



भारतीय राष्ट्रीय राजमार्ग प्राधिकरण
(सड़क परिवहन और राजमार्ग मंत्रालय)
National Highways Authority of India

(Ministry of Road Transport and Highways)

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CIRCULAR

Sub: Guidelines for handling the Dispute Review Board(DRB)/Dispute Review Expert(DRE)/Dispute Adjudication Board(DAB) & Arbitration matters in NHAI.

- *Procedure reg.*

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NHAI awards civil construction contracts on Engineering, Procurement and Construction (EPC) or Build, Operate & Transfer (BOT)-Toll & BOT-Annuity basis as per the mandate provided under Section 14 of NHAI Act, 1988 which empowers the Authority to execute various contracts. The agreements/contracts executed between NHAI and various contractors invariably contain clause(s) for dispute resolution and arbitration as per clauses of the agreements/contracts as well as Arbitration & Conciliation Act, 1996.

2. The terminology of dispute resolution mechanism varies with the different types of agreements. Over a period of time, there have been several disputes referred to DRB/DRE/DAB and also to Arbitration Tribunals (ATs) which are in progress. It has been observed that in some cases they get time-barred due to delay on the part of various functionaries of NHAI at PIU, RO or the concerned Division, which leads to obvious legal complications. Although, the guidelines/instructions with regard to decision to be taken on recommendations of DRB/DRE/DAB & Arbitration matters have been circulated vide Circular No.11041/217/2007-Admn. dated 23.08.2010, however, it is observed that the timelines contained therein are not being adhered to. Hence, in order to ensure expeditious disposal and streamline the procedure for handling these matters, the following procedure is reiterated:

(a) The PD (Nodal/Presenting Officer) of NHAI on receipt of the recommendations of DRB/DRE/DAB shall immediately examine the merits of the recommendations and in accordance with the clauses of the agreements/contracts, the PD shall submit his specific comments/observations invariably within the period as specified in Table at para 6, to the RO clearly specifying therein as to how the matter is fit to be referred to Arbitration Tribunal or not, based on the merits of the case and justifiable reasons.

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(b) On receipt of the comments from the concerned PD, the RO shall forward his specific recommendations to the concerned Division of NHAI, HQ considering the independent opinion of the Engineer whether the case is fit to be referred to arbitration or not. The RO, if deemed necessary, may also take the opinion of Techno-legal Expert/Legal Counsel in arriving at such decision for reference of the matter to Arbitration Tribunal.

(c) As soon as the recommendations of RO are received, the concerned Technical Division at HQ shall circulate a note to the Executive Committee for consideration of the recommendations of DRB/DRE/DAB. In the circumstances, if Executive Committee is unable to meet within next 7 days, then, the Technical Division may seek its approval by circulation of the note.

(d) The concerned Technical Division shall, thereafter, communicate the final decision of Executive Committee to the concerned RO and PD for further necessary action, under intimation to Legal & Arbn. Cell. It shall be the responsibility of the concerned Technical Division to ensure that the decision of the Executive Committee is acted upon well before the expiry of limitation period as provided in the contract/concession agreement.

(e) The RO shall make sincere efforts to enter into a supplementary agreement with the contractor/concessionaire for conducting arbitration meetings at the venue as provided in the contract/concession agreement with emphasis to regulate the fee of the arbitrators as per approved fee schedule contained in Circular No. 110401/217/2007-Admn. dated 24.12.2010.

(f) It is also important to adhere to the limitation period as prescribed in the contract/Concession Agreement which is given below and PDs/ROs/Technical Division at HQ are advised to comply with the following limitation period scrupulously:

S.No	Name of Authority	DRE* (Limitation period is 28 days)	DAB* (Limitation period is 14 days)	DRB* (Limitation period is 28 days)	Arbitration (Limitation period is 30 days)	Remarks
1	Project Director (incl. Engineer)	7 days	4 days	7 days	7 days	
2	Regional Office	5 days	3 days	5 days	5 days	
3	Tech Divn. at HQ	6 days	3 days	6 days	6 days	
4	Executive Committee	10 days	4 days	10 days	12 days	

* The limitation period commences from the date of receipt of notice from either of the parties to the contract.

- (i) As per contract/concession agreement, DRB/DRE/DAB is to be constituted within 90 days from the period mentioned in the contract/concession agreement.
- (ii) The recommendations of DRB/DRE/DAB are to be accepted and referred to Arbitral Tribunals within 28 days' time or as provided under the contract.
- (iii) The Arbitration Award after its publication is to be either accepted or challenged within a period of 90 days before the Court of Law.
- (iv) The Single Judge decision of the High Court is to be either complied with or could be challenged within a period of 30 days from the date of the decision before the Division Bench of the same High Court.
- (v) The decision of the Division Bench of the High Court is to be either complied with or challenged before the Hon'ble Supreme Court within a period of 90 days from the date of the decision.

3. The PDs/ROs/concerned Technical Divisions are advised to ensure that the decisions are taken well within the limitation period lest the opposite party gets the right for advancing the argument to dismiss the plea before the Court solely on account of limitation period. Therefore, the timelines as mentioned above are to be strictly followed by all concerned so that any proposal with regard to challenge or the acceptance, could be examined by Legal & Arbn. Cell by providing around **3 days**, and for taking final decision by the Competent Authority by **another 7 days**. It may be noted that contention of late receipt of Award or non-receipt of Award can not be considered a valid ground.

4. This issues with the approval of Chairman, NHAI.



(P C Grover)
CGM(Legal/HR&A)

To,

All Officers at HQs,
All ROs/PIUs/CMUs

Copy for information to: PS to Chairman