

On the Right Track: Your Essential Checklist for Navigating Railway Arbitration



National Academy of Indian Railways
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FOREWORD

It is the bounded duty of every Railway person to ensure safeguarding of the Railway's interests in Arbitration Cases. For this, a well-presented case, grounded in factual evidence and the relevant legal statutes such as the Arbitration and Conciliation Act, and the Limitation Act, is of critical importance.

Understanding the complexities of these legal frameworks and the latest judicial decisions can be challenging, especially for our officers who handle these contracts daily but might not have immediate access to legal expertise. During an outreach program on Arbitration in South Western Railway in the last week of July'24, GM/SWR Shri Arvind Srivastava and PCMM Shri A.K. Sirohi brought out the need to prepare a checklist on arbitration procedures tailored to the needs of our railway operations. This task was taken up in great earnest by Shri Dilip Gupta. Professor Inventory Management/ NAIR and he developed this comprehensive checklist booklet. This booklet includes specific checklists for works, service, supply, and Government e-Marketplace (GeM) contracts, facilitating a thorough and informed approach to dispute management.

The creation of this resource is a proactive step toward equipping our officers with the necessary tools and knowledge to handle arbitration confidently and competently. These tools will undoubtedly aid in maintaining the integrity of our operations and in achieving fair resolutions, reflecting the high standards we strive for within our organization.

The checklists included herein are tailored to address the unique requirements and challenges faced by railway officers, whether they are involved in appointing arbitrators, representing the railways during disputes, or serving as arbitrators themselves. Each checklist is designed to cater to the specific nuances and compliance requirements of the respective contracts, providing a targeted approach to dispute resolution.

I commend Shir Gupta for his dedication and swift action in assembling this vital resource within a very short timeframe. This booklet is expected to be a cornerstone in our ongoing efforts to refine our arbitration practices and uphold the highest standards of integrity and fairness in our proceedings.

Any feedback and suggestions for further improvement of these checklists are encouraged and will be invaluable for future updates. Such suggestions may be forwarded to Shri Gupta, which will be duly considered in future revision of this booklet.

I encourage everyone to utilize this booklet to its fullest potential, as it is geared towards fostering a deeper understanding and a more systematic approach to arbitration within Railways.

August, 2024



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PREFACE

In the intricate landscape of railway operations, effective dispute resolution through arbitration is essential for maintaining contractual integrity and operational continuity. Recognizing the need for a systematic approach to these challenges, this booklet has been developed to serve as a comprehensive guide to arbitration procedures tailored specifically to our needs.

This guide is enriched with detailed checklists that integrate the General Conditions of Contract (GCC) for works and services, IRS conditions of contract, and the GCC stipulations for the Government e-Marketplace (GeM). These elements are crucial for ensuring that the arbitration processes are both relevant and practical, catering specifically to the diverse and complex contracts within railway operations.

Additionally, the booklet simplifies the legal framework, making it accessible and actionable. It covers the Arbitration and Conciliation Act, the Limitation Act, and pertinent judgments from the Supreme Court and High Courts, which are instrumental in shaping our approach to arbitration.

The creation of this guide was driven by the imperative to provide our officers with a robust tool that addresses the multifaceted nature of arbitration in the railway sector. It aims to empower them with the knowledge and frameworks necessary to navigate through arbitration confidently and competently, ensuring that the interests of the railways are robustly defended.

I am grateful to all contributors who assisted in refining the guidelines and integrating essential contractual conditions, ensuring that this booklet is both comprehensive and practical. My hope is that it will serve as an invaluable resource for all railway officers engaged in arbitration, promoting a culture of precision, legal acumen, and operational excellence within Railways.

Continuous improvement is pivotal to the success of any resource designed to support complex operations. Feedback and suggestions from users of this guide are invaluable for refining and updating the content to better meet the evolving needs of the railway community. Insights and recommendations are encouraged and can be forwarded to the NAIR.

August, 2024



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DISCLAIMER

The checklists provided in this document are intended solely for guidance and informational purposes and are not to be considered as legal advice. While efforts have been made to ensure the accuracy and completeness of the information contained herein, this document does not substitute for professional legal counsel. The checklists should be considered as a starting point for understanding and navigating the arbitration process within the railway.

Users are encouraged to consult with legal professionals or relevant legal departments to address specific legal issues or concerns related to arbitration proceedings.

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List of abbreviations

GCC : General conditions of contract

Act : The Arbitration and Conciliation Act, 1996 with amendments

AT : Arbitral Tribunal including sole arbitrator

IRS : Indian Railway Standard Conditions

GeM : Government e-Marketplace

Ref. : Reference/ Refer

Works Contracts

Checklist I: for Ensuring Compliance with Arbitration and Conciliation Act, 1996 and GCC for works in Appointment of Arbitrator

SN	Check point	yes	No/Action
1	Whether the date and details of the received demand for arbitration have been recorded?		The Arbitration proceedings shall be assumed to have commenced from the day, a written and valid demand for arbitration is received by the Railway. (Ref: Clause 64.(1)(iii)(a) of GCC for works)
2	Whether an acknowledgment has been sent to the claimant confirming receipt of the arbitration demand?		
3	Whether a valid contract exists and contains a valid arbitration clause as per GCC for works?		A valid arbitration agreement is must to refer any dispute for arbitration. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement. (Ref: Section 7 of the Act)
4	Whether the demand for arbitration is submitted by an authorized party (e.g., contract signatory or legal representative)?		The Contractor, after 120 days but within 180 days of presenting his final claim on disputed matters shall demand in writing that the dispute or difference be referred to arbitration. (Ref: Clause 64.(1)(i) of GCC for works)
5	Whether the demand is made within the contractual or legal time limits, i.e., <u>after 120 days but within 180 days</u> of presenting the final claim on disputed matters?		
6	Whether the claim is not time-barred, i.e., a valid demand for arbitration has been received within <u>3 years from the date the dispute arose?</u>		The Limitation Act, 1963 is applicable to arbitration proceedings in India. It dictates the time frames within which parties must initiate arbitration after a cause of action arises. The limitation period for contractual disputes is three years from the date when the cause of action arises.
7	Whether the matter is arbitrable under the terms of the contract? It means dispute is not <u>an excepted matter as per clause 63.1</u> of GCC for works		As per clause 63.1 of GCC, in case of 'excepted matters' (matters not arbitrable) decisions of the Railway authority, thereon shall be final and binding on the Contractor and that 'excepted matters' shall stand specifically excluded from the purview of Arbitration.

8	Whether the details provided in the demand, including the nature of the dispute, the relief sought, and any supporting documents have been enclosed?		The demand for arbitration shall specify the matters which are in question, or subject of the dispute or difference as also the amount of claim item-wise. Only such dispute or difference, in respect of which the demand has been made, together with counter claims or set off, given by the Railway, shall be referred to arbitration and other matters shall not be included in the reference. Ref. clause 64.(1)(ii)(a) of GCC for works
9	Whether the party demanding arbitration has complied with any preliminary steps required by the contract, such as conciliation?		In the event of any dispute or difference between the parties, before demanding arbitration, alternate mechanism of conciliation or DAB must be exhausted.
10	Whether claimant has waived off the applicability of <u>Sub-Section 12(5) of Arbitration and Conciliation (Amendment) Act 2015.</u>		If No, serving railway officer cannot be appointed as arbitrator. Only, retired Railway officers may be appointed as arbitrators.
11	Whether due procedure prescribed in clause 64.(3)(a)(i), 64.(3)(a)(ii), 64.(3)(b)(i) or 64.(3)(b)(ii) of GCC for works has been followed for appointing an arbitrator or tribunal?		If railway fails to appoint an arbitrator in accordance with the procedure specified in the arbitration agreement, other party can apply to the appropriate court to appoint an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996. This provision gives power to the court to appoint an arbitrator.
12	Whether arbitrator(s) meets qualification for appointment of arbitrator(s) as mentioned in clause 64.3(c)(iii)(i).		If arbitrator(s) do not meet the qualifications for appointment as specified in the arbitration agreement or under applicable laws, other party may apply to a court for the removal of the arbitrator(s) under Section 14 of the Arbitration and Conciliation Act, 1996. A court can remove an arbitrator if they are found to be unqualified or ineligible.

13	Whether a certification as <u>per annexure- XVI (GCC for works)</u> has been taken from Arbitrator(s) that he/they is/are not the one/those who had an opportunity to deal with the matters to which the contract relates or who in the course of his/their duties as Railway servant(s) expressed views on all or any of the matters under dispute or differences.	According to Section 12 of the Act, a person may be disqualified from being appointed as an arbitrator if they: <ul style="list-style-type: none"> • Have a direct or indirect interest in the subject matter of the arbitration. • Are in a relationship with any of the parties that may lead to justifiable doubts about their impartiality or independence.
14	Whether the arbitration demand has been processed within the prescribed time limit for appointment of the arbitrator.	Time line in appointment of arbitrator must be followed strictly as procedure prescribed in clause 64.(3)(a)(i), 64.(3)(a)(ii), 64.(3)(b)(i) or 64.(3)(b)(ii) of GCC for works. If railway fails to appoint an arbitrator in time specified in the arbitration agreement, other party can apply to the appropriate court to appoint an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996. This provision gives power to the court to appoint an arbitrator.

Checklist II : for Presenting officer for ensuring Compliance with the Act and GCC for works in representing Railways in Arbitration proceedings

A. At the time of appointment of Arbitrator

SN	Check point	yes	No/ Action
1	Whether a valid contract exists and contains a valid arbitration clause as per GCC for works?		It must be informed to the arbitrator(s) appointing authority and advised to regret the request of claimant for appointment of arbitrator.
2	Whether the demand is made within the contractual or legal time limits, i.e., <u>after 120 days but within 180 days</u> of presenting the final claim on disputed matters?		
3	Whether the claim is not time-barred, i.e., a valid demand for arbitration has been received within <u>3 years from the date the dispute arose?</u>		
4	Whether the matter is arbitrable under the terms of the contract? It means dispute is not <u>an excepted matter as per clause 63.1</u> of GCC for works		No arbitrator to be appointed as in case of excepted matters decisions of the Railway authority, shall be final and binding on the Contractor. As per clause 63.1 of GCC 'excepted matters' shall stand specifically excluded from the purview of Arbitration.
5	Whether the party demanding arbitration has complied with any preliminary steps required by the contract, such as conciliation?		Claimant should be advised to exhaust existing remedies available in conciliation or Dispute Adjudication Board (DAB).
6	Whether Arbitrator(s) is/are not the one/those who had an opportunity to deal with the matters to which the contract relates or who in the course of his/their duties as Railway servant(s) expressed views on all or any of the matters under dispute or differences.		If any arbitrator has direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject-matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality then It must be informed to the arbitrator(s) appointing authority.
7	Whether due procedure prescribed in clause 64.(3)(a)(i), 64.(3)(a)(ii), 64.(3)(b)(i) or 64.(3)(b)(ii) of GCC for works has been followed for appointing an arbitrator or tribunal (AT)?		It must be informed to the arbitrator(s) appointing authority to ensure that due procedure as agreed by both the parties has been followed for appointment of AT.

B. At the time of submission of defense statement and counter claim(s)

SN	Check point	Yes	No/ Action
1	Whether the claimant has submitted his claims within a period of 30 days from the date of appointment of the Arbitral Tribunal.		If the claimant fails to communicate his statement of claim along with the facts supporting his claim, the points at issue and the relief or remedy sought, within 30 days , the arbitral tribunal may be asked to terminate the proceedings as per section 25(a) of the Act.
2	Whether claimant has submitted his claims stating the facts supporting the claims along with all the relevant documents and the relief or remedy sought against each claim.		
3	Whether none of any claims relates to <u>an excepted matter as per clause 63.1</u> of GCC for works for which decisions of the Railway authority shall be final and binding on the Contractor.		If the claims falling under the ambit of "Excepted Matters" were referred to arbitration and thereafter the AT was appointed, even then it could be pleaded before the AT as per section 16(2), that it has no jurisdiction to adjudicate such disputes.
4	Whether the claim is not time-barred, i.e., a valid demand for arbitration has been received within <u>3 years from the date the dispute arose?</u>		If the time barred claims were referred to arbitration and thereafter the AT was appointed, even then it could be pleaded before the AT that it has no jurisdiction to adjudicate such disputes.
5	Whether defense statement includes all facts supporting the defense and counter claims along with all the relevant documents.		If the respondent (Railway) fails to communicate his statement of defence within 60 days, the arbitral tribunal may continue the proceedings and have the discretion to treat the right of the respondent to file such statement of defence as having been forfeited. Therefore, extension must be sought from AT in case of delay as per section 25(b) of the Act.
6	Whether defense statement and counter claim(s), if any, has been submitted within a period of 60 days of receipt of copy of claims from Tribunal , otherwise extension has been sought from Tribunal.		
7	Whether there is no objection on Jurisdiction of AT, validity of arbitration agreement, scope of its authority etc.		A plea that the arbitral tribunal does not have jurisdiction shall be raised at the time of submission of the statement of defence. The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement. Ref. Section 16 of the Act and clause 64.(3)(c)(ii)(b) of GCC.

C. During arbitral proceedings and final award

SN	Check point	Yes	No/Action
1	Whether Railway has no reasonable apprehension about preservation, interim custody or sale of any goods or property which are the subject-matter of the arbitration agreement.		Railway may, during the arbitral proceedings, apply to the arbitral tribunal for an interim measure of protection in respect of any of the matter as may appear to the arbitral tribunal to be just and convenient as per section 17 of the Act.
2.	Whether the place of arbitration is within the geographical limits of the Division of the Railway where the cause of action arose or the Headquarters of the concerned Railway or any other place with the written consent of both the parties.		The arbitral tribunal may, <u>if agreed by the parties</u> , meet at any place it considers appropriate.
3	Whether any new claim has not been added during proceedings by either party.		No new claim shall be added during proceedings by either party. However, a party may amend or supplement the original claim or defense thereof during the course of arbitration proceedings subject to acceptance by Tribunal having due regard to the delay in making it. Ref. Clause 64.(1)(iv) of GCC
4	Whether none of the arbitrators appointed refuses, withdraws, or vacates his office or is unable or unwilling to perform his functions as arbitrator for any reason whatsoever or fails to act without undue delay.		The General Manager may appoint new arbitrator/arbitrators to act in his/their place in the same manner in which the earlier arbitrator had been appointed. Such re-constituted Tribunal may, at its discretion, proceed with the reference from the stage at which it was left by the previous arbitrator (s).
5	Whether arbitral tribunal is within the scope of its authority and not considering claims which are non-arbitrable or excepted matter.		A plea that the arbitral tribunal is exceeding the scope of its authority must be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. Ref. Section 16(3) of the Act.
6	Whether decision of the arbitral tribunal has been made by a majority of all its members.		The signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated. In the absence

			of such a majority, the views of the Presiding Arbitrator shall prevail. Ref. Clause 64.(4) of GCC
7	whether award in matters has been made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings.		The parties may, by consent, extend the period for making award for a further period <u>not exceeding six months.</u> Ref. Sec. 29A(3) of the Act.
8	whether award in matters has been made by the arbitral tribunal within agreed extended period of six months.		If the award is not made even within the extended period, <u>the mandate of the arbitrator(s) shall terminate</u> unless the Court has, either prior to or after the expiry of the period so specified, extended the period. <u>Any award made by tribunal without seeking extension from court is null and void.</u> Ref. Sec. 29A(4) of the Act
9	Whether the arbitral award states item wise, the sum and reasons upon which it is based.		The analysis and reasons shall be detailed enough so that the award could be inferred there from.
10	Whether award is free from any computational errors, any typographical or clerical errors or any other error of similar nature and does not need any interpretation of a specific point of award.		Party may apply for corrections or interpretation of a specific point of award to Tribunal <u>within 60 days of receipt of the award.</u> Ref. Clause 64.(3)(d)(ii) of GCC
11	Whether AT has made an award as per terms of the contract without violating any expressed provision of contract.		While deciding and making an award, the arbitral tribunal shall, in all cases, take into account the terms of the contract otherwise <u>it may be set aside by court.</u> Ref. Sec. 28(3) of the Act
12	Whether AT has not given award for interest either pendente lite or post award interest.		Clause 64.(5) of GCC prohibits payment of pendente lite interest. Similarly, clause 16(3) of GCC prohibits payment of interest on any amount payable to contract.

D. challenging the arbitral award, appeal and enforcement of award.

SN	Check point	Yes	No/Action
1	Whether Railway was given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise able to present his case.		<p>An application may be made for setting aside such award in accordance section 34 of the Act.</p> <p>An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award. Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.</p> <p><u>Therefore, An application for setting aside must be made within four months from the date on which the party making that application had received the arbitral award.</u></p>
2	Whether the arbitral award deals with a arbitrable matter and dispute not falling in excepted matter and it does not contain decisions on matters beyond the scope of the submission to arbitration.		
3	Whether the composition of the arbitral tribunal or the arbitral procedure was in accordance with the agreement of the parties.		
4	Whether AT has made an award as per terms of the contract without violating any expressed provision of contract and the arbitral award states item wise, the sum and reasons upon which it is based.		
5	Whether AT has not given award for interest either pendente lite or post award interest.		
6	Whether the arbitral award does not conflict with the public policy of India i.e. I. the making of the award was not induced or affected by fraud or corruption; or II. it is not in contravention with the fundamental policy of Indian law; or III. it does not conflict with the most basic notions of morality or justice.		
7	Whether an application to set aside the arbitral award has been filed in the Court under section 34.		Where the time for making an application to set aside the arbitral award under section 34 has expired, then, such award shall be enforced, in the same manner as if it were a decree of the court.

			<u>The filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay on a separate application made for that purpose. (Ref. Section 36(2) of the Act.)</u>
8	Whether railway finds the order of court to set aside the arbitral award reasonable and finds no reason to appeal.		Appeal may be filed in high court. No second appeal allowed except appeal to the Supreme Court.

Checklist III : for Railway officer appointed as arbitrator for ensuring Compliance with Arbitration and Conciliation Act, 1996 and GCC for works in Arbitration proceedings

SN	Check point	Yes	Action (in case answer is No)
1	Whether Arbitrator(s) is/are not the one/those who had an opportunity to deal with the matters to which the contract relates or who in the course of his/their duties as Railway servant(s) expressed views on all or any of the matters under dispute or differences.		If any arbitrator has direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject-matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality then It must be informed to the arbitrator(s) appointing authority.
2	Whether there is no objection on Jurisdiction of AT, validity of arbitration agreement, scope of its authority etc.		The arbitral tribunal must rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement. Ref. Section 16 of the Act and clause 64.(3)(c)(ii)(b) of GCC.
3	Whether the claimant has submitted his claims within a period of 30 days from the date of appointment of the Arbitral Tribunal.		If the claimant fails to communicate his statement of claim along with the facts supporting his claim, the points at issue and the relief or remedy sought, within 30 days , the arbitral tribunal may terminate the proceedings as per section 25(a) of the Act.
4	Whether claimant has submitted his claims stating the facts supporting the claims along with all the relevant documents and the relief or remedy sought against each claim.		
5	Whether none of any claims relates to <u>an excepted matter as per clause 63.1</u> of GCC for works for which decisions of the Railway authority shall be final and binding on the Contractor.		If the claims falling under the ambit of "Excepted Matters" were referred to arbitration, such claims must be rejected by AT.
6	Whether the claim is not time-barred, i.e., a valid demand for arbitration has been received within <u>3 years from the date the dispute arose?</u>		If the time barred claims were referred to arbitration such claims must be rejected by AT.
7	Whether defense statement includes all facts supporting the defense and counter claims along with all the relevant documents.		If the respondent (Railway) fails to communicate his statement of defence within 60 days, the arbitral tribunal may continue the proceedings or may

8	Whether defense statement and counter claim(s), if any, has been submitted within a period of 60 days of receipt of copy of claims from Tribunal , otherwise extension has been sought from Tribunal.		grant extension in case of delay as per section 25(b) of the Act. However, The statement of claim and defence shall be completed within a period of six months from the date the arbitrator received notice, in writing of their appointment.
9	Whether AT has no reasonable apprehension about preservation, interim custody or sale of any goods or property which are the subject-matter of the arbitration agreement.		Arbitral tribunal may provide interim measure of protection in respect of any of the matter as may appear to the arbitral tribunal to be just and convenient as per section 17 of the Act.
10	Whether no new claim has not been requested to add during proceedings by either party.		No new claim shall be allowed to add during proceedings by either party. However, a party may be allowed to amend or supplement the original claim or defense thereof during the course of arbitration proceedings. Ref. Clause 64.(1)(iv) of GCC
11	Whether arbitrators appointed is able and willing to perform his functions as arbitrator without undue delay.		The General Manager may appoint new arbitrator/arbitrators to act in his/their place in the same manner in which the earlier arbitrator had been appointed. Such re-constituted Tribunal may, at its discretion, proceed with the reference from the stage at which it was left by the previous arbitrator (s).
12	Whether arbitral tribunal is within the scope of its authority and not considering claims which are non-arbitrable or excepted matter.		The arbitral tribunal shall not exceed the scope of its authority during the arbitral proceedings. Ref. Section 16(3) of the Act.
13	Whether decision of the arbitral tribunal has been made by a majority of all its members.		The signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated. In the absence of such a majority, the views of the Presiding Arbitrator shall prevail. Ref. Clause 64.(4) of GCC
14	whether award in matters has been made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings.		If AT is not able to make award within a period of twelve months from the date of completion of pleadings. Then consent of parties must be obtained to extend the period for making award for a further period <u>not exceeding six months.</u> Ref. Sec. 29A(3) of the Act.

15	whether award in matters has been made by the arbitral tribunal within agreed extended period of six months.		If the award is not made even within the extended period, <u>the mandate of the arbitrator(s) shall terminate</u> unless the Court has, either prior to or after the expiry of the period so specified, extended the period. <u>Any award made by tribunal without seeking extension from court is null and void.</u> Ref. Sec. 29A(4) of the Act
16	Whether the arbitral award states item wise, the sum and reasons upon which it is based.		AT must award item wise with reasons. The analysis and reasons shall be detailed enough so that the award could be inferred there from.
17	Whether AT has made an award as per terms of the contract without violating any expressed provision of contract.		While deciding and making an award, the arbitral tribunal shall, in all cases, take into account the terms of the contract otherwise <u>it may be set aside by court.</u> Ref. Sec. 28(3) of the Act
18	Whether there is any claim for interest either pendente lite or post award interest.		Clause 64.(5) of GCC prohibits payment of pendente lite interest. Similarly, clause 16(3) of GCC prohibits payment of interest on any amount payable to contract.

SERVICE CONTRACTS

Checklist I: for Ensuring Compliance with Arbitration and Conciliation Act, 1996 and GCC for services in Appointment of Arbitrator

SN	Check point	yes	No/Action
1	Whether the date and details of the received demand for arbitration have been recorded?		The Arbitration proceedings shall be assumed to have commenced from the day, a written and valid demand for arbitration is received by the Railway. (Ref: Clause 8.2.2(a) of GCC for Services)
2	Whether an acknowledgment has been sent to the claimant confirming receipt of the arbitration demand?		
3	Whether a valid contract exists and contains a valid arbitration clause as per GCC for works?		A valid arbitration agreement is must to refer any dispute for arbitration. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement. (Ref: Section 7 of the Act)
4	Whether the demand for arbitration is submitted by an authorized party (e.g., contract signatory or legal representative)?		The Contractor, after 120 days but within 180 days of presenting his final claim on disputed matters shall demand in writing that the dispute or difference be referred to arbitration. (Ref: Clause 8.2.1 of GCC for Services)
5	Whether the demand is made within the contractual or legal time limits, i.e., <u>after 120 days but within 180 days</u> of presenting the final claim on disputed matters?		
6	Whether the claim is not time-barred, i.e., a valid demand for arbitration has been received within <u>3 years from the date the dispute arose?</u>		The Limitation Act, 1963 is applicable to arbitration proceedings in India. It dictates the time frames within which parties must initiate arbitration after a cause of action arises. The limitation period for contractual disputes is three years from the date when the cause of action arises.
7	Whether the matter is arbitrable under the terms of the contract? It means dispute is not <u>an excepted matter as per clause 8.1</u> of GCC for Services.		As per clause 8.1 of GCC, in case of 'excepted matters' (matters not arbitrable) decisions of the Railway authority, thereon shall be final and binding on the Contractor and that 'excepted matters' shall stand specifically excluded from the purview of Arbitration.

8	Whether the details provided in the demand, including the nature of the dispute, the relief sought, and any supporting documents have been enclosed?		<p>The demand for arbitration shall specify the matters which are in question, or subject of the dispute or difference as also the amount of claim item-wise. Only such dispute or difference, in respect of which the demand has been made, together with counter claims or set off, given by the</p> <p>Railway, shall be referred to arbitration and other matters shall not be included in the reference. Ref. clause 8.2.1.1(a) of GCC for Services.</p>
9	Whether the party demanding arbitration has complied with any preliminary steps required by the contract, such as conciliation?		In the event of any dispute or difference between the parties, before demanding arbitration, alternate mechanism of conciliation or DAB must be exhausted.
10	Whether claimant has waived off the applicability of <u>Sub-Section 12(5) of Arbitration and Conciliation (Amendment) Act 2015.</u>		If No, serving railway officer cannot be appointed as arbitrator. Only, retired Railway officers may be appointed as arbitrators.
11	Whether due procedure prescribed in clause 8.4 of GCC for Services has been followed for appointing an arbitrator or tribunal?		If railway fails to appoint an arbitrator in accordance with the procedure specified in the arbitration agreement, other party can apply to the appropriate court to appoint an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996. This provision gives power to the court to appoint an arbitrator.
12	Whether arbitrator(s) meets qualification for appointment of arbitrator(s) as mentioned in clause 8.4.3.1(c) of GCC for Services.		If arbitrator(s) do not meet the qualifications for appointment as specified in the arbitration agreement or under applicable laws, other party may apply to a court for the removal of the arbitrator(s) under Section 14 of the Arbitration and Conciliation Act, 1996. A court can remove an arbitrator if they are found to be unqualified or ineligible.

13	Whether a certification as <u>per annexure- XVI (GCC for works)</u> has been taken from Arbitrator(s) that he/they is/are not the one/those who had an opportunity to deal with the matters to which the contract relates or who in the course of his/their duties as Railway servant(s) expressed views on all or any of the matters under dispute or differences.	According to Section 12 of the Act, a person may be disqualified from being appointed as an arbitrator if they: <ul style="list-style-type: none"> • Have a direct or indirect interest in the subject matter of the arbitration. • Are in a relationship with any of the parties that may lead to justifiable doubts about their impartiality or independence.
14	Whether the arbitration demand has been processed within the prescribed time limit for appointment of the arbitrator.	Time line in appointment of arbitrator must be followed strictly as procedure prescribed in clause 8.4 of GCC for Services. If railway fails to appoint an arbitrator in the time specified in the arbitration agreement, other party can apply to the appropriate court to appoint an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996. This provision gives power to the court to appoint an arbitrator.
15	Whether claimant/ Contractor is a Micro or Small Enterprise and has made a reference to Micro and Small Enterprises Facilitation Council, if the dispute is in regard to any amount due under Section 17 of the MSMED Act, 2006.	In case a Micro or Small Enterprise, being a party to dispute, makes a reference to Micro and Small Enterprises Facilitation Council, under the provisions in MSMED Act 2006, the provisions of the MSMED Act 2006, shall prevail over conciliation and arbitration agreement as contained in the contract. Council may also appoint independent arbitrator without flowing any agreed procedure prescribed in agreement/ contract.

Checklist II : for Presenting officer for ensuring Compliance with Arbitration and Conciliation Act, 1996 and GCC for services in representing Railways in Arbitration proceedings

A. At the time of appointment of Arbitrator

SN	Check point	Yes	Action (in case answer is No)
1	Whether a valid contract exists and contains a valid arbitration clause as per GCC for Services?		It must be informed to the arbitrator(s) appointing authority and advised to regret the request of claimant for appointment of arbitrator.
2	Whether the demand is made within the contractual or legal time limits, i.e., <u>after 120 days but within 180 days</u> of presenting the final claim on disputed matters?		
3	Whether the claim is not time-barred, i.e., a valid demand for arbitration has been received within <u>3 years from the date the dispute arose?</u>		
4	Whether the matter is arbitrable under the terms of the contract? It means dispute is not <u>an excepted matter as per clause 8.1</u> of GCC for Services.		No arbitrator to be appointed as in case of excepted matters decisions of the Railway authority, shall be final and binding on the Contractor. As per clause 8.1 of GCC 'excepted matters' shall stand specifically excluded from the purview of Arbitration.
5	Whether the party demanding arbitration has complied with any preliminary steps required by the contract, such as conciliation?		Claimant should be advised to exhaust existing remedies available in conciliation or Dispute Adjudication Board (DAB).
6	Whether Arbitrator(s) is/are not the one/those who had an opportunity to deal with the matters to which the contract relates or who in the course of his/their duties as Railway servant(s) expressed views on all or any of the matters under dispute or differences.		If any arbitrator has direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject-matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality then It must be informed to the arbitrator(s) appointing authority.
7	Whether due procedure prescribed in clause 8.4 of GCC for Services has been followed for appointing an arbitrator or tribunal (AT)?		It must be informed to the appointing authority to ensure that due procedure as agreed by both the parties has been followed for appointment of AT.

B. At the time of submission of defense statement and counter claim(s)

SN	Check point	Yes	No/ Action
1	Whether the claimant has submitted his claims within a period of 30 days from the date of appointment of the Arbitral Tribunal.		If the claimant fails to communicate his statement of claim along with the facts supporting his claim, the points at issue and the relief or remedy sought, within 30 days , the arbitral tribunal may be asked to terminate the proceedings as per section 25(a) of the Act.
2	Whether claimant has submitted his claims stating the facts supporting the claims along with all the relevant documents and the relief or remedy sought against each claim.		
3	Whether none of any claims relates to <u>an excepted matter as per clause 8.1</u> of GCC for Services for which decisions of the Railway authority shall be final and binding on the Contractor.		If the claims falling under the ambit of "Excepted Matters" were referred to arbitration and thereafter the AT was appointed, even then it could be pleaded before the AT as per section 16(2), that it has no jurisdiction to adjudicate such disputes.
4	Whether the claim is not time-barred, i.e., a valid demand for arbitration has been received within <u>3 years from the date the dispute arose?</u>		If the time barred claims were referred to arbitration and thereafter the AT was appointed, even then it could be pleaded before the AT that it has no jurisdiction to adjudicate such disputes.
5	Whether defense statement includes all facts supporting the defense and counter claims along with all the relevant documents.		If the respondent (Railway) fails to communicate his statement of defence within 60 days, the arbitral tribunal may continue the proceedings and have the discretion to treat the right of the respondent to file such statement of defence as having been forfeited. Therefore, extension must be sought from AT in case of delay as per section 25(b) of the Act .
6	Whether defense statement and counter claim(s), if any, has been submitted within a period of 60 days of receipt of copy of claims from Tribunal , otherwise extension has been sought from Tribunal.		
7	Whether there is no objection on Jurisdiction of AT, validity of arbitration agreement, scope of its authority etc.		A plea that the arbitral tribunal does not have jurisdiction shall be raised at the time of submission of the statement of defence. The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement. Ref. Section 16 of the Act and clause 8.4.3.1 (b) of GCC Services.

C. During arbitral proceedings and final award

SN	Check point	Yes	No/Action
1	Whether Railway has no reasonable apprehension about preservation, interim custody or sale of any goods or property which are the subject-matter of the arbitration agreement.		Railway may, during the arbitral proceedings, apply to the arbitral tribunal for an interim measure of protection in respect of any of the matter as may appear to the arbitral tribunal to be just and convenient as per section 17 of the Act.
2.	Whether the place of arbitration is within the geographical limits of the Division of the Railway where the cause of action arose or the Headquarters of the concerned Railway or any other place with the written consent of both the parties.		The arbitral tribunal may, <u>if agreed by the parties</u> , meet at any place it considers appropriate.
3	Whether any new claim has not been added during proceedings by either party.		No new claim shall be added during proceedings by either party. However, a party may amend or supplement the original claim or defense thereof during the course of arbitration proceedings subject to acceptance by Tribunal having due regard to the delay in making it. Ref. Clause 8.2.3 of GCC for Services.
4	Whether none of the arbitrators appointed refuses, withdraws, or vacates his office or is unable or unwilling to perform his functions as arbitrator for any reason whatsoever or fails to act without undue delay.		The General Manager may appoint new arbitrator/arbitrators to act in his/their place in the same manner in which the earlier arbitrator had been appointed. Such re-constituted Tribunal may, at its discretion, proceed with the reference from the stage at which it was left by the previous arbitrator (s).
5	Whether arbitral tribunal is within the scope of its authority and not considering claims which are non-arbitrable or excepted matter.		A plea that the arbitral tribunal is exceeding the scope of its authority must be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. Ref. Section 16(3) of the Act .
6	Whether decision of the arbitral tribunal has been made by a majority of all its members.		The signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted

			signature is stated. In the absence of such a majority, the views of the Presiding Arbitrator shall prevail. Ref. Clause 8.4.4 of GCC for Services.
7	whether award in matters has been made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings.		The parties may, by consent, extend the period for making award for a further period <u>not exceeding six months.</u> Ref. Sec. 29A(3) of the Act.
8	whether award in matters has been made by the arbitral tribunal within agreed extended period of six months.		If the award is not made even within the extended period, <u>the mandate of the arbitrator(s) shall terminate</u> unless the Court has, either prior to or after the expiry of the period so specified, extended the period. <u>Any award made by tribunal without seeking extension from court is null and void.</u> Ref. Sec. 29A(4) of the Act
9	Whether the arbitral award states item wise, the sum and reasons upon which it is based. .		The analysis and reasons shall be detailed enough so that the award could be inferred there from.
10	Whether award is free from any computational errors, any typographical or clerical errors or any other error of similar nature and does not need any interpretation of a specific point of award.		Party may apply for corrections or interpretation of a specific point of award to Tribunal <u>within 60 days of receipt of the award.</u> Ref. Clause 8.4.3.1(d) of GCC for Services.
11	Whether AT has made an award as per terms of the contract without violating any expressed provision of contract.		While deciding and making an award, the arbitral tribunal shall, in all cases, take into account the terms of the contract otherwise <u>it may be set aside by court.</u> Ref. Sec. 28(3) of the Act
12	Whether AT has not given award for interest either pendente lite or post award interest.		Clause 8.4.5 of GCC for Services prohibits payment of pendente lite interest.

D. challenging the arbitral award, appeal and enforcement of award.

SN	Check point	Yes	No/Action
1	Whether Railway was given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise able to present his case.		<p>An application may be made for setting aside such award in accordance section 34 of the Act.</p> <p>An application for setting aside may not be made after <u>three months</u> have elapsed from the date on which the party making that application had received the arbitral award. Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.</p> <p><u>Therefore, An application for setting aside must be made within four months from the date on which the party making that application had received the arbitral award.</u></p>
2	Whether the arbitral award deals with a arbitrable matter and dispute not falling in excepted matter and it does not contain decisions on matters beyond the scope of the submission to arbitration.		
3	Whether the composition of the arbitral tribunal or the arbitral procedure was in accordance with the agreement of the parties.		
4	Whether AT has made an award as per terms of the contract without violating any expressed provision of contract and the arbitral award states item wise, the sum and reasons upon which it is based.		
5	Whether AT has not given award for interest either pendente lite or post award interest.		
6	Whether the arbitral award does not conflict with the public policy of India i.e. IV. the making of the award was not induced or affected by fraud or corruption; or V. it is not in contravention with the fundamental policy of Indian law; or VI. it does not conflict with the most basic notions of morality or justice.		
7	Whether an application to set aside the arbitral award has been filed in the Court under section 34.		<p>Where the time for making an application to set aside the arbitral award under section 34 has expired, then, such award shall be enforced, in the same manner as if it were a decree of the court.</p> <p><u>The filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay on a separate application made for</u></p>

			<u>that purpose. (Ref. Section 36(2) of the Act.)</u>
8	Whether railway finds the order of court to set aside the arbitral award reasonable and finds no reason to appeal.		Appeal may be filed in high court. No second appeal allowed except appeal to the Supreme Court.

Checklist III : for Railway officer appointed as arbitrator for ensuring Compliance with Arbitration and Conciliation Act, 1996 and GCC for Services in Arbitration proceedings

SN	Check point	Yes	Action (in case answer is No)
1	Whether Arbitrator(s) is/are not the one/those who had an opportunity to deal with the matters to which the contract relates or who in the course of his/their duties as Railway servant(s) expressed views on all or any of the matters under dispute or differences.		If any arbitrator has direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject-matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality then It must be informed to the arbitrator(s) appointing authority.
2	Whether there is no objection on Jurisdiction of AT, validity of arbitration agreement, scope of its authority etc.		The arbitral tribunal must rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement. Ref. Section 16 of the Act and clause 8.4.3.1(b) of GCC for Services.
3	Whether the claimant has submitted his claims within a period of 30 days from the date of appointment of the Arbitral Tribunal.		If the claimant fails to communicate his statement of claim along with the facts supporting his claim, the points at issue and the relief or remedy sought, within 30 days , the arbitral tribunal may terminate the proceedings as per section 25(a) of the Act.
4	Whether claimant has submitted his claims stating the facts supporting the claims along with all the relevant documents and the relief or remedy sought against each claim.		
5	Whether none of any claims relates to <u>an excepted matter as per clause 8.1</u> of GCC for Services for which decisions of the Railway authority shall be final and binding on the Contractor.		If the claims falling under the ambit of "Excepted Matters" were referred to arbitration, such claims must be rejected by AT.
6	Whether the claim is not time-barred, i.e., a valid demand for arbitration has been received within <u>3 years from the date the dispute arose?</u>		If the time barred claims were referred to arbitration such claims must be rejected by AT.
7	Whether defense statement includes all facts supporting the defense and counter claims along with all the relevant		If the respondent (Railway) fails to communicate his statement of defence within 60 days, the arbitral tribunal

	documents.		may continue the proceedings or may grant extension in case of delay as per section 25(b) of the Act. However, The statement of claim and defence shall be completed within a period of six months from the date the arbitrator received notice, in writing of their appointment.
8	Whether defense statement and counter claim(s), if any, has been submitted within a period of 60 days of receipt of copy of claims from Tribunal , otherwise extension has been sought from Tribunal.		
9	Whether AT has no reasonable apprehension about preservation, interim custody or sale of any goods or property which are the subject-matter of the arbitration agreement.		Arbitral tribunal may provide interim measure of protection in respect of any of the matter as may appear to the arbitral tribunal to be just and convenient as per section 17 of the Act.
10	Whether no new claim has not been requested to add during proceedings by either party.		No new claim shall be allowed to add during proceedings by either party. However, a party may be allowed to amend or supplement the original claim or defense thereof during the course of arbitration proceedings. Ref. Clause 8.2.3 of GCC for Services,
11	Whether arbitrators appointed is able and willing to perform his functions as arbitrator without undue delay.		The General Manager may appoint new arbitrator/arbitrators to act in his/their place in the same manner in which the earlier arbitrator had been appointed. Such re-constituted Tribunal may, at its discretion, proceed with the reference from the stage at which it was left by the previous arbitrator (s).
12	Whether arbitral tribunal is within the scope of its authority and not considering claims which are non-arbitrable or excepted matter.		The arbitral tribunal shall not exceed the scope of its authority during the arbitral proceedings. Ref. Section 16(3) of the Act.
13	Whether decision of the arbitral tribunal has been made by a majority of all its members.		The signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated. In the absence of such a majority, the views of the Presiding Arbitrator shall prevail. Ref. Clause 8.4.4 of GCC for Services.
14	whether award in matters has been made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings.		If AT is not able to make award within a period of twelve months from the date of completion of pleadings. Then consent of parties must be obtained to extend the period for making award for

			a further period <u>not exceeding six months.</u> Ref. Sec. 29A(3) of the Act.
15	whether award in matters has been made by the arbitral tribunal within agreed extended period of six months.		If the award is not made even within the extended period, <u>the mandate of the arbitrator(s) shall terminate</u> unless the Court has, either prior to or after the expiry of the period so specified, extended the period. <u>Any award made by tribunal without seeking extension from court is null and void.</u> Ref. Sec. 29A(4) of the Act
16	Whether the arbitral award states item wise, the sum and reasons upon which it is based.		AT must award item wise with reasons. The analysis and reasons shall be detailed enough so that the award could be inferred there from.
17	Whether AT has made an award as per terms of the contract without violating any expressed provision of contract.		While deciding and making an award, the arbitral tribunal shall, in all cases, take into account the terms of the contract otherwise <u>it may be set aside by court.</u> Ref. Sec. 28(3) of the Act
18	Whether there is any claim for interest either pendente lite or post award interest.		Clause 8.4.5 of GCC prohibits payment of pendente lite interest.

Supply/ Store Contracts (IRS conditions Applicable)

Checklist I: for Ensuring Compliance with Arbitration and Conciliation Act, 1996 and IRS Conditions in Appointment of Arbitrator

SN	Check point	yes	No/Action
1	Whether the date and details of the received demand for arbitration have been recorded?		The Arbitration proceedings shall be assumed to have commenced from the day, a written and valid demand for arbitration is received by the Railway. (Ref: Para 3(a) Clause 2903 of IRS conditions)
2	Whether an acknowledgment has been sent to the claimant confirming receipt of the arbitration demand?		
3	Whether a valid contract exists and contains a valid arbitration clause as per IRS conditions of contract?		A valid arbitration agreement is must to refer any dispute for arbitration. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement. (Ref: Section 7 of the Act)
4	Whether the demand for arbitration is submitted by an authorized party (e.g., contract signatory or legal representative)?		The Contractor, after 120 days but within 180 days of presenting his final claim on disputed matters shall demand in writing that the dispute or difference be referred to arbitration. (Ref: Para 1 of Clause 2903 of IRS conditions)
5	Whether the demand is made within the contractual or legal time limits, i.e., <u>after 120 days but within 180 days</u> of presenting the final claim on disputed matters?		
6	Whether the claim is not time-barred, i.e., a valid demand for arbitration has been received within <u>3 years from the date the dispute arose?</u>		The Limitation Act, 1963 is applicable to arbitration proceedings in India. It dictates the time frames within which parties must initiate arbitration after a cause of action arises. The limitation period for contractual disputes is three years from the date when the cause of action arises.
7	Whether the matter is arbitrable under the terms of the contract? It means dispute is not <u>an excepted matter as per Clause 2902 of IRS conditions</u>		As per clause 2902 of IRS conditions, in case of 'excepted matters' (matters not arbitrable) decisions of the Railway authority, thereon shall be final and binding on the Contractor and that 'excepted matters' shall stand specifically

			excluded from the purview of Arbitration.
8	Whether the details provided in the demand, including the nature of the dispute, the relief sought, and any supporting documents have been enclosed?		<p>The demand for arbitration shall specify the matters which are in question, or subject of the dispute or difference as also the amount of claim item-wise. Only such dispute or difference, in respect of which the demand has been made, together with counter claims or set off, given by the</p> <p>Railway, shall be referred to arbitration and other matters shall not be included in the reference. Ref. Para 2(a) Clause 2903 of IRS conditions of contract.</p>
9	Whether the party demanding arbitration has complied with any preliminary steps required by the contract, such as conciliation?		In the event of any dispute or difference between the parties, before demanding arbitration, alternate mechanism of conciliation or DAB must be exhausted.
10	Whether claimant has waived off the applicability of <u>Sub-Section 12(5) of Arbitration and Conciliation (Amendment) Act 2015.</u>		If No, serving railway officer cannot be appointed as arbitrator. Only, retired Railway officers may be appointed as arbitrators.
11	Whether due procedure prescribed in clause 2905 (a) & (b) of IRS conditions has been followed for appointing an arbitrator or tribunal?		If railway fails to appoint an arbitrator in accordance with the procedure specified in the arbitration agreement, other party can apply to the appropriate court to appoint an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996. This provision gives power to the court to appoint an arbitrator.
12	Whether arbitrator(s) meets qualification for appointment of arbitrator(s) as mentioned in Para III of Clause 2905 (c) of IRS conditions.		If arbitrator(s) do not meet the qualifications for appointment as specified in the arbitration agreement or under applicable laws, other party may apply to a court for the removal of the arbitrator(s) under Section 14 of the Arbitration and Conciliation Act, 1996. A court can remove an arbitrator if they are found to be unqualified or ineligible.

13	Whether a certification as per <u>Annexure (Ref para (iii) of Clause 2905(c) (iii)</u> has been taken from Arbitrator(s) that he/they is/are not the one/those who had an opportunity to deal with the matters to which the contract relates or who in the course of his/their duties as Railway servant(s) expressed views on all or any of the matters under dispute or differences.		<p>According to Section 12 of the Act, a person may be disqualified from being appointed as an arbitrator if they:</p> <p>E. Have a direct or indirect interest in the subject matter of the arbitration.</p> <p>F. Are in a relationship with any of the parties that may lead to justifiable doubts about their impartiality or independence.</p>
14	Whether the arbitration demand has been processed within the prescribed time limit for appointment of the arbitrator.		<p>Time line in appointment of arbitrator must be followed strictly as procedure prescribed in clause 2905 of IRS conditions. If railway fails to appoint an arbitrator in the time specified in the arbitration agreement, other party can apply to the appropriate court to appoint an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996. This provision gives power to the court to appoint an arbitrator.</p>
15	Whether claimant/ Contractor is a Micro or Small Enterprise and has made a reference to Micro and Small Enterprises Facilitation Council, if the dispute is in regard to any amount due under Section 17 of the MSMED Act, 2006.		<p>In case a Micro or Small Enterprise, being a party to dispute, makes a reference to Micro and Small Enterprises Facilitation Council, under the provisions in MSMED Act 2006, the provisions of the MSMED Act 2006, shall prevail over conciliation and arbitration agreement as contained in the contract. Council may also appoint independent arbitrator without flowing any agreed procedure prescribed in agreement/ contract.</p>

Checklist II : for Presenting officer for ensuring Compliance with The Act and IRS conditions of contract in representing Railways in Arbitration proceedings

A. At the time of appointment of Arbitrator

SN	Check point	Yes	Action (in case answer is No)
1	Whether a valid contract exists and contains a valid arbitration clause as per GCC for works?		It must be informed to the arbitrator(s) appointing authority and advised to regret the request of claimant for appointment of arbitrator.
2	Whether the demand is made within the contractual or legal time limits, i.e., <u>after 120 days but within 180 days</u> of presenting the final claim on disputed matters?		
3	Whether the claim is not time-barred, i.e., a valid demand for arbitration has been received within <u>3 years from the date the dispute arose?</u>		
4	Whether the matter is arbitrable under the terms of the contract? It means dispute is not <u>an excepted matter as per clause 2902 of IRS conditions of contract.</u>		No arbitrator to be appointed as in case of excepted matters decisions of the Railway authority, shall be final and binding on the Contractor. As per clause Clause 2902 of IRS conditions of contract. 'excepted matters' shall stand specifically excluded from the purview of Arbitration.
5	Whether the party demanding arbitration has complied with any preliminary steps required by the contract, such as conciliation?		Claimant should be advised to exhaust existing remedies available in conciliation or Dispute Adjudication Board (DAB).
6	Whether Arbitrator(s) is/are not the one/those who had an opportunity to deal with the matters to which the contract relates or who in the course of his/their duties as Railway servant(s) expressed views on all or any of the matters under dispute or differences.		If any arbitrator has direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject-matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality then It must be informed to the arbitrator(s) appointing authority.
7	Whether due procedure prescribed in clause 2905 (a) & (b) of IRS conditions has been followed for appointing an arbitrator or tribunal (AT)?		It must be informed to the appointing authority to ensure that due procedure as agreed by both the parties has been followed for appointment of AT.

B. At the time of submission of defense statement and counter claim(s)

SN	Check point	Yes	No/ Action
1	Whether the claimant has submitted his claims within a period of 30 days from the date of appointment of the Arbitral Tribunal.		If the claimant fails to communicate his statement of claim along with the facts supporting his claim, the points at issue and the relief or remedy sought, within 30 days , the arbitral tribunal may be asked to terminate the proceedings as per section 25(a) of the Act.
2	Whether claimant has submitted his claims stating the facts supporting the claims along with all the relevant documents and the relief or remedy sought against each claim.		
3	Whether none of any claims relates to <u>an excepted matter as per clause 2902</u> of IRS conditions for which decisions of the Railway authority shall be final and binding on the Contractor.		If the claims falling under the ambit of "Excepted Matters" were referred to arbitration and thereafter the AT was appointed, even then it could be pleaded before the AT as per section 16(2) of the act , that it has no jurisdiction to adjudicate such disputes.
4	Whether the claim is not time-barred, i.e., a valid demand for arbitration has been received within <u>3 years from the date the dispute arose?</u>		If the time barred claims were referred to arbitration and thereafter the AT was appointed, even then it could be pleaded before the AT that it has no jurisdiction to adjudicate such disputes.
5	Whether defense statement includes all facts supporting the defense and counter claims along with all the relevant documents.		If the respondent (Railway) fails to communicate his statement of defence within 60 days, the arbitral tribunal may continue the proceedings and have the discretion to treat the right of the respondent to file such statement of defence as having been forfeited. Therefore, extension must be sought from AT in case of delay as per section 25(b) of the Act.
6	Whether defense statement and counter claim(s), if any, has been submitted within a period of 60 days of receipt of copy of claims from Tribunal , otherwise extension has been sought from Tribunal.		
7	Whether there is no objection on Jurisdiction of AT, validity of arbitration agreement, scope of its authority etc.		A plea that the arbitral tribunal does not have jurisdiction shall be raised at the time of submission of the statement of defence. The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement. Ref. Section 16 of the Act and para ii (b) of clause 2905 (c) of IRS conditions

C. During arbitral proceedings and final award

SN	Check point	Yes	No/Action
1	Whether Railway has no reasonable apprehension about preservation, interim custody or sale of any goods or property which are the subject-matter of the arbitration agreement.		Railway may, during the arbitral proceedings, apply to the arbitral tribunal for an interim measure of protection in respect of any of the matter as may appear to the arbitral tribunal to be just and convenient as per section 17 of the Act.
2.	Whether the place of arbitration is within the geographical limits of the Division of the Railway where the cause of action arose or the Headquarters of the concerned Railway or any other place with the written consent of both the parties.		The arbitral tribunal may, <u>if agreed by the parties</u> , meet at any place it considers appropriate.
3	Whether any new claim has not been added during proceedings by either party.		No new claim shall be added during proceedings by either party. However, a party may amend or supplement the original claim or defense thereof during the course of arbitration proceedings subject to acceptance by Tribunal having due regard to the delay in making it. Ref. para 4 of clause 2903 of IRS conditions
4	Whether none of the arbitrators appointed refuses, withdraws, or vacates his office or is unable or unwilling to perform his functions as arbitrator for any reason whatsoever or fails to act without undue delay.		The General Manager may appoint new arbitrator/arbitrators to act in his/their place in the same manner in which the earlier arbitrator had been appointed. Such re-constituted Tribunal may, at its discretion, proceed with the reference from the stage at which it was left by the previous arbitrator (s).
5	Whether arbitral tribunal is within the scope of its authority and not considering claims which are non-arbitrable or excepted matter.		A plea that the arbitral tribunal is exceeding the scope of its authority must be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. Ref. Section 16(3) of the Act.
6	Whether decision of the arbitral tribunal has been made by a majority of all its members.		The signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted

			signature is stated. In the absence of such a majority, the views of the Presiding Arbitrator shall prevail. Ref. Clause clause 2906 of IRS conditions
7	whether award in matters has been made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings.		The parties may, by consent, extend the period for making award for a further period <u>not exceeding six months.</u> Ref. Sec. 29A(3) of the Act.
8	whether award in matters has been made by the arbitral tribunal within agreed extended period of six months.		If the award is not made even within the extended period, <u>the mandate of the arbitrator(s) shall terminate</u> unless the Court has, either prior to or after the expiry of the period so specified, extended the period. <u>Any award made by tribunal without seeking extension from court is null and void.</u> Ref. Sec. 29A(4) of the Act
9	Whether the arbitral award states item wise, the sum and reasons upon which it is based. .		The analysis and reasons shall be detailed enough so that the award could be inferred there from.
10	Whether award is free from any computational errors, any typographical or clerical errors or any other error of similar nature and does not need any interpretation of a specific point of award.		Party may apply for corrections or interpretation of a specific point of award to Tribunal <u>within 60 days of receipt of the award.</u> Ref. clause 2905 (d)(ii) of IRS conditions
11	Whether AT has made an award as per terms of the contract without violating any expressed provision of contract.		While deciding and making an award, the arbitral tribunal shall, in all cases, take into account the terms of the contract otherwise <u>it may be set aside by court.</u> Ref. Sec. 28(3) of the Act
12	Whether AT has not given award for interest either pendente lite or post award interest.		Clause 2907 of IRS conditions prohibits payment of pendente lite interest. Similarly, clause 0503 of IRS conditions prohibits payment of interest on any amount payable to contract.

D. challenging the arbitral award, appeal and enforcement of award.

SN	Check point	Yes	No/Action
1	Whether Railway was given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise able to present his case.		An application may be made for setting aside such award in accordance section 34 of the Act.
2	Whether the arbitral award deals with a arbitrable matter and dispute not falling in excepted matter and it does not contain decisions on matters beyond the scope of the submission to arbitration.		An application for setting aside may not be made after <u>three months</u> have elapsed from the date on which the party making that application had received the arbitral award. Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.
3	Whether the composition of the arbitral tribunal or the arbitral procedure was in accordance with the agreement of the parties.		<u>Therefore, An application for setting aside must be made within four months from the date on which the party making that application had received the arbitral award.</u>
4	Whether AT has made an award as per terms of the contract without violating any expressed provision of contract and the arbitral award states item wise, the sum and reasons upon which it is based.		
5	Whether AT has not given award for interest either pendente lite or post award interest.		
6	Whether the arbitral award does not conflict with the public policy of India i.e. VII. the making of the award was not induced or affected by fraud or corruption; or VIII. it is not in contravention with the fundamental policy of Indian law; or IX. it does not conflict with the most basic notions of morality or justice.		
7	Whether an application to set aside the arbitral award has been filed in the Court under section 34.		Where the time for making an application to set aside the arbitral award under section 34 has expired, then, such award shall be enforced, in the same manner as if it were a decree of the court. <u>The filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay</u>

			<u>on a separate application made for that purpose. (Ref. Section 36(2) of the Act.)</u>
8	Whether railway finds the order of court to set aside the arbitral award reasonable and finds no reason to appeal.		Appeal may be filed in high court. No second appeal allowed except appeal to the Supreme Court.

Checklist III : for Railway officer appointed as arbitrator for ensuring Compliance with Arbitration and Conciliation Act, 1996 and IRS conditions in Arbitration proceedings

SN	Check point	Yes	No/ Action
1	Whether Arbitrator(s) is/are not the one/those who had an opportunity to deal with the matters to which the contract relates or who in the course of his/their duties as Railway servant(s) expressed views on all or any of the matters under dispute or differences.		If any arbitrator has direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject-matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality then It must be informed to the arbitrator(s) appointing authority.
2	Whether there is no objection on Jurisdiction of AT, validity of arbitration agreement, scope of its authority etc.		The arbitral tribunal must rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement. Ref. Section 16 of the Act and para ii (b) of clause 2905 (c) of IRS conditions
3	Whether the claimant has submitted his claims within a period of 30 days from the date of appointment of the Arbitral Tribunal.		If the claimant fails to communicate his statement of claim along with the facts supporting his claim, the points at issue and the relief or remedy sought, within 30 days , the arbitral tribunal may terminate the proceedings as per section 25(a) of the Act.
4	Whether claimant has submitted his claims stating the facts supporting the claims along with all the relevant documents and the relief or remedy sought against each claim.		
5	Whether none of any claims relates to <u>an excepted matter as per clause 2902 of IRS conditions</u> for works for which decisions of the Railway authority shall be final and binding on the Contractor.		If the claims falling under the ambit of "Excepted Matters" were referred to arbitration, such claims must be rejected by AT.
6	Whether the claim is not time-barred, i.e., a valid demand for arbitration has been received within <u>3 years from the date the dispute arose?</u>		If the time barred claims were referred to arbitration such claims must be rejected by AT.
7	Whether defense statement includes all facts supporting the defense and counter claims along with all the relevant documents.		If the respondent (Railway) fails to communicate his statement of defence within 60 days, the arbitral tribunal may continue the proceedings or may

8	Whether defense statement and counter claim(s), if any, has been submitted within a period of 60 days of receipt of copy of claims from Tribunal , otherwise extension has been sought from Tribunal.		grant extension in case of delay as per section 25(b) of the Act. However, The statement of claim and defence shall be completed within a period of six months from the date the arbitrator received notice, in writing of their appointment.
9	Whether AT has no reasonable apprehension about preservation, interim custody or sale of any goods or property which are the subject-matter of the arbitration agreement.		Arbitral tribunal may provide interim measure of protection in respect of any of the matter as may appear to the arbitral tribunal to be just and convenient as per section 17 of the Act.
10	Whether no new claim has not been requested to add during proceedings by either party.		No new claim shall be allowed to add during proceedings by either party. However, a party may be allowed to amend or supplement the original claim or defense thereof during the course of arbitration proceedings. Ref. para 4 of clause 2903 of IRS conditions
11	Whether arbitrators appointed is able and willing to perform his functions as arbitrator without undue delay.		The General Manager may appoint new arbitrator/arbitrators to act in his/their place in the same manner in which the earlier arbitrator had been appointed. Such re-constituted Tribunal may, at its discretion, proceed with the reference from the stage at which it was left by the previous arbitrator (s).
12	Whether arbitral tribunal is within the scope of its authority and not considering claims which are non-arbitrable or excepted matter.		The arbitral tribunal shall not exceed the scope of its authority during the arbitral proceedings. Ref. Section 16(3) of the Act.
13	Whether decision of the arbitral tribunal has been made by a majority of all its members.		The signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated. In the absence of such a majority, the views of the Presiding Arbitrator shall prevail. Ref. clause 2906 of IRS conditions
14	whether award in matters has been made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings.		If AT is not able to make award within a period of twelve months from the date of completion of pleadings. Then consent of parties must be obtained to extend the period for making award for a further period <u>not exceeding six</u>

			<u>months.</u> Ref. Sec. 29A(3) of the Act.
15	whether award in matters has been made by the arbitral tribunal within agreed extended period of six months.		If the award is not made even within the extended period, <u>the mandate of the arbitrator(s) shall terminate</u> unless the Court has, either prior to or after the expiry of the period so specified, extended the period. <u>Any award made by tribunal without seeking extension from court is null and void.</u> Ref. Sec. 29A(4) of the Act
16	Whether the arbitral award states item wise, the sum and reasons upon which it is based.		AT must award item wise with reasons. The analysis and reasons shall be detailed enough so that the award could be inferred there from.
17	Whether AT has made an award as per terms of the contract without violating any expressed provision of contract.		While deciding and making an award, the arbitral tribunal shall, in all cases, take into account the terms of the contract otherwise <u>it may be set aside by court.</u> Ref. Sec. 28(3) of the Act
18	Whether there is any claim for interest either pendente lite or post award interest.		Clause 2907 of IRS conditions prohibits payment of pendente lite interest. Similarly, clause 0503 of IRS conditions prohibits payment of interest on any amount payable to contract.

GeM Contracts

Checklist I: for Ensuring Compliance with Arbitration and Conciliation Act, 1996 and GCC on GeM in Appointment of Arbitrator

SN	Check point	yes	No/Action
1	Whether the date and details of the received demand for arbitration have been recorded?		The Arbitration proceedings shall be assumed to have commenced from the day, a written and valid demand for arbitration is received by the Railway.
2	Whether an acknowledgment has been sent to the claimant confirming receipt of the arbitration demand?		
3	Whether a valid contract exists and contains a valid arbitration clause as per GCC for works?		A valid arbitration agreement is must to refer any dispute for arbitration. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement. (Ref: Section 7 of the Act)
4	Whether the demand for arbitration is submitted by an authorized party (e.g., contract signatory or legal representative)?		The Contractor shall demand in writing that the dispute or difference be referred to arbitration. (Ref: Clause 16.2 of GCC on GeM)
5	Whether the claim is not time-barred, i.e., a valid demand for arbitration has been received within <u>3 years from the date the dispute arose?</u>		The Limitation Act, 1963 is applicable to arbitration proceedings in India. It dictates the time frames within which parties must initiate arbitration after a cause of action arises. The limitation period for contractual disputes is three years from the date when the cause of action arises.
6	Whether the details provided in the demand, including the nature of the dispute, the relief sought, and any supporting documents have been enclosed?		The demand for arbitration shall specify the matters which are in question, or subject of the dispute or difference as also the amount of claim item-wise. Only such dispute or difference, in respect of which the demand has been made, together with counter claims or set off, given by the
7	Whether the party demanding arbitration has complied with any preliminary steps required by the contract, such as		In the event of any dispute or difference between the parties, before demanding arbitration, alternate mechanism of conciliation

	conciliation?		as per Clause 16.1 of GCC on GeM must be exhausted.
8	Whether due procedure prescribed in clause 16.2 (i), (ii) and (iii) of GCC on GeM has been followed for appointing an arbitrator or tribunal?		If railway fails to appoint an arbitrator in accordance with the procedure specified in the arbitration agreement, other party can apply to the appropriate court to appoint an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996. This provision gives power to the court to appoint an arbitrator.

Checklist II : for Presenting officer for ensuring Compliance with Arbitration and Conciliation Act, 1996 and GCC on GeM in representing Railways in Arbitration proceedings

A. At the time of appointment of Arbitrator

SN	Check point	Yes	Action (in case answer is No)
1	Whether a valid contract exists and contains a valid arbitration clause as per GCC on GeM?		It must be informed to the arbitrator(s) appointing authority and advised to regret the request of claimant for appointment of arbitrator.
2	Whether the claim is not time-barred, i.e., a valid demand for arbitration has been received within <u>3 years from the date the dispute arose?</u>		
3	Whether the party demanding arbitration has complied with any preliminary steps required by the contract, such as conciliation?		Claimant should be advised to exhaust existing remedies available in conciliation.
4	Whether Arbitrator(s) is/are not the one/those who had an opportunity to deal with the matters to which the contract relates or who in the course of his/their duties as Railway servant(s) expressed views on all or any of the matters under dispute or differences.		If any arbitrator has direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject-matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality then It must be informed to the arbitrator(s) appointing authority.
5	Whether due procedure prescribed clause 16.2 (i), (ii) and (iii) of GCC on GeM has been followed for appointing an arbitrator or tribunal (AT)?		It must be informed to the arbitrator(s) appointing authority to ensure that due procedure as agreed by both the parties has been followed for appointment of AT.

B. At the time of submission of defense statement and counter claim(s)

SN	Check point	Yes	No/ Action
1	Whether the claimant has submitted his claims within a period of 30 days from the date of appointment of the Arbitral Tribunal.		If the claimant fails to communicate his statement of claim along with the facts supporting his claim, the points at issue and the relief or remedy sought, within 30 days , the arbitral tribunal may be asked to terminate the proceedings as per section 25(a) of the Act.
2	Whether claimant has submitted his claims stating the facts supporting the claims along with all the relevant documents and the relief or remedy sought against each claim.		
4	Whether the claim is not time-barred, i.e., a valid demand for arbitration has been received within <u>3 years from the date the dispute arose?</u>		If the time barred claims were referred to arbitration and thereafter the AT was appointed, even then it could be pleaded before the AT that it has no jurisdiction to adjudicate such disputes.
5	Whether defense statement includes all facts supporting the defense and counter claims along with all the relevant documents.		If the respondent (Railway) fails to communicate his statement of defence within 60 days, the arbitral tribunal may continue the proceedings and have the discretion to treat the right of the respondent to file such statement of defence as having been forfeited. Therefore, extension must be sought from AT in case of delay as per section 25(b) of the Act.
6	Whether defense statement and counter claim(s), if any, has been submitted within a period of 60 days of receipt of copy of claims from Tribunal , otherwise extension has been sought from Tribunal.		
7	Whether there is no objection on Jurisdiction of AT, validity of arbitration agreement, scope of its authority etc.		A plea that the arbitral tribunal does not have jurisdiction shall be raised at the time of submission of the statement of defence. The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement. Ref. Section 16 of the Act.

C. During arbitral proceedings and final award

SN	Check point	Yes	No/Action
1	Whether Railway has no reasonable apprehension about preservation, interim custody or sale of any goods or property which are the subject-matter of the arbitration agreement.		Railway may, during the arbitral proceedings, apply to the arbitral tribunal for an interim measure of protection in respect of any of the matter as may appear to the arbitral tribunal to be just and convenient as per section 17 of the Act.
2.	Whether the place of arbitration is within the geographical limits of the Division of the Railway where the cause of action arose or the Headquarters of the concerned Railway or any other place with the written consent of both the parties.		The arbitral tribunal may, <u>if agreed by the parties</u> , meet at any place it considers appropriate.
3	Whether any new claim has not been added during proceedings by either party.		No new claim shall be added during proceedings by either party. However, a party may amend or supplement the original claim or defense thereof during the course of arbitration proceedings subject to acceptance by Tribunal having due regard to the delay in making it.
4	Whether arbitral tribunal is within the scope of its authority and not considering claims which are non-arbitrable or excepted matter.		A plea that the arbitral tribunal is exceeding the scope of its authority must be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. Ref. Section 16(3) of the Act.
5	Whether decision of the arbitral tribunal has been made by a majority of all its members.		The signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated. In the absence of such a majority, the views of the Presiding Arbitrator shall prevail.
6	whether award in matters has been made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings.		The parties may, by consent, extend the period for making award for a further period <u>not exceeding six months</u> . Ref. Sec. 29A(3) of the Act.
7	whether award in matters has been made by the arbitral tribunal within agreed extended period of six months .		If the award is not made even within the extended period, <u>the mandate of the arbitrator(s)</u>

			<u>shall terminate</u> unless the Court has, either prior to or after the expiry of the period so specified, extended the period. <u>Any award made by tribunal without seeking extension from court is null and void.</u> Ref. Sec. 29A(4) of the Act
8	Whether the arbitral award states item wise, the sum and reasons upon which it is based.		The analysis and reasons shall be detailed enough so that the award could be inferred there from.
9	Whether award is free from any computational errors, any typographical or clerical errors or any other error of similar nature and does not need any interpretation of a specific point of award.		Party may apply for corrections or interpretation of a specific point of award to Tribunal <u>within 60 days of receipt of the award.</u>
10	Whether AT has made an award as per terms of the contract without violating any expressed provision of contract.		While deciding and making an award, the arbitral tribunal shall, in all cases, take into account the terms of the contract otherwise <u>it may be set aside by court.</u> Ref. Sec. 28(3) of the Act
11	Whether AT has not given award for interest either pendente lite interest.		Clause 16.4 of GCC on GeM prohibits payment of pendente lite interest.

D. challenging the arbitral award, appeal and enforcement of award.

SN	Check point	Yes	No/Action
1	Whether Railway was given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise able to present his case.		<p>An application may be made for setting aside such award in accordance section 34 of the Act.</p> <p>An application for setting aside may not be made after <u>three months</u> have elapsed from the date on which the party making that application had received the arbitral award. Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.</p> <p><u>Therefore, An application for setting aside must be made within four months from the date on which the party making that application had received the arbitral award.</u></p>
2	Whether the arbitral award deals with a arbitrable matter and dispute not falling in excepted matter and it does not contain decisions on matters beyond the scope of the submission to arbitration.		
3	Whether the composition of the arbitral tribunal or the arbitral procedure was in accordance with the agreement of the parties.		
4	Whether AT has made an award as per terms of the contract without violating any expressed provision of contract and the arbitral award states item wise, the sum and reasons upon which it is based.		
5	Whether AT has not given award for interest either pendente lite or post award interest.		
6	Whether the arbitral award does not conflict with the public policy of India i.e. I. the making of the award was not induced or affected by fraud or corruption; or II. it is not in contravention with the fundamental policy of Indian law; or III. it does not conflict with the most basic notions of morality or justice.		
7	Whether an application to set aside the arbitral award has been filed in the Court under section 34.		<p>Where the time for making an application to set aside the arbitral award under section 34 has expired, then, such award shall be enforced, in the same manner as if it were a decree of the court.</p> <p><u>The filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay on a separate application made for that purpose. (Ref. Section 36(2) of the Act.)</u></p>

8	Whether railway finds the order of court to set aside the arbitral award reasonable and finds no reason to appeal.		Appeal may be filed in high court. No second appeal allowed except appeal to the Supreme Court.
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Checklist III : for Railway officer appointed as arbitrator for ensuring Compliance with Arbitration and Conciliation Act, 1996 and GCC on GeM in Arbitration proceedings

SN	Check point	Yes	Action (in case answer is No)
1	Whether Arbitrator(s) is/are not the one/those who had an opportunity to deal with the matters to which the contract relates or who in the course of his/their duties as Railway servant(s) expressed views on all or any of the matters under dispute or differences.		If any arbitrator has direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject-matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality then It must be informed to the arbitrator(s) appointing authority.
2	Where the total value of the Contract exceeds ₹ 1,00,00,000/- (Indian Rupees One Crore only), whether both the arbitrators appointed by the two parties have appointed a third arbitrator i.e., the Presiding Arbitrator within 30 (thirty) days from their nomination.		Where the total value of the Contract exceeds ₹ 1,00,00,000/- (Indian Rupees One Crore only), the arbitration shall be conducted by a quorum of three arbitrators. Each party shall be entitled to appoint an arbitrator and the two party-appointed arbitrators shall within 30 (thirty) days from their nomination, appoint a third arbitrator i.e., the Presiding Arbitrator. In case of failure to appoint the Presiding Arbitrator within a period of 30 (thirty) days from the date of nomination of the two arbitrators by the respective parties, the aggrieved party may approach the High Court (under whose jurisdiction the principal place of business of the Buyer department/ organization is located) to appoint the Presiding Arbitrator as per the provisions of the Arbitration and Conciliation Act, 1996 (as amended up to date).
3	Whether there is no objection on Jurisdiction of AT, validity of arbitration agreement, scope of its authority etc.		The arbitral tribunal must rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement. Ref. Section 16 of the Act.
4	Whether the claimant has submitted his claims within a period of 30 days from the date of appointment of the Arbitral Tribunal.		If the claimant fails to communicate his statement of claim along with the facts supporting his claim, the points at issue and the relief or remedy sought, within

5	Whether claimant has submitted his claims stating the facts supporting the claims along with all the relevant documents and the relief or remedy sought against each claim.		30 days , the arbitral tribunal may terminate the proceedings as per section 25(a) of the Act.
5	Whether the claim is not time-barred, i.e., a valid demand for arbitration has been received within <u>3 years from the date the dispute arose?</u>		If the time barred claims were referred to arbitration such claims must be rejected by AT.
6	Whether defense statement includes all facts supporting the defense and counter claims along with all the relevant documents.		If the respondent (Railway) fails to communicate his statement of defence within 60 days, the arbitral tribunal may continue the proceedings or may grant extension in case of delay as per section 25(b) of the Act. However, The statement of claim and defence shall be completed within a period of six months from the date the arbitrator received notice, in writing of their appointment.
7	Whether defense statement and counter claim(s), if any, has been submitted within a period of 60 days of receipt of copy of claims from Tribunal , otherwise extension has been sought from Tribunal.		
8	Whether AT has no reasonable apprehension about preservation, interim custody or sale of any goods or property which are the subject-matter of the arbitration agreement.		Arbitral tribunal may provide interim measure of protection in respect of any of the matter as may appear to the arbitral tribunal to be just and convenient as per section 17 of the Act.
9	Whether no new claim has not been requested to add during proceedings by either party.		No new claim shall be allowed to add during proceedings by either party. However, a party may be allowed to amend or supplement the original claim or defense thereof during the course of arbitration proceedings.
12	Whether arbitral tribunal is within the scope of its authority and not considering claims which are non-arbitrable or excepted matter.		The arbitral tribunal shall not exceed the scope of its authority during the arbitral proceedings. Ref. Section 16(3) of the Act.
13	Whether decision of the arbitral tribunal has been made by a majority of all its members.		The signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated. In the absence of such a majority, the views of the Presiding Arbitrator shall prevail.
14	whether award in matters has been made by the arbitral tribunal within a period of twelve months from the date of		If AT is not able to make award within a period of twelve months from the date of completion of pleadings. Then

	completion of pleadings.		consent of parties must be obtained to extend the period for making award for a further period <u>not exceeding six months.</u> Ref. Sec. 29A(3) of the Act.
15	whether award in matters has been made by the arbitral tribunal within agreed extended period of six months.		If the award is not made even within the extended period, <u>the mandate of the arbitrator(s) shall terminate</u> unless the Court has, either prior to or after the expiry of the period so specified, extended the period. <u>Any award made by tribunal without seeking extension from court is null and void.</u> Ref. Sec. 29A(4) of the Act
16	Whether the arbitral award states item wise, the sum and reasons upon which it is based.		AT must award item wise with reasons. The analysis and reasons shall be detailed enough so that the award could be inferred there from.
17	Whether AT has made an award as per terms of the contract without violating any expressed provision of contract.		While deciding and making an award, the arbitral tribunal shall, in all cases, take into account the terms of the contract otherwise <u>it may be set aside by court.</u> Ref. Sec. 28(3) of the Act
18	Whether there is any claim for interest either pendente lite.		Clause 16.4 of GCC on GeM prohibits payment of pendente lite interest.

Suggested action to avoid litigation

SN	Situation	Suggested action
1.	A firm has approached the court regarding a dispute in a contract that contains an arbitration agreement.	Where a firm has approached the court regarding a dispute arising from a contract that contains a valid arbitration agreement, the railway may argue that the dispute should not be handled in court regardless of the court's jurisdiction. It should file a application while submitting first statement on the substance of the dispute with the court to refer the dispute to arbitration as stipulated in the agreement. This motion should outline the agreement, demonstrate that the dispute falls within its scope, and request that the court dismiss the proceedings in favor of arbitration.
2.	Whether a court may reject an application to refer parties to resolve a dispute through arbitration?	Under Section 8 of the Arbitration and Conciliation Act, 1996 , the court must refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists. The decision of whether or not to refer parties to arbitration must be based on a superficial examination of the arbitration agreement's validity rather than a detailed examination. Thus, a court generally has the obligation to refer parties to arbitration if a valid arbitration agreement exists.
3	Firm claims in the court that contract is null and void and therefore arbitration agreement is also void.	As per Section 16(1) of the Act , The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. In practical terms, this means that even if one party challenges the validity or performance of the main contract, the arbitration clause itself remains valid and enforceable. Any invalidity of the main contract will not oust the jurisdiction of the arbitrator, derived from the arbitration clause.
4	High court has appointed an independent arbitrator ignoring the procedure for appointment of tribunal as prescribed in GCC for works.	Union of India Vs Parmar construction Company (2019) case may be referred in which supreme court set aside the decision of High court to appoint an independent arbitrator without following the procedure for appointment of tribunal as prescribed in GCC for works.

Thank You