
Arbitration procedure prescribed by the Relevant Authority of Power Exchange India Limited in exercise of powers conferred under Clause 12.4 of the Bye Laws of Power Exchange India Limited.

1. DEFINITIONS

- a. 'Arbitrator' means a sole arbitrator or a panel of arbitrators.
- b. 'Applicant' means the person who makes the application for initiating arbitral proceedings.
- c. 'Respondent' means the person against whom the Applicant lodges an arbitration application, whether or not there is a claim against such person.
- d. "Arbitration Regulations" means the regulations set out in para 19 of the Business Rules

2. SEAT OF ARBITRATION

- a. The Relevant Authority may provide for different seats of arbitration for different regions of the country either generally or specifically and in such an event the seat of arbitration shall be the place so provided by the Relevant Authority. Save as otherwise specified by the Relevant Authority, the seat of arbitration shall be Mumbai.
- b. The premises/location where arbitration shall take place shall be such place as may be identified by the Exchange from time to time and intimated to the arbitrator and the parties to the dispute accordingly.

3. JURISDICTION OF COURTS

For the purpose of Clause 12 of the Byelaws of the Power Exchange India Limited, in matters where the Exchange is a party to the dispute, the Civil Courts at Mumbai shall have exclusive jurisdiction.

4. Arbitration Application -

All claims, differences or disputes between the Members, clients arising out of or in relation to transactions made subject to the and Business Rules, Bye-laws, Rules and Regulations of the Exchange shall be submitted to arbitration in accordance with the provisions of the Business Rules, Bye-laws, Rules and Regulations of the Exchange & the circulars issued there under.

5. Limitation period –

The limitation period for filing an arbitration application shall be governed by the law of limitation i.e. The Limitation Act, 1963

6. Panel of arbitrator –

If the value of the claim, difference or dispute is equal to or more than Rupees Fifty Lakhs, then such matter shall be referred to a panel of three arbitrators and if the value of the claim, difference or dispute is less than Rupees Fifty Lakhs, then the same shall be referred to a sole arbitrator. In case of any claim difference or dispute which is less than Rupees Fifty Lakhs, if there is a counter claim is equal or more than Rupees Fifty Lakhs, then the arbitration panel shall be expanded to three arbitrators from a sole arbitrator.

7. Maintenance of Panel of Arbitrators –

For facilitating arbitration, the Exchange from time to time shall specify panel of arbitrators. The list of arbitrators is as per **Annexure I** of the circular

8. Appointment of arbitrators for arbitration matter –

The arbitrators for an arbitration matter i.e. sole or panel of arbitrators shall be appointed as under.

PROCEDURE FOR APPOINTMENT OF ARBITRATORS

(a) The Applicant and the Respondent against whom the claim has been made by the Applicant shall submit to the Exchange in the order of descending preference, names of such number of persons as specified hereunder from amongst the list of eligible persons specified by the Exchange for the respective seats of arbitration. The number of persons to be so selected by the Applicant and the Respondent shall at least be four. Such names shall be submitted in Form No. II by the Applicant along with Form No. I. The Respondent shall submit the names in Form No. II within seven days of the receipt of Form No. I from the Exchange. Upon receiving the Form No. II from both the Applicant as well as the Respondent, the Exchange shall, as provided for herein, identify the person/s who shall act as the arbitrator.

(b) The Exchange shall identify the sole arbitrator to whom the arbitration application will be referred in the following manner:

- i. The Exchange shall identify the most common arbitrator to whom the highest preference has been given by both the Applicant and the Respondent.*
- ii. If no common arbitrator is identifiable, the Relevant Authority (MD & CEO or/ and the officials of the Exchange as delegated by the MD & CEO of the Exchange)*

shall select an arbitrator from the lists of persons eligible to act as arbitrators excluding the persons selected by the Applicant and the Respondent. If after excluding the persons selected by the Applicant and the Respondent no eligible person is available to act as arbitrator or if the available person refuses or fails to act as arbitrator, then the Relevant Authority may select an arbitrator from the list submitted by either the Applicant or Respondent.

iii. In the event of the failure of Applicant and the Respondent to submit any names of eligible persons to act as arbitrators, the Relevant Authority shall select the sole arbitrator from the lists of persons eligible to act as arbitrators.

(c) The Exchange shall identify the panel of arbitrators to whom the arbitration application will be referred in the following manner:

(i) The Exchange shall identify three most common arbitrators in the order of preference given by both the Applicant and the Respondent.

(ii) In case of matters to be referred to a panel, if no common arbitrator is identifiable or only one or two common arbitrators are identifiable, the first, the second and/or the third arbitrator as the case may be shall be selected by the Relevant Authority from the list of eligible persons excluding the persons selected by the Applicant and the Respondent. If after excluding the persons selected by the Applicant and the Respondent no eligible person is available to act as arbitrator or if the available person refuses or fails to act as arbitrator, then the Relevant Authority may select an arbitrator from the list submitted by either the Applicant or Respondent.

(iii) In the event of the failure of Applicant and the Respondent to submit any names of eligible persons to act as arbitrators the Relevant Authority shall select the panel of arbitrators from the lists of persons eligible to act as arbitrators.

(iv) The panel of arbitrators so appointed shall select one among themselves to act as a presiding arbitrator within 7 days of receipt of intimation from the Exchange appointing them to act as an arbitrator. In case of failure or lack of consensus among the panel to select a presiding arbitrator, the Relevant Authority shall select the presiding arbitrator.

(d) If the Applicant refuses to choose the persons eligible to act as arbitrators or fails to submit Form II, and the Respondent submits Form II, then the Relevant Authority shall

select an arbitrator from the balance list of eligible persons excluding the persons selected by the Respondent. If after excluding the persons selected by the Respondent no eligible person is available to act as arbitrator or if the available person refuses or fails to act as arbitrator, then the Relevant Authority may select an arbitrator from the list submitted by the Respondent.

(e) If the Applicant submits Form II and the Respondent fails to submit the same, then Relevant Authority shall select an arbitrator from the balance lists of eligible persons excluding the persons selected by the Applicant.

(f) If the arbitrator chosen as per the above procedure is not able to take up the matter for whatsoever reasons and /or is not available for an extended period then the Relevant Authority shall select an arbitrator from the remaining names on the list of eligible persons excluding the persons selected by the Applicant and/or the Respondent. If after excluding the persons selected by the Applicant and the Respondent no eligible person is available to act as arbitrator or if the available person refuses or fails to act as arbitrator, then the Relevant Authority may select an arbitrator from the list submitted by either the Applicant or Respondent.

9. Cost of arbitration –

All fees and charges relating to the appointment of the arbitrator and conduct of arbitration proceedings shall be borne by the parties to the reference equally or in such proportions as may be decided by the Arbitrator. Such fees/charges are recovered from the deposits made while filing the arbitration application & balance amount, if any, is refunded to the parties. The costs, if any, to be awarded to either of the parties in addition to the fees and charges that have to be borne by the parties for conducting the arbitration, shall be decided by the Arbitrator. Unless the arbitrator directs otherwise, each party shall bear their own expenses of travelling and other incidental expenses incurred.

For defraying the costs that may be incurred for conducting the arbitration proceeding, both the parties to arbitration shall deposit with the Exchange such costs as specified under.

DEPOSIT TOWARDS COST OF ARBITRATION

(a) The parties to the claim, difference or dispute shall bear cost of arbitration. For this purpose, both the parties to arbitration shall make a deposit with the Exchange along with Form No.I or Form No. III as the case may be, for defraying the costs that may be incurred for conducting the arbitration proceeding provided when there is failure, neglect or refusal

by Respondent, being a constituent, to make a deposit accordingly, the Applicant shall be responsible for making such deposit without prejudice however to its right to recover the same from such Respondent in terms of the award. The Exchange shall have the right to recover the deposit from the Member (in case the respondent is a client of the member and does not make the required deposit) from the moneys due to it if the member / Client of the Member fails to make the deposit.

(b) The amount of deposit, which has to be deposited is determined by the amount of the claim initially and thereafter determined based on a higher counter claim, if any, and is as specified below:

S.N	Amount of Claim/Counter Claim (higher amount to be considered)	Amount of Deposit
1	Up to Rs Fifty Lakhs	Rs. 20,000
2	Above Rs. Fifty Lakhs but less than Rs. Two crores	Rs.25,000
3	Rs. Two crores and above	Rs.35,000

Additional deposits have to be paid by the parties to arbitration in case there is a counter claim and the same is higher than the claim amount in a higher slab. The balance, if any, from the above deposit after adjusting the cost of arbitration there from shall be returned to respective party (ies).

(d) Notwithstanding what is mentioned at (b) above, the Exchange may call for such additional deposits as it may deem fit if in its opinion the deposits already made will be insufficient to defray the expenses of arbitration. Such additional deposits shall partake the character of deposit and shall be dealt with accordingly.

10. Procedure for arbitration –

- a. The arbitration application shall be filed in Form I as per **Annexure II** of Circular, along with choice of arbitrators, statement of claim and such other documents (three sets in case of sole and five sets in case of panel of arbitrators)
- b. On receipt of the same, the Exchange shall forward one copy of the same to the respondent.

- c. The respondent shall within seven days from the date of receipt of the Form I from the Exchange, submit Form II as per **Annexure II** of Circular along with choice of arbitrators and statement of defense to the Exchange.
- d. On expiry of the seven days period of receipt of Form I by the respondent, the arbitrators will be appointed on the basis of preferences submitted by the parties
- e. The arbitrators will conduct the hearings within such locations as may be specified by the Exchange.

11. Requirement of hearing –

No hearing shall be required to be given to the parties to the dispute if the value of the claim is Rs.5,00, 000/- (Rs Five Lakhs) or less. In such a case the arbitrator shall proceed to decide the matter on the basis of documents submitted by both the parties provided however the arbitrator for reasons to be recorded in writing may hear both the parties to the dispute.

12. Completion of arbitration proceedings –

The arbitration proceedings shall be completed by way of issue of arbitral award within a period of four months from the date of appointment of the arbitrators for the matter.

13. Arbitral award –

The arbitrator shall submit to the Exchange the arbitral award in triplicate and the Exchange will arrange to send one original each to the parties to the dispute and one original will be retained by the Exchange permanently.

14. Appeal u/s 34 in the Court of Law –

A party aggrieved by the arbitral award may file an application to the Court of competent jurisdiction in accordance with Section 34 of the Arbitration and Conciliation Act, 1996. The application under Section 34 of the said Act shall be filed in the competent Court nearest to the Arbitration Centre where the appellate arbitral award has been passed.

15. The above Circular is subject to the Bye Laws, Rules and Regulations of the Exchange and should be read in context of the same.

16. Forms for Arbitration –

The following forms specified by the Exchange for arbitration and appellate arbitration are as per Annexure II of the circular.

Sr.no	Form No	Description
1.	Form I	New arbitration application
2.	Form II	Statement of defense

Form No. I
Arbitration Application

To
Power Exchange India Limited (Arbitration),
5th Floor, Tower 3,
Equinox Business Park (Peninsula Techno Park),
Off Bandra Kurla Complex,
Kurla (West), LBS Marg,
Mumbai- 400 070, India.

Sir(s),

I/We am/are a Member of the Exchange (Member Code) /Constituent of *(Please mention name of Member) . I/We hereby apply for adjudication by arbitration of the claim, difference and dispute within the meaning of the Bye laws, Rules and Regulations of the Exchange which has arisen and is now pending between me (Applicant) and person (Respondent) as under:

Details	Applicant	Respondent
Name		
Address		
City & Pin code		
State		
Telephone No.		
Mobile No.		
Fax No.		
Email id		
PAN No.		
Client Code		

The amount of claim in the matter is:

(a) Rs. _____ (in _____ word)
(Rupees _____ only)

(b) Product: DAS / DAC / Weekly / Other _____ (Specify)

1. Date of transaction on the Exchange: _____

2. Please find enclosed a cheque/Demand Draft/Pay order No. _____ dated _____ issued by _____ bank in favour of Power Exchange India Ltd., for an amount of Rs. _____ (Rupees _____ only) payable at Mumbai towards Arbitration deposit for defraying costs and expenses of arbitration.

3. List of documents / copy enclosed with the claim

- Member Constituent Agreement (MCA)
- Risk Disclosure Document (RDD)
- Statement of Accounts for Funds / Securities
- Margin Statements
- Contract Notes
- Statement of case
- Other, please specify _____

4. Choice of arbitrators: (minimum two for sole & four for panel cases)

- i. _____
- ii. _____
- iii. _____
- iv. _____
- v. _____

5. Hearing required: Yes / No

6. (a) I will represent the case.

(b) I would represent the case along with my representative _____ in his/her capacity as _____.

(c) On my behalf _____ will represent in his/her capacity as _____.

Signature of Applicant

Date:

Place:

Note:

The Applicant shall put his/her signature on all the pages of the documents submitted along with this form and if the Applicant is a firm/company, the rubber stamp of the firm/company shall be affixed on all the pages. If the Applicant is a firm/company then the authorized representative of the Applicant has to submit the authority letter/board resolution as the case may be along with this form.

Four names are to be suggested from the list of persons eligible to act as arbitrators

Three sets of Form along with statement of claim and such other documents in case of sole and five sets in case of panel of arbitrators shall be filed.

* Strike whichever is not relevant.

Form No. II
Arbitration Defense

To
Power Exchange India Limited (Arbitration),
5th Floor, Tower 3, Equinox Business Park (Peninsula Techno Park),
Off Bandra Kurla Complex,
Kurla (West),
LBS Marg,
Mumbai- 400 070, India.

Sir(s),
In connection with the application for arbitration submitted by Mr./Mrs./Ms./M/s.
_____ the Applicant above named, I/We enclose
herewith three/five copies of my reply along with the enclosures.

1. Arbitration Matter No. _____

Applicant _____

vs

Respondent _____

2. List of documents / copy enclosed with the claim

- Statement of defense to the arbitration case
- List of documents to support defense statement
- Other, please specify _____

3 Payment details for cost of arbitration

Please find enclosed a cheque/Demand Draft/Pay order No. _____ dated _____ issued
by _____ bank in favour of Power Exchange India Ltd., for an amount of Rs.
_____ (Rupees _____ only) payable at
Mumbai towards Arbitration deposit for defraying costs and expenses of arbitration.

4. Choice of arbitrators: (minimum two for sole & four for panel cases)

- i.** _____
- ii.** _____
- iii.** _____
- iv.** _____

v. _____

5. Hearing required: Yes / No

6. (a) I will represent the case.

**(b) I would represent the case along with my representative _____
in his/her capacity as _____.**

**(c) On my behalf _____ will represent in his/her capacity
as _____.**

Signature of Applicant

Date:

Place:

Note:

The Applicant shall put his/her signature on all the pages of the documents submitted along with this form and if the Applicant is a firm/company, the rubber stamp of the firm/company shall be affixed on all the pages. If the Applicant is a firm/company then the authorized representative of the Applicant has to submit the authority letter/board resolution as the case may be along with this form.

The Guidelines for Empanelment and Nomination of Arbitrators, Dispute Review Board/Dispute Review Experts and Conciliators etc. are as under:

1. EMPANELMENT

1.1. The qualifications and eligibility criteria for empanelment of arbitrators are given below:

(a) The person applying for empanelment should be physically and mentally fit.

(b) The person should have a minimum age of 50 years and a maximum age of 70 years as on the last date of submission of applications.

1. Judges

Honorably Retired Judges of the Supreme Court or any of the High Courts, having made judicial pronouncements in some arbitration cases.

2. Advocates

Practicing in the Supreme Court or at the level of High Court for at least fifteen years with experience in arbitration matters and knowledge of corporate laws, contract law, mediation and arbitration procedure.

3. Engineers

(a) Honorably retired not below the rank of Chief Engineer in the CPWD or in any other department of the Central or State Government with knowledge of arbitration and mediation law and procedure.

(b) Engineers specialized in Electrical / power with at least fifteen years experience in areas such as power generation, distribution grid, etc. and at least five years experience in the conduct of arbitration / mediation cases, law and procedure.

4. Chartered Accountants/Secretaries

Chartered Accountants/Chartered Secretaries with at least fifteen years experience and knowledge in the profession and at least five years experience in the conduct of arbitration / mediation cases, law and procedure.

5. Executives

Senior legal and commercial executives, company secretaries in the public sector undertakings or private commercial organizations or professor/lecturer with at least fifteen years experience in the profession and at least five years experience in legal / commercial matters, arbitration / mediation law and procedure.

6. Businessmen

Company directors and other persons with outstanding reputation and experience in domestic or international trade for at least ten years and at least five years experience in arbitration / mediation law and procedure.

7. Foreign Nationals

Suitable persons of nationalities other than an Indian resident in India or abroad, who have adequate knowledge in their respective fields and at least fifteen years experience in commercial arbitration / mediation procedures in any of the above categories.

8. Maritime experts

Persons having knowledge and at least five years experience of shipping laws, practices and procedures, particularly in international matters at a senior level in a company or institution of standing or otherwise having a distinguished career in shipping matters and at least five years experience in conduct of maritime arbitration and mediation cases.

9. Consumer Law Experts

Persons having knowledge of consumer law and at least ten years experience in practice and procedures with regard to consumer dispute redressal / settlement. Must also have some experience in conduct of arbitration and mediation matters.

10. Others

Persons having fifteen years experience in any other specialized areas and have at least five years experience in arbitration law and procedure.