

Haryana Industry Facilitation Council (Arbitration) Rules, 2001

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Rule

HARYANA-INDUSTRY-FACILITATION-COUNCIL-ARBITRATION-RULES of 2001

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Haryana Industry Facilitation Council (Arbitration) Rules, 2001Published vide Haryana Government Industries Department Notification No. 2/5/2-1-IIB-II.99, dated The 28th May, 2001No. 2/5/2-1-IIB-II-99. - In exercise of the powers conferred by sub-section (3) of Section 7B of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (Act 32 of 1993) and all other powers enabling him in this behalf the Governor of Haryana hereby makes the following rules to provide for the composition of the Industry Facilitation Council established in the State, the manner of filling vacancies among, and the procedure to be followed in the discharge of the functions by, the members thereof, namely :-

1. Title and extent.

(1)These rules may be called the Haryana Industry Facilitation Council (Arbitration) Rules, 2001.(2)They shall apply to all disputes under the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (Act 32 of 1993).

2. Definitions.

- In these rules, unless the context otherwise requires :- (a)"Act" means the Interest on Delayed Payments to Small and Ancillary Industrial Undertakings Act, 1993 (Act 32 of 1993).(b)"Chairperson" means the Chairperson of the Council and includes the sole member of such Council.(c)"Claimant" means the supplier as defined in the Act.(d)"Council" means the Industry Facilitation Council, established by the Government under Section 7A of the Act.(e)"Form" means the forms appended to these rules.(f)"Member" means a member of the Council.(g)"Respondent" means the buyer as defined in clause of Section 2 of the Act from whom the claimant seeks to

recover any amount due under the Act together with the interest thereon as provided for in the Act.

3. Composition of Council.

(1)The Council established by the Government shall consist of :-

1. Director of Industries, Haryana	Chairman
2. General Manager, Haryana Financial Corporation	Member
3. General Manager, Punjab National Bank	Member
4. Company Secretary, Haryana State Industrial Development Corporation	Member
5. President, Haryana Chamber of Commerce and Industry	Member
6. President, Punjab, Haryana and Delhi Chamber of Commerce and Industries.	Member
7. President, Faridabad Industry Association.	Member
8. Technical Expert (Mechanical Engineering), Directorate of Industries, Haryana	Member Secretary

(2)The term of office of the Members other than the Chairperson shall be for a period of two years from the date of appointment : Provided that the Government may re-appoint a Member.(3)Any

Member of the Council may resign from the Council by one month's notice in writing to the Government.(4)The Government may remove from office any member, who has -(a)been adjudged

as insolvent; or(b)been convicted of an offence which, in the opinion of the Government, involves moral turpitude; or(c)become physically or mentally incapable of acting as a Member; or(d)acquired such financial or other interest as is likely to affect prejudicial to the public interest; or(e)so abused his position as to render his continuance in office prejudicially to the public interest; or(f)remained absent in three consecutive sittings except for reasons beyond control :Provided that no Member shall be so removed on the ground mentioned in clauses (d), (e) and (f) except after an inquiry held by the Government in this behalf and finds the Member guilty on such ground.(5)Any vacancy arising in the Council for any reason whatsoever may be filled by the Government by notification.

4. Remuneration and allowances of members.

- The remuneration, honorarium or fees and any allowances that may be paid to the Members shall be at such rates as the Government may by order specify.

5. Reference by way of statement of claim.

(1)A reference to the Council shall be made by way of statement of claim in Form-I accompanied by such documents and facts supporting his claim enclosing the requisite number of copies together with an initial share deposit towards costs of an amount of rupees five hundred by way of demand draft in the name of the Council.(2)If any reference contains any claim in respect of the matters other than referred to in sub-section (1) of Section 6 of the Act, the Council shall return the claim to the claimant for deletion of the matters extraneous to that Section :Provided that if the claimant does not comply with within thirty days of such return, the Council may terminate the proceedings

without prejudice to the right of the claimant to make the fresh reference if he is otherwise entitled so to do.(3)The Council may require any claimant to provide any better statement or particulars of claim or any further documents in support of the claim as it may consider necessary for the purpose of the proceedings and if the claimant fails to do so within thirty days of receipt of any such communication or within such further time as the Council may, for sufficient cause, allow, the Council to terminate the proceedings without prejudice to the right of the claimant to make any fresh reference if he is otherwise entitled so to do.

6. Challenge of Member.

(1)On receipt of a statement of claim, every Member shall disclose in writing any circumstances likely to give rise to justifiable doubts as to his independence or impartiality and any such disclosure shall be sent to the parties alongwith the notices in Form-2 calling for statement of defence and thereafter, the requirements of sub Section (2) of Section 12 of the Arbitration and Conciliation Act, 1996 shall apply.(2)The ground for challenge of a Member and the procedure for challenge shall be in accordance with Sections 12 and 13 of the Arbitration and Conciliation Act, 1996 (26 of 1996).(3)On a successful challenge, the Council shall cease to proceed with the reference and transfer the case to such other Council having alternate or concurrent jurisdiction over the dispute and such other Council shall thereafter proceed with the reference afresh or as it may deem fit having regard to the stage of proceedings completed in the former Council.

7. Statement of defence.

(1)The Council shall if it is satisfied that, on the facts stated therein, it has jurisdiction to proceed with the reference and that the claimant is entitled under the Act to make a reference, cause a copy of the statement of claim to be sent by registered post to the respondent alongwith copies of the attached documents and issue notice in Form-2 to the respondent asking him to furnish within thirty days a statement of defence in Form-3 with such documents and facts in support of his defence or having a bearing on the matter under reference together with his half share of deposit for costs in such manner as may be specified therein and within the time allowed to the respondent for finishing his statement of defence.(2)A copy of the notice in Form-2 shall also be sent by registered post to the claimant alongwith a notice in Form-4 calling upon the claimant to pay a further amount after adjusting the initial deposit made by him towards his half share of deposit for costs in such manner as may be specified therein and within the time allowed to the respondent for furnishing his statement of defence.(3)The Council, may, on an application made by the respondent showing sufficient cause, allow such further time for the statement of defence as it may consider fit, but not exceeding sixty days from the date of receipt by the respondent of the notice under sub-rule (1).

8. Hearings and written proceedings.

(1)On receipt of the statement of defence and if the amount of deposits has been paid by the parties, the Council shall send a copy of the statement of defence to the claimant and fix a date for appearance and hearing of the parties and issue notice by registered post in Form-5.(2)If the respondent fails or omits to send a statement of defence within the time allowed to him, the Council

shall proceed to fix a date for the appearance and hearing of the parties and issue notice by registered post in Form-5 :Provided that if the respondent has failed or omitted to pay his share of the deposit, the Council shall call upon the claimant to pay that share also within fifteen days of receipt of the notice :Provided further that if the Claimant has not paid the aforesaid share, the Council may suspend or terminate the proceedings.(3)At the first hearing, the Council shall not proceed to enter upon the merits of the subject matter in dispute, till it has decided on any challenge to jurisdiction and challenge to any of its Members.(4)The Council shall decide whether to hold oral hearing for the presentation of evidence or for oral argument, or whether proceedings shall be conducted on the basis of documents and other materials :Provided that the Council shall hold oral hearing at an appropriate stage of the proceedings, on request by a party, unless the parties have agreed that no oral hearing shall be held.(5)The parties shall be given sufficient advance notice of any hearing and of any meeting of the Council for the purposes of inspection of documents, goods or other property.(6)All statements, documents or other information supplied to, or applications made to the Council by one party shall be communicated to the other party, and any expert report or evidentiary document on which the Council may rely in making its decision shall be communicated to the parties.(7)Where without cause :-(a)the claimant fails to communicate his statement of claim in accordance with these rules and Section 23(1) of the Arbitration and Conciliation Act, 1996 (26 of 1996) the Council shall terminate the proceedings,(b)the respondent fails to communicate his statement of defence in accordance with these rules and Section 23(1) of the Arbitration and Conciliation Act, 1996 (26 of 1996) the Council shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant,(c)a party fails to appear at an oral hearing or to produce documentary evidence, the Council may continue the proceedings and make the arbitrage award on the evidence before it.(8)The Council may appoint one or more experts in terms of Section 26 of the Arbitration and Conciliation Act, 1996 (26 of 1996).(9)The Council, or a party with the approval of the Council, may apply to court under Section 27 of the Arbitration and Conciliation Act, 1996 (26 of 1996), for assistance in taking evidence.(10)The Council may, with the agreement of the parties, at any time during the proceedings, use mediation, conciliation or other procedures to encourage settlement of the dispute under Section 30 of the Arbitration and Conciliation Act, 1996 (26 of 1996).(11)The Council shall conduct its proceedings at such place as the Government may specify in the notification.(12)The Council may on such terms as it may think fit at any stage for reasonable or sufficient cause, adjourn the hearing from time to time but it shall so conduct the proceedings that the decision is given, as far as possible, within ninety days of the first date of hearing.(13)At any stage of the proceedings, if the parties jointly apply to the Council that the proceedings be terminated the Council shall terminate the proceedings.

9. Decision by Council.

(1)Decision of the Council shall be by a majority of all its Members.(2)Notwithstanding anything contained in sub-rule (1), if authorised by the parties or all the Members of the Council, questions of procedure may be decided by the Chairperson.

10. Deposits.

(1) In fixing the deposits or supplementary deposits as an advance for costs and expenses of the arbitration referred to in Section 31(8) of the Arbitration and Conciliation Act, 1996 (26 of 1996) the Council shall comply with any scale or scheme of fees and expenses that the Government may, by order, specify and all the provisions of section 38 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall be complied with. (2) In any case where the proceedings are terminated before making of an award, the Council shall adjust its costs and expenses from any of the deposits as it may deem fit and proper in the facts and circumstances of the case and refund the balances of deposits, if any, to the respective parties.

11. Arbitral awards.

(1) The Council shall make an arbitral award in accordance with section 31 of the Arbitration and Conciliation Act, 1996 (26 of 1996). (2) The arbitral award shall be stamped in accordance with the relevant law in force.

12. Interpretation of rules.

- Notwithstanding anything contained in these rules, the arbitral proceedings shall be governed by the Arbitration and Conciliation Act, 1996 (26 of 1996) and these rules shall be interpreted and applied so as to be consistent with the supplementary to and not in derogation of the Arbitration and Conciliation Act, 1996 (26 of 1996). Form-1 [See Rule 5(1)] Reference and Statement of Claim

1. Form and enclosures to be submitted in quadruplicate

2. In case of several deliveries/particulars under the same contract, the relevant particulars may be in the form of an attached statement.

Before the _____ Industry Facilitation Council at _____

1. Name of the Claimant seller.

2. Full Postal address of the claimant seller.

3. Name of the Respondent buyer.

4. Full postal address of the Respondent Buyer.

- 5. Small Scale Industries registration number of the Claimant (copy of permanent registration certificate attested by a Gazetted Officer to be enclosed).**
- 6. Particulars of the purchase order/contract with the respondent seller in respect of which the amounts are claimed (copy of the purchase order/contract to be enclosed).**
- 7. Date on which the goods were delivered or services rendered to the seller (attach evidence of delivery).**
- 8. Date of acceptance of the goods/services or the date of deemed acceptance (attach copies of documents evidence).**
- 9. Amount due for the goods delivered (attach copies of bills/invoices).**
- 10. Date on which the payment is due or deemed to be due.**
- 11. Amounts and dates of receipts of payments, if any.**
- 12. Interest claimed under the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (32 of 1993) upto the date of reference (attach calculations).**
- 13. Total amount claimed up to date of reference.**
- 14. Brief recital of facts of the case.**
- 15. Remedies sought.**
- 16. Particulars of initial deposit of Rs. 500/- paid herewith.**

Signature of Claimant. Form-2 [See Rules 6(1), 7(1)(2)] The _____ - Industry Facilitation Council at _____ - (Established pursuant to section 7A of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (Act 32 of 1993)). Reference No. of Notice Calling for Statement of Defence

M/s Claimant

M/s Respondent

To : The respondent above named. The above named claimant has made a reference under section 6(2) of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (Act 32 of 1993) to this Council for acting as an arbitrator in respect of the amounts claimed. You are hereby called upon to furnish, within thirty days of the receipt of this notice, your statement of defence in Form 3 specified under the Haryana Industry Facilitation Council (Arbitration) Rules, 2001, (specimen enclosed) together with :- (a) such documents and facts in support of your defence or having a bearing on the matter under reference and a deposit amount, and (b) your share of deposit as an advance for costs referred to in section 31(8) of the Arbitration and Conciliation Act, 1996 (26 of 1996) by way of a demand draft in the name of _____ payable at _____. A copy of the statement of claim together with the documents submitted therewith is enclosed. The Council, being the arbitral tribunal, consists of the following Members :

1. 4 7.
2. 5.
3. 6.

In case you desire to challenge any of the Members under sections 12 and 13 of the Arbitration and Conciliation Act, 1996 (26 of 1996), you may send a written statement of the reasons for challenge within fifteen days of the receipt of this notice. Disclosures made under rule 6 read with Section 12(1) of the Arbitration and Conciliation Act, 1996 (26 of 1996), from the Members are enclosed herewith. If your statement of defence is not received within the time allowed, the Council shall reject the appeal. Form-3 [See Rule 7(1)] Statement of Defence Form and enclosures to be submitted in quadruplicate Before the _____ Industry Facilitation Council at _____ -

1. Name of the Claimant seller.

2. Name of the Respondent buyer.

3. Full postal address of the respondent buyer.

4. Whether the respondent buyer admits or denies the claim of the Claimant.

5. Brief statement of defence (attach documents and facts in support of defence or having a bearing on the matter under reference).

6. Particulars of deposit paid herewith.

Signature of Respondent. Form-4 [See Rule 7(2)] The
Industry _____ - Facilitation Council at _____ (Established
pursuant to section 7A of the Interest on Delayed Payments to Small Scale and Ancillary Industrial
Undertaking Act, 1993 (Act 32 of 1993). Reference No. of Notice for payment of deposit

M/s Claimant

M/s Respondent

To : The Claimant above named. Take notice that further amount of Rs. _____ shall be deposited by you towards your share of deposit as an advance for costs referred to in section 31(8) of the Arbitration and Conciliation Act, 1996 (26 of 1996) by way of demand draft in the name of _____ payable at _____. The amount of further deposit shall be paid to Council within the time allowed to the respondent for furnishing his statement of defence. Chairperson. Form-5 [See Rule 8(1) and 8(2)] The _____ - Industry Facilitation Council at _____ - (Established pursuant to section 7A of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (Act 32 of 1993). Reference No. of Notice for First Hearing

M/s Claimant

M/s Respondent

To : The Claimant and Respondent above named. Take notice that the arbitral reference will be heard by the Council at _____ hours _____ on _____ and your appearance in person or by a duly authorised representative is required at the aforesaid time and date. The respondent has/has not filed his statement of defence. If you fail or omit to make an appearance, the Council may continue the proceedings and make an award on the evidence before it. Chairperson Enclosure : Copy of statement of defence, if any, to the Claimant.