

F. No. 11/22/2021-Th.II
Government of India
(Bharat Sarkar)
Ministry of Power
(Vidyut Mantralay)

Shram Shakti Bhawan, Rafi Marg
New Delhi, the 29th April, 2022

OFFICE MEMORANDUM

Subject: Dispute Resolution through Conciliation for Contractual Disputes in Projects implemented by CPSUs / Statutory Bodies under the administrative control of Ministry of Power – Induction of the coal-mining expert Member in the CCIE – regarding.

Ministry of Power vide OM of even number dated 29.12.2021 (Annex-I), introduced a conciliation mechanism for settlement of contractual disputes in contracts of CPSUs / Statutory Bodies under Ministry of Power executing power projects. The said mechanism envisages conciliation of contractual disputes through three Nos. of Conciliation Committee of Independent Experts (CCIEs). CCIE have been constituted by selecting one Member each from amongst the following categories:-

- I. Former Officers of the rank of Secretary / Additional Secretary to the Govt. of India.
- II. Sector Experts having substantial domain knowledge of project development and O&M of power projects.
- III. Experts in Finance with experience in senior positions of Financial Institutions.

2. In the meantime, a representation was received from a CPSU under this Ministry executing Thermal Projects that a substantial number of contractual disputes in thermal projects are attributable to disputes raised by Mine Development Operators (Contractors) of the Captive Coal Mines of the CPSUs/Project Implementing Agencies. The 3 CCIEs constituted by Ministry of Power, in its present form, need more domain expertise to conciliate the contractual disputes related to mining issues of these captive coal mines.

3. Accordingly, it has been decided to empanel one additional Member in the existing CCIE(s) having substantial domain expertise in coal-mining sector.

4. In view of the above, Clause 2(IV) is hereby added below Clause 2 (III) of this Ministry's OM of even number dated 29.12.2021:-

"2.(IV): Sector Expert having substantial domain knowledge of coal mining sector"

5. In addition, following para 2 of Clause 2 of the OM of even number dated 29.12.2021 is modified as under:

Contd...2.

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Original Clause

"Provided that one of the Members in each CCIE should be from the category mentioned at 2(II) above i.e. Sector Expert having substantial domain knowledge of project development and O&M of power projects."

replaced with

"Provided that the composition of the CCIE should be such that there shall be (a) one member from category 2(I), (b) one member from Category 2(III), and (c) one member from Category 2(II) when dealing with disputes relating to power projects or Category 2(IV) when dealing with disputes relating to captive coal mines."

6. The remaining terms & conditions of the aforesaid OM will remain unchanged.

This issues with the approval of Hon'ble Minister of Power & NRE.



(R. P. Pradhan)
Director

1. Chairperson, CEA
2. Chairperson, CWC
3. CMDs / Chairman(s) of all the CPSUs / Statutory Bodies / Autonomous Bodies under the Ministry of Power

Copy to:

1. PS to Hon'ble Minister of Power & NRE
2. PS to HMoS for Power
3. Sr. PPS to Secretary (Power)
4. Sr. PPS to As (SKG) / Sr. PPS to AS (VKD)/ Sr. PPS to AS & FA
5. PPS to All Joint Secretaries in Ministry of Power
6. PPS to EA
7. All Directors / Deputy Secretaries / Under Secretaries / Deputy Directors, MoP

F. No. 11/22/2021-Th.II
Government of India
(Bharat Sarkar)
Ministry of Power
(Vidyut Mantralay)

Shram Shakti Bhawan, Rafi Marg
New Delhi, the 18th October, 2023

OFFICE MEMORENDUM

Subject: Dispute Resolution through Conciliation for Contractual Disputes in Projects implemented by CPSUs / Statutory Bodies under the administrative control of Ministry of Power — Constitution of Conciliation Committee of Independent Experts (CCIE) — Corrigendum Reg.

In partial modification of this Ministry's OM of even number dated 29.12.2021 (copy enclosed) regarding resolution of contractual disputes in the Projects implemented by CPSUs / Statutory Bodies under the administrative control of Ministry of Power through conciliation by Conciliation Committee of Independent Experts (CCIE), following amendments are hereby made in the CCIE mechanism:-.

2. Para 6 of the OM No. F. No. 11/22/2021-Th.II dated 29.12.2021 may be read as under:

*In case of any disagreement during execution of contracts, it is expected that the parties will take up the matter first with the Dispute Avoidance Mechanism (through Independent Engineer), wherever the option is available. In case of its failure, the parties may refer the matter further to the Conciliation Committee. The Conciliation process shall be conducted under Part III of the Arbitration and Conciliation Act, 1996. The Conciliation Committee would either be able to resolve and settle dispute(s) between the parties, or the process may fail. In case of failure of the conciliation process at the level of the Conciliation Committee, the parties may withdraw from conciliation process and take recourse to **Arbitration proceedings** or the laid down legal process of Courts. ~~However, the option of Arbitration would not be available once the conciliation mechanism has been exercised.~~ In the event of the conciliation proceedings being successful, the parties to the dispute would sign the written settlement agreement and the conciliators would authenticate the same. Such settlement agreement would then be binding on the parties in terms of Section 73 of the Arbitration and Conciliation Act, 1996*

3. Para 9 of the OM No. F. No. 11/22/2021-Th.II dated 29.12.2021 may be read as under:

*In cases of disputes pending before the Arbitration Tribunals or the Courts, both the parties [i.e. Developer and Contractor] need to agree to explore the possibilities of conciliation through the Conciliation Committee of Independent Experts. In case of such agreement, an appropriate reference shall be made to the Conciliation Committee, upon which the Committee shall proceed to examine such reference(s). **In the event of the conciliation proceedings being successful, the parties to the dispute would sign the written settlement agreement and the conciliators would***

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authenticate the same. Such settlement agreement would then be binding on the parties in terms of Section 73 of the Arbitration and Conciliation Act, 1996. The option of resolution through conciliation through CCIE would be open only in the event of the parties withdrawing from arbitration proceedings and undertaking to forego their rights to proceed for further arbitration in the subject matter. However, other legal remedies would be open to the parties. However, the parties may resume the Arbitration proceedings or take recourse to any other legal remedies in the event of the conciliation proceedings not being successful.

4. The aforementioned changes will be effective from the date of issuance of this Office Memorandum.
5. This issues with the approval of the Competent Authority.

Vikrant

(Vikrant S. Dhillon)

Deputy Director

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1. Chairperson, CEA
2. Chairperson, CWC
3. CMDs/Chairpersons to all CPSUs/Statutory bodies/ Autonomous bodies under MoP
4. All members of CCIE - 1,2,3.

Copy to:

1. PS to Hon'ble Minister of Power and New & Renewable Energy
2. PS to Secretary (Power)
3. PA to SS & FA
4. Sr. PPS to AS (AT)
5. PPS to all Joint Secretaries in MoP
6. PPS to EA
7. All Directors/ DS/ US/ DD, MoP

Copy also to:

In-charge, NIC Cell, MoP with request to publish the instant OM on the homepage of the website of Ministry of Power.