

**ARBITRATION RULES OF THE SOCIETY  
FOR AFFORDABLE REDRESSAL OF  
DISPUTES - PORTS (SAROD-PORTS)**

# ARBITRATION RULES OF SAROD-PORTS

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## **PREAMBLE**

In order to seek speedy, affordable, just and reasonable Redressal of Dispute/Differences between Major Port Trusts and Concessionaire/Contractor arising out of and during the course of execution of various contracts, a Society for Affordable Resolution of Disputes - Ports (SAROD-Ports) has been formed under the Societies Registration Act, 1860 with registration no. S-E/1715/ Distt. South East/2020 dated 30<sup>th</sup> January, 2020. It has been formed by Indian Ports Association and Indian Private Ports and Terminals Association with founding members as mentioned in the Memorandum of Association of SAROD-Ports.

## **SAROD-PORTS ARBITRATION RULES**

### **Rule 1- Scope of Application**

1.1 Where any agreement, submission or reference provides for arbitration at the Society for Affordable Resolution of Disputes - Ports ("SAROD-Ports"), or under the Arbitration Rules of the SAROD-Ports and where the case is a domestic arbitration, the same shall be conducted in accordance with the following Rules, or such Rules as amended by the SAROD-Ports where the amendments take effect before the commencement of the Arbitration

1.2 These rules shall come into effect from the day of approval by Governing Body of SAROD-Ports.

### **Rule 2 – Definitions**

2.1 These Rules shall be referred to as "the SAROD-Ports Arbitration Rules".

2.2 In these Rules:

**"Act"** means the 'Arbitration and Conciliation Act, 1996' of India and any statutory modifications or re-enactments thereof

**"Domestic Arbitration"** means an arbitration other than an international commercial arbitration as defined under the Act.

**"E-Arbitration"** means submission of pleadings, defence statement etc. by E-mail and holding of proceedings via video conferencing.

**"Governing Body"** means Governing Body of SAROD-Ports as defined in Article 4 of Memorandum of Association.

**"IPA"** means Indian Ports Association.

**"IPPTA"** means Indian Private Ports and Terminals Association

**"Party"** means a party to an arbitration agreement.

**"President"** means President of Governing Body of SAROD-Ports as defined in Rules & Regulation of SAROD-Ports.

**"SAROD-Ports"** means the Society for Affordable Redressal of Disputes-Ports.

**"SAROD-Ports Arbitrator Panel"** means the list of persons admitted to serve as Arbitrators under these Rules.

**"Secretary"** means Secretary of SAROD-Ports as defined in Rules & Regulation of SAROD-Ports.

**"Tribunal"** means either a Sole Arbitrator or all Arbitrators when more than one is appointed.

### **Rule 3 - Notice, Calculation of periods of Time**

3.1 All communications including notice, communication, or proposal, shall be in writing ("written communication"). Any such written communication is deemed to have been received if it is delivered to the addressee personally, or by post at his -(a) place of business, (b) habitual residence, or (c) mailing address, or by any form of electronic communication (including electronic mail or facsimile) which provides a record of its transmission or in any other manner as may be ordered by the Tribunal.

3.2 For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, notification, communication or proposal is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Gazetted public holidays or non-business days occurring during the running of the period of time are included in calculating the period.

3.3 The transmission is deemed to have been received on the day of transmission.

3.4 The parties shall file with the Secretary, a copy of any written communication concerned arbitration proceedings.

### **Rule 4- Commencement of Arbitration**

4.1 Any party wishing to commence an arbitration under these Rules ("the Claimant") shall file with the Secretary and serve on the other party {"the Respondent"}, a written Notice of Arbitration ("the Notice of Arbitration") which shall include the following:

- a. a request that the dispute be referred to arbitration;
- b. the names, addresses, telephone numbers, fax numbers and email addresses of the parties to the dispute;
- c. a reference to the arbitration clause or any separate arbitration agreement that is invoked and provide a copy of the arbitration clause or arbitration agreement;
- d. a reference to the contract out of which the dispute arises and

provide a copy of the contract where possible;

e. a brief statement describing the nature, facts and circumstances leading to the dispute;

f. the relief or remedy sought, including the amount of claim if quantifiable at the time the Notice of Arbitration is filed;

g. a proposal as to the number of Arbitrators (i.e. one or three), if the parties have not previously agreed on the number; and

h. The name of the proposed sole Arbitrator from the panel of Arbitrators maintained by SAROD-Ports, or in case of a three member Tribunal, the name of its nominee Arbitrator from the panel of Arbitrators maintained by SAROD-Ports

4.2 A filing fee of Rs. 10,000/- (Ten Thousand rupees) or any amount decided by Governing Body from time to time is payable at the time of filing the Notice of arbitration.

4.3 The date of receipt of complete notice of Arbitration including the requisite filing fees with the Secretary is the date of commencement of the arbitration for the purpose of the SAROD-Ports arbitration rules.

4.4 For the avoidance of doubt, the Notice of Arbitration is deemed to be complete when all the requirements of Rule 4.1 have been fulfilled or when the Secretary determines that there has been substantial compliance with the requirements.

#### **Rule 5 - Response by Respondent**

5.1 Within 14 (fourteen) days of receipt of the Notice of Arbitration, the Respondent shall file with the Secretary and serve upon on the Claimant, a Response including

a. A confirmation or denial of all or part of the claims;

b. Brief statement of the nature and circumstances of any envisaged counterclaims

c. A comment in response to any proposals contained in the Notice of Arbitration;

d. The name of the respondent's nominated Arbitrator.

e. Statement specifying the relief claimed, including the amounts of quantified counterclaims, if any, and if such counterclaims are quantifiable at the time the Response to Notice of Arbitration is filed;

f. Either a confirmation to the name of the sole Arbitrator proposed by the Claimant or in case of disagreement, propose the name of the sole Arbitrator from the panel of Arbitrators maintained by SAROD-Ports. In case of a three member Tribunal, the name of the nominee Arbitrator from the panel of Arbitrators maintained by SAROD-Ports will be proposed by the claimant as well as by the respondent. In such situations, the appointment of the sole Arbitrator or the Tribunal shall be as per the provisions of Rule 11.3.

g. the names and contact details of the Respondent, and its legal representatives (if any), (including postal addresses, telephone numbers, fax numbers, and email addresses, if available);

5.2 A filing fee of Rs. 10,000/- (Ten thousand rupees) or any amount decided by Governing Body from time to time is payable at the time of filing the Response.

5.3 In case parties have objection to the jurisdiction of Arbitral Tribunal, such objection shall be raised at the earliest as per the provisions of the Arbitration and Conciliation Act, 1996.

#### **Rule 6- Filing of Case Statements**

6.1 Within 30 (thirty) days after the filing of the Notice of Arbitration, the claimant must file with the Secretary and serve on the Respondent, a Statement of Claimant's Case along with all documents to be relied upon by the Claimant.

6.2 Within 30 (thirty) days after the service of the statement of Claimant's Case, the Respondent must file with the Secretary and serve on the Claimant, a statement of respondent's defence and counterclaim (if any) along with all documents to be relied upon by the Respondent.

6.3 Within 30 (thirty) days after the service of the statement of Respondent's defence, if the Claimant intends to challenge anything in the statement of Respondent's defence and/or counterclaim, the Claimant must then file with the Secretary and serve on the Respondent, a statement of claimant's reply and if necessary, defence to counterclaim.

6.4 No further case statements may be filed without the leave of the Tribunal or if a Tribunal has not been appointed, the Secretary.

6.5 The Tribunal or if a Tribunal has not been appointed, the Secretary, may upon the written application of a party, extend the time limits provided under this Rule.

6.6 The party required to file a case statement must at the same time deposit with the Secretary for eventual transmission to the Tribunal an

additional copy or additional copies of the case statement, according to the number of Arbitrators constituting or who will constitute the Tribunal.

### **Rule 7 - Contents of Case Statements**

7.1 The case statements must contain the detailed particulars of the party's claim, defence or counterclaim and must thus contain a comprehensive statement of the facts and contentions of law supporting the party's position.

7.2 It must:

- a. Set out all items of relief or other remedies sought together with the amount of all quantifiable claims and detailed calculations.
- b. State fully its reasons for denying any allegation or statement of the other party. State fully its own version of events if a party intends to put forward a version of events different from that given by the other party.

7.3 A case statement must be signed by or on behalf of the party making it.

### **Rule 8 - Default in Filing and Serving Case Statements**

8.1 If the Claimant fails within the time specified under these Rules or as may be fixed by the Tribunal or by the Secretary, to submit its Statement of Case, the Tribunal or if a Tribunal has not been appointed, the Governing Body may issue an order for the termination of the arbitral proceedings or make such other directions as may be appropriate in the circumstances.

8.2 If the Respondent fails to submit a Statement of Respondent's Defence, the Tribunal may nevertheless proceed with the arbitration and make the award.

### **Rule 9 - Further Written Statements**

9.1 The Tribunal will decide which further written statements, in addition to the case statement(s) already filed, are required from the parties and shall fix the periods of time for giving, filing and serving such statements.

9.2 All such further statements must be given to the Tribunal, filed with the Secretary and served on the Claimant or Respondent, whichever is applicable.

### **Rule 10 - SAROD-Ports to Provide Assistance**



10.1 At the request of the Tribunal or either party, the Secretary will render such assistance as is required for the conduct of the arbitration, including arranging for facilities, suitable accommodation for sittings of the Tribunal, secretarial assistance or interpretation of these rules.

10.2 Any additional expenses incurred or to be incurred for any such arrangements shall be borne by the parties.

### **Rule 11- Appointment of Tribunal**

11.1 The disputes shall be decided by a Sole Arbitrator when the total claim and counterclaim (if any) as set out in the Notice of Arbitration and Response to Notice of Arbitration respectively is Rs.3 (three) crores or less.

11.2 In all cases where amount in dispute is more than Rs.3 (three) crores, the Tribunal shall consist of a three-member Tribunal to be nominated by the parties.

11.3 Where the dispute is to be decided by a sole Arbitrator, both parties shall mutually appoint a sole Arbitrator from the panel of Arbitrators maintained by SAROD-Ports, within 15 (fifteen) days from the date of the Notice of Arbitration. If the parties fail to agree on the appointment of Arbitrator within 15 (fifteen) days from the receipt of a request by one party from the other party, the appointment shall be made upon request of a party, by the Governing Body from the panel of Arbitrators maintained by SAROD-Ports. The Governing Body shall consider the nature of the dispute as set out in the Notice of Arbitration, and the response to the Notice of Arbitration (if filed), prior to appointment of the sole Arbitrator.

a) Where the dispute is to be decided by a Tribunal comprising of three Arbitrators, each party shall appoint one Arbitrator from the panel of Arbitrators maintained by SAROD-Ports, and the two appointed Arbitrators shall appoint the third Arbitrator from the panel of Arbitrators maintained by SAROD-Ports, who shall act as the Presiding Arbitrator. In an arbitration by a three member Tribunal, if (i) a party fails to appoint an Arbitrator within 15 (fifteen) days from the receipt of request from one party to do so, or (ii) if the two appointed Arbitrators fail to agree on the appointment of third Arbitrator within 15 (fifteen) days from the date of their appointment, then the appointment of the Presiding Arbitrator shall be made, upon the request of a party by the Governing Body of SAROD-Ports from the panel of Arbitrators maintained by SAROD-Ports.

b) The eligibility criteria for empanelment of Arbitrators will be decided by the Governing Body.

11.4 An Arbitrator/Presiding Arbitrator to be appointed under these Rules shall be a person on the SAROD-Ports Arbitration Panel as at the date of the appointment.

11.5 In the event of any party failing to appoint Arbitrator within 30 days of receipt of the notice of Arbitration, the Governing Body shall appoint the Arbitrator or Presiding Arbitrator as the case may be.

### **Rule 12- Multiparty appointment of the Tribunal**

12.1 In an arbitration where there are more than two parties to the arbitration and a sole Arbitrator is to be appointed in terms of Rule 11.1, the parties may agree to jointly nominate the sole Arbitrator from the panel of Arbitrators maintained by SAROD-Ports. In the absence of such joint nomination having been made within 30 days of the date of Notice of Arbitration, the Governing Body shall appoint the sole Arbitrator from the panel of Arbitrators maintained by SAROD-Ports.

12.2 In an arbitration where there are more than two parties to the arbitration, and three Arbitrators are to be appointed, the Claimant(s) shall jointly nominate one Arbitrator and the Respondent(s) shall jointly nominate one Arbitrator, from the panel of Arbitrators maintained by SAROD-Ports, and the two appointed Arbitrators shall appoint the third Arbitrator from the panel of Arbitrators maintained by SAROD-Ports, who shall act as the presiding Arbitrator. If (i) a party [i.e. the Claimant (s) or Respondent (s), as the case may be], fails to appoint an Arbitrator within thirty days from the receipt of request from one party to do so, or (ii) if the two appointed Arbitrators fail to agree on the third Arbitrator within thirty days from the date of their appointment, then the appointment shall be made by the Governing Body of SAROD-Ports from the panel of Arbitrators maintained by SAROD-Ports.

### **Rule 13-Appointment of Substitute Arbitrator**

In the event of the death or resignation of any of the Arbitrators or if the Arbitrator withdraws from his office for any reason or by or pursuant to agreement of the parties, or if the Arbitrator becomes de jure or de facto unable to perform his functions or for other reasons fail to act without any undue delay, a substitute Arbitrator must be appointed by the same procedure as in Rule 11 by which the Arbitrator concerned was appointed, failing which, the Governing Body will make the appointment.

### **Rule 14 - Independence and Impartiality of the Tribunal**

14.1 The Tribunal conducting arbitration under these Rules shall be and remain at all times independent and impartial, and shall not act as advocate for any party.

14.2 A prospective Arbitrator shall disclose to those who approach him in

connection with his possible appointment, any circumstances likely to give rise to justifiable doubts as to his impartiality or independence.

14.3 An Arbitrator, from the time of his appointment and throughout arbitral proceedings, shall without delay, disclose to the Secretary and the parties in writing circumstances referred in 14.2 unless they have already been informed of them by him.

### **Rule 15 - Code of Ethics for Arbitrators**

An Arbitrator is a fountain of justice and emblem of equity, fairness and good conscience. Therefore he/she is expected to exhibit a noble conduct. The code of conduct prescribed by the Governing Body has to be adopted.

#### **Appointment**

15.1 A prospective Arbitrator shall accept an appointment only if he is fully satisfied that he is able to discharge his duties without bias, he has an adequate knowledge of the language of the arbitration, and he is able to give to the arbitration the time and attention which the parties are reasonably entitled to expect,

15.2 In this code, the masculine includes the feminine.

#### **Disclosure**

15.3 A prospective Arbitrator shall disclose all facts or circumstances that may give rise to justifiable doubts as to his impartiality or independence, such duty to continue thorough out the arbitral proceedings with regard to new facts and circumstances, in terms of the Arbitration and Conciliation Act, 1996 as amended from time to time.

15.4 A prospective Arbitrator shall disclose to the Secretary and any party who approaches him for a possible appointment:

(a) Any past or present close personal relationship or business relationship, whether direct or indirect, with any party to the dispute, or any representative of a party, or any person known to be a potentially important witness in the arbitration;

(b) The extent of any prior knowledge he may have of the dispute.

#### **Bias**

15.5 The criteria for assessing questions relating to bias are impartiality and in dependence. Partiality arises when an Arbitrator favour one of the parties or where he is prejudiced in relation to the subject matter of the dispute. Dependence arises from relationships between an Arbitrator

and one of the parties, or with someone closely connected with one of the parties.

15.6 Any close personal relationship or current direct or indirect business relationship between an Arbitrator and a party, or any representative of a party, or with a person who is known to be a potentially important witness, will normally give rise to justifiable doubts as to a prospective Arbitrator's impartiality or independence. Past business relationships will only give rise to justifiable doubts if they are of such magnitude or nature as to be likely to affect a prospective Arbitrator's judgment. He should decline to accept an appointment in such circumstances unless the parties agree in writing that he may proceed.

### **Communications**

15.7 Before accepting an appointment, an Arbitrator may only enquire as to the general nature of the dispute, the names of the parties and the expected time period required for the arbitration.

15.8 No Arbitrator shall communicate with any of the parties or their Counsel until after the Secretary gives notice of the formation of the Tribunal to the parties.

15.9 Throughout the arbitral proceedings, an Arbitrator shall avoid any unilateral communications regarding the case with any party, or its representatives.

### **Fees**

15.10 In accepting an appointment, an Arbitrator agrees to the remuneration as prescribed in the Schedule to the rules of SAROD-Ports, and he shall make no unilateral arrangements with any of the parties or their Counsel for any additional fees or expenses without the agreement of all the parties and the consent of the Secretary of SAROD-Ports.

### **Conduct**

15.11 Once the arbitration proceedings commence, the Arbitrator shall acquaint himself with all the facts and arguments presented and all discussions relative to the proceedings so that he may properly understand the dispute.

### **Confidentiality**

15.12 The arbitration proceedings shall remain confidential. An Arbitrator is in a relationship of trust to the parties and should not, at any time, use confidential information acquired during the course of the proceedings to gain personal advantage or advantage for others, or to affect adversely the interest of another.

15.13 This Code is not intended to provide grounds for the setting aside of any award.

#### **Rule 16- Challenge of Arbitrators**

16.1 An Arbitrator may be challenged if there are circumstances that give rise to justifiable doubts as to his impartiality or independence and also if he or she has committed any misconduct.

16.2 An Arbitrator may also be challenged if he does not possess the qualifications required by the agreement of the parties.

16.3 A party may challenge an Arbitrator appointed on its nomination or with its agreement only for reasons of which it becomes aware after the appointment has been made.

16.4 A party who intends to challenge an Arbitrator shall file with the Secretary and serve on the other party or all other parties, whichever is applicable, a Notice of challenge.

16.5 The Notice of challenge must be filed and served within 14 days from the appointment of the Arbitrator or within 14 days after the circumstances mentioned in Rule 15.1 became known to that party.

16.6 The Notice of challenge must state the reasons for the challenge.

16.7 The arbitration shall be suspended until the challenge is resolved or decided upon.

16.8 When an Arbitrator has been challenged by one party, the other party may agree to the challenge. The Arbitrator may also, after the challenge, withdraw from his office. However, it is not implied in either case that there has been an acceptance of the validity of the grounds for the challenge. In both cases, the procedure provided in Rule 11 read with Rule 13, shall be used for the appointment of a substitute Arbitrator.

#### **Rule 17 - Decision on Challenge**

17.1 If the other party does not agree to the challenge and the Arbitrator does not withdraw, the decision on the challenge will be made by the Governing Body.

17.2 If the Governing Body sustains the challenge, a substitute Arbitrator shall be appointed or chosen pursuant to the procedure applicable to the appointment of an Arbitrator as provided in Rule 11 read with Rule 13. If the Governing Body dismisses the challenge, the Arbitrator shall continue with the arbitration.

#### **Rule 18 - Removal of the Tribunal**

18.1 The Governing Body may on the application of a party remove an Arbitrator:

- a. Who is physically or mentally incapable of conducting the proceedings or where there are justifiable doubts as to his ability to do so; or
- b. Who has refused or failed to use all reasonable dispatch in conducting the arbitration or making an award.
- c. Who has continuously absented from attending the proceedings for more than three sittings without prior permission of the Presiding Arbitrator/Governing Body of SAROD- Ports.

18.2 An Arbitrator may also be removed where complaints are received or on the Governing Body's own initiative when it decides that the arbitrator is prevented *de jure* or *de facto* from the fulfilling the arbitrator's functions, or that the particular arbitrator is not fulfilling the functions in accordance with the Rules or within the prescribed time limits.

18.3 Where applications or complaints are received against an Arbitrator for removal, there shall be a committee consisting of at least three members of the Governing Body to examine the same and make a recommendation to the Governing Body within 10 days from the date of receipt of the application or complaint as to what appropriate action may be taken against the concerned arbitrator.

18.4 The committee shall afford an opportunity of hearing to the Arbitrator(s) concerned before making any recommendation in the matter.

18.5 The Governing Body, if deems fit may afford an opportunity of hearing to the concerned arbitrator before taking a decision on the recommendation of the committee.

18.6 Upon the removal of the Arbitrator, a substitute Arbitrator shall be appointed in accordance with Rule 11 read with Rule13.

18.7 The Governing Body's decision on the application is final and is not subject to appeal or review.

### **Rule 19 - Re-hearing in the Event of Replacement of the Tribunal**

19.1 Unless otherwise agreed by the parties, where an Arbitrator is replaced under rule 18, any hearings previously held may be repeated at the discretion of the Arbitral Tribunal.

19.2 Unless otherwise agreed by the parties, an order or ruling of the arbitral Tribunal made prior to the replacement of a Arbitrator under rule 18

shall not be invalid solely because there has been a change in the composition of the Arbitral Tribunal.

### **Rule 20 - Jurisdiction of the Tribunal**

20.1 The Tribunal shall have the power to rule on its own jurisdiction, including any objection with respect to the existence, termination or validity of the arbitration agreement. For that purpose, an arbitration agreement which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the Tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration agreement.

20.2 The plea that the Tribunal does not have jurisdiction shall be raised not later than in the Statement of Defence. A plea that the Tribunal is exceeding the scope of its authority shall be raised promptly after the Tribunal has indicated its intention to decide on the matter alleged to be beyond the scope of its authority. In either case the Tribunal may nevertheless admit a late plea under this Rule if it considers the delay justified. A party is not precluded from raising such a plea by the fact that he has nominated, or participated in the appointment of an Arbitrator.

20.3 The Tribunal shall rule on an objection that it lacks jurisdiction as a preliminary question upon the objection being raised. It may rule on an objection that it exceeds the scope of its authority either as a preliminary question or in an award on the merits, as it deems just and convenient.

20.4 In addition to the jurisdiction to exercise the powers defined elsewhere in these Rules, the Tribunal shall have jurisdiction to determine any question of law arising in the arbitration; proceed with the arbitration notwithstanding the failure or refusal of any party to comply with these Rules or with the Tribunal's orders or directions, or to attend any meeting or hearing, but only after giving that party written notice that it intends to do so; and to receive and take into account such written or oral evidence as it shall determine to be relevant, whether or not strictly admissible in law.

20.5 The arbitral Tribunal shall decide on a plea referred to in 20.2 and where the arbitral Tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

### **Rule 21 - Fees of SAROD-Ports and Arbitral Tribunal**

**Registration Fee (Non - Refundable):** Rs.10,000/- (Ten thousand rupees) or any amount fixed by Governing Body from time to time.

#### **Arbitral Tribunal Fees**

The Arbitral Tribunal fees and other miscellaneous expenses shall be

as per the Schedule to these rules as decided by the Governing Body from time to time.

### **Rule 22- Transmission of File to the Tribunal**

22.1 The Secretary shall, as soon as practicable transmit to the Tribunal, a file containing the Notice of Arbitration, the Response and all case statements.

22.2 The Tribunal shall as soon as practicable, after consultation with the parties, issue such orders and/or directions as are necessary for the conduct of the arbitration to conclusion, including a timetable for steps to be taken in the arbitration and for the hearing of the arbitration.

### **Rule 23- Judicial Seat of Arbitration**

23.1 Unless otherwise agreed by the parties, the judicial seat of arbitration shall be New Delhi.

23.2 Notwithstanding Rule 23.1, the Tribunal may, unless otherwise agreed by the parties, hold hearings and meetings anywhere convenient, subject to the provisions of Rule 28.2.

### **Rule 24 - Language of Arbitration**

- a. The language to be used in the arbitration shall be English.
- b. If a party submits any document in any language other than English, the party submitting such a document also has to submit before the Tribunal a translation of the said document to the English language.

### **Rule 25 - Conduct of the Proceedings**

The Tribunal shall have the widest discretion allowed by the Act to ensure just, expeditious, economical and final determination of the dispute.

As far as practicable, the proceedings shall be conducted between 10 a.m. to 5 p.m. with a recess of one hour.

### **Rule 26 - Communication between Parties and the Tribunal**

26.1 Where the Tribunal sends any written communication to one party, it shall send a copy to the other party or parties as the case maybe.

26.2 Where a party sends any written communication (including Statements, expert reports or evidentiary documents) to the Tribunal, the same shall be copied to the other party or ail other parties, whichever is applicable, and show to the Tribunal that the same has been so copied.



26.3 The address of the parties for the purpose of all communications during the proceedings shall be those set out in the Notice of Arbitration, or as either party may at any time notify the Tribunal and the other party or parties, whichever is applicable.

26.4 A copy of correspondence between the parties and the Tribunal shall be sent to the Secretary.

### **Rule 27 – Party Representatives**

Any party may be represented by legal practitioners or any other representatives, subject to such proof of authority as the Tribunal may require. The names and addresses of such representatives must be notified to the other party or parties.

### **Rule 28 – Hearings**

28.1 Unless the parties have agreed on documents- only arbitration the Tribunal shall hold a hearing for the presentation of evidence by witnesses, including expert witnesses, or for or a submissions.

28.2 The Tribunal shall fix the date, time and place of any meetings and hearings in the arbitrations on the first hearing, and complete time table pertaining to all the activities of the Arbitration e.g. submission of statement of claim, reply, counter claim, reply therein, admission and denial of documents, visit/inspection of site if any. The Tribunal shall stick to the time table without any deviations unless there are unavoidable circumstances warranting such deviation which will be with the prior permission of the Tribunal.

28.3 Prior to the hearing, the Tribunal may provide the Parties with matters or questions to which it wishes them to give special consideration.

28.4 In the event that a party to the proceedings without sufficient cause, fails to appear at a hearing of which the notice has been given, the Tribunal may proceed with the arbitration and may make the Award after the party present has submitted evidence to prove its case.

28.5 All meetings and hearing shall be in private unless the parties agree otherwise.

### **Rule 29 - Documents Only Arbitration**

29.1 Parties, may, at any stage before the constitution of the Tribunal or at any stage thereafter but before the evidence stage, mutually agree in writing to have their disputes resolved only through written pleadings, documents and submissions filed by the parties and without an oral hearing.

29.2 Where the parties agree to dispense with oral hearing, the Tribunal

must be promptly informed by both the parties in writing as soon as possible.

29.3 Parties may seek discovery of documents if they are not satisfied with existence of documents annexed with statement of claim, reply and counter claim by giving self-contained request to the Tribunal justifying the necessity for such documents. Decision of Tribunal shall be final and binding upon the parties.

29.4 The Tribunal shall have the power to call for any further information or clarification from the parties in addition to the pleadings and documents filed by them.

### **Rule 30 – Witnesses**

30.1 The Tribunal may require each party to give notice of the names and designations of the witnesses it intends to call and reasons for legal necessity of such witness.

30.2 No party shall call any expert witness without the leave of the Tribunal.

30.3 Any witness who gives evidence may be questioned by each party or its representative subject to any rulings made by the Tribunals.

30.4 A Witness may be required by the Tribunal to testify under oath or affirmation.

30.5 Subject to such order or direction which the Tribunal may make, the testimony of witness may be presented in written form, either as signed statements or by duly sworn or affirmed affidavits.

30.6 Any party may require a witness to attend an oral examination at a hearing. If the witness fails to attend, the Tribunal may place such weight on the written testimony as it thinks fit, or may exclude it altogether,

30.7 The Tribunal shall determine the admissibility, relevance, materiality and weight of the evidence given by any witness.

### **Rule 31- Experts Appointed by the Tribunal**

31.1 Unless otherwise agreed by the parties, the Tribunal may:

- a. appoint one or more experts to report the Tribunal on specific issues;
- b. require a party to give any such expert any relevant

information or to produce, or to provide access to, any relevant documents, goods or property for inspection by the expert.

31.2 An expert appointed under Rule 31.1 above shall submit a report in writing to the Tribunal. Upon receipt of such written report, the Tribunal shall deliver a copy of the report to each of the parties and invite the parties to submit written comment on the report.

31.3 Rule 30.2 shall not apply to an assessor appointed by agreement of the parties, or to an expert appointed by the Tribunal to advise solely in relation to procedural matters.

**Rule 32- Rules applicable to substance of dispute where the place of arbitration is situated in India**

In an arbitration, the arbitral Tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;

**Rule 33 - Closure of Hearing**

33.1 The Tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submission to make and, if there are none, declare the hearing closed.

33.2 The Tribunal may also, in view of exceptional circumstance, reopen the hearings at any time before the award is made.

**Rule 34 - Additional Powers of the Tribunal**

34.1 In addition to the powers conferred by the Act, the Tribunal shall also have the power to:-

- a. Allow any party, upon such terms of as to costs and otherwise) as it shall determine, to amend claims or counterclaims;
- b. Extend or abbreviate any time limits provided by these Rules;
- c. Conduct such enquires as may appear to the Tribunal to be necessary or expedient;
- d. Order the parties to make any property or thing available for inspection
- e. Order any parties to produce to the Tribunal, and to other

parties for inspection, and to supply copies of any documents, or classes of documents in their possession, custody, or power which the Tribunal determines to be relevant.

- f. Make orders or give directions to any party for interrogatories;
- g. Make orders or give directions to any party for an interim injunction or any other interim measure;
- h. Make such orders or give such directions as it deems fit in so far as they are not inconsistent with the Act or any statutory re-enactment thereof or such law which is applicable or these Rules.

34.2 If the parties so agree, the Tribunal shall also have the power to add other parties (with their consent) to be joined in the arbitration and make a single Final Award determining all disputes between them.

### **Rule 35- Deposits of Costs and Expenses**

35.1 The Arbitral Tribunal's fees and SAROD-Ports administration fees shall be ascertained in accordance with the schedule of fees in force at the time of commencement of the arbitration.

35.2 The claimant shall deposit with SAROD-Ports half of the fees payable by it for the arbitration at the time of filing of the statement of claim. The respondent shall deposit with the SAROD-Ports the half of the fees payable by it for the arbitration at the time of filing the Statement of respondent's defence and counterclaim (if any). The balance fees payable shall be paid 60 (Sixty) days before the date of the final hearing or on such other date as the Secretary may direct.

35.3 Where the amount of the claim or the counterclaim is not quantifiable at the time payment is due, the Secretary shall make a provisional estimate. The fees will be adjusted in the light of such information as may subsequently become available.

35.4 If the arbitration is settled or disposed of without a hearing, the amount of the Tribunal's fees and SAROD-Ports administration fees shall be finally determined by the Secretary who will have regard to all the circumstances of the case, including the stage of proceedings at which the arbitration is settled or otherwise disposed of.

35.5 The Secretary may from time to time direct parties to make one or more deposit(s) towards any further expenses incurred or to be incurred on behalf of or for the benefit of the parties.

35.6 All deposit(s) shall be made to and held by the SAROD-PORTS. Any interest which may accrue on such deposit(s) shall be retained by the SAROD-Ports.

35.7 If a party fails to make the payments or deposits required or directed, the Tribunal may refuse to hear the claims or counterclaims, whichever is applicable, by the non-complying party, and it may proceed to determine claims or counterclaims by any party who has complied with orders.

35.8 The parties shall remain jointly and severally liable to the SAROD-Ports for payment of all such fees and expenses until they have been paid in full even if the arbitration is abandoned, suspended or concluded, by agreement or otherwise, before the final Award is made.

### **Rule 36 - Decision Making by the Tribunal**

36.1 Where a Tribunal has been appointed, any direction, order, decision or award of the Tribunal must be made by the whole Tribunal or a majority. If an Arbitrator refuses or fails to sign the Award, the signatures of the majority shall be sufficient, provided that the reason for the omitted signature is stated.

36.2 If there is no unanimity, the same shall be made by the majority Arbitrators as well as by the dissenting Arbitrator alone as if acting as a sole Arbitrator.

36.3 However, in case of a three-member Tribunal the presiding Arbitrator may after consulting the other Arbitrators, make procedural rulings alone.

### **Rule 37 - The Award**

37.1 It will be mandatory for the parties to submit written synopsis of their arguments respectively which will form part of the arbitral proceedings.

37.2 Unless the Secretary extends the time or the parties agree otherwise, the Tribunal shall make its Award in writing within 30 days from the date on which the hearings are closed and shall state the reasons upon which its award is based. The award shall contain the date and shall be signed by the Arbitrator or Arbitrators.

37.3 The Tribunal may make interim awards or separate awards on different issues at different times.

37.4 All Awards must be submitted by the Tribunal to the Secretary and they shall be issued through the Secretary.

37.5 The Tribunal must deliver to the Secretary number of originals of the award sufficient for the parties and for filing with the Secretary.

37.6 The Secretary shall release the award to the parties only upon receipt of sufficient deposits to cover the fees and expenses due to the Tribunal and to the SAROD- PORTS.

37.7 By agreeing to have arbitration under these Rules, the parties undertake to carry out the award without delay.

37.8 Stamp duty on award shall be payable by the party in whose favor the award has been pronounced.

### **Rule 38- Additional Award**

38.1 Within 30 days after the receipt of the award, either party, with notice to the Secretary and the other party may request the Tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.

38.2 If the Tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearing or evidence, it shall notify all the parties within 7 days of the receipt of the request, that it will make an additional award, and complete the additional award within 30 days after the receipt of the request.

### **Rule 39 - Correction of Awards**

39.1 Within 30 days of receiving an Award, unless another period of time has been agreed upon by the parties, a party may by notice to the Secretary and the other party request the Tribunal to correct in the Award, any errors in computation, any clerical or typographical errors or any errors of similar nature.

39.2 If the Tribunal considers the request to be justified, it shall make the corrections within 30 days of receiving the request. Any correction shall be notified in writing to the parties and shall become part of the Award.

39.3 The Tribunal may correct any error of the type referred to in Rule 39.1 on its own initiative within 30 days of the date of the Award.

### **Rule 40- Settlement**

40.1 If, the parties arrived at amicable settlement of the dispute during the currency proceedings, the parties shall file memo of settlement before the Tribunal who shall either issue an order for the termination of the arbitral proceedings or, if requested by both parties and accepted by the Tribunal, record the settlement in the form of an arbitral award on agreed terms. The Tribunal is not obliged to give reasons for such an award,

40.2 The Parties shall:

- a. Notify the Tribunal and the Secretary immediately if the arbitration is settled or otherwise terminated:

b. Make provision in any settlement for payment of all the costs of the arbitration and fees and expenses due to the SAROD-PORTS and the Tribunal.

40.3 If the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in Rule 38.1, before the award is made, the Tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The Tribunal shall have the power to issue such an order unless party raises justifiable grounds for objection.

40.4 Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the Tribunal, shall be communicated by the Tribunal to the parties through the Secretary.

#### **Rule 41- Interest**

The Tribunal may award interest on any sum awarded at such rate as applicable in fixed deposits of the Nationalised Bank in India in respect of such periods ending not later than the date of the award as the Tribunal considers just.

#### **Rule 42- Costs**

42.1 The Tribunal shall have the discretion to determine whether costs are payable by one party to another, the amount of such costs, and when such costs are to be paid.

42.2 The decision of the Tribunal under Rule 37 above shall be made in accordance with the provisions of the Act, as amended from time to time.

42.3 The Tribunal has power to order in its Award, that all or part of the legal or other costs (such as legal fees and expenses, costs incurred in respect of party appointed experts etc.) of one party shall be paid by the other party.

#### **Rule 43 - Waiver**

A party which is aware of non-compliance with these Rules and yet proceeds with the arbitration without promptly stating its objection in writing such non-compliance shall be deemed to have waived its right to object.

#### **Rule 44 - Exclusion of Liability**

44.1 The Tribunal, the President, the SAROD-Ports and any of its officers, employees or agents shall not be liable to any party for any act or omission in connection with any arbitration conducted under these Rules.

44.2 After the Award as been made and the possibilities of corrections and additional Awards have lapsed or been exhausted, neither the Tribunal nor the President shall be under any obligation to make any statement to any person about any matter concerning the arbitration, and no party shall seek to make any Arbitrator or the President or the SAROD-Ports and any of its officers a witness in any legal proceedings arising out of the arbitration.

#### **Rule 45- General Provisions**

45.1 In all matters not expressly provided for in these Rules, the President, the Secretary and the Tribunal shall act in the spirit of these Rules and shall make every reasonable effort to ensure the just, expeditious and economical conclusion of the arbitration.

45.2 If any of these Rules is in conflict with a mandatory provision of law applicable to the arbitration or the arbitration agreement from which the parties cannot derogate, that mandatory provision shall prevail.

45.3 The Secretary may from time to time issue Practice Notes on the implementation of these Rules.

#### **Rule 46- Amendment to Rules**

These Rules may from time to time be amended by the Governing Body of SAROD-Ports.



## SCHEDULE

### Fees and other miscellaneous expenses for the Arbitrator of SAROD-Ports

S. No.	Particulars of Fees and misc. expenses	Amount payable per Arbitrator per case where total sum of all claims or counter-claims in the case before Arbitral Tribunal 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 Arbitral Tribunal is above Rs.100 crore and up to Rs.500 Crore	Amount payable per Arbitration per case where total sum of all claims or counter-claims in the case before Arbitral Tribunal is above Rs.500 Crores
1.	Fee	i) Rs.25,000/- per day	i) Rs.40,000/- per day	i) Rs.50,000/- per day
		ii) 25% extra on fee at (i) above in case of fast-track procedure as per Section-29B of Arbitration & Conciliation Act, 1996; or 10% extra on fee at (i) above if award is published within 6 months from date of entering the reference by Arbitral Tribunal.	ii) 10% extra on fee at (i) above if award is published within 6 months from date of entering the reference by Arbitral Tribunal;	ii) 10% extra on fee at (i) above if award is published within 6 months from the date of entering the reference by Arbitral Tribunal.
		Alternatively, the Arbitrator may opt for a lump-sum fee of Rs.5.00 lakh per case including counter-claims	Alternatively, the Arbitrator may opt for a lump-sum fee of Rs.8.00 lakh per case including counter-claims	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	Rs.25,000/- per arbitrator per case.	Rs.25,000/- per arbitrator per	Rs.25,000/- per arbitrator per

	Secretarial Assistance and incidental charges (Telephone, fax, postage etc.)		case.	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 actual against bills subject to ceiling given below)			
(i)	Traveling Expenses	Economy Class (by Air), First Class AC (by Train) and AC Car (by Road @ 13/Km)		
(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 2 and half days)	Rs.5,000/- per half-day for outstation Arbitrator.		
Note	<p>1. Lodging, Boarding and Travelling expenses shall be allowed only for the arbitrator who is residing at least 100 Kms away from the venue of the meeting.</p> <p>2. Delhi, Mumbai, Chennai, Kolkata, Bengaluru and Hyderabad shall be considered as Metro Cities.</p>			