

Storage & Contract

Please find enclosed **circular no. 17/2014 dated 23.9.2014** regarding Settlement of Commercial Disputes between Public Sector Enterprises inter-se and Public Sector Enterprises and Govt. Departments through Permanent Machinery of Arbitration(PMA) in the Deptt. of Public Enterprises and **circular no. 18/2014 dated 23.9.2014** regarding Instructions to all Ministries/Deptt./PSUs/Board/Authorities under administrative control of various Ministries/Deptts to desist from initiating inter-ministerial/departmental litigation in the court of Law which are self-explanatory received from Legal Division vide letter no. 19(1)/89-Legal dated 23.9.2014.

This is submitted for your information and necessary action please.

P. H. W.
2014/14
Asst. Genl. Manager(S&C)

Asst. Genl. Manager(I,II,III & IV) S&C Division, FCI Hqrs.

U.O Note no. Misc./2014-15/Stg. Admin.

Dated: 30.9.2014

Copy to:

PS to GM(S&C), FCI, Hqrs.

Myr/sg-17/sg-14A/sg-14B
28/10/14
Place in file of circulars.
08.10.14

भारतीय खाद्य निगम
मुख्यालय
16-20, बाराखम्बा लेन, नई दिल्ली - 110001



FOOD CORPORATION OF
INDIA, HEADQUARTERS
16-20, BARAKHAMBA LANE,
NEW DELHI - 110001

Phone 011 43527645

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Email: mlegal.fci@nic.in

No. 19(1)/89-Legal

23.09.2014


परिपत्र संख्या 17/2014

Sub: 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) in the Department of Public Enterprises – Reg.

Sir,

In continuation of Circular No.14/2013 and 16/2014 issued from file of even no. dated 17.7.2014 and 22.4.2014 on the cited subject, please find enclosed Office Memorandum No.7(3)2014-DPE (PMA) dated 14.07.2014 of Govt. of India, Ministry of Heavy Industries & Public Enterprises, Department of Public Enterprises which is self-explanatory for necessary action.

Yours faithfully


(जॉर्ज कुरियाकोस)
महाप्रबन्धक(विधि)

सलंगक: उपरोक्तानुसार

वितरण :

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

प्रतिलिपि:

PS to CMD, FCI, Hqrs.

संलग्नक 1/2
24/9/14

उमर (प्र. प्रशा.)

24/9/14

प्र. (प्र. प्रशा.)

24/9/14

1030-1014
30/7/14

संख्या. 7(3)2014-डीपीई (पीएमए)

भारत सरकार

भारी उद्योग और लोक उद्यम मंत्रालय

लोक उद्यम विभाग



लोक उद्योग भवन,

ब्लॉक नं. 14, सी. जी. ओ. काम्प्लेक्स,

- लोधी रोड, नई दिल्ली - 110 003

दिनांक : 14 जुलाई, 2014

अध्यक्ष एवं प्र.निदे (पा.जा.वि) / CMD, FCI
द्वारा संख्या / Dy. No. 1289
दिनांक / Dated 28-7-14
समय / Time

कार्यालय ज्ञापन

विषय :- केन्द्रीय सरकारी उद्यमों के परस्पर और केन्द्रीय लोक उद्यमों एवं सरकारी विभाग के मध्य वाणिज्यिक विवादों को लोक उद्यम विभाग में स्थायी मध्यस्थता तंत्र (पीएमए) के माध्यम से निपटाना

अधोहस्ताक्षरी को दिनांक 12 जून 2013 के कार्यालय ज्ञापन संख्या 4(1)2011-डीपीई (पीएमए)-जी. एल का संदर्भ लेने का निदेश हुआ है जिसमें सभी केन्द्रीय सरकारी उद्यमों के मुख्य कार्यपालकों के साथ-साथ सभी प्रशासनिक मंत्रालयों/विभागों को संशोधित पीएमए मार्गनिदेश जारी किए गए थे।

मार्गनिदेशों का अन्तिम पैरा निम्न प्रकार से है :-

"केन्द्रीय सरकारी उद्यमों/बैंकों/पोर्ट ट्रस्टों आदि के प्रबंधन के साथ सभी संबंधित प्रशासनिक मंत्रालयों/विभागों को उनके प्रशासनिक नियंत्रणाधीन सभी संबंधित संगठनों द्वारा इन मार्गनिदेशों को कड़ाई से पालन करने हेतु इन्हें इनके नोटिस में लाने का अनुरोध किया गया है। यह भी अनुरोध किया गया है कि वे यह भी सुनिश्चित और निगरानी करें कि पक्षकारों द्वारा मध्यस्थ के अवार्ड का कार्यान्वयन उसके आदेशानुसार किया गया है। उक्त पैरा IV (i) में संदर्भित अनुबंध के अनुसार राष्ट्रपतिक निदेशों को संबंधित संगठन (नों) के नियमों और अन्य संबंधित विनियमों में उपबंधों को शामिल करने हेतु जारी किए जाए।"

2. चूंकि लोक उद्यम विभाग का कुछ केन्द्रीय सरकारी उद्यमों से यह प्रतिवेदन प्राप्त हो रहे हैं कि कुछ मामलों में पीएमए मध्यस्थता अवार्ड को कार्यान्वयन नहीं किया जा रहा है जिसके परिणामस्वरूप संबंधित केन्द्रीय सरकारी उद्यमों को वित्तीय संकट होता है, इसप्रकार पीएमए की स्थापना का मुख्य उद्देश्य पूरा नहीं होता है। उदाहरणतया, लोक उद्यम विभाग में हैवी इन्जीनियरिंग कारपोरेशन लि. द्वारा नार्दन कोल फील्डस लि. से पीएमए अवार्ड का कार्यान्वयन न किए जाने के संबंध में एक प्रतिवेदन प्राप्त हुआ है जबकि हैवी इन्जीनियरिंग कारपोरेशन लि. द्वारा 16.87 करोड़ रूपए के भुगतान का निर्णय 28 फरवरी 1997 को एकल मध्यस्थ द्वारा दिया गया था और उसके बाद नार्दन कोल फील्ड लि. द्वारा विधि सचिव को दी गई याचिका को एक तरफ रखकर एकल मध्यस्थ के अवार्ड को उसके दिनांक 30 नवम्बर 1999 के आदेश के तहत सही ठहराया गया था। इस आदेश के विरुद्ध नार्दन कोल फील्डस लि. उच्च न्यायालय में गया लेकिन उसकी याचिका को माननीय उच्च न्यायालय ने वर्ष 2007 में खारिज कर दिया। मध्यस्थ एवं नियुक्ति प्राधिकारी के विरुद्ध स्थगन आदेश न दिए जाने के बावजूद नार्दन कोलफील्डस लिमिटेड ने अवार्ड को कार्यान्वित नहीं किया है तथा वह भुगतान किए जाने तक 18% की दर से ब्याज के भुगतान के लिए जिम्मेदार है। इस संबंध में लोक उद्यम विभाग के दिनांक 12 जून 2013 के कार्यालय ज्ञापन

4-28-7-14

GM (Law)

GM (Law)

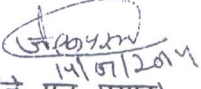
सं. 4(1)/2011-डीपीई (पीएमए)-जी एल की ओर ध्यान आकृष्ट किया जाता है जो लोक उद्यमों, सरकारी विभाग आदि द्वारा किए गए व्यवसायिक अनुबंधों में शामिल करने से संबंधित है। साथ-साथ यह शर्त लगाई गई है कि अपीलीय प्राधिकारी अर्थात् विधि सचिव अथवा विशेष सचिव/अपर सचिव जब वे विधि सचिव द्वारा प्राधिकृत हों, के निर्णय संबंधित पक्षों द्वारा अन्तिम एवं स्पष्ट रूप से मानने होंगे।

इस विशेष मामले में कोई स्थगन आदेश नहीं दिया गया है परन्तु नादर्न कोलफील्ड्स लि. ने हेवी इन्जीनियरिंग कारपोरेशन लि. को कोई भुगतान नहीं किया है।

3. सभी प्रशासनिक मंत्रालयों/विभागों से यह सुनिश्चित करने तथा निगरानी करने का अनुरोध है कि वे मध्यस्थ द्वारा पीएमए अवार्ड का उसके निर्देशों के अनुसार कार्यान्वयन हो रहा है तथा उपर्युक्त संशोधित दिशानिर्देशों में दी गई सलाह के अनुसार राष्ट्रपतिक निदेश जारी किए जाएं।

प्रशासनिक मंत्रालयों / विभागों से यह ध्यान में रखने का अनुरोध किया जाता है कि पीएमए दिशानिर्देशों सहित लोक उद्यम विभाग के दिशानिर्देशों का समझौता जापान प्रणाली के अन्तर्गत केन्द्रीय सरकारी लोक उद्यम के मूल्यांकन के प्रयोजन के लिए ध्यान में रखा जाना चाहिए तथा वे अपने नियंत्रणाधीन केन्द्रीय सरकारी लोक उद्यमों को तदनुसार सलाह दे सकते हैं।

4. इसे, लोक उद्यम विभाग की सचिव के अनुमोदन से जारी किया जाता है।


14/07/2014
(जे. एन. प्रसाद)

निदेशक

सेवा में,

भारत सरकार के सभी मंत्रालयों/विभागों के सचिव
प्रतिलिपि :

1. श्री रामायन यादव, संयुक्त सचिव एवं मध्यस्थ, स्थायी मध्यस्थता तंत्र, लोक उद्यम विभाग
2. सभी केन्द्रीय सरकारी लोक उद्यमों के मुख्य कार्यपालकों को सूचना एवं आवश्यक अनुपालन हेतु।

प्रतिलिपि : सूचनार्थ अग्रसारित

- i. प्रधानमंत्री कार्यालय, साउथ ब्लॉक, नई दिल्ली
- ii. मंत्रिमण्डल सचिव, राष्ट्रपति भवन, नई दिल्ली
- iii. मंत्री (भारी उद्योग एवं लोक उद्यम) के निजी सचिव, उद्योग भवन, नई दिल्ली
- iv. सचिव, लोक उद्यम के निजी सचिव
- v. वित्त सचिव के निजी सचिव, नार्थ ब्लॉक, नई दिल्ली
- vi. विधि सचिव के निजी सचिव, शास्त्री भवन, नई दिल्ली
- vii. संयुक्त सचिव(प्र.)/ संयुक्त सचिव(ए.के.पी.)/सलाहकार(पीई)
- viii. लोक उद्यम विभाग के सभी उच्चाधिकारी

प्रतिलिपि : विशेष ध्यान एवं कार्रवाई के लिए

1. सचिव, कोयला मंत्रालय, शास्त्री भवन, नई दिल्ली
2. सचिव, भारी उद्योग विभाग, उद्योग भवन, नई दिल्ली

No.7(3)2014-DPE (PMA)
Government of India
Ministry of Heavy Industries & Public Enterprises
Department of Public Enterprises

Block No.14, CGO Complex,
Lodhi Road, New Delhi.110003

Dated the 14th July 2014

OFFICE MEMORANDUM

Sub: 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) in the Department of Public Enterprises.

The undersigned is directed to refer to O.M. No.4 (1)2011-DPE (PMA)-GL dated 12th June, 2013 by which the revised PMA guidelines were issued to all administrative Ministries/Departments as well as to the Chief Executives of all Central Public Sector Enterprises(CPSEs). The last paragraph of the said guidelines mentions as under:

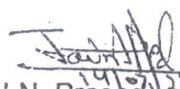
"All the administrative Ministries/Departments concerned with management of the Central Public Sector Enterprises/Banks/Port Trusts etc. are requested to bring these guidelines to the notice of all concerned organisations under their administrative control for their strict compliance. It is also requested that they may ensure and monitor the implementation of the award of the Arbitrator by the parties as per his/her directions. Presidential directives as per Annexure referred to in paragraph 1V(i) above, may be issued to incorporate the provisions in the Articles of Association or other relevant regulations of concerned organisation(s) at the earliest."

2. However, the Department of Public Enterprises(DPE) is receiving representations from some CPSEs that PMA Arbitration Award is not being implemented in some cases and this results in financial distress to the concerned CPSEs, thereby negating the very purpose of setting up of the PMA. For example, a representation has been received in DPE from Heavy Engineering Corporation Ltd. regarding non-implementation of PMA award by Northern Coalfields Ltd., even after the decision was given by the Sole Arbitrator on 28th February 1997 for payment of Rs.16.87 crore to Heavy Engineering Corporation Ltd. and after the appeal of Northern Coalfields Ltd. to Law Secretary was set aside and the award of Sole Arbitrator was upheld by his order dated 30th November 1999. The Northern Coalfields Ltd. went to the High Court against the order but its appeal was dismissed by the Hon'ble Court in 2007. Despite having no stay against the orders of the Arbitrator and Appellate Authority the Northern Coalfields Ltd. has not implemented the award and are liable to pay interest @ 18% till the payment is made. In this

connection attention is invited to annexure to DPE O.M. No.4(1)/2011-DPE(PMA)-GL dated 12th June 2013, relating to the Arbitration clause to be included in all commercial contracts entered into by the Public Enterprises/Government Departments etc. where it is stipulated, inter alia, that the decision of the Appellate Authority, i.e. Law Secretary or the Special Secretary/Additional Secretary, when so authorised by the Law Secretary, shall bind the parties finally and conclusively. In this particular case, no stay has been granted, but Northern Coalfields Ltd. has made no payment to Heavy Engineering Corporation Ltd. at all.

3. All administrative Ministries/Departments are requested to ensure and monitor implementation of PMA Award of the Arbitrator by the parties as per his/her directions and Presidential directive may be issued as advised in the revised guidelines referred above. The administrative Ministries/Departments are also requested to keep in mind that implementation of DPE guidelines, including PMA guidelines, is a factor taken into account for evaluation purpose of the CPSE under the MoU system and they may advise the CPSEs under their control accordingly.

4. This issues with the approval of Secretary, DPE.


(J.N. Prasad) 2014
Director

To

Secretaries of all Ministries/Departments of the Government of India.

Copy to:

1. Sh. Ramayan Yadav, Joint Secretary & Arbitrator of PMA, DPE.
2. The Chief Executives of all CPSEs for information and necessary compliance.

Copy forwarded for information to:

- (i) The Prime Minister's office, South Block, New Delhi
- (ii) The Cabinet Sectt., Rashtrapati Bhawan, New Delhi
- (iii) PS to the Minister (HI&PE), Udyog Bhawan, New Delhi
- (iv) PS to Secretary(PE)
- (v) PS to Finance Secretary, North Block, New Delhi
- (vi) PS to Law Secretary, Shastri Bhawan, New Delhi
- (vii) JS(Admn.)/JS(AKP)/Adviser(PE)
- (viii) All officers in DPE

Copy for specific attention and action to:

1. Secretary, Ministry of Coal, Shastri Bhavan, New Delhi
2. Secretary, Department of Heavy Industry, Udyog Bhawan, New Delhi

भारतीय खाद्य निगम
मुख्यालय
16-20, बाराखम्बा लेन, नई दिल्ली - 110001



FOOD CORPORATION OF
INDIA, HEADQUARTERS
16-20, BARAKHAMBA LANE,
NEW DELHI - 110001

Phone 011 43527645

Fax 011 43527639

Email: mlegal.fci@nic.in

No. 19(1)/89-Legal

23.09.2014


परिपत्र संख्या 18/2014

Sub: Instructions to all Ministries/Departments/PSUs/Boards/Authorities under administrative control of various Ministries/Departments to desist from initiating inter-ministerial/departmental litigation in the Court of Law - Reg.

Sir,

With reference to the cited subject, please find enclosed Communication No.18-50/2014-FC.I dated 22.08.2014 of Govt. of India, MOCA,F&PD, Deptt. of Food and Public Distribution, Krishi Bhawan, New Delhi enclosing therein Communication No 39-16/2014-AC Dated 19.08.2014 of Govt. of India, MOCA,F&PD, Deptt. of Food and Public Distribution, Krishi Bhawan, New Delhi and D.O. No.29(9)/2014.Judl. dated 7.08.2014 of Govt. of India, Ministry of Law & Justice, Department of Legal Affairs which are self-explanatory for necessary action.

Yours faithfully,


(जॉर्ज कुरियाकोस)
महाप्रबन्धक(विधि)

संलग्नक: उपरोक्तानुसार

वितरण :

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

प्रतिलिपि:

PS to CMD, FCI, Hqrs.

प्र. (अ. प्रशा.)
सि.प्र.
रस्ताली

सं. प्र. (अ. प्रशा.)
सि.प्र.
रस्ताली

उप. प्र. (अ. प्रशा.)
सि.प्र.
रस्ताली
24/9/14

1241-Legal
26/8/14

अध्यक्ष एवं प्रबन्धि (भारत.नि.) / CMD FCI
आवरी संख्या / Dy. No. 1500
दिनांक / Dated 26-8-14
समय / Time

No.18-50/2014-FC.I
Government of India
Ministry of Consumer Affairs,
Food and Public Distribution
Deptt. of Food and Public Distribution



Krishi Bhavan, New Delhi -110001
Dated: 22nd August, 2014

To
Chairman & Managing Director,
Food Corporation of India,
16-20, Barakhamba Lane,
New Delhi.

Subject:- Instructions to all Ministries/Department/PSUs/Boards/ Authorities under administrative control of various Ministries/ Departments to desist from initiating inter-ministerial/ departmental litigation in the Court of Law - reg.

C. 26/8
Sir, 26-8-14
ED (Law)
GM (Law)

I am directed to forward herewith O.M. No.39-16/2014^{AC} dated 19/08/2014 forwarding therewith a copy of D.O. letter No.29(9)/2014-Judl. dated 07th August, 2014 received from Ministry of Law & Justice, Department of Legal Affairs on the above subject for information and necessary action as deemed appropriate.

Yours faithfully
[Signature] 26-8-14

(Inderdeep Kandwal)
Under Secretary to the Govt. of India

REV (CA)

No. 39-16/2014-AC
Government of India
Ministry of Consumer Affairs, Food & Public Distribution
Department of Food & Public Distribution

Krishi Bhawan, New Delhi
The 19th August, 2014

OFFICE MEMORANDUM

Sub: Instructions to all Ministries/ Department/ PSUs/ Boards/ Authorities under administrative control of various Ministries/ Departments to desist from initiating inter-ministerial/ departmental litigation in the Court of Law - reg.

The undersigned is directed to forward herewith a copy of D. O. No. 29(9)/2014-Judl. dated 07th August, 2014, received from Department of Legal Affairs on the subject mentioned above for information and necessary action as deemed appropriate.

(P. S. Dangwal)
19/8/14
(P. S. Dangwal)
Under Secretary (AC)
Tele: 2338 0518

Encl: As above

To

- 1. JS(Sugar)
- 2. JS(Pol. & FCI)
- 3. JS(Impex, SRA, EOP & IC)
- 4. JS(Storage)
- 5. JS(BP & PD)
- 6. JS(Admin)
- 7. Director (Sugar)
- 8. Director (VVOF)

Dir (M)

Dir (FCI)

DS (FCI)

DS (P-2 & FC-III)

20/8

All concerned Officers / Sections and FCI should be forwarded copy.

20/8/14

US (FCI)

Copy to:

- 1. CMD, FCI, 16-20, Barakhamba Lane, New Delhi.
- 2. MD, CWC, Siri Institutional Area, Hauz Khas, New Delhi.
- 3. Director (Vig), D/o Food & PD (i.r.o. HVOC).
- 4. Chairman, WDRA, 4/1, Siri Institutional Area, Hauz Khas, New Delhi.
- 5. *AMD*, CRWC, Ground Floor, Pragati Maidan Metro Station Building, New Delhi.

Re provide copy to all

20-8-14

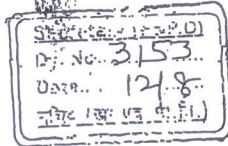
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Sh. A. C.

20/8/14

कुम. मल्होत्रा
सचिव

P. K. Malhotra
Secretary



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भारत सरकार
विधि और न्याय मंत्रालय
विधि कार्य विभाग

GOVERNMENT OF INDIA
MINISTRY OF LAW & JUSTICE
DEPARTMENT OF LEGAL AFFAIRS

Dated the 7th August, 2014.

14789 D/CAC
13/8/14

JS (Admn.)
Dy. No. 2038
Dt. 12/8

उपरोक्त मामले का प्रथम एवं अन्तिम
विधि कार्य विभाग
(खाद्य एवं सार्वजनिक विज्ञान विभाग)
12/8/14
जायगी संख्या: 6149/R&D/14
विधि कार्य / सचिव विभाग

D.O.No.29(9)/2014-Judl.

Dear Secretary,

In a meeting chaired by Principal Secretary to the Hon'ble Prime Minister on 31 July, 2014, the issue relating to instructions to all the Ministries/ Departments/ PSUs/ Boards/ Authorities under administrative control of various Ministries/ Departments to desist from initiating inter-ministerial/ departmental litigation in the Court of Law was discussed.

2. It has been effort of this Department to reduce Government litigation in courts so that valuable court time is spent in resolving other pending cases. It has also been endeavour of the Government to see that disputes between various Ministries/ Departments/ PSUs/ Boards/ Authorities under the control of the Government do not go to the court. In that direction, a Permanent Machinery of Arbitration is functioning in the Department of Public Enterprises which deals with disputes between two Public Sector Undertakings. Similarly, in-house mechanism is working in some other Departments of the Government. Such mechanism includes Arbitration and other alternate dispute resolution mechanism. In spite of these instructions, certain PSUs/ Departments still resort to court proceedings in settlement of disputes either with the Government Departments or with other PSUs.

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3. On the basis of the 154th Report of the Public Accounts Committee given in 1974-75, directions were issued which have been reiterated from time to time with regard to Resolution of such disputes. The instructions read as under:-

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(i) In so far as disputes between one Government Department and another are concerned, there can be no question of taking recourse to litigation or even arbitration in seeking settlement of points at issue. If a discussion at the level of Ministers concerned does not result in agreement the problem can always be taken to the Cabinet for final decision.

(ii) Unresolved disputes between a Government Department and public sector enterprise and between one public enterprise and another would ordinarily fall in either of the two following categories:

- (a) Those relating to statutory matters; and
- (b) Those relating to commercial or other agreements.

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Regardless of the type of dispute, it has been decided that all disputes should be resolved amicably by mutual consultation or through the good offices of empowered agencies of the Government or through arbitration and recourse to litigation should be eliminated."

4. All Ministries/ Departments are, therefore, requested to desist from inter-ministerial/ departmental litigations in any Court of Law and may issue necessary instructions in this regard to all Public Sector Undertakings/ Boards/ Authorities under their administrative control. In case it is not possible to resolve the dispute amicably by mutual consultation or through the good offices of Empowered Agencies of the Government or through Arbitration, the same should be referred first to the Cabinet Secretariat, and, then if necessary to PMO.

With regards,

Yours sincerely,



(P.K. Malhotra)

All Secretaries to the Government of India