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

(Ministry of Road Transport and Highways)
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NHAI/DR&A/ARB(Misc)/2011

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Circular

Sub: Strict compliance of the contractual and statutory provisions for appointment of Arbitrator by NHAI.

Recently, in one case of appointment of Arbitrator, concerned PIU did not refer the request of the Contractor for appointment to the Legal & Arbitration Cell in time and consequently the Contractor approached Hon'ble High Court of Delhi. As a matter of fact, the Contractor had sent a long letter detailing various disputes and asking for resolution thereof and at the same time invoked the Arbitration Clause provided in the Contract, in a rather surreptitious manner in the same letter. But somehow the Hon'ble Single Judge ignored this aspect and merely emphasized the statutory time limit of 30 days within which appointment of Arbitrator should have been done. In the aforesaid circumstances, the Court, on their own, appointed one Arbitrator to adjudicate the dispute between parties and did not accept the nominee of NHAI appointed due to inordinate delay.

2. In view of the above, all ROs/PIUs/CMUs are advised to pay prompt attention to letters from contractors raising disputes and requesting therein for appointment of Arbitrator and refer such letters without any delay to Legal & Arbitration Cell. Considering the technical nature of dispute, it is in NHAI's interest that a suitable Arbitrator should be appointed by NHAI rather than the Court deciding upon a non-technical person. Thus, in the fitness of things, this power of appointment ought to be exercised by NHAI. It is needless to mention that appointment of Arbitrator is to be done within 30 days from the date of receipt of request of the contractor by any PIU/HQ in accordance with the Section 11 (4) (a) of the Arbitration and Conciliation Act, 1996.

3. The provisions of the contract have to be followed in letter and spirit and, therefore, due cognizance needs to be taken of any such letters from the Contractor/Concessionaire.


(P C Grover)
CGM (Legal)

To:

All ROs/PIUs/CMUs

CGMs(T)
CGM(LA)

For Information :

PS to All Members
PS to Chairman