues, is clearly to be avoided.

30. Multiple arbitrations can be of various categories:

- (i) Arbitrations and proceedings between the same parties under the same contract.
- (ii) Arbitrations and proceedings between the same parties arising from a set of contracts constituting one series, which bind them in a single legal relationship.
- (iii) Arbitrations and proceedings arising out of identical or similar contracts between one set of entities, wherein the other entity is common.

31. In Category (i) cases seeking a second reference under Section 11 of the Arbitration and Conciliation Act, 1996 for adjudication of disputes, the Supreme Court and High Courts have referred disputes between the same parties arising under the same contract, to arbitration. In *Indian Oil Corporation v. SPS Engg Co. Ltd.*¹, a claim relating to risk-execution of balance work, which was not referred to the first Tribunal, was referred to arbitration. Similar is the position in *Sam India Built Well (P) Ltd. v. UOI* [Arb. P. 106/17, decided on 8th September, 2017]; *Parsvnath Developers Limited v. Rail Land Development Authority* [Arb. P. 724/18, decided on 31st October, 2018]; *Parsvnath Developers Limited v. Rail Land Development Authority* [Arb. P. 710/19, decided on 19th May, 2020].

32. In a set of petitions involving several caterers and the *Indian Railway Catering & Tourism Corporation Limited*² (*IRCTC cases*) involving 25 petitions which fell in category (iii) above, the Delhi High Court recently appointed a single arbitrator to adjudicate the disputes.

33. However, what can lead to enormous uncertainty and confusion which ought to be avoided is the constitution of separate Arbitral Tribunals for separate claims in respect of the same contract, especially when the first Arbitral Tribunal is still seized of the dispute or is still available to adjudicate the remaining claims. In *Dolphin Drilling Ltd. v. ONGC*³, the Supreme Court, while considering the question as to whether a second reference for arbitration ought to be made, observed as under:

"5. The plea raised by the respondent voices a real problem. It is unfortunate that arbitration in this country has proved to be a highly expensive and time consuming means for resolution of disputes. But on that basis it is difficult to read the arbitration clause in the agreement as suggested by the respondent. ...

6. The plea of the respondent is based on the words "all disputes" occurring in paragraph 28.3 of the agreement. Mr. Agrawal submitted that those two words must be understood to mean "all disputes under the agreement" that might arise between the parties throughout the period of its subsistence. However, he had no answer as to what would happen to such disputes that might arise in the earlier period of the contract and get barred by limitation till the time comes to refer "all disputes" at the conclusion of the contract. The words "all disputes" in Clause 28.3 of the agreement can only mean "all disputes" that might be in existence when the arbitration clause is invoked and one of the parties to the agreement gives the arbitration notice to the other. In its present form Clause 28 of the agreement cannot be said to be a one-time measure and it cannot be held that once the arbitration clause is invoked the remedy of arbitration is no longer available in regard to other disputes that might arise in future."

34. A perusal of the above finding of the Supreme Court clearly shows that the Court has expressed its displeasure about the arbitration process becoming a highly expensive and time-consuming means for resolution of disputes. Owing to the wording of the clause, in the said case, the Supreme Court referred the parties to arbitration for the second time. The underlying ratio of *Dolphin* (supra), on a careful reading, is that all disputes that are in existence when the arbitration clause is invoked, ought to be raised and referred at one go. Though there is no doubt that multiple arbitrations are permissible, it would be completely contrary to public policy to permit parties to raise claims as per their own convenience. While provisions of the CPC do not strictly apply

to arbitral proceedings, the observations of the Supreme Court in *Dolphin* (supra) show that when an arbitration clause is invoked, all disputes which exist at the time of invocation ought to be referred and adjudicated together. It is possible that subsequent disputes may arise which may require a second reference, however, if a party does not raise claims which exist on the date of invocation, it ought not to be given another chance to raise it subsequently unless there are legally sustainable grounds. This is necessary in order to ensure that there is certainty in arbitral proceedings and the remedy of arbitration is not misused by parties. The constitution of separate arbitral tribunals is a mischief which ought to be avoided, as the intent of parties may also not be *bona fide*.

35. It is the settled position in law that the principles of *res judicata* apply to arbitral proceedings⁴. The observations of the Supreme Court in *Dolphin* (supra) also clearly show that principles akin to Order II Rule 2 CPC also apply to arbitral proceedings. The issue as to whether any claims are barred under Order II Rule 2 CPC or whether any claim is barred by *res judicata* is to be adjudicated by the arbitral tribunal and not by the Court⁵. Keeping in mind the broad principles which are encapsulated in Order II Rule 2 CPC, as also Section 10 and Section 11 of the CPC, which would by itself be inherent to the public policy of adjudication processes in India, it would be impermissible to allow claims to be raised at any stage and referred to multiple Arbitral Tribunals, sometimes resulting in multiplicity of proceedings as also contradictory awards. Thus, this Court is of the considered opinion that:

- i. In respect of a particular contract or a series of contracts that bind the parties in a legal relationship, the endeavour always ought to be to make one reference to one Arbitral Tribunal. The solution proposed by the Supreme Court (*Aftab Alam, J.*) in paragraph 9 of *Dolphin* (supra) i.e., to draft arbitration clauses in a manner so as to ensure that claims are referred at one go and none of the claims are barred by limitation, may be borne in mind. The said observation in *Dolphin* (supra) reads:

"9. The issue of financial burden caused by the arbitration proceedings is indeed a legitimate concern but the problem can only be remedied by suitably amending the arbitration clause. In future agreements, the arbitration clause can be recast making it clear that the remedy of arbitration can be taken recourse to only once at the conclusion of the work under the agreement or at the termination/cancellation of the agreement and at the same time expressly saving any disputes/claims from becoming stale or time-barred etc. and for that reason alone being rendered non-arbitrable."

- ii. If under a contract, disputes have arisen and the arbitration clause is to be invoked, at different stages, the party invoking arbitration ought to raise all the claims that have already arisen on the date of invocation for reference to arbitration. It would not be permissible for the party to refer only some disputes that have arisen and not all. If a dispute and a claim thereunder has arisen as on the date of invocation and is not mentioned, either in the invocation letter or in the terms of reference, such claim ought to be held as being barred/waived, unless permitted to be raised by the Arbitral Tribunal for any legally justifiable/sustainable reasons.
- iii. If an Arbitral Tribunal is constituted for adjudicating some disputes under a particular contract or a series thereof, any further disputes which arise in respect of the same contract or the same series of contracts, ought to ordinarily be referred to the same Tribunal. The Arbitral Tribunal may pronounce separate awards in respect of the multiple references, however, since the Tribunal would be the same, the possibility of contradictory and irreconcilable findings would be avoided.

- iv. In cases belonging to Category (iii) involving different parties and the same organisation, where common/overlapping issues arise, an endeavor could be made as in the *IRCTC cases* (supra) to constitute the same Tribunal. If that is however not found feasible, at least challenges to the Awards rendered could be heard together, if they are pending in the same Court.
- v. At the time of filing of petitions under Section 11 or Section 34 or any other provision of the Arbitration and Conciliation Act, 1996, specific disclosure ought to be made by parties as to the number of arbitration references, Arbitral Tribunals or court proceedings pending or adjudicated in respect of the same contract and if so, the stage of the said proceedings.
- vi. If there are multiple challenges pending in respect of awards arising out of the same contract, parties ought to bring the same to the notice of the Court adjudicating a particular challenge so that all the challenges can be adjudicated comprehensively at one go. This would ensure avoiding a situation as has arisen in the present case where Award Nos. 1 and 3 have attained finality and the challenge to Award No. 2 continued to remain pending.

36. Coming to the facts, a perusal of the dates would reveal that Award No. 1 was passed on 5th October, 2007 and the Contractor *inter alia*, challenged the rejection of Claim 2.3 under Section 34 of the Arbitration and Conciliation Act, 1996. Parallely, the Contractor invoked arbitration in respect of some more claims in 2007. So, while the challenge to Award No. 1 was pending, including the rejection of Claim 2.3, the second arbitration was continuing. In 2009, the Contractor then sought permission of the Court to agitate Claim 2.3 before the second AT, which it was permitted to do, keeping open NHA's objections. It didn't end there. Thereafter, a third arbitration, in respect of recovery of amounts collected as liquidated damages, along with other claims, was invoked by the Contractor on 23rd December, 2008. Award No. 2 was passed on 21st February, 2011 i.e., when the third arbitration was still continuing. The present OMP came to be filed in August, 2011. In order dated 20th September, 2011, it is noticed that the third arbitral proceeding is underway. The third Arbitral Tribunal concluded its proceedings and rendered its award on 20th February, 2012. The said award attained finality on 14th August, 2013. NHA is also stated to have paid the awarded sum thereunder.

37. While Awards No. 1 and 3 have attained finality, the challenge in respect of Award No. 2 i.e., the present petition, continues to remain pending. Parties may not have brought to the notice of the Court deciding OMP No. 584/2012, arising out of Award No. 3, that the OMP relating to Award No. 2 is pending before the Court.

38. It is in this background that the Court has to consider the submissions made on behalf of the Contractor that the findings in Award No. 3 have to be read for deciding the present petition. The question that arises is whether it is permissible to read the findings of a subsequent award to decide objections against the previous award.

39. Claim No. 2.3 related to compensation for non-grant of escalation of rates i.e., revision of rates to cover increased cost of material and labour beyond the escalation provision provided in the agreement. This claim was one of the claims raised before the first AT which was, however, rejected by the first AT in the following terms:

"2.2.3.4 Arbitral Tribunal's observations and Conclusion.

2.2.4.1 The Claimant preferred this Claim No. 2 under three sub-heads as follows:

Claim 2.1: Compensation for losses incurred on account of overhead and expected profit, Claim 2.2: Compensation for reduced productivity of machinery and equipment deployed.

Claim 2.3: "Revision of rates to cover for increase of cost of materials and labour during extended period over and above the relief available under

escalation (price adjustment) provision in the agreement.

Under sub-claims 2.1, 2.2 & 2.3 the Claimant demanded compensation of Rs. 3751.48 lacs, Rs. 1374.93 lacs and 1406.03 lacs respectively for the period from 15.01.2004 to 06.07.2006 (CA-XV dated 30.10.2006). The Claimant has finally not demanded a declaratory award for these sub-claims.

2.2.4.2 Out of the above three sub-claims, the sub claim No. 2.3 does not find a mention in the list of claims included in the notice invoking Arbitration dated 27.01.2005 (C-87) followed by letter dated 21.02.2005 (C-89). Although, this notice (C-87) is in continuation of the Claimant's notice dated 25.01.2005 to the General manager of the Respondents (C-86), the letter dated 27.01.2005 (C-87), being the later of two letters and addressed to the Chairman (Employer), finally prevails over the letter dated 25.01.2005 (C-86). The notice to commence arbitration dated 27.01.2005 in its third para graph clearly mentions as follows - "In terms of clause 67.1, we give notice of our intention to commence arbitration in respect of the following issues/claims" (Emphases supplied). Here the Claimants have listed 9 claims. Sub-Claims 2.3 referred to above is not included in this list. In the very first meeting of the AT held on 06.04.2005 it was made clear by the AT that the present arbitration is only for the claims contained in the Contractor's letters dated 27.01.2005 and 21.02.2005.

Hence the AT rules that sub-claim 2.3 is outside its terms reference."

40. Thus, the first AT was of the opinion that Claim 2.3 ought to have been part of the invocation/reference letter. The said claim, having not been raised in the invocation letter, was held to be outside the terms of reference. There is no doubt that in 2009 this Court permitted the Contractor to agitate the claim before the second AT, however, all objections of NHAI were kept open. The Second AT has, in the impugned award, come to the conclusion that escalation is not liable to be granted because of Clause 70.2, as also the fact that the first AT has taken care of all the escalations which were to be awarded to the Contractor. The reasoning of the Arbitral Tribunal is that insofar as delays, if any, by NHAI are concerned, the first AT has granted all the claims raised by the Contractor and no further claims are liable to be granted. The second AT has also analysed the aspects of delay and concluded that the four year delay by the Contractor after the site was available, was wholly unjustified.

41. The reasoning of the second AT is that Clause 70.2 provides for all possible changes in cost i.e., rise or fall in prices. Clauses 70.2 and 70.3 provide the formula for grant of escalation which has been granted to the Contractor. In view of the said clauses, the second AT holds that no further compensation is liable to be granted. The escalation clause in the contract has a clearly specified formula. If any rise or fall in costs is not covered by the contract, as per Clause 70.2 the unit rates and prices mentioned in the contract would be deemed to cover such contingency. A clear interpretation of this clause would be that if escalation is otherwise not provided under the contract, the only escalation permissible would be under Clause 70.2. The impugned award records that the Contractor did not provide any evidence to support this claim. Since NHAI has already paid as per the escalation clause in the contract, no further escalation is permissible.

42. In Award No. 1, on delay, the Tribunal concludes that delay is attributable to NHAI only to the extent that there was a delay by NHAI in handing over the site. The first AT observes that though the initial work of the Contractor was affected by NHAI's inability to fulfil its obligations under Clause 42.01, once the hindrances were removed, the Contractor was not able to accelerate the progress of the work. However, the 3rd AT, while dealing with the claim for recovery of liquidated damages, records that NHAI did not provide sufficient evidence to support the claim that delay was caused by the Contractor. These awards have to independently stand on their own

legs. Any attempt to conflate Award no. 1 into Award no. 2 or Award no. 3 into Award no. 2 would lead to extremely unpredictable consequences. Ideally, since the core issue was of delay, one Tribunal ought to have dealt with all claims. However, that has not happened. It has been a 20-year long journey since the contract was executed in 2000 and the Court is still wrestling with multiplicity of proceedings, arising out of one contract. There needs to be an end to such multiplicity of litigations. The second Award on its own, is quite well reasoned and is also in terms of the clauses of the contract. In view of the same, it cannot be said that the findings in the impugned Award no. 2 are prone to challenge.

43. On behalf of the Contractor, various judgments have been cited to support the proposition that claims for damages due to delay and claims for escalation/revision of rates are distinct. Both claims can be adjudicated upon and granted separately. Grant of damages does not defeat the claim for escalation. This proposition is not in doubt. However, in the present case, escalation/revision of rates as per the contract has already been granted and the Contractor has been compensated for the delays both in Award No. 1 and Award No. 3. Claim No. 1 (Claim No. 2.3 before the first AT) is rightly rejected on two counts: (i) that the same was not included in the initial reference, though the dispute had already arisen, (ii) the delays after the clear availability of site was that of the Contractor and (iii) no escalation beyond what is permissible in Clause 70.2 is liable to be granted. Escalation as provided in the Contract has already been granted. This reasoning is not faulty and is not liable to be interfered with.

44. While hearing a petition under Section 34 of the Arbitration and Conciliation Act, 1996, it would be incongruous to hold that a finding in a subsequent award would render the previous award illegal or contrary to law. The award would have to be tested as on the date when it was pronounced, on its own merits, and not on the basis of subsequent findings which may have been rendered by a later Arbitral Tribunal. In *Vijay Karia v. Prysmian Cavi E Systemic SRL*⁶ the Supreme Court rejected the argument that since the award under challenge is irreconcilable and inconsistent with another award, it deserved to be set aside. Thus, the findings of the second AT do not suffer from any patent illegality or perversity and no other grounds for interference under Section 34 of the Arbitration and Conciliation Act, 1996 are made out. Even if, for the sake of argument, one looks at the findings of the third AT, those relate to delays caused in the project and the right of NHA1 to impose liquidated damages. Escalation or compensation for non-payment of increased rates, is not the subject matter of Award No. 3. Thus, none of the findings in Award No. 3 can be jettisoned or incorporated into the present petition to rule in favour of the Contractor *qua* Award No. 2 for awarding compensation/rate revision/escalation. The stand of the Contractor is thus not tenable and is liable to be rejected. The findings of the majority award are clear and succinct - the scope of interference is very limited. This Court does not find any merit in the present petition.

45. The issue of multiplicity in arbitral proceedings also needs to be effectively dealt with to ensure that a long-drawn arbitral journey, as in the present case, is avoided. Parties to arbitration are expected to adhere to a *bona fide* discipline of use of arbitral processes. There appears to be a clear need for streamlining the same. The Delhi High Court has issued several practice directions under the Act. One such direction⁷ requires that when petitions under Section 9 of the Arbitration and Conciliation Act, 1996, are filed, it is mandatory for the party to mention that no other petition on the same cause of action was filed. In an attempt to further avoid multiplicity of Tribunals and inconsistent/contradictory awards, as has arisen in the present case, the following directions are issued:

- i. In every petition under Section 34 of the Arbitration and Conciliation Act, 1996 (*hereinafter, "Section 34 petition"*), the parties approaching the Court ought to disclose whether there are any other proceedings pending or adjudicated in

respect of the same contract or series of contracts and if so, what is the stage of the said proceedings and the forum where the said proceedings are pending or have been adjudicated.

- ii. At the time when a Section 34 petition is being heard, parties ought to disclose as to whether any other Section 34 petition in respect of the same contract is pending and if so, seek disposal of the said petitions together in order to avoid conflicting findings.
- iii. In petitions seeking appointment of an Arbitrator/Constitution of an Arbitral Tribunal, parties ought to disclose if any Tribunal already stands constituted for adjudication of the claims of either party arising out of the same contract or the same series of contracts. If such a Tribunal has already been constituted, an endeavor can be made by the arbitral institution or the High Court under Section 11, to refer the matter to the same Tribunal or a single Tribunal in order to avoid conflicting and irreconcilable findings.
- iv. Appointing authorities under contracts consisting of arbitration clauses ought to avoid appointment or constitution of separate Arbitrators/Arbitral Tribunals for different claims/disputes arising from the same contract, or same series of contracts.

46. The present order be sent to the Ld. Registrar General for being placed before Hon'ble the Chief Justice for considering if any modifications are required to be made in the Rules of the Delhi High Court framed under the Arbitration and Conciliation Act, 1996.

47. The present order be also sent to the Secretary, Ministry of Law & Justice, Government of India and the Chairman, National Highway Authority of India.

¹ (2011) 3 SCC 507

² ARB.P. 745-51/2019; ARB.P. 753/2019; ARB.P. 755-61/2019; ARB.P. 763/2019; ARB.P. 765-70/2019; ARB.P. 780/2019; ARB.P. 789/2019 & ARB.P. 797/2019

³ (2010) 3 SCC 267 : AIR 2010 SC 1296

⁴ *K.V. George v. Secretary to Government, Water and Power Department, Trivandrum*, (1989) 4 SCC 595 : AIR 1990 SC 53

⁵ *Indian Oil Corporation v. SPS Engg. Co. Ltd.*, (2011) 3 SCC 507; *Sam India Built Well (P) Ltd. v. UOI* [Arb. P. 106/17, decided on 8th September, 2017]; *Parsvnath Developers Limited v. Rail Land Development Authority* [Arb. P. 724/18, decided on 31st October, 2018]; *Parsvnath Developers Limited v. Rail Land Development Authority* [Arb. P. 710/19, decided on 19th May, 2020]

⁶ [Civil Appeal No. 1544 of 2020, decided on 13th February, 2020]

⁷ Practice Direction No. 16/Rules/DHC, dated 7th December, 2009

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ O.M.P. (COMM) 196/2021 & I.A. 8445/2021

UNION OF INDIA

..... Petitioner

Through: Mr. Rajan Sabharwal and Mr.
Raghav Sabhrwal, Advs.

versus

M/S PRAGATI CONSTRUCTION CONSULTANTS

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER

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16.07.2021

(Video-Conferencing)

1. In order to enable the court to facilitate the hearing of this matter, the petitioner is directed to file a proper synopsis, specifically setting out (i) the nature of the dispute before the learned Arbitral Tribunal (ii) the findings of the learned arbitrator qua the claims with which the petitioner is aggrieved, (iii) the reasoning of the learned arbitrator with respect to the said claims and (iv) why the arbitral award merits interference given the parameters of jurisdiction of this Court under Section 34 of the Arbitration and Conciliation Act, 1996.

2. Re-notify on 17th August, 2021.

C. HARI SHANKAR, J.

JULY 16, 2021/dsn

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\$~9(Original Side)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ O.M.P. (COMM) 165/2021 & I.A. 5830/2021

PICASSO DIGITAL MEDIA PVT LTD. Petitioner

Through: Mr. Ravi Ranjan & Ms. Preeti,
Adv.

versus

PICK A CENT EDUCATION AND CONSULTANCY
SERVICES PVT LTD Respondent

Through: Mr. Nishant Gaurav Gupta and
Mr. Bharath Babu, Advocates

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

% **06.10.2021**

1. Mr. Ravi Ranjan, learned Counsel for the petitioner, submits that he has not received any copy of the reply filed by the respondent.
2. Mr. Bharath, learned Counsel for the respondent is directed to e-mail, to learned Counsel for the petitioner, today itself, a copy of the reply along with annexures thereto.
3. Let a rejoinder thereto, if any, be filed within four weeks from today.
4. Both sides are also directed to file short notes of their respective submissions, not exceeding five pages each, after exchanging copies with each other, at least 48 hours in advance of the next date of hearing.

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O.M.P. (COMM) 165/2021

Page 1 of 2

5. Mr. Bharath also submits that the impugned award is also under challenge before a coordinate Bench of Hon'ble Mr. Justice Vibhu Bakhru, on 9th December, 2021.

6. Accordingly, list on 9th December, 2021, before Hon'ble Mr. Justice Vibhu Bakhru, subject to orders of Hon'ble the Judge-in-Charge (Original Side).

7. This Court has been observing, in case after case, that cross challenges under Section 34 of the Arbitration & Conciliation Act, 1996, are being put up by the Registry before different Benches. This creates confusion, as the Court has to then direct that the matters be consolidated before any one Bench and also makes it necessary to adjourn the matter.

8. It would be advisable that the Registry devices a system by which it maintains a record of challenges to awards so that cross challenges to the award are listed before the same Bench and unnecessary delay is avoided.

9. Let a copy of this order be marked to the learned Registrar General, so as to ensure compliance as best as possible.

10. Interim orders already passed shall continue till the next date of hearing.

C.HARI SHANKAR, J

OCTOBER 6, 2021

SS

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O.M.P. (COMM) 165/2021

Page 2 of 2