



Business Partners' Meet 2013

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Dispute Resolution Mechanisms in ONGC

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By

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Dispute Resolution Mechanisms

- Pre Contractual Disputes:
 - Independent External Monitor (IEM-Integrity Pact)
- Post Contractual Dispute:
 - Conciliation through Outside Experts Committee (OEC)
 - Arbitration
 - Court



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IEM

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- Appointed for the first time in 2006 under Integrity Pact
- Disputes relating to Bid – Evaluation, Awarding of Contract and matters under Integrity Pact
 - To ensure transparency and integrity in Award of Contract
 - Post Contractual Commercial Disputes (Claim/Counter Claim) – not to be referred

- Panel of Independent Monitors
(Qualification – Member of CAG/ High level Govt. Officials etc.)
- Constitution of IEM – 1 or 3 Members
 - Aggrieved bidder can make complaint
 - Opportunity of hearing to the parties – Discretionary.
 - Observations are recommendatory in nature
 - Not binding.



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Conciliation

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Conciliation

- Conciliation is a confidential, voluntary and private dispute resolution process in which a neutral person helps the parties to reach a negotiated settlement
- Why Conciliation
 - The unresolved disputes landing up in arbitration or court litigation involve
 - blockage of enormous capital,
 - delay in the execution of critical projects and
 - Invariably expensive

- The Arbitration Act 1940 – did not have provisions for Conciliation
- United Nations Commission on International Trade Law (UNCITRAL) Rules on Conciliation, 1980 – proposed conciliation as a method of amicably settling disputes
- The Arbitration and Conciliation Act, 1996 (“***The Act***”)
 - for the first time in India, conciliation for commercial disputes recognized
 - Part III of the Act provides for conciliation of disputes (Section 61 to 81)

Guiding Principles

- Section 67 of the Act mandates a conciliator to be guided by:
 - Principles of Objectivity, Fairness and Justice;
 - Consider, among other things,
 - Rights and obligations of the parties;
 - Usages of the trade concerned;
 - Circumstances surrounding the dispute;
 - Including any previous business practices between the parties
- Section 66 of the Act - Conciliator not bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872.

Conciliation - In ONGC

- Conciliation through Outside Experts Committee (OEC) introduced with Board's approval vide PMC Circular dated 21.9.1998
 - Initially for dispute involving INR 1 Crore and above
 - In 2007 - the limit of INR 1 Crore was removed
 - In 2011 – OEC clause made a part of the contract
 - No OEC clause for Contract below INR 5 Lacs

Procedure of OEC

- Party to give 30 days notice with points of disputes and claim amount.
- Consent of the contractor is obtained
- Proposal for OEC constitution is put up before CMD
- CMD nominates 3 members OEC. (Exceptionally 1 Member OEC)
 - Technical
 - Financial/ Commercial
 - Legal
- OEC members to give Declaration of independence
- OEC Meetings are held in - Delhi/Mumbai/Chennai
- Time Period – 8 to10 Weeks
- Parties present their case.
- Advocates are not allowed.
- No Oral Evidence – Only Documentary Evidence
- OEC makes recommendations which are non-binding in nature

Contd.

- Recommendation of OEC is placed before Competent Authority for consideration
 - Upto INR10 Crore – Executive Committee
 - Above INR 10 Crore – Board through Committee on Dispute Resolution
- If the recommendations are acceptable to both the parties, settlement agreement is signed
- Settlement agreement is authenticated by OEC
- Section 73 of the Act - After authentication, settlement agreement acquires the status of an Award which is binding and enforceable.

Conciliation – Confidentiality

- Section 75 of the Act - All the matters relating to Conciliation Proceedings (OEC) are confidential in nature.
- The Settlement Agreement can not be disclosed except for the purposes of implementation and enforcement.
- Section 81- The party shall not rely as evidence in Arbitral or Judicial Proceedings on the
 - Views expressed or suggestions made during Conciliation Proceedings
 - Admissions made by Parties before the Conciliator
 - Proposal made by the Conciliators etc.

Facilities/Fees of OEC Members

- INR 10,000/- per meeting (maximum INR 1,00,000) per OEC Member
- INR 10,000/- - Fees for drafting of Recommendation to any one Member
- Air Travel in Executive Class
- Loading and Boarding – 5 Star Hotel
- Conveyance

Fee of OEC Members, Cost of holding meetings and other expenses are **shared equally** by the parties.

Benefits of OEC

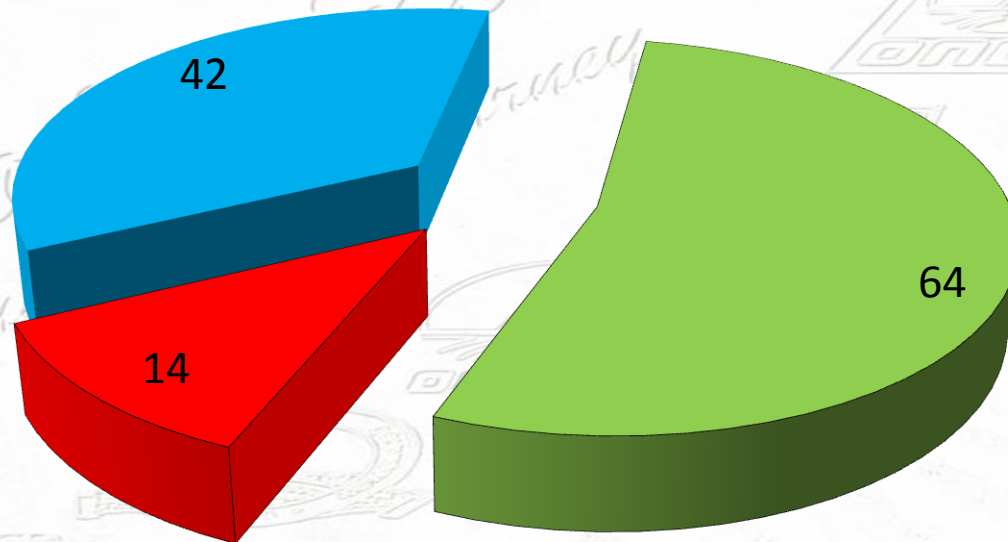
- Cost Effective and Expeditions.
- Purpose of conciliation is not to prove who is right and who is wrong as per contract.
- Parties try for an amicable settlement.
- Conciliator's role is to assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their disputes.
- The conciliator may not follow the procedural law strictly.
- Section 77: Pending OEC, Judicial/Arbitration Proceedings can be kept in abeyance, with the parties consents.
- Conciliation does not affect the legal rights of the parties to approach to Arbitration/Judicial Forum.

- Conciliator may persuade the parties to come to a settlement on principles of ex aequo et bono or amiable compositeur.
- Conciliation does not close the option of arbitration or litigation until settlement is signed by the parties.
- Article 137 of Limitation Act, 1963 - Period of Limitation gets extended till the date Conciliation fails.
- The settlement agreement when signed is treated at par with decree of the Court and can be executed.

OEC Success Story

Total Cases referred to OEC: 120

■ Settled Successfully ■ Recommendation not accepted by Parties ■ Ongoing



Disputes involving approximately USD 525 MM + INR 2115 Crore have been settled successfully



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Arbitration

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Arbitration

- Disputes which are not settled in OEC can be referred to Arbitration
- No Arbitration Clause for Contracts below INR 5 Lacs.
- Party raising the dispute to give 60 days notice with points of dispute and claim amount in INR.
- L-I in ONGC - Competent Authority to appoint arbitrator from the existing Panel of Arbitrators (Item LA-4 of BDP, 2009)

Appointment of Arbitrator

Claim up to
INR 50 Lacs

- Sole arbitrator from Panel of Retd Officers - appointed by ONGC.

Above INR 50
Lacs to INR 5
Crore

- Sole arbitrator from Panel of Retd. Judges - appointed by ONGC.

Above INR 5
Crore

- 3 arbitrators from the panel- each party to choose one Arbitrator and the two arbitrators to appoint Presiding Arbitrator

Panel of Arbitrator

- Only those who accept the terms including fees rates to be appointed.
- Serving employee not to be appointed.
- In 2011: A lump sum fees was fixed to be paid to each Arbitrator.
- Lum-sum fees includes fees for study of pleadings, case material, writing of the award, secretarial charges etc.
- The Fee of the Arbitrator is to be **shared equally** by the Parties.

Fee of Arbitrator

Amount of Claims and Counter Claims	Arbitrator Fee (shared equally by Parties)
Upto INR 50 lakhs	INR 10,000 per meeting subject to a ceiling of INR 1,00,000/-.
Above INR 50 lakhs to INR 1 crore	INR 1,35,000/- plus INR 1,800/- per lakh or a part there of subject to a ceiling of INR 2,25,000/-.
Above INR 1 crore and upto INR 5 Crores	INR 2,25,000/- plus INR 33,750 per crore or a part there of subject to a ceiling of INR 3,60,000/-.
Above INR 5 crores and upto INR 10 crores.	INR 3,60,000/- plus INR 22,500/- per crore or a part there of subject to a ceiling of INR 4,72,500/-.
Above INR 10 crores	INR 4,72,500 plus INR 18,000/- per crore or part thereof subject to a ceiling of INR 15,00,000/-.

Time Stipulations

8 months

- for disputed amount upto INR 5 Crore.

12 months

- for disputed amount above INR 5 Crore.

The time would run from the first meeting of the Arbitrators

Payment of Arbitrator's fees:

20% –On filing of reply to the claim

40% –On completion of pleadings

20% –On conclusion of final hearing

20 % –At the time of Award



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Courts

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Court

- Award of an Arbitrator, unless set aside by Court, is final and binding.
- The Award of Arbitrator can be challenged in court within 3 months of the receipt.
- Maximum 30 more days can be granted by court.
- No further time is allowed to file objections.
- If not objected or if the objections are rejected by the court, it can be enforced as a decree of the court.

THANK YOU



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