

No. 10-11/2025-AR
Government of India
Ministry of Education
Department of Higher Education
(AR Section)

West Block-I, R. K. Puram-1,
New Delhi-110066

Dated the 24th November, 2025

OFFICE MEMORANDUM

Subject:- Circulation of Final Guidelines for Mitigating Contractual Disputes involving Government/Government Entities-reg.

The undersigned is directed to forward herewith a copy of OM letter dated 18.11.2025 received from D/o Legal Affairs, M/o Law and Justice on the subject mentioned above, which is self-explanatory, for information and compliance.

2. This issues with the approval of Competent Authority.

Encl: As above.


(G.K. Bhojal)
24/11/2025
Under Secretary (AR)

To,

All Bureau Heads of the Department of Higher Education

DSC (CU-Cdn)

for you pl

dl

26/11

US (CU-Cdn)



26/11/2025

Solw. (Cdn.)

JS (T&S) in mty.

No. A-60011/38/2021-NDIAC
Government of India
Ministry of Law & Justice
Department of Legal Affairs

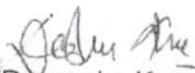
Shastri Bhawan, New Delhi
Dated, the 18th November, 2025

OFFICE MEMORANDUM

Subject: Circulation of Final Guidelines for Mitigating Contractual Disputes involving Government/Government Entities – reg.

The undersigned is directed to say that a Committee comprising major stakeholders of the Government of India was constituted in the Department of Legal Affairs under the chairmanship of Joint Secretary (Arbitration & Conciliation) to examine the relevant provisions of contracts that give rise to disputes and to suggest modifications to facilitate the speedy resolution of contractual disputes. The terms of reference of the Committee were as follows:

- i. To examine and review major standard contracts, along with the applicable terms and conditions in the supply and infrastructure sectors, which give rise to contractual disputes.
 - ii. To recommend modifications to the provisions of the contracts and the applicable terms and conditions to mitigate the possibility of contractual disputes.
 - iii. Any other measure.
2. After deliberations and discussions, the Committee has submitted its recommendations in the form of the "Guidelines for Modifications to the Provisions of Contract to Mitigate the Possibility of Contractual Disputes." A copy of the said Guidelines is enclosed herewith for consideration, dissemination, and adoption wherever feasible.
3. This issues with approval of the competent authority.


(Devanshu Kumar)

Under Secretary to the Govt. of India
Tele. No. 01123383634

To

All Secretaries to the Government of India

Copy for information to:

1. PSO to Law Secretary, Department of Legal Affairs, Shastri Bhawan, New Delhi.

No. A-60011/38/2021-NDIAC
Government of India
Ministry of Law & Justice
Department of Legal Affairs

Shastri Bhawan, New Delhi
Dated, the 14th October, 2025

OFFICE MEMORANDUM

Subject: Recommendations For Modifications to the Provisions of Contract to Mitigate the Possibility of Contractual Disputes – reg.

The Government of India has been consistently striving to reform and strengthen the dispute resolution framework in the country by promoting Alternate Dispute Resolution (ADR) mechanisms such as arbitration, mediation, and conciliation. These mechanisms are designed to provide less adversarial, cost-effective, and time-efficient alternatives to traditional court-based litigation. Recognizing the importance of quick and fair resolution of disputes for the growth of trade, commerce, and industry, the Government has undertaken several policy and legislative interventions to institutionalize and streamline ADR practices across sectors.

Major legislative milestones in this regard include the enactment of the Arbitration and Conciliation Act, 1996, which laid the foundation for modern arbitration practices in India; the Commercial Courts Act, 2015, aimed at expediting commercial dispute resolution; the India International Arbitration Centre Act, 2019, which established an autonomous institution to promote institutional arbitration; and the Mediation Act, 2023, which provides a statutory framework for mediation and encourages pre-litigation settlement. These legislative measures collectively aim to make dispute resolution more efficacious, transparent, and globally competitive.

In alignment with these efforts, the Department of Legal Affairs (DLA) under the Ministry of Law and Justice, New Delhi, has been undertaking several initiatives to strengthen the overall dispute resolution ecosystem. These include promoting institutional arbitration and mediation, developing model rules and procedures, organizing capacity-building workshops, and undertaking reforms in law to facilitate a more business-friendly environment.

In recent times, there has been a significant increase in contractual disputes in where government/government entities are parties, particularly in areas relating to issues such as imposition of Liquidated Damages, Extension of Time (EoT), Price Variation, and other performance related issues. These disputes have often led to prolonged adversarial dispute resolution, thereby delaying project execution and escalating costs.

Delay in resolution of such disputes has been one of the key reasons for hindering timely project completion, adversely affecting both public interest and economic efficiency. Hence, it is essential to establish clear, time-bound, and practical mechanisms for dispute resolution, especially in cases involving government entities.

In order to make the contractual provisions effective and implementable to mitigate the dispute where government entities are parties, it was decided by the competent authority to constitute a committee. The committee on contractual dispute under the Chairmanship Shri Ajay Kumar Arora was constituted *vide* OM No. A-60011/38/2021-NDIAC dated 16.01.2025 to examine the relevant provisions of contracts and suggest modifications to mitigate the contractual disputes where Government/Government entities are parties. The committee was constituted comprising of:

Sr. No.	Ministries/PSUs	Members
1.	Shri Ajay Kumar Arora, Joint Secretary, DLA	Chairperson
2.	Shri Ram Chandra, Chief Engineer (Legal), Central Electricity Authority, Ministry of Power	Member
3.	Shri Kishan Rawat, Director/CE(G), Ministry of Railways	Member
4.	Shri Sureshwar Singh Bonal, Director, Ministry of Heavy Industries	Member
5.	Shri S. J. Ahmed, Executive Director (CMMG), SAIL	Member
6.	Shri Narender Kumar, Executive Director (Contracts-Civil) NHPC	Member
7.	Shri Rajender Kumar, GM (Tech.), CMD & Legal Division, NHAI	Member
8.	Shri Shibu A. Manual, ED, ONGC	Member
9.	Shri Amit Kapur, Advocate J. Sagar Associates, Advocates and Solicitor	Member
10.	Shri Jainendar Kumar, DDG (C & EPC), BRO	Special Invitee
11.	Shri Deepak K. Prasad, Sr. DGM, BHEL Shri S.K. Choudhary (Corporate Law), BHEL	Special Invitee

On the basis of the suggestions received from the members to the committee and keeping in view all the factors, the following recommendations are issued for mitigating the delay in resolution of contractual disputes as being identified one of the major reasons for impacting timely completion of major projects.

The recommendations can help in mitigating contractual disputes which will arise in the near future where government/ government entities are parties.

2. OBJECTIVE OF THE RECOMMENDATIONS

The primary objective of these recommendations is to enable prevention of contractual disputes arising in major infrastructure and development projects. Delay in dispute resolution has been identified as a major factor contributing to cost overruns, project delays, and inefficient utilization of public resources. These recommendations aim to promote efficiency, accountability, and fairness in the dispute resolution process.

3. TERMS OF REFERENCE FOR THE WORKING OF THE COMMITTEE WERE AS FOLLOWS

- i) To examine and review the major standard contracts along with the applicable terms and conditions in the supply and infrastructure sectors, which give rise to the contractual disputes.
- ii) To recommend modifications to the provisions of the contracts and the applicable terms and conditions, to mitigate the possibility of contractual disputes.
- iii) Any other measures.

4. MAJOR ISSUES IDENTIFIED

- i. Procurement of goods often leads to contractual disputes due to delays in supply, non-conformity with specifications, quality defects, and price variations. Issues like breach of tender conditions, contract performance failures, and breach of delivery timelines further complicate resolution.
- ii. Service contracts often give rise to disputes over price variation, where escalation or fluctuation clauses are contested, non-compliance of tender conditions, and final bill settlement, where disagreements occur on scope of work, delays, or additional claims.
- iii. Majority of disputes arise due to delays in execution of contract where major reasons of such delays as attributable to Employer are delay in handing over of land/ front, delay in Resolution of Right of Way (RoW) or Right to Use issues in contracts and delay in Forest / Environmental / Wildlife Clearances. Such delays lead to contractor's claims.
- iv. Delay in Execution of Contract due to geological surprises/site related issues which ultimately lead to extension of time for the completion of the contract.
- v. Delay in Execution of Contract (Due to Extension of Time, Unforeseen Circumstances, Scope Changes).
- vi. Delay in mobilization by contractor.
- vii. The lack of agreement on 'seat' of arbitration often causes delays in contractual disputes as it determines court jurisdiction, leading to challenges, interim applications, and enforcement hurdles.

- viii. Compensation clauses in contracts often face issues like ambiguity in terms, difficulty in proving actual loss, and enforceability where clauses resemble penalties.
- ix. Lack of clarity in communication and delayed / no response to issues raised by Contractor create ambiguity during execution and are a reason for disputes and an impediment in the process of closure of contract.

5. GENERAL RECOMMENDATIONS

- i) Critical milestones for timely execution of contract and resources to be made available at site should be clearly specified in the tender to facilitate proper delay analysis. The delay analysis should be done at regular intervals during monitoring of the project execution and documented for future reference.
- ii) To resolve the issue of liquidated damages the concerned Ministries/Department/PSUs should specify formulas, recovery stages to mitigate consequent disputes and sufficient material to indicate demonstrable loss.
- iii) The emphasis should be laid on mentioning of Specific Clauses dealing with Unforeseen situations, relevant for the specific industry, which needs to be incorporated to reduce disputes.
- iv) Accentuate on Digital Tools to track milestone, payments, variations and correspondences which will support documentation and build a repository over the period of time.
- v) The practice of rotation of officers in areas requiring specialized knowledge or skills should, wherever feasible, be deferred until the completion of at least one milestone. If rotation is necessary, the newly posted officer may, if possible, be attached with the outgoing officer for a period of three months to become well acquainted with the ongoing work.
- vi) Officers deployed at site should be well versed with the provisions and conditions of the contract to ensure effective monitoring and timely decision-making.
- vii) Risk, Responsibility, and Dispute Mitigation Clauses - Each Party shall bear the risks and responsibilities arising from its own acts, omissions, or negligence. On the occurrence of any such event, either Party shall immediately take appropriate recourse by assessing the extent of loss or impact, so that the progress of work is not delayed. Parties should promptly notify each other of any event likely to affect performance, timelines, or cost, and shall cooperate in good faith to mitigate potential losses. The amount of loss, if any, shall be mutually determined by Parties, keeping in view the actual loss sustained. Any disagreement or issue shall, in the first instance, be addressed

through mutual consultations or a designated dispute-resolution mechanism which shall be empowered to examine the claims from the practical point of view and realistic situation at site to ensure timely and efficient resolution before resorting to arbitration or legal proceedings.

- viii) Time bound resolution at each stage of dispute resolution process must be adhered. The Employer should ensure proper and timely response / communication in relation to issues raised by the contractor so that the same is dealt with promptness to avoid dispute / litigation in future.
- ix) If a contract is delayed for reasons not attributable to the contractor, verified idling charges for manpower and machinery needs to be reimbursed (excluding profit) based on certified records. It is advisable to have such terms in the tender / contract for prolonged/significant delays to avoid disputes.
- x) Extension of Time (EoT) may be granted on a case-to-case basis as per the provisions of the contract. The decision on EoT shall be taken at the earliest, and in any case, not later than three months from the date of receipt of the contractor's request preferably within the currency of the contract. EoT shall be granted with proper justification, supported by reasons in writing duly substantiated with relevant facts and figures. If the contractor still fails to complete the work within the extended period, liquidated damages may be imposed as per the provisions of the contract.
- xi) During execution or foreclosure an Independent Person/Agency of high repute of respective professional skills, may be engaged, if required and as agreed by the parties.
- xii) Disputes arising out of delayed payment can be avoided by:
 - a) involving the Employer Project Management Team from the contracting stage itself so that they are aware of the terms and milestones as well as documentation required for certification of work during execution.
 - b) proper financial planning of monetary resources as per cash flow requirement of the project for payment as per milestones after contract finalization.
- xiii) Special focus should also be given to contract execution training programmes, aimed at improving officer's understanding of contract provisions, obligations, and procedural compliance to ensure effective implementation and monitoring of projects.
- xiv) The seat of arbitration must be clearly stipulated in the tender / contract.
- xv) Before referring disputes to Litigation, efforts should be made for amicable settlement through mechanism deemed appropriate including Mediation / Conciliation.
- xvi) Officers representing the Government/Government entities must be duly authorised and empowered to make statements during the course of Mediation/Arbitration proceedings.

Any bona-fide statement made by them in good faith during such proceedings shall be protected and shall not be used to the prejudice of either Party in any subsequent legal or arbitral proceedings.

- xvii) As far as possible the Closure of Contract/ Final Bill of the Contractors must be settled at the earliest.
- xviii) Adoption of Institutional arbitration/Mediation through India International Arbitration Centre (IIAC) and other reputed Arbitration/Mediation Institution. Mandatory Institutional Arbitration in place of Ad-hoc Arbitration.

6. GENERAL MECHANISM FOR SPEEDY DISPUTE RESOLUTION

i) Institutional Support -

- a. Establishment of Contract Dispute Resolution Cells wherever required and deemed appropriate in each Department.
- b. Development of a centralized and digitised database of contractual disputes.

ii) Special Observation with respect to Legal Perspective -

- a. In a contract relating to an infrastructure project, the Government entities may at the threshold itself take legal preliminary objection with respect to maintainability of the case in Civil Courts by invoking the provisions of the Specific Relief (Amendment) Act, 2018. These provisions restrict injunctions that may delay public projects, provide for dispute resolution through Special Courts within prescribed timelines, and emphasize specific performance as the primary remedy to ensure timely completion of works.
- b. **Defence and Counter Claims** - While defending disputes before the Tribunal or Court, all relevant facts, figures, and details of the claims must be clearly and accurately presented in the Statement of Defence/Claims to ensure a well-substantiated and effective representation of the Government entity's position. Further, the appropriate steps also need to be taken to dismantle the claims of the contractor with reference to facts, figures and assumptions of the contractor mentioned in the SOC without prejudice to other submission made on merits of the case. Any counter claim filed by the Government entity shall be supported with sustainable evidence and documentation and must not be based on assumptions. All facts, figures, and supporting material for the counter claim should be clearly presented to ensure it is credible, substantiated, and effectively represented before the Tribunal or Court.

7. Contractual disputes in government projects cause delays and cost overruns. Clear provisions on idling charges, extension of time, risk allocation, and unforeseen events, along with Institutional Arbitration, Mediation, and digital monitoring, can reduce disputes. Time-bound resolution, emphasis on amicable settlement, and alignment with existing laws like the Specific Relief (Amendment) Act, 2018 will ensure timely project completion, efficiency, and protection of public interest.