Annexure I

SN025

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

NO.96/CE-I/CT/29 -- New Delhi, dated 6.8.1997.

The General Managers,
All Indian Railways,
and others.

(As-per list attached)

Sub: Arbitration & Conciliation Ordinance, 1996.

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Clause No.63 & 64 of General Conditions of Contract (GCC) have been revised in view of the promulgation of the Arbitration and conciliation Ordinance 1996. Revised Arbitration Clause have been approved as follows:-

63. Matters finally determined by the Railway - All disputes and differences of any kind whatsoever arising out of or in connection with the contract, whether during the progress of the work or after its completion and whether before or after the determination of the contract shall be referred by the contractor to the Railway and the Railway shall within 120 days after receipt of the Contractor's representation make and notify decisions on all matters referred to by the contractor in writing provided that matters for which provision has been made in clauses 8(a), 18, 22(5), 39, 43(2), 45(a), 55, 55-A(5), 57, 57A, 61(1), 61(2) and 62(1)(b) of General Conditions of Contract or in any clause of the special conditions of the contract shall be deemed as 'excepted matters' and decisions of the Railway authority, thereon shall be final and binding on the contractor provided further that 'excepted matters' shall stand specifically excluded from the purview of the arbitration clause and not be referred to arbitration.

64(1)(i) - Demand for Arbitration-

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)-

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 itemwise. Only such dispute(s) or

Contd...2/-

difference(s) in respect of which the demand has been made, together with counter claims or set off shall be referred to arbitration and other matters shall not be included in the reference.

64(1)(ii)(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.

(b)The claimant shall submit his claim stating the facts supporting the claims alongwith all 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.

(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(i)(iii) -

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(i)(iv) -

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 pendancy 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.

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64(3)(a)(i) -

In cases where the total value of all claims in question added together does not exceed Rs.10,00,000/-(Rupees ten lakhs only), the Arbitral Tribunal consist of a sole arbitrator who shall be either the General Manager or a gazetted officer of Railway not below the grade of JA grade nominated by the General Manager in that behalf. The sole arbitrator shall be appointed within 60 days from the day when a written and valid demand for arbitration is received by Railway.

64(3)(a)(ii) -

In cases not covered by clause 64(3)(a)(i), the Arbitral Tribunal shall consist of a panel of three Gazetted Rly officers not below JA grade, as the arbitrators. For this purpose, the Railway will send a panel of more than 3 names of Gzetted Rly. Officers of one or more departments, of the Rly to the contractor who will be asked to suggest to General Manager upto 2 names out of the panel for appointment as contractor's nominee. 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. 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 Railways for the purpose of appointment of arbitrators.

64(3)(a)(iii)-

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 apoint new arbitrator/arbitrators to act in his/ their place in the same manner in which the earlier arbitrator/ arbitrators had been appointed. Such re-constitutued Tribunal may, at its discretion, proceed with the reference from the stage at which it was left by the previous arbitrator(s).

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64(3)(a)(iv) -

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.

64(3)(a)(v) -

While appointing arbitrator(s) under sub-clause(i), (ii) and (iii) 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)(b)(i) -

The arbitral award shall state itemwise, the sum and reasons upon which it is based.

64(3)(b)(ii) -

A party may apply for corrections of any computational errors, any typographical or clerical errors or any other error of similar nature occuring in the award and interpretation of a specific point of award to tribunal within 30 days of receipt of the award.

64(3)(b)(iii)

A party may apply to tribunal within 30 days of receipt of award to make an additional award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

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64.4 In case of the Tribunal, comprising of three Members, any ruling or 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 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 the Rly Administration from time to time.

64.7 Subject to the provisions of the aforesaid Arbitration and Conciliation Act 1996 and the rules there under and any statutory modification thereof shall apply to the arbitration proceedings under this clause.

The above directives should be applicable with immediate effect.

This issues with the concurrence of Finance Dte. of Railway Board(Ministry of Law & Justice).

(V.K. Bahmani) 5/4/97
Exec.Director, Civil Engg.(G)
Railway Board.

(Hindi version will follow)