

**RULES**  
OF  
**ARBITRATION**  
OF  
**THE BENGAL CHAMBER OF COMMERCE**

### **RECOMMENDED ARBITRATION CLAUSE**

The Bengal Chambers of Commerce recommends the following arbitration clause in the contracts:

"Any dispute or difference arising out of or touching or concerning this contract including its construction, scope, implication, performance, effect, validity, breach thereof or for determining any claim, right or liability of the parties hereunder shall be referred to arbitration of The Bengal Chambers of Commerce & Industry in accordance with its Rules of Arbitration and subject to the provisions of Arbitration & Conciliation Act, 1996 or any statutory amendment thereof from time to time in force."

Rules of Arbitration

### **APPLICATION OF RULES**

#### **RULE - 1**

(i) These rules may be called the "Rules of Arbitration of The Bengal Chambers of Commerce & Industry."

(ii) These rules or any amendment thereof, for the time being in force, shall apply to arbitration of disputes or differences arising out of or relating to any contractual or legal or commercial relationship where the parties have agreed to seek an alternative dispute resolution mechanism for adjudication of their disputes by arbitration of The Bengal Chambers of Commerce notwithstanding any agreement of the parties as to procedure of arbitration.

### **DEFINITIONS**

## **RULE 2**

In these rules, the following words shall have the following meanings:

(i) "Arbitral Tribunal" means the Tribunal of arbitrator or arbitrators appointed by the Chambers to determine a dispute or difference.

(ii) "Arbitral Award" includes an interim award.

(iii) "Arbitration Committee" means the Committee appointed by the Chamber for regulating the arbitration mechanism contemplated under these rules.

(iv) "Chamber" means The Bengal Chamber of Commerce & Industry.

(v) "Claimant" is one or more individual(s) or body corporate(s) or any other legal entity/ies seeking resolution of any dispute or difference.

(vi) "International Commercial Arbitration" means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is –

- (a) an individual who is a national of, or habitually resident in, any country other than India; or
- (b) a body corporate which is incorporated in or has its principal place of business in any country other than India; or
- (c) a company or an association or a body of individuals whose central management and control is exercised in any country other than India, or
- (d) the Government of a foreign country.

(vii) "Panel" means the Panel of Arbitrators maintained by the Chamber.

(viii) "Registrar" means the Registrar for the time being appointed by the Arbitration Committee and may include such other person as the Chamber may nominate for carrying out the duties of the Registrar under these rules.

(ix) "Respondent" is one or more individual(s) or body corporate(s) or any other legal entity/ies against whom a claim is asserted or against whom a reference is made.

(xiii) "Rules" means the Rules of Arbitration of The Bengal Chamber of Commerce & Industry.

## **ARBITRATION COMMITTEE**

### **RULE 3**

(a) The Chamber shall constitute an Arbitration Committee for performing the functions prescribed under these Rules. The Committee shall consist of the President of the Chamber, who shall be the ex officio Chairman of the Committee, three other members from the Chamber Committee and the Director General of the Chamber.

(b) All decisions of the Arbitration Committee shall be taken by majority and in case of a tie the Chairman shall have a casting vote.

(c) The Arbitration Committee shall hold office for a term of one year and co-terminus with the Chamber Committee by which it is constituted.

## **REGISTRAR**

### **RULE 4**

(a) The Arbitration Committee shall appoint the Director General of the Chamber or any other person of their choice as Registrar under these rules. The Registrar shall be in full time employment with the Chamber and governed by its standing orders and service conditions.

(b) The Registrar shall receive request for arbitration, receive payment of fees, appoint, in consultation with the Arbitration Committee, the Arbitral Tribunal. The Registrar shall also receive all communications made to the Arbitral Tribunal by the parties and communicate to them the orders and directions of the Arbitral Tribunal, keep a register of request for arbitration and of awards made by the Arbitral Tribunal, keep such other books or memoranda and make such other records or returns as the Arbitration Committee shall from time to time require and generally carry out the directions of an Arbitral Tribunal so constituted under these rules and take such

other steps as may be necessary to assist such Arbitral Tribunal in the carrying out of its functions. Every communication issued by the Arbitration Committee or by its order shall be through the hand of the Registrar.

(c) The Registrar may delegate to any officer of the Chamber, to discharge such of the functions and administrative duties of the Registrar as are deemed proper and necessary from time to time, with reference to a particular case or cases.

### **PANEL OF ARBITRATORS**

#### **Rule 5**

(a) A Panel of Arbitrators shall be appointed by the Arbitration Committee from –

- (i) The legal fraternity including practising lawyers and retired Judges;
- (ii) Entrepreneurs and corporate professionals in business, professions and industry;
- (iii) Former civil servants and persons with experience of holding authoritative positions under the Central or State Governments in India;
- (iv) Persons based in India having achieved mark of significance in any vocation or trade;
- (v) Persons having specialised qualifications or outstanding credentials.

(b) The Arbitration Committee may at any time add the name of any person to the Panel of Arbitrators or delete the name of any person from the panel.

(c) The Registrar shall prepare and maintain the Panel of Arbitrators together with comprehensive information about their qualification, expertise and experience.

(d) A consent in writing of persons so selected should be obtained before placing his or her name in the Panel of Arbitrators. The person so agreeing shall sign an undertaking in favour of the Chamber to

conduct the proceedings, if assigned to him or her by the Chamber with utmost integrity, fairness, judicious approach, best intellect and application of mind committed to the interests of justice, law and equity.

(e) The Arbitration Tribunal shall be formed out of the Panel of Arbitrators comprised of one or odd number of members depending on the nature of the dispute and the amount involved.

## **INITIATION OF ARBITRATION**

### **RULE 6**

(a) Any Party desirous of having recourse to arbitration (Claimant) shall give a request for arbitration to the Registrar and serve a copy of the same to the Respondent(s).

(b) The request for arbitration to the Registrar shall be accompanied by-

(i) The names and full addresses of the parties to the dispute.

(ii) Brief description of the nature and circumstances of the dispute giving rise to the claim.

(iii) The amount of claim in principal and interest. If the reference does not seek recovery of money, the reliefs shall be valued with the best reasonable assessment of the party making the reference. The valuation made at this stage shall be one of the relevant factors to be considered by the Arbitral Tribunal while passing final award.

(iv) The original or duly certified copies of the arbitration agreement, any contract or agreement out of or in connection with which the dispute has arisen.

(v) Registration fee as prescribed in the Schedule of Fees appended hereto.

(vi) If any Court makes an order directing that an arbitration proceeding be held by the Chamber, the order of the Court or a certified copy thereof.

(vii) The Claim Statement of the Claimant as well as all documents annexed or relied on thereto with sufficient number of certified true copies thereof, both in soft and hard copy form to provide one copy for each party, plus one for each arbitrator and one for the Registrar.

(c) The Arbitration shall be deemed to have commenced on the day the request for arbitration along with the registration fee is received by the office of the Registrar.

(d) On receipt of a request for arbitration, the Registrar shall, within seven (7) days, circulate the same amongst members of the Arbitration Committee who shall have absolute discretion to accept or reject the said request. The Arbitration Committee is not bound to give reasons for the exercise of its discretion.

(d) Before deciding on the acceptability of a request for arbitration, the Arbitration Committee may ask the claimant for further information and particulars of the dispute and/or its claims.

(e) If any information or particulars regarding the arbitration agreement furnished by the claimant with the request for arbitration is found to be incorrect or false, at any time subsequently, the Arbitration Committee shall have the power to reject the request for arbitration or rescind any step taken in furtherance of the same.

(f) The registration fee will not be refunded under any circumstances and will become the property of the Chamber.

## **CONSTITUTION OF ARBITRAL TRIBUNAL**

### **RULE 7**

(a) On receipt of the request for arbitration, the Registrar shall take necessary steps to have the Arbitral Tribunal constituted for the adjudication of the dispute or difference as provided hereunder in consultation with the Arbitration Committee.

(b) Where there are two or more requests for arbitration and the issue involved in the dispute arises out of same transactions, the

Registrar may, if he thinks proper to do so and with the consent of the Parties, fix the hearings of the disputes jointly or refer the requests to the same Tribunal. The awards, however, shall be given separately in each case.

(c) Every arbitrator must be and remain independent of the parties involved in the arbitration.

(d) Before appointment or confirmation, a prospective arbitrator shall sign a statement of independence and disclose in writing to the Registrar any facts or circumstances which might be of such a nature as to call into question the arbitrator's independence in the eyes of the parties. The registrar shall provide such information to the parties in writing and fix a time limit for any comments from them.

(e) An arbitrator shall immediately disclose in writing to the Registrar and to the parties any facts or circumstances of a similar nature which may arise during the arbitration.

(f) The decision of the Arbitration Committee as to the appointment, confirmation, challenge or replacement of an arbitrator shall be final and the reasons for such decision shall not be communicated.

## **RULE 8**

(a) The disputes or differences shall be decided by a sole arbitrator or by three arbitrators.

(b) Where the parties have not agreed upon the number of arbitrators the Registrar shall appoint a sole arbitrator, save where it appears to the Registrar that the dispute is such as to warrant the appointment of three arbitrators as provided hereafter.

(c) Where the claim including interest upto the date of request for arbitration does not exceed Rs. One crore, the Arbitration Tribunal shall be formed of a Sole Arbitrator and where it exceeds Rs. One crore, the Arbitration Tribunal shall be formed of three Arbitrators.

(d) Where the parties have agreed that the dispute shall be settled by a sole arbitrator, they may, by agreement, nominate the sole arbitrator for confirmation. If the parties fail to nominate a sole arbitrator within 30 days from the date when the Claimant's Request for Arbitration has been received by the other party, or within such



additional time as may be allowed by the Registrar, the sole arbitrator shall be appointed by the Registrar.

(e) Where the Arbitral Tribunal is to be formed of three Arbitrators, the Registrar, in consultation with the Arbitration Committee, shall appoint two of them and the Presiding Arbitrator shall be appointed by the two appointed Arbitrators.

#### **RULE 9**

In confirming or appointing, arbitrators, the Registrar shall consider the prospective arbitrator's availability and ability to conduct the arbitration in accordance with these Rules. The same shall apply where the Registrar confirms arbitrators pursuant to Rule 8(b) and (e).

#### **RULE 10**

(a) A challenge of an arbitrator, whether for an alleged lack of independence or otherwise, shall be made by the submission to the Registrar of a written statement specifying the facts and circumstances on which the challenge is based.

(b) For a challenge to be admissible, it must be sent by a party either within 30 days from receipt by that party of the notification of the appointment or confirmation of the Arbitral Tribunal, or within 30 days from the date when the party making the challenge was informed of the facts and circumstances on which the challenge is based, if such date is subsequent to the receipt of such notification.

(c) The Arbitral Tribunal shall decide on the admissibility, and, at the same time, if necessary, on the merits of a challenge after the Registrar has afforded an opportunity for the arbitrator concerned, the other party or parties and any other members of the Arbitral Tribunal, to comment in writing within a suitable period of time. Such comments shall be communicated to the parties and to the arbitrators.

#### **RULE 12**

(a) An arbitrator shall be replaced upon his death, incapacitation, upon the acceptance by the Registrar of the arbitrator's resignation, upon acceptance by the Arbitral Tribunal of a challenge or upon the request of all the parties.

(b) An arbitrator shall also be replaced on the Registrar's own initiative when it decides that he is prevented *de jure or de facto* from fulfilling his functions, or that he is not fulfilling his function in accordance with the Rules or within the prescribed time limits.

(c) When, on the basis of information that has come to its attention, the Registrar considers applying Rule 12(b), he shall decide on the matter after the arbitrator concerned, the parties and any other members of the Arbitral Tribunal have had an opportunity to comment in writing within a suitable period of time. Such comments shall be communicated to the parties and to the arbitrators.

## **DEFENCE STATEMENT**

### **RULE 13**

The Respondent(s) shall, within such time as may be granted by the Arbitral Tribunal or within such extended time, file with the Registrar along with proof of service thereof on the claimant, its Defence Statement setting out its case accompanied by documents referred to or relied on therein with sufficient number of certified true copies thereof, both in soft and hard copy form, to provide one copy for each arbitrator and one for the Registrar.

## **COUNTER-CLAIM AND REPLY STATEMENT**

### **RULE 14**

The Respondent(s) may make a counter-claim against the Claimant provided the counter-claim arises under the same transaction as the original claim. He must submit the counter-claim with full details supported by all documents and information as in the case of the Claim Statement within the period laid down for the Defence Statement and the Claimant may within twenty-one days of the notification of the counter claim or within such extended time, submit a Reply Statement to the counter-claim with the Registrar along with proof of service thereof on the Respondent(s). The Arbitral Tribunal appointed to adjudicate upon the original claim shall also adjudicate upon the counter-claim and there will be no change in the number of

members of Arbitral Tribunal already constituted on the basis of original claim.

## **AMENDMENT OF PLEADINGS**

### **RULE 15**

Amendment to the Claim Statement, Defence Statement, Counter-claim or Reply Statement submitted to the Arbitral Tribunal must be made by way of a formal application by the Party so desiring setting out the exact nature and form of amendment sought and grounds therefor. The Arbitral Tribunal will decide whether such amendments should be allowed or not. The Administrative fee and Arbitrator's fee (for each Arbitrator) shall get revised to the extent of increase for such additional claims/counter-claims. The party making such additional claim/counter-claim shall deposit the entire fees payable in respect of such increase of additional claim as set out in the schedule of fees on the amendment being allowed.

## **DEPOSITS**

### **RULE 16**

(a) The Registrar shall, before commencement of Arbitral proceedings, require the Parties or any one of them to pay in advance or in one or more installments such sums of money, as he deems necessary with the Chamber to defray expenses of the arbitration including the administrative charges and arbitrator's fee. As a general rule, the payments shall be called for in equal shares from the Claimant(s) and the Respondent(s). The Arbitral Tribunal may, during the course of the arbitration proceedings or in the arbitration award, require further sums to be paid by the Parties or any one of them to meet the expenses of the arbitration.

(b) When one of the Parties neglects or refuses to make the deposit, the Registrar or the Arbitral Tribunal, as the case may be, may require such payment whether in relation to a claim or a counter-claim, to be made by the other Party to the dispute (Claimant or Respondent, as the case may be). Should the whole or part of the payment be not made by the Parties or any one of them, the Registrar shall inform the Parties or the Party concerned that the claim or counterclaim, as the case may be, will not be the subject matter of the reference. The Arbitral Tribunal shall proceed only in respect of those claims or counter-claims for which the payments have been made to the

Chamber and otherwise may order the suspension or termination of the arbitral proceedings.

(c) All payments shall be made to the Chamber and no payment shall be released to the arbitrators directly by the parties. The payment made shall be taken into account by the Arbitral Tribunal in apportioning the cost while making the award. Any payment made in excess shall be refunded to such of parties as the Arbitral Tribunal may direct. The Chamber shall have a lien for the arbitral award on any unpaid cost of the arbitration.

## **FEES AND EXPENSES**

### **RULE 17**

(a) The Arbitral Tribunal shall be entitled to allow fees and expenses of witnesses or any expert appointed by the Arbitral Tribunal, expenses connected with the selection and carriage of sample and examination of goods, cost of proceedings in respect of any matter arising out of the arbitration incurred by the Arbitration Tribunal, and any other incidental expenses and charges in connection with or arising out of the reference or award as the Arbitration Tribunal shall, in its absolute discretion, think fit.

(b) The costs of the reference and the award including charges, fees and other expenses shall be in the discretion of the Arbitral Tribunal, which may direct to and by whom, and in what proportion, such charges, fees and other expenses and any part thereof shall be borne and paid, and may fix and settle the amount of costs to be so paid or any part thereof and may award costs to be paid as between attorney and client. In the event, any administrative fees and expenses are due to the Chamber, the Arbitral Tribunal may award them in favour of the Chamber.

(c) The fees, costs and expenses incidental to the reference and the award shall include the following :

(1) Registration Fee :

A registration fee Rs.2,500/- shall be paid along with the request for arbitration. The registration fee will not be refunded and becomes the property of the Chamber.

(2) Administrative Fee and Arbitrator's Fee

- (i) The Administrative fee (of Chamber) and Arbitrator's fee (for each arbitrator) will be fixed separately with regard to the amount in dispute in each case, as under :

Amount in Dispute	Arbitrator's Fee	Administrative Fee
Upto Rs.5 lacs (Rs.500,000)	Rs.30,000/-	Rs.15,000/-
From Rs.5 lac one to Rs.25 lac (Rs.500,001 to 2,500,000)	Rs.30,000/- plus Rs.1,500 per lac or part thereof subject to a ceiling of Rs.60,000/-	Rs.15,000/- plus Rs.750/- per lac or part thereof subject to a ceiling of Rs.30,000/-
From Rs.25 lac one to Rs.1 Crore (Rs.2,500,001 to Rs.10,000,000)	Rs.60,000/- plus Rs.1,200 per lac or part thereof subject to a ceiling of Rs.1,50,000/-	Rs.30,000/- plus Rs.600/- per lac or part thereof subject to a ceiling of Rs.75,000/-
From Rs.1 Crore one to Rs.5 Crore (Rs.10,000,001 to Rs.50,000,000)	Rs.1,50,000/- plus Rs.22,500 per crore or part thereof subject to a ceiling of Rs.2,40,000/-	Rs.75,000/- plus Rs.11,250/- per crore or part thereof subject to a ceiling of Rs.1,20,000/-
From Rs.5 crore one to Rs.10 Crore (Rs.50,000,001 to Rs.100,000,000)	Rs.2,40,000/- plus Rs.15,000 per crore or part thereof subject to a ceiling of	Rs.1,20,000/- plus Rs.8,000/- per crore or part thereof subject to a ceiling of

	Rs.3,15,000/-	Rs.1,60,000/-
Over Rs.10 crore (Rs.1,00,000,000)	Rs.3,15,000/- plus Rs.12,000 per crore or part thereof.	Rs.1,60,000/- plus Rs.6,000/- per crore or part thereof.

(ii) The Chamber will be entitled to receive a Special Fee of Rs.500/- per hearing for providing facilities of hearing rooms for arbitration hearings and secretarial assistance etc. at the arbitration hearing.

(3) Notwithstanding the provisions in Sub-Rule (2) of this Rule, the Arbitration Committee may prescribe the Arbitrator's fees and the Administrative fees of the Chamber at a figure higher than those prescribed in the said Sub-Rule, if in the exceptional circumstances of the case this appears to be necessary.

(5) Notwithstanding the provision in Sub-Rule (2) hereinabove, in arbitration cases to which Rule 7(b) applies, the Arbitrator's fee and the Administrative fee of the Chamber will be fixed by computing the fee applicable to larger claim in addition to 60% of the applicable fees of all claims being tried jointly. Provided that the Arbitration Committee will have power to prescribe the Arbitrator's Fee and Administrative Fee under this Sub-Rule in any other manner, having regard to the nature and facts of the matters under reference.

(d) The arbitrator may be paid an amount of Rs.500/- towards local conveyance for attending each arbitration hearing in the city of his residence. In respect of joint trial, the hearing will be treated as one irrespective of the number of cases. Any traveling and other expenses incurred by the arbitrator or the Registrar for attending the arbitration hearings in a city other than the place of residence, shall also be reimbursed to him as provided hereinafter. The above expenses shall form part of the arbitration costs.

(e) An arbitrator who has to travel shall be paid traveling expenses by air or rail (air conditioned wherever available) or car (when neither air nor rail transport is available) at actuals. In addition, he may be paid out-of-pocket expenses at actuals for boarding, lodging and local transport subject to maximum of Rs.15,000/- per day in metropolitan

towns, Rs.5000/- in class A cities and Rs.2,500/- in other cities. An arbitrator who makes his own arrangements for boarding, lodging, local transport etc. may be paid out of pocket expenses at the rate of Rs.1500/- per day, without production of vouchers. The limits for stay of the officials of the Chamber will be of those applicable to them under the Chamber's service rules.

(f) The amount of the claim shall be stated in Rupee. If the amount is stated in a currency other than the rupee, it shall be converted into Rupees, at the current official rate of exchange.

(g) Where the sum under dispute is not stated or in arbitration proceedings where the relief claimed is other than a money claim, the Registrar and the Arbitral Tribunal under Rule 17(c), may require such payment as may be deemed necessary to be paid by such of the parties as may be required subject to later adjustment.

(h) The Arbitration Committee shall have power to modify the fees and charges from time to time.

### **SUBMISSION OF THE CASE TO THE ARBITRAL TRIBUNAL**

#### **RULE 18**

(a) The Registrar shall send copies of all papers relating to arbitration such as Claim Statement, Defence Statement, Counter-claims, Reply Statement or other documents received from the parties to the dispute to the Arbitrator/Arbitrators constituting the Arbitral Tribunal under Rule 7 with a request to proceed with the arbitration and the Arbitral Tribunal shall be deemed to have entered on the reference on the day on which Claim Statement, Defence Statement, Counter-claims, Reply Statement, documents, etc. have been dispatched to the Arbitrator/Arbitrators. Intimation shall be given to the Parties of the day on which the Arbitral Tribunal is deemed to have entered upon the reference.

(b) If the Claimant does not file all the requisite documents, papers, etc. or does not deposit the appropriate Fees as per the Rules after having been given due opportunity for the purpose by the Registrar or the Arbitral Tribunal, the Registrar or the Arbitral Tribunal may dismiss/close the case for non-prosecution by the Claimant.

(c) Similarly, if the Respondent fails to produce any requisite document, papers including the Defence Statement or information or

fails to deposit administrative fees, or arbitrator's fees etc. after having been given due opportunity for the purpose by the Registrar or the Arbitral Tribunal, the Registrar or the Arbitral Tribunal may proceed further with the arbitration proceedings as per the Rules, notwithstanding such failure or refusal by the Respondent.

## **COMMUNICATIONS TO AND FROM THE REGISTRAR**

### **RULE 19**

All applications which the parties desire to make to the Arbitral Tribunal and all notices to be given to the Parties before or during the course of arbitration or otherwise in relation thereto shall be made through and sent by the Registrar who shall communicate the orders and directions of the Arbitral Tribunal thereon to the Parties.

## **ADJOURNMENTS**

### **RULE 20**

(a) There shall be no adjournment granted by the Arbitral Tribunal unless a request in writing is made by any party so desiring at least 3 working days prior to the date fixed for arbitration. Where any arbitrator or party has to ordinarily travel from outside the city where the venue of arbitration is fixed, such notice must be served at least 3 days prior to the date when such arbitrator or party is scheduled to commence the travel for the arbitration. On receipt of such request the Registrar shall forthwith inform the arbitrators and all other parties.

(b) The Arbitrators shall, following mutual discussion, intimate to the Registrar their decision on the request for adjournment. If the adjournment is granted, the following date for arbitration will be informed simultaneously.

(c) A party may still be entitled to ask for adjournment subject to bearing of all costs and expenses related to the concerned arbitration sitting and paying such costs to other parties as the arbitrators may direct as a pre-condition to grant of adjournment.

## **ARBITRAL TRIBUNAL TO DECIDE ON PROCEDURE**



## **RULE 21**

The proceedings before the Arbitral Tribunal shall be governed by these Rules and where these Rules are silent, the Arbitral Tribunal shall be competent to decide and regulate the procedure of the arbitration and its decision on any question relating to interpretation of these rules or any procedural matter there under shall be final and binding on the parties.

## **JURISDICTION OF THE ARBITRAL TRIBUNAL**

### **RULE 22**

Notwithstanding the terms of any appointment of an arbitrator, unless the parties otherwise agree the jurisdiction of the tribunal shall extend to determining all disputes arising under or in connection with the transaction the subject of the reference, and each party shall have the right before the tribunal makes its award (or its last award, if more than one is made in a reference) to refer to the tribunal for determination any further dispute(s) arising subsequently to the commencement of the arbitral proceedings.

### **RULE 23**

The Arbitral Tribunal appointed under these rules shall be competent to decide on its own jurisdiction. Where the jurisdiction or applicability of the arbitration agreement is challenged the same shall be decided as preliminary issue.

## **PLACE OF ARBITRATION**

### **RULE 24**

The place or venue of arbitration shall be India. The Arbitration proceedings shall be held at such place or places in India as the Arbitral Tribunal may determine having regard to the convenience of the Arbitrators and the Parties. In a case in which one or both the Parties are from overseas, the Arbitration proceedings may also be held at any place outside India at the discretion of the Arbitral Tribunal.

## **FAILURE OF ANY PARTY TO APPEAR**

### **Rule 25**

If any party refuses or fails to take part in the arbitration proceedings in spite of being given a peremptory notice, the Arbitral Tribunal may proceed with the arbitration notwithstanding such refusal or absence.

## **SUMMARY ARBITRATION**

### **RULE 26**

(a) The parties may opt for conciliation and request the Arbitral Tribunal before the commencement of the arbitration proceedings, unless they have already agreed otherwise, to settle their dispute through conciliation as per Rules of conciliation of the Chamber.

(b) The Parties may opt for Summary Arbitration and request the Arbitral Tribunal, before the commencement of the arbitration proceedings, to decide the reference in a summary manner, according to the procedure laid down herein.

(c) The Arbitral Tribunal will be authorised to decide the dispute on the written pleadings, documents and written submissions filed by the Parties without any oral hearing.

(d) The Arbitral Tribunal shall have power to call for any further information/clarification from the parties in addition to the pleading and documents filed by them.

(e) An oral hearing may be held if both the parties make a joint request or if the Arbitral Tribunal considers an oral hearing is necessary in any particular case.

(f) If an oral hearing is held, the Arbitral Tribunal may dispense with any technical formalities and adopt such procedure, as it deems appropriate and necessary for economic and expeditious disposal of the case.

(g) The Summary Arbitration hearings will go on as far as possible on day-to-day basis from 10.30 a.m. to 4.30 p.m. The Arbitral Tribunal shall not ordinarily adjourn a hearing at the request of any

party, except where the circumstances are beyond the control of the party and the Arbitral Tribunal is satisfied that reasons and circumstances for the adjournment are justified. While granting an adjournment, the Arbitral Tribunal may make such orders regarding payment of costs by one or both of the parties, as it deems fit and reasonable.

#### **RULE 27**

At a hearing, a party shall be entitled to appear through counsel or duly authorised representative or personally. However, where the dispute is purely of a commercial nature, the parties shall have no right to be represented by lawyers except where, having regard to the nature or complexity of the dispute, the Arbitral Tribunal considers it necessary in the interest of justice that the parties should be allowed to be represented by counsel.

#### **RULE 28**

The parties shall do all acts necessary to enable the Arbitral Tribunal to make an award expeditiously and shall not do or cause or allow to be done, any act which will delay the proceedings or prevent Arbitral Tribunal from making an award expeditiously, and if any party does cause or allow to be done any such act, that party shall pay such costs as the Arbitral Tribunal deems reasonable.

### **EXPERT'S ADVICE**

#### **RULE 29**

The arbitral tribunal may at its discretion at any time or times before making the final award and at the expense of the parties concerned, consult any person having special knowledge relating to the particular industry, commodity, produce or branch of trade concerned in the reference or any expert or qualified accountant and may also at the like expenses of the Parties, consult counsel or advocates upon any technical question of law, evidence, practice or procedure arising in the course of the reference. If the parties agree, the Arbitral Tribunal may, at the expense of the Parties, appoint any expert, accountant, or lawyers to attend hearings as an assessor and take into account the advice of such assessor.

## WITNESS ACTION

### RULE 30

(a) If the Arbitral Tribunal shall at any stage of an arbitration be of the opinion that it is desirable to examine either party or any witness who may not be willing to give evidence before it or may be resident outside the city of Kolkata, the Arbitration Tribunal may direct the parties to apply to the Civil Court having jurisdiction in that behalf to issue process to such party or witness, including the issue of summons and commission for the examination of witnesses and subpoena to produce documents and may at its discretion require one or both the parties to deposit such fee or fees to cover the cost of any such proceeding as the Arbitral Tribunal shall consider necessary and in the event of any party who has been called on to deposit such fees failing to do so may deal with the manner in any way the Arbitral Tribunal may think just.

(b) The Parties to the reference and any witness on their behalf shall, subject to the provisions of any law for the time being in force :

(i) submit to be cross examined or re-examined by the Arbitral Tribunal on oath or affirmation in relation to the matters in dispute. All examinations in chief would be on the basis of evidence on affidavit.

(ii) produce before the Arbitral Tribunal all books, deeds, papers, accounts, writings and documents in their possession or power respectively which may be required or called for by the Arbitral Tribunal.

(iii) comply with the requirements of the Arbitral tribunal as to the production or selection of samples, and

(iv) generally do all other things which, during the pendency of the reference, the Arbitral Tribunal may require.

(c) The Arbitral Tribunal shall administer oath or affirmation to the Parties or witnesses appearing and giving evidence.

(d) The Registrar shall make necessary arrangements for a stenographic or audio-visual record of evidence whenever a Party requires such record. The cost of the stenographic or audio-visual

record and all transcripts thereof, if any, shall form part of the costs of the reference.

### **POWER OF ARBITRATION TRIBUNAL**

#### **RULE 31**

The Arbitral Tribunal may -

- (a) make any arbitral award conditional or in the alternative;
- (b) correct in any arbitral award any clerical mistake or error arising from or incidental to any slip or omission;
- (c) administer to the Parties to the arbitration such interrogatories as it may consider necessary;
- (d) decide all objections to its jurisdiction including any objection regarding the existence or validity of the arbitration clause or the arbitration agreement;
- (e) decide the law governing :-
  - (i) the contract or the matter in dispute,
  - (ii) the arbitration agreement, and
  - (iii) the arbitration procedure.
- (f) issue such orders or directions as it may deem necessary for safeguarding, interim custody, preservation, protection, storage, sale or disposal of the whole or part of the subject matter of the dispute or for its inspection or sampling without prejudice to the rights of the Parties or the final determination of the dispute.
- (g) award interest including pendente lite and further interest.
- (h) dismiss the reference or claim :
  - (i) if the claimant does not prosecute the arbitration proceedings or file the papers within the time granted.
  - (ii) or neglects or refuses to pay the dues or deposits ordered to be paid by the Arbitral Tribunal or the Registrar.

- (i) make an ex parte arbitral award :
  - (i) if the respondent neglects or refuses to appear or make is defence or fails to file the papers within the time granted.
  - (ii) neglects or refuses to pay the dues or deposits ordered to be paid by the Arbitral Tribunal or the Registrar.

### **LANGUAGE**

#### **RULE 32**

The language of the arbitration proceedings shall be English unless otherwise agreed by the parties. If any document filed by a Party is in a language other than English, the Party filing such document shall simultaneously furnish an English translation of the document. The Registrar may make arrangements for the service of an interpreter at the request of one or more of the parties and costs thereof shall form part of the costs of the reference.

### **WAIVER OF RULES**

#### **RULE 33**

Any party who proceeds with the arbitration with the knowledge that any provision or requirement of these rules has not been complied with and who fails to state his objection thereto in writing, shall be deemed to have waived his right to object.

### **RETURN OF DOCUMENTS**

#### **RULE 34**

Unless required to be filed in a Court of law, the Arbitral Tribunal shall have full discretion to retain/to return all books, documents or papers produced before it and may direct at any time that the books, documents or papers produced before it or any of them may be returned to the parties producing them on such terms and conditions as the Arbitral Tribunal may impose.

## **ARBITRAL AWARD**

### **RULE 35**

(a) No arbitral award shall be made by the Arbitral Tribunal unless the case of the party making request for arbitration has been brought to the notice of the other party and until after the lapse of such specified time within which he has been asked to submit his Defence Statement under these Rules.

(b) Whenever there is more than one arbitrator, the arbitral award of the majority shall prevail and be taken as the decision of Arbitral Tribunal.

(c) Should the Parties arrive at a settlement of the dispute by common agreement before the Arbitral Tribunal and the Arbitral Tribunal is satisfied that such agreement is genuine and not to defeat the purpose of any law, the Arbitral Tribunal shall render an arbitral award as per agreement of the Parties. Otherwise, the Arbitral Tribunal shall make the arbitral award on the basis of the documents, evidence, etc. filed before it by the Parties.

(d) The Arbitral Tribunal shall make the arbitral award as expeditiously as possible, preferably within six months from the date of entering upon reference subject to a maximum limit of two years. If necessary, the maximum limit of two years for making the arbitral award may be extended by agreement between the parties to the dispute or by the Arbitration Committee.

(e) The arbitral award shall state the reasons upon which it is based, unless:

- (i) the parties have agreed that no reasons are to be given, or
- (ii) the arbitral award is an arbitral award on agreed terms.

(f) The arbitral award shall state its date and the place of arbitration and the arbitral award shall be deemed to have been made at that place. It shall be in such number of copies as are required for circulation amongst the parties and for record of the Registrar.

(g) The Arbitral Tribunal may make an interim award, and may, by an arbitral award, determine and order what shall be done by either or any of the Parties, respecting the matters referred.

**RULE 36**

The arbitrators constituting the Arbitral Tribunal shall sign the arbitral award and the Registrar shall give notice in writing to the Parties of the making and signing thereof and of the amount of fees & charges payable in respect of the arbitration and the arbitral award. The arbitrator's fee shall be payable by the Chamber on receipt of the arbitral award and requisite payment made by the parties.

**RULE 37**

(a) When an arbitral award has been made, the Registrar shall furnish a signed copy of the arbitral award to the parties by registered post provided the arbitration costs have been fully paid to the Chamber by the parties or by one of them.

(b) The Registrar may require either Party to notify him of the compliance with the arbitral award.

(c) The Chamber may print, publish or otherwise circulate any arbitral award made under its rules or under its auspices, in any arbitration journal, magazine, report, etc. for the purpose of creating arbitration jurisprudence or precedents for the benefit and guidance of future arbitrations. No party to the arbitration shall have any objection to the publication of arbitral awards as above.

**RULE 38**

Additional copies of the arbitral award certified to be true by the Registrar shall be made available to the parties but to no one else, at all times at request and on payment of fees as fixed by the Registrar.

**RULE 39**



A party shall in all things abide by and obey the arbitral award which shall be binding on the Parties and their respective representatives, notwithstanding the death of any party before or after the making of the arbitral award and such death shall not operate as revocation of the submission to reference.

### **STAMP DUTY**

#### **RULE 40**

Stamp duty is to be paid by the parties in equal share in all cases in accordance with the scale of stamp duty for the time being imposed by law.

### **COPIES OF PROCEEDINGS**

#### **RULE 41**

No party is entitled as of right to copies of proceedings before the Arbitral Tribunal. In case the Registrar is required to furnish copies of depositions and/or documents which have been taken or proved before the Arbitration Tribunal, a charge as demanded by the Registrar shall be paid by the party requiring such copies.

#### **RULE 42**

The Registrar shall, upon the written request of a party, furnish to such party at its expense certified facsimile of any document or pleading filed in the arbitration proceedings.

### **CASES WITHDRAWN**

#### **RULE 43**

When the party requesting for arbitration desires to withdraw it before an Arbitral Tribunal has been constituted, the Registrar shall return to him any payments made by him, under Rule 17, after deducting such charges as he might have incurred in connection with the case. The registration fee, however, shall not be refundable.

#### **RULE 44**

If the arbitration is terminated by the act or default of any parties after constitution of the Arbitral Tribunal and before the award is made, any fees, charges and expenses incurred by the Chamber shall be paid by the parties in such proportion as per schedule of fees prescribed in these Rules.

### **INDEMNITY OF SECRETARIAT AND ARBITRATORS**

#### **RULE 45**

The Chamber, the Arbitration Committee, the Arbitrators and the Registrar shall not be liable for any act or omission in whatever capacity they may have acted in connection with or in relation to an arbitration under these Rules. Parties are themselves required to contest the proceedings regarding the validity of the arbitration agreement before the Court.

#### **RULE 46**

No party shall bring or prosecute any suit or proceedings whatsoever against the Arbitral Tribunal, or any member thereof, for or in respect of any matter or thing purporting to be done under these Rules nor any suit or proceedings in respect thereof (save for enforcement of the award) against the other party.

### **AMENDMENT OF RULES**

#### **RULE 47**

The Chamber Committee of The Bengal Chambers & Commerce may revise, amend or alter these rules as and when expedient and necessary.