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भारत संचार निगम लिमिटेड
(भारत सरकार का उपक्रम)
BHARAT SANCHAR NIGAM LIMITED
(A Govt. of India Enterprise)

File No. BSNLCO-COMN/13(12)/8/2022-Elect.works

Dated :- 15.09.2023

To

All PCEs/Sr.CEs/CEs(Elect.),
BSNL

Subject: instruction on the handling of court and arbitration proceedings by field offices.

It is noted that there are currently more than 150 court/arbitration cases pending in various circles. It appears that the lack of strict monitoring at higher levels sometimes results in cases being poorly defended, time-barred cases are admitted/extra claims & interest are allowed and execution notices being issued.

Some commonly observed errors are :

1. Non-invocation of limitation clauses for old cases.
2. No appeal against interest allowed in case of genuine withholding/retention.
3. Withholding of amounts/refunds without proper justification/reasons/arbitrary reasons and not informing the vendor about the withholding/refunds in time by the field units.
4. Non-finalization of bills after completion of work which makes the case open for court/arbitration
5. Failure to issue timely notices to vendor with relevant clauses.
6. Failure to keep records properly as per extent guidelines. In some recent cases, even measurement book/order book/notices were not made available to Arbitrator in defence.
7. While charges are handed over to the successor (SDE/EE/SE level) the details of pending cases are not handed over in writing, causing non-monitoring of cases and cases remains unrepresented.

The Management has taken these inaction /omission/negligence very seriously and therefore following instructions are reiterated:-

The handling of court and arbitration cases is well defined in CPWD manual under SoP 5/31 and SoP 5/32 along with the responsibilities of enforcement officers and defense counsel and is hereby again attached for strict compliance.

It is reiterated that arbitration/court cases should not be considered as inheritance of old and defunct divisions handed over to the succeeding engineer in charge. On the other hand, due importance must be given to these cases and they must be given the highest priority at all stages until their final disposition. When an award is made by an arbitrator not appointed by a court, and the contractor is required to pay money to the Government under the award, the Engineer in charge should first furnish the arbitrator with a stamp paper of such value as the arbitrator may require according to the amount of the award under the regulations of the State in which the award is expected to be made. However, it shall be the responsibility of the arbitrator to decide which party shall furnish the stamp paper, and the arbitrator's decision in this matter shall prevail.

The Executive Engineer of the concerned division shall be primarily responsible for handling and defending the court cases. He/she shall collect all relevant documents and provide assistance to the legal counsel. The Superintending Engineer shall provide appropriate and timely direction to the Executive Engineer to ensure that the case is properly defended and expeditiously processed. If it is deemed necessary to seek the advice of higher authorities at any time, the Superintending Engineer should promptly refer the matter to the concerned Chief Engineer for advice in person or in writing, depending on the requirements of the individual case. The Superintending Engineer should keep himself fully informed of the progress of each case within his jurisdiction. He shall obtain regular reports from the Executive Engineer on the progress of cases and send monthly reports to the Chief Engineer.

All statements of defense to be filed by the Executive Engineer shall be approved by the Superintending Engineer and Counsel prior to filing the statement. The Executive Engineer is also required to regularly update all court proceedings in the Legal Information Management and Briefing System (LIMBS) and ensure that all information is current.

Regarding Court Judgments

(i) The Executive Engineer shall send a report directly to the Chief Engineer with copies to the Superintending Engineer for information within 48 hours of a court judgment rendered against the department. He shall take up the matter with the competent authority with the help of the Superintending Engineer/Chief Engineer and take all necessary action as per the decision of the competent authority in each case.

(ii) He shall be responsible for requesting a copy of the judgment and all other relevant documents, his own comments and the opinion of the legal counsel conducting the case on the advisability of filing an appeal/revision and submit the same as soon as possible so that the competent authority can decide whether to file an appeal/revision or not. Upon receipt of the appropriate documents from the Executive Engineer, the Superintending Engineer shall send his own opinion to the Chief Engineer. The Chief Engineer, upon receipt of the report from the Executive Engineer, shall review the matter and consider the advisability of filing an appeal/review in light of the Superintending Engineer's comments. The proposal should be submitted well in advance of the deadline for filing an appeal and should be complete in all respects, i.e., a copy of the judgment (if such copy has not been received, a detailed report thereon) and all other relevant documents should accompany the proposal.

(iii) The Executive Engineer shall ensure that there are no avoidable delays in issuing instructions to counsel. In all cases, instructions will be provided at least one day prior to the hearing date.

General Issues Related to Litigation:

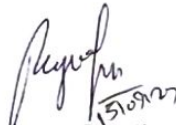
- (i) In order to enable the Executive Engineer to put up proper defense of the case the Executive Engineer hands over the charge of the Division, or transfer arbitration cases/ works, and they unless all the facts and arguments are already explained in the pleadings already submitted, prepare and place on record a self-contained note giving all the facts of the case and detailed comments on the claims.
- (ii) The court of the place from which the letter of award was issued shall have jurisdiction to decide any dispute arising out of or in connection with the contract.

Further it has been observed that the court/arbitration cases sent to corporate office do not contain adequate information and it becomes very difficult to consider the matter, resulting in inadequate representation of the cases.

In order to reduce the time wasted in collecting details and thus make the process more efficient, it is requested that court/arbitration cases submitted by circles to the corporate office for preparation of para-wise reply or for vetting may always be sent to the corporate office in the following format

1. Brief Description of Case.
2. Issue to be decided in court.
3. Existing guidelines on the matter.
4. Views of the circles as respondent/appellant.
5. Specific issue on which guidelines is needed from the Corporate Office.
6. Any other significant issue that should be considered.
7. Legal opinion, if any, of the counsel handling the case.
8. Legal opinion of the counsel in cases where we need to defend the case in a higher court against the orders of a lower court

This has the approval of competent authority.


(Rajeev Soni)
CGM(EW)

Copy to :-

1. PPS to CMD
2. PPS to Dir.(HR)/Dir.(CFA)/Dir.(CM)/Dir.(EB)/Dir.(Fin)
3. All CGMs BSNL

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2. 10% of the security deducted from the bills of the contractors is refunded after expiry of maintenance period in accordance with the terms of the contract in this behalf.
3. The Engineer in Charge maintains a register in which all these works carried out in the Division are entered which are periodically reviewed by the Engineer in Charge. The Register contains the following heads:
 - (i) Name of the work
 - (ii) Date of completion
 - (iii) Specification in brief
 - (iv) Rate paid
 - (v) Name of the firm/contractor
 - (vi) History* of all defects, with date(s) of occurrence, noticed during the guarantee period.
 - (vii) Action taken by the firm/contractor.

*The history helps as a ready reference about the efficiency and the quality of the work done by the firm/contractor.

SOP No. 5/31 : Appointment of Arbitrator and Reference of Disputes (Refer Para 5.21.1)

1. Reference of dispute to arbitration

- (i) The pre-arbitration procedures as per Clause 25 of the GCC are complied with before appointment of Arbitrator/s. The appointment of arbitrator/s is made within time and as per procedure prescribed in the arbitration Clause 25 of the GCC in the contract.
- (ii) The EE gives consent for fast track arbitration only with prior approval of CE/CPM.
- (iii) All disputes including those which were referred to the DRC are only referred to the Arbitrator/s if either party decides to resort to arbitration.
- (iv) Opinion of the Engineer-in-charge as to the reasonability of the grounds shown by the contractor for granting extension of time, under Clause 5 of the GCC, cannot be disputed and the decision of the Engineer-in-charge is final.
- (v) Arbitration is conducted as per the arbitral procedure, as decided by the arbitrator/s through their preliminary order.
- (vi) The Contractor cannot have recourse to a court of law for the redressal of his/her grievances, unless he/she has exhausted the channel of the arbitration as envisaged in Clause 25 of GCC of the contract.
- (vii) Even if the contractor goes to court, the Engineer in Charge takes a plea that the contractor being a signatory to the agreement containing arbitration clause, any dispute arising out of or in any way connected with the execution or work has first to be settled by reference to the process as mentioned in Clause 25 of the GCC.

2. Application for appointment of Arbitrator

- (i) A standard application form seeking appointment of arbitrator by the Contractors is given in **Annexure- 39**

- (ii) The application form, duly filled in, listing out disputes and claim against each dispute is submitted by the contractor to the Chief Engineer, with two copies thereof to the concerned Engineer in Charge. All the three copies of the application form are accompanied by a Statement of Claims in the manner indicated in the application form.
- (iii) The arbitration clause can be invoked by the Engineer-in-charge as well as by the contractor applying to the Chief Engineer for appointment of the Arbitrator at any point during the execution of works and it is not required to wait till the completion of the work.
- (iv) The party invoking arbitration clause gives information enough to justify existence of dispute, details about the claims having been made and its refusal by the other party for admittance. A “dispute” implies an assertion of right by one party and repudiation thereof by the other. Existence of a dispute is a condition precedent to arbitration. If there is no existence of dispute there cannot be any right to demand arbitration.
- (v) Before appointing arbitrator, the Chief Engineer ensures that existence of dispute(s) has been established. For this purpose, the party invoking arbitration clause is asked to produce documentary evidence of its claims having been duly lodged with the other party and refusal by the other party to accede to them or no response by other party within stipulated time.
- (vi) All correspondence between the Engineer in Charge and the Superintending Engineer/Chief Engineer regarding appointment of Arbitrator, or on award, and subsequent court cases, if any, and are sent through D.O letter/ e- mail/ speed post /special messenger.

3. Appointment of Arbitrator

- (i) The standard form of appointment letter, is given at **Annexure -40** [for sole arbitrator] and **Annexure 41** [in case of Arbitral Tribunal] whichever is applicable, is used for appointing an Arbitrator. Where the contract provision is for a sole arbitrator, the Appointing Authority follows the terms of Clause 25 and appoints an arbitrator and refers the disputes to him/her if either party requests for arbitration. Where the contract provision is for three arbitrators, the appointing authority follows the terms of clause 25 and appoints one of the three arbitrator if either party requests for arbitration.
- (ii) The sole or one arbitrator, in case he/she is an employee of CPWD, subject to fulfillment of requirement of Section 12(5) of the Arbitration and Conciliation Act, 1996 as amended in 2015 with reference to Seven Schedule i.e. agreement by the parties in writing after the disputes have arisen w.r.t. appointment of such an arbitrator. Otherwise the Appointing Authority appoints a suitable arbitrator with due consideration of the requirements of Fifth Schedule of the Arbitration and Conciliation Act, 1996 as amended in 2015.
- (iii) The Appointing Authority in every case ensures that the arbitrator so appointed satisfies the qualification as per the Arbitration clause of the contract. It is the duty of the Appointing Authority to appoint an Arbitrator of good reputation and having professional knowledge in arbitration. Hence in each case the power of appointment of arbitrator is exercised with due diligence by the Appointing Authority.
- (iv) Where the contract provision is for three arbitrators and in case of following situations
 - (a) the contractor fails to appoint the second arbitrator, or
 - (b) The two appointed Arbitrators fails to appoint the presiding arbitrator, within the prescribed time.

- The Appointing Authority ensures that Engineer-in-Charge, without delay requests the Director General CPWD to appoint the second Presiding Arbitrator as the case may be.
- (v) The Appointing Authority refers the disputes to the Arbitrator so appointed. Wherever it is found that (a) The arbitrator appointed by the contractor, or (b) The Presiding Arbitrator appointed by the two appointed arbitrators is not eligible under seventh schedule of Arbitration and Conciliation Act 1996 (as amended in 2015), the remedy is under Section 14 of the Act. However, in case there are justifiable doubts under fifth schedule, challenge to jurisdiction of arbitrator is done by Engineer in charge under section 16 of the act, without any delay. However, challenge to the appointment of Arbitrator under section 16 of the A&C Act should not be a ground for not referring the disputes to the Presiding Arbitrator.
 - (vi) The Appointing Authority while referring disputes to arbitrator is not to decide whether the dispute is arbitrable or not; or whether it is barred by limitation or not. These are matters to be decided by arbitrator and parties are at liberty to raise objections on these issues before the Arbitrator. The role of appointing authority is only to appoint the arbitrator and refer a list of disputes. Hence the Appointing Authority should not hold any request because in his/her opinion it is an excepted matter and hence not referable to arbitrator. Whether it is an excepted matter or not may itself be matter of dispute and it is be decided by the arbitrator. Objection, if any, is to be raised before the arbitrator by the parties.
 - (vii) Whenever a notice for appointment of an Arbitrator is received from a contractor in terms of Clause 25 of Agreement forms No. CPWD 7 and 8 (and corresponding clauses in other forms), the Appointing Authority should process the case so as to appoint an Arbitrator within 30 days from the receipt of such a notice. The time limit of 30 days for appointment of Arbitrator is strictly adhered to. Non-receipt of comments from Engineer in Charge / Superintending Engineer in respect of disputes does not have a basis of not adhering to the limit of 30 days.
 - (viii) The mandate of an appointed arbitrator is not revocable except with the order of the court or his/her resignation or by consent of both the parties. It is not revocable by the death of any party or parties to the contract.
 - (ix) In case arbitration proceedings are terminated by arbitral tribunal under Section 25(a) of Arbitration and Conciliation Act 1996 (as amended in 2015), for non submission of statement of claim by the claimant within time as per direction of arbitral tribunal, there is no provision in law for further appointment of arbitrator.
 - (x) In all arbitration cases the Arbitrator(s) gives reasons for the award.
 - (xi) Generally, the cases of disputes between the Government and other parties are referred to the sole arbitrator. The Government of India have appointed a panel of Arbitrators in the Ministry of , and generally the arbitration cases are referred to one of them as is decided by the Chief Engineer/Director General. CPWD.
 - (xii) The award by the Arbitrator(s) thus appointed is final and binding on all parties to the contract, unless it is set aside by Court of Law, or a stay obtained by a separate application on the award from, the court.

- (xiii) The sample letter for appointment of a new Arbitrator due to transfer or vacation of office by the existing Arbitrator is given in **Annexure -42**.
- (xiv) It can be clarified in the letter of appointment of the Arbitrator that the reference is without prejudice to the defence that is raised by the Government regarding the tenability of the claim on all necessary and available grounds including those in limitation.

4. Preparation of Arbitration cases

- (i) Arbitration involves both matters of facts and technical issues as well as legal issues. The legal issues are generally involved the Indian Contract Act, 1872 The Limitation Act, 1963 and the Arbitration and Conciliation Act, 1996 and other relevant statutes. In addition, judicial precedents are used appropriately.
- (ii) The following steps are taken by the Engineer in Charges/Divisional Officers with a view to properly defend the Arbitration cases:
 - (a) As soon as a contractor or the Engineer-in-charge applies for arbitration, the Engineer in Charge or Divisional officer prepares a detailed history sheet containing the data regarding estimates, designs and drawings, NIT, agreements, extra and substituted items, reduction statements, extension of time/notices issued under clause 2, 3, 14 etc., and send a copy to his/her Superintending Engineer/PM/CPM.
 - (b) Lists out important letters in respect of the issues that are raised by the contractor, or the important notices by the contractor, or the important notices issued to the contractor, and place these originals in a separate file. In the routine file, true copies of these documents is placed.
 - (c) Keeps original agreements, plans, designs including the calculations for these if available, details of measurements and analysis of rates attached to the technically sanctioned estimates, all the Measurement Books connected with the work, Cash Book, Site Order Book, Cement Register in safe custody of the Engineer in Charge along with originals listed in para (ii).
 - (d) Copies of the old Measurement Books if required be provided to sub divisions for completion of final bill.
 - (e) All the files connected with the work are properly page-numbered, stitched and sealed, and kept by the Engineer in Charge along with the above records.
 - (f) If there are important situations or circumstances which are not available on the file, but are only known to the field staff, their signed statements regarding the factual information is obtained and kept on record.
- (iii) If the work has been completed, the final bill is prepared as early as possible, and in any case before the disputes are referred to arbitration. The Superintending Engineer/Engineer in Charge ensures that the bills are finalized immediately.
- (iv) The Engineer in Charge informs the authority with whom Extra/Substituted/Deviations/RR items are pending related to instant work with a request to approve the items immediately. The concerned authority ensures that all such pending items are finalized within the time prescribed in the contract and in any case before statement of defence is submitted.
- (v) A detailed note on the facts of the case dealing with each and every item of the claims and/or of counter claims is prepared by the Engineer in Charge, along with reference to various relevant documents supporting the Government stand or case or refuting the contractor's claim(s)

- (vi) The AAO of the office of the Engineer in Charge/Divisional Officer in complete compilation of records and is responsible for the same. Superintending Engineer is requested, wherever necessary for guidance and assistance in preparation of Arbitration cases.
- (vii) One of the important documents for defence in an arbitration case is the agreement. A copy of the Superintending Engineer's orders conveying his/her decision on recovery of compensation, if any, and copies of sanctioned extra, substituted and deviated items and sanctions to extension of time, etc. are attached to the original agreement by the Engineer in Charge so that these are readily available during the hearings of the arbitration case. These papers are got signed by the contractor as far as possible, so that any claim on these issues can be refuted before the Arbitrator.
- (viii) While examining the request for arbitration from a contractor or any claim ; the Engineer in Charge examines whether the claim of the contractor is time barred **or not**, in accordance with the provisions of the Limitation Act, 1908 or 1963 as the case is. This point is taken into consideration in preparing the defence before the arbitrator.
- (ix) The question as to whether any claim has become time barred will itself be a dispute which can only be settled by arbitration.
- (x) The Engineer in Charge may call the field Staff in-charge of the work from their new stations for any information that he/she may need to collect by personal discussions, but only under orders from the Superintending Engineer concerned.
- (xi) In cases where the claims (excluding interest) exceed Rs. 1 crore, advice of the Techno-Legal Cell is sought.
- (xii) The Engineer in Charge submits the Counter Statement of facts normally within two months, and in exceptional cases within three months from the date of receipt of the statement of the facts. However, in case the same is overruled by any order of the Arbitrator/s, the Engineer in Charge is bound to follow the order of the Arbitrator/s.

5. Production of official documents before Arbitrator/s

- (i) In case 'discovery' is sought by the contractor during arbitral proceedings, proper defence is raised, including proof of 'relevance' and need of specifying the documents. Similarly, the Department seeks discovery, only if necessary and is specific depending on the disputes under arbitration.
- (ii) Wherever required and found necessary, records of Central Technical Examiner / Chief Engineer (CSQ)/QA Unit's objections on overpayments and defective work, reports of CBI / SPE or the Vigilance Unit of the Department are consulted and their assistance is availed in order to defend the case.

6. Engagement of lawyer other than Departmental Counsel

- (i) Where the Counsel of the Department is not available and /or otherwise if it is considered desirable to avail of the services of a local lawyer to conduct a case on behalf of the Department or assist the Departmental Counsel, fees of the lawyer engaged is decided at the rates approved by the State in which the cases are conducted. In such cases, approval of the Chief Engineer/Additional Director General/Director General (Works) as the case is, is obtained before engaging such lawyer. However, the approval of the same from the competent authority as above is communicated to the Engineer in Charge within 15 days of the receipt of the request made by the Engineer in Charge.

- (ii) Where the fees are in excess of the approved rates of charge laid down by the State Administration, and it is desirable to engage a lawyer, specialized in the particular matter in hand and broadly if it is in the interest of the government, prior approval of the DG, CPWD is obtained.
- (iii) In the case of Engineer in Charges at stations where Senior/Junior Counsel is also stationed, the Engineer in Charges do not engage Private Lawyer/Standing Government Counsel locally, except in case where the Senior Counsel/Junior Counsel is not available due to unforeseen circumstances, and a lawyer is required to take up the case and appear before the court.

7. Engagement of Departmental Counsel (Junior/Senior/Standing/Private)

- (i) In cases, where the value of the claims is **Rs. 1 Crore** or more, the Counsel defends the cases with the help of the Engineer in Charge concerned before the Arbitrator. The Engineer in Charge takes necessary action to brief the Counsel.
- (ii) Where required, the Departmental Counsel assists in preparation of the counter statement of facts on the basis of the notes/matter made available to him/her by the Engineer in Charge.
- (iii) Where the contractor's claims are based on entries in the Measurement Books recorded by any CPWD officer who may have colluded with the contractor and made false entries, sufficient evidence contesting the correctness or veracity of the entries in the Measurement Books are placed before the Arbitrator in support of the contention of the Department.

8. Techno-Legal Cell

- (i) Arbitration cases pertaining to Sub-Regions of Additional Director General (NDR) and Additional Director General (DR) are handled by Director (Works), and those pertaining to other Sub-Regions, by the Director (TLCQA)/Director Works of the concerned Sub-Region.
- (ii) The Techno-Legal Units are required to take up the cases as soon as CSF/SF is prepared by the Department and is vetted by the concerned Superintending Engineer. These Units scrutinize the CSF/SF and render necessary advice to the Engineer in Charge/Superintending Engineer regarding defence of the case. The Engineer in Charge/Superintending Engineer should, however, continue to follow the procedure of getting the CSF/SF vetted further by the Counsel.
- (iii) The Techno-Legal Units scrutinize the cases of acceptance or otherwise of arbitration award in the power of Additional Director General/Special Director General/Director General and render necessary advice. The Chief Engineers seeks their advice in such cases.
- (iv) The Core Unit also deals with the cases of appointment of Arbitrator other than the designated Arbitrators of the Ministry of Urban Development, correspondence regarding legal opinion/opinion of the Senior Counsel and suggestions for modifications to the existing Rules and Procedures, and any clarifications needed.
- (v) The Techno-Legal Units are required to examine the awards with a view to check:
 - (a) Whether the case has been properly defended before the Arbitrator, and
 - (b) Whether there are any lapses on the part of concerned officials due to which the award has gone against the department.
- (vi) The Techno-Legal Units bring such cases to the notice of the Chief Engineer for appropriate action.

9. Acceptance/Challenge of award

- (i) The Director General/Special Directors General/Additional Directors General/Chief Engineers in the CPWD are delegated powers for acceptance/Challenge of arbitration awards as provisioned under financial power delegated to the CPWD officers.
- (ii) When, in the opinion of CE/ADG/Special DG/DG there are no grounds to challenge the award under Section 34 (2) of the Arbitration and Conciliation Act, 1996, the case need not to be referred to the Sr. Counsel/Min. of Law for their advice. However, if considered necessary, CE can refer the matter to Sr. Counsel, CPWD/ Min. of Law (either Delhi or Local Branch) before accepting/ recommending for acceptance of the award.
- (iii) Where, in the opinion of CE/ADG/DG(W), there are good grounds available to challenge the award (whole or part of the award) under Section 34 (2) of the Arbitration and Conciliation Act, 1996, Ministry of law is consulted by the competent authority before taking a decision. An award should not be challenged without recording sufficient reasons to avoid frivolous litigation and interest burden.
- (iv) The time schedule for processing and deciding is as under:

Sr. No.	Authority to accept/ challenge the award	By EE to SE	By SE to CE	Action by CE
1	CE	20 days from the date of receipt of award or from the date of disposal of application filed u/s 33 of Arbitration Act.	10 days. The SE offers his/her specific comments about acceptance or challenging award against each claim.	The CE will take decision about accepting or challenging the award within 20 days after receipt of case from SE.
2	ADG	15 days from the date of receipt of award or from the date of disposal of application filed u/s 33 of Arbitration Act.	5 days. The SE offers his/her specific comments about acceptance or challenging award against each claim.	The CE will submit the case to ADG within 10 days of receipt from SE with his/her specific comments about accepting/ challenging award against each claim. The ADG will take decision about accepting or challenging the award within 15 days.
3	SDG/DG	- do -	- do -	Within 10 days of receipt from SE, the CE will submit the case to the SDG /DG under intimation to ADG/SDG who will send his/her comments to SDG/DG within 10 days. The SDG/DG will take decision about accepting or challenging the award within 15 days.

- (v) If the award is found to be in order from all aspects, it is not challenged. However, Under Section 33, a party can make an application for correction or interpretation within 30 days of receipt of the arbitration award
- (vi) In cases, where, in the opinion of authority competent to accept/challenge the award, there are good grounds available to challenge the award (whole or part), Ministry of Law is consulted.
- (vii) An application for setting aside/challenge an arbitration award is not made after 3 months have elapsed from the date on which the party making that application had received that arbitral award or from the date on which his/her application for correction in or interpretation of arbitration award in terms of Section 33 of the Arbitration and Conciliation Act, 1996 was disposed of by the Arbitral Tribunal/ Arbitrator.
- (viii) The award amount should not be deposited in the court, in case of challenge to the award, unless otherwise directed by the court.

10. Payment of Arbitral Award:

- (i) Immediately on decision to accept the award by the Govt. of India (i.e. by Chief Engineer/ Additional Director General/ Special Director General, Director General as the case is), or on receiving such intimation from the contractor, a communication as per **Annexure-43** is issued to the contractor intimating the fact of such acceptance, and offer payment in terms of the award if the contractor communicates acceptance of the award within the specified time.
- (ii) Payment is made to the contractor once the arbitration award is accepted by the Department and the payment is made within the specified period in the Award and if not so specified in the Award, then as per the Arbitration and Conciliation Act 1996.
- (iii) Money is get deposited by the client organizations for Arbitral award as per terms of the MoU. The payments made towards arbitration awards are charged to the work.
- (iv) The amount of the interest has to be taken into consideration while deciding the authority competent to accept the award. However, in case no fixed date is specified in the award and the interest is to be paid upto the date of actual payment of award amount to the contractor, the likely date of such payment, in case of no fixed date provided in the award, is taken into consideration.
- (v) If the actual payment to the contractor gets delayed beyond the anticipated date due to some unavoidable circumstances, and the amount of interest increases to an extent that the total amount of award exceeds the power of acceptance of the authority that accepted the award then in such cases, the payment is made to the contractor as early as possible, and the case is submitted to the authority competent to accept the increased amount of award for ex- post facto approval.
- (vi) The award amount is paid even if the award is challenged for arbitration under the amended law in 2015 unless a stay is obtained through a separate Application. Even then the court may ask to deposit security for granting a stay. In deposit work the client is kept in loop regarding arbitration and the MoU is clear about liability of client for arbitration award.
- (vii) An Arbitration award is not be discharged by the death of any party thereto either as respect to the deceased or any other party, but is in such event be enforceable by or against the legal representative of the deceased.

- (viii) The authority accepting the award examines, through the concerned Techno-Legal Units, whether there is any lapse on part of any official resulting the award against the Department. In case of any lapse is found appropriate action is taken.
- (ix) Action is taken as per the NITI AAYOG circular No. N-14070/14/2016-PPPAU dated 05-09-2016, where the award is challenged.

11. General instructions

- (i) The Engineer in Charge sends a quarterly statement (ending March, June, September and December) of pending arbitration cases in the proforma **Annexure - 43 A Part I & II** on 7th April, 7th July, 7th October and 7th January every year to the Superintending Engineer, who also sends a similar statement for the entire circle to the concerned Chief Engineer on 15th April, 15th July, 15th October and 15th January every year. These reports are reviewed by the Chief Engineer during periodical meetings with his/her Superintending Engineers/Engineer in Charges to expedite the finalization of arbitration cases.
- (ii) The Engineer in Charge ensures that all the drawings issued with the NIT, and those subsequently followed for execution of works are properly preserved and kept along with the contract documents. The Engineer in Charge also ensures that suitable and adequate arrangements are made in his/her Division regarding preservation of all-important documents, registers etc. Besides others, a list of all such records is prepared and kept handy so that correct position of each case is known to the Engineer in Charge who is required to defend the case, to enable him/her to do so on proper lines.
- (iii) The arbitration cases are not be considered as legacy of old and defunct Divisions handed over to subsequent Engineer in Charges. On the other hand, these are given due importance and dealt with on priority basis at all stages till these are finally disposed of.
- (iv) Whenever an award is made by an Arbitrator appointed otherwise than through a Court, and if under the award some money is payable to the Government by the contractor, the Engineer in Charge should first supply to the Arbitrator stamped paper of appropriate value as is asked for by the Arbitrator according to amount of the award as per the rules of the State where the award is likely to be made by the Arbitrator. However, it is for the Arbitrator to say as to which party should supply the stamped paper and the decision of the arbitrator in this matter prevails.
- (v) Often mistakes are made, despite engaging legal counsels from ministry of law, regarding the jurisdiction of courts in arbitration matters and particularly in challenge of arbitral award with adverse consequences. S.42 of the Arbitration Act confers jurisdiction only in one court, if the same has been approached earlier, but not due to previous Application under S.8 for reference to arbitration. Hence the proper advice must be obtained in each fact of case and the location from the legal counsel by giving full facts of history of case to avoid unnecessary litigation in wrong forum.
- (vi) As per judicial precedent the court at the seat of arbitration as well as the place involving subject matter of disputes have jurisdiction in arbitration. Where a High Court has original jurisdiction, it is the 'Court' for arbitration even in domestic arbitration. The procedure in court proceedings may depend on whether the arbitration is as per un-amended Act or amended Act in 2015. The Commercial Courts, the Commercial Divisions and Commercial Appellate Division, where set up, is have jurisdiction as per specified value of dispute.

SOP No. 5/32 : Court Cases and Judgment in Court Cases (Ref Para 5.22)**1. Court Cases**

- (i) The expenditure likely to be incurred to recover any amount through litigation in courts, is carefully estimated so that unnecessary expenditure on litigation is avoided where there is no reasonable chance of recovering the judgment debts for reasons such as poor financial standing of the party concerned.
- (ii) It is the primary responsibility of the Departmental Counsel or Government Counsel at the particular station where the case has jurisdiction to see to the proper defence of the case. The superior officer of the Department keeps a constant watch over the progress of these cases and ensures that all such cases, at every stage, are processed properly so that the cases do not go against the Government interests by default, resulting in financial loss, etc. to the Government.
- (iii) The Superintending Engineer sees that all such cases are reported with all details to the Chief Engineer as soon as a suit against Government is threatened by any aggrieved party, or the Department itself intends to file a suit against a contractor or third party. Monthly reports on each such case is sent to the Chief Engineer detailing the progress of the case and further action taken.
- (iv) The Engineer in Charges of the Division concerned are primarily responsible for handling and defending the court cases. He/she collects all the relevant records and ensures all help to the counsel. The Superintending Engineer gives adequate and timely instructions to the Engineer in Charge to ensure that case is defended properly and handled expeditiously. If it is considered necessary to obtain the advice of higher authorities at any stage, the Superintending Engineer should refer the matter immediately to the Chief Engineer concerned for advice, either personal or in writing, according to the needs of the occasion.
- (v) The Superintending Engineer keeps himself/herself fully conversant with the progress of each case. He/she obtains regular reports from the Engineer in Charge about the progress of the case from time to time and sends monthly reports to the Chief Engineer.
- (vi) All defence statements to be filed by the Engineer in Charge are approved by the Superintending Engineer and the Counsel before the statement is filed.
- (vii) Engineer in Charges updates all the court cases in Legal Information Management and Briefing System (LIMBS) regularly and ensures all information is up- to-date.

2. Judgment in Court cases

- (i) The Engineer in Charge sends a report to the Chief Engineer direct within 48 hours after the court has delivered a judgment that is against and adverse to the Government with copies to the Superintending Engineer and the Ministry for information. He/she takes up the matter with the competent authority with the help of Superintending Engineer/Chief Engineer and take all necessary action as per decision of competent authority in each case.
- (ii) He is responsible to apply for and furnish with minimum delay a copy of the judgment and all other relevant papers, his/her own comments and the opinion of the Counsel conducting the case, on the advisability of filing an appeal/revision petition to enable the Government to come to a decision whether an appeal/revision is filed or not.

- (iii) On receipt of the relevant papers from the Engineer in Charge, the Superintending Engineer sends his/her own comments to the Chief Engineer. The Chief Engineer examines the matter on receipt of the Engineer in Charge's report, and considers the advisability of the filing an appeal/ revision petition in the light of the comments of the Superintending Engineer. Thereafter, the Chief Engineer forwards his/her proposals to the Ministry to enable them to seek the advice of the Ministry of Law.
 - (iv) The proposal is made well in advance of the last date of filing an appeal, and it is complete in every respect, i.e. copy of the judgment (if such copy has not been received, a verbatim report of the same), and all other relevant papers accompany the proposal.
 - (v) The Engineer in Charges and Superintending Engineers ensures that there is no avoidable delay in the issue of the instructions to the Government pleader. In any case the instructions are communicated at least a day before the date of hearing.
- 3. Law charges on civil suits-** The costs and expenses incurred on civil suits in connection with the execution of Government works is charged as per CPWD A-Code.
- 4. General issues related to Court Cases.**
- (i) In order to enable the Engineer in Charges to put up proper defence of the case the Engineer in Charges hands over the charge of the Division, or transfer arbitration cases/ works, and they unless all the facts and arguments are already explained in the pleadings already submitted, prepare and place on record a self-contained note giving all the facts of the case and detailed comments on the claims.
 - (ii) The Court of the place from where the letter of award of work has been issued, has the jurisdiction to decide any dispute arising out of or in respect of the contract.

SOP No. 5/33 : Operation of Contract Clauses (Refer Para 5.23)

- 1. Clause 2 of CPWD Forms no.7 and 8 and Clause 16 of the CPWD Form no. 12**
- (i) The compensation for slow progress or non-completion of work in stipulated time, at the rates specified therein, is an "agreed compensation" under clause 2, which the contractor has to pay in case of default. Therefore, there is no choice for the Engineer-in-charge but to recover the same at the rates mentioned in clause 2 of the contract, if the progress of the work is slow or the work is not completed in stipulated time.
 - (ii) In case the contractor feels aggrieved, he/she may appeal to the Chief Project Manager/ Project Manager/Superintending Engineer against such recovery, who may uphold the recovery at the original rates or at reduced rates or completely waive off the same depending upon the merits of each case.
 - (iii) In such cases the decision of the Chief Project Manager/ Project Manager/ Superintending Engineer is final and out of purview of the Arbitration clause. The Chief Project Manager/ Project Manager/Superintending Engineer should give a registered notice to the contractor, of his/her intention to levy the compensation. Proformas for show cause notice to be issued to the contractor regarding compensation under clause 2 have been given below
 - (a) When work either is in progress or has been completed. (Refer **Annexure- 44**).
 - (b) In case of contract is determined under clause 3. (Refer **Annexure- 45**).
 - (iv) Reply submitted by the contractor, if any is taken while deciding the compensation.