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From

The Chief Administrator,
Haryana State Agri. Marketing Board,
Panchkula.

To

All the Executive Engineers, (CP)
Haryana State Agri. Marketing Board.

Memo. No. ADA-I (Admin. III)-07/8501-11
Panchkula, dated the: 5/2/87

Subject:

Guidelines for handling/deferring the Arbitration cases.

It has generally been observed that the arbitration cases are not being pursued/defended properly by the Executive Engineers concerned either before the arbitrators or in the courts; which results in prolonged litigation and avoidable expenditure. To streamline the procedure sought to be followed in these cases, following guidelines are issued for general information & meticulous compliance.

1. Appointment of Arbitrator.

The appointment of Arbitrators should be strictly adhered to as per the clause of agreement in this regard. In most of the recent agreements the power of appointment is with the Chief Engineer, who should appoint the arbitrator by designation as appointment of arbitrator by name can create complications at a later stage. The appointment of arbitrator once made is final and can only be changed with the intervention of the court in accordance with the Arbitration Law.

2. Limitation for making the award.

The arbitrator is required to render the award within the statutory period of 4 months unless this period is extended in accordance with law.

3. When the award is made: (a) against the Award.

In the event of any award having been given by the Arbitrator in favour of contractual agency, the Executive Engineer should immediately refer the matter to Head Office for legal advice along with his detailed comments & grounds, if any, for either accepting such award or challenging the same. In case he recommends the acceptance of the award, he should also send an explanatory memo, elaborating the various facts and circumstances leading to the impugned award and justifying the payments awarded in favour of the contractor. It should also contain the lapses in this connection by official officers associated with the execution of work in question.

Where the Head Office finally decides to make payment of the awarded amounts, the matter ends and payment should accordingly be made. In cases, where the award is found to be legally not sustainable, the same is required to be challenged in the court of law. This can be done either by filing an application in the court within 30 days of the making of the award, or within 30 days of the receipt of notice on the application moved in the civil court by the contractual agency to get the award made the Rule of the Court and, thus, enforceable as a decree. But decision in any case is required to be taken, expeditiously, in consultation with head office & legal cell. Normally, we can await till the contractual agency moves an application in the court and on receipt of notice can file our objections against the award. We should follow this procedure as usual.

The Executive Engineer concerned shall be held personally responsible for any delay, laxity in expediting the finalisation of part or action on the award, which they are required to pursue at personal level both with the arbitrator as well as Head Office.

3.(b) When the award is made in favour of the Board, partially or wholly.

The Executive Engineer should immediately take the necessary steps to get the award made rule of court, within 30 days of the announcement of the award in consultation with the Head Office/Legal Cell as stated in para 3(a) above.

4. Rule of the Court.

When the award is made Rule of Court, it becomes enforceable as a decree and the civil court of the competent jurisdiction, acquires all the powers under CPC to issue the warrants of attachments of any property, accounts, vehicles etc. belonging to the judgment debtor to satisfy the claim of the decree holder. Hence very prompt and urgent action is required by the E.E. concerned to see that necessary steps to make the payment are taken in consultation with the Head Office without any delay or laxity, which can result in attachment of our accounts, vehicles etc. entailing avoidable harassment and expenditure. Hence instant personal attention of EE concerned is required to handle such situations and get suitable instructions to make the payments or file appeal, if advisable, and obtain stay orders. For this purpose following steps are required to be taken:-

- 1) The Executive Engineer should immediately get a copy of the order of the court and submit the same to C.E. along with his recommendations and opinion of the Advocate, who conducted or defended the case on behalf of the Board and seek approval for filing further appeal or making the payments as the case may be. This should be done at personal level or through special messenger as the exigencies require.

- ii) If it is decided to make the payment, the same should be arranged expeditiously and made as and when required by the court enforcing the decree.
- iii) If it is decided to file an appeal against the orders of the court, the same should be done expeditiously and order of stay of the execution of the award obtained should be supplied to the executing court.

It may once again be emphasised that responsibility of Executive Engineers do not end merely by handing over the case to Board office/Advocate. E.E. should follow the cases by taking personal interest and should ensure that he or any official of his office attends the hearing regularly before the Arbitrator/Courts. The Head Office may also be kept informed about the proceedings of the case & if any legal aspect that can be had from the legal cell.

As mentioned earlier when an award is made rule of court and no further appeal is to be filed and payment is to be made to the contractor, an explanatory memo detailing therein full facts of the case, circumstances leading to the appointment of Arbitrator, claims and counter claims put up by the parties and the report about the lapses of the work associated with such works should also be sent.

Please acknowledge its receipts.

Harinandan
Co-Ordination Officer
FOR CHIEF ADMINISTRATOR

Enclst. No. Admn. III-87/ 8572-14

Dated 5/2/87

A copy is forwarded for information and necessary action to:-

1. The Chief Engineer, HSNM Board, Panchkula.
2. The Superintending Engineer, HSNM Board, Karnal/Rajpura.

Harinandan
Co-Ordination Officer
FOR CHIEF ADMINISTRATOR