

कोल इण्डिया लिमिटेड

(महाराष्ट्र कंपनी)

(भारत सरकार उपक्रम)

सिविल अभियांत्रिकी डिविजन,

'कोल भवन', प्रेमिसिज सं. 04, एसएआर,

प्लॉट सं.-एफ-III, एक्सन एरिया-1 ए, न्यूटाउन, राजारहाट,

कोलकाता-700 156,

वेबसाइट: www.coalindia.in

सी आई एन सं. L23109WB1973GOI028844



5 DECADES OF UNEARTHING ENERGY

COAL INDIA LIMITED

(A Maharatna Company)

(A Govt. of India Undertaking)

Civil Engineering Division,

'Coal Bhawan', Premises No.04-MAR,

Plot No-AF-III, Action Area - IA,

New Town, Rajarhat,

Kolkata - 700 156

Website: www.coalindia.in

CIN No.L23109WB1973GOI028844

Ref. CIL/CIVIL/31(Pt-1 B)/ 1676

Date.21.03.2025

सेवा में,

The General Manager (Civil)/ E&M
BCCL/CCL/ ECL/MCL/NCL/SECL/WCL/CMPDIL
ED, IICM / General Manager, NEC

विषय: Modification of the provision of Settlement of Dispute in the Manual for Civil Engineering Works (MCEW) in CIL & Subsidiaries.

Ref: 1. CIL/GM(CMC)/2025/274 dated 20.03.2025
2. CIL/GM(CMC)/2025/276 dated 21.03.2025

महाशय,

CFDs of CIL in their 373rd meeting held on 08.03.2025 have approved the modification of the provision of Settlement of Dispute in the manuals of CIL including the Consultancy & Non Consultancy Service Tenders in CIL & Subsidiaries.

The modification is in line with the Section 9.9 Dispute Resolution of the "Manual for procurement of Goods – Second Edition, 2024" which was in line with the OM no. 1/2/2024-PPD dated 03.06.2024 issued by Department of Expenditure (DoE).

The approved modified provision is attached herewith as **Annexure-I**.

In the existing contract where there is provision of Arbitration, the following advisory is also issued:

- The Settlement of dispute through Arbitration may be avoided as far as possible.
- Even if it is resorted to, then it may be restricted to disputes with a value less than Rs.10 crores. This figure is with reference to the value of the dispute (not the value of the contract, which may be much higher).

This issues with the approval of Competent Authority.

The above amendment is issued for implementation with immediate effect.

Yours faithfully,

Encl: As above

Copy:

1. CVO, CIL
2. ED(Co-ordination), CIL
3. ED(M&C), CIL/ED(Contracts), CIL
4. Company Secretary, CIL/ GM(Vig), CIL
5. TS to CMD MCL/SECL/WCL/ECL/BCCL/CMPDIL/NCL/CCL/CMPDIL
6. TS to D(T)/D(F)/D(M)/D(P)/D(BD), CIL
7. GM CIL, Delhi
8. GM(System), CIL-
9. Office copy

with request to upload the order in CIL website

General Manager/ HoD (Civil), CIL
माहिती / विभागाध्यक्ष (सिविल)
General Manager / HoD (Civil)
सिविल अभियांत्रिकी विभाग
Civil Engineering Division
कोल इण्डिया लिमिटेड
Coal India Limited

कोल इण्डिया लिमिटेड

(महारत्न कंपनी)

(भारत सरकार उपक्रम)

संविदा प्रबंधन प्रकोष्ठ,

'कोल भवन', प्रेमिसिज सं.04 एमएआर,

प्लॉट सं.-एएफ-III, एक्सन एरिया-1 ए, न्यूटाउन, राजारहाट,

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50 DECADES OF UNEARTHING ENERGY

COAL INDIA LIMITED

(A Maharatna Company)

(A Govt. of India Undertaking)

Contract Management Cell

'Coal Bhawan', Premises No.04-MAR

Plot No-AF-III, Action Area -IA

New Town, Rajarhat

Kolkata - 700 156

Website: www.coalindia.in

CIN No. 23109WB1973GOI028844

संदर्भ संख्या: सी०आई०एल/वि.प्र.(संप्रप्र)/2025/276

दिनांक: 21.03.2025

सेवा में,

The General Manager (CMC)

ECL/BCCL/CCL/NCL/WCL/SECL/MCL

The General Manager, NEC

विषय: Corrigendum to the letter issued for communicating the modification of the provision of Settlement of Dispute in the Contract Management Manuals (CMM): Chapter 2, Chapter 3 and Chapter 6 and Consultancy & Non-Consultancy Service Tenders in CIL & Subsidiaries.

संदर्भ: सी०आई०एल/वि.प्र.(संप्रप्र)/2025/274 दिनांक: 20.03.2025

महोदय,

A letter vide no. सी०आई०एल/वि.प्र.(संप्रप्र)/2025/274 दिनांक: 20.03.2025 was issued communicating the modification of the provision of Settlement of Dispute in the Contract Management Manuals (CMM): Chapter 2, Chapter 3 and Chapter 6 and Consultancy & Non-Consultancy Service Tenders in CIL & Subsidiaries. The modified provision was attached as Annexure-I with the said letter.

In the said provision under the sub-head "(viii) Mediated Settlement Agreement (MSA)", the serial numbering of the provisions is mentioned as "5, 6, 7, 8 and 9" which is to be read as "1, 2, 3, 4 and 5".

The corrected modified provision is attached herewith.

All other terms shall remain same.

भवदीय,
21.03.25
कार्यकारी निदेशक (संविदा)
सी.आई.एल.

प्रतिलिपी:

1. CVO, CIL
2. ED(Co-ordination), CIL
3. All EDs, CIL
4. Company Secretary, CIL
5. All HODs, CIL
6. TS to CMD - ECL/BCCL/CCL/NCL/WCL/SECL/MCL/CMPDIL
7. TS to D(P)/D(BD)/D(M)/D(F)/D(T), CIL
8. GM(System), CIL – with request to upload in CIL website.

कोल इण्डिया लिमिटेड

(महाराष्ट्र कंपनी)

(भारत सरकार उपक्रम)

संविदा प्रबंधन प्रकोष्ठ,

'कोल भवन', प्रेमिसिज सं.04 एमएआर,

प्लॉट सं.-एएफ-III, एक्शन एरिया-1 ए, न्यूटाउन, राजरहाट,

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COAL INDIA LIMITED

(A Maharatna Company)

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CIN No. 23109WB1973GOI028844

संदर्भ संख्या: सी०आई०एल/वि.प्र.(संप्रप्र)/2025/274

दिनांक: 20.03.2025

सेवा में,

The General Manager (CMC)

ECL/BCCL/CCL/NCL/WCL/SECL/MCL

The General Manager, NEC

विषय: Modification of the provision of Settlement of Dispute in the Contract Management Manuals (CMM): Chapter 2, Chapter 3 and Chapter 6 and Consultancy & Non-Consultancy Service Tenders in CIL & Subsidiaries..

महोदय,

CFDs of CIL in their 373rd meeting held on 08.03.2025 have approved the modification of the provision of Settlement of Dispute in the manuals of CIL including the Consultancy & Non Consultancy Service Tenders in CIL & Subsidiaries.

The modification is in line with the Section 9.9 Dispute Resolution of the "Manual for procurement of Goods – Second Edition, 2024" which was in line with the OM no. 1/2/2024-PPD dated 03.06.2024 issued by Department of Expenditure (DoE).

The approved modified provision is attached herewith as Annexure-I.

In the existing contract where there is provision of Arbitration, the following advisory is also issued:

- The Settlement of dispute through Arbitration may be avoided as far as possible.
- Even if it is resorted to then it may be restricted to disputes with a value less than Rs. 10 crores. This figure is with reference to the value of the dispute (not the value of the contract, which may be much higher).

This issues with the approval of Competent Authority.

The above amendment is issued for implementation with immediate effect.

भवदीय,

20/03/25

कार्यकारी निदेशक (संविदा)

सी.आई.एल.

प्रतिलिपी:

1. CVO, CIL
2. ED(Co-ordination), CIL
3. All EDs, CIL
4. Company Secretary, CIL
5. All HODs, CIL
6. TS to CMD - ECL/BCCL/CCL/NCL/WCL/SECL/MCL/CMPDIL
7. TS to D(P)/D(BD)/D(M)/D(F)/D(T), CIL
8. GM(System), CIL – with request to upload in CIL website.

APPROVED CLAUSE OF SETTLEMENT OF DISPUTE IN THE MANUALS OF CIL:

Disputes Resolution

1. Normally, there should not be any scope for dispute between the buyer / Company and seller / contractor after entering a mutually agreed valid contract. However, due to various unforeseen reasons, problems may arise during the contract, leading to a dispute between the buyer / Company and the seller / contractor. Therefore, the conditions governing the contract should contain suitable provisions for the settlement of such disputes or differences binding on both parties.
2. All disputes and differences between the parties, as to the construction or operation of the contract, or the respective rights and liabilities of the parties on any matter in question or any other account whatsoever, but excluding the Excepted Matters (detailed below); arising out of or in connection with the contract, within thirty (30) days from aggrieved Party notifying the other Party of such matters; whether before or after the completion/ termination of the contract, that cannot be resolved amicably between the Engineer-in-charge and the contractor within thirty (30) days from one party notifying the other of such matters, whether before or after the completion or termination of the contracts, shall be referred to as a "Dispute".
3. The aggrieved party shall give a 'Notice of Dispute' indicating the Dispute and claims, citing relevant contractual clauses to the Engineer-in-charge, and requesting to invoke the dispute resolution mechanisms as available in the contract.

Excepted Matters

Matters for which provision has been made in any clause of the contract shall be deemed as 'excepted matters' (matters not disputable), and decisions of the Company, thereon, shall be final and binding on the contractor. The 'excepted matters' shall stand expressly excluded from the purview of the Dispute Resolution Mechanism. However, where the Procuring Entity has raised the dispute, this sub-clause shall not apply. Unless otherwise stipulated in the contract, excepted matters shall include but not limited to:

1. Any controversies or claims brought by a third party for bodily injury, death, property damage or any indirect or consequential loss arising out of or in any way related to the performance of this Contract ("Third Party Claim"), including, but not limited to, a Party's right to seek contribution or indemnity from the other Party in respect of a Third-Party Claim.
2. Issues related to the pre-award tender process or conditions.
3. Issues related to ambiguity in contract terms shall not be taken up after a contract has been signed. All such issues should be highlighted before the contractor signs the contract.
4. Issues related to contractual action/ termination of contract etc., by the Company on account of fraud, corruption, debarment of contractors, criminal or wilful negligence of the contractor etc.
5. Issues that are already under investigation by CBI, Vigilance, or any other investigating agency or government.
6. Provisions incorporated in the contract, which are beyond the purview of the Company or are in pursuance of policies of Government, including but not limited to

- a) Provisions of restrictions regarding local content and Purchase Preference to Local suppliers in terms of the Make in India policy of the Government.
- b) Provisions regarding restrictions on Entities from Countries having land-borders with India in terms of the Government's policies in this regard.
- c) Purchase preference policies regarding MSEs and Start-ups

SETTLEMENT OF DISPUTES WITH THE CONTRACTOR

It is incumbent upon the contractor to avoid litigation and disputes during the course of execution. However, if such disputes take place between the contractor and the department, effort shall be made first to settle the disputes at the Company level.

The contractor should make request in writing to the Engineer-in-charge for settlement of such disputes/ claims within 30 (thirty) days of arising of the cause of dispute/ claim failing which no disputes/ claims of the contractor shall be entertained by the Company.

The dispute is to be resolved as per following stages:

In first stage dispute shall be referred as given below:

Scenario	The dispute shall be referred to:
For works executed at Area / sub-area / project level where Area GM is not Engineer-in-charge (EIC) and EIC is under the administrative control of Area GM:	Area GM
For works executed at Area / sub-area / project level and Area GM is Engineer-in-charge:	HOD(concerned department), Subsidiary HQ
For works executed at / through HQ level where HOD(concerned department) is not Engineer-in-charge (EIC) and EIC is under the administrative control of HOD	HOD (concerned department), Subsidiary HQ / CIL, as the case may be.
For works executed at / through HQ level and HOD(concerned department) is Engineer-in-charge	Serving officer not below the rank of HOD / E8, nominated by concerned Director.

If dispute still persist even after 60 days (extendable by another 30 days with mutual consent) of receipt of representation to Engineer-in-charge, then the Dispute shall be attempted to be resolved, as far as feasible, before recourse to courts, in the sequence as mentioned below, and the next mechanism shall not be invoked unless the earlier mechanism has been invoked or has failed to resolve it within the deadline mentioned therein:

- a) Adjudication
- b) Mediation

NOTE: While processing a case for dispute resolution/ litigation, the Company may take legal advice at appropriate stages.

Adjudication

1. After exhausting efforts to resolve the Dispute in the first stage as mentioned above, the contractor shall give a 'Notice of Adjudication' specifying the matters which are in

question or subject of the dispute or difference indicating the relevant contractual clause(s), as also the amount of claim (item-wise) to the concerned Director, Subsidiary / CIL for invoking resolution of the dispute through Adjudication.

2. Concerned Director Subsidiary / CIL can himself be the Adjudicator or can nominate an Adjudicator (a serving officer of Subsidiary / CIL not below the rank of HOD / E8, as the case may be).

[NOT TO BE PART OF TENDER DOCUMENT: The Adjudicator is to be appointed preferably within one week of receipt of representation by the contractor for invoking resolution of the dispute through Adjudication.]

3. During his adjudication, the Adjudicator shall give the contractor an adequate opportunity to present his case. Within 60 days (extendable by another 30 days with mutual consent) after receiving the representation, the Adjudicator shall make and notify decisions in writing on all matters referred to him. The parties shall not initiate, during the adjudication proceedings, any conciliation, arbitral (if available in the existing contracts) or judicial proceedings in respect of a dispute that is the subject matter of the adjudication proceedings.

NOTE: If differences still persist, the settlement of the dispute or differences relating to the interpretation and application of the provisions of commercial contract(s) between Central Public Sector Enterprise (CPSEs)/ Port Trusts inter se and also between CPSEs and Government Departments/ Organizations (excluding disputes relating to Railways, Income Tax, Customs & Excise Department), shall be taken up by either party for its resolution through Administrative Mechanism for Resolution of CPSEs Disputes (AMRCD) as mentioned in DPE OM No. 05/003/2019-FTS-10937 dated 14th December 2022 and the decision of AMRCD on the said dispute will be binding on both the parties.

For other contracts, if not satisfied by the decision in adjudication, or if the adjudicator fails to notify his decision within the above-mentioned time-frame, the contractor may proceed to invoke the process of Mediation as follows.

Mediation

- (i) Any party may invoke Mediation by submitting "Notice of Mediation" to the CMD of concerned Subsidiary / CIL. A neutral third party, known as the Mediator, facilitates the mediation process.

[NOT TO BE PART OF TENDER DOCUMENT: If the other party is not agreeable to Mediation, the aggrieved party may invoke Arbitration, if available in the existing contracts.

However, even in the case of existing contracts where there is provision of Arbitration, following advisory is being issued:

- a. *The Settlement of dispute through Arbitration may be avoided as far as possible.*
- a. *Even if it is resorted to then it may be restricted to disputes with a value less than Rs. 10 crore. This figure is with reference to the value of the dispute (not the value of the contract, which may be much higher)]*

- (ii) **The Mediation Act and a Mediation Agreement:** The Mediation shall be conducted as per The Mediation Act 2023.

(iii) **Guidelines for Mediation:** Department of Expenditure, Ministry of Finance has issued guideline on Mediation. Government departments/ entities/ agencies are encouraged to adopt mediation under the Mediation Act 2023 and/ or negotiate amicable settlements to resolve disputes. Where necessary, e.g. matters of high value, they may proceed in the manner discussed below:

1. Company, may where they consider appropriate, e.g. in high-value matters (where amount of dispute / claim value is more than the DoP of concerned Director), constitute a High-Level Committee (HLC) (minimum 03 members) for dispute resolution, which may include the following (this composition is purely indicative and not prescriptive):
 - i. A retired judge.
 - ii. A retired high-ranking officer and/ or technical expert.
2. In cases where a HLC is constituted, the Company may either
 - i. negotiate directly with the other party and place a tentative proposed solution before the HLC or
 - ii. conduct mediation through a mediator and then place the tentative mediated agreement before the HLC or
 - iii. use the HLC itself as the mediator.
3. This will enable decisions taken for resolving disputes in appropriate matters to be scrutinized by a high-ranking body at arms-length from the regular decision-making structure, thereby promoting fair and sound decisions in the public interest, with probity.
4. There may be rare situations in long-duration works contracts where a renegotiation of the terms may best serve public interest due to unforeseen major events. In such circumstances, the terms of the tentative re-negotiated contract may be placed before a suitably constituted High-Level Committee before approval by the competent authority.

[NOT TO BE PART OF TENDER DOCUMENT: Competent authority for such approval shall be one level above the Tender Accepting Authority limited to Board of Directors of concerned subsidiary / CIL.]
5. Mediation agreements need not be routinely or automatically included in procurement contracts/ tenders. The absence of a mediation agreement in the contract does not preclude pre-litigation mediation. Such a clause may be incorporated where it is consciously decided to do so. **(NOT TO BE PART OF TENDER DOCUMENT)**
6. Disputes where the methods outlined above are unsuccessful should be adjudicated by the courts.

(iv) Appointment of Mediator(s):

1. Mediators can be of any nationality and must be registered with the Mediation Council of India (MCI) or empanelled by a court-annexed mediation centre or empanelled by an Authority constituted under the Legal Services Authorities Act, 1987 or empanelled by a mediation service provider (MSP) recognised by MCI.
2. Within 30 days of receipt of the “Notice of Mediation”, the CMD of subsidiary / CIL after consultation with concerned Legal department shall propose names of three likely mediators from its panel, asking the other party to choose one as Mediator. The mutually accepted mediator shall then be appointed to conduct mediation.

3. If parties do not agree on the mediator, they can approach a mediation service provider ("MSP", recognised by MCI), who shall appoint a mediator based on the suitability and preferences of the parties within 7 days.
4. In contracts having an Integrity Pact, Independent External Monitors (IEMs) can be appointed as mediators, as per the Standard Operating Procedure (SOP) issued by the Central Vigilance Commission (CVC).
5. After a mediator is appointed, they must disclose any conflict of interest. Either party can seek a replacement of the Mediator after such disclosure.

(v) **Venue:** Mediation must be conducted within the territorial jurisdiction of the Court, which has jurisdiction to decide the dispute unless both parties agree to do it online or at the HQ of the subsidiary / CIL where the contract has been executed.

Online Mediation: The Act allows parties to opt for online/ virtual Mediation, which shall be deemed to occur within the jurisdiction of a competent court. The Act also requires online mediation communication mechanisms to ensure confidentiality.

(vi) The Process:

1. The Mediator independently and impartially encourages open communication and cooperation between disputing parties to reach an amicable settlement, but he does not have the authority to impose a settlement upon the parties to the dispute. The parties shall be informed expressly by the mediator that he only facilitates in arriving at a resolution of the dispute and that he shall not impose any settlement nor give any assurance that the mediation may result in a settlement.
2. Unlike court proceedings, Mediation is informal and flexible and allows for creative problem-solving and exploration of various solutions. The Code of Civil Procedure or the Indian Evidence Act, 1872 shall not be binding on the mediator.
3. Confidentiality: Subject to the other provisions of the Mediation Act 2023, the mediator, mediation service provider, the parties and participants in the mediation shall keep confidential all the following matters relating to the mediation proceedings, namely:—
 - i. acknowledgements, opinions, suggestions, promises, proposals, apologies and admissions made during the mediation;
 - ii. acceptance of, or willingness to, accept proposals made or exchanged in the mediation;
 - iii. documents prepared solely for the conduct of mediation or in relation thereto;
 - iv. any other mediation communication.
- v. No audio or video recording of the mediation proceedings shall be made or maintained by the parties or the participants, including the mediator and mediation service provider, whether conducted in person or online, to ensure the confidentiality of the mediation proceedings.
4. The mediator initially meets the parties separately and communicates the view of each party to the other to the extent agreed upon by them. He assists them in identifying issues, advancing better understanding, clarifying priorities, and exploring areas of the parties' responsibility, identifying common interests, and encouraging compromise. He then meets them jointly to encourage a mutually acceptable resolution. At any stage of the mediation proceedings, at the parties' request, the mediator may suggest a dispute settlement in writing.

(vii) **Termination of Mediation:** The process must be completed within 120 days, though parties can extend it by another 60 days through mutual consent. If Mediation is

not completed within this timeline (120+60 days), the Mediator shall prepare a non-settlement report without disclosing the cause of non-settlement or any other matter or thing referring to their conduct during mediation for the parties or the MSP. Mediation shall also stand terminated on a declaration of the mediator, after consultation with the parties or otherwise, that further efforts at mediation are no longer justified or on communication by party(ies) in writing, addressed to the mediator and the other parties that they wish to opt out of mediation.

(viii) **Mediated Settlement Agreement (MSA):**

As per Section 49 of Mediation Act, Notwithstanding anything contained in this Act, no dispute including a commercial dispute, wherein the Central Government or State Government or any of its agencies, public bodies, corporations and local bodies including entities controlled or owned by them is a party, the settlement agreement arrived at shall be signed only after obtaining the prior written consent of the competent authority of such Government or any of its entity or agencies, public bodies, corporations and local bodies, as the case may be.

[NOT TO BE PART OF TENDER DOCUMENT: Competent authority for such consent shall be Tender Accepting Authority limited to CoFDs of concerned subsidiary / CIL.]

If the parties resolve the dispute and execute a mediated settlement agreement (“MSA”), then the Mediation is successful. An MSA is a written agreement settling some or all disputes and may extend beyond the disputes referred to mediation. It must be valid under the Indian Contract Act, signed by both parties and duly authenticated by the Mediator for the parties or the MSP. The Act provides options for MSA registration. During the pendency of proceedings, parties can also execute other agreements, settling some of the subject- matter disputes.

1. **Challenge to MSA:** MSA can be challenged within 90 days on limited grounds of (a) fraud, (b) corruption, (c) impersonation, and (d) subject matter being unfit for Mediation.
2. **Execution of MSA:** If there is no challenge or a challenge is unsuccessful, the Act ensures that the MSA is binding and enforceable, akin to a judgment or decree. This means that if one party fails to comply with the MSA, the non-defaulting party has a right to enforce it through the Court.
3. **Costs:** The parties shall equally bear all costs of mediation, including the fees of the mediator and the charges of the mediation service provider.
4. **No claim of Interest during Mediation proceedings:** Parties shall not claim any interest on claims/counter-claims from the date of notice invoking Mediation till the execution of the settlement agreement if so arrived. If parties cannot resolve the dispute, either party shall claim no interest from the date of notice invoking Mediation until the date of Termination of Mediation Proceedings.
5. The parties shall not initiate, during the mediation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject matter of the mediation proceedings.