

Presentation By

CA R.C. Bajpai

***Practical Approach
to
Arbitral Proceedings***

ARBITRAL PROCESS SETTING UP

The Arbitral Tribunal

The Arbitrators are appointed according to Arbitration clause/Arbitration Agreement.

As a rule, if the parties do not agree for sole arbitrator then each party appoints one arbitrator and party arbitrators agree upon on presiding arbitrator.

SALIENT FEATURES OF ARBITRAL PROCEDURES

- The Civil Code procedure (1908) and Evidence Act (1872) are not applicable.
- Adherence to the principles of natural justice.
- Parties to the reference are free to agree on the procedure in absence of any agreement as between the parties. The Arbitral Tribunal will finalize the Arbitral Procedure. But it may be noted that such procedure must not be contrary with Section 20, 22, 23, 24, 25 and 26 of the Arbitration and Conciliation Act 1996.

PROBLEM AREAS

The Arbitral Procedures are mostly delayed due To following reasons:-

- Non-Fixation of time for filing claims
- Failure to appoint arbitrator early
- Appointing arbitrator from Non-related field
- Late completion of pleadings
- Holding Arbitration hearings for short durations
- Liberal grant of adjournments
- Payment of fees to arbitrators on daily basis
- Lack of training to arbitrators
- Ignoring stipulations of agreement and
- Challenging award in routine

PROCEDURE BEFORE THE Arbitral Tribunal

Initial stage of the procedure...

- Once a dispute has arisen and the Arbitral Tribunal have been setup, appropriate procedure should be established to an efficient resolution of the dispute, with the consent of the parties.
- An early pre-hearing of the Arbitral Tribunal with the parties is very useful for early settlement and in the meeting they should direct the parties for submission of following:
 - ❖ Statement of Claim;
 - ❖ Statement of Defence for Counter-Claim, if any;
 - ❖ Reply to the Counter-Claim, if any;
 - ❖ Directions to be given with regard to inspection of documents relied and inspection of property.

COMMENCEMENT OF ARBITRAL PROCEEDINGS

PLACE OF ARBITRATION

- The Arbitration proceedings shall be held at such place or places as agreed by parties and consented by Arbitral Tribunal.

LANGUAUGE OF ARBITRATION

- The parties and Arbitrators may decide the language as per there choice, to be used in Arbitral proceedings.
(Preferably English Language.)

STATEMENT OF CLAIM AND DEFENCE

(A) Statement of claim is to Incorporate:

- Facts supporting the claim;
- Points at issue;
- Relief or remedy sought.

(B) The statement of defence has to Incorporate:

- The defence in respect of each of the claim made in the statement of claim,
- Any other information/statement rebutting the claim.
- These requirements are to be complied with by the parties unless the parties have otherwise agreed as to the required elements of the above statements.

COUNTER CLAIM

Respondent may make a Counter-Claim against the Claimant provided Counter-Claim arises in the same transaction as of original claim along with all documents and information and the Claimant may, within directed time submit, a statement in reply to the Counter-Claim. Copy of the reply of the Claimant to the Counter-Claim and all appended documents, if any, shall be sent to the Respondent for information.

TECHNIQUES FOR EFFICIENT ARBITRATION HEARINGS

- **Issue Simplification:**
- **Admission of Evidence:**
- **Controlling the Order and Managing the Testimony:**
- **Expert Witnesses:**
- **Bifurcation of issues:**
- **Receipt of Documentary evidence:**
- **Encouraging Settlement:**
- **Hearing & Written Proceeding**
- The first hearing of the Arbitral Tribunal should be convened within 15 days of the receipt of the complete reply of the respondent the Arbitrators should convince the parties for the proposed time schedule for the proceedings.
- Arguments preferably should be heard within 15 days of the completion of evidence, to be followed by submission of written arguments, if any.
- Adjournments of duly fixed hearing should not be granted except for unavoidable reasons which should be spelt out in the adjournment order.
- A standard format for the **PRELIMINARY** and **LAST** meeting is presented for your convenience, this may be amended as requirement for each case.

Use of IT and Modern Technology:

- It would be useful to have a system in place wherein minutes of the arbitration proceedings, arguments and cross-examinations are simultaneously entered in a processor and draft prints are submitted to parties for approval followed by finalization and signing of the agreement.
- It would be advantageous and economical to conduct arbitration proceedings by way of tele-conferencing and video conferencing, wherever and whenever possible.

COMPLETION OF HEARING

- On completion of hearing the Arbitral Tribunal will give last opportunity if they wish to ADD anything, if not hearing will be completed reference will be closed for making the award. Claimant will be directed to furnish desired stamp paper and the cost of stamps will be borne equally by both the parties.
- The Arbitrator will make the Award within 15 days from the date of completion of hearing.

AWARD

- No award shall be made by the Arbitral Tribunal unless the case of the party applying for arbitration has been brought to the notice of the other party and until after lapse of such specified time within which he has been asked to submit his defence statement.
- Whenever there is more than one arbitrator, the award of the majority shall prevail and be taken as the decision of Arbitral Tribunal. Failing a majority, the Presiding Arbitrator of the Arbitral Tribunal alone shall make the award.
- The Arbitral award shall state its date and place of Arbitration.
- Should the parties arrive at a settlement of the dispute by common agreement is genuine and not to defeat the purpose of any law, the Arbitral Tribunal shall render an award as per agreement of the parties. Otherwise, the Arbitral Tribunal shall make the award on the basis of the documents, evidence, etc. filed before it by the parties.
- The Arbitral Tribunal shall make the award as expeditiously as possible.
- The Arbitral Award shall state the reasons upon which it is based.
- A Standard format for [AWARD](#) is presented just as a guideline and same can be amended as per requirement of each case.

THANK YOU

Presented By:

CA R.C. BAJPAI

CFE (Certified Fraud Examiner)

rc_d4@dataone.in

rcebajpai_co@sify.com

9415052437

915122321184

915122321475