

The Manual of Procedure for Alternative Disputes Resolution 2009 to be Used by the Courts in the State of Rajasthan as Well as by the Arbitrators for Disposal of Cases

RAJASTHAN

India

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THE-MANUAL-OF-PROCEDURE-FOR-ALTERNATIVE-DISPUTES-RESOLUTION-2009

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The Manual of Procedure for Alternative Disputes Resolution 2009 to be Used by the Courts in the State of Rajasthan as Well as by the Arbitrators for Disposal of Cases Published vide Notification No. 7/S.R.O./2009, dated 4.12.2009-Rajasthan Gazette, Extraordinary, Part 1-B, dated 15.12.2009, page 433(1) = 2010 RSCS/Part 2/page 106/H. 51 and corrected by Errata No. Nil, dated Nil-Rajasthan Gazette, Extraordinary, Part 1-B, dated 22.4.2010, page 19 = 2010 RSCS/Part 2/page 626/H. 286A perusal of the various provisions of the Arbitration and Conciliation Act of 1996 and the statement of objects and reasons stated therefor, clearly provide that the Act was intended to make it more responsive to contemporary requirements. It was also recognized therein that our economic reforms may not become fully effective if the law dealing with settlement of both domestic and international commercial disputes remain out of tune with such like reforms. Like arbitration, conciliation is also getting increasing worldwide recognition as an instrument for settlement of disputes. Based on Uncitral Model Law, the framers of the Indian Act of 1996 have tried to provide almost complete autonomy to the parties to have an expeditious and inexpensive means of dispute resolution with least possible judicial intervention. In conformity with this object, the law provides in Sections 3, 6, 10, 11, 13, 19(2), 20(1), 22, 24, 25, 26, 29, 30 and 31(8) that the agreement of the parties will be considered as supervening. In view of the above provisions of the Act, while keeping the opinion of the parties as supervening factor that this manual is being framed for regulating the smooth functioning of the Alternative Disputes by independent and impartial Arbitrators. In exercise of the

powers conferred under Rule 7 of the Alternative Disputes Resolution Rules, 2004, and all other powers enabling in this behalf, the High Court of Judicature for Rajasthan, hereby makes the following manual:-

1. Short title.

(a) This manual may be called the manual of procedure for alternative dispute resolution 2009 to be used by the Courts in the State of Rajasthan as well as by the arbitrators for disposal of cases. (b) These provisions shall come into force with immediate effect.

2. Definition.

- In this manual, unless the context otherwise requires:- a. "Act" means Arbitration and Conciliation Act, 1996. b. Words and expressions, used and not defined in this manual but defined in the "Act", "Rules" and "Scheme" shall have the same meaning as assigned to them therein.

3. Arbitrators.

- (i) The Chief Justice or the person or institution designated by him may in order to ensure the qualification, independence or impartiality of the arbitrator to be appointed, may prepare and keep a panel of names of arbitrators having requisite legal, technical or knowledge in specialised fields and ask for the option of the parties to choose names out of the said panel reserving to itself the final right of appointment. The panel of such persons shall be prepared from time to time by the designated Judge after obtaining the written consent of the concerned person who agree to abide by the rules and manual framed. (ii) While appointing arbitrator/arbitrators under the Act, the Chief Justice or the persons or institution designated by him shall ask the parties to disclose if the dispute involves any technical matter requiring qualification of specific nature to resolve the dispute.

4.

That a party may request the Chief Justice or any person or institution designated by him to take measures to refer all or certain disputes arising fill between the parties to a permanent arbitral institution to be constituted by the said authority unless the appointment procedure provides other means for securing appointment by the agreement.

5. Procedure to be followed.

- (i) The Arbitrator appointed shall issue a notice to the parties for their appearance before him either in person or through their representative or agent or advocate. (ii) The Arbitrator to decide how the service of the notice to be affected. The parties may, keeping note about the same, be informed on telephone or by a fax, or by mail, or by other available modes of delivery, giving at least clear 7 days time or same shall be in addition to the mode of service provided under Civil Procedure Code. (iii) The Arbitrator shall set the date, time and place of hearing which shall be scheduled to

take place within 30 days of his appointment and the same shall be notified.(iv)As far as possible the hearing shall be held at the place convenient to the parties.(v)If any party requests that the hearing may be held in a specific local and the other party files no objection thereto within 5 days after notice of request has been sent to it, the local shall be the one requested. If the party objects to the local request by the other party, the arbitrator shall have the power to determine local and his decision shall be final and binding.

6. Procedure to proceed in the absence of the party, if duly served with Notice.

- (i) The arbitrator may proceed in the absence of the party duly served with notice.(ii)If any of the parties after due notice fails to appear at the hearing or at any continuation of a hearing session, the arbitrator may in his discretion proceed with the arbitration of the controversy in his absence. In such cases, all awards shall be rendered as if each party had entered an appearance in the manner submitted.

7. Time for filing the reply.

- For the reasons recorded, time of not more than 15 days may be granted to the party for responding or filing reply or for further progress in the matter.

8. Document be exchanged prior to hearing starts.

- At least two business days prior to the date of first hearing the parties shall exchange, the copies of all the documents they intend to reply and submit at the hearing. The arbitrator shall resolve any dispute concerning the exchange of the documents.

9. Fair and Equitable Procedure be established.

- The arbitrator shall establish a fair and equitable procedure for the submission of documents and hearing of the matter.

10. Vacancy.

- In the event of occurrence of vacancy of the post of arbitrator after hearing have commenced, the remaining arbitrators, may continue with the hearing and determine the controversies unless the parties agree otherwise. If the parties want to fill up the vacancy, it would be open to either of the party to move the High Court for filling up the vacancy so as to complete the hearing.

11. Hearing.

- After the service of notice, the arbitrator may hold pre-hearing conference so as to resolve the issues or minimize the amplitude of the claim under arbitration.

12. Procedure to lead the evidence.

- (i) The claimant shall present his evidence first in support of his claim. The respondent shall then present the evidence in support of his defence. The witness of each party shall submit to questions or other examinations. The Arbitrator will have the discretion to vary this procedure to the extent in the circumstances necessary. (ii) The Arbitrator may permit for sufficient reasons to prove a particular fact by affidavit. (iii) For securing presence of the witness, the Arbitrator may issue subpoena process with necessary direction, if any.

13. Evidence need not be in strict conformity with rules of evidence.

- The Arbitrator shall be the judge of the relevance and materiality of the evidence offered and strict conformity to legal rules of evidence, shall not be necessary.

14. Proceedings be controlled with a view to expediting the result of dispute.

- The Arbitrator shall control the proceedings with a view to expediting the results of the dispute. In order to expedite the proceedings, the Arbitrator may control the order of proof, bifurcate the proceedings, exclude cumulative or irrelevant testimony or evidence and direct the parties to fix presentation of evidence on decisive issues.

15. Parties and witnesses be testified under oath, if required.

- (i) The Arbitrator may require parties and witnesses to testify under oath administered by him duly or any qualified person and if it is required by law or requested by any party shall do so. (ii) All evidence shall be taken in presence of all the arbitrators and all the parties or their authorized representative, except where any of the party is absent or waives his right to be present or the parties and arbitrator agree otherwise. (iii) The parties may present rebuttal evidence, if permitted by the Arbitrator.

16. Hearing be scheduled on consecutive days.

- (i) Generally, hearing will be scheduled on consecutive days or on any blocks of consecutive days in order to minimize the costs and early determination. (ii) If the hearing as per clause (i) is not feasible and if the hearing is not over on the day fixed the matter may be adjourned to next day or the arbitrator may fix another day for further progress which shall not be beyond the period of fifteen days after that particular day of hearing. (iii) The arbitrator may in his discretion adjourn any hearing either upon his initiative or upon the request of any party made to him.

17. The arbitrator may entertain motion.

- The Arbitrator shall entertain motions including motion that may help dispose of full or part of the claim, or that may expedite the proceedings, and may also make preliminary rulings and, pass

interlocutory' orders as deemed fit in the circumstance.

18. Either of the parties may opt for not hearing.

- It will be open to either of the parties not to opt for the hearing. If no hearing is demanded or consented to, the party shall then declare before arbitrator to resolve the dispute on the basis of the documents produced and the arbitrator to resolve the dispute on the basis of the documents produced and the arbitrator shall then after perusing the documents and the issues before him.

19. May permit to submit additional documents.

- In his discretion the arbitrator may at the request of any party permit to submit additional documents relating to the claim or dispute or at his initiative may direct a party to submit additional documents.

20. The attendance or presence shall be determined by the arbitrator

- The attendance or presence of persons at the hearing including witness shall be determined by the Arbitrator. However, all parties to the arbitration and their advocate shall be entitled to attend all the hearing.

21. Right to representation in proceeding.

- All parties shall have a right to representation by advocate at any stage of the proceeding.

22. Closing of hearing.

- (i) The parties shall present closing statements.(ii)On hearing, satisfied that the presentation of the parties is complete, the arbitrator shall declare the hearing closed.

23. Re-opening of the hearing.

- Where permitted by applicable law, the hearing may be reopened by the arbitrator on his own motion or at his discretion upon application of a party at any time before the award is rendered.

24. Extension of time can be sought.

- If re-opening of the hearing would prevent the arbitrator from passing the order within the specified time, the extension of the time may be sought for.

25. Management.

- The arbitrator shall take such steps as he may deem necessary or desirable to avoid delay and to achieve just and speedy and cost effective results in the case.

26. Interpretation.

- The arbitrator shall be empowered to interpret and determine the applicability of any of the provisions of these rules and to take appropriate action to obtain compliance with any ruling. Such interpretation and action to obtain compliance shall be final and binding upon the parties.

27. Interim measure.

- (i) At the request of any of the parties, the arbitrator, may take whatever interim measures he deem necessary with respect to the a dispute including conservation of the property.(ii)For such interim measures, the arbitrator will be free to pass an interim award and also direct the parties to furnish security for the costs of such measures.

28. Interpreter.

- (i) Any party desiring to have an interpreter shall after seeking the consent of the arbitrator make all arrangements directly with the interpreter and shall assume the costs of service. The opposite party and the arbitrator shall be informed about the arrangements made with full particulars.(ii)The interpreter if found to be dishonest in arbitration proceeding, he shall be discontinued by the arbitrator and the party may in that case make arrangement for another interpreter.

29. Communication.

- There shall be no direct communication between the parties and the arbitrator other than at the hearing, unless the parties and the arbitrator agree otherwise.

30. Inspection and investigation.

- (i) It will be open to the arbitrator to examine any site or object relevant to the case or have a local inspection as far as possible in the presence of the parties or their representative except in a case the party waives his presence.(ii)If local inspection is made, arbitrator shall prepare a report which shall form part of the record and be made available to the parties for necessary submission.(iii)The party remaining absent at the time of local inspection of investigation shall not have a right to agitate any issue in that regard later on.

31. Discovery.

- (i) The parties shall co-operate in the exchange of documents and information within their knowledge or control for achieving just and speedy results. The parties may conduct such discovery as may be agreed to by them provided that the arbitrator deems appropriate. If the parties do not agree on such discovery, the arbitrator for good cause shown and consistent with the expeditious nature of arbitration may give appropriate direction.(ii)The arbitrator upon good causes shown may order the conduct of deposition of or propounding of interrogatories to such persons, who may possess information, determined by him to be necessary to a determination of disputes referred.

32. Taking of decisions.

- All decisions of the arbitration inclusive of award may be unanimous or by a majority in case a team of arbitrators is appointed, unless concurrence of all the arbitrators is expressly required by the arbitration agreement or by any applicable law or by order appointing arbitrators.

33. Time Schedule for arbitration.

- After the constitution of Arbitral Tribunal it shall on commencement of the Arbitration proceedings, fix the schedule of time after filing of the claim, to be adhered by them with the consent of all the parties for the completion of Arbitration proceedings and passing of award ordinarily within a period of six months subject to an extension with the consent of both the parties only after recording cogent reasons for the same.

34. [Reasonable costs of arbitration. [Substituted by Notification No. S.R.O. 1, dated 19.5.2016 (w.e.f. 22.4.2010).]

- That simultaneously with the framing of time schedule as aforesaid and filing of the claim, reasonable amount of fees if not already agreed by the parties and their nominee arbitrators, shall be fixed in consultation with the parties by explaining to them the method of determining that amount as per the Fourth Schedule appended to the Arbitration and Conciliation Act, 1996 inserted by the Arbitration Conciliation (Amendment) Act, 2015, with the provision of secretariat assistance allowance of Rs. 500/- per day upto the claim of Rs. 20 lacs, Rs. 750 per day above the claim of Rs. 20 lacs and upto Rs. 10 crore and Rs. 1000/- per day above the claim of Rs. 10 crores.]

| Sr. No. | Amount of Claim | Arbitrators total fee | Secretariat Assistant |
|---------|------------------------------|-----------------------|-----------------------|
| 1 | 2 | 3 | 4 |
| 1. | Upto Rs. 1 Lac | Rs. 10,000/- | Rs. 300/-per day |
| 2. | From Rs. 1 Lac One to 2 Lacs | Rs. 15,000/- | Rs. 300/-per day |

| | | | |
|----|--------------------------------------|---|------------------|
| 3. | From Rs. 2 Lacs One to Rs. 3 Lacs | Rs. 20,000/- | Rs. 300/-per day |
| 4. | From Rs. 3 Lacs One to 5 Lacs | Rs. 30,000/- | Rs. 500/-per day |
| 5. | From Rs. 5 Lacs One to 25 Lacs | Rs. 30,000/- Plus Rs. 1500/- per Lac or part, with ceiling of Rs. 60,000/- | Rs. 500/-per day |
| 6. | From Rs. 25 Lacs One to 1 Crore | Rs. 60,000/- Plus Rs. 1200/- per Lac or part, with ceiling of Rs. 1,50,000/- | Rs. 500/-per day |
| 7. | From 1 Crore One to Rs. 5 Crore | Rs. 1,50,000/- Plus Rs. 22,500/-per Crore or part, subject to a ceiling of Rs. 2,40,000/- | Rs. 700/-per day |
| 8. | From Rs. 5 Crore One to Rs. 10 Crore | Rs. 2,40,000/- Plus Rs. 15,000/-per Crore or part, subject to a ceiling of Rs. 3,15,000/- | Rs. 700/-per day |
| 9. | Over Rs. 10 Crore | Rs. 3,15,000/- Plus Rs. 12,000/-per Crore or part | Rs. 700/-per day |

Explanation.-However in addition (Sic addition) to the above amounts ordinarily no other charges shall be included in the cost except (Sic except) with the consent of both the parties. However, other necessary expenses for venue place of arbitration and other essential expenses required to be incurred be fixed on the basis of actual amounts spent. Note.-The above schedule of fee may be revised by the Chief Justice or Judge designated in consultation with the committee as appointed.

35. Interpretation of Rules.

- (i) The arbitrator shall interpret and apply these rules in so far as they relate to the arbitrators powers and duties. When there are more than one arbitrator and a difference arise amongst them, concerning meaning on application of the Rules, it shall be decided by a majority. If that is not possible; either of the parties or Chairman of the panel may refer the question to the Court whose decision shall be final. (ii) The Court shall decide the question referred under above as far as possible within 15 days from the date, the parties put in appearance before it.

36. Withdrawal of the Claim.

- It will be open to the claimant or any party to withdraw the claim or defend fully or partly. The proceedings shall then be discontinued without prejudice to the rights of the parties if claim is fully withdrawn and in case it is partly withdrawn, arbitrator shall proceed quo the claim not withdrawn or kept alive for determination. The arbitrator shall then make necessary report to the Court.

37. Settlement.

- The parties may settle the dispute partly or fully and submit to arbitrator for passing appropriate order.

38. Legal proceeding.

- No party shall during the arbitration of any matter prosecute or initiate any civil or criminal or any other proceeding against any other party touching upon any of the matters referred to arbitration pursuant to these rules unless the law otherwise commands.

39. Award.

- The award shall be speaking one and contain the names of the parties, the name of the advocate, if any, a summary of the issues in controversy, the proceedings and the damages and other relief request the damages and other relief awarded, a statement of any other issue resolved, the name of the arbitrator, the dates on which the claim was filed and the award rendered, the numbers and dates of hearing sessions, the location of hearing, and the signature of the arbitrator(s).

40. The arbitrator may grant any remedy or relief.

- The arbitrator may grant any remedy or relief including equitable relief that is found just and proper and within the scope of or the agreement between the parties. The arbitrator shall in the award, assess, Advocate's fees, arbitration expenses, compensation, costs and interest if any, to be paid from such date and at such rate, as may be deemed appropriate by him unless directed otherwise by the Court or the parties have requested otherwise.

41. The arbitrator may pass the award in terms of settlement.

- If the parties desire to settle the dispute upon any matter amicably it shall be at the election of the parties and if the settlement is arrived at, the Arbitrator shall pass the award in terms of settlement and such award shall be referred to as the consent award.

42. Award shall be deemed final.

- Unless the law applicable directs otherwise all awards rendered shall be deemed final and not subject to review or appeal, but it may subject to review of the Court on the grounds available in law.

43. Award be made within ten days from date of closing of hearing.

- (i) The arbitrator shall make the award within the period not later than 10 days from the date of closing of the hearing. (ii) The court may extend for reasonable period the time to submit the award.

44. Copy of award be served.

- The arbitrator shall after making the award serve a copy of the award either by registered or certified mail upon all the parties or their advocate at the address of record or by personally serving the award upon the parties or by filing or delivering the award in such manner as may be authorised

by law.

45. Procedure for rectification of error in the award.

- Within the period of 15 days after transmission of the award, any party upon a notice to the other side, may request that the arbitrator may correct any clerical, typographical, technical or computer error in the award, but the arbitrator shall not determine the merits of any claim awarded.

46. Waiver.

- The party who proceeds with the arbitration fails to raise the objection in writing against non compliance of the rules, shall be deemed to have waived the right to object.

47. Amendment to the pleadings.

- (i) During the course of arbitration proceedings, if there is a prayer to amend the pleadings, the same shall be considered by the Arbitrator keeping in view the expediency of arbitration proceedings.(ii)The party, filing the draft amended pleadings, shall serve on all parties a copy of such draft amended pleadings.(iii)The other parties may within 7 days from receipt of the service, file a response.

48. General.

- (i) The party shall co-operate to the fullest practicable in the voluntary exchange of documents and information to expedite the arbitration.(ii)Any request for documents or other information should be specific, relevant to the matter in controversy and afford the party to whom the request is made within a reasonable period of time to respond without interfering with the time set for the hearing.(iii)The arbitrator shall be empowered either resorting to subpoena process or otherwise to direct the appearance of any person employed or associated with any member of the association or Government or by private sector or public sector for the production of any record in the possession or control of such person or member.(iv)Unless the arbitrator directs otherwise, the party requesting the appearance of a person or the production of document shall bear reasonable cost of such appearance and/or production.(v)After the receipt of the award, the suit or proceedings pending before the Court shall be restored to the board for prompt disposition.

49.

That after the award is made, the entire record of the case and the award, as properly maintained by the presiding arbitrator or the sole arbitrator shall be sent to the court as defined in the Act for being kept in its record room.

50.

That the committee constituted under Rule 7 of the A.D.R. Rules, 2004 shall also take steps to nominate any person or institute to conduct training courses from time to time or imparting legal education to lawyers and judicial officers. It is proposed that such training courses be organised every month at each District Headquarters by the District Judges wherein, the inspecting judges of this court may also participate in their District, two times or three times in a year for monitoring and assessing the efforts made by each one of the Presiding Officer of the Court in the District while keeping in view the provisions of Section 89 of the Code of Civil Procedure which should aim at reducing the pendency of civil cases by the respective courts and for the said purpose each one of the Courts should send monthly statement of cases wherein their efforts made under Section 89 have succeeded to reduce the pendency of cases and marks may be given by the inspecting judge of this court to be kept in the service file of the Presiding Officers of the courts.

51.

That the case which relate to matrimonial, maintenance, child custody and other fast track cases as provided under the Case Flow Management Rules 2006 framed by the High Court of Rajasthan should ordinarily be taken in priority by the Courts wherein such cases are pending, fixing the time frame scheme for the disposal of such cases which should also be monitored by the inspecting judge of this Court in each of their District and for the purpose of finally deciding such cases each one of the Presiding Officer shall appoint a panel of conciliators and mediators who are well versed in the technique of alternative methods of dispute resolution.

52. Interpretation.

- If any question arises with reference to the interpretation of the provision of this manual, within three months before the judge designated, then the said question shall be referred to the committee as appointed whose decision shall be final for the purposes of removal of difficulties.

53. Power to amend.

- The Chief Justice/Ag. Chief Justice /Designated Judge may from time to time amend by way of addition any provision of this manual in consultation with the committee as appointed.