



**SINGHANIA & PARTNERS** LLP  
SOLICITORS AND ADVOCATES

# Dispute Resolution in Defence Contracts

By: Ravi Singhania | Managing Partner



# ARBITRATION CLAUSE

## International Arbitration

- **Article 21A** of the Standard Contract Document deals with International Arbitration or arbitration with foreign vendors.
- 3rd arbitrator is/ has to be appointed mutually but such person should not belong to either of the countries and should be appointed from a mutually accepted territory.
- In case of failure to agree on any name, 3rd arbitrator has to be appointed by ICA or ICADR. However, in case of disagreement, 3rd arbitrator may be nominated by ICC, Paris after consultation with both parties.

# STATUTORY REQUIREMENTS

The parties while appointing such arbitrators have to comply with the following basic standards laid down with respect to appointment of arbitrator:

- He/She should be an independent person;
- He/She must not have any direct or indirect interest in the outcome of the proceedings;
- He/She should be able to devote sufficient time for expedient disposal of the dispute.

The above standards have been provided keeping in mind the provisions contained in amended **Section 12** of the Act.

**Seventh Schedule** of the Act, provides that an arbitrator to be appointed for adjudication of disputes should not be related to either of the parties.

# ISSUES

- The procedure provided therein for multiple avenues for appointment of third arbitrator, may result into unnecessary delay in constitution of the arbitral tribunal, which will ultimately delay the disposal of disputes between the parties. Appointment of the third arbitrator by direct reference to ICC, Paris may be considered.
- **Article 21 A.6** of the Standard Contract Document provides that the proceedings shall be governed as per Indian Arbitration & Conciliation Act, 1996 and the award shall be enforceable in Indian Courts only.

# LIMITATION

Any claim or action by a party to enforce a contractual right can be taken within 3 years when the cause of action for such right arose. The limitation of 3 years is provided under Article 137 of the Limitation Act, 1963. The said period cannot be limited or extinguished.

**Pandit Construction Company vs DDA & Anr. : MANU/DE/8226/2007.**

## CAUSE OF ACTION

**NHPC Ltd. Vs KCT & Bros. (CS) Ltd. & Anr. : MANU/DE/0431/2010**

If a party is pursuing its remedies genuinely before a wrong forum despite there being an arbitration clause, he will be entitled to protection under Section 14 of the Limitation Act.

**Consolidated Engineering vs Principal Secretary, Irrigation: 2008(2) Arb.L.R. 139 (SC)**

## Limitation for Counter Claim

**Voltas Ltd. v. Rolta India Ltd. : (2014) 4 SCC 516**

## Dispute

**Major Inder Singh Rekhi vs DDA :1988 AIR SC 1007**

# BANK GUARANTEE LAW

- Law relating to bank guarantee has been settled in catena of judgments by various courts in India, which provide in no uncertain terms that a bank guarantee is a completely separate contract, having no connection with the main contract and has to be governed as per its own terms and conditions.
- It has further been settled that a bank guarantee can be invoked only as per its terms and any deviation thereto would lead to declaring the invocation as bad in law.

**Hindustan Construction Co. Ltd. v State of Bihar : (1999) 8 SCC 436**

**Denel (Proprietary) Ltd. v Union of India (2010) 2 Arb.L.R. 69** not a good law.

# AGENTS

- While various defence vendors have time and again engaged agents, however, the same has never been done openly as their role has always been questioned by the GOI. However, in the current DPP there seems to be deviation from the existing policy of GOI and they have allowed engagement of agents provided a disclosure is made well in advance in the prescribed format.
- **Schedule I to Chapter II** provides under **Article 19** that necessary details in respect of agents will have to be disclosed by a foreign vendor well in advance.
- The contract with the agent will not be a conditional contract wherein payment made or penalty levied is based, directly or indirectly, on success or failure of the award of the contract.



# CLAUSES IN TERROREM

It has been settled by various courts in India that a clause in terrorem is not valid in law.

**Fateh Chand v Balkishan Das : AIR 1963  
SC 1405**



# BLACKLISTING

The Courts in India have time and again tested the legality of blacklisting of any company by a government agency including the Ministry of Defence in various matters on the lines of rights available to any party under **Article 14** of the Constitution of India.

**IMI Ltd. vs UOI cited in 201 (2013) DLT  
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**THANK YOU**

Ravi Singhanian

ravi@singhanian.in