



भारतीय राष्ट्रीय राजमार्ग प्राधिकरण

(सड़क परिवहन और राजमार्ग मंत्रालय, भारत सरकार)

National Highways Authority of India

(Ministry of Road Transport and Highways, Government of India)

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दूरभाष/Phone : 91-11-25074100 / 25074200



NHAI/Policy Guidelines/ Dispute Resolution/ 2024

Policy Circular No.2.1.71/ 2024 dated 01st February, 2024

{E-Office File No.NHAI/Legal &Arb/ReviewHigherFeesAT/2023/01 (Comp. No. 199896)}

Sub: Revision of Fee payable to the Arbitrators in terms of the Arbitration & Conciliation (Amendment) Act, 2015 and in pursuance to the judgement dated 30-08.2022 of Hon'ble Supreme Court of India in the matter i.e. Civil Appeal No. 5880-5879 of 2022 titled as M/s ONGC Vs M/s Afcons Gunanusa JV-reg.

The Arbitration Fee, payable to the Members of Arbitral Tribunal is being revised, and modifying. according to the Fourth Schedule as prescribed in the Arbitration & Conciliation (Amendment) Act, 2015 and in pursuance to the judgement dated 30.08.2022 of Hon'ble Supreme Court of India in the matter i.e. Civil Appeal No. 5880-5879 of 2022 titled as M/s ONGC Vs M/s Afcons Gunanusa, which is as under:-

Sl. No.	Sum in Dispute (Claims /Counter Claims)	Fee Payable to each Arbitrator @ of
1	Up to ₹5,00,000 (Five Lakh)	₹45,000
2	Above ₹5,00,000 (Five Lakh) and up to ₹20,00,000 (Twenty Lakh)	₹45,000 plus 3.5 per cent of the sum in dispute over and above ₹5,00,000 (Five Lakh)
3	Above ₹20,00,000 (Twenty Lakh) and up to ₹1,00,00,000 (One Crore)	₹97,500 plus 3 per cent of the sum in dispute over and above ₹20,00,000 (Twenty Lakh)
4	Above ₹1,00,00,000 (One Crore) and up to ₹10,00,00,000 (Ten Crore)	₹3,37,500 plus 1 per cent of the sum in dispute over and above ₹1,00,00,000 (One Crore)
5	Above ₹10,00,00,000 (Ten Crore) and up to ₹20,00,00,000 (Twenty Crore)	₹12,37,500 plus 0.75 per cent of the sum in dispute over and above ₹10,00,00,000 (Ten Crore)
6	Above ₹20,00,00,000 (Twenty Crore)	₹19,87,500 plus 0.5 per cent of the sum in dispute over and above ₹20,00,00,000 (Twenty Crore), with an overall ceiling of ₹30,00,000 (Thirty Lakh)

In the event, the arbitral tribunal is a Sole Arbitrator, he /she shall be entitled to an additional amount of twenty-five per cent, on the fee payable as per the above.

Contd...2/-

Note 1: Keeping the directions of Hon'ble Supreme Court Judgement dated 30th August 2023, it is necessary to submit that Hon'ble Court noted the following:

- (i) The relationship between the parties and the Arbitrator(s) is contractual in nature upon that relationship, the law superimposes a duty upon the arbitrator(s) to act as an impartial and independent adjudicator. The principal of party autonomy plays a substantial role in determining of arbitrator's fee. We have noted in **Section C.1** of this judgment that party autonomy plays a central role the the determination of arbitrator's fees in the rules of international arbitral institutions and domestic legislation of other countries. Aside from institutional arbitration, arbitrator's fees in ad hoc arbitration are arrived at through negotiations between the parties and the arbitrator(s).
- (ii) Arbitrators do not have the power to unilaterally issue binding and enforceable orders determining their own fees.
- (iii) The term "sum in dispute" in the Fourth Schedule of the Arbitration & Conciliation (Amendment), Act 2015, shall be separately payable for the disputes, related to the claims and counter-claims.
- (iv) The ceiling of ₹30,00,000 in the entry at Serial No 6 of the aforesaid Schedule shall be applicable and binding to the arbitrator(s). Consequently, the highest fee payable shall be ₹30,00,000; and the same shall be borne by both the parties, equally.
- (v) This ceiling is applicable to each individual arbitrator, and not the arbitral tribunal as a whole, where it consists of three or more arbitrators.

Note 2:

- (i) The above fee is payable to each arbitrator, to be shared equally by both the parties to the arbitration i.e. Claimant and Respondent. No separate fee for reading charges, secretarial charges and declaration/publishing of award shall be payable by the parties. Henceforth, the fee shall be regulated as per ibid Policy Circular. Therefore, difference of fee in ongoing /pending Arbitration matters shall be worked out by the respective Divisions /PIUs and difference amount if any will be considered for payment, accordingly, subject to agreement between the parties. In other words, fee already paid shall be adjusted from the prescribed fee shown in the chart and balance amount, if any, shall be paid to the Arbitrator(s).
- (ii) Further, payment of fees payable to the Arbitrator(s) will be released stage-wise as per **Annexure-1** to this order.
- (iii) The expenses such as travelling and lodging etc. will be paid as per **Annexure-2** to this order.
- (iv) In case of Arbitrations under the rules of ICA/ICADR/SAROD/DIAC, the fee and expenses payable to the Arbitrators, the administrative/registration fee payable to the institution, etc. shall be as per prescribed in the rules of ICA/ICADR/SAROD/DIAC.

Contd...3/-



- (v) Now, earlier fee schedules, as **Annexure -3** circulated vide Policy Circular dated 01.06.2017 and Policy Circular dated 22.10.2020 being modify w.e.f. the date of issuance of ibid Policy Circular.

2. This issues with the approval of Competent Authority.

Encl.: As stated above



01/02/24

(Sanjay Kumar Patel)
General Manager (Coord.)

To:

All Officers of NHAI HQ/ ROs/ PIUs/ CMUs/ Site Offices

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Rules for Release of Fee of Arbitrators

The Fees payable to the Arbitrator shall be disbursed stage/phase wise to the Arbitral Tribunal in the following manner:

Sl. No.	Stage of the Case	Fee payable
1	Upon completion of pleadings.	20% of the total fees payable.
2	Upon completion of Claimant's & Respondent's evidence and completion of Claimant's arguments.	20% of the total fees payable.
3	In case Respondent files its Counter Claims, thus after its arguments on Claims & Counter Claims	10% of the total fees payable
4	Upon completion of Claimant's arguments on the Respondent's Counter Claim and rejoinder arguments.	10% of the total fees payable
5	Upon completion of Respondent's rejoinder arguments if any	10% of the total fees payable.
6	Upon submission of written synopsis by the parties, if any	10% of the total fees payable
7	After passing/publishing of Award.	20% of the total fees payable.

Note:

1. It is clarified that the each slab in the above table shall apply only upon conclusion of the relevant stage and in case a particular stage is not concluded, the previous slab shall apply. Further, payment shall be released on the basis of the directions/orders of Ld. Arbitral Tribunal / Ld. Sole Arbitrator in pursuance to the payment table mentioned hereinabove.
2. Termination of proceedings on settlement between the parties - In case of settlement between the parties to a dispute, the Arbitral Tribunal shall be paid minimum of 1/3rd of the total fees if such settlement is arrived.
3. A Substitute Arbitrator, in case appointed shall be entitled to the same fee as payable to the rest of the Members of the Arbitral Tribunal.



'Annexure-2'

Other Miscellaneous Expenses of the Arbitrator's as per actual bills subject to ceiling given below:-

Sl. No.	Particular	Fees
1.	Travelling Expenses	Economy Class (by Air)/ First Class AC (by Train)/ AC Car by road (rates shall be as per prevailing rates, applicable for the Officers of NHAI.)
2.	Lodging and Boarding	₹ 15,000/- per day (Metro Cities) or ₹ 8,000/- per day (in other Cities) or ₹ 5,000/- per day, if any Arbitrator makes own arrangement
3.	Local Travel	₹ 2,000/- per day (on actual bills)
4.	Extra Charges for days other than meeting days (Maximum for 2*1/2 days)	₹ 5,000/- per ½ day for outstation Arbitrator

Note:

1. The Arbitrators shall provide the actual bills in original for reimbursement of Travelling, Lodging and Boarding & Local Travel, TDS as per provisions of I.T. Act, 1961 shall be deducted from the entire bill amount, if applicable.
2. Lodging, Boarding and Traveling expenses shall be allowed only for the arbitrator who is residing 100 Kms away from the venue of the meeting.
3. Delhi, Mumbai, Chennai, Kolkata, Bangalore and Hyderabad shall be considered as Metro Cities.
4. The expenditure, as aforesaid shall be equally shared by both the parties.



Schedule of Expenses and Fee payable to the Arbitrators

Sr. No.	Particulars of fees and expenses	Amount payable per Arbitrator per Case where total sum of all claims or counter-claims in the case before AT is up to Rs. 100 Crore	Amount payable per Arbitrator per Case where total sum of all claims or counter-claims in the case before AT is above Rs. 100 Crore and up to Rs. 500 Crore	Amount payable per Arbitrator per Case where total sum of all claims or counter-claims in the case before AT is above Rs. 500 Crore
1.	Fee	(i) Rs. 25,000/- per day; (ii) 25% extra on fee at (i) above in case of fast-track procedure as per Section-29(B) of A&C Act; or 10% extra on fee at (i) above if award is published within 6 months from date of entering the reference by AT; Alternatively, the Arbitrator may opt for a lump-sum fee of Rs. 5.00 lakh per case including counter-claims.	(i) Rs. 40,000/- per day. (ii) 10% extra on fee at (i) above if award is published within 6 months from date of entering the reference by AT; Alternatively, the Arbitrator may opt for a lump-sum fee of Rs. 8.00 lakh per case including counter-claims.	(i) Rs. 50,000/- per day; (ii) 10% extra on fee at (i) above if award is published within 6 months from date of entering the reference by AT; Alternatively, the Arbitrator may opt for a lump-sum fee of Rs. 10.00 lakh per case including counter-claims.
2.	Reading Charges – One Time	Rs. 25,000/- per arbitrator per case including counter claims.	Rs. 40,000/- per Arbitrator per case including counter claims.	Rs. 50,000 per Arbitrator per case including counter claims
3.	One-time charges for Secretarial Assistance and Incidental Charges (telephone, fax, postage etc.)	Rs. 25,000/- per arbitrator per case	Rs. 25,000/- one-time per arbitrator per case	Rs. 25,000/- one-time per arbitrator per case
4.	One-time Charges for publishing / declaration of the Award	Rs. 40,000/- per arbitrator	Rs. 50,000/- per arbitrator	Rs. 60,000/- per arbitrator
5.	Other Expenses (as per actuals against bills subject to ceiling given below)			
(i)	Traveling Expenses	Economy Class (by air), First Class AC (by train) and AC Car (by road)		
(ii)	Lodging and Boarding	Rs. 15,000/- per day (Metro Cities); or Rs. 8,000/- per day (in other cities); or Rs. 5,000/- per day, if any Arbitrator makes own arrangement		
6.	Local Travel	Rs. 2,000/- per day		
7.	Extra Charges for days other than meeting days (maximum for 2x½ days)	Rs. 5,000/- per ½ day for outstation Arbitrator		

Note	1. Lodging, boarding and travelling expenses shall be allowed only for the arbitrator who is residing 100 kms. away from the venue of the meeting. 2. Delhi, Mumbai, Chennai, Kolkata, Bengaluru and Hyderabad shall be considered as Metro Cities.
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Additional Notes:

- (i) In case of arbitrations under SAROD Rules of Arbitration, SAROD may consider to revise its order dated 08.01.2016 as per the above schedule. Thereafter only, the above schedule shall be applicable subject to modifications made by SAROD, if any.
- (ii) The above schedule of fees and expenses shall be applicable to all meetings of ATs being held on or after the date of issue of this Circular where the fee structure of NHAI has been followed by the Arbitral Tribunals on its own or in pursuance of the provision in original agreement or Supplementary Agreement between the parties.
- (iii) In case of future bidding/ contracts, the fee structure as may be determined by the NHAI from time to time, may be included as part of the Bidding/ Contract Documents and the acceptance of the above fee structure by the Contractors/ Concessionaires/ Consultants may be kept as a pre-condition for signing the contract.





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NHAI/Policy Guidelines/Legal/2020

Policy Circular No.2.1.44 dated 22.10.2020

{Decision taken on E-Office File Comp. No.5693}

Sub: Revision of Fee payable to the Arbitrators in terms of the Arbitration & Conciliation (Amendment) Act, 2015 in the Contractual Disputes.

Para 3 of Policy Circular/SoP dated 01.06.2017, regarding schedule of fee mentioned in the Annexure-3, has been modified/amended with the following schedule as per 437-Minutes of EC decision dated 11/09/2020:

Sum in dispute	Model fee
Up to Rs. 5,00,000 (Five Lakh)	Rs. 45,000
Above Rs 5,00,000 (Five Lakh) and up to Rs 20,00,000 (Twenty Lakh)	Rs 45,000 plus 3.5 per cent of the claim amount over and above Rs 5,00,000 (Five Lakh)
Above Rs. 20,00,000 (Twenty Lakh) (and up to Rs 1,00,00,000 (One Crore)	Rs 97,500 plus 3 per cent of the claim amount over and above Rs 20,00,000 (Twenty Lakh)
Above Rs 1,00,00,000 (One Crore) and up to Rs 10,00,00,000 (Ten Crore)	Rs 3,37,500 plus 1 per cent of the claim amount over and above Rs 1,00,00,000 (One Crore)
Above 10,00,00,000 (Ten Crore) and up To Rs 20,00,00,000 (Twenty Crore)	Rs 12,37,500 plus 0.75 per cent of the claim amount over and above Rs 10,00,00,000 (Ten Crore)
Above Rs 20,00,00,000 (Twenty Crore)	Rs 19,87,500 plus 0.5 per cent of the claim amount over and above Rs 20,00,00,000 (Twenty Crore) with a ceiling of Rs 30,00,000 (Thirty Lakh)

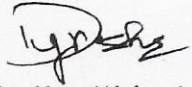
Note:- In the event, the arbitral tribunal is a sole arbitrator, he shall be entitled to an additional amount of twenty-five per cent on the fee payable as per the table set out above.

2. The above fee is payable to each arbitrator, to be shared equally by both the parties to the arbitration i.e. Claimant and Respondent, which is inclusive of fee of arbitrators for Claim & Counter Claims i.e. total "Sum in dispute", reading charges, declaration/publishing of award. Further, the fee of AT was being regulated as per Policy Circular of 01.06.2017 and henceforth the fee shall be regulated as per ibid OM. Therefore, difference of fee in ongoing Arbitration matters shall be worked out by the respective Divs. /PLUs and difference of amount shall be paid accordingly. In other words, fee already paid shall be adjusted from the prescribed fee shown in the chart and balance amount, if any, shall be paid to the Arbitrator(s).

3. The expenses such as stay and travelling charges will be paid as per Policy Guidelines/ Circular No. 2.1.22/2017 dated 01.06.2017.

Contd to Pg-2

4. Accordingly the Policy Circular dated 01.06.2017 on the mentioned subject is modified to the above extant.
5. This issue with the approval of Competent Authority.


(Digvijay Mishra)
CGM (Coord)

To,

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