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मध्यप्रदेश राजपत्र

प्राधिकार से प्रकाशित

क्रमांक 5]

भोपाल, शुक्रवार, दिनांक 4 फरवरी 2022—माघ 15, शक 1943

भाग ४

विषय-सूची

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|-----|------------------------|-------------------------------|----------------------------------|
| (क) | (1) मध्यप्रदेश विधेयक, | (2) प्रवर समिति के प्रतिवेदन, | (3) संसद में पुरःस्थापित विधेयक. |
| (ख) | (1) अध्यादेश, | (2) मध्यप्रदेश अधिनियम, | (3) संसद के अधिनियम. |
| (ग) | (1) प्रारूप नियम, | (2) अन्तिम नियम. | |

भाग ४ (क)—कुछ नहीं

भाग ४ (ख)—कुछ नहीं

भाग ४ (ग)

अन्तिम नियम

उच्च न्यायालय, मध्यप्रदेश, जबलपुर

Jabalpur, the 20th January 2022

No. 70/MPDIAC.—In exercise of the powers conferred by Section 82 of the Arbitration and Conciliation Act, 1996 the (26 of 1996), High Court of Madhya Pradesh, hereby, makes the following amendments in the Madhya Pradesh Arbitration Centre (Domestic and International) Rules, 2019, namely:—

AMENDMENTS

In the said rules,-

1. In rule 4,-

(1) in sub-rule (2), clauses (1), (2), (3) and (4) shall be renumbered as clauses (a) (b) (c) and (d) respectively.

(2) In sub-rule (2), in clause (a) so renumbered, for the words “at least”, the word “generally” shall be substituted.

2. In rule 11,-

(1) in sub-rule (2), after clause (f), the following clause shall be added, namely :-

“(fa) unless the parties have agreed otherwise or an arbitrator has been named by the Court, the nomination of an arbitrator, if the arbitration agreement provides for three arbitrators, or a proposal for a sole arbitrator if the arbitration agreement provides for a sole arbitrator:

Explanation: In any event, the party making a request for arbitration shall inform the centre in writing the name of arbitrator(s) not later than 21 days from the date of the first submission of the request for arbitration.”.

(2) After sub-rule (6), the following clauses shall be added, namely :-

“(a) the claimant shall confirm that the requisite administrative charges have been paid;

(b) party making request for arbitration may also file statement of claim alongwith the request;

(c) subject to rule 12A, the party to arbitration can amend their respective pleadings.”.

3. In rule 12,-

(1) In sub-rule (1), after clause (g), the following sub-clauses shall be added, namely :-

“(i) where the arbitration agreement provides for a sole arbitrator, the party may concur or otherwise propose the name of his choice to act as a sole arbitrator;

(ii) where the arbitration agreement provides for three or five members Tribunal, the nomination of

arbitrator shall be as envisaged in such agreement.”.

(2) In sub-rule (1), after clause (h), the following clauses shall be added, namely :-

“(i) confirmation that copies of the Response and the documents relied on have been served simultaneously on all the parties, with the proof of service to the satisfaction of the Director;

(j) confirmation that the requisite administrative charges have been paid.”.

(3) after rule 12, the following rule shall be inserted, namely :-

“12A. Amendments to the Statement of claim or defence.-

(1) A party may amend or supplement its pleadings with the leave of the Tribunal on such terms as the Tribunal may determine. The Tribunal shall decide the application considering it is necessary for adjudication of the matter and is not causing any prejudice to the other party. However, no amendment can be allowed which may cause the claim outside the purview of arbitration agreement:

Provided that no application for amendment shall be allowed after the hearing has commenced, unless the Tribunal comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of hearing.

(2) The Director may adjust, reduce or enhance, as the case may be, the Tribunal's fees and the MPIDIAC's charges in consonance with the amended pleadings.

(3) All statements, documents or other information supplied to the Tribunal and the Director by one party

shall simultaneously be supplied to the other party.

- (4) The Tribunal may after completion of pleadings and before framing the issues, if considers it appropriate, require the parties to furnish proposed issues.”.

4. In rule 15,-

- (1) existing para shall be renumbered as sub-rule (1)

- (2) after sub-rule (1) as so renumbered, the following sub-rule shall be added, namely :-

“(2) It shall be deemed to have been received if it is delivered to-

(a) the addressee personally;

(b) the addressee’s habitual residence, place of business or address as specified in the agreement.

- (3) If none of the places referred to in sub-rule (2) above can be found after making a reasonable inquiry, a written communication shall be deemed to have been received if it is sent to the addressee’s last known place of business, habitual residence or mailing address by registered post or by any other means which provides a record of attempted delivery.

- (4) In the case of electronic communication, it will be deemed to have been delivered when transmitted, with reference to the recipient’s time zone.

- (5) For the purposes of calculating any period of time under these rules, such period shall begin to run on the day following the day when a written communication or proposal is received or deemed to have been delivered. When the day next following such date is a non-business day, in the place of receipt, the time period commences on the first following business day. If the last day of such period is a non-business day at the place of receipt, the period is extended

until the first business day which follows. Non-business days occurring during the running of the period of time are included in calculating the period.

- (6) After the constitution of the Tribunal, where any party delivers any written communication to the Tribunal, it shall simultaneously deliver a copy to each arbitrator, all other parties, the Director and shall confirm in writing to the Tribunal that it has been done.”.
5. After rule 19, the following rules shall be inserted, namely :-

“19A. Grounds of objection.-

- (1) Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator’s impartiality or independence, or if the arbitrator does not possess any requisite qualification which the parties have previously agreed, or if the arbitrator becomes *de jure* or *defacto* unable to fulfill his functions or is not fulfilling those functions in accordance with the rules or within the prescribed time limits.
- (2) A party may challenge the arbitrator nominated by him only for reasons of which he becomes aware after the appointment has been made.
- (3) Subject to rule 18, a party who intends to challenge an arbitrator shall send a notice of challenge within 14 days after the receipt of the notice of appointment of

the arbitrator who is being challenged or within 14 days after the circumstances mentioned in rule 20A (2) become known to that party.

- (4) The notice of challenge shall be submitted to MPDIAC and simultaneously shall be sent to the other party, the Arbitrator(s) being challenged and the other members, if any, of the tribunal. The notice of challenge shall be in writing and shall state the reasons for the challenge. The MPDIAC may request comments on the challenge from the parties, the challenged arbitrator and the other members of the Tribunal (or if the Tribunal has yet not been constituted, any appointed arbitrator) within a period of 10 days from the date of such request.
- (5) The notice of challenge duly submitted as per rule 19A (1) shall be deposited of by the President within a period of 30 days from the date of receipt of notice in terms of the Rules:

Provided that however, the time for deciding the challenge can in no circumstance exceed a further period of 30 days.

Explanation: Notice of challenge shall not be acted upon and shall not be treated as received by MPDIAC unless the party submitting such notice deposits a sum of Rs.10,000/- towards processing costs which

shall not be refundable under any circumstances. The time for making the Award, for the purposes of section 29A of the Act, shall stand extended by the period spent between the date of receipt of the application for the challenge and its disposal by the President. The period shall be deemed to be an extension under section 29A (3) of the Act.

- (6) If the President sustains the challenge, a substitute arbitrator shall be appointed in accordance with the procedure referred to in rule 19 (3). The time limits provided in rule 20A shall commence from the date of the Director's notification to the parties of the decision by the President.
- (7) The President shall have the discretion to impose such costs as may be deemed appropriate in the event that the challenge fails, which shall be recoverable from the party instituting the challenge.
- (8) The Centre shall forthwith communicate to the parties whether the challenge has been sustained or overrules.

6. In rule 20,-

- (1) in sub-rule (2), at the end, the words "as required under section 12 of the Act" shall be added.
- (2) after sub-rule (2), for full stop, colon shall be substituted and thereafter the following proviso shall be added, namely :-

“Provided that the parties may, subsequent to disputes having arisen between them, waive the applicability of sub-section (5) of section 12 of the Act by an express agreement in writing.”.

7. After rule 20, the following rule shall be inserted, namely :-

“20A. Termination and Substitution.-

- (1) An arbitrator may be replaced on the grounds specified in Section 14 of the Act, either on an application by the party or otherwise, if in the opinion of the President he is not fulfilling those functions in accordance with the Rules or within the prescribed time limits.
- (2) In the event of death, resignation, withdrawal or removal of an arbitrator during the course of arbitral proceedings a substitute arbitrator shall be appointed in accordance with the procedure applicable to the appointment of the arbitrator.
- (3) When, on the basis of information that has come to the attention, the President considers, applying Rule 20A (1), shall decide on the matter after providing an opportunity to comment in writing within a reasonable period of time to the arbitrator concerned, to the parties and any other members of the Tribunal. But before deciding

such comments shall be communicated to the parties and to the Tribunal.

- (4) Further proceedings before the reconstituted Tribunal shall commence from the stage at which they were prior to such reconstitution.

20B. Jurisdiction.-

- (1) Any objection by a party to the existence or, to the competence of the MPDIAC to administer an arbitration, before the appointment of Tribunal, shall be placed in the first instance before the President.
- (2) If the President sustains the objection, the proceedings shall be terminated. In all other cases, the Tribunal shall decide such objection in accordance with Section 16 of the Act.”

8. After Rule 25, the following rule shall be inserted, namely:-

“25A. Interim relief.-

- (1) A party may, during the arbitral proceedings apply to the Arbitral Tribunal for an interim measure of protection in respect of the subject matter of the dispute as it may consider necessary as specified in section 17 of the Act.

- (2) The Arbitral Tribunal may modify, suspend or terminate an interim measure granted by it, upon an application by a party if the circumstances so warrant.”.

9. In rule 31,-

- (1) In sub-rule (2), at the end, the words “The Director may fix separate advances on costs for Claims and Counter-Claims, respectively” shall be added.
- (2) After sub-rule (2), the following sub-rule shall be added, namely:-

“(2a) Where the amount of the Claim or the Counter-Claim is not quantifiable at the time payment is due, a provisional estimate of the costs of the arbitration shall be made by the Director. Such estimate may be based on the nature of the controversy and the circumstances of the case. This may be adjusted in light of such information as may subsequently become available.”.

- (3) After sub-rule (3), the following sub-rules shall be added, namely:-

“(3a) If a party fails to make the deposits as directed within 30 days from the date on which it is due, the Director may, after

consulting the President and the parties, direct the Tribunal to terminate the work. If the payment is not made within 30 days, the relevant claims or counter-claims shall be considered as withdrawn without prejudice to the party reintroducing the same claims or counter-claims in another proceeding.

(3b) If the arbitration is settled or disposed of without hearing or in terms of rule 25 (3), the costs of arbitration shall be finally determined by the Director. The Director shall have regard to all the circumstances of the case, including the stage of proceedings at which the arbitration is settled or disposed or terminated under rule 25(3). In the event that the costs of arbitration determined are less than the deposits made, the surpluses shall be refunded to the party (s) in such proportions as the President may decide.

(3c) All deposits shall be made to and held by the MPDIAC. The interest, if any, which may accrue on such deposits shall be retained by the MPDIAC.”.

(4) In sub-rule (4), after the words “Arbitral award”, the words “Any deposit made in excess shall be refunded

to such party(s) as the Tribunal may direct” shall be deleted.

10. After Rule 33, the following rules shall be inserted, namely:-

“33A. Parties to share equally Administrative Cost and the fees of the Arbitrator.-

- (1) The Administrative Cost and the Arbitrators' fees set forth in these Rules shall be initially shared equally by the parties, subject to the cost of arbitration as may be finally determined by the Arbitral Tribunal.
- (2) The fee, costs and expenses, determined by the Centre, shall be payable entirely in advance.

33B. Miscellaneous Expenses.-

Miscellaneous expenses likely to be incurred during arbitration shall be determined by the Director and shall be paid equally by the parties.

33C. Accounts.-

The Director may maintain an account of the Administrative Cost, miscellaneous expenses and for which the Director shall be entitled to open and operate a bank account with a scheduled nationalized bank. The Chief cashier shall maintain accounts book of the centre under the supervision of the Director.

33D. Administrative cost, miscellaneous expenses and Arbitrators' fees when proceedings terminate.-

- (1) Arbitrators' fees shall be payable when proceedings are terminated, withdrawn or settled.
- (2) Subject to rule 32(6) and rule 49 (6) of these rules in the event of the arbitration being terminated, withdrawn or settled, the Director, in consultation with the President shall fix the quantum of fees payable to the arbitrator(s). The Director shall take into account the stage at which the arbitration proceedings stood terminated and the extent of work done or time spent by the Arbitrator (s) on the matter:

Provided that no separate fee or charges shall be payable to the Arbitral Tribunal in relation to any Application under section 17 or Section 33 of the Arbitration and Conciliation Act, 1996.

- (3) Unless otherwise directed by the Court or except in case of de novo trial directed by the Court, the Arbitral Tribunal shall not be entitled to fresh fee in the event the award is set aside and remanded to the same Arbitral Tribunal for consideration.

(4) The Administrative Cost and miscellaneous expenses paid by the parties shall not be refundable, under any eventuality.”.

11. In Rule 36, after sub-rule (9), the following sub-rule shall be added, namely:-

“(9a) In addition to the powers specified in these rules, and not in derogation of the mandatory rules of law applicable to the arbitration, the Tribunal shall have the power to-

- (a) order the preservation, storage, sale or disposal of any property or item which is or forms part of the subject matter of the dispute;
- (b) issue an award for unpaid deposits towards the costs of the arbitration where a party to the arbitration has paid the non-paying party's share of the deposits on behalf of the non-paying party;
- (c) direct any party -
 - (i) to ensure that the assets of such party are not encumbered, alienated or dissipated in any manner so as to frustrate the Award;
 - (ii) to provide security for legal or other costs in any manner the Tribunal thinks fit;
 - (iii) to provide security for all or part of amount any in dispute in the arbitration.”.

12. In rule 49, after the table, the following points shall be inserted, namely :-

- “* Conversion rate as on date of deposit shall be applicable.
- * Deposit in INR only.”.

13. After rule 50, the following rule shall be inserted, namely:-

50A. Arbitrators' fees.-

(1) The fees payable to the Arbitrators shall be determined in accordance with the scales specified in rule 32 and 49 of these rules.

(2) The fee shall be determined and assessed on the aggregate amount of the claim(s) and counter claim(s):

Provided that in the event of failure of party to arbitration to pay its share as determined by the centre, on the aggregation of claim(s) and counter claim(s), the centre may assess the claim(s) and counter claim(s) separately and demand the same from the parties concerned:

Provided further that for the purposes of valuation or quantification of the Claims, the Centre shall be governed by the laws of India, and the principles governing the valuation of claims before the Courts of Civil Jurisdiction:

Provided also that in case of undervaluation or where the value is not determinable in pecuniary terms, the Director would be entitled to assess and demand the revised fee on the basis of assessment

and to decide the objections, if any, relating to the quantification or valuation.”.

14. After rule 52, the following rules shall be added, namely:-

“53. Exclusion and waiver of liability.-

The MPDIAC, Board of Governors including the President, directors, officers, employees or any Arbitrator or any Committee or Sub-Committee, shall not be liable to any person for any negligence, act or omission in connection with any arbitration governed by these rules.

54. Decisions of the Board of Governor and the Directorate.-

- (1) Subject to rule 21(5), the decisions of the Board of Governors and the Directorate with respect to all matters relating to an arbitration shall be conclusive and binding upon the parties and the Tribunal. The President and the Directorate shall not be required to provide reasons for such decisions.
- (2) In all matters not expressly provided for in these rules, The President, the Directorate and the Tribunal shall act in the spirit of these rules and shall make every reasonable effort to ensure fair, expeditious and economical conclusion of the arbitration and the enforceability of any Award.
- (3) The MPDIAC may from time to time issue Practice Notes to supplement, regulate and implement

these rules for the purpose of facilitating the administration of arbitrations governed by these rules.

55. Residuary provisions.-

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

1. For schedule-II, the following schedule shall be substituted, namely:-

“SCHEDULE-II

[See sub-rule 2 of Rule 20 and Section 12 read with Schedule V and VI of the Arbitration and Conciliation Act, 1996]

ARB.P. No. :

ARBITRATOR'S DECLARATION OF ACCEPTANCE AND

STATEMENT OF INDEPENDENCE

I, the undersigned

Last Name: _____ First Name _____



ACCEPTANCE

Hereby, declare that I accept to serve as arbitrator under the Rules of the Madhya Pradesh Domestic and International Arbitration Centre in the instant case. In so declaring, I confirm that I have familiarized myself with the requirements of the rules of the Centre and I am capable and available to serve as an arbitrator in accordance with all of the requirements of the Rules of the Centre and accept to be remunerated in accordance therewith. I accept that the obligation to disclose any facts or circumstance which may call into question my independence or impartiality in the eyes of any of the parties shall remain binding on me till the arbitration proceedings are finally concluded.

Please tick the boxes below as may be applicable:

I am independent of each of the parties and intend to remain so; to the best of my knowledge, there are no facts or circumstances, past or present, that need be disclosed for they might be of such nature as to call into question my independence or impartiality in the eyes of any of the parties.

Or

I am independent of each of the parties and intend to remain so, however I wish to call your attention to the following facts or circumstances which I hereafter disclose because they might be of such a nature as to call into question

my independence or impartiality in the eyes of any of the parties. (Please use separate sheet if necessary).



NON-ACCEPTANCE

Hereby declare that I decline to serve as arbitrator in the subject case. (If you wish to state the reasons please do so.)

Kindly provide us the following details.”.

Date: _____

Signature _____

Mob.: _____

E-mail: _____

Land Line No.: _____

PS/ Secretary: _____.”.

RAJENDRA KUMAR VANI, Registrar General.