भारत सरकार Government Of India
रेल मंत्रालय Ministry Of Railways
(रेलवे बोर्ड) (Railway Board)

No: 2015/CE-I/CT/ARB/18 **New Delhi, dated 16.11.2016**

To,
As per list attached

Sub: Amendment to Annexure of Board's letter of even no. dated 11th November 2016 regarding "modification to Clause 64 of General Conditions of Contract - 2014 for implementation of Arbitration and Conciliation (Amendment) Act 2015".

Ref.-Board's letter no. 2015/CE-I/CT/ARB/18 dated 11th November, 2016.

Subsequent to the promulgation of Arbitration and Conciliation (Amendment) Act, 2015, Clause 64 of the General Conditions of Contract (GCC-2014) has been modified vide Railway Board's letter referred above. However, during issue of letter, the draft copy of annexure regarding **"format of certification by Arbitrators"** was inadvertently enclosed.

2. Item No. 8 of the said annexure stipulates regarding certification by Arbitrator to conclude the arbitration process within twenty seven months (i.e arbitration process-twenty four months and rendering of award - three months) as against twelve months.

3. In view of above, the **said annexure is cancelled** and **modified annexure is enclosed** alongwith approved letter.

4. Please acknowledge receipt.

DA: As above

अनिल कुमार 16/11/16
(अनिल कुमार)
निदेशक/सिविल इंजीनियरिंग(जी)/रेलवे बोर्ड
[Phone:+91-9717647611, e-mail address: dcegrb@gmail.com]

भारत सरकार Government Of India
रेल मंत्रालय Ministry Of Railways
(रेलवे बोर्ड) (Railway Board)

No. 2015/CE-I/CT/ARB/18 **New Delhi, dated 11th November, 2016**

To,

As per list attached

Sub: Modification to clause 64 of General Conditions of Contract - 2014 for implementation of Arbitration and Conciliation (Amendment) Act 2015.

In view of the promulgation of the Arbitration and Conciliation (Amendment) Act 2015, it has been decided by Board to modify Clause 64 of Indian Railways General Conditions of Contract (GCC-2014) as under:-

64.(1) : Demand For Arbitration :

64.(1) (i) : In the event of any dispute or difference between the parties hereto as to the construction or operation of this contract, or the respective rights and liabilities of the parties on any matter in question, dispute or difference on any account or as to the withholding by the Railway of any certificate to which the contractor may claim to be entitled to, or if the Railway fails to make a decision within 120 days, then and in any such case, but except in any of the "excepted matters" referred to in Clause 63 of these Conditions, the contractor, after 120 days but within 180 days of his presenting his final claim on disputed matters shall demand in writing that the dispute or difference be referred to arbitration.

64.(1) (ii) (a)

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.

64.(1) (ii) (b)

The parties may waive off the applicability of sub-section 12(5) of Arbitration and Conciliation (Amendment) Act 2015, if they agree for such waiver, in writing, after dispute having arisen between them, in the format given under Annexure XII of these conditions.

64.(1) (iii) (a)

The Arbitration proceedings shall be assumed to have commenced from the day, a written and valid demand for arbitration is received by the Railway.

64.(1) (iii) (b)

The claimant shall submit his claim stating the facts supporting the claims alongwith all the relevant documents and the relief or remedy sought against each claim within a period of 30 days from the date of appointment of the Arbitral Tribunal.

64.(1) (iii)(c)

The Railway shall submit its defence statement and counter claim(s), if any, within a period of 60 days of receipt of copy of claims from Tribunal thereafter, unless otherwise extension has been granted by Tribunal.

64.(1) (iii) (d)

Place of Arbitration : The place of arbitration would be 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.

64.(1) (iv)

No new claim shall be added during proceedings by either party. However, a party may amend or supplement the original claim or defence thereof during the course of arbitration proceedings subject to acceptance by Tribunal having due regard to the delay in making it.

64.(1) (v)

If the contractor(s) does/do not prefer his/their specific and final claims in writing, within a period of 90 days of receiving the intimation from the Railways that the final bill is ready for payment, he/they will be deemed to have waived his/their claim(s) and the Railway shall be discharged and released of all liabilities under the contract in respect of these claims.

64.(2)

Obligation During Pendency Of Arbitration : Work under the contract shall, unless otherwise directed by the Engineer, continue during the arbitration proceedings, and no payment due or payable by the Railway shall be withheld on account of such proceedings, provided, however, it shall be open for Arbitral Tribunal to consider and decide whether or not such work should continue during arbitration proceedings.

64.(3) : Appointment of Arbitrator :

64.(3) (a) : Appointment of Arbitrator where applicability of section 12 (5) of Arbitration and Conciliation Act has been waived off :

64.(3) (a) (i) : In cases where the total value of all claims in question added together does not exceed Rs. 1,00,00,000/- (Rupees One Crore only), the Arbitral Tribunal shall consist of a Sole Arbitrator who shall be a Gazetted Officer of Railway not below JA Grade, nominated by the General Manager. The sole arbitrator shall be appointed within 60 days from the day when a written and valid demand for arbitration is received by GM.

64.(3) (a) (ii) : In cases not covered by the Clause 64(3)(a)(i), the Arbitral Tribunal shall consist of a Panel of three Gazetted Railway Officers not below JA Grade or 2 Railway Gazetted Officers not below JA Grade and a retired Railway Officer, retired not below the rank of SAG Officer, as the arbitrators. For this purpose, the Railway will send a panel of at least four (4) names of Gazetted Railway Officers of one or more departments of the Railway which may also include the name(s) of retired Railway Officer(s) empanelled to work as Railway Arbitrator to the contractor within 60 days from the day when a written and valid demand for arbitration is received by the GM.

Contractor will be asked to suggest to General Manager at least 2 names out of the panel for appointment as contractor's nominee within 30 days from the date of

dispatch of the request by Railway. The General Manager shall appoint at least one out of them as the contractor's nominee and will, also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the 'presiding arbitrator' from amongst the 3 arbitrators so appointed. GM shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of contractor's nominees. While nominating the arbitrators, it will be necessary to ensure that one of them is from the Accounts Department. An officer of Selection Grade of the Accounts Department shall be considered of equal status to the officers in SA grade of other departments of the Railway for the purpose of appointment of arbitrator.

64.(3) (b) : Appointment of Arbitrator where applicability of section 12 (5) of A&C Act has not been waived off :

The Arbitral Tribunal shall consist of a Panel of three (3) retired Railway Officer, retired not below the rank of SAG Officer, as the arbitrators. For this purpose, the Railway will send a panel of at least four (4) names of retired Railway Officer(s) empanelled to work as Railway Arbitrator duly indicating their retirement date to the contractor within 60 days from the day when a written and valid demand for arbitration is received by the GM.

Contractor will be asked to suggest to General Manager at least 2 names out of the panel for appointment as contractor's nominee within 30 days from the date of dispatch of the request by Railway. The General Manager shall appoint at least one out of them as the contractor's nominee and will, also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the 'presiding arbitrator' from amongst the 3 arbitrators so appointed. GM shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of contractor's nominees. While nominating the arbitrators, it will be necessary to ensure that one of them has served in the Accounts Department.

64.(3) (c) (i) : If one or more of the arbitrators appointed as above refuses to act as arbitrator, withdraws from his office as arbitrator, or vacates his/their office/offices or is/are unable or unwilling to perform his functions as arbitrator for any reason whatsoever or dies or in the opinion of the General Manager fails to act without undue delay, the General Manager shall appoint new arbitrator/arbitrators to act in his/their place in the same manner in which the earlier arbitrator/arbitrators 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).

64.(3) (c) (ii) :

(a) The Arbitral Tribunal shall have power to call for such evidence by way of affidavits or otherwise as the Arbitral Tribunal shall think proper, and it shall be the duty of the parties hereto to do or cause to be done all such things as may be necessary to enable the Arbitral Tribunal to make the award without any delay. The proceedings shall normally be conducted on the basis of documents and written statements.

(b) Before proceeding into the merits of any dispute, the Arbitral Tribunal shall first decide and pass its orders over any plea submitted/objections raised by any party, if any, regarding appointment of Arbitral Tribunal, validity of arbitration agreement, jurisdiction and scope of the Tribunal to deal with the dispute (s) submitted to arbitration, applicability of time 'limitation' to any dispute, any violation of agreed procedure regarding conduct of the arbitral proceedings or plea for interim measures of protection and record its orders in day to day proceedings. A copy of the proceedings duly signed by all the members of tribunal should be provided to both the

parties.

64.(3) (c) (iii) (i) Qualification of Arbitrator (s)

(a) Serving Gazetted Railway Officers of not below JA Grade level.

(b) Retired Railway Officers not below SA Grade level, three years after his date of retirement.

(c) Age of arbitrator at the time of appointment shall be below 70 years.

(ii) An arbitrator may be appointed notwithstanding the total number of arbitration cases in which he has been appointed in the past.

(ii) While appointing arbitrator(s) under Sub-Clause 64.(3)(a) (i), 64.(3)(a) (ii) & 64.(3)(b) above, due care shall be taken 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. The proceedings of the Arbitral Tribunal or the award made by such Tribunal will, however, not be invalid merely for the reason that one or more arbitrator had, in the course of his service, opportunity to deal with the matters to which the contract relates or who in the course of his/their duties expressed views on all or any of the matters under dispute.

64.(3) (d) (i) The arbitral award shall state 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 therefrom.

64.(3) (d) (ii) A party may apply for corrections of any computational errors, any typographical or clerical errors or any other error of similar nature occurring in the award of a Tribunal and interpretation of a specific point of award to Tribunal within 60 days of receipt of the award.

64.(3) (d) (iii) A party may apply to Tribunal within 60 days of receipt of award to make an additional award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

64.(4) In case of the Tribunal, comprising of three Members, any ruling on award shall be made by a majority of Members of Tribunal. In the absence of such a majority, the views of the Presiding Arbitrator shall prevail.

64.(5) Where the arbitral award is for the payment of money, no interest shall be payable on whole or any part of the money for any period till the date on which the award is made.

64.(6)

(a) The cost of arbitration shall be borne by the respective parties. The cost shall inter-alia include fee of the arbitrator(s), as per the rates fixed by Railway Board from time to time and the fee shall be borne equally by both the parties, provided parties sign an agreement in the format given at Annexure II to these condition after/ while referring these disputes to Arbitration. Further, the fee payable to the arbitrator(s) would be governed by the instructions issued on the subject by Railway Board from time to time irrespective of the fact whether the arbitrator(s) is/are appointed by the Railway Administration or by the court of law unless specifically directed by Hon'ble court otherwise on the matter.

(b) (i) Sole Arbitrator shall be entitled for 25% extra fee over the fee prescribed by Railway Board from time to time.

(ii) Arbitrator tribunal shall be entitled to 50% extra fee if Award is decided within six months.

64.(7)

Subject to the provisions of the aforesaid Arbitration and Conciliation Act 1996 and the rules thereunder and relevant para of General Conditions of Contract (GCC) and any statutory modifications thereof shall apply to the appointment of arbitrators and arbitration proceedings under this Clause.

3. This issues with the concurrence of Finance Directorate of the Ministry of Railways.

4. Please acknowledge receipt.

Enclosures:
(i) Annexure –XII to GCC,
(ii) Format of Certification by Arbitrators.

अनिल कुमार 11/11/16

(अनिल कुमार)
निदेशक/सिविल इंजीनियरिंग(जी)/रेलवे बोर्ड
[Tele: 030-47598(Rly), 9717647611(CUG)]
Email-padcegrb@gmail.com

No. 2015/CE-I/CT/ARB/18 **New Delhi, dated 10th November, 2016**

Copy forwarded for information to :
(i) FA&CAOs, All Indian Railways.
(ii) The Dy. Comptroller and Auditor General of India (Railways), Room no. 224, Rail Bhawan, New Delhi

For Financial Commissioner / Railways

Annexure- XII

Agreement towards Waiver under Section 12 (5) and Section 31-A(5) of Arbitration and Conciliation (Amendment) Act

I/we.....(Name of agency/contractor) with reference to agreement no.....raise disputes as to the construction and operation of this contract, or the respective rights and liabilities, withholding of certificate and demand arbitration in respect of following claims:

Brief of claim:

(i) Claim 1 - Detailed at Annexure-
(ii) Claim 2 -
(iii) Claim 3-

I/we.....(post of Engineer) with reference to agreement no.....hereby raise disputes as to the construction and operation of this contract, or the respective rights and liabilities, withholding of certificate and demand arbitration in respect of following claims:

I/we.....do/do not agree to waive off applicability of section 12 (5) of Arbitration and Conciliation (Amendment) Act.

Signature of Claimant _____Signature of Respondent _____

Agreement under Section 31(5)

I/we..... (name of claimant) with reference to agreement no.....hereby waive off the applicability of sub section 31-A (2) to 31-A (4) of the Arbitration and Conciliation (Amendment) Act. We further agree that the cost of arbitration will be shared by the parties as per Clause 64 (6) of GCC.

Signature of Claimant _____Signature of Respondent _____

*Strike out whichever not applicable.

Certification by Arbitrators appointed under Clause 63 & 64 of Indian Railways General Conditions of Contract

1. Name :

2. Details :

3. Prior experience (Including Experience with Arbitrations) :

4. **I do not have more than five on-going Arbitration cases with me.**

5. I hereby certify that I have retired from Railways w.e.f. and empanelled as Railway Arbitrator as per The Arbitration and Conciliation Act- 1996.

6. I have no any past or present interest in relation to the subject matter in dispute, whether financial, business, professional or other kind.

   Or

   I have past or present interest in relation to the subject matter in dispute, whether financial, business, professional or other kind. The list of such interests is as under ;

7. I have no past or present interest in any of the parties whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to my independence or impartiality in terms of clause 12 (5) and Seventh schedule of The Arbitration and Conciliation Act- 1996.

   Or

   I have past or present interest in any of the parties whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to my independence or impartiality in terms of clause 12 (5) and Seventh schedule of The Arbitration and Conciliation Act- 1996. The details of such interests are as under ;

8. There are no concurrent Circumstances which are likely to affect my ability to devote sufficient time to the arbitration and in particular to finish the entire arbitration within twenty-four months and render an award within three months.

   Or

   There are Circumstances which are likely to affect my ability to devote sufficient time to the arbitration and in particular to finish the entire arbitration within twenty-four months and render an award within three months. The list of such circumstances are as under ;

CANCELLED

(Modified)

Certification by Arbitrators appointed under Clause 63 & 64 of Indian Railways General Conditions of Contract

1. Name :

2. Contact Details :

3. Prior experience (Including Experience with Arbitrations) :

4. **I do not have more than five on-going Arbitration cases with me.**

5. I hereby certify that I have retired from Railways w.e.f. _____ and empanelled as Railway Arbitrator as per 'The Arbitration and Conciliation Act- 1996'.

6. I have no any past or present relationship in relation to the subject matter in dispute, whether financial, business, professional or other kind.

   Or

   I have past or present relationship in relation to the subject matter in dispute, whether financial, business, professional or other kind. The list of such interests is as under ;

7. I have no any past or present relationship with or interest in any of the parties whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to my independence or impartiality in terms of The Arbitration and Conciliation Act-1996.

   Or

   I have past or present relationship with or interest in any of the parties whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to my independence or impartiality in terms of The Arbitration and Conciliation Act-1996. The details of such relationship or interests are as under ;

8. There are no concurrent Circumstances which are likely to affect my ability to devote sufficient time to the arbitration and in particular to finish the entire arbitration within twelve months.

   Or

   There are Circumstances which are likely to affect my ability to devote sufficient time to the arbitration and in particular to finish the entire arbitration within twelve months. The list of such circumstances is as under ;

16/11/16

LIST FOR DISTRIBUTION

1. General Managers, All Indian Railways & Production Units.
1a. General Manager (Con), N.F. Railway, Guwahati.
1b. General Manager /CORE, Allahabad.
2. Principal Chief Engineers, All Indian Railways.
3. Chief Administrative Officers (Con), All Indian Railways.(Except N.F. Railway)
4. FA&CAOs/ All Indian Railways.
5. Chief Vigilance Officers, All Indian Railways.

Copy to:

(A)

1. CAO/CAO(R), COFMOW, Tilak Bridge, New Delhi.
2. CAO/CAO(R), Diesel Locomotive Works, Patiala(Punjab).
3. CAO, Rail Coach Factory/Rae Bareli Project, Kishanganj, Delhi -110007.

(B)

1. Director General, RDSO, Manak Nagar, Lucknow.
2. Director General, Railway Staff College, Vadodara
3. Director, IRICEN, Rail Path, Pune – 411 001 (Maharashtra).
4. Chief Commissioner of Railway Safety, Ashoka Road, Lucknow.

(C)

1. MD, DMRC, Metro Bhawan, 13, Fire Bridge Lane, Barakhamba Road, New Delhi- 110 001,
2. MD, CONCOR, Concor Bhawan, C-3, Mathura Road, Opp. Apollo Hospital, New Delhi- 110076.
3. IRCON International Limited, C-4, District Centre, Saket, New Delhi- 110017
4. MD, RITES Ltd., RITES Bhawan, Plot No.1, Sector-29, Gurgaon.
5. MD, RVNL, August Kranti Bhawan,Plot No.25, 1st Floor, Bhikaji Cama Place, New Delhi.
6. MD, MRVC Ltd., Churchgate Station Bldg, Mumbai- 400020
7. MD, KONKAN Railway Corporation Ltd, Rail Bhawan, New Delhi-110001.
8. MD, DFCCIL, 5th Floor, Pragati Maidan Metro Station Building Complex, New Delhi-110001
9. MD, RLDA, Near Safdarjung Railway Station, Moti Bagh, Phase-I, New Delhi- 110021
10. MD, CRIS, Chanakyapur, New Delhi.
11. CMD, RailTel Corporation of India Ltd. Plot No. 143, Institutional Area, Sector-44, Gurgaon – 122003.
12. RCF, Rae Bareilly, Kishan Ganj, Delhi-110007.
13. CME, IROAF, 12th Floor, Core-1, Scope Minar, Distt. Centre, Laxmi Nagar, Delhi- 110092
14. CAO (Workshop Projects), Chamber Bhawan, Judge's Court Road, Anta Ghat, Patna-800001, Bihar.

Copy to:

ME, M(Tr.), M(RS), FC, DG(S&T), DG(RS), AM(CE), AM(Works), AM(B), AM(Elec.), AM(RS), Adv(Projects), Adv.(L&A), Adv(Bridges), EDCE(G), EDCE(P), EDTK(M), EDTK(MC), EDTK(P), EDCE(B&S)-I, EDCE(B&S)-II, EDF(X)-I, EDF(X)-II, ED(Works), EDW(Plg.), ED/Project(Mon.), ED(L&A)-I, ED(L&A)-II, ED(L&A)-III, ED(PSU).