

# Jammu and Kashmir International Arbitration Centre (Arbitration Proceedings) Rules 2020

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**HIGH COURT OF JAMMU AND KASHMIR AT SRINAGAR  
(Office of the Registrar General )**

**Subject: The Jammu & Kashmir International Arbitration Centre (JKIAC)(Arbitration Proceedings) Rules, 2020.**

**NOTIFICATION**

**No:** 43

**Dated:** 19.09.2020

To regulate the Arbitration Proceedings in the Jammu and Kashmir International Arbitration Centre (JKIAC), the High Court of Jammu and Kashmir hereby frames the following Rules.

**PART-A  
INTRODUCTION**

**1. Application and Interpretation -**

These Rules shall be called as "The Jammu & Kashmir International Arbitration Centre (Arbitration Proceedings) Rules, 2020" [for short JKIAC Arbitration Proceedings Rules, 2020].

Where parties have agreed to refer their disputes to the JKIAC for arbitration (whether before or after a dispute has arisen), or where the Court directs that arbitration be conducted between the parties in accordance with these Rules, the parties shall be deemed to have agreed that the arbitration shall be conducted and administered in accordance with these Rules, as amended and adopted hereafter and may be in effect on the date of commencement of the arbitration. If any of these Rules are 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 or the agreement shall prevail as the case may be.

These Rules shall come into force from the date of notification and, shall apply to any arbitration which is commenced on or after that date, in accordance with these rules.

 **2. Definition-**

**2.1 In these Rules:**

- (a) "Act" means the Arbitration and Conciliation Act, 1996 and amendments thereto including the Arbitration and Conciliation (Amendment) Act 2015, the Arbitration and Conciliation (Amendment) Act 2019 or the re-enactment or modification thereof.

- (b) "Arbitral Award" includes an interim, partial and final award.
- (c) "Arbitral Tribunal" or "Tribunal" means person(s) acting as arbitrators or a sole arbitrator and includes an Emergency Arbitrator.
- (d) "Arbitration Committee" means the Committee constituted under Rule 3 of the Jammu & Kashmir International Arbitration Centre (JKIAC) (Internal Management) Rules, 2020.
- (e) "Centre" or "JKIAC" means the Jammu & Kashmir International Arbitration Centre.
- (f) "Chairperson" means Chairperson nominated by the Chief Justice of the Common High Court of Jammu & Kashmir and Ladakh under Rule 3 of the Jammu & Kashmir International Arbitration Centre (JKIAC) (Internal Management) Rules, 2020.
- (g) "Claimant", notwithstanding any nomenclature given to the parties in any Court in any proceeding between them, means the party(ies) which files the Statement of Claim, first in point of time, either jointly or separately. The other party(ies) shall be referred to as "Respondent(s)". The party filing Counter- Claim(s) shall be referred as "Counter-Claimant".
- (h) "Coordinator" means the Coordinator appointed under Rule 6 of the Jammu & Kashmir International Arbitration Centre (Internal Management) Rules, 2020.
- (i) "JKIAC Panel of Arbitrators" means the Panel of Arbitrators (for short, the Panel) prepared by the Arbitration Committee in accordance with Rule 10 of the Jammu & Kashmir International Arbitration Centre (Internal Management) Rules, 2020 as amended from time to time.
- (j) "Party" means a party to an arbitration agreement and includes legal representative(s) and as the case may be the successor in interest of such party.
- (k) "Request" means a written communication to the Centre to commence the arbitration in accordance with these Rules.
- (l) "Rules" mean the JKIAC (Arbitration Proceedings) Rules, 2020, as amended from time to time.
- (m) "Sub-committee(s)" means Sub-committee(s) appointed by the Chairperson from amongst the Members of the Arbitration Committee.
- (n) "Vice-Chairperson" means the Vice-Chairperson nominated by the Chief Justice of the Common High Court of Jammu & Kashmir and Ladakh under Rule 3 of the Jammu & Kashmir International Arbitration Centre (JKIAC) (Internal Management) Rules, 2012.

2.2 The words and phrases not defined herein shall bear the same meaning as used or defined in the Act, the Jammu & Kashmir International Arbitration Centre (JKIAC) (Internal Management) Rules, Jammu & Kashmir International Arbitration Centre (Administrative Cost and Arbitrators' Fees) Rules and the Schedules thereto as the case may be. If any difficulty arises with respect to the interpretation of any provisions of these Rules, the decision of the Arbitration Committee shall be final and binding.

### 3. Written Communications and the Calculation of Periods of Time-

3.1 For the purposes of these Rules, any notice, communication or proposal shall be in writing ("Written Communication"). Any such Written Communication may be delivered personally or by registered post or courier service, or transmitted by any form of electronic communication (including electronic mail and facsimile), or delivered by any other means that provides a record of its transmission or in any other manner as may be decided by the Tribunal. It shall be deemed to have been received if it is delivered to:

- (i) the addressee personally;
  - (ii) the addressee's habitual residence or mailing address, place of business or address (including electronic mail address and/or facsimile number) as specified in the agreement.
- 3.2 If none of the places referred to in Rule 3.1 above can be found after making a reasonable inquiry, a written communication will be deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address or address disclosed in the agreement between the parties, by registered post or by any other means which provides a record of attempted delivery.
- 3.3 In the case of electronic communication, it will be deemed to have been delivered when transmitted, with reference to the recipient's time zone.
- 3.4 For the purposes of calculating any period of time under these Rules, such period shall begin to run on the day following the day when a Written Communication or proposal is received or deemed to have been delivered. When the day next following such date is a non-business day, in the place of receipt, the time period commences on the first following business day. If the last day of such period is a non-business day at the place of receipt, the period is extended until the first business day which follows. Non-business days occurring during the running of the period of time are included in calculating the period.
- 3.5 After the constitution of the Tribunal, where any party delivers any Written Communication to the Tribunal, it shall simultaneously deliver a copy to each arbitrator, all other parties and the Coordinator and shall confirm in writing to the Tribunal that it is so done.

## **PART-B**

### **COMMENCEMENT**

#### **4. Request for Arbitration-**

- 4.1 A party may make a request to commence arbitration to the center by filing with the Coordinator a written Request for Arbitration which shall contain or be accompanied by:
- (a) the provisional terms of reference; if any;
  - (b) the order of the Court or judicial authority, if any, referring the parties to Arbitration;
  - (c) a request that the dispute be referred to arbitration to be conducted by the JKIAC;
  - (d) the full terms of the arbitration clause or the separate arbitration agreement that is invoked;
  - (e) a copy of the contract(s) or another instrument(s) out of or in relation to which the dispute arises;
  - (f) the full names and contact details, including postal address(es), telephone number(s), facsimile number(s) and electronic mail address(es), to the extent known, of the parties to the arbitration and their legal representatives, if any;
  - (g) a statement briefly describing the nature and circumstances of the dispute and the claims advanced by the Claimant against any other party to the arbitration, each such party being here separately described as the "Respondent", specifying the relief claimed, including the amounts of any quantified claims and, to the extent possible, an estimate of the monetary value of any other claims;

- (h) a statement of any matters which the parties have previously agreed to as to the conduct of the arbitration or with respect to which the Claimant wishes to make a proposal (such as the number of arbitrator(s), the applicable rules of law, the language(s) of the arbitration, and the seat of arbitration);
- (i) unless the parties have agreed otherwise or an arbitrator has been named by the Court, the nomination of an arbitrator, if the arbitration agreement provides for three arbitrators, or a proposal of five persons from which to appoint a sole arbitrator, if the arbitration agreement provides for a sole arbitrator;

**Explanation-** In any event, the party making a request for arbitration shall inform the centre in writing of the name of arbitrator(s) not later than 21 days from the date of the first submission of the request for arbitration.

- (j) confirmation that copies of the Request for Arbitration and any documents have been or are being served simultaneously on all other parties, specifying the mode of service employed and the date of service, to be supported then or as soon as possible thereafter by documentary proof satisfactory to the Coordinator of actual delivery including the date of delivery; and
- (k) confirmation that the requisite administrative charges have been paid.

4.3 Party making request for Arbitration may also file Statement of Claim as provided in Part F, along with the request and proposed name(s) of Arbitrator(s) where the Arbitrator(s) is not appointed by Court

4.4 The contents of the Request for Arbitration do not prevent a party from subsequently adding, supplementing or amending in its pleadings the matters referred to arbitration or the reliefs claimed, subject to Rule 18, provided that such matters and reliefs fall within the scope of the arbitration agreement.

4.5 Arbitration Proceedings under these rules shall be deemed to commence:

- (a) upon receipt of an order of a Court referring the parties to arbitration; or
- (b) on the date when a party files a request in writing to the JKAC in accordance with Rule 4.1 to commence the arbitration, whichever is earlier.

## 5. Response to the Request for Arbitration-

5.1 The Respondent shall simultaneously send to the party making a request for Arbitration and JKAC a Response within 30 days of receipt of the Request for Arbitration. The Response shall contain or be accompanied by:

- (a) a confirmation or denial of all or part of the claims, including the Claimant's invocation of the arbitration agreement in support thereof;
- (b) the full names and contact details (including postal address(es), telephone number(s) and mobile number(s), facsimile number(s) and electronic mail address(es) of the Respondent and its legal representatives and successor(s) in interest, if any;
- (c) a statement briefly describing the nature and circumstances of the dispute and the defence to the claim, including counter-claims, if any, raised specifying the relief claimed, and the amounts of any quantified counter-claims and, to the extent possible, an estimate of value of any other counter-claims;
- (d) any comment in response to any statements contained in the Request for Arbitration, or with respect to which the Respondent wishes to make a proposal, on matters relating to the conduct of the arbitration such as the number of arbitrator(s), the applicable rules of law, and the seat/place of arbitration;
- (e) unless the parties have agreed otherwise:

- (i) where the arbitration agreement provides for a sole arbitrator, the concurrence or otherwise with the proposed nomination of the party making request for Arbitration;
  - (ii) where the arbitration agreement provides for three or five member Tribunal, the nomination of Arbitrator shall be as envisaged in such agreement.
- (f) confirmation that copies of the Response and the documents relied on have been or are being served simultaneously on all other parties, specifying the mode of service employed and the date of service, by documentary proof satisfactory to the Coordinator of actual delivery (including the date of delivery);
- (g) confirmation that the requisite administrative charges have been paid.

5.2 The Response may also include the Statement of Defence and a Statement of Counter-claim, as referred to in Rule 17.1.

## 6. Consolidation Mechanism-

6.1 Prior to the constitution of the Arbitral Tribunal, in the arbitrations sought to be consolidated, a party may file an application with the Coordinator to consolidate two or more arbitrations pending under these Rules into a single arbitration, provided that any of the following criteria is satisfied in respect of the arbitrations to be consolidated:

- (a) all parties have agreed to the consolidation;
- (b) all the claims in the arbitrations are made under the same arbitration agreement; or
- (c) the arbitration agreements are compatible, and: (i) the disputes arise out of the same legal relationship(s); (ii) the disputes arise out of contracts consisting of a principal contract and its ancillary contract(s); or (iii) the disputes arise out of the same transaction or series of transactions.

6.2 An application for consolidation under Rule 6.1 shall include:

- (a) the case reference numbers of the arbitrations sought to be consolidated;
- (b) the names, addresses, telephone numbers, facsimile numbers and electronic mail addresses, if known, of all parties and their representatives, if any, and any arbitrators who have been nominated or appointed in the arbitrations sought to be consolidated;
- (c) the information specified in Rule 4;
- (d) if the application is being made under Rule 6.1(a), identification of the relevant agreement and, where possible, a copy of such agreement; and
- (e) a brief statement of the facts and legal basis supporting the application.

6.3 The party applying for consolidation under Rule 6.1 shall, at the same time as it files an application for consolidation with the Coordinator, send a copy of the application to all parties and shall notify the Coordinator that it has done so, specifying the mode of service employed and the date of service.

6.4 The Arbitration Committee, or the Sub-committee constituted for the purpose of considering such applications for consolidation, shall, after considering the views of all parties, and having regard to the circumstances of the case, decide whether to grant, in whole or in part, any application for consolidation under Rule 6.1. The Arbitration Committee's decision to grant an application for consolidation under Rule 6.1 to Rule 6.4 is without prejudice to the Arbitral Tribunal's power to subsequently decide any question as to its jurisdiction

arising from such decision.

- 6.5 The decision of the Arbitration Committee (or the Sub-committee) to reject an application for consolidation under Rule 6.1 to Rule 6.4, in whole or in part, is without prejudice to any party's right to apply to the Arbitral Tribunal for consolidation pursuant to Rule 6.8 of these Rules. Any arbitrations that are not consolidated shall continue as separate arbitrations under these Rules.
- 6.6 Where the Arbitration Committee (or the Sub-committee) decides to consolidate two or more arbitrations under Rule 6.1 to Rule 6.4, the arbitrations shall be consolidated into the arbitration that is deemed by the Coordinator to have commenced first, unless otherwise agreed by all parties or the Arbitration Committee (or the Sub-committee) decides otherwise having regard to the circumstances of the case.
- 6.7 Where an application for consolidation is granted under Rule 6.4, the Arbitration Committee (or the Sub-committee) may revoke the appointment of any arbitrators appointed prior to the decision on consolidation. Unless otherwise agreed by all parties, all other Rules shall apply as appropriate, and the respective timelines there under shall run from the date of receipt of the decision of the Arbitration Committee (or the Sub-committee) under Rule 6.4.
- 6.8 After the constitution of any Arbitral Tribunal in the arbitrations sought to be consolidated, a party may apply to the Arbitral Tribunal to consolidate two or more arbitrations pending under these Rules into a single arbitration, provided that any of the following criteria is satisfied in respect of the arbitrations to be consolidated:
- (a) all parties have agreed to the consolidation;
  - (b) all the claims in the arbitrations are made under the same arbitration agreement, and the same Arbitral Tribunal has been constituted in each of the arbitrations or no Arbitral Tribunal has been constituted in the other arbitration(s); or
  - (c) the arbitration agreements are compatible, the same Arbitral Tribunal has been constituted in each of the arbitrations or no Arbitral Tribunal has been constituted in the other arbitration(s), and; (i) the disputes arise out of the same legal relationship(s); (ii) the disputes arise out of contracts consisting of a principal contract and its ancillary contract(s); or (iii) the disputes arise out of the same transaction or series of transactions.
- 6.9 Subject to any specific directions of the Arbitral Tribunal, the provisions of Rule 6.2 shall apply, *mutatis mutandis*, to an application for consolidation under Rule 6.8.
- 6.10 The Arbitral Tribunal shall, after giving all parties the opportunity to be heard, and having regard to the circumstances of the case, decide whether to grant, in whole or in part, any application for consolidation under Rule 6.8. The Arbitral Tribunal's decision to grant an application for consolidation under Rule 6.8 is without prejudice to its power to subsequently decide any question as to its jurisdiction arising from such decision. Any arbitrations that are not consolidated shall continue as separate arbitrations under these Rules.
- 6.11 Where an application for consolidation is granted under Rule 6.8, the Arbitration Committee (or the Sub-committee) may revoke the appointment of any arbitrators appointed prior to the decision on consolidation.
- 6.12 The decision of the Arbitration Committee (or the Sub-committee) to revoke the appointment of any arbitrator under Rule 6.7 or Rule 6.11 is without prejudice to the validity of any act done or order or Award made by the

arbitrator before his appointment was revoked.

- 6.13 Where an application for consolidation is granted under Rule 6.4 or Rule 6.8, any party who has not nominated an arbitrator or otherwise participated in the constitution of the Arbitral Tribunal shall be deemed to have waived its right to nominate an arbitrator or otherwise participate in the constitution of the Arbitral Tribunal, without prejudice to the right of such party to challenge an arbitrator.

## PART-C

### THE ARBITRAL TRIBUNAL

#### 7. Disclosures and Grounds of Challenge-

7.1 When a person is approached in connection with his possible appointment as an Arbitrator, he shall disclose in writing circumstances, if any, as detailed in section 12 of the Act, including the following:

- (a) the existence, either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject-matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality; and;
- (b) circumstances which are likely to affect his ability to devote sufficient time to the arbitration and in particular his ability to complete the entire arbitration within the time stipulated under the Act.

**Explanation 1** - The grounds stated in the Fifth Schedule to the Act shall guide in determining whether such circumstances exist which give rise to justifiable doubts as to the independence or impartiality of an Arbitrator.

**Explanation 2** - The disclosure shall be made by such person in the form specified in the Sixth Schedule to the Act.

7.2 An Arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall, without delay, disclose to the parties in writing any circumstances referred to in Rule 7.1 unless they have already been informed of them by him.

7.3 An Arbitrator may be challenged only if -

- (a) circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or
- (b) he does not possess the qualifications agreed to by the parties.
- (c) he becomes *de jure* or *de facto* unable to fulfill his functions or is not fulfilling those functions in accordance with the Rules or within the prescribed time limits.

7.4 A party may challenge an Arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

7.5 Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or Counsel or the subject-matter of the dispute, falls under any of the categories specified in the Seventh Schedule to the Act shall be ineligible to be appointed as an Arbitrator.

PROVIDED that parties may, subsequent to disputes having arisen between them, waive the applicability of Rule 7.5 by an express agreement in writing.



PROVIDED further that Rule 7.5 shall not apply to cases where an Arbitrator has already been appointed on or before the commencement of the Arbitration and Conciliation (Amendment) Act, 2015.

**8. Appointment and Confirmation of Arbitrators-**

- 8.1 The parties to a dispute shall within one week of the service of notice on the respondents determine the number of arbitrators, provided that such number shall not be an even number, and, in case there are only two parties to a dispute, such number shall not exceed three. In case of more than two parties to a dispute, the number of arbitrators may be more than three, but in no case, it shall exceed five.
- 8.2 Failing the determination referred to in Rule 8.1, the Arbitral Tribunal shall consist of a sole arbitrator. Such sole arbitrator shall be appointed consensually by the parties. In the event of the parties failing to arrive at a consensus, the Chairperson/Sub Committee shall appoint the sole arbitrator.
- 8.3 The Chairperson/Sub Committee shall appoint the sole arbitrator in the following eventualities:
- (a) if the respondent does not communicate/respond to the names proposed by the claimant at the time of filing request under Rule 4.1.
  - (b) if the claimant does not propose names of the arbitrator(s) at the time of filing the request
- 8.4 Where the agreement provides for the appointment of three arbitrators the Claimant and Respondent shall appoint their individual arbitrators within thirty days of intimation of filing of the Request and the two arbitrators shall within 21 days, appoint the third arbitrator and such third arbitrator shall preside over the Arbitral Tribunal.
- 8.5 Where the parties fail to appoint their respective Arbitrators or where the Arbitrators appointed by the Parties fail to appoint the Presiding Arbitrator, in terms of the Rule 8.3, then within 21 days thereof, the Chairperson / Sub-Committee shall appoint the Arbitrator / Presiding Arbitrator as the case may be.

PROVIDED that in a case of International Arbitration the Presiding Arbitrator shall be of a nationality other than the nationalities of the parties where the parties belong to different nationalities.

**9. Appointment of Arbitrators in case of Multi-party Arbitration-**

- 9.1 Where disputes arise amongst more than two parties out of a defined legal relationship or out of a series of interconnected contracts (including "chain" or "string" contracts), the parties may agree that the Arbitral Tribunal shall consist of three members, one to be nominated by each of the parties (supporting parties will be grouped together and treated as one party for the purpose of such nomination of the arbitrator) and the third arbitrator shall be appointed by the Chairperson and such third arbitrator shall Chair the Arbitral Tribunal.
- 9.2 If the parties to a dispute are required to be grouped in three groups, each such group will nominate one arbitrator each and the three members of the Arbitral Tribunal shall nominate one out of themselves to Chair the Arbitral Tribunal. If the members fail to so nominate, the Chairperson shall nominate anyone of them to Chair the Arbitral Tribunal within fifteen days of the constitution of the Arbitral Tribunal.
- 9.3 If the parties to a dispute are required to be grouped in four groups, each such group will nominate one arbitrator and the Chairperson will appoint an

independent arbitrator from the panel who shall Chair the Arbitral Tribunal.

- 9.4 If the parties to a dispute are required to be grouped in five groups, each such group will nominate one arbitrator each and the five members of the Arbitral Tribunal shall nominate one out of themselves to Chair the Arbitral Tribunal. If the members fail to so nominate, the Chairperson shall nominate anyone of them to Chair the Arbitral Tribunal within fifteen days of the constitution of the Arbitral Tribunal.
- 9.5 All efforts shall be made to ensure that such grouping of parties shall not exceed five. In case the groups are more than five, the Chairperson shall adopt such procedure for the appointment of arbitrators as may be deemed appropriate, in view of the facts and circumstances of the case, but in no case shall the number of arbitrators comprising the Arbitral Tribunal exceed five.

#### **10. Challenge to Appointment of the Arbitrators-**

- 10.1 Subject to Rule 8, a party who intends to challenge an arbitrator shall send a notice of challenge within 14 days after the receipt of the notice of appointment of the arbitrator who is being challenged or within 14 days after the circumstances mentioned in Rule 11.2 become known to that party.
- 10.2 The notice of Challenge shall not be acted upon and shall not be treated as received by JKIAAC unless the party submitting such notice deposits a sum of Rs. 5000/- towards processing costs which, if the challenge succeeds, shall be refundable.
- 10.3 The notice of challenge shall be submitted to JKIAAC and simultaneously shall be sent to the other party, the Arbitrator(s) being challenged and the other members, if any, of the Tribunal. The notice of challenge shall be in writing and shall state the reasons for the challenge. The JKIAAC may request comments on the challenge from the parties, the challenged arbitrator and the other members of the Tribunal (or if the Tribunal has yet not been constituted, any appointed arbitrator) within a period of 10 days' from the date of such request.
- 10.4 The notice of challenge duly submitted as per Rule 10.1 shall be disposed of by the Chairperson / Sub-committee within a period of 30 days from the date of receipt of notice in terms of the Rules.

PROVIDED however, the time for deciding the challenge can in no circumstance exceed a further period of 30 days.

- 10.5 The time for making the Award, for the purposes of Section 29A of the Act, shall stand extended by the period spent between the date of receipt of the application for the challenge and its disposal by the Chairperson / Sub-committee. This period shall be deemed to be an extension under Section 29A (3) of the Act.
- 10.6 If the Chairperson or the Sub-Committee appointed by the Chairperson sustains the challenge, a substitute arbitrator shall be appointed in accordance with the procedure referred to in Rule 11.2. The time limits provided in Rule 11 shall commence from the date of the Coordinator's notification to the parties of the decision by the Chairperson or the Sub-Committee appointed by the Chairperson.
- 10.7 The Chairperson/ Sub-Committee will have the discretion to impose such costs as may be deemed appropriate in the event that the challenge fails, which shall be recoverable from the party instituting the challenge.
- 10.8 The Centre shall forthwith communicate to the parties whether the challenge has been sustained or overruled.

**11. Termination and Substitution-**

- 11.1 An arbitrator may be replaced on the grounds specified in Section 13 and 14 of the Act or Rule 10, either on an application by the Party or otherwise if in the opinion of the Chairperson or the Sub-Committee appointed by the Chairperson is not fulfilling those functions in accordance with the Rules or within the prescribed time limits.
- 11.2 In the event of death, resignation, withdrawal or removal of an arbitrator during the course of arbitral proceedings a substitute arbitrator shall be appointed in accordance with the procedure applicable to the appointment of the arbitrator.
- 11.3 When, on the basis of information that has come to its attention, the Chairperson or the Sub-Committee appointed by the Chairperson considers applying Rule 11.1, it shall decide on the matter after the arbitrator concerned, the parties and any other members of the Tribunal have had an opportunity to comment in writing within a reasonable period of time. Such comments shall be communicated to the parties and to the Tribunal.
- 11.4 The further proceedings before the reconstituted Tribunal shall commence from the stage at which they were prior to such reconstitution.

**PART-D**

**FAST TRACK ARBITRATION**

**12. Fast Track Arbitration-**

- 12.1 Notwithstanding anything contained hereinbefore, the parties may, mutually agree in writing, before or at the time of the constitution of the Tribunal, to adopt the fast track procedure for resolution of their disputes or differences.
- 12.2 In adopting the fast track procedure the parties shall sign an undertaking in writing to the effect that they shall dispense with oral evidence.
- 12.3 The Claimant shall submit documents in support along with the Request, in terms of Rule 4 of these Rules, to the Secretariat addressed to the Coordinator and supply a simultaneous copy to the other party.
- 12.4 The other party shall, within thirty days of the receipt of the documents referred to in Rule 12.3, submit its Reply, to the Secretariat addressed to the Coordinator, together with documents in support of the Reply.
- 12.5 The parties shall appoint a sole arbitrator from the JKIAC Panel of Arbitrators in terms of Rule 9 of these Rules within a period of thirty days after the expiry of the date specified in Rule 12.4 and communicate the same to the Coordinator. If parties fail to reach an agreement, the Chairperson or the Sub-Committee appointed by the Chairperson shall make such appointment within one week after the expiry of said period of thirty days. The confirmation of the appointment of the Arbitrators after obtaining mandatory disclosure in terms of Sixth Schedule of the Act, as may be amended from time to time, shall be communicated to the parties and the Arbitrators.

**13. Fast Track Procedure-**

- 13.1 The Arbitral Tribunal shall follow the following procedure while conducting arbitration proceedings under the fast-track procedure:
  - (a) the Arbitral Tribunal shall decide the dispute on the basis of written pleadings, documents and submissions filed by the parties;

- (b) the Arbitral 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;
  - (c) an oral hearing may be held only if all the parties make a request or if the Arbitral Tribunal considers it necessary to have an oral hearing for clarifying certain issues; if the Parties desire an oral hearing, such hearing would be limited to oral submissions within a specified time to be determined by the Arbitral Tribunal;
  - (d) The Arbitral Tribunal may adopt such procedure, not inconsistent with this Rule, as deemed appropriate for expeditious disposal of the case.
- 13.2 The award under this Rule shall be made within a period of 6 months from the date the arbitral tribunal enters upon the reference.
- 13.3 If award is not made within 6 months, the mandate will terminate unless the extension has been granted by the Court in accordance with the Act.

## **PART-E**

### **EMERGENCY ARBITRATION AND INTERIM RELIEF**

#### **14. Emergency Arbitration-**

- 14.1 If a party is in a requirement of urgent interim or conservatory measures that cannot await the formation of the Arbitration Tribunal, it may make an application to the Secretariat addressed to the Coordinator, with a simultaneous copy thereof to the other parties to the arbitration agreement for such measures.
- 14.2 The party making such an application shall:
- (a) include a statement briefly describing the nature and circumstances of the relief sought and specific reasons why such relief is required on an emergency basis and the reasons why the party is entitled to such relief;
  - (b) pay the relevant application fee for the appointment of the Emergency Arbitrator, and
  - (c) file proof of service of such application upon the opposite parties.
- 14.3 The Emergency Arbitrator's fee shall be as prescribed in The Jammu & Kashmir International Arbitration Centre (Administrative Costs and Arbitrators' Fees) Rules and the party invoking the provision of Emergency Arbitrator shall deposit such fees along with the Application.
- 14.4 The Secretariat, with the consent of the Chairperson or the Sub-Committee appointed by the Chairperson shall appoint the Emergency Arbitrator within two days of making of such request (excluding non-business days).
- 14.5 Prior to accepting his appointment, a prospective Emergency Arbitrator must disclose to the Coordinator any facts or circumstances which may give rise to justifiable doubts as to his impartiality or independence. Any challenge to the appointment of the Emergency Arbitrator must be made within one business day of the communication by the Coordinator to the parties of the appointment of the Emergency Arbitrator and the circumstances disclosed.
- 14.6 An Emergency Arbitrator may not act as an arbitrator in any future arbitration relating to the dispute unless agreed by all the parties.
- 14.7 The Emergency Arbitrator so appointed shall schedule a hearing including the filing of pleadings and documents by the parties within two business days of his appointment. The Emergency Arbitrator shall provide a reasonable opportunity of being heard to all the parties before granting any

urgent, interim or conservatory measures and proceed to make an order by giving reasons. The parties shall comply with any order made by the Emergency Arbitrator.

- 14.8 The Emergency Arbitrator shall have the power to order any interim relief that he deems necessary. An order of the Emergency Arbitrator shall be made in writing, with a brief statement of reasons. An order or award of an Emergency Arbitrator shall be enforceable in the manner as provided in the Act.
- 14.9 The Emergency Arbitrator shall ensure that the entire process from the appointment of the Emergency Arbitrator to making the order shall be completed within seven (7) days.
- 14.10 The Emergency Arbitrator shall become *functus officio* after the order is made and shall not be a part of the Arbitral Tribunal, which may be formed subsequently and in accordance with Rule 14 unless otherwise agreed to by all the parties.
- 14.11 The order for urgent interim or conservatory measures passed by the Emergency Arbitrator shall not bind the Arbitral Tribunal on the merits of any issue or dispute that the said Tribunal may be required to determine.
- 14.12 The order passed by the Emergency Arbitrator shall remain operative for a period of two months from the date of passing of the order unless modified, substituted or vacated by the Arbitral Tribunal. The Arbitral Tribunal will also have the power to extend the order beyond the period of two months.
- 14.13 Any order of the Emergency Arbitrator may be confirmed, varied, discharged or revoked, in whole or in part, by order or award made by the Arbitral Tribunal upon application by any party or upon its own initiative.

**15. Interim Relief -**

- 15.1 A party may, during the arbitral proceedings apply to the Arbitral Tribunal for an interim measure of protection in respect of the subject matter of the dispute as it may consider necessary, including-
- (i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or
  - (ii) for an interim measure of protection in respect of any of the following matters namely:-
    - (a) the preservation, interim custody or sale of any goods which are the subject matter of the arbitration agreement;
    - (b) securing the amount in dispute in the arbitration;
    - (c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorizing for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party or authorizing any samples to be taken, or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;
    - (d) interim injunction or the appointment of a receiver;
    - (e) such other interim measures of protection as may appear to the arbitral tribunal to be just and convenient and the arbitral tribunal shall have the same power for making orders, as the Court has for the purpose of, and in relation to, any proceedings before it.
- 15.2 The Arbitral Tribunal may modify, suspend or terminate an interim measure granted by it, upon an application by a party if the circumstances so warrant.

**PART-F**  
**PLEADINGS**

**16. Statement of Claim-**

- 16.1 Unless already submitted pursuant to Rule 4.3, the Claimant shall, within the period of time to be determined by the Tribunal at the first procedural meeting held pursuant to Rule 21.2, file at the Centre, after serving advance copies on to the Respondents and the Tribunal, a Statement of Claim setting out in full detail:
- (a) Name, description, contact details, email ids, telephone numbers and correspondence address of Claimant(s) and Respondent(s);
  - (b) Description of the nature and circumstance of the dispute giving rise to the claim(s);
  - (c) Statement of the relief sought along with amount(s) claimed;
  - (d) Relevant agreements and, in particular, a copy of written arbitration clause or written arbitration agreement;
  - (e) Statement as to the rules of law and the language of the arbitration.
  - (f) All supporting and relevant documents will be filed as self attested true copies of the originals, with adequate sets /copies to be supplied to the Parties and an additional set for the Centre;
  - (g) Issues to be adjudicated;
  - (h) All relevant particulars concerning the arbitrators, their number, qualifications, if any prescribed in the arbitration on which parties have already agreed in writing;
  - (i) Order of Court or judicial authority, if any, passed in proceedings referred to in Rule 1.2 of these Rules, along with the signed joint memorandum (if any signed);
  - (j) A statement as to whether any order under Section 9 of the Act, has been passed and if so, whether the request for arbitration is being made within the period provided under sub-section 2 of Section 9 of the Act. A copy of the interim order passed shall also be closed;
  - (k) Final Terms of reference in furtherance of provisional terms under Rule 4;
  - (l) Value of each relief sought along with a self-declaration, stating the aggregate amount of claims, quantification of Arbitrator's fee based on the aggregation of their values and the date of deposit of its share of the fees, if deposited.

**Explanation:** For the purpose of this Rule, the provisions of Rule 3 shall apply *mutatis mutandis*.

- 16.2 If the Claimant fails within the time specified to submit its Statement of Claim, the Tribunal may issue an order for the termination of the arbitral proceedings qua such claims or impose such costs or give such other directions as deemed appropriate.

**17. Statement of Defence, Plea of Set Off and Counter-claim-**

- 17.1 Unless otherwise agreed, within 30 days from the date of the receipt of the Statement of Claim and the documents, the Respondent(s) shall file Statement of Defence. The plea of Set-Off and/or Counter-claim, if any, shall be filed along with the Statement of Defence. Notwithstanding Rule 17.1, the statement of Defence and/or Set Off/Counter-Claim may be entertained if the Arbitral

Tribunal or the Centre, as the case may be, having regard to the facts and circumstances grant further extension, not exceeding 30 days, upon such terms including costs, as it may deem fit and proper.

PROVIDED however, the party seeking such extension of time will necessarily file the Statement of Defence and/or Set Off/Counter-Claim before the expiry of the further period of 30 days and which shall be taken on record subject to the decision of the Arbitral Tribunal or Centre, as the case may be.

- 17.2 Upon failure to adhere to the time limit under Rule 17.1 or the extended time limit under Rule 21.2, the Tribunal may order foreclosure of the right of the Respondent to file Statement of Defence / or a plea of Set-Off and / or counter-claim.
- 17.3 The copy of the Statement of Defence, plea of Set-Off and/or Counter-Claim and the documents annexed thereto, shall be sent to the Claimant in advance and proof of service thereof shall accompany the original Statement of Defence, plea of Set-Off and/or Counter-Claim submitted to the Centre.
- 17.4 The Claimant shall file the reply to the Counter Claim and the provisions of sub-rule 1 to 3 to this rule shall apply *mutatis mutandis*. Subject to the decision of the Tribunal, failure of the Claimant to file his Reply to the Counter- Claim within the time stipulated or the extended time, may constitute a waiver of the Claimant's opportunity to file the reply.

**Explanation:** For the purpose of this Rule, the provisions of Rule 3 shall apply *mutatis mutandis*.

**18. Amendments to the Statement of Claim or Defence-**

- 18.1 With the leave of the Tribunal and on such terms as the Tribunal may determine, a party may amend or supplement its Claim, Counter-Claim or other pleadings, unless the Tribunal considers it inappropriate, having regard to the delay in making such request or prejudice to the other party or any other circumstances. However, a Claim or Counter-Claim or pleadings may not be amended or supplemented in such a manner that the amended or supplemented Claim or Counter-Claim or pleadings would, if permitted, fall outside the scope of the arbitration agreement.
- 18.2 The Coordinator may adjust the Tribunal's fees and the JKIA's fees (where appropriate) if a party is permitted to amend or supplement its Claim, Counter-Claim or pleadings.

**19. Further Pleadings-**

- 19.1 All statements, documents or other information supplied to the Tribunal and the Coordinator by one party shall simultaneously be supplied to the other party.
- 19.2 The Tribunal shall decide whether further pleadings shall be required from the parties or may be presented by them. The Tribunal shall fix the periods of time for communicating such pleadings if any. The Tribunal may further limit the length and scope of written pleadings and written and oral evidence (both fact witnesses and experts).
- 19.3 The Tribunal may at any time during the proceedings, if it considers it appropriate, require the parties, in consultation with the Tribunal, to prepare an agreed list of issues to be determined by the Tribunal.

## **PART-G**

### **ARBITRAL PROCEEDING**

#### **20. Jurisdiction-**

20.1 Any objection by a party to the existence or, to the competence of the JKIAC to administer an arbitration, before the Tribunal is appointed, shall be placed in the first instance before the Chairperson or the Sub-Committee appointed by the Chairperson for that purpose.

20.2 If the Chairperson or the Sub-Committee appointed by the Chairperson sustains the objection, the proceedings shall be terminated. In all other cases, the Tribunal shall decide such objection in accordance with Section 16 of the Act.

#### **21. Conduct of Proceedings**

21.1 The Tribunal may conduct the arbitration in such manner as it considers appropriate to ensure the avoidance of unnecessary delay and expense, having regard to the complexity of the issues involved and the amount in dispute.

PROVIDED that such procedures ensure fair and equal treatment of the parties and afford them a reasonable opportunity to present their case.

21.2 The Tribunal shall, soon after it is appointed, discuss with the parties and determine such procedure, including the procedural timetable, as will be most appropriate and expeditious, ensuring completion of pleadings within the period mandated by law.

21.3 To ensure continued effective case management, the Tribunal, after consulting the parties, may adopt further procedural measures or modify the procedural timetable from time to time.

21.4 The Tribunal may decide that for the purposes of Rules 21.2 and 21.3, any one member of the Tribunal will decide the procedure, including the procedural timetable.

21.5 The Tribunal may 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 meetings or hearings, and may:-

- (a) admonish the Party Representative;
- (b) draw appropriate inferences in assessing the evidence relied upon, or the legal arguments advanced by the Party Representative;
- (c) take any other appropriate measures in order to preserve the fairness and integrity of the proceedings.

#### **21.6 Application for adjournment-**

(1) Any party seeking adjournment or change in the timetable fixed for the arbitration proceedings shall file a written request, supported by sufficient and cogent reasons and necessary documents, if any, at least 30 days prior to the date for which such adjournment is sought along with costs by way of Demand Draft in the name of Jammu & Kashmir International Arbitration Centre for a sum of Rs. 5,000/-. The Arbitral Tribunal may accede to such request after recording its reasons in writing.

(2) If a request for adjournment could not be made at least thirty days prior to the date for which it is sought, then the same may be entertained only if it is made in writing and supported by sufficient and cogent reasons and necessary documents, subject to payment of costs as given below:



Time	Cost
30 to 26 days (both inclusive) prior to the fixed date	Rs. 5,000/- plus 10% i.e. Rs. 5500/-
25 to 21 days (both inclusive) prior to the fixed date	Rs. 5,000/- plus 20% i.e. Rs. 6000/-
20 to 16 days (both inclusive) prior to the fixed date	Rs. 5,000/- plus 30% i.e. Rs. 6500/-
15 to 11 days (both inclusive) prior to the fixed date	Rs. 5,000/- plus 40% i.e. Rs. 7000/-

PROVIDED, that no request for adjournment shall be entertained ten days before the scheduled date unless supported by special or exceptional reasons or in cases of emergency. The percentage of additional costs may be decided by the Arbitral Tribunal in such cases, including the power to exempt the imposition of additional costs, original costs to remain unaffected. In all such cases, the Tribunal shall record special reasons in writing.

- (3) The Tribunal may, for reasons to be recorded in writing, exempt a party from depositing costs for seeking an adjournment or may reduce the amount of costs.
- (4) For removal of doubts, it is clarified that the Arbitral Tribunal may, in addition to the above costs payable to the Centre, determine costs, if any, payable by the party seeking an adjournment to the opposite party(ies).

## 22. Language-

22.1 The language of the arbitration proceedings shall be English.

22.2 If a document is in a language other than English, the Tribunal, or if the Tribunal has not been established, the Coordinator may order that party to submit a translation in a form to be determined by the Tribunal or the Coordinator.

## 23. Seat and Venue-

23.1 The parties may agree on the seat of arbitration. Failing such an agreement, the seat of arbitration shall be Jammu or Srinagar in Jammu and Kashmir, depending on the place where the Coordinator is headquartered at the time of receipt of the request for Arbitration.

23.2 The Tribunal may in consultation with the parties hold hearings, meetings and deliberations by any means and at any venue, it considers expedient or appropriate.

In such eventuality, the Arbitrator shall cause copy of the proceedings to be sent forthwith to the JKIAC for placing in the record of the arbitration and for further proceedings.

## 24. Applicable Law -

24.1 The Tribunal shall, for deciding the merits of the dispute, apply the law and / or rules agreed upon by the parties. Failing such agreement between the parties, the Tribunal shall decide the dispute on merits by applying the law with which the dispute has the closest connection.

24.2 The law governing the arbitration agreement shall be the Act. The Rules governing the arbitration proceedings shall be the present Rules.

24.3 The Tribunal shall decide as *amiable compositeur* or *ex aequo et bono* only if the parties have expressly authorized the Tribunal to do so.

**25. Evidence -**

- 25.1 Ordinarily, the burden of proving the facts relied on to support its Claim, Counter-Claim or Defence, shall be on the concerned party.
- 25.2 The Tribunal shall, while determining the admissibility, relevance, materiality and weight of any evidence, not be bound by the Indian Evidence Act, 1872 or the Code of Civil Procedure, 1908 or by any strict rules of evidence.
- 25.3 Witnesses, including expert witnesses, who are presented by the parties to testify before the Tribunal on any issue of fact or expertise, may be any individual, notwithstanding that the individual is a party to the arbitration or in some related to a party. Unless otherwise directed by the Tribunal, statements by witnesses, including expert witnesses, may be presented in writing and signed by them.
- 25.4 At any time during the arbitral proceedings, the Tribunal may require the parties to produce documents, exhibits or other evidence within such period of time as the Tribunal shall determine. The Tribunal may also, in consultation with the parties, undertake a site visit.
- 25.5 In addition, the Tribunal shall have the power to:
- (a) conduct such enquiries as may appear to be necessary or expedient;
  - (b) order the parties to make any property or item available for inspection; and
  - (c) order any party to produce to the Tribunal and to the other parties for inspection and to supply copies of, any document in their possession, custody or control which the Tribunal considers relevant to the case and material to its outcome.

**26. Hearings -**

- 26.1 Unless the parties have agreed on a documents-only arbitration or as provided in these Rules, the Tribunal shall, if either party so requests or the Tribunal so decides, hold a hearing on the merits of the dispute, including, but not limited to any issue as to jurisdiction.
- 26.2 The Tribunal may, in advance of any hearing, submit to the parties a list of questions which it wishes them to answer.
- 26.3 The Tribunal shall fix the date, time and place of any meeting or hearing and shall give the parties reasonable advance notice.
- 26.4 If any party to the proceedings, without sufficient cause, fails to appear at a hearing, the Tribunal may proceed with the arbitration, pass appropriate orders or may make the Award.
- 26.5 Unless the parties agree otherwise, all meetings and hearings shall be held in private, and any recordings, transcripts, documents or other materials used shall remain confidential.

**27. Witnesses -**

- 27.1 Before a hearing, the Tribunal may require any party to give a list of witnesses, including expert witnesses, whom it intends to produce, the subject matter of their testimony and its relevance to the issues.
- 27.2 The Tribunal has the discretion to allow, refuse or limit the number of witnesses intended to be produced by a party. The Tribunal shall also have the discretion to restrict the time to be allocated for the oral testimony of a witness.
- 27.3 The Tribunal is free to determine the manner in which witnesses are to be examined, and may direct that the testimony of any witness be presented in written form.

**28. Joinder of Parties-**

- 28.1 A party wishing to join an additional party to the arbitration shall submit its written request for arbitration against (or jointly with) the additional party (the "Request for Joinder") to the Coordinator. The date on which the Request for Joinder is received by the Coordinator shall, for all purposes, except the time for making the award, be deemed to be the date of the commencement of arbitration against the additional party. No additional party may be joined after the confirmation or appointment of any arbitrator, unless all parties, including the additional party, otherwise agree in writing.
- 28.2 The Request for Joinder shall contain the following information:
- (a) the case reference of the existing arbitration;
  - (b) the name in full, description, address, including e-mail address, and other contact details of each of the parties, including the additional party;
  - (c) a description of the nature and circumstances of the dispute giving rise to the claims and of the basis upon which the claims are made;
  - (d) a statement of the relief sought, together with the amounts of any quantified claims and, to the extent possible, an estimate of the monetary value of any other claims;
  - (e) any relevant agreements and, in particular, the arbitration agreement(s);
  - (f) where claims are made under more than one arbitration agreement, an indication of the arbitration agreement under which each claim is made;
  - (g) such other documents or information as the party filing the Request for Joinder considers appropriate or as may contribute to the efficient resolution of the dispute.
- 28.3 All parties to the arbitration agreement shall be required to give written consent to the joinder of parties in addition to the written consent of the party to be impleaded and payment of proportionate administrative costs and fees of the Tribunal.
- 28.4 The rule shall apply *mutatis mutandis* to the Statement of Claim/plea of Set-Off and / or Counter-Claim submitted by the additional party.

PROVIDED that no such reply, Set-Off or Counter-Claim shall be permitted to be filed after the expiry of 30 days from the date of impleadment / joinder.

**29. Reference to Med-Arb-**

- 29.1 Parties to an arbitration agreement may, at any time before the commencement of the arbitration proceedings or while the arbitration proceedings are in progress, opt for mediation, and request the Arbitral Tribunal to put the arbitration proceedings on hold to enable the parties to resolve their disputes amicably.
- 29.2 The parties should convey their request to the Arbitral Tribunal, or if the Arbitral Tribunal is not in session, to the Coordinator.
- 29.3 The Arbitral Tribunal shall accept the request of the parties and keep in abeyance the arbitration proceedings, relegating the parties to Med-Arb.
- 29.4 The Mediators on the panel of the Masalihat - Jammu & Kashmir High Court Mediation Centre shall be deemed to be the mediators for the purpose of the reference to Med-Arb. The parties shall have the liberty to appoint the mediator of their choice and proceed with the mediation proceedings expeditiously.
- 29.5 The mediation proceedings shall be conducted in accordance with the mediation rules of the Jammu & Kashmir High Court Mediation Centre, which

shall be deemed to have been incorporated herein and as an integral part of these rules. The proceedings before the mediators shall remain confidential and shall not be brought on record in the arbitration proceedings, should the mediation fail.

29.6 If the parties settle the dispute through Mediation, the settlement agreement executed between the parties shall be forwarded to the Arbitral Tribunal, which shall, on receipt of the settlement agreement, proceed in accordance with Rule 30.

29.7 The Arbitrator shall not act as a Mediator in the matter where he is arbitrating, unless the parties agree to the contrary by an agreement in writing, specifically waiving confidentiality with regard to matters revealed during mediation.

**30. Settlement of dispute-**

30.1 The Tribunal may encourage settlement of the dispute with the agreement of the parties.

30.2 If during the arbitration proceedings, the parties settle the dispute, the Tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the Tribunal, record the settlement in the form of an Arbitral Award on agreed terms.

30.3 Such Arbitral Award as passed to record settlement between the parties should contain an express statement on its face that it is an award made at the parties' joint request and with their consent.

**PART-H**

**ORDER AND AWARD**

**31. Orders of the Tribunal-**

31.1 In addition to the powers specified in these Rules, and not in derogation of the mandatory rules of law applicable to the arbitration, the Tribunal shall have the power to:

(a) order the preservation, storage, sale or disposal of any property or item which is or forms part of the subject matter of the dispute;

(b) issue an award for unpaid deposits towards the costs of the arbitration where a party to the arbitration has paid the non-paying party's share of the deposits on behalf of the non-paying party;

(c) direct any party-

(i) to ensure that the assets of such party are not encumbered, alienated or dissipated in any manner so as to frustrate the Award;

(ii) to provide security for legal or other costs in any manner the Tribunal thinks fit;

(iii) to provide security for all or part of any amount in dispute in the arbitration.

**32. Arbitral Award -**

32.1 At the request of any one of the parties and subject to the statutory timeline for completion of proceedings, the Tribunal may submit a draft award to the Coordinator for the scrutiny by the Committee constituted for that purpose. In such event, the Coordinator will, on the advice of such Committee suggest modifications to the draft award without in any manner interfering with the

decision of the Tribunal. The suggestions will be communicated not later than 10 days after the receipt of the draft award failing which the Arbitrator will proceed to pronounce the final award without waiting for the suggestions. The Tribunal is at liberty to make such changes as it deems fit to the draft award.

- 32.2 The Tribunal may make separate Awards on different issues at different times.
- 32.3 In the event of a settlement, if the parties so request, the Tribunal may render a consent award recording the settlement, provided always that such Award contains an express statement that it is an Award made by the parties' consent. A consent award need not contain reasons. If the parties do not require a consent award, the parties shall confirm to the Coordinator that a settlement has been reached. The Tribunal shall be discharged and the arbitration concluded upon payment of any outstanding costs of the arbitration.
- 32.4 The JKIAC may publish any Award after redacting the names of the parties and other identifying information.

## **PART-I**

### **FEE AND COST**

#### **33. Fees of the Arbitral Tribunal and JKIAC's fees**

- 33.1 The Tribunal's fees and the JKIAC's fees shall be fixed in accordance with the JKIAC Fees Rules ordinarily not later than 30 days from the Statement of Claims or Counter-Claims.

#### **34. Costs of the Arbitration**

- 34.1 At the first procedural hearing, the Tribunal will determine the terms (other than the fees) which are required to be complied with by the parties.
- 34.2 The Tribunal shall specify in the award the total amount of the costs of the arbitration. Unless the parties have agreed otherwise, the Tribunal shall determine in the award the apportionment of the costs of the arbitration among the parties.
- 34.3 Regime for costs-

(A) In relation to any arbitration proceeding or a proceeding under any of the provisions of these Rules pertaining to the arbitration, the Arbitral Tribunal, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), shall have the discretion to determine—

- (a) whether costs are payable by one party to another;
- (b) the amount of such costs; and
- (c) when such costs are to be paid.

**Explanation**—For the purpose of this Rule, "costs" means reasonable costs relating to— (i) the fees and expenses of the arbitrators, Centre and witnesses; (ii) legal fees and expenses; (iii) any administration fees of the institution supervising the arbitration; and (iv) any other expenses incurred in connection with the arbitral or Court proceedings and the arbitral award.

- (B) If the Arbitral Tribunal decides to make an order as to payment of costs—
- (a) the general rule is that the unsuccessful party shall be ordered to pay the costs of the successful party; or

- (b) the Arbitral Tribunal may make a different order for reasons to be recorded in writing.
  - (C) In determining the costs, the Arbitral Tribunal shall have regard to all the circumstances, including—
    - (a) the conduct of all the parties;
    - (b) whether a party has succeeded partly in the case;
    - (c) The Arbitral Tribunal shall consider the Party Representative's misconduct in apportioning the costs of the arbitration, deciding, if appropriate, how and in what amount the Party Representative's misconduct leads the Tribunal to a different apportionment of costs;
    - (d) whether the party had made a frivolous Counter-Claim leading to delay in the disposal of the arbitral proceedings; and
    - (e) Whether any reasonable offer to settle the dispute is made by a party and refused by the other party.
  - (D) The Arbitral Tribunal may make an order under this section including the order that a party shall pay—
    - (a) a proportion of another party's costs;
    - (b) a stated amount in respect of another party's costs;
    - (c) costs from or until a certain date only;
    - (d) costs incurred before proceedings have begun;
    - (e) costs relating to particular steps taken in the proceedings;
    - (f) costs relating only to a distinct part of the proceedings; and
    - (g) interest on costs from or until a certain date.
  - (E) An agreement which has the effect that a party is to pay the whole or part of the costs of the arbitration, in any event, shall be only valid if such agreement is made after the dispute in question has arisen.
- 34.4 In making decisions as to costs, the Tribunal may take into account such circumstances as it considers relevant, including the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner.

**35. Advance on Costs -**

- 35.1 The Coordinator shall fix the amount of deposits for costs of the arbitration. Unless the Coordinator directs otherwise, 50% of such deposits shall be payable by the Claimant and the remaining 50% of such deposits shall be payable by the Respondent. The Coordinator may fix separate advances on costs for Claims and Counter-Claims, respectively.
- 35.2 Where the amount of the Claim or the Counter-Claim is not quantifiable at the time payment is due, a provisional estimate of the costs of the arbitration shall be made by the Coordinator. Such estimate may be based on the nature of the controversy and the circumstances of the case. This may be adjusted in light of such information as may subsequently become available.
- 35.3 The Coordinator may from time to time direct parties to make further advances towards costs of the arbitration incurred or to be incurred on behalf of, or for the benefit of the parties.
- 35.4 If a party fails to make the deposits as directed within 30 days from the date on which it is due, the Coordinator may, after consulting with the Chairperson or the Sub-Committee appointed by the Chairperson and the parties, direct the Tribunal to terminate the work. If the payment is not made within 30 days, the relevant Claims or Counter-Claims shall be considered as withdrawn without prejudice to the party reintroducing the same Claims or Counter-Claims in another proceeding.

- 35.5 Parties are jointly and severally liable for the costs of the arbitration. Any party is free to pay the whole of the deposits for costs of the arbitration in respect of the claim or the counterclaim should the other party fail to pay its share.
- 35.6 The Tribunal or the Coordinator may suspend its work, in whole or in part, should the advances or deposits directed under this Rule remain either wholly or in part unpaid. On the application of a party, the Tribunal may issue an Award for unpaid deposits towards the costs of the arbitration pursuant to Rule 34.4(D).
- 35.7 If the arbitration is settled or disposed of without a hearing or in terms of Rule 30.2, the costs of arbitration shall be finally determined by the Coordinator. The Coordinator shall have regard to all the circumstances of the case, including the stage of proceedings at which the arbitration is settled or disposed or terminated under Rule 30.2. In the event that the costs of arbitration determined are less than the deposits made, there shall be a refund in such proportions as the Chairperson or the Sub-Committee appointed by the Chairperson may decide, in the same proportion as the deposits were made.
- 35.8 All deposits shall be made to and held by the JKAC. Any interest which may accrue on such deposits shall be retained by the JKAC.
- 35.9 The Centre shall have a lien on the Arbitral Award for any unpaid costs of the Arbitration including adjournment cost, miscellaneous expenses, secretarial expenses and the fees of the Arbitrator and the Award will not be notified to the parties unless all such costs have been fully paid to the Centre by the parties or by one of them.

## **PART- J**

### **MISCELLANEOUS PROVISIONS**

#### **36. Exclusion and Waiver of Liability-**

The JKAC, including the Chairperson, members of the Arbitration Committee, directors, officers, employees or any Arbitrator or any Committee or Sub-Committee, shall not be liable to any person for any negligence, act or omission in connection with any arbitration governed by these Rules.

#### **37. Proceedings using the e-mode**

- i) The modalities of conducting hearing by the electronic mode such as Video Conferencing shall be devised by the learner Arbitrators itself, and the coordinator of the JKAC shall assist the learned Arbitrators in this behalf.
- ii) The procedure to be used for conducting hearings via Video Conferencing shall be the same procedure as is in vogue for hearings before the High Court.
- iii) The coordinators shall be responsible for installation, maintenance and upkeep of all video conferencing equipment.
- iv) In case of any difficulty, dispute or question as regards the procedure for regulation of these proceedings, the same may be referred to the Chairperson of the Committee for decision and resolution.

#### **38. Confidentiality-**

38.1 The parties, the JKAC and the Tribunal shall at all times treat all matters relating to the proceedings and the Award as confidential.

38.2 A party or any Arbitrator shall not, without the prior written consent of all the parties, disclose to a third party any such matter except:

- (a) for the purpose of making an application to any competent Court of any state to enforce or challenge the Award;
- (b) pursuant to the order of or a subpoena issued by a Court of competent jurisdiction;
- (c) for the purpose of pursuing or enforcing a legal right or claim;
- (d) in compliance with the provisions of the laws of any state which are binding on the party making the disclosure;
- (e) in compliance with the request or requirement of any regulatory body or other authority; or
- (f) pursuant to an order by the Tribunal on application by a party with proper notice to the other parties binding the parties on the terms of disclosure of documents considered to be sensitive, given the nature of the dispute.

38.3 In this Rule, "matters relating to the proceedings" means the existence of the proceedings and the pleadings, evidence and other materials in the arbitration proceedings and all other documents produced by another party in the proceedings or the Award arising from the proceedings, but excludes any matter that is otherwise in the public domain.

38.4 The Tribunal has the power to take appropriate measures, including issuing an order or Award for sanctions or costs, if a party breaches the provisions of this Rule.

**39. Decisions of the Arbitration Committee and the Secretariat-**

39.1 Subject to Rule 21.1, the decisions of the members of the Arbitration Committee and the Secretariat with respect to all matters relating to an arbitration shall be conclusive and binding upon the parties and the Tribunal. The Chairperson, the Arbitration Committee and the Secretariat shall not be required to provide reasons for such decisions.


39.2 In all matters not expressly provided for in these Rules, The Chairperson, the Arbitration Committee, the Secretariat and the Tribunal shall act in the spirit of these Rules and shall make every reasonable effort to ensure fair, expeditious and economical conclusion of the arbitration and the enforceability of any Award.

39.3 The JKIAC may from time to time issue Practice Notes to supplement, regulate and implement these Rules for the purpose of facilitating the administration of arbitrations governed by these Rules.

**40. Residuary Provisions-**

The Chairperson may take appropriate decisions, as it considers necessary in respect of all matters, which are not specifically provided in these Rules.

**By Order**

  
**(Jawad Ahmed)**  
**Registrar General**

No: 7071-06/RC

Dated: 19.09.2020

**Copy of the above forwarded to:**

1. Advocate General, Government of UT of Jammu and Kashmir at Srinagar.
2. Chief Secretary, Government of UT of Jammu and Kashmir at Srinagar.
3. Advisor to LG UT of Ladakh, Leh.  
.....for information.
4. Principal Secretary to Hon'ble the Chief Justice High Court of J&K.



5. Secretary to Hon'ble Mr/Mrs Justice \_\_\_\_\_  
.....for information of their Lordships.
6. Secretary to the Department of Law, Justice and Parliamentary Affairs,  
Government of Jammu and Kashmir, Srinagar.
7. Secretary to the Department of Law and Justice, Government of UT of Ladakh, Leh.
8. Registrar Vigilance, High Court of J&K, Srinagar.
9. Registrar Rules, High Court of J&K, Srinagar.
10. Member Secretary, J&K State, Legal Service Authority, Srinagar.
11. Registrar Judicial, High Court of J&K, Jammu/Srinagar.  
.....for information.
12. CPC e-Courts J&K High Court Jammu for information and with the request to upload the  
Notification on the official website of the High Court.
13. Manager, Government Press, Jammu for publication in the next issue of Government Gazette.

  
**Registrar General**