

Chapter 15

Contract Management & Arbitration

Contract Management and Arbitration

CONTRACT MANAGEMENT **INDIAN CONTRACT ACT-1872**

1.0 Sec-1 Short Title

- Applicable to whole of India except J&K
- Applicable from 1.09.1872

2.0 Sec-2 Interpretation-Clauses

2.1 Proposal

When one person signifies to another his willingness to do something, with a view to obtain the assent of another person, he is said to make a proposal.

2.2 Promise

A proposal when accepted, becomes a promise.

2.3 Promisor

The person making the proposal is called PROMISOR (Contractor)

2.4 Promisee

The person accepting the proposal is called PROMISEE (Deptt./BSNL)

2.5 Consideration

When, at the desire of Promisor, the Promisee has done something or promises to do something, such act of promise is called consideration.

2.6 Agreement

Every promise forming the consideration for each other, is an AGREEMENT

2.7 Reciprocal Promises

Promises which form the consideration for each other, are called RECIPROCAL PROMISES

2.8 Contract

An Agreement enforceable by Law is a CONTRACT

2.9 An agreement not enforceable by Law is said to be **void.**

Chapter – I

Communication, Acceptance and Revocation of Proposals

3.0 Sec-4 Communication When Complete

The Communication of a Proposal is Complete:-

The communication of a proposal is complete when it becomes to the knowledge of the person to whom it is made.

The Communication of an Acceptance is Complete:-

as against the proposer, when it is put in a course of transmission to him so as to be out of the power of the acceptor;

The Communication of a Revocation is Complete:-

- as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it;
- as against the person to whom it is made, when it comes to his knowledge.

4.0 Sec-5 Revocation of Proposal and Acceptance

A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

CHAPTER – II

Of Contracts, Voidable Contracts, and Void Agreements

5.0 Sec-10 – What agreements are contracts (Ingredients of Contract)

All the agreements are contracts

- If they are made by free consent
- Parties competent to contract (Sec-11)
- For a Lawful consideration.
- With Lawful object
- Lawful objects are not expressly declared to be void

6.0 Sec-11 who are competent to contract

Every person is competent to contract who is

- Major
- of sound mind (Sec-12)
- not disqualified from contracting by any law

7.0 Sec-14 Free consent defined

Free consent if

- No coercion (Sec-15)
- No undue influence (Sec-16)
- No Fraud (Sec-17)
- No misrepresentation of facts (Sec-18)
- No mistake (Sec-20, 21, & 22)

8.0 Sec-24 Agreement void, if consideration and objects are unlawful

9.0 Sec-25 Agreements without consideration, void

An agreement without consideration is void, **unless**

- (i) it is expressed in writing and registered and is made due to natural love and affection between the parties standing in near relation to each other.
- (ii) It is a promise to compensate a person who has done something for the promisor.
- (iii) If a person promise to pay a debt which is time barred by Limitation Law.

10.0 Sec-29 Agreements Void for uncertainty

Agreements, the meaning of which is not certain are void.

Chapter – IV
Of Performance of Contracts, Contracts Which Must Be Performed

Performance of Reciprocal Promises

11.0 Sec-51 – Promisor not bound to perform, unless reciprocal promisee ready and willing to perform

When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

12.0 Sec-52 – Order of performance of reciprocal promises

Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in the order, and where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of transaction requires.

13.0 Sec-53 – Liability of party preventing event on which contract is to take effect

When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation from the other party for any loss which he may sustain in consequence of the non-performance of the contract.

14.0 Sec-54 – Effect of default as to the promise which should be performed, in contract consisting of reciprocal promises

When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss.

15.0 Sec-55 Effect of failure to perform at fixed time, in contract in which time is essential

When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing

at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, **if the intention of the parties was that time should be of the essence of the contract.**

Effect of such failure when time is not essential:-If it was not the intention of the parties that time should be of the essence of the contract, **the contract does not become voidable** by the failure to do such thing at or before the specified time; **but the promisee is entitled to compensation** from the promisor for any loss occasioned to him by such failure.

Effect of acceptance of performance at time other than that agreed upon:- If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, **the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance he gives notice to the promisor of his intention to do so.**

Notice under section 55 before expiry of stipulated period is must before granting any provisional Extension of Time at the request of contractor. Even if contractor does not apply and promisee intends to continue the contract, su-moto provisional extension of time with notice under section 55 should be given to the contractor. If contractor continues to work, receiving instructions & accepting measurement & bills, it is implied acceptance of contractor.

Chapter V

Of Certain Relations Resembling Those Created) by Contract

16.0 **Sec-70 –Obligation of person enjoying benefit of non-gratuitous act**

Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the later is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

Chapter VI

Of The Consequences of Breach of Contract

17.0 **Sec-73 Compensation for loss or damage caused by breach of contract**

When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of

things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is **not to be given for any remote and indirect loss or damage sustained by reason of the breach.**

Explanation.-In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused-by the non-performance of the contract must be taken into account.

18.0 Sec-74 Compensation for breach of contract where penalty stipulated for.

When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, **whether or not actual damage or loss is proved to have been caused thereby**, to receive from the party who has broken the contract **reasonable compensation not exceeding the amount so named** or, as the case may be, the penalty stipulated for.

19.0 Sec-75 Party rightfully rescinding contract, entitled to compensation

A person who rightfully rescinds a contract is entitled to consideration for any damage which he has sustained through the non-fulfillment of the contract.

The Arbitration and Conciliation Act, 1996

1.0 Sec-1 Short Title, extent and commencement

1.1 This act is effective from **25.01.1996**. Arbitral Proceedings is started by way of appointment of Sole Arbitrator by appointing authority (CE-Civil). AC Act 1996 is applicable where Arbitral Proceedings started on or after 25.1.1996. Earlier to 25.01.1996, Arbitration Act 1940 shall be applicable.

2.0 Difference in Old and New Arbitration Act

| Arbitration Act 1940 | | Arbitration & Conciliation Act 1996 | |
|-----------------------------|--|--|--|
| (i) | No Provision of Conciliation | (i) | Provision of conciliation exist |
| (ii) | Award more than specified amount (Rs. 75,000/-) shall be reasoned award | (ii) | All awards shall be reasoned award (Sec-31) |
| (iii) | Time of hearing and publishing the award was four months only. After that it was necessary to obtain the enlargement of time by both the parties | (iii) | No time limit has been given in new act. |
| (iv) | It was necessary to make award "RULE OF COURT" within 30 days. | (iv) | After 3 months of receipt of award by apposite party, award will become DECREE. (Sec-36) |

3.0 Arbitration

If there is a dispute, recourse to settle down the dispute is Arbitration.

4.0 Sec-7 Arbitration Agreement

Means an agreement by the parties to submit to Arbitration disputes arisen between them.

It may be in the form of Arbitration Clause in the contract or in the form of separate agreement.

5.0 Sec- 8 Power to refer parties to Arbitration where there is an Arbitration Agreement

(i) A Judicial authority before which an action is brought where Arbitration Agreement exist shall refer the parties to Arbitration. (Means Respondent and

Appointing Authority. Court should not Su-moto appoint the Arbitrator. Sub section 1).

- (ii) (Sub Section-3) If some issue is pending before the judicial authority, an arbitration may be commenced or continued and Arbitration Award made.

Chapter III- Composition of Arbitral Tribunal

6.0 Sec-10

- i. As per implied interpretation of **Sec-11**, an arbitrator should be appointed by the appointing authority within **thirty days** from the date of receipt of request from the claimant.

Chapter V- Conduct of Arbitral Proceeding

7.0 Sec-18 – Equal Treatment of Parties

The parties shall be treated with equality and each party shall be given a full opportunity to present his case.

8.0 Sec-19 Determination of Rules of Procedure

Parties are free to agree on the procedure to be followed by the Arbitrator in conducting proceedings.

Failing any agreement, Arbitrator may conduct the proceedings in the manner it considers appropriate.

9.0 Sec-20- Place of Hearing

- (i) Parties are free to agree on the place of Arbitration.
- (ii) Failing any agreement, place of arbitration shall be determined by Arbitrator considering the circumstances of the case and convenience of the parties.

10.0 Sec-23- Statement of claim and defense

Within the time period determined by the Arbitrator, claimant shall submit statement of facts supporting his claim and relief sought. Respondent shall submit his statement of defense. Parties may submit with their statement all document they consider to be relevant.

11.0 Sec-24 – Hearings and written proceedings

- (i) Unless agreed by the parties, Arbitrator shall decide whether to hold oral hearing or to decide on the basis of documents.

- (ii) Parties shall be given sufficient advance notice of any hearing or inspection of record or property.
- (iii) All statements, documents or applications made to Arbitrator by one party **shall be communicated to other party**. Any expert report or evidence on which Arbitrator may rely in making its decision **shall be communicated to the parties**.

12.0 Sec-25 Default of a party

- (a) If claimant fail to communicate his statement of claim, Arbitrator shall **Terminate the Proceedings**.
- (b) If respondent fail to communicate his statement of defense, Arbitrator **shall continue the** proceedings without treating failure in itself as on admission of the allegation by the claimant.
- (c) If a party fails to appear at an oral hearing, Arbitrator may continue the proceedings and make the arbitral award on the evidence before it.

13.0 Sec-30 Settlement

- (a) Arbitrator may use mediation or conciliation during arbitral proceedings to encourage settlement
- (b) If, during arbitral proceedings, the parties settled the dispute, the Arbitrator shall terminate the proceedings and, if requested by the parties, Arbitrator may record the settlement in the form of an Arbitral Award on agreed terms.
- (c) An Arbitration award on **agreed terms** shall arbitral award.

14.0 Sec-31 Form and Contents of Arbitral Award

- (i) Arbitration award shall be **in writing** and shall be **signed** by Arbitrator
- (ii) Arbitral award shall **state the reasons** upon which it is based.
- (iii) The Arbitral award shall state **date and place** of **Arbitration** and award deemed to have been made at that place.
- (iv) Signed copy shall be delivered to each party.
- (v) Arbitrator may make an interim award.
- (vi) (Sub-Sec-7a) Arbitrator may award **Interest as deems reasonable** on the whole or party of money, for whole or part of period between the date on which the cause of action arose and the date on which the award is made (Pre-reference Period + Pendentelite Interest)
- (vii) (Sub-Sec-7b) In Arbitration award, interest on the amount of award is to be paid as directed by Arbitrator. Otherwise Award shall carry interest @ **18%** per annum from the date of award to the date of payment.
- (viii) Cost of Arbitration shall be fixed by the Arbitrator if any.

15.0 Sec-32 Termination Proceedings

- (i) The arbitral proceedings shall be terminated **by the Final Arbitration Award.**
- (ii) Arbitrator shall issue an order for termination of Arbitral Proceedings where:-
 - (a) The claimant withdraws his claims.
 - (b) Parties agree on the termination of proceedings
 - (c) Arbitrator finds that the continuation of the proceedings for any reason become unnecessary or impossible.

16.0 Sec-33-Correction and interpretation of award, Additional Award

- (i) Within **thirty days** from the receipt of the arbitral award:
 - (a) A party, with notice to the other party, may request the arbitral tribunal **to correct any computation errors, any clerical or typographical errors** or any other errors of similar nature occurring in the award;
 - (b) A party, with notice to the other party, may request the arbitral tribunal **to give an interpretation of a specific point** or part of the award.
- (ii) If the arbitral tribunal considers the request made under sub-section (1) to be justified, it shall make the correction or give the interpretation **within thirty days from the receipt of the request** and the interpretation shall form part of the arbitral award.
- (iii) The arbitral tribunal **may correct any error** of the referred to in clause (a) of sub-section (1), **on its own initiative, within thirty days from the date of the arbitral award.**
- (iv) A party with notice to the other party may request, within **thirty days from the receipt of the arbitral award**, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.
- (v) If the arbitral tribunal considers the request made under sub-section(4) to be justified, it shall make the additional arbitral award **within sixty days from the receipt of such request.**
- (vi) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional arbitral award under sub-section (2) or sub-section (5).

Chapter VII- Recourse against Arbitration Award**17.0 Sec-34 Application for setting aside arbitral award**

- (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award.

- (2) An arbitral award may be set aside by the Court only if—
- (a) The party making the application furnishes proof that—
 - (i) A party was under **some incapacity**; or
 - (ii) The arbitration agreement is **not valid under the law**
 - (iii) the party making the application **was not given proper notice** of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
 - (iv) the arbitral award deals with a dispute not contemplated by or not falling **within the terms of the submission to arbitration**, or it contains decisions on matters **beyond the scope of the submission to arbitration**; or
 - (v) The composition of the arbitral Tribunal or the arbitral procedure was not in accordance with the agreement of the parties.
- (3) An application for setting aside **may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or**, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral Tribunal:

Chapter VIII – Finality and Enforcement of Arbitral Awards

18.0 Sec-35 Finality of arbitral awards

Subject to this Part an arbitral award **shall be final and binding on the parties.**

19.0 Sec-36 - Enforcement

Where the time for making an application to set aside the arbitral award under section 34 has expired, **the award shall be enforced** under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner **as if it were a decree of the Court.**

20.0 Sec-40-Arbitration agreement not to be discharged by death of party thereto

An arbitration agreement **shall not be discharged by the death** of any party thereto either, but shall in such event be enforceable **by or against the legal representative of the deceased.**

Part III

Conciliation

21.0 Sec-62 Commencement of conciliation proceedings

- (i) The party initiating conciliation shall send to the other party a written **invitation to conciliate**.
- (ii) Conciliation proceedings shall commence **when the other party accepts** in writing the invitation to conciliate.
- (iii) If the other party rejects the invitation, there will be no conciliation proceedings.
- (iv) If the party initiating conciliation **does not receive a reply within thirty days** from the date on which he sends the invitation, he may elect to treat this as a rejection of the invitation to conciliate.

22.0 Sec-67 Role of conciliator

- (i) The conciliator shall assist the parties to reach an amicable settlement of their dispute.
- (ii) The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons thereof.

23.0 Sec-73 - Settlement agreement

- 1. If the parties reach agreement on a settlement of the dispute, they may draw up and **sign a written settlement agreement**.
- 2. When the parties sign the **settlement agreement, it shall be final and binding on the parties** and persons claiming under them respectively.

24.0 Sec-74 Status and effect of settlement agreement

The settlement agreement shall have the **same status and effect as if it is an arbitral award** on agreed terms on the substance of the dispute rendered by an arbitral Tribunal under section 30.

25.0 Sec-77 - Resort to arbitral or judicial proceedings

The parties **shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings** in respect of a dispute that is the subject-matter of the conciliation proceedings

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