

CHAPTER 4

Arbitration

Part A INTRODUCTION

1. By Section 49(1) and the Third Schedule of the India Arbitration Act, 1940 (X of 1940), the whole of the Indian Arbitration Act of 1899, the whole of the Second Schedule to the Code of Civil Procedure and Clauses (a) to (f) (both inclusive) of sub-section (1) of Section 104 of the Code of Civil Procedure, have been repealed. These provisions have been consolidated in the Indian Arbitration Act, 1940. The instructions contained in this part are only administrative. Statutory rules under Section 44 of the Indian Arbitration Act, 1940, are contained in Part B of this Chapter.

2. The following rules have been laid down by the Government of India in regard to the appointment of public officers to act as arbitrators for the settlement of disputes:

**Extracts from proceeding of the Government of India,
Home Department (Public) No. 544, dated Fort William,
the 12th February, 1873**

(1) An officer shall not act as an arbitrator in any case without the sanction of his immediate superior, or unless he be directed so to act by a Court having authority to appoint an arbitrator.

(2) No public officer shall act as an arbitrator in any case which is likely to come before him in any shape in virtue of any judicial or executive office which he may be holding.

(3) If any officer acts as arbitrator at the private request of disputants, he shall accept no fees.

(4) If he acts by appointment of a Court of law, he may accept such fees as the Court may fix.

3. (i) In the event of an officer in any public department being nominated as arbitrator in a civil suit, the Court, before appointing him arbitrator, should refer to the official superior of the officer nominated to ascertain whether his services can be made available.

(ii) The Punjab Government have directed in their circular letter No. 5795-G-43/64326 (H-Gaz), dated the 14th October, 1943, that their servants should not be allowed to undertake arbitration without the previous permission of the competent authority.

Part B
RULES UNDER THE INDIAN ARBITRATION ACT, 1940
(ACT X OF 1940)

Rules made by the High Court under the powers conferred by Section 44 of the Indian Arbitration Act, 1940 (Act X of 1940), and published in its notification No. 45-R/X. W-5, dated 9th March 1945.

1. Citation—The following rules shall be cited as the Arbitration Rules. All references therein to ‘Act’ shall be read as meaning the Arbitration Act, 1940.

2. Title of application—(a) Save as hereinafter provided, all applications, affidavits and proceedings under the Act, shall be instituted in the matter of the Act, and in the matter of the Arbitration.

(b) Applications under Chapter IV of the Act shall be instituted in the suit or matter in which order or reference is made.

(c) Application under Section 34 of the Act shall be instituted in the suit which the applicant seeks to have stayed.

(d) Applications under Section 7(2) of the Act shall be instituted in the matter of the insolvency in which the reference to arbitration is sought or claimed.

3. Mode of application—All applications under the Act shall be made only to the proper Court and all applications shall be made by petition and shall be presented in the same manner as plaints or other applications to the Clerk of the Court or to such other officer as the Court appoints in that behalf who shall cause them to be registered and take such orders as are necessary from the Presiding Judge. Where application is made with the consent of all the parties affected thereby, the written petition shall be endorsed with the consent of the parties affected and shall bear their signature.

4. Contents of petition—The petition shall be divided into paragraphs numbered consecutively and shall contain the name, description and place of residence of the petitioner of the opposite party, with a statement in summary form—

(a) of the material facts;

(b) of facts showing that the Court to which the application is presented has jurisdiction; and

(c) of the nature of the relief asked for, and shall specify the persons liable to be affected by the application. A copy of the arbitration agreement, the special case or the award relating to the petition shall be annexed to the application:

Provided that where a party is, by reason of absence or for any other good cause, unable to sign the same, it may be signed on his behalf by any person duly authorised by him to sign the same.

5. Registering petitions and award—Applications under Section 14 of the Act shall be numbered and registered as regular suits. Other applications under the Act shall be numbered and registered as miscellaneous applications requiring judicial enquiry.

6. Notice of application to persons affected by award—Upon any application by petition under the Act, the Judge shall direct notice thereof to be given to all persons mentioned in the petition, and to such other persons as may seem to him to be likely to be affected by the proceedings, requiring all or any of such persons to show cause, within the time specified in the notice, why the relief sought in the petition should not be granted.

7. Copy of petition—A copy of the petition shall be served on each person notified by virtue of the last preceding rule and the applicant shall supply a copy of the petition or affidavit for service on the opposite party.

8. Court-fees and process fees—(a) The Court-fees and process fees chargeable for all petitions shall be in accordance with the Court-fees Act and the rules for the levy of process fees in force for the time being.

(b) The petitioner or the plaintiff shall deposit the necessary process fees for notice to the other party concerned within three days of the presentation of his petition or within such further time as the Court may permit.

(c) The party who has requested the arbitrator or umpire to cause an award to be filed shall, within three days after the filing of the award, or within such further time as the Court may permit, deposit the process fees for notice to the other parties concerned.

9. Notice to arbitrators—Except where misconduct on the part of an arbitrator or umpire is alleged as a ground for setting aside an award or for removing an arbitrator or umpire, or unless the Court otherwise orders, it shall not be necessary to serve notice of the application upon an arbitrator or umpire and he shall not be allowed his costs of appearing thereto.

10. Filing of award—(a) The arbitrator or umpire or any of the parties to the arbitration may cause the award or a signed copy thereof to be filed in Court in the manner prescribed in Rule 3.

(b) When the award is filed by the arbitrator or umpire, he shall, together with the award, send to the Court and depositions and documents which have been taken and proved before him, and the opinion pronounced by the Court on the special case submitted by him, if any, in accordance with Section 14 of the Act, by forwarding the same under a sealed cover addressed to the Court. He shall also send together with the award a copy of the notice given to the parties concerned and affidavit of service of such notice and of attestation of his signature on the award.

(c) When the award is filed by any of the parties to the arbitration under clause (a), the party may move the Court for directing the arbitrator to produce in original such of the documents as were produced before him together with the record of the arbitration.

11. Notice of filing award—When the award has been filed in Court, the Court shall forthwith issue notice of such filing to the parties interested in the award.

12. Limitation for application for judgment on Award—An application for judgment in terms of an award shall not be made until after the expiration of 30 days from the date of service of the notice of filing the award.

13. Court to issue notice on application under Section 20—When an application under Section 20 of the Act is filed and registered, the Court shall, on the application, issue a notice, returnable within not less than 10 days from the service, thereof, calling upon the opposite party to show cause why arbitration agreement should not be filed.

14. Processes to be issued on application by arbitrator or umpire—Processes to the parties to arbitration proceedings or to witnesses shall be issued by the Court on the written application of the arbitrator or the umpire.

15. Accompaniment of the above application—If the proceedings are under Chapter II of the Act, the application for such processes must be accompanied by a copy of the agreement under which the arbitrator or the umpire is acting. If otherwise, the date of the order appointing him arbitrator or umpire shall be mentioned in the application.

16. Special case—Every special case for the Court’s opinion under Section 13(b) of the Act shall be made in Form 1. The arbitrator or umpire, as the case may be, shall at the same time give notice of such action to the parties. When the Court has announced its opinion under Section 14(3), it shall be the duty of the arbitrator or umpire concerned to have a certified copy of such opinion added to and made part of the award.

17. Application of Code of Civil Procedure and the High Court Rules and Orders—In the case not provided for in the foregoing rule or in the Act, the provisions of the Code of Civil Procedure, 1908, and the High Court Rules and Orders, *mutatis mutandis*, shall apply to all the proceedings before the Court and to all appeals under the Act.

18. Forms—The forms prescribed by these rules shall be used for the purposes to which they severally relate with such variations as the circumstances of each case may require.

FORM 1

Special Case

(Title of suit)

In the matter of an arbitration between A.B. of..... and C.D.
of.....the following special case is stated for the opinion of the Court:

(Here state the facts concisely in numbered paragraphs).

The questions of law for the opinion of the Court are :

First—Whether X

Second—Whether Y

Dated theday of.....19

FORM 2

Application for an Order of Reference

(Title of suit)

1. The suit is instituted for (state nature of claim).
2. The matter in difference between the parties is (state matter of difference).
3. The applications being all the parties interested have agreed that the matter in difference between them shall have referred to arbitration.
4. The applicants, therefore, apply for an order of reference.

A.B.

C.D.

Dated theday of.....19

Note—If the parties are agreed to the arbitrators, it should be so stated.

FORM 3

Order or Reference

(Title of suit)

Open reading the application presented on theday of.19..... it is ordered that the following matter in difference arising in this suit, namely :

be referred for determination to X and Y, or in case of their not agreeing then to the determination of Z, who is hereby appointed to be umpire; and such arbitrators are to make their award in writing on or before.....day of..... 19..... and in the case of the said arbitrators not agreeing in an award the said umpire is to make his award in writing

within.....months after the time during which it is within the power of the arbitrators to make an award shall have ceased.

Liberty to apply.

Given under my hand and the seal of the Court, this..... day of.....19.....

Judge

FORM 4

Order for Appointment of New Arbitrator

(Title of Suit)

Whereas by an order, date the..... day of..... 19..... (stated order of reference and death, refusal, etc., of arbitrator), it is by consent ordered, that Z be appointed in the place of X deceased (or as the case may be to act as arbitrator with Y, the surviving arbitrator, under the said order; and it is ordered that the award of the said arbitrators be made on or before theday of19.....

Given under my hand and the seal of the Court this..... day of.....19.....

FORM 5

Award

(Title of suit)

In the matter of an arbitrator between A.B. of..... and C.D. of.....

Whereas in pursuance of an order of reference made by the Court of.....and dated.....the.....day of..... 19..... the following matter in difference between A.B. and C.D. namely:.....has been referred to us for determination:

Now we, having duly considered the matter referred to us do hereby make our award as follows:

We award.....

(1) that X

(2) that Y

Dated the.....day of.....19.....

FORM 6

Notice of Filing of an Award

(Title)

.....
.....

Whereas the petitioner, an arbitration agreement, dated.....between you
and has in Court an award dated.....made by.....

[Name(s) of arbitrator(s)]
notice is hereby given to you of the filing of the same in this Court.

Unless an application to have the award set aside or remitted for reconsideration is made within
thirty days of the date of service of this notice, a judgment in terms of the award may be
pronounced by the Court and on the judgment so pronounced a decree shall follow.

Given under my hand and the seal of the Court

this..... day of.....19.....

Sd/.....

..... Judge

at.....

FORM 7

Notice of the Filing of an Arbitration Agreement

(Title)

To

.....
.....

Whereas the plaintiff has applied that you are a party, to an arbitration agreement dated....., and that differences have arisen with regard to the subject-matter of this agreement of any part thereof and that the agreement should be filed in Court:

Notice is hereby given calling upon you to show cause on..... why the arbitration agreement should not be filed.

Given under my hand and the seal of the Court, this.....day of. 19.....

Sd/.....
(Seal) Judge
at.....

Part C
THE ARBITRATION (PROTOCOL AND CONVENTION)
ACT, 1937

The following rules were framed by the High Court of Punjab in exercise of the powers conferred by Section 10 of the Arbitration (Protocol and Convention) (Act, 1937 and approved by the Governor of the Punjab under Section 224 of the Government of India Act, 1935 (25 and 26 Geo. V, Chapter 42):

Rules under Section 10 of the Arbitration (Protocol and Convention) Act, 1937

- 1. Title of application, etc.**—All applications, affidavits and proceedings under the Act shall be entitled “in the matter of the Act,” and in the matter of the Arbitration.
- 2. What application shall be by petition**—Applications under Section 3 shall be made to the Court whose proceedings are intended to be stayed, and application under Section 5 shall be made to the Court having jurisdiction over the subject-matter of the award.
- 3. Contents of petition**—Every petition shall be divided into paragraphs, numbered consecutively, and shall contain, in a summary form, a statement of the material facts relied on, and the nature of the relief asked for, and shall specify the persons liable to be affected thereby.
- 4. Stay of proceedings under Section 3 of the Act**—Upon an application for stay of proceedings under Section 3 of the Act being filed, the Court shall direct notice to be given to the

party or parties to the legal proceedings, other than the applicant, requiring him or them to show cause, within a time specified, why the order should not be made, unless the Court is satisfied that the object of the application would be defeated by the delay occasioned by the notice.

5. Documents to be produced with the petition for enforcement of a foreign award—The party seeking to enforce a foreign award shall produce with his petition—

(a) the document specified in Section 8(i) of the Act and where such document is in a foreign language, the translation thereof into English, certified in the manner prescribed in sub-section (2) of the said Section 8;

(b) the original agreement for arbitration or an authenticated copy thereof and, when the same is in a foreign language, the translation thereof into English certified in the manner prescribed in sub-section (2) of the said Section 8;

(c) affidavit or affidavits showing (1) that the said agreement was valid under the law by which it was governed, (2) that the award was made by the tribunal provided for in the agreement or constituted in the manner agreed upon by the parties, (3) that it was made in conformity with the law governing the arbitration procedure, and (4) that it has become final in the country in which it was made; and

(d) other document or documents in support of his application.

6. Procedure to be followed in case of non-production of documents with petition for enforcement of award—If the application under Section 5 of the Act be presented for admission without the document specified in Rule 5(a) above, it shall forthwith be returned to the party presenting it. If such application is unaccompanied by the documents specified in Rule (5)(b) and (c) above, the Court may allow time within which such documents must be filed.

7. Execution of decrees and orders—The provisions of the Code of Civil Procedure and the Rules and Orders of the High Court relating to execution of decrees and orders shall, *mutatis mutandis*, be applicable to the execution of decrees and orders under the Act.

8. Fees payable on proceedings—(I) The fees in respect of proceedings under the Act, shall be according to the scale of fees applicable to proceedings under Section II of the Code of Civil Procedure.

(II) As regards the powers which have been notified to the parties to the Convention and the territories to which the Convention applies *see* Central Government (Department of Commerce) Notification 103 (4)/II-Tr. dated the 8th January, 1938.

SCHEME FOR APPOINTMENT OF ARBITRATORS, 1996

HIGH COURT OF DELHI
NEW DELHI

NOTIFICATION

Delhi, the 29th January, 1996

No. 16/Rules.—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:

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

2. Submission of request—(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 the 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.

3. Authority to deal with the request—(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 High Court exercising ordinary original civil jurisdiction, where the value of the subject matter exceeds Rs. 5 lakh.

(ii) The request 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.

4. Seeking further information—(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 documents as may be required to be filed by the person designed in para 3 of this Scheme.

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

6. Notice to affected person—Subject to the provisions of paragraph 5, the person designed 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 arbitrators) 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.

7. Intimation of action taken on request—The appointment made or measures taken by the person designed 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 arbitration, 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.

8. Requests and communications to be sent to Authorised Officer—All requests under the Scheme and communications relating thereto shall be presented to the Officer authorised by the person designed 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 designed in para 3.

9. Delivery and receipt of written communications—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.

10. Costs for processing requests—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 the 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).

11. Interpretation—(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.

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

APPENDIX 1

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 the 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 described the general nature of the disputes and the points at issue.
8. Valuation of the subject matter
9. Relief or the remedy sought

Date: Signature of the applicant

Signature of the Advocate, if any

1. In accordance with Rule 13 of the rules contained in this Chapter, the notice is returnable within not less than ten days from the service thereof.
2. Form Nos. 6 and 7 were added by High Court Notification No. 251-Genl/X-W. 5, dated the 23rd October, 1956.
3. Corresponds to Article 227 of the Constitution of India.