

CHAPTER XI

ARBITRATION AND LEGAL PROCEEDINGS

PART I—ARBITRATION PROCEEDINGS

11.1. Condition 18 of conditions of contract contained in Schedule 'B' provides as under :—

“If any question, difference or objection whatsoever shall arise, in any way connected with or arising out of this instrument or the meaning or operation of any part thereof, or the rights, duties or liabilities of either party, then save in so far as the decision of any such matter is herein before provided for and has been so decided, every such matter, including whether its decision has been otherwise provided for and or whether it has been finally decided accordingly or whether the contract should be terminated or has been rightly terminated in whole or in part and as regards the rights and obligations of the parties as a result of such termination, shall be referred for arbitration to any officer appointed by Haryana Govt. and his decision shall be final and binding and where the matter involves a claim the amount, if any awarded, in such arbitration, shall be recoverable in respect of the matter so referred”.

11.2. The arbitration proceedings are governed by the provisions of Indian Arbitration Act.

11.3. The Arbitration proceedings can be initiated either by the contractor or by Government whenever there is a dispute regarding the subject matter of the contract, its terms and conditions, interpretation and meaning of the terms of the contract etc. or the nature of purchase, specifications of stores, their quantity, price, delivery period and other rights and liabilities of both the parties arising out of the contract.

11.4. Notice of Arbitration :

- (a) Whenever there is dispute, either party is required to give the other party, a notice of its intention to refer the case to the Arbitration specifying the exact nature of dispute seeking the consent of other party to refer the matter for Arbitration. This is necessary because if arbitrator is appointed without obtaining the consent of the other party then the reference becomes unilateral and the other party can get it set aside from court.
- (b) In case the other party fails to give consent to refer the matter for arbitration then it is open to the party to move the Civil Court for obtaining the orders of the court for the appointment of an arbitrator under section 20 of Indian Arbitration Act.

11.5. Appointment of Arbitrator :

In the event of any dispute arising out of the contract, the aggrieved party approaches the second party for referring the matter to arbitration. In case the second party agrees, a request is made to the Govt. for appointment of any officer

of Haryana Govt. as Arbitrator out of a panel of officers already approved. Normally I.A.S. officers not below the rank of Deputy Secretary are included in this panel. In case the second party does not agree, an application under section 20 of the Indian Arbitration Act is made by the aggrieved party in the Court of Senior Sub Judge at Chandigarh or in the Court of competent jurisdiction elsewhere, for the appointment of an arbitrator. *It is important to note that reference for the appointment of arbitrator can be made to Court within 3 years of dispute. Otherwise the application becomes time barred.* Further proceedings are taken only on the basis of the orders of the Court.

11.6. (a) As soon as Govt. orders are received in this behalf, the case file is passed on to the legal cell of the Directorate by the purchase section concerned. The purchase section will also send a brief history of the case and the details of the dispute involved, to the legal cell. The following information, in brief, is to be supplied by the purchase section to the legal cell.

- (1) The brief history of the case.
- (2) No. and date of acceptance of tender.
- (3) Name and full address of the contractor.
- (4) Nomenclature of the stores ordered in acceptance of tender.
- (5) Name of the Indenting Department.
- (6) Name and full address of the consignee.
- (7) Valuation of the claim.
- (8) Officers/Officials who are conversant with the case and would be able to give evidence in support of Govt. claim.

(b) The Purchase Section will collect all the documents that will be required for the conduct of arbitration proceedings. The documents are to be collected not only from this Directorate but also from the consignee/Indenting Department concerned. This section will also obtain complete information regarding payment made against the contract and balance of the outstanding payment. The Legal Cell will prepare the details of all counter claims which are to be made against the contractor. The officer concerned of the purchase section will assist the legal cell in these matters. The purchase section will also supply a list of officers who dealt with the case at every stage and whose examination may be required at any stage for evidence. It will be the responsibility of the purchase section to arrange for the presence of the witnesses to give evidence on behalf of the Government, wherever necessary.

(c) In case the file of purchase section relating to the dispute is not free, the purchase section should supply such extracts, including a copy of the acceptance of tender and other necessary documents, as it may find necessary for conducting the case.

(d) Legal Cell will be completely responsible for watching the progress of each case and for production of evidence and to see that the case is successfully conducted before the Arbitrator. It shall be fully assisted by the officials of the purchase section in this behalf.

11.7. Examination of the claim filed by the contractor before Arbitrator should be undertaken and written statement on behalf of the Directorate should be prepared as soon as a copy of the claim filed by the contractor before the Arbitrator is received. The legal cell will prepare draft written statement on behalf of the department to be filed before the arbitrator. The draft statement shall be shown to the Branch Officer of the Purchase Section concerned and got approved from the Director, Supplies & Disposals, before being finally got typed for filing before the Arbitrator. The written statement should be got duly signed and verified by the officers dealing with the contract.

11.8. Arbitration Proceedings :

The Arbitrator issues a notice to both the parties concerned with the dispute and fixes a date of hearing. After the first date the arbitrator gives time for the filing of claims and counter claims. Thereafter both the parties are afforded an opportunity to lead oral and documentary evidence in support of their claims. After the evidence has been completed, the arguments are heard by the arbitrator from both sides. It is always safe to file written arguments with the Arbitrator. The Assistant District Attorney conducts the case before the arbitrator, and the dealing assistant and Head Assistant concerned are duty bound to assist him in the arbitration proceedings in all possible manner. When the Assistant District Attorney is not available due to one reason or other, the Branch Officer should make it a point to appear before the Arbitrator and request for adjournment and bring the proceedings to the notice of the Director.

11.9. Time limit within which Arbitrator is to give his Award

As per Schedule 1 clause 3 of the Indian Arbitration Act the proceedings are required to be completed by the Arbitrator within four months of starting of the arbitration proceedings. This period is counted from the date of first hearing. Where it is not possible for the Arbitrator to give his award within this prescribed period, both the parties must agree for the extension of time before the arbitrator by mutual consent and on such mutual consent being filed before the arbitrator, he passes orders of extension. However, if one of the parties does not agree to the extension of time limit, then the application for the extension of time limit has to be filed before the court by the claimant party or in the case where counter claim is filed by the Govt. or contractor, then that party can also move such application for extension of time limit

11.10. Arbitrator's Award :

On receipt of award in the Directorate, Assistant District Attorney will move the competent court to direct the Arbitrator to file the same in the court for being made a rule of court because unless the award is made a rule of court it is not enforceable. The time limit for moving the application in the court for this purpose is 30 days from the date of receipt of award in the Directorate. The Arbitrator can also file award in the court suo-moto and for that no limitation is prescribed. When the award is in the favour of the Government, prompt action should be taken

to move the court for directing the arbitrator to file the award in the court. If the award is not in favour of the Government, the Directorate should file its objections within 30 days of receipt of notice from the court.

11.11. Recovery Proceedings of the Award Amount

As soon as the award has been made rule of the court, the purchase section concerned shall serve a demand notice to the contractor for payment of the awarded amount. The purchase section shall simultaneously explore the possibility of effecting recovery in full or part, of the awarded amount, from any pending bills of the contractor. In case payment is not made by the contractor within 30 days of the demand notice, steps should be taken to have the recovery effected by getting decree executed. Legal Cell shall maintain a record of decrees which are to be got executed on the basis of award amount.

11.12. The legal cell shall maintain a record regarding arbitration cases as follows :—

- (1) The register showing the arbitration cases moved for the arbitration, (SP-23).
- (2) Separate file in respect of each arbitration case.
- (3) A record for the pending amount awarded and the decrees pending execution of the awarded amount.

11.13. (a) After the life of the decree has run out or if at an earlier stage it becomes apparent that recovery is not possible and it is considered no use pursuing the matter of recovery any further, the purchase section will refer the matter to Govt. to seek orders whether or not the recovery proceedings be pursued further and whether or not the amount be written off. Such cases, of course, are rare and should not be referred unless the period of limitation has expired. In all such proposals to the Govt. it should be clearly mentioned that the Directorate have taken all possible steps to recover the Government dues, and the reasons why the case be not pursued should be given in detail.

(b) Under the Indian Limitation Act 1963, an application for execution of a decree or order of any Civil Court must be made within 12 years of the date when the decree or order becomes enforceable & where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or a recurring periods, application for execution must be made within 12 years of the date when default in making the payment or delivery in respect of which execution is sought takes place. This provision should be kept in view.

11.14) In case there is a dispute but the contractor instead of taking the dispute to the arbitration, files a Civil suit in court, the department should file an application under section 34 of the Arbitration Act requesting the court that there is an arbitration clause in the agreement and the suit is not maintainable. The objection should be filed before filling any written statement in the court. When the objections are not sustained, the case will have to be defended like any other legal proceedings, the procedure for which has been mentioned in part II of this chapter.

PART II—LEGAL PROCEEDINGS

11.15. All legal notices served on the Government regarding contracts for supplies and disposals of stores are dealt with in the Directorate of Supplies & Disposals and not by L.O. or consignee.

11.16. Immediately on the receipt of a notice that a case has been initiated in the court or an award has been filed by the Arbitrator in the court, the Directorate shall immediately move the Govt. for obtaining sanction to defend the case and issue directions to the District Attorney of the District concerned to defend the case. This should be done promptly so as to receive the sanction and have the directions issued before the first hearing of the case. In case the time is very short, the District Attorney concerned can be contacted directly with a request to defend the case pending issue of the directions by the Government.

11.17. Complaint, written Statement and Rejoinder :

(a) Normally a copy of complaint is supplied by the court with the notice. In case it has not been supplied or is not legible, it should be obtained and a written statement should be prepared by the legal cell in consultation with the purchase section and should be got approved from the Director. If the other party files a reply, rejoinder should also be filed.

(b) In case there are any preliminary objections regarding limitation, jurisdiction, defect in complaint etc. these should be filed before filing written statement.

11.18. Framing of Issues :

After the written statement, reply and a rejoinder have been filed, the court frames issues for determination.

11.19. Evidence :

After the issues have been framed, oral and documentary evidence is led before the court by both the parties. Evidence of the officers or persons conversant with the matter or the experts having special knowledge about the matter under issue, should be led in support of court case. The department should lead the evidence promptly and Assistant District Attorney should see that the case does not go by default or costs are not awarded by the court as a result of not producing evidence. The purchase Section should see that all records relating to the case whether pertaining to this directorate or to be obtained from L.O. or other departments are obtained and made available to the District Attorney. Similarly all officials who have dealt with the case at any stage and whose evidence is required by the court should be made available.

11.20. Arguments :

After the evidence has been completed by both the parties, and the arguments are heard, the Assistant District Attorney should see that the District Attorney concerned is fully briefed on all points so as to enable him to conduct the arguments effectively.

11.21. Judgement :

On the receipt of a copy of the judgement from the court the following action should be taken promptly by legal cell:

1. If it is against the Directorate, the comments of the District Attorney alongwith a copy of the judgement should be obtained, and if advised, appeal should be filed within the period of limitation.

2. If the judgement is in the favour of the department, execution proceedings should be initiated and followed up. In case other party files an appeal it should be contested under the orders of the Government and directions to the concerned District Attorney or Advocate General be got issued from the L.R. promptly.

3. In several cases the judgement debtors reside outside the State of Haryana. In all such cases it is necessary to obtain a Transfer Certificate i.e. orders for transferring the decree for satisfaction to the Court in whose jurisdiction the judgement debtor resides. For this purpose an application for transfer certificate is filed in the court of Senior Sub Judge, through District Attorney. After the receipt of certificate, the District Attorney sends it to the L.R. for further action. On receipt of transfer certificate, the L.R. writes to the concerned Court (in case the party resides outside the State of Haryana) or concerned Deputy Commissioner (in case the party resides in Haryana) to file execution application and realise the amount. The Directorate is required to give full assistance to the Counsel conducting the execution proceedings. Department is also required to furnish list of property to be attached in execution proceedings. In all such cases the Directorate should take up the matter for ascertaining the details of property of the judgement debtor as follows :—

- (i) With the State Government concerned through Home Department, Government of Haryana, in case the judgement debtor is located outside the Haryana State.
- (ii) With the General Manager, District Industries Centre (in the case of manufacturer) or with Deputy Commissioner concerned (in other cases) where he is located within Haryana.