

BHEL ARBITRATION GUIDELINES 2018

BHARAT HEAVY ELECTRICALS LIMITED BHEL ARBITRATION GUIDELINES, 2018

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1. INTRODUCTION

These Guidelines shall be known as BHEL Arbitration Guidelines 2018. These Guidelines shall come into force from the 46th day of the date of its approval and shall supersede the extant Guidelines with regard to Appointment of Arbitrators dated 29.04.2010, Circular for Payment of Fees 28.04.2011 and the Panel of serving/retired employees as Arbitrators.

2. OBJECTIVES

These Guidelines are inter-alia intended to assist the concerned Units/Divisions/Regions/Business Groups to take appropriate and expeditious action with regard to nomination/appointment of Arbitrators and acceptance/challenge of arbitral awards and putting in place robust monitoring mechanism of arbitration cases.

3. GENERAL

- i. Disputes can arise inter-se parties involved in a commercial /contractual relationship. It is emphasised that amicable resolution of disputes is better than arbitration. As such, attempts for amicable resolution of dispute including conciliation should be made by BHEL wherever needed within the terms and conditions of the respective MOU/Contract/LOI, etc. and in accordance with the Policies of the Company, as may be applicable, as well as relevant provisions of the applicable law(s).
- ii. If amicable resolution is not possible for any reason, and the MOU/Contract/LOI etc. contains an Arbitration Clause, then either party i.e. BHEL or the other party may decide to initiate arbitration. Arbitration is commenced by serving a notice invoking arbitration on the other party in line with the said Arbitration Clause.
- iii. Unless the Contract provides otherwise, in domestic ad-hoc arbitrations (where the Arbitration Clause does not mandate that rules of any Arbitration Institution shall apply) the appointment of Sole Arbitrator/BHEL's nominee arbitrator needs to be made within the 30 days from the date of receipt of a notice invoking arbitration. In case the Agreement otherwise provides for any other procedure/timeline for appointment of Sole Arbitrator/BHEL's nominee Arbitrator the said procedure/timelines is required to be adhered to by both the Parties.
- iv. For foreign seated and/or institutional arbitrations the time limit for making the nomination of arbitrator should be specifically ascertained by the Unit/Region/Division/Business Group as per the applicable rules of arbitration.

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- v. Non-adherence to time limit of 30 days for domestic ad-hoc arbitrations or the time limit as per the contract clause/rules, as the case may be, can lead to forfeiture of BHEL's rights and therefore the specified time limits should be strictly adhered to.
- vi. Where BHEL is to initiate arbitration, the notice invoking arbitration is to be served so as to reach the other party well within the prescribed period of limitation as per the provisions of the Contract/law. Mere pendency of amicable resolution proceedings or continued correspondence/meetings etc. does not save the bar of limitation. If such amicable resolution proceedings, correspondences, meetings etc. are likely to lead to favourable outcome, then, attempt is to be made to obtain acknowledgement of the debt within the limitation period or to receive part payments etc. to ensure that limitation period remains available to BHEL.
- vii. The amended Arbitration & Conciliation Act, 1996 mandates time bound disposal of cases. As per the provisions of the Arbitration & Conciliation Act, 1996 as amended, it is open to the parties to agree that even in cases in which the arbitral proceedings have been commenced before the date of commencement of the amending Act i.e. 23.10.2015, the amended provisions of the Arbitration & Conciliation Act can be made applicable, in order to have the ongoing cases disposed expeditiously in a time bound manner. Accordingly, in appropriate cases, possibility of switching over the ongoing arbitral proceedings to the amended provisions of the Arbitration & Conciliation Act, 1996 can be explored to ensure early disposal of the case. Consent for such switch over on behalf of BHEL shall be given by the Head of the BHEL Unit/Division/Region/Business Group with the approval of the concerned Functional Director.
- viii. The procedure outlined in this Guidelines shall be applicable for all arbitrations excepting the cases involving disputes or differences between BHEL on one side and other CPSE(s) or Port Trust(s), Government Department(s) (other than disputes concerning Railways, Income Tax, Customs and Excise Departments) /Organisations. These cases shall henceforth be dealt with in terms of Dept. of Public Enterprises OM No. F. No. 4(1)/2013-DPE(GM)/FTS-1835 dated 22nd May, 2018 as amended from time to time. The detailed procedure for dealing with cases falling within this category is brought out in **Appendix 1** hereto.

4. PROCEDURE FOR APPOINTMENT OF ARBITRATOR

- i. Unless the agreement/contract/MoU etc. provides for appointment of all the members of the arbitral tribunal by an Institution conducting arbitration or where the power to appoint arbitrator(s) is vested exclusively with the other party, the appointment of arbitrators and/or assignment of dispute to arbitration (wherever applicable) shall henceforth be approved as per Delegation of Powers given below:

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Particulars	Value/Type of case involved	Competent Authority
Power to:	Involving Claim up to Rs 50 crores	By Director (HR) and Director (Finance).
Assign dispute (if applicable) and appoint arbitrator.	Involving Claim of more than Rs 50 crores or in an international arbitration.	By Director (HR), Director (Finance) and CMD.

Note: Since counter claim of the parties may not be available at the stage of assignment of dispute to arbitration, counter claims of either party are not to be considered in deciding the level of competent authority for assignment of dispute to arbitration (if applicable) and appointment of arbitrator.

- ii. A self-contained proposal shall be submitted by the Group/Department concerned with all supporting documents through the Legal Department in the Unit, if any, and Units' Head of Finance to the Head of Unit/Division/Region/Business Group for recommending assignment of the disputes and/or appointment of arbitrator. An advance copy of the proposal shall be forwarded by the Unit/Division/Region/Business Group to Corporate Law electronically immediately after recommendation of the Head of Unit/Division/Region/Business Group.
- iii. The proposals should be processed within the Unit/Division/Region/Business Group as per Paragraph 4(ii) above and thereupon be forwarded to the Corporate Law as early as possible, but not later than at least 15 days before the expiry of the time limit for making the appointment/nomination.
- iv. On receipt of the proposal from the Unit/Division/Region/Business Group, Corporate Law shall identify and recommend suitable person from the BHEL Panel of Arbitrators or if necessary, (for cases covered under sub-clause (vi) herein below) from outside the panel for appointment of such person as the Sole Arbitrator/BHEL's nominee Arbitrator and submit the proposal to the concerned Competent Authority as per para 4(i) hereinabove through the concerned Business Director for approval for assignment of the disputes and/or appointment of Arbitrator. Corporate Law will record detailed justification for identifying and recommending the person as Arbitrator after properly assessing the person's suitability inter-alia based on the following:
 - a) gravity & seriousness of the case and amount involved;
 - b) their profile and area of expertise;
 - c) capability of the person to handle such large amount involved;
 - d) availability to handle the matter in a timely manner;
 - e) previous experience (if any) of BHEL in dealing with them;
 - f) seat of arbitration;
 - g) conflict of interest, if any;

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- v. In the event the appointment of arbitrator(s) or the Presiding Arbitrator is to be made by both the parties with mutual consent, as far as practicable names of 2 or more persons shall be forwarded to the other party after approval of the Competent Authority as per sub-clause 4(i) hereinabove for seeking consent of the other party to one of the names proposed for appointment as arbitrator in the case. In the event the other party does not agree to any of the names so proposed by the BHEL Unit/Division/Region/Business Group, the appointment of arbitrator shall be carried out as per the provisions of section 11 of the Arbitration & Conciliation Act, 1996 or, as the case may be, the applicable foreign law/rule of arbitral institution concerned.
- vi. In case suitable persons are not available on the panel of arbitrators or the panel is exhausted, Corporate Law shall identify suitable person from outside the panel for appointment/nomination of sole arbitrator/BHEL's nominee arbitrator and submit the proposal to the concerned Competent Authority. As far as practicable such person shall conform to the criteria stipulated in relevant sub-clauses of Clause 5 mentioned herein below.
- vii. In case where, for whatever reason, the Arbitrator/Arbitral Tribunal is appointed/substituted (based on an application by the other party) by any court or other statutory authority of competent jurisdiction or is appointed by an Institution conducting arbitration or where, under the contract/agreement/MoU etc., the other party has the exclusive authority to appoint arbitrator(s), the said matter shall be submitted by the concerned Unit/Division/Region/Business Group for putting up to the concerned Competent Authority as per Paragraph 4(i) above, for information within a period of fifteen (15) days from the date of appointment/substitution of the Arbitrator/Arbitral Tribunal.

5. SELECTION OF ARBITRATOR

- i. A panel of arbitrators (other than BHEL serving/retired employees) will be drawn up at Corporate Office with the approval of Director (HR) for selection as Sole Arbitrator/BHEL's nominee arbitrator, from amongst the following categories of persons:
 - a) Retired Senior Officers of Central/State Governments (Not less than Joint Secretary to Government of India);
 - b) Former Functional or Independent Directors or other retired Senior Officials of other Public Sector Undertakings (pay scale wise equivalent to or more than E-8 level of BHEL). For this purpose, from time to time list of suitable retired persons and/or empanelled arbitrators, if any, can be obtained from other CPSEs/SPSEs and/or from BHEL's Units/Divisions/Regions/Business Groups for consideration for empanelment.
 - c) A Designated Senior Advocate;

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- d) A retired Judge of either the Hon'ble Supreme Court; or, a Judge of one of the Hon'ble High Courts; or, a Judge of the District Courts who has held a position not less than an Additional District Judge during his service;
 - e) Other suitable persons having experience of not less than 25 years in relevant field viz. commercial/technical/engineering/financial/legal etc.; provided that (i) He or she possesses relevant educational qualification in the related field; and (ii) He or she has experience as an arbitrator in at least 2 cases.
 - f) From the panel of arbitrators maintained by Arbitration Institutions such as Delhi International Arbitration Centre, New Delhi, Arbitration Centre, Karnataka, International Centre for Alternative Dispute Resolution (ICADR), New Delhi, Indian Council of Arbitration (ICA), SCOPE Forum of Conciliation and Arbitration (SFCA), other Institutions run by various High Courts.
- ii. Upon approval of the Guidelines, the criteria and conditions mentioned in para 5 (i), (iii), (iv), (v), (vi) & (vii) herein shall be notified in the official website of the Company.
 - iii. The Panel shall be for the entire Company. The List/Panel shall be updated from time to time based on request for empanelment received from eligible persons in writing as per Format 1 hereto.
 - iv. Mere fulfilment of the criteria for empanelment as aforesaid and submission of request for empanelment/renewal of empanelment shall not entitle any person to any right to be empanelled. Empanelment/renewal of empanelment by itself will not entitle any person to claim either any fees, or privilege or benefit of any kind whatsoever or for being selected as an Arbitrator in a case.
 - v. The empanelment of Arbitrators on BHEL's panel of Arbitrators shall be done with approval of Director (HR) for a period of 3 years initially. Subject to the person continuing to be eligible/suitable, empanelment of an empanelled person on the BHEL's panel of Arbitrators may be renewed for further period(s) of not more than 3 years at a time, on the basis of written request received from such person, with the approval of Director (HR). Expiry/non-renewal of the empanelment of a person on the BHEL panel of Arbitrators will not however affect any ongoing case(s) assigned to the concerned Arbitrator and the relevant case(s) can continue to be handled by such person till their completion on same terms and conditions as to fees etc. as applicable.
 - vi. Director (HR) may also add to or delete the name of any Arbitrators from the Panel from time to time.

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- vii. The panel shall be drawn giving details of the age, qualifications, professional and technical experiences in different fields etc. of the Arbitrators.
- viii. The panel of arbitrators so drawn up with the approval of Director (HR) shall be uploaded on Legal Case Management System.
- ix. Arbitrations can also be conducted through Institutions providing arbitral services such as Delhi International Arbitration Centre, New Delhi, Arbitration Centre, Karnataka, International Centre for Alternative Dispute Resolution (ICADR), New Delhi, Indian Council of Arbitration (ICA), SCOPE Forum of Conciliation and Arbitration (SFCA), Singapore International Arbitration Centre (SIAC) International Chamber of Commerce (ICC), London Court for International Arbitration (LCIA) or similar institutions providing alternate dispute resolution services etc., provided that the applicable Arbitration Clause provides for conduct of arbitration through any Arbitration Institutions mentioned above or if both the parties agree for Arbitration under the aforesaid Arbitration institutions subsequent to the dispute having arisen or as directed by Court or the Micro & Small Enterprise Facilitation Council (in case of MSME vendors).
- x. If necessary, with the consent of the other party and with approval of concerned BHEL competent authority as per Works Policy/Purchase Policy etc. as amended from time to time, the arbitration clause of the contract can also be modified for this purpose.
- xi. While selecting the Arbitrator, it shall be ensured that the proposed arbitrator is not covered by one or more of the grounds enumerated in the Schedule 5 and Schedule 7 of the Arbitration & Conciliation Act, 1996 which lay down the criteria/grounds which shall give rise to justifiable doubt as to independence or impartiality of the Arbitrators and the category of persons who cannot be appointed as Arbitrator (s) respectively. If removal of an arbitrator is considered necessary, whether on grounds of impartiality or due to unavailability etc., timely action shall be taken by the concerned Group/Department within BHEL Unit/Division/Region/Business Group in consultation with Unit law department, if any, in accordance with the relevant provisions of law/rules of arbitral institution with the approval of the Head of Unit/Division/Region/Business Group.
- xii. Further, where the Arbitration & Conciliation Act, 1996 governs the conduct of the arbitration, the mandate of the appointed arbitrator(s) terminates if the final award is not passed by the arbitrator(s) within a period of twelve (12) months from the date of entering into reference. The period of twelve (12) months can be extended by further six (6) months by consent of the parties. Beyond the said period, the mandate of the arbitrator(s) to pass the award can be extended only by the concerned Court. Accordingly, in selecting the arbitrator, it needs to be ensured that the appointed Arbitrator(s) will be able to devote adequate time for completing the arbitration within the stipulated time period. The Unit/Division/Region/Business Group should cooperate with the arbitrator(s) to ensure that

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the timelines are fixed and adhered to so that the proceedings are, as far as practicable, completed within the stipulated time period. For this purpose, when a person is approached in connection with his possible appointment as arbitrator, as per Section 12 of the Act, a declaration shall be obtained from such person by Corporate Law in the form specified in Sixth Schedule of the Act.

- xiii. Further, if the proceedings cannot be concluded within the stipulated time period, then, either party can approach the concerned Court for seeking extension of mandate of the arbitrator(s) by appropriate period and for passing of other directions (for substitution of one or all arbitrators, reduction of fees of arbitrators in case of delay attributable to the arbitrators, etc., if required), in accordance with provisions of section 29A of the Arbitration & Conciliation Act, 1996, as amended from time to time.
- xiv. The proviso to Section 12 (5) of the Act provides for an exception to the ineligibility of a person whose relationship, with the parties or counsel falls in any of the categories specified in the Seventh Schedule, whereby the parties may subsequent to the disputes having arisen between them, waive the applicability by an express agreement in writing.
- xv. It needs to be ensured that the person proposed to be appointed as an arbitrator by BHEL should not have been appointed as an arbitrator by BHEL (i.e. by any Unit/Division/Region/Business Group of BHEL) in 2 or more cases within the past three years. Towards this end within one (1) month from the date of issuance of these Guidelines, the Units/Divisions/Regions/Business Group shall update on the Legal Case Management System, the details of the arbitrators appointed by them for their arbitration cases, within the past 3 years. For new cases, the details of the Arbitrator shall be updated on the Legal Case Management System by the concerned Unit/Division/Region/Business Group immediately upon approval of the name of the Arbitrator by the concerned Competent Authority.
- xvi. Unless the agreement/contract/MoU etc. or the Rules of the Arbitral Institution applicable to the case provides otherwise, in international arbitration cases, BHEL's nominee arbitrator should always be an Indian and a leading legal luminary.

6. FEES OF ARBITRATORS

- i. For all matters where the Arbitrator(s) have already agreed to the existing BHEL Circular dated 28-04-2011 regarding Payment of Fees to Arbitrators, travel and boarding & lodging entitlement, out of pocket and secretarial expenses for the entire proceedings etc., the said Circular of fees for Arbitrators dated 28-04-2011 will continue to apply till the completion of the ongoing arbitration proceedings.

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- ii. In cases where ongoing arbitral proceedings are switched over to the amended provisions of the Arbitration & Conciliation Act, 1996, in terms of para 3(vii) hereinabove, the arbitral tribunal can determine its fee, costs of arbitration as per section 31(8) read with section 31A(1) of the Arbitration & Conciliation Act, 1996. From the fees/costs of arbitration so determined, the amount of fee already paid to the Arbitrator by the parties shall be deducted and the remainder, if any, only shall be payable to the arbitrator in equal proportion by the parties. In such a case, necessary approval for such higher fee would be obtained by the concerned Group/Department of the Unit/Division/Region/Business Group from Competent Authority empowered to incur legal expenses as per extant Handbook of Delegation of Powers as amended from time to time.
- iii. Subject to the paras 6 (i) and (ii) above, the fees of arbitrators shall be governed by the following provisions:
 - a) In ad-hoc domestic arbitrations – Fees payable to the Arbitrators shall be as determined by the Arbitrators in terms of section 31(8) read with section 31 A(1) of the Arbitration & Conciliation Act, 1996. Though the fee prescribed in the Fourth Schedule of the Arbitration & Conciliation Act, 1996 is not binding on the Arbitral Tribunal in the absence of the Rules framed by the respective High Courts, attempts should be made to restrict the fee as per the said Schedule (although the same is not binding on the arbitrator). As and when the concerned High Court frames rules in this behalf, the payment of fee of arbitrators in the ad-hoc domestic arbitral proceedings will be made as per the said Rules.
 - b) In arbitration conducted through an Institution – As per the Rules of the concerned Institution.
 - c) In ad-hoc international arbitrations – As determined by the arbitral tribunal.
- (iv) Entitlement for local and out-of-station travel and boarding and lodging etc., of Arbitrators.
 - a) Unless otherwise fixed by the Sole Arbitrator or the Arbitral Tribunal, the Arbitrators who fall under clauses (a), (b) – Functional and Independent Directors of PSUs; (c) and (d) of Para 5 (i) hereinabove will be entitled to travel, boarding & lodging and local and out of station transportation as per entitlement of Executive Directors of BHEL.
 - b) Senior Officers of other PSUs falling within clause (b) of Para 5(i) when appointed as Sole Arbitrator in a case shall be entitled to local and out of station travel and boarding and lodging at a place other than the place of their usual residence, as per their entitlement applicable for the post held by them at the time of their superannuation or entitlement of E-8 level BHEL officials, whichever is higher.

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- c) Persons falling within Para 5(i)(e) when appointed as Sole Arbitrator in a case while travelling out of station (at a place out of local municipal limits of their ordinary place of residence) shall ordinarily be entitled to travel by air economy class or by air conditioned first class by train (if the place is unconnected by air) and boarding and lodging and local transportation for such person shall be arranged as per entitlement of E-8 level executive of BHEL.
- d) Entitlement of persons falling within Para 5(i)(f) when appointed as Sole Arbitrator shall be decided on a case to case basis depending upon the category they belong to i.e. whether such a person falls within Para 5 (i) (a) to (e) hereinabove.

Notes:

1. With respect to Arbitrator(s) residing within Delhi NCR, travel to other regions of Delhi NCR shall be treated as local travel only and will not constitute out of station travel.
2. All Members of an Arbitral Tribunal shall be entitled for local and out of station transportation and travel & boarding & lodging as per entitlement applicable to the Presiding Arbitrator of the Arbitral Tribunal, notwithstanding the scale of entitlement applicable for the category to which they belong to.
3. The Head of Unit/Division/Region/Business Group for reasons to be recorded in writing may approve arrangement of local and out of station travel and boarding and lodging for any person at a scale higher than the entitlement of the concerned person being appointed as Sole Arbitrator.

7. ACCEPTANCE OF/CHALLENGE TO ARBITRAL AWARDS

- i. The proposals for acceptance of or challenge to arbitral award shall henceforth be approved as per Delegation of Powers given below:

Particulars	Competent Authority	
Power to: Approve acceptance of or challenge to arbitral award	a) Concerned Head of Unit/Division/Region/Business Group having powers of Executive Director	
	b) If, the concerned Head of Unit/Division/Region/Business Group is not having Power of Executive Director, but is reporting to:	
	An Executive Director	The said Executive Director
	A Functional Director	The concerned Functional Director
	CMD	Director HR & Director (Finance)

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- ii. A self-contained proposal shall be submitted by the Group/Department concerned with all supporting documents through the Legal Department in the Unit, if any, and the Head of Finance to the Head of Unit/Division/Region/Business Group for approval for acceptance of or challenge to arbitral award or, as the case may be, for making necessary recommendations to the concerned Competent Authority as per Table at para 7(i) above.
- iii. The limitation period/time limit for challenging an Award under the Arbitration & Conciliation Act, 1996 is three months from the date of receipt of the arbitral award.
- iv. The proposals for acceptance of or challenge to arbitral award requiring approval by the concerned Functional Director, or, as the case may be, by Director (HR) & Director (Finance) should be processed within the Unit/Division/Region/Business Group as per para 7(ii) above and thereupon be forwarded to the Corporate Law Department as early as possible, but not later than at least 60 days before the expiry of the time limit for challenging the Award. If a shorter time period is stipulated in the law governing such arbitral proceedings for challenging the award, the proposal should be processed within the Unit in a similar manner as mentioned heretofore and sent to Corporate Law Department at the earliest but not later than when half the total time for filing of such challenge is still available. An advance copy of the proposal shall be forwarded by the Unit/Division/Region/Business Group to Corporate Law electronically immediately after recommendation of the Head of Unit/Division/Region/Business Group.
- v. Proposal that require approval of Director (HR) and Director (Finance) shall be submitted by Corporate Law Department to concerned Competent Authority through concerned Functional Director.
- vi. An interim award where passed shall also be dealt with in the same manner as enumerated above.
- vii. In any case, where arbitral proceedings have been terminated otherwise than by passing of an arbitral award, shall also be processed for approval by the Head of the Unit/Division/Region/Business Group (irrespective of whether the Head of Unit/Division/Region/Business Group has the powers of Executive Director or not) for acceptance of or challenge to the said Order terminating the arbitral proceedings.
- viii. It is open to parties to explore possibilities for amicable settlement of the disputes even during pendency of arbitral proceedings. Where during the course of the arbitral proceedings any possibility of a settlement emerges, suitable steps can be taken under the BHEL Conciliation Scheme, 2018 for this purpose. If the other party is not willing to proceed with conciliation proceedings under the BHEL Conciliation Scheme, 2018, approval of the concerned competent authority within BHEL as per the Works Policy/Purchase Policy/Handbook of Delegation of Powers or other applicable policy/Guidelines etc., if any, shall be taken as required depending

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upon the terms of the settlement before conveying BHEL's views as regards the proposed settlement terms to the other party/Arbitrator(s).

8. REPORTING OF CASES/DEVELOPMENTS

- i. Units/Divisions/Regions/Business Groups shall furnish a report to Corporate Law within the next working day (from the date of receipt/occurrence of development/progress in the matter) on the BHEL Legal Case Management System (LCMS), regarding the following issues:
 - a) Receipt of a notice from another party invoking thereby the arbitration clause of any contract/agreement/MOU/P.O./W.O. etc., between such party and the Unit/Division/Region/Business Group of BHEL.
 - b) Date of passing/receipt of award in any arbitration proceedings.
 - c) Any important development in arbitral proceedings.
- ii. The Unit/Division/Region/Business Group shall ensure that the status of the arbitration cases is recorded and updated on the Legal Case Management System without any delay.
- iii. The Heads of Unit/Division/Region/Business Group shall carry out review of the arbitration cases, if any, pertaining to the Unit/Division/Region/Business Group on a monthly basis.
- iv. As per the directions of the Board, the arbitration cases are to be reviewed in each quarter i.e. as on 31st March, 30th June, 30th September and 31st December. Units / Divisions / Regions / Business Group submit the Report for arbitration cases pertaining to it on the LCMS, within 2 days of the end of the relevant quarter.

9. MISCELLANEOUS

- i. These Guidelines are to be read with the provisions of the Arbitration & Conciliation Act, 1996 and in the event of any contradiction between these Guidelines and the provisions of the Arbitration & Conciliation Act, 1996 as amended from time to time; the provisions of the Arbitration & Conciliation Act, 1996 as amended from time to time shall prevail and the relevant provisions of the Guidelines shall stand modified to that extent. Corporate Law shall arrange to issue necessary clarification/correction for this purpose with the approval of Director (HR).

Corporate Law shall ensure that any amendments in the provisions of the Arbitration & Conciliation Act, 1996 as and when passed by the Parliament, are quickly given effect to in BHEL by suitably amending the BHEL Arbitration Guidelines, 2018.

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- ii. Director (HR) shall have the power to interpret the provisions of these Guidelines and issue necessary clarifications from time to time.
- iii. Any deviation from these Guidelines (except as provided in Note 3 of para 6 (iv) hereinabove) will require approval of Director (HR) and Director (Finance) on a case to case basis and such deviation will not tantamount to an amendment of the relevant provision of the Guidelines.
- iv. The proposals under paras 9 (ii) and (iii) above shall be initiated by the Department/Group within the Unit/Division/Region/Business Group concerned and routed through the Law Department, if any, Head of Finance and Head of Unit/Division/Region/Business Group and forwarded to Corporate Law Department. Corporate Law Department shall submit the proposal to the concerned competent authority through the concerned Functional Director for obtaining approval thereof.
- v. Proposals under provisions of this Guidelines, emanating from Manufacturing Units/Divisions/Regions/Business Groups reporting to Chairman & Managing Director, shall be routed through Director (HR).

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THE PROCEDURE FOR HANDLING CASES FALLING UNDER DPE OM NO. F. NO. 4(1)/2013-DPE(GM)/FTS-1835 DATED 22ND MAY, 2018 THROUGH ADMINISTRATIVE MECHANISM FOR RESOLUTION OF CPSEs DISPUTES (AMRCD)

I. METHOD FOR INCLUSION OF AMRCD CLAUSE IN CONTRACTS:

- A. In order to resolve disputes with other CPSEs/Port Trusts/Central or State Government Departments/Organisation (excluding Railways, Income Tax, Customs and Excise Departments) by invoking the said AMRCD mechanism, the BHEL Units / Divisions / Regions / Business Groups are required to ensure inclusion of the prescribed AMRCD arbitration clause as contained in the said OM (as amended from time to time) in all the existing and future commercial contracts with the other CPSEs/Port Trusts/Central or State Government Departments/Organisation (excluding Railways, Income Tax, Customs and Excise Departments).
- B. For this purpose, for existing commercial contracts of BHEL with other CPSEs/Port Trusts/Central or State Government Departments/Organisation (excluding Railways, Income Tax, Customs and Excise Departments), where some other arbitration clause has been agreed to, the concerned group/department within the Unit/Division/Region/Business Group shall send suitable correspondence to the other party requesting for incorporation of the prescribed AMRCD arbitration clause as stipulated in the DPE OM dated 22nd May, 2018 or its modification, if any, as applicable from time to time. On receipt of consent of the other party, the arbitration clause of the Agreement shall be amended with approval of concerned BHEL competent authority as per Works Policy/Purchase Policy etc. as amended from time to time. After amendment of the arbitration clause, the disputes/differences can be referred to the First Level (Tier) of the AMRCD mechanism for resolution thereof.
- C. For ongoing cases already pending before the Sole Arbitrator or before the Appellate Authority, under the Permanent Mechanism for Arbitration, will also be dealt with under the AMRCD mechanism. Further, the cases where Sole Arbitrator has passed an order and appeal is being preferred by an aggrieved party, will also be referred to Cabinet Secretary only after exhausting the channel of dispute resolution at the level of the Committee of Secretaries of the concerned administrative ministries of the disputing CPSEs and the Secretary, Department of Legal Affairs i.e. the First Level (Tier) of the AMRCD as stipulated in the OMs dated 04th July, 2018 and 11th July, 2018 issued by the Ministry of Heavy Industries & Public Enterprises. In such cases, in accordance with MHI&PE OM dated 22nd May, 2018, the Unit/Division/Region/Business Groups shall take steps as per Clause B hereinabove for inclusion of prescribed AMRCD arbitration clause in the Contract and thereafter take further steps for reference of the matter to the First Level (Tier) of the

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AMRCD. The procedure for processing of proposals for reference of the matters to the First Level (Tier) in such cases shall be the same as stipulated herein below.

II. COMPETENT AUTHORITY FOR DEALING WITH CASES PERTAINING TO AMRCD

The Competent Authority for approving a proposal for referring a dispute to the First Level (Tier) of the AMRCD or acceptance of/challenge to the decision of the First Level (Tier) of the AMRCD shall be as per the Table at Enclosure-1 hereto.

III. PROCEDURE FOR PROCESSING OF PROPOSALS

- A. The following procedure shall be applicable to the below mentioned cases:
- a) All cases where a BHEL Unit/Division/Region/Business Group intends to refer a dispute to AMRCD; or,
 - b) Where an intimation is received from the Dept. of Heavy Industries or any other sources regarding any other CPSE/Government Department/Port Trust etc., having invoked the AMRCD mechanism against BHEL; or,
 - c) Where the decision of the First Level (Tier) of the AMRCD is proposed to be challenged.
- B. In all such cases, a self-contained proposal shall be prepared by the concerned Group/Department within Unit/Division/Region/Business Group including the details of efforts made by BHEL for amicable resolution of the dispute, if any.
- a) Such proposal shall be accompanied by a self-contained Statement of Claim or as the case may be, Statement of Defence and/or Counter-claim.
 - b) Statement of Claim or as the case may be, the Statement of Defence and/or Counter-claim shall contain the following:
 - i. Brief facts of the case leading to dispute.
 - ii. The heads of the claim(s); or, as the case may be, Counter-claim(s) that are proposed to be taken up for claiming through the AMRCD for resolution.
 - iii. The quantification thereof with requisite calculation sheet(s).
 - iv. Grounds and documents in support of the claims or the counter-claims.

In case of a challenge to the decision of the First Level (Tier) of the AMRCD, adequate and cogent grounds in support of the proposal to challenge together with legal opinion, from an advocate/law firm, if any.

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- c) The proposal together with the above mentioned Statement of Claim or as the case may be, the Statement of Defence and/or Counter-claim shall be routed to the Legal Department, if any of the Unit / Division / Region / Business Group and the Head of Finance of the Unit / Division / Region / Business Group and thereafter be forwarded to the Corporate Law Department duly recommended by the Head of Unit / Division / Region / Business Group.
- d) Corporate Law Department shall submit the proposal to the concerned Competent Authority as per the Enclosure 1 hereto.
- e) Upon approval of the proposal by the concerned Competent Authority, the same shall be forwarded by Corporate Law Department to the Financial Advisor (FA) in the Department of Heavy Industries for further representing the case before the Secretary, Department of Heavy Industries and thereafter before the First Level (Tier) of the AMRCD mechanism or as the case may be, for representing the case before the Second Level (Tier) of the AMRCD.
- f) The concerned Group/Department in the Unit/Division/Region/Business Group shall be responsible for providing the clarifications/explanations/further inputs etc., as may be required by the Corporate Law Department or the office of the Financial Advisor (FA) for facilitating the presentation of the matter by the Financial Advisor before the Secretary, DHI, and thereafter, before the First Level (Tier) or the Second Level (Tier) of the AMRCD mechanism and, and also, if required, attend the hearing(s)/meetings(s) of the First Level (Tier) or the Second Level (Tier) of the AMRCD.
- g) Such clarifications/explanations/further inputs etc., shall also be processed within BHEL as per the procedure outlined herein and shall be forwarded to the Financial Advisor (FA) in the Department of Heavy Industries after approval thereof by the concerned Competent Authority.
- h) Time limit for processing of proposal:
 - i) In cases where BHEL has to submit the Statement of Defence and/or Counter-claim – Proposal should reach Corporate Law Department at least 30 days before the time limit stipulated by AMRCD /Secretary, DHI for submission of Statement of Defence and/or counter-claims, if any, of BHEL is scheduled to expire.
 - (ii) For challenging the decision of the First Level (Tier) of the AMRCD – Proposal should reach Corporate Law Department at least 7 working days before the expiry of the time limit for challenging the decision of the First Level (Tier) of the AMRCD is scheduled to expire.

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ENCLOSURE 1 TO APPENDIX 1

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COMPETENT AUTHORITY FOR DEALING WITH CASES PERTAINING TO AMRCD

Sl. No.	Particulars		Value/Type of case involved	Competent Authority	Remarks	
1	For assignm ent of Dispute before	If BHEL is to invokes AMRCD mechanism	Up to Rs 50 crores	Director (HR) and Director (Finance)	1. Case to be submitted through concerned Business Director. 2. Case details to be submitted to CMD for information	
			More than Rs 50 crores	Director (HR), Director (Finance) and CMD		
2	AMRCD	If some other CPSE invokes AMRCD mechanism against BHEL	Up to Rs 50 crores	Director (HR) and Director (Finance)	1. Case to be submitted through concerned Business Director. 2. Case details to be submitted to CMD for information.	
			More than Rs 50 crores			
3	For acceptance of or challenge to the decision of AMRCD		Where Proposal is for acceptance of the decision	a) Concerned Head of Unit/ Division/Region/Business Group having powers of Executive Director		Case details to be submitted to concerned Director, Director (HR), Director (Finance) and CMD for information.
				b) If, the concerned Head of Unit/ Division/Region /Business Group is not having Power of Executive Director, but is reporting to:		
				An Executive Director	The said Executive Director	
				A Functional Director	The concerned Functional Director	
				CMD	Director HR & Director (Finance)	

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Sl. No.	Particulars	Value/Type of case involved	Competent Authority	Remarks
		If the proposal is for challenging the decision of the AMRCD	Director (HR), Director (Finance) and CMD	Case to be submitted through concerned Business Director

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APPENDIX 2

PROCESS FLOWCHART AND CHECKLIST FOR ASSIGNMENT OF DISPUTE TO ARBITRATION AND/OR APPOINTMENT OF ARBITRATOR(S)

WHERE NOTICE/INVITATION IS RECEIVED FROM CONTRACTOR/COLLABORATOR/CUSTOMER etc.

SI No.	Particulars	Time limit
1.	The notice to be sent to the concerned Group within the Unit/Division/Region/Business Group.	Zero date
2.	Once complete notice in is received, then, the concerned Group shall examine the following: a) Whether alleged disputes are arising in connection with the Contract & covered by the arbitration clause. b) Value of claims involved. c) Other Unit(s) involved d) If yes, whether such Unit(s) views have been obtained e) Whether BHEL has any counter-claim to make and value thereof The date of receipt of the notice is the commencement date for reckoning the time period for appointment of arbitrator.	2 days from the date of receipt of the notice invoking arbitration
3.	Concerned Group to prepare suitable proposal. Proposal to include the following: i. A concise narration of the facts of the case ii. The particulars of dispute, the claims indicated in the notice invoking arbitration. If no value of the claims is indicated in the notice invoking arbitration, then, the Unit/Division/Region/Business Group shall indicate the estimated value of claim(s) iii. Efforts at amicable resolution, if any. iv. BHEL's counter-claim(s), if any. v. Financial implications involved shall be brought out. vi. Whether the other party has approached any other forum for appointment of arbitrator. The proposal shall be accompanied with the following: i. Copy of the Contract/Order/LOI etc. ii. Copy of correspondence, emails exchanged with the other party. iii. The notice invoking arbitration iv. Copy of Court orders, if any/status of case, concerning the contract viz., if section 9 of Arbitration & Conciliation Act, 1996 has been invoked by any of the parties etc.	

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Sl No.	Particulars	Time limit
4.	<ul style="list-style-type: none">- The concerned Group shall route proposal to the Unit Law Dept. and Head of Finance of the Unit / Division / Region / Business Group before submitting it to Head of Unit-- After recommendation of Head of Unit, forward the proposal to Corporate Law Department.- Corporate Law Department shall submit the proposal to concerned Competent Authority through the concerned Business Director.	<p style="text-align: center;">14 days from the date of receipt of the notice invoking arbitration</p> <p>Note: For proposals requiring approval at Corporate Office, the time limit for forwarding the proposal to Corporate Law Department shall be strictly adhered to. If there is any delay, then, the reasons for the same shall be recorded in writing and approval for the same shall be obtained from the Head of Unit/Division/Region/Business Group.</p>

Notes:

1. Where BHEL intends to initiate arbitration, the same procedure as enumerated above shall mutatis-mutandis be applicable.
2. This checklist is inapplicable for the cases covered under AMRCD mechanism. For such cases, the methodology and timelines as stipulated in Appendix 1 to this Guidelines shall be adhered to.

**PROCESS FLOWCHART AND CHECKLIST FOR PROCESSING OF PROPOSALS FOR DECISION AS REGARDS
ACCEPTANCE OF / CHALLENGE TO ARBITRAL AWARDS**

Sl. No.	Particulars	Time Limit
1	<p>Receipt of Arbitral Award from Ld. Sole Arbitrator/Ld. Arbitral Tribunal.</p> <p>The receipt of the signed copy of the award in the concerned Unit is the commencement date for reckoning limitation for challenging the award/seeking clarifications/correction of clerical errors in the award from the Arbitrator.</p> <p>The Dak section/First recipient of the Award in the Unit should therefore be asked to clearly indicate the date of receipt of the award on the award/envelope containing the award.</p>	Zero date
2	<p>A. If necessary, obtain legal opinion from external counsel in terms of SOP for Litigation Management dated 21-04-2017.</p> <p>B. Simultaneously obtain views of other concerned Departments</p>	10 days from the date of receipt of the arbitral award/interim award
3	<p>Concerned Group to prepare suitable proposal with clear recommendation as to whether the award is to be accepted/challenged.</p> <p>Proposal to include the following:</p> <ol style="list-style-type: none"> A concise narration of the facts of the case. Issues involved before the Arbitrator(s). Decision of the Arbitrator(s) on each issue. Which part, if any, of the decision of the Arbitrator(s) is to be challenged. Reasons supporting such challenge. If acceptance of the award is proposed, then, reasons for the same shall be brought out clearly. Financial implications involved shall be brought out. <p>The proposal shall be accompanied with the following:</p> <ol style="list-style-type: none"> A copy of the arbitral award. A copy of the Pleadings filed before the Arbitrator(s) i.e., the Statement of Claim, Statement of Defence & Counter-claim, Reply to Counter-Claim/Rejoinder. Copy of the Contract/Order/LOI etc. Legal opinion of the external counsel, if any. 	Within 20 days of the date of receipt of the arbitral award/interim award
4	If the Head of Unit has powers to approve the proposal, then, the same Proposal shall be submitted to Head of Unit/Division/Region/Business Group through Unit Law	

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Sl. No.	Particulars	Time Limit
	<p>Department and Unit Head of Finance for consideration and approval.</p> <p>.</p> <p>If the Head of Unit does not have powers to approve the proposal and the same is requiring approval by Executive Director to whom the Head of Unit reports/ or from Competent Authority at Corporate Office, then, the following procedure shall be adhered to:</p> <ul style="list-style-type: none">- Route the proposal to Unit Law Department and Unit/Business Sector, Head of Finance before submitting the same to the Head of Unit/Division/Region/Business Group for making necessary recommendations to the concerned Competent Authority. <p>After recommendation of Head of Unit, forward the proposal to concerned ED / to Corporate Law Department.</p>	<p>Within 30 days of the date of receipt of the arbitral award/interim award</p> <p>Note: For proposals requiring approval at Corporate Office, the time limit for forwarding the proposal to Corporate Law Department shall be strictly adhered to. If there is any delay, then, the reasons for the same shall be recorded in writing and approval for the same shall be obtained from the Head of Unit/Division/Region/Business Group.</p>

Note:

1. This checklist is inapplicable for the cases covered under AMRCD mechanism. For such cases, the methodology as stipulated in Appendix 1 to this Guidelines shall be adhered to.

FORMAT 1

**PROFORMA FOR APPLICATION AND DECLARATION FOR
EMPANELMENT AS AN ARBITRATOR ON BHEL PANEL OF ARBITRATORS**

1. Name: _____
2. Father's name: _____
3. Date of birth: _____
4. PAN no. (compulsory): _____(enclose copy)
5. Contact details: Address: _____ Phone. _____ Mobile: _____ Email: _____
(Note: This information will be used to contact you. Any change in these details shall be informed by you to BHEL immediately)
6. Educational / Professional / Other qualification: (Enclose self-attested copy of certificates / Degrees / Diplomas etc.) (Additional sheets may be used, if required)

Sl No.	Name of degree (commencing from graduation)	Name of College / University / Institute etc.	From	To	Subjects

7. Experience and employment details: (Enclose self-attested copy of the employment/experience certificates issued by Employers, Certificate of Practice issued by Bar Councils etc.) (Additional sheets may be used, if required)

Sl No.	Employer/ professional Details	From	To	Designation	Scale of Pay	Nature of Duties/Work (Also include particulars of specialisation, if any)	Membership details of professional bodies (like Arbitration Councils, Boards), if any

8. Remarks (if any): _____

Name and Signature of the Applicant)

DECLARATION

I, -----, son/wife/daughter of ----- resident of -----
----- presently working as -----in ----- having my office at
----- do hereby solemnly declare, undertake and agree as follows:

I have carefully perused the Criteria and Conditions for Empanelment as Arbitrator on the BHEL's Panel of Arbitrators as available on BHEL's official website i.e., www.bhel.com and confirm that that I accept the same and agree to be bound by the same. I understand and agree that BHEL will be free to make modifications to the criteria and conditions for empanelment of Arbitrators at any time at its sole discretion for any reason whatsoever as deemed fit and such change will become applicable to me as per the approval of the Competent Authority of BHEL and thereupon, I shall be bound by such modified Criteria and Conditions for Empanelment as Arbitrator on the BHEL's Panel of Arbitrators.

I also confirm that I have never been employed in BHEL or its administrative Ministry till date.

I, hereby declare and affirm that during my service period no penalty had been imposed on me in any disciplinary proceedings against me or no criminal proceedings involving moral turpitude are either pending or decided against me.

Further, I undertake to intimate to BHEL forthwith regarding initiation of any such case and/or imposition of penalty against me during the period of continuance of my empanelment as Arbitrator on BHEL Panel of Arbitrators.

I confirm that the above information is true and correct to the best of my knowledge. I undertake that if there is any change in the information provided in this application, then, I shall forthwith inform BHEL regarding the same.

I also agree that if at any stage the said information is found or discovered to be untrue or incorrect or inaccurate in any respect, then, BHEL will be free to take appropriate action including, but without limitation to, deletion of my name from the BHEL Panel of Arbitrators without any notice.

(Name and Signature of the Applicant)

Date:

Place: