CIRCULAR NO. 05/2018

Sub: Settlement of commercial disputes between Central Public Sector Enterprises (CPSEs) inter se and CPSE(s) and Government Departments/Organizations- Administrative Mechanism for Resolution of CPSEs Disputes (AMRCD).

In supersession of this Office Circular No.14/2013 dated 17.7.2013, Circular No. 16/2014 dated 22.4.2014, 17/2014 dated 23.9.2014, 18/2014 dated 23.9.2014 on settlement of commercial disputes between Public Sector Enterprises inter se and Public Sector Enterprise (s) and Government Department(s) through Permanent Machinery of Arbitration (PMA), please find enclosed OM dated 22.6.2018 enclosing therein OM dated 22.5.2018 issued by Govt. of India, Department of Public Enterprises replacing the PMA with a new mechanism namely Administrative Mechanism for Resolution of CPSEs Disputes (AMRCD) having two level (tier) structure has been evolved by Govt. of India, Department of Public Enterprises. The existing PMA mechanism stands wound up from the date of OM i.e. 22.5.2018.

The para-7 of the aforesaid OM dated 22.5.2018 provides that all pending cases with the Sole Arbitrator-PMA and Appellate Authority shall stand transferred with immediate effect to the concerned Administrative Ministries/Departments to be dealt with as per the laid down mechanism of dispute resolution under OM dated 22.5.2018.

It is advised to take immediate steps in respect of the pending cases with PMA/Appellate Authority in terms of these instructions.

This is for information and necessary action.

Yours faithfully,

[Signature]

(George Kuriakose)
General Manager (Law)

Encl: As above.

Distribution:
1. All Executive Directors, Hqrs/Zone, FCI.
2. All CGMs, FCI,
3. All GMs (Region), FCI,
4. All Heads of Divisions, FCI, Hqrs, New Delhi.
5. All Law Officers, Hqrs/Zone/Region, FCI
6. Director, IFS, Gurgaon, FCI.

Copy to:
PS to CMD, FCI, Hqrs, New Delhi.
OFFICE MEMORANDUM

Subject: Transfer of records submitted by [FCI] in Case No. PMA/NCT/14/2017 and [PET] between [NCCE].

By O.M. dated 22.05.2018, PMA has been replaced by Administrative Mechanism for Resolution of CPSEs Disputes (AMRCD) w.e.f. 22.05.2018.

Para-7 of the said O.M. specifically mentions that pending cases with this Forum and Appellate Authority shall stand transferred with immediate effect to concerned administrative Ministries/Departments to be dealt with as per the procedure as mentioned in the said O.M.

Since, at present record of 18 cases is lying with this office which were adjourned sine die and a liberty was given to the parties that if any of the party intends to re-open, it may approach this Forum but now, since, PMA is not in existence, it will not be legally correct to keep these case files here in PMA.

The issue being complicated as such the same was brought to the notice of Secretary, Department of Public Enterprises (DPE) and a decision has been taken that the files/records of sine die cases may be returned to the concerned administrative Ministries/Departments and they are at liberty to take further course of action as per O.M. dated 22.05.2018.

Keeping in view, the observation as approved by the Secretary, DPE, the records of all cases adjourned sine die is being forwarded to the concerned Ministries/Departments for further necessary course of action as per said O.M.

(G.S. Yadav)
Joint Secretary & Arbitrator

The
Secretary
Department of Food and Public Distribution
Ministry of Consumer Affairs, Food and
Public Distribution
Krishi Bhawan
New Delhi

Copy to: CMD, FE I, New Delhi
F. No. 4(1)/2013-DPE(GM)/FTS-1835

Government of India
Ministry of Heavy Industries & Public Enterprises
Department of Public Enterprises

Public Enterprises Bhawan,
Block No. 14, CGO Complex,
Lodhi Road, New Delhi-110003
Dated: 22nd May, 2018

OFFICE MEMORANDUM

Subject: Settlement of commercial disputes between Central Public Sector Enterprises (CPSEs) inter se and CPSE(s) and Government Department(s)/Organization(s) - Administrative Mechanism for Resolution of CPSEs Disputes (AMRCD).

The undersigned is directed to refer to Department of Public Enterprises guidelines issued vide OM No. 4(1)/2011-DPE (PMA)-GL dated 12.06.2013, No.4(1)/2011-DPE(PMA) dated 24.03.2014, No. 4(1)/2011-DPE (PMA) dated 26.03.2014 and No. 4(1)/2013-DPE(PMA)/FTS-1835 dated 11-04-2017 regarding the resolution of commercial disputes between Central Public Sector Enterprises (CPSEs) inter se and also between CPSEs and Government Departments/Organizations (excluding disputes concerning Railways, Income Tax, Customs & Excise Departments) through PMA (Permanent Machinery of Arbitration) mechanism.

2. To make the mechanism more effective and binding on the disputing parties, a new mechanism namely Administrative Mechanism for Resolution of CPSEs Disputes (AMRCD) having two level (tier) structure has been evolved in consultation with various stakeholders to replace the existing PMA mechanism which stands wound up from the date of issue of this OM.

3. Applicability

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 concerning Railways
Income Tax, Customs & Excise Departments), such dispute or difference shall be taken up by either party for its resolution through AMRCD.

4. As per the approved new mechanism to resolve the commercial disputes, the following structure and procedure shall be followed by the concerned disputing parties:

A. Structure:

i. At the First level (tier), such commercial disputes shall be referred to a Committee comprising of Secretaries of the Administrative Ministries/Departments to which the disputing CPSEs/Parties belong and Secretary-D/o Legal Affairs. The Financial Advisors (FAs) of the two concerned Administrative Ministries/Departments will represent the issues related to the dispute in question before the above Committee. In case the two disputing parties belong to the same Ministry/Department, the above said Committee will comprise Secretary of the administrative Ministry/Department concerned, Secretary-D/o Legal Affairs and Secretary-Department of Public Enterprises. In such a case, the matter may be represented before the Committee by the FA and one Joint Secretary of that Ministry/Department.

   Further, in case of a dispute between CPSE and State Government Department/Organization, the above said Committee will comprise the Secretary of the Ministry/Department of the Union to which the CPSE belongs and Secretary-D/o Legal Affairs and a senior officer nominated by the Chief Secretary of the State concerned. In such a case, the matter will be represented before the Committee by the FA of the concerned administrative Ministry/Department and the concerned Principal Secretary of the State Government Department/ Organisation.

ii. In case the dispute remains unresolved even after consideration by the above Committee, the same will be referred at the Second level (tier) to the Cabinet Secretary, whose decision will be final and binding on all concerned.
B. Procedure:

1. At the First level (tier), the claiming party (Claimant) will approach the FA of its administrative Ministry/Department for representing the dispute before the Secretary of its administrative Ministry/Department. The Secretary of administrative Ministry/Department of claiming party will intimate the same to the Secretary of administrative Ministry/Department of responding party (Respondent) and Secretary-D/o Legal Affairs and thereafter meetings will take place in the administrative Ministry/Department of the claiming party to examine the facts and resolve the dispute on merit. The FAs of the concerned administrative Ministries/Departments will represent the issues related to the dispute in question before the above Committee. After arriving at a decision by the Committee, the Secretary of the administrative Ministry/Department of the claiming party will write down the decision and it will be signed jointly by both the Secretaries and Secretary- D/o Legal Affairs. A copy of the decision will be communicated by the Secretary of the administrative Ministry/Department of the claiming party to each party to the dispute for implementation.

In case where one party (1st party) to the dispute is a Department/Organization of a State Government, the procedure for admitting the dispute will be same as above, however, all meetings in connection with resolution of the dispute will be held in the administrative Ministry/Department (Union) of other party (2nd Party) irrespective of the position of the 1st Party whether as a Claimant or Respondent. The presentation of the issues before the above Committee in this case will be done by the FA of the concerned Administrative Ministry/Department and concerned Principal Secretary of the State Government Department/Organization.
ii. The Committee of Secretaries at the First level (tier) shall finalise the decision within 3 months after having received the reference/notice in writing regarding the dispute from the concerned aggrieved party.

5. Appeal

Any party aggrieved with the decision of the Committee at the First level (tier) may prefer an appeal before the Cabinet Secretary at the Second level (tier) within 15 days from the date of receipt of decision of the Committee at First level, through it's administrative Ministry/Department, whose decision will be final and binding on all concerned.

6. Arbitration Clause

(i) The CPSEs will ensure inclusion of a clause in all the existing and future commercial contracts between CPSEs, inter-se and CPSEs and Government Departments/Organizations as under:

"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 concerning Railways, Income Tax, Customs & Excise Departments), such dispute or difference shall be taken up by either party for resolution through AMRCD as mentioned, in DPE OM No. 4(1)/2013-DPE(GM)/FTS-1835 dated 22-05-2018.

(ii) The on-going contracts shall also be suitably amended accordingly.

7. Disposal of pending cases in PMA

All pending cases with Sole Arbitrator-PMA and Appellate Authority shall stand transferred with immediate effect to concerned administrative Ministries/Departments to be dealt with as per above mentioned laid down mechanism of dispute resolution. All cases in which the hearing has been completed
by Sole Arbitrator, the award will be made by Sole Arbitrator. Appeal, if any, made against such cases will lie with the Cabinet Secretary at Second level (tier).

8. All the administrative Ministries/Departments concerned with Central Public Sector Enterprises/Port Trusts etc. are requested to bring these guidelines to the notice of all CPSEs under their administrative control for strict compliance.

9. This issues with the approval of the Competent Authority.

To:
1. Secretary of all Ministries/Departments of the Government of India.
2. Chief Secretary of all the States and Union Territories.

Copy to:
1. Sh. G. S. Yadav, Joint Secretary & Arbitrator-PMA, DPE.
2. Chief Executive of all CPSEs for information and necessary compliance.

Copy forwarded for kind information to:
(i) The Prime Minister’s Office, South Block, New Delhi.
(ii) The Cabinet Secretariat, Rashtrapati Bhawan, New Delhi.
(iii) PS to the Minister (HI&PE), Udyog Bhawan, New Delhi.
(iv) Secretary (DPE), CGO Complex, New Delhi
(v) Secretary (Law), D/o Legal Affairs, Shastri Bhawan, New Delhi.

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