

**Carbonated Fly Ash Brick (C-Brick) Plant of 2 Lakh per Day Capacity at NTPC Ramagundam**

Bidding Document No: CS-3100-702-9

GEPNIC Tender Ref. No: 2025\_NTPC\_98848\_1

**Amendment No 01 to Commercial Bidding Documents**

Ref: CS-3100-702-9-AMDT01\_COMM

<b>Clause Ref</b>	<b>Existing</b>	<b>Amended as</b>
Section VII Book 2 of 2 Appendix-1 to Contract Agreement Terms of Payment (A) Schedule 2 Note 4	In case the Contractor decides not to take advance payment mentioned at (I) above, 90% of the advance amount shall be paid progressively on prorate basis along with the receipt payment, as specified in para (III) above.	In case the Contractor decides not to take advance payment mentioned at (I) above, the advance amount shall be paid progressively on prorate basis along with the receipt payment, as specified in para (III) above.
GCC Clause 6.0 (Settlement of Disputes)	As per Published Bidding Documents	Replace the GCC Clause 6 (Settlement of Disputes) and GCC clauses 20.3.5, GCC 23.7, GCC 39.2.5 and GCC 40.2 as under :

**(i) Clause 6 (Settlement of Disputes) of Section-GCC has been replaced as under:**

**6. Settlement of Disputes**

**6.1. Mutual Consultation**

*If any dispute of any kind whatsoever shall arise between the Employer and the Contractor in connection with or arising out of the Contract, including without prejudice to the generality of the foregoing, any question regarding its existence, validity or termination, or the execution of the Facilities, whether during the progress of the Facilities or after their completion and whether before or after the termination, abandonment or breach of the Contract, the parties shall seek to resolve any such dispute or difference by mutual consultation.*

*On reference of such a dispute by either party, the Employer shall invite the Contractor for mutual consultation, within seven (07) working days of such reference.*

*Without admitting the Employer's liability, the Employer may obtain, within 30 days of such reference of the dispute, further details from the Contractor and examine it relating to the dispute. Such examination (if any) by the Employer shall not be construed as or imply acceptance of the claim or liability or accuracy or*

*completeness of the details set forth in such request or reference. The Employer may hold discussions with Contractor with an effort to resolve the dispute.*

*If the parties fail to resolve such a dispute or difference by mutual consultation within a period of forty-five (45) days from the date of receipt of reference of such dispute or within such extended period as the parties shall agree in writing, then the dispute may be settled through Independent Engineer (if applicable) and/or Mediation through Independent External Monitors (if applicable) and/or through Conciliation and/or Arbitration (if applicable) / other remedies available under the applicable laws.*

*Notwithstanding anything contained in any other law for the time being in force, the parties shall keep confidential all matters relating to the Mutual consultation proceedings. Confidentiality shall extend also to any agreement reached during Mutual consultation, except where its disclosure is necessary for purposes of implementation and enforcement.*

*The parties shall not rely on or treat as evidence in Independent Engineer/ Mediation/ Conciliation/ and in any way Arbitral or Judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the Mutual consultation proceedings-*

- a) *views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;*
- b) *admissions made by the other party in the course of the mutual consultation proceedings;*
- c) *the fact that the other party had indicated his willingness to accept a proposal for mutual settlement.*

**6.2. Resolution of Dispute through Independent Engineer (IE): NOT APPLICABLE**

**6.3. Mediation through Independent External Monitors (IEMs)**

*If the parties fail to resolve a dispute or difference by mutual consultation and through Independent Engineer (if applicable) within a period specified at Cl. 6.1 and 6.2 above, the dispute, if the parties agree, may be referred to the Panel of IEMs for Mediation.*

*The Mediation proceedings shall be completed in a time bound manner, in **not more than 45 days from the date of reference to IEMs for Mediation.***

*The IEMs may conduct the Mediation proceedings in the manner, they consider appropriate. In case of 3-member Panel of IEMs, 2 members will constitute a valid quorum and the meeting can take place to proceed in the matter after seeking consent from the member who is not available. However, IEMs recommendations will be signed by all the members.*

*The fees for such meetings shall be as specified in the SCC. The travel and stay arrangement for such meetings shall be equal to that of Independent Board*

*Member of Employer's Organization. However, not more than five meetings shall be held for a particular dispute resolution. The fees/ expenses on dispute resolution shall be equally shared by both the parties.*

*If decision of IEMs is acceptable to both the parties, a Settlement Agreement will be signed to the extent agreed by the parties within 15 days of acceptance by the parties and same shall be authenticated by all the IEMs.*

*Notwithstanding anything contained in any other law for the time being in force, the Mediator and the parties shall keep confidential all matters relating to the Mediation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement.*

*The parties shall not rely on or introduce as evidence in Conciliation or Arbitral or Judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the Mediation proceedings, —*

- a) *views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;*
- b) *admissions made by the other party in the course of the Mediation proceedings;*
- c) *proposals made by the Mediator; and*
- d) *the fact that the other party had indicated his willingness to accept a proposal for settlement made by the Mediator.*

#### **6.4. Resolution of Dispute through Conciliation**

*If the parties fail to resolve such a dispute or difference by mutual consultation and through Independent Engineer (if applicable) and/or through Mediation (if applicable) within a period as specified at Cl. 6.1, 6.2 and 6.3 above, the dispute if the parties agree, may be referred to Conciliation.*

- (i) *For cases where the disputed amount (Claim/ Counter claim, whichever is higher) is upto Rs. 25 Cr. (excluding interest), the matter for conciliation shall be referred to Expert Settlement Council (ESC), constituted by Employer*
- (ii) *For cases where the disputed amount (Claim/ Counter claim, whichever is higher) is above Rs. 25 Cr. (excluding interest), the matter for conciliation shall be referred to Conciliation Committee of Independent Experts (CCIE), constituted by Ministry of Power (MoP).*

*If the claim/Counter-claim is in foreign currency, the SBI Bills Selling Exchange rate prevailing on the date of claim shall be used for the purpose of converting the claim in Indian Rupee.*

*The Conciliation process shall be conducted as per Part III of the Arbitration and Conciliation Act, 1996.*

**6.4.1. Resolution of Dispute through Expert Settlement Council (ESC), constituted by EMPLOYER {For cases with Disputed amount (Claim/ Counter claim, whichever is higher) upto Rs. 25 Crore excl. interest}**

*If the parties fail to resolve such a dispute or difference by mutual consultation and through Independent Engineer (if applicable) and/or through Mediation (if applicable) within a period specified at Cl. 6.1, 6.2 and 6.3 above, the dispute, if the parties agree, may be referred to Conciliation through Expert Settlement Council (ESC), in cases where the Disputed amount (Claim/ Counter claim, whichever is higher) is upto Rs.25 crore (excl. interest).*

**6.4.1.1. Invitation for Conciliation through ESC:**

- 6.4.1.1.1. A party shall notify the other party in writing about such a dispute it wishes to refer for Conciliation through ESC within a period of 15 days from the date of failure to resolve the dispute through Mutual Consultation and Independent Engineer (if applicable) and/or through Mediation (if applicable) within a period as specified at Cl. 6.1, 6.2 and 6.3 above. Such Invitation for Conciliation shall contain sufficient information as to the dispute to enable the other party to be fully informed as to the nature of the dispute, amount of the monetary claim, if any, and apparent cause of action.
- 6.4.1.1.2. Upon acceptance of the invitation to conciliate, the other party shall submit its counter claim, if any, within a period of 15 days from the date of the invitation to conciliate. If the other party rejects the invitation or Disputed amount (Claim/ Counter claim, whichever is higher) exceeds Rs 25 crore (excl. Interest), there will be no Conciliation proceedings through ESC.

*There shall be no Conciliation where disputed amount (Claim/ Counter claim, whichever is higher excl. interest) is only up to Rs 5 lakhs.*

- 6.4.1.1.3. If the party initiating Conciliation does not receive a reply within fifteen (15) days from the date on which it sends the invitation, or within such other period of time as specified in the invitation, it shall treat this as a rejection of the invitation to conciliate from the other party.

**6.4.1.2. Conciliation through ESC:**

- 6.4.1.2.1. Where Invitation for Conciliation has been furnished under GCC sub clause 6.4.1.1, the parties shall attempt to settle such dispute through Expert Settlement Council (ESC) which shall be constituted by CMD/Chairman of Employer.
- 6.4.1.2.2. ESC will be formed from experts comprising three members from the panel of Conciliators maintained by EMPLOYER. However, there will be single member ESC for disputes involving disputed amount (Claim/ Counter claim, whichever is higher excl. interest) is up to Rs. 1 crore.

*CMD/ Chairman of Employer shall have the authority to reconstitute the ESC to fill any vacancy.*

- 6.4.1.2.3. *The ESC shall be amongst Civil Servants of Govt. of India retired from the level of Joint Secretary and above, Retired Judges, Officers retired from the level of Executive Director and above of any Maharatna /Navratna company in India, other than NTPC Ltd, Retired Independent Directors who have served on the Board of any Maharatna / Navratna company in India, other than NTPC Ltd.*

**6.4.1.3. *Proceedings before ESC:***

- 6.4.1.3.1. *The claimant shall submit its Statement of Claims (SOC) along with relevant documents to ESC members, and to the party(s) indicated in the appointment letter within 15 days of appointment of ESC. The respondent shall file its reply/Statement of Defence (SOD) and counter claim (if any) within 15 days of the receipt of the Statement of claims. Each party shall send a copy of such Statement along with relevant documents to the other party.*

*Parties may file their rejoinder/additional documents, if any in support of their Claim/Counterclaim within next 7 days. No documents shall be allowed thereafter, except with the permission of ESC.*

- 6.4.1.3.2. *The parties shall file their claim and counterclaim in the following format*

- a. Chronology of the dispute
- b. Brief of the contract
- c. Brief history of the dispute
- d. Issues

Sl. No.	Description of Claims/ Counter claims	Amount (in foreign currency/INR)	Relevant Contract Clause

- e. Details of Claim(s)/Counter Claim(s)
- f. Basis/Ground of claim(s)/counter claim(s) (along with relevant clause of contract)

*Note: Statement of claims shall be restricted to maximum limit of 20 pages.*

- 6.4.1.3.3. *In case of 3 members ESC, 2 members will constitute a valid quorum and the meeting can take place to proceed in the matter after seeking consent from the member who is not available. However, ESC recommendations will be signed by all the members.*

*If required, meetings can be conducted through video conferencing/other digital means subject to the agreement between the parties and the ESC.*

- 6.4.1.3.4. *The parties shall be represented by their in house employees. No party shall be allowed to bring any advocate or outside consultant/advisor/agent to contest on*

*their behalf. Ex-officers of Employer's Organization who have handled the subject matter in any capacity shall not be allowed to attend and present the case before ESC on behalf of contractor. However, ex-employees of parties may represent their respective organizations. Parties shall not claim any interest on claims/counter-claims from the date of notice invoking Conciliation till execution of settlement agreement, if so arrived. In case, parties are unable to reach a settlement, no interest shall be claimed by either party for the period from the date of notice invoking Conciliation till the date of ESC recommendations and 30 days thereafter in any further proceeding.*

- 6.4.1.3.5. *ESC will conclude its proceedings in maximum 5 meetings and give its recommendations within 90 days from the date of reference to ESC. ESC will give its recommendations to both the parties recommending possible terms of settlement. CMD/ Chairman of Employer may extend the time/number of meetings, in exceptional cases, if ESC requests for the same with sufficient reasons and as agreed by the parties.*
- 6.4.1.3.6. *Depending upon the location of ESC members and the parties, the venue of the ESC meeting shall be either Delhi/Mumbai/Kolkata/Chennai or any other city whichever is most economical from the point of view of travel and stay etc. All the expenditure incurred in ESC proceedings shall be shared by the parties in equal proportion.*

#### **6.4.1.4. Fees & Facilities to the Members of the ESC**

*The cost of Conciliation proceedings including but not limited to fees for Conciliator, Airfare, Local transport, Accommodation, cost towards conference facility etc shall be as provided herein below:*

<b>Sl. No.</b>	<b>Fees/ Facility</b>	<b>Entitlement</b>
1	Fees	<i>Lumpsum fee of Rs. 2,50,000 per conciliator irrespective of the no. of meetings.*</i>
2	Secretarial expenses	<i>Rs. 10,000 lump sum (to 1 member only).</i>
3	<i>Transportation in the city of the meeting</i>	<i>Car as per entitlement or Rs. 2,000 per day</i>
4	Venue for meeting	<i>Employer's conference rooms</i>
<i>Facilities to be provided to the out-stationed member</i>		
5	<i>Travel from the city of residence to the city of meeting</i>	<i>As per entitlement of Independent Directors. Executive class air tickets / first class AC train tickets/ Luxury car/ reimbursement of actual fare. However, entitlement of air travel by Business class shall be subject to austerity measures, if any, ordered by Govt of India.</i>
6	<i>Transport to and fro airport/ railway station in</i>	<i>Car as per entitlement or Rs. 3,000</i>

<b>Sl. No.</b>	<b>Fees/ Facility</b>	<b>Entitlement</b>
	<i>the city of residence</i>	
7	Stay for out stationed members	As per entitlement of Independent Directors.
8	Transport in the city of meeting	Car as per entitlement or Rs. 2000 per day

\* Due to unavoidable circumstances, if there is requirement of more than 5 meeting to conclude the Conciliation proceedings, the same may be done at the discretion of ESC within the capping of fee of Rs 2.5 Lakhs per conciliator. However, logistic arrangements, including travel, etc. may be provided as per the extant Policy for such additional sittings.

Aforesaid fees is subject to revision by Employer from time to time and subject to government guidelines on austerity measures, if any. All the expenditure incurred in the ESC proceedings shall be shared by the parties in equal proportions. The Parties shall maintain the account of expenditure and present to the other for the purpose of sharing on conclusion of the ESC proceedings.

- 6.4.1.5. If recommendations/ report of ESC is acceptable to both the parties, a Settlement Agreement under Section 73 of the Arbitration and Conciliation Act, 1996 will be signed to the extent agreed by the parties within 15 days of acceptance by the parties and same shall be authenticated by all the ESC members.

Parties are free to terminate Conciliation proceedings at any stage as provided under the Arbitration and Conciliation Act 1996.

- 6.4.1.6. Notwithstanding anything contained in any other law for the time being in force, the Conciliator and the parties shall keep confidential all matters relating to the Conciliation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement.

The parties shall not rely on or introduce as evidence in Arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the Conciliation proceedings,—

- a) views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;
- b) admissions made by the other party in the course of the Conciliation proceedings;
- c) proposals made by the Conciliator; and
- d) the fact that the other party had indicated his willingness to accept a proposal for settlement made by the Conciliator.

**6.4.2. Resolution of Dispute through Conciliation Committee of Independent Experts (CCIE), constituted by Ministry of Power (MoP) {For cases with Disputed amount (Claim/ Counter claim whichever is higher) above Rs. 25 Crore excl. interest}**

*If the parties fail to resolve such a dispute or difference by mutual consultation and through Independent Engineer (if applicable) and/or through Mediation (if applicable) within a period specified at Cl. 6.1, 6.2, 6.3 above, the dispute, if the parties agree, may be referred to Conciliation Committee of Independent Experts (CCIE), in cases where the Disputed amount (Claim/ Counter claim whichever is higher) is above Rs. 25 crore excl. interest.*

**6.4.2.1. Invitation for Conciliation through CCIE:**

- 6.4.2.1.1. A party shall notify the other party in writing about such a dispute it wishes to refer for CCIE within a period of 15 days from the date of failure to resolve the dispute through Mutual Consultation and Independent Engineer (if applicable) and/or through Mediation (if applicable) within a period as specified at Cl. 6.1, 6.2 and 6.3 above. Such Invitation for Conciliation shall contain sufficient information as to the dispute to enable the other party to be fully informed as to the nature of the dispute, amount of the monetary claim, if any, and apparent cause of action.
- 6.4.2.1.2. If the party initiating Conciliation does not receive a reply within fifteen (15) days from the date on which it sends the invitation, or within such other period of time as specified in the invitation, it shall treat this as a rejection of the invitation to conciliate from the other party.

**6.4.2.2. Conciliation Committee of Independent Experts:**

- 6.4.2.2.1. Where Invitation for Conciliation has been consented to under GCC sub clause 6.4.2.1, the same shall be referred to the Conciliation Committee of Independent Experts (CCIE) within 30 days.

*Conciliation Committees of Independent Experts (CCIE) have been constituted and notified by MoP for settlement of disputes arising in the Contract. There are three CCIEs, as specified in Special Conditions of Contract.*

- 6.4.2.2.2. The Contractor may select three CCIEs, in priority order, from the list of CCIEs enclosed with the Special Conditions of Contract, for finalization by Central Electricity Authority (CEA).

*There shall not be any conflict of interest for the members of the CCIE due to their past assignments. Individuals CCIE members shall submit an undertaking in this regard to the Employer, prior to appointment. It shall be ensured that they have not been engaged for providing any services to any of the parties i.e. either Employer or the Contractor in the last five years. An Undertaking in this regard, shall also be furnished by the Contractor for the purpose of avoiding any conflict of interest.*

**6.4.2.3. Proceedings before CCIE:**

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- 6.4.2.3.1. *The procedure of CCIE shall not be treated as alternate arbitration proceedings where both parties come with Statement of claims/defence, arguments/counter arguments, rejoinders, written submissions etc., aided by their respective lawyers.*
- 6.4.2.3.2. *The parties shall be brief and to the point before the Committee with regard to their respective stance and view the exercise in the spirit of conciliation/settlement.*
- 6.4.2.3.3. *The possibility of non-availability of any one of the members of CCIE in any proceedings cannot be ruled out. As such, the Committee comprising the other two members shall be competent to proceed in the matter. The proceedings of the Committee shall not be vitiated if one of the three members of CCIE is not present in the deliberations of the Committee. When the parties sign the settlement agreement, at least two members of CCIE shall authenticate the same. Such conciliation proceedings shall be considered valid and the settlement agreement will be binding on the parties.*
- 6.4.2.3.4. *The parties shall be represented by their in house employees. No party shall be allowed to bring any advocate or outside consultant/advisor/agent to contest on their behalf. Ex-officers of Employer's Organization who have handled the subject matter in any capacity shall not be allowed to attend and present the case before CCIE on behalf of contractor. However, ex-employees of parties may represent their respective organizations.*
- 6.4.2.3.5. *The Conciliation proceedings shall be completed in each case through 5 sittings in a period of not more than three months from the date the reference made to the CCIE. In exceptional cases, if any dispute so merits, the time period may be extended at the discretion of Conciliation Committee (with reasons to be recorded in writing), for a further period of three months.*
- 6.4.2.3.6. *The CCIE shall hold day to day sitting at a suitable place (preferably the headquarter of the Employer or New Delhi) and may hold as many sittings every month as it deems appropriate keeping in view the volume of work.*

#### **6.4.2.4. Fees & Facilities to the Members of the CCIE**

*Each member of CCIE would be paid a sum of Rs. 50,000/- as sitting fee per sitting. In addition, Rs. 5,000/- per sitting will be paid for local transport charges for each day of proceeding.*

*In case, a particular dispute requires more than 5 sittings, the same may be held at the discretion of the CCIE but with a cap on payment of fee for 5 sittings only. The local transport charges shall, however, be paid as provided for each day of sitting beyond the 5 sittings.*

*All expenditure incurred on the conciliation proceedings including payment of fees to the Conciliators, office space, logistic, secretarial assistance and other incidental expenses etc. shall be borne by the Employer initially. Thereafter it shall be shared equally by both parties on completion of the conciliation process.*

- 6.4.2.5. *The Parties shall maintain the account of expenditure and present to the other for the purpose of sharing on conclusion of the CCIE proceedings.*

*The Conciliation process shall be conducted under Part III of the Arbitration and Conciliation Act, 1996.*

*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 remedies as may be available to them under the applicable laws other than Arbitration.*

*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.*

*After successful conclusion of proceedings, the Parties to the conciliation process, have to undertake and complete all necessary actions for implementation of the terms of settlement within a period of 30 days from execution of settlement agreement, unless a different timeline not exceeding 60 days is agreed upon in settlement agreement. All pending claims of parties, in connection with the dispute, before any other legal forum are to be withdrawn within the said 30 days in pursuance of the settlement agreement.*

- 6.4.2.6. *Notwithstanding anything contained in any other law for the time being in force, the Conciliator and the parties shall keep confidential all matters relating to the Conciliation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement.*

*The parties shall not rely on or introduce as evidence in Arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the Conciliation proceedings, —*

- a) *views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;*
- b) *admissions made by the other party in the course of the Conciliation proceedings;*
- c) *proposals made by the Conciliator; and*
- d) *the fact that the other party had indicated his willingness to accept a proposal for settlement made by the Conciliator.*

## **6.5. Arbitration**

- 6.5.1. *If the process of mutual consultation and IE (if applicable)and/or Mediation (if applicable) and/or ESC fails to arrive at a settlement between the parties, Employer or the Contractor may, within Thirty (30) days of such failure, give*

*notice to the other party, of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. The mechanism of settling the disputes through arbitration shall be applicable only in cases where the disputed amount (i.e. Claim/ Counter claim, whichever is higher, excluding interest) is less than Rs. 10 crores.*

*If the claim/ counter claim is in foreign currency, the SBI Bills Selling Exchange rate prevailing on the date of claim shall be used for the purpose of converting the claim in Indian Rupee*

*In case the disputed amount (Claim/ Counter claim, whichever is higher, excl. interest) is **Rs. 10 Crores or above**, the parties shall be within their rights to take recourse to remedies as may be available to them under the applicable laws other than Arbitration after prior intimation to the other party. There shall be no arbitration where the disputed amount (Claim/ counter claim, whichever is higher) is only up to Rs. 5 lakhs.*

*The parties at the time of invocation of arbitration shall submit all the details of the claims and the counter-claims including the Heads/Sub-heads of the Claims/Counter-Claims and the documents relied upon by the parties for their respective claims and counter-claims. The parties shall not file any documents/details of the claims and counter-claims thereafter.*

*The claims and the counter claims raised by the parties at the time of invocation of the arbitration shall be final and binding on the parties and no further change shall be allowed in the same at any stage during arbitration under any circumstances whatsoever.*

*In case, multiple arbitrations are invoked (whether sub-judice or arbitral award passed) by any party under this contract, then the cumulative disputed amount (i.e. Claim/ Counter claim, whichever is higher, excluding interest) in all such arbitrations shall be taken into account while arriving at the total disputed amount for the subject contract. Disputes having cumulative value less than Rs 10 crores shall be resolved through arbitration. In case the disputed amount (Claim/Counter claim, whichever is higher, excluding interest) is Rs 10 crores and above, the parties shall be within their rights to take recourse to remedies as may be available to them under the applicable laws other than Arbitration after prior intimation to the other party.*

- 6.5.2. Any dispute in respect of which a notice of intention to commence arbitration has been given, in accordance with GCC Sub Clause 6.5.1, shall be finally settled by arbitration.
- 6.5.3. It is agreed between the parties that the Arbitration proceedings shall be conducted as per the provisions of Fast Track Procedure as provided under The Arbitration and Conciliation Act, 1996, as amended from time to time.

*Any dispute or difference raised by a party to arbitration shall be adjudicated by an arbitral tribunal consisting of three arbitrators, in the following manner:*

- a) *A party willing to commence arbitration proceeding shall invoke Arbitration Clause by giving notice to the other party.*
- b) *The EMPLOYER and the Contractor shall each appoint one arbitrator, and these two arbitrators shall jointly appoint a third arbitrator within 30 days, who shall act as presiding arbitrator of the arbitral tribunal. If the two arbitrators do not succeed in appointing a third arbitrator within 30 days of the latter of the two arbitrators has been appointed, the third arbitrator shall be appointed by the High Court of Delhi.*
- c) *If one party fails to appoint its arbitrator within 30 days after the other party has named its arbitrator, the party which has named its arbitrator may approach the High Court of Delhi to appoint the second arbitrator.*
- d) *If any member of the arbitral tribunal dies, resigns, becomes incapacitated or withdraws for any reason from the proceedings or his mandate is terminated by the Court, a substitute shall be appointed in the same manner as the arbitrator whose mandate has terminated as above. After substitution of new member, the arbitration tribunal shall proceed with reference from the stage where the mandate of the arbitrator has been terminated.*
- e) *Arbitrator tribunal shall be paid fees as per the Fee Schedule (presently Fourth Schedule) provided in 'The Arbitration and Conciliation Act, 1996' as amended from time to time. If the claim/ counter claim is in foreign currency, the SBI Bills Selling Exchange rate prevailing on the date of claim shall be used for the purpose of converting the claim in Indian Rupee which may be used for determining the arbitration fee.*
- f) *If after commencement of the Arbitration proceedings, the parties agree to settle the dispute mutually or refer the dispute to mediation or Conciliation, the arbitral tribunal shall put the proceedings in abeyance until such period as requested by the parties. Where the proceedings are put in abeyance or terminated on account of mutual settlement of dispute by the parties, the fees payable to the arbitrator shall be determined as under:
  - (i) 40% of the fees if the Pleadings are complete.
  - (ii) 60% of the fees if the Hearing has commenced.
  - (iii) 80% of the fees if the Hearing is concluded but the Award is yet to be passed.*
- g) *Each party shall pay its share of arbitrator's fees in stages as under or as per the directions of Arbitrator:
  - (i) 40 % of the fees on Completion of Pleadings.*

- (ii) 40% of the fees on Conclusion of the Final Hearing.
  - (iii) 20% at the time when arbitrator notifies the date of final award.
- h) *The Claimant shall be responsible for making all necessary arrangements for the travel/ stay of the Arbitrator including venue of arbitration, hearings. The parties shall share the expenses for the same equally.*
- i) *The Arbitration shall be held at Delhi only.*
  - j) *The arbitral tribunal shall give reasoned and speaking award in prompt manner and it shall be final and binding on the parties.*
  - k) *Subject to the aforesaid conditions, provisions of the Arbitration and Conciliation Act, 1996 and any statutory modifications or re-enactment thereof as amended from time to time, shall apply to the arbitration proceedings under this clause.*

6.5.4. *In the event of any dispute or difference relating to the interpretation and application of the provisions of commercial contract (s) between Central Public Sector Enterprises (CPSEs)/ Port Trusts inter se and also between CPSEs and Government Departments/ Organizations (excluding disputes relating to Railways, Income Tax, Customs & Excise Departments), such disputes or difference shall be taken up by either party for resolution through Administrative Mechanism for Resolution of CPSEs Disputes (AMRCD) as mentioned in DPE Office Memorandum No. 05/0003/2019-FTS-10937 dated 14.12.2022 issued by Department of Public Enterprises, Government of India and its further clarifications, modifications and amendments, issued from time to time.*

***The limit on disputed amount as mentioned at clause 6.5.1 above shall not be applicable and matter may be referred to AMRCD irrespective of the amount involved in dispute, if the dispute could not be resolved through Mutual Consultation and IE (if applicable) as brought out at GCC Sub Clause 6.1 and 6.2 above.***

- 6.6. *Notwithstanding any reference to the Independent Engineer or Mediation or Conciliation or Arbitration herein,*
- (a) *the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree.*
  - (b) *the Employer shall pay the Contractor any monies due to the Contractor.*

*Settlement of Dispute clause cannot be invoked by the Contractor, if the Contract has been mutually closed or 'No Demand Certificate' has been furnished by the Contractor or any Settlement Agreement has been signed between the Employer and the Contractor.*

(II) The clause reference appearing in the GCC sub-clauses 20.3.5, 23.7, 39.2.5 & 40.2 in respect of “Expert Settlement Council (ESC)” has been modified with reference to modifications in clause 6 above.

(ii)-(a) ***Sub-Clause 20.3.5 (Approval/Review of Technical Documents by Project Manager) of Section-GCC shall be replaced as under:***

20.3.5 If any dispute or difference occurs between the Employer and the Contractor in connection with or arising out of the disapproval by the Project Manager of any document and/or any modification(s) thereto that cannot be settled between the parties within a reasonable period, then such dispute or difference may be referred to Expert Settlement Council (ESC) for determination in accordance with GCC Sub-Clause 6.4.1 hereof. If such dispute or difference is referred to ESC, the Project Manager shall give instructions as to whether and if so, how, performance of the Contract is to proceed. The Contractor shall proceed with the Contract in accordance with the Project Manager's instructions, provided that if the ESC upholds the Contractor's view on the dispute and if the Employer has not given notice under GCC Sub-Clause 6.5.1 hereof, then the Contractor shall be reimbursed by the Employer for any additional costs incurred by reason of such instructions and shall be relieved of such responsibility or liability in connection with the dispute and the execution of the instructions as the ESC shall decide, and the Time for Completion shall be extended accordingly.

(ii)-(b) ***Sub-Clause 23.7 (Test and Inspection) of Section-GCC shall be replaced as under:***

23.7 If any dispute or difference of opinion shall arise between the parties in connection with or arising out of the test and/or inspection of the Plant and Equipment or part of the Facilities that cannot be settled between the parties within a reasonable period of time, it may be referred to the Expert Settlement Council (ESC) for determination in accordance with GCC Sub-Clause 6.4.1.

(ii)-(c) ***Sub-Clause 39.2.5 (Changes Originating from Employer) of Section-GCC shall be replaced as under:***

39.2.5 If the Employer and the Contractor cannot reach agreement on the price for the Change, an equitable adjustment to the Time for Completion, or any other matters identified in the Change Proposal, the Employer may nevertheless instruct the Contractor to proceed with the Change by issue of a “Pending Agreement Change Order.”

Upon receipt of a Pending Agreement Change Order, the Contractor shall immediately proceed with effecting the Changes covered by such Order. The parties shall thereafter attempt to reach agreement on the outstanding issues under the Change Proposal.

If the parties cannot reach agreement within sixty (60) days from the date of issue of the Pending Agreement Change Order, then the matter may be referred to the Expert Settlement Council (ESC) in accordance with the provisions of GCC Sub-Clause 6.4.1.

**(ii)-(d) Sub-Clause 40.2 (Extension of Time for Completion) of Section-GCC shall be replaced as under:**

- 40.2 Except where otherwise specifically provided in the Contract, the Contractor shall submit to the Project Manager a notice of a claim for an extension of the Time for Completion, together with particulars of the event or circumstance justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the claim, the Employer and the Contractor shall agree upon the period of such extension. In the event that the Contractor does not accept the Employer's estimate of a fair and reasonable time extension, the Contractor shall be entitled to refer the matter to the Expert Settlement Council (ESC), pursuant to GCC Sub-Clause **6.4.1.**