



Arbitration DO's & DON'Ts

**SOUTHERN RAILWAY
VIGILANCE ORGANISATION**

VAW - 2023

Southern Railway
Vigilance Organisation

Arbitration

Do's and Don'ts

Do's – Arbitration

Do's - Arbitration

Pre- Arbitration Stage

- ❖ Ensure that only valid claims of the contractor are referred for Arbitration.
- ❖ Ensure that Arbitral Tribunal is appointed within the time limit specified in the GCC / IRS conditions of contract.

Arbitration Stage

- ❖ Ensure that the relevant provisions of GCC / IRS conditions of contract are invariably cited in the Statement of Defense (SOD)
- ❖ Ensure that the Defense / Counter Claim is presented against every claim raised by the Claimant Contractor.
- ❖ Ensure that a copy of the GCC / IRS conditions of contract is submitted to the Arbitral Tribunal.
- ❖ Ensure that the claims violating the express provisions of the contract are vehemently opposed, duly citing the relevant provisions of the contract.
- ❖ Ensure that claims for any interest i.e., pendente lite interest or Post – award interest are vehemently opposed duly citing the relevant case laws such as Union of India Vs Manraj Enterprises (CA No. 6592 of 2021)

Post - Arbitration Stage

- ❖ If it is decided not to challenge the Arbitral award, ensure that the Arbitral award amount is paid to the Claimant Contractor at the earliest without any undue delay.
- ❖ If it is decided to challenge the Arbitral award either partially or wholly, ensure that such application for challenging the Arbitral award is filed before the competent Court within the stipulated time period.
- ❖ After the application is filed before the competent Court, ensure that the case is numbered and presented before the Hon'ble Court citing the relevant terms of contract and with appropriate case laws.
- ❖ After the case has been numbered, contact the nominated Railway Advocate regularly and frequently and ensure their appearance during every hearings.
- ❖ Monitor the progress of the case through “eCourt services” app which can be downloaded and installed in the mobile.
- ❖ Whenever the cases are dismissed owing to non-appearance of the nominated Railway advocate, ensure that the restoration petition is immediately filed and that the dismissal order is revoked.
- ❖ In such cases, recommend for appropriate action against the nominated Railway advocate to the Department of Legal Affairs.

Don'ts - Arbitration

Don'ts - Arbitration

Pre- Arbitration Stage

- ❖ Don't recommend / accept any time-barred request for Arbitration.
- ❖ Don't recommend / accept any time-barred claims for Arbitration.

Arbitration Stage

- ❖ Don't fail to present claim-wise Statement of Defense (SOD)
- ❖ Don't fail to oppose the claims which are violating the express provisions of the contract.

Post - Arbitration Stage

- ❖ In case it is decided to challenge the Arbitral award either wholly or partially, don't file such application beyond the stipulated time limit.
- ❖ In case the time limit has exceeded and application was not filed, don't pursue further to challenge the award. In such cases, it is better to make the payment as per the Arbitral award and thereafter fix responsibility for the delay.
- ❖ If it is decided not to challenge the Arbitral award, do not delay in making the payment to the Claimant contractor as per the Arbitral award-otherwise the contractor may file Execution Petition (EP) against the Railways.
- ❖ Don't agree or concur with the Arbitral award which directs Railway to pay any interest (pendente lite interest or Post – award interest).

Such awards shall be challenged before the competent Court.

- ❖ If the Arbitral award is with Post-award interest (and not with pendente lite interest) and if the entire Arbitral award except the portion of Post-award interest is acceptable, don't challenge the arbitral award only for the portion pertaining to Post – award interest. In such cases, it is better to make the payment of the arbitral award to the contractor without any delay.
- ❖ If the Arbitral award is with Post-award interest and it is decided to challenge the award, such award shall be challenged for the portion of Post-award component also- apart from the principal component which was decided for challenging.

Important Case Laws of Hon'ble Supreme Court

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Appointment of Arbitral Tribunal

- ❖ Union of India vs Parmar Construction Company (2019) SSC Online 492
- ❖ Union of India vs M.P.Gupta (2004) 10 SCC 504
- ❖ Union of India and another vs V.S.Engineering (P) Ltd., (2006) 13 SCC 240
- ❖ Union of India vs Pradeep Vinod Construction Company (2019) SCC 1467
- ❖ CORE vs ECI SPICSMO-MCML (JV), 2020 (1) Arb. LR 19 (SC)

Excepted Matter

- ❖ Continental Construction Co. Ltd vs State of M.P. (1988) 3 SCC 82
- ❖ Vishwananth Sood vs Union of India AIR 1989 SC 952.
- ❖ Prabartak Commercial Corporation Ltd., vs Chief Administrator D.A. Project (1991) 1 SCC 498
- ❖ FCI vs Sreekanth Transport (1994) SCC 491
- ❖ SAIL vs J.C.Budharaja (1999) 8 SCC 122
- ❖ Ch.Ramalinga Reddy vs Superintending Engineer (1999) 9 SCC 610
- ❖ Union of India vs Popular Builders (2000)8 SCC 1
- ❖ GM/NRly vs Sarvesh Chopra (2002) 4 SCC 45
- ❖ Harsha Constructions vs Union of India and others 2014 (3) Arb. LR 482 (SC)
- ❖ Booz Allen and Hamilton Inc. vs SBI Home Finance Ltd. (2011) 5 SCC 32

Terms of Contract and the Arbitral Award

- ❖ New India Civil Erectors (P) Ltd. vs Oil & Natural Gas Corporation (1997) 11 SCC 75
- ❖ Ch.Ramalinga Reddy vs Superintending Engineer (1999) 9 SCC 610
- ❖ ONGC vs Saw Pipes Ltd., (2003) 5 SCC 705
- ❖ MD, Army Welfare Housing Organization vs Sumangal Services (P) Ltd. (2004) 9 SCC 619
- ❖ SBP & Co. vs Patel Engg. Ltd., (2005) 8 SCC 618
- ❖ Ramnath International Construction (P) Limited vs Union of India (CA no. 3167-3168 of 2005)
- ❖ Delhi Development Authority vs R.S.Sharma & Co (2008) 13 SCC 80
- ❖ Associate Builders vs Delhi Development Authority 2014 (4) Arb. LR 307 (SC)

Awarding *pendente lite* Interest in Arbitral awards

- ❖ Sayeed Ahmed and Company vs State of Uttar Pradesh and others (CA No: 4197 of 2009)
- ❖ Sree Kamatchi Amman Construction vs Divisional Railway Manager (Works), Palghat and others (CA No: 6815-6816 of 2010)
- ❖ Sri Chittranjan Maity s. Union of India (CA No:15545-15546 of 2017)
- ❖ Garg Bulider vs BHEL (CA No: 6216 of 2021)

Post – award Interest in Arbitral awards

- ❖ Major VP Ninlawan (Retd) vs Union of India (CA No:14749 of 2002)
- ❖ Union of India vs Krafters Engg. & Leasing (P) Ltd., (CA No:2005 of 2007)
- ❖ Union of India vs Manraj Enterprises (CA No: 6592 of 2021)

Form and contents of Arbitral awards

- ❖ Anand Bros. Pvt Ltd vs Union of India 2014 (3) Arb. LR 470 (SC)
- ❖ Dyna Technologies Pvt. Ltd. Vs Crompton Greaves Ltd. 2020 (1) Arb. LR 1 (SC)
- ❖ Som Datt Builders Ltd., vs State of Kerala (2009) 10 SCC 259
- ❖ ONGC vs Saw Pipes Ltd., (2003) 5 SCC 705
- ❖ Union of India vs Mahanlal Kapoor (1973) 2 SCC 836
- ❖ McDermott International Inc. vs Burn Standard Co. Ltd (2006) 11 SCC 181
- ❖ Baranasi Krishna Committee and others vs Karamyogi Shelters Pvt. Ltd (2012) 9 SCC 496

Time limit for Arbitration

- ❖ Hon'ble Supreme Court in its Judgement (in Suo Motu Writ Petition (C) No.3 of 2020

Correction and Interpretation of the award

- ❖ Dharmapal Satyapal Ltd., vs Dinesh Enamelled Wire Industries (P) Ltd. 2015 (1) Arb. LR 419
- ❖ Ircon International Ltd., vs Budh Raja Mining & constructions Ltd. 2007 (4) Arb LR 159 Delhi

- ❖ Kalicharan Pandey & Co. vs Union of India 2015 (3) Arb. LR 36

Recourse against Arbitral award

- ❖ State of Himachal Pradesh vs Himachal Techni Engineers (2010) 12 SCC 210, 214
- ❖ Union of India vs Popular Construction Co. (2001) 8 SCC 4
- ❖ Patel Engineering Ltd., vs NEEPCO 2020 (3) Arb. LR 88 (SC)
- ❖ Ssangyong Engineering & Construction Co. Ltd vs NHAI 2019 SCC online SC 677
- ❖ Dharma Prathisthanam vs Madhok Construction (P) Ltd. (2005) 9 SCC 686,700
- ❖ Balvant N.Vishwamitra vs Yadav Sadashiv Mule (2004) 8 SCC 706
- ❖ McDermott International Inc. vs Burn Standard Co. Ltd (2006) 11 SCC 181
- ❖ Bijendra Nath Srivastava vs Mayanak Srivastava (1994) 6 SCC 177
- ❖ Rajasthan State Mines and Minerals Ltd., vs Eastern Engineering Enterprises and another (1999) 9 SCC 283
- ❖ Nabha Power Ltd., vs Punjab Power Corporation Ltd., and another (2018) 11 SCC 508

Notes

Notes



DISCLAIMER

This booklet on DO's & DON'Ts is purely for the purpose of providing guidelines. It is only indicative and not exhaustive. It should not be quoted as authority in any official reference or produced in a Court. A reference, wherever necessary, should always be made to the original orders issued by the administration from time to time on the subject.