

Dated:02.03.2022

## **CONCILIATION AND SETTLEMENT GUIDELINES**

**Subject: Establishment of a Conciliation & Settlement Mechanism for Contractual Disputes under the contract /agreements with the Contractors/ Concessionaires/ Consultants/Service Providers at Major ports - Panel of Independent Experts, Constitution of Conciliation & Settlement Committee and Guidelines - regarding**

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## **GUIDELINES**

### **1.0 Background:**

1.1 The Major Ports have been entering into contracts / agreements with the Contractors/ Concessionaires/Consultants / Service providers (to be called contractors) for implementing projects or for obtaining services through different types of contracts (PPP Concessionaire, O&M services, consultancy services, or similar contracts). Several disputes have been arising under these contract /agreements. Presently, there are more than 100 references pending before the Courts/ Arbitration panel on contractual disputes in Major Ports. The early resolution / settlement of claims, preferably through an out-of-court settlement process, is in the interest of all the stakeholders. In this background, NITI Aayog, on the basis of experience of some of the PSU's in settling issues through conciliation, issued directions on 5.09.2016 on initiatives to be taken up for revival of the Construction Sector. In pursuance of these directions, Ministry of Shipping (now Ministry of Ports, Shipping and Waterways) came out with Guidelines on 10.06.2019 for processing Arbitration Awards in Major Ports. Accordingly, the Major Ports, following the conciliation procedure of the Guidelines, initiated the conciliation process in case of 25 disputes. Out of the 24 disputes taken up for conciliation, 7 have been successfully resolved. 9 disputes are presently at various stages of conciliation. However, in case of 8 such disputes, no settlement has been reached. It is felt that, the existing mechanism has not been able to deliver the expected outcome, thus a need for a more robust dispute resolution mechanism with comprehensive Guidelines has been felt to serve the intended purpose.

### **2.0 Objective and Rationale**

2.1 The Cabinet Committee on Economic Affairs (CCEA) took certain decisions in its meeting held on 31.08.2016 for revival of the construction sector. These decisions were communicated by the NITI Aayog vide its two OMs No. 14070/14/2016-PPPAU dated 5th September 2016. One of these OMs titled "Initiatives on the measures for revival of the Construction Sector" (copy enclosed at **Annexure-1**) required all the concerned Departments/ Ministries/ PSUs to expeditiously examine the initiatives contained therein and take action for their implementation. The initiatives *inter alia* include establishing a system of conciliation of disputes for amicable settlement through appointment of Conciliation Committees comprising of independent experts in order to ensure speedy disposal of pending or new cases. Recourse to such conciliation is open before, during or after the arbitration proceedings/Court cases.

2.2 Dispute resolution mechanism followed through Arbitration or Courts has been found to be exceedingly time consuming and financially burdensome on commercial entities like Ports. A settlement reached through conciliation, mediation or mutual understanding will lead to financial

gains to both the disputing parties. The process of settlement of dispute is a preferred method and is writ large in various sections of the Arbitration and Conciliation Act 1996. It has been detailed out for various stages. Thus section 30 provide for settlement even when the dispute resolution mechanism is underway in Arbitration or Courts.

2.3 The dispute resolution mechanism through settlement process brings finality to a dispute as the parties reach an agreement and thus do not require to further approach arbitration or court forums which saves both time & financial resources of the Port/organizations. It thus needs to be institutionalized and emphasized as a preferred tool of dispute resolution mechanism.

2.4 Following the aforesaid decision of CCEA and provisions of the Arbitration and Conciliation Act 1996, Ministry of Road Transport & Highways developed a mechanism of Conciliation Committee in the arbitration issues relating to them.

2.5 Therefore, a Conciliation& Settlement Committee for deliberating the disputed issues between the Concessionaires/ Contractors/ Consultants / Service providers and the Major Ports, in order to explore the possibility for amicable resolution of the issues, is proposed to be constituted.

2.6 The Conciliation process will be conducted under Part III of the Arbitration and Conciliation Act, 1996 as amended.

2.7 In view of the aforesaid, the procedure for conciliation/ amicable settlement of disputes is revised as under with the approval of Board of Port Authority in its meeting held on 02.03.2022 in order to ensure speedy disposal of pending or new cases of disputes in all forms of contracts (Item Rate, DBFOT, EPC, OMT, O&M, Consultancy Contract etc.). The revised procedure given hereunder will supersede all the previous procedures/ circulars on the subject.

### **3.0 Application and scope.**

3.1 Save as otherwise provided by any law for the time being in force and unless the parties have otherwise agreed, Part III of the Arbitration and Conciliation Act, 1996 shall apply to conciliation and settlement of disputes arising out of legal relationship, whether contractual or not and to all proceedings relating thereto.

### **4.0 Constitution of conciliation and settlement committee.**

4.1 On the same analogy as that of the decisions of the CCEA and the provisions contained in the Arbitration and Conciliation Act 1996, it has been decided to constitute a Conciliation & Settlement Committee(CSC) comprising of persons from amongst the panel of the following Independent Experts:-

Sl. No.	Designation/ Brief particulars of the Expert
1.	Former Chief Vigilance Commissioner (CVC)/ ex-Secretary to the Government of India/ ex-Chairman, Major Port Authority
2.	Retired Judge of a High Court / former Lokayukta/ Senior counsel in reputed Legal firm who has handled PPP/ Concessions Agreements in Infrastructure/Construction Sector especially in Ports – as Legal Expert
3.	Retired Additional Secretary/Special Secretary/Secretary to the Government of India who has served as Financial Advisor as an expert in Public Finance
4.	A renowned person having experience in the Port or Shipping industry as Industry representative
5.	Formerly a Senior Partner with one of the reputed accounting firms as Finance Expert.
6.	Former Chief Mechanical or Electrical Engineer in Infrastructure/construction industry as Technical/Engineering Expert.

4.2 Depending upon the response to this mechanism, the work load and requirements for speedy settlement of disputes, the panel may be expanded further with the approval of the competent authority.

## 5.0 Appointment of the Committee

5.1 The Committee will be constituted with minimum three members as conciliators and they ought, as a general rule, to act jointly. The committee shall function with minimum three members. [Provided in case if the amount in dispute is less than Rs. 1 Crore, the CSC shall be constituted consisting of only two members/conciliators instead of minimum three]<sup>[1]</sup>.

5.2 The CSC shall be chaired by the senior most member of the Committee i.e. either depending upon their date of appointment in civil services or as deemed appropriate in mutual agreement amongst the members. The Chairman shall decide on administrative and procedural matters.

5.3 The members of the Conciliation and Settlement Committee (CSC) shall be drawn from the following independent experts:

1. Shri Gopal Krishna, former Secretary (S), Ministry of Ports, Shipping & Waterways
2. Shri N. Sivasailam, former Special Secretary (Logistics), Ministry of Commerce
3. Shri A. Balasubramanian, Senior Director (Project Finance) Infrastructure Development Finance Company Ltd.
4. Dr. C. Chandramouli, former Secretary, Department of Personnel and Training
5. Shri Shambhu Singh, former Special Secretary and Finance Advisor, Ministry of RT & H, Shipping & Power.

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[1] inserted as per the directions of IPA vide letter dated 21.03.2022.

5.4 The Committee constituted under these guidelines shall remain valid for a period of three years from the date of issue of these guidelines. Depending upon response from the contesting parties and the work-load, one more such committee may be constituted at a later stage with the approval of the competent authority.

## **6.0 Commencement of conciliation proceedings**

6.1 If any commercial dispute or a dispute which may have commercial aspects in the future arises between the Port and Contractor the Port authorities and the contractor may mutually decide to settle the dispute through the conciliation and settlement process.

6.2 Either the Port or the contractor may send a reference about the dispute to the other party. The party initiating conciliation shall send to the other party a written invitation to settle or conciliate under this Part, briefly identifying the subject of the dispute. The concerned Technical Division in the Port shall send a request or response within 7 working days if a reference is received from the contractor thereby inviting the Contractor to depute a team of their representatives to interact with the Contract Management Division(CMD) constituted by each Port. A template response is attached herewith as **Annexure-2**.

6.3 The CMD will obtain and examine the correspondence/ documents of the parties relating to the disputes, within 15 days, hold discussions with the team of the Contractor and the Technical Division to crystallize the issues, prepare the agenda containing the gist on dispute.

6.4 Port shall offer/agree with the other party to refer the matter to the CSC as conciliation is intended to be one consolidated package of settlement. Upon receipt of the consent of the Contractor for making a reference to the CSC, the Chairman Port Authority shall refer the matter to the Committee. The consent of the Contractor for conciliation shall also be deemed to be the consent to the Committee in terms of sections 63 and 64 of the Arbitration and Conciliation Act,1996.

6.5 Any issue arising out of TAMP guidelines of the order between the major ports and concessionaire / contractor may also be included for resolving through this process.

6.6 The proceedings, shall commence when the Port or the other party accepts in writing the invitation to settle/conciliate.

6.7 If the other party rejects the invitation, there will be no settlement/conciliation proceedings.

6.8 If the party initiating settlement/conciliation does not receive a reply within thirty days from the date on which he sends the invitation, or within such other period of time as specified in the invitation, he may elect to treat this as a rejection of the invitation to settle/conciliate and if he so elects, he shall inform in writing the other party accordingly.

6.9 It may be noted that this is an alternate dispute resolution mechanism being put in place and if the Contractor is not willing to take recourse to this process or has any reluctance whatsoever in this behalf, there is no compulsion and they are free to follow the provisions as per law.

## **7.0 Procedure in cases already pending before the Arbitral Tribunals/Courts**

7.1 In cases of disputes pending before the Arbitration Tribunals or the Courts, either party could make an offer to the other party to come forward and explore the possibilities of settlement and conciliation through the CSC as per template communication enclosed as **Annexure-3**. Whenever the parties agree to refer the dispute to the CSC, the Port shall make an appropriate reference to the CSC, upon which the Committee shall proceed to examine such reference(s). However, wherever the parties agree to reach out to the CSC, they shall be required to keep the proceedings pending before the Arbitral Tribunals/ Courts in abeyance.

## **8.0 Procedures of the committee and submission of statements to committee.**

8.1 Upon receiving a reference the committee shall meet in the first instance and evolve its own procedures and methodologies for undertaking the functions of the conciliation and settlement committee.

8.2 The committee may request each party to submit to it a brief written statement describing the general nature of the dispute and the points at issue. Each party shall send a copy of such statement to the other party.

8.3 The committee may request each party to submit to it a further written statement of his position and the facts and grounds in support thereof, supplemented by any documents and other evidence that such party deems appropriate. The party shall send a copy of such statement, documents and other evidence to the other party.

8.4 At any stage of the conciliation proceedings, the committee may request a party to submit to it such additional information as it deems appropriate.

8.5 The committee shall hold its day-to-day sittings at a suitable place as convenient to both parties and may hold as many sittings every month as it deems appropriate keeping in view the volume of work at its disposal. It is expected that the conciliation-cum-settlement proceedings shall be completed in each case through 5 sittings in a period of not more than six months from the day the reference is made to the committee.

8.6 For abundant clarity and understanding of the parties, it may be noted that the procedure of committee may not be treated as alternate arbitration proceedings, where both parties come with Statement of claims/ defense, arguments/ counter arguments, rejoinders, written submissions, etc., aided by their respective lawyers. The forum of CSC is a settlement forum, where mutual give and take constitutes the essence, rather than strict legal position of the parties. Hence, the parties are expected to be brief and to the point before the CSC with regard to their respective stands and view the exercise in the spirit of conciliation/settlement.

8.7 The committee may give its recommendations on amicable settlement separately for each contract.

8.8 The committee is set up for speedy dispute resolution and as such its proceedings for a case should be compulsorily be finalized within 6 months of reference been made to the committee. If no settlement is reached in this time and only as a special case if both the parties request, the committee may continue to proceed with the issue for a further period of 3 months. If no settlement is reached in 9 months then the proceedings before the committee will automatically cease.

### **9.0 Special experts to assist committee**

9.1 Unless otherwise agreed by the parties, the committee may—

(a) appoint one or more specific experts to report to it on specific issues to be determined by the committee and

(b) require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

9.2 Unless otherwise agreed by the parties, if a party so requests or if the committee considers it necessary, the expert shall, deliver a written report.

9.3 Unless otherwise agreed by the parties, the expert shall, on the request of a party, make available to that party for examination all documents, goods or other property in the possession of the expert with which he was provided in order to prepare his report.

### **10.0 Conciliators not bound by certain enactments.**

10.1 The conciliators are not bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).

### **11.0 Role of conciliators.**

11.1 The conciliators shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.

11.2 The conciliators shall be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.

11.3 The conciliators may conduct the conciliation proceedings in such a manner as he considers appropriate, taking into account the circumstances of the case, the wishes the parties may express, including any request by a party that the conciliator hear oral statements, and the need for a speedy settlement of the dispute.

11.4 The conciliators may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons therefor.

#### **12.0 Administrative assistance.**

12.1 In order to facilitate the conduct of the conciliation proceedings, the parties, or the conciliators with the consent of the parties, may arrange for administrative assistance by a suitable institution or person. Alternatively, if both parties agree the Contract Management Division (CMD) created by every port could provide secretarial assistance in respect of the disputes. The CMD will arrange for the required infrastructure, secretarial assistance and logistic support to the CSC.

#### **13.0 Communication between conciliator and parties.**

13.1 The conciliators may invite the parties to meet them or may communicate with them orally or in writing. They may meet or communicate with the parties together or with each of them separately.

13.2 Unless the parties have agreed upon the place where meetings with the conciliator are to be held, such place shall be determined by the conciliators, after consultation with the parties, having regard to the circumstances of the conciliation proceedings.

#### **14.0 Disclosure of information.**

14.1 When the conciliators receives factual information concerning the dispute from a party, he shall disclose the substance of that information to the other party in order that the other party may have the opportunity to present any explanation which it considers appropriate.

14.2 Provided that when a party gives any information to the conciliators subject to a specific condition that it be kept confidential, the conciliators shall not disclose that information to the other party.

#### **15.0 Co-operation of parties with conciliators.**

15.1 The parties shall in good faith co-operate with the conciliators and, in particular, shall endeavour to comply with requests by the conciliators to submit written materials, provide evidence and attend meetings.

#### **16.0 Suggestions by parties for settlement of dispute.**

16.1 Each party may, on his own initiative or at the invitation of the conciliators,



submit to the conciliator suggestions for the settlement of the dispute.

### **17.0 Settlement agreement.**

17.1 When it appears to the conciliators that there exist elements of a settlement which may be acceptable to the parties, it shall formulate the terms of a possible settlement and submit them to the parties for their observations. After receiving the observations of the parties, the conciliators may reformulate the terms of a possible settlement in the light of such observations.

17.2 If the parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement. If requested by the parties, the conciliators may draw up, or assist the parties in drawing up, the settlement agreement.

17.3 When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them respectively.

17.4 The conciliators shall authenticate the settlement agreement and furnish a copy thereof to each of the parties.

### **18.0 Status and effect of settlement agreement.**

18.1 The settlement agreement shall have the same status and effect as if it is an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal under section 30 of the Arbitration and Conciliation Act ,1996.

### **19.0 Confidentiality.**

19.1 Notwithstanding anything contained in any other law for the time being in force, the conciliators and the parties shall keep confidential all matters relating to the conciliation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement.

### **20.0 Termination of conciliation proceedings.**

20.1 The conciliation proceedings shall be terminated-

- (a) by the signing of the settlement agreement by the parties, on the date of the agreement; or
- (b) by a written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or

- (c) by a written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or
- (d) by a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration.
- (e) due to condition specified in para 8.8 if the proceedings are delayed beyond 6/9 months.

### **21.0 Follow-up action by the Port on the recommendations of the Conciliation Committee**

21.1 The Port would honour and implement the recommendations/ decisions of the CSC.

21.2 Once the recommendations/ decision of the CSC are received, the CMD of the Port Authority shall inform the concerned Technical Division accordingly within 7 working days. In the event of the conciliation between the parties being successful, the CMD/Technical Division shall prepare the agenda for the Executive Committee / Board of Port as per internal delegation of powers in the Port for seeking approval.

21.3 On receipt of the approval prompt action would be taken by the Port for signing the settlement agreements and thereafter completing the formalities for resolution of the dispute in its entirety including making payments, if any, to the Contractors and withdrawal of the cases pending before the Arbitration Tribunals/ Courts, preferably within a period of 30 days.

21.4 The CMD/Technical Division shall place a Standing Item for the Board of Port containing information about the Settlements reached at the level of the CSC for information of the Board in every Board meeting in the following format:-

Sl. No.	Brief of the Dispute	Claim Amount	Settlement Amount	Level of Settlement (Chairman/EC/ Board of Port)

### **22.0 Resort to arbitral or judicial proceedings.**

22.1 The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject-matter of the conciliation proceedings except that a party may initiate arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights.

### **23.0 Conciliation to be under the Arbitration and Conciliation Act.**

23.1 The conciliation process shall be conducted under Part III of the Arbitration Act and Conciliation 1996. The CSC would either be able to resolve and settle the dispute(s) between the parties, or the process may fail. In case of failure of the conciliation process at the level of the CSC, the parties may withdraw from the conciliation process and take recourse to the laid down legal process of arbitration/ Courts. In the event of the conciliation proceedings being successful, the parties to the dispute would append their signatures to the settlement concluded by the Committee.

### **24.0 Fee**

24.1 The sitting fee of the committee will be based on success fee model. Each member of the committee may be paid a sitting fee of Rs 7,500/ per day for a maximum of 5 days (irrespective if the sittings are more than 5) if the proceedings of the committee do not result in conciliation and a clear settlement.

24.2 If the proceedings/case leads to signing of a Settlement Agreement each member of the committee (CSC) shall be paid a sitting fee as follows:-

<b>S N</b>	<b>Amount settled and agreed by the Parties</b>	<b>Fee(Rs)</b>
1.	Up to Rs. 5,00,000	45,000
2.	Above Rs. 5,00,000 and up to Rs. 20,00,000	45,000 plus 3.5 % of amount above 5,00,000
3.	Above Rs. 20,00,000 and up to Rs. 1,00,00,000	97,500 plus 3.0 % of amount above 20,00,000
4.	Above Rs. 1,00,00,000 and up to Rs. 10,00,00,000	3,37,500 plus 1.0 % of amount above 1,00,00,000
5.	Above Rs. 10,00,00,000 and up to Rs. 20,00,00,000	12,37,500 plus 0.75 % of amount above 10,00,00,000
6.	Above Rs. 20,00,00,000	19,87,500 plus 0.50 % of amount above 20,00,00,000 with a ceiling of 30,00,000

24.3 Each member of the committee shall be paid other expenses, subject to actual and on production of bills as follows:-

Sl.No.	Nature of Expense	Amount
1.	Traveling Expenses	Economy Class (by Air), First Class AC (by Train) and AC Car (by Road @ 13/Km)
2.	Lodging and Boarding	Rs.15,000/- per day (Metro Cities) or Rs.8,000/- per day (in other Cities) or Rs.5,000/- per day, if any Conciliator makes own arrangement.
3.	Local Travel	Rs.2,000/- per day

24.5 Lodging, Boarding and Travelling expenses shall be allowed only for the conciliator who is residing at least 100 Kms away from the venue of the meeting.

24.6 Delhi, Mumbai, Chennai, Kolkata, Bengaluru and Hyderabad shall be considered as Metro Cities.

[24.7 Provided, travel of the Conciliators/Independent Experts by Executive Class is provided only when the settlement is reached and the Conciliators travel to visit the Port for signing the settlement.]<sup>[2]</sup>

## 25.0 Costs.

25.1 Upon termination of the conciliation proceedings, the conciliators shall fix the costs of the conciliation and give written notice thereof to the parties.

25.2 For the purpose of sub-section (1), “costs” means reasonable costs relating to—

- (a) the fee and expenses of the conciliators and witnesses requested by the conciliator with the consent of the parties;
- (b) any special expert advice requested by the conciliator with the consent of the parties;
- (c) any other expenses incurred in connection with the conciliation proceedings and the settlement agreement.

25.3 The costs shall be borne equally by the parties unless the settlement agreement provides for a different apportionment. All other expenses incurred by a party shall be borne by that party.

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[2] inserted as per the directions of IPA vide letter dated 21.03.2022.

## **26.0 Deposits.**

26.1 The conciliators may direct each party to deposit an equal amount as an advance for the costs referred to in Para 25 above which it expects will be incurred.

26.2 During the course of the conciliation proceedings, the conciliators may direct suppl

26.3 If the required deposits are not paid in full by both parties within thirty days, the conciliator may suspend the proceedings or may make a written declaration of termination of the proceedings to the parties, effective on the date of that declaration.

26.4 Upon termination of the conciliation proceedings, the conciliator shall render an accounting to the parties of the deposits received and shall return any unexpended balance to the parties.

## **27.0 Role of conciliators in other proceedings.**

27.1 Unless otherwise agreed by the parties,—

- a) the conciliator shall not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceeding in respect of a dispute that is the subject of the conciliation proceedings;
- b) the conciliator shall not be presented by the parties as a witness in any arbitral or judicial proceedings.

## **28.0 Admissibility of evidence in other proceedings.**

28.1 The parties shall not rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the conciliation proceedings,—

- (a) views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;
- (b) admissions made by the other party in the course of the conciliation proceedings; (c) proposals made by the conciliator;
- (d) the fact that the other party had indicated his willingness to accept a proposal for settlement made by the conciliator.

## **29.0 Committee to give suggestions**

29.1 Based on the experience gained in the course of conciliation proceedings, the

committee may suggest/ recommend advisories to the Port from time to time for improvement in its Contract Management Systems.

### **30.0 Information Dissemination**

30.1 All Ports will give wide publicity to this form of dispute resolution amongst all contractors. A draft is placed as **Annexure 3**.

30.2 A template letter to be given by the Concessionaires/Contractors/Consultants in response to the letter from the Ports (Annexure 3) is attached as **Annexure 4**.

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**Annexure-1**

**No. N-14070/14/2016-PPPAU**  
**Government of India**  
**National Institution for Transforming India (NITI Aayog)**

NITI Bhawan, New Delhi Septe

**OFFICE MEMORANDUM**

**Subject: Initiatives on the measures for revival of the Construction Sector - regarding.**

The construction sector has been facing a number of problems, mainly arising from the liquidity constraints caused on account of their payments not being released by the Government Departments/ Public Sector Undertakings (PSUs) pursuant to the arbitral awards. To discuss the problems of the construction sector, detailed deliberations/ consultations were held with the representatives of the construction industry, banks, major government PSUs and concerned Ministries/ Departments. Based on the above deliberations/ consultations, the NITI Aayog placed a proposal before the Cabinet Committee on Economic Affairs (CCEA) for its consideration suggesting various immediate and long-term measures required for addressing the issues ailing the construction sector. The CCEA, chaired by the Hon'ble Prime Minister, has considered the proposals of NITI Aayog in its meeting held on 31 August 2016 and approved the same for the revival of construction sector.

2 The NITI Aayog has separately issued instructions on the subject with regard to the immediate measures to be taken by all concerned. In addition to the said instructions, the CCEA has also directed that the following measures may be expeditiously examined by all the concerned Departments/ Ministries/PSUs:

Item-rate contracts may be substituted by EPC (turnkey) contracts, wherever appropriate. Such contracts have been in vogue for over two decades in the developed world and Federation Internationale Des Ingenieurs-Conseils (FIDIC - an International Federation of Consulting Engineers, known by its French acronym) has also published such contractual frameworks:

Model bidding documents and Model EPC contracts, suitably revisited or modified wherever required to suit the requirements of particular sectors, may be adopted by PSUs/ Government Departments for construction works;

Ministry of Finance has issued model bidding documents for RFQ, RFP etc. which may be adopted (with appropriate changes wherever required) in all sectors. Model EPC contracts have been developed for Highways and Railways and published by the erstwhile Planning Commission also. NHA1 has already adopted this document and all construction contracts are currently being structured on this model. NITI Aayog shall assist the concerned departments, wherever required, in this regard.

The method of conciliation has proved more effective in settling disputes as

per experience of some of the PSUs. All PSUs/ Departments issuing public contracts may consider setting up Conciliation Committees/ Councils comprising of independent subject experts in order to ensure speedy disposal of pending or new cases. Recourse to such conciliation may be open before, during or after the Arbitration proceedings. A provision to this effect would also need to be made in the Contract Agreements in future as a mechanism for resolution of disputes.

3. All the concerned Ministries/ Departments shall also communicate the above to their respective PSUs for taking necessary action on the aforesaid measures.

(A. Muthuvezhappan)  
Director (PPPAU)

To

1. Secretaries of all the Ministries/Departments of Government of India.
2. Chairpersons/ CMDs/ MDs of all the Central Government PSUs.
3. Chairpersons/ CMDs/MDs/CEOs of all the Scheduled Commercial Banks.
4. Chief Executive, Indian Banks Association, Mumbai.
5. Shri Alok Tandon, Additional Secretary, Cabinet Secretariat, Rashtrapati Bhavan, New Delhi -110001.
6. Dr. T. V. Somanathan, Joint Secretary, PMO, South Block, New Delhi - 110001.

Copy for information to:

7. PS to Vice Chairman/ PS to MoS/ PS to all Members
8. Sr. PPS to CEO/ PPS to Special Secretary



**Template Letter to be sent to the Concessionaire/ Contractor/ Consulting party**

From:

\_\_\_\_\_  
Major Port,

To:

\_\_\_\_\_  
\_\_\_\_\_

No. \_\_\_\_\_

Date: \_\_\_\_\_

**Subject: Your reference dated \_\_\_\_\_ regarding the Dispute in the project for settlement.**

Sir,

Kindly refer to your above cited reference on the subject cited above. It is agreed to refer the matter for consideration of the Conciliation and Settlement Committee. However, in order to arrive at any proposed conciliation, it would be useful if the team from the Port Authority and your Company/ firm discuss and crystalise the issues in advance.

2. You are, therefore, requested to discuss the issues/ disputes with the Port Authority team led by the Contract Management Division of the Port Authority on a date and time mutually convenient.
3. Once the issues to be referred to the Conciliation and Settlement Committee are finalized, we would request the committee to commence their proceedings.

Yours Sincerely,

(General Manager, Port)

Copy to:

1. Chairman/CMD, Port.
2. Project Director, \_\_\_\_\_ . It is requested that all correspondence/ documents relating to the subject along with index may please be furnished to the Contract Management Division within 7 days of issue of this letter.
3. Independent/ Authority Engineer, \_\_\_\_\_

**Letter to be sent to all the Concessionaires/ Contractors/ Consultants of Port Authority**

No. \_

Date:

**Subject: Establishment of Conciliation and Settlement Committees of Independent Experts in terms of the provisions contained in Part-III of the Arbitration & Conciliation (Amendment) Act, 2015 in Port Authority pursuant to the decisions of the CCEA.**

Dear Sirs,

I have been directed to inform you that the Port Authority has established a Conciliation and Settlement Committee of Independent Experts for conciliation/ settlement of any contractual disputes/ difference between the Port Authority on the one hand and the Concessionaires/ Contractors/ Consultants working for the Port Authority on the other.

2. The Standard Operating Procedures (SoP) for conciliation and settlement of disputes through the conciliatory process and the constitution of the Conciliation and Settlement Committee of Independent Experts (CSC) is contained in the Policy Guidelines issued by the Port Authority on the subject and placed on the website of the Port Authority. It may be noted that the scope of the CSC pervades across disputes before, during or after the Arbitral process.

3. As on 15.05.2020, there are 120 references before the Courts/Arbitration panel on contractual disputes/ claims and may be that other references have been made to various other bodies. The Port Authority would be agreeable to refer all the cases filed by it before the Hon'ble Courts challenging the Arbitral Awards with appropriate request to the Hon'ble Courts for holding the proceedings in these matters in abeyance for such time as may be taken by the CSC for settlement of the related disputes in case you are agreeable to the same.

4. Further, in case you are agreeable to refer the disputes presently under Arbitral proceedings/pending before courts to the said Committee(s), you may also take recourse to this conciliatory and settlement route with appropriate request to the Arbitral Tribunals to hold the proceedings in abeyance till such time the said dispute(s) is/ are considered by the CSC.

5. Please take note that by giving your consent/ willingness to refer the dispute(s) to the CSC, you are also confirming your acceptance of the conciliation process as contained in the Policy Guidelines of Port Authority dated 02.06.2017 and 02.03.2022, more specifically to the provisions contained in sections 63 and 64 of the Arbitration and Conciliation/Amendment) Act, 2015, and that it meets the requirements on "conciliation" under the Act *ibid*.

6. Accordingly, you are requested to indicate your consent/willingness in this behalf at the following address:

The Chief General Manager  
Contract Management Division, Port Authority  
Email: Contact No.

Copy to:

1. Concerned Divisions, Port.

Yours Sincerely,

( )  
Chairman/CMD

**Annexure-4****Template letter to be given by the Concessionaires/ Contractors/  
Consultants to the Port Authority**

No.-----

Date:\_\_\_\_\_

To

The Chief General Manager  
 Contract Management Division,  
 .....Port Authority  
 Address:.....  
 Email:  
 Contact No.

**Subject: Establishment of Conciliation and Settlement Committees of  
 Independent Experts in terms of the provisions contained in Part-III of the  
 Arbitration & Conciliation (Amendment) Act, 2015**

Madam/ Sir,

Please refer to your letter no.----- dated ----- (reference to be made of the letter issued by the port as per Annexure-3) on the above subject providing us an opportunity of resolving the dispute presently under arbitral proceedings/ pending before Courts through the conciliatory and settlement route with appropriate request to the Arbitral Tribunals to hold the proceedings in abeyance till such time the said dispute(s) is/ are considered by the CSC.

2. We hereby convey our acceptance for referring the disputes to CSC for resolution. We have noted that by giving our consent/ willingness to refer the dispute(s) to the CSC, we are also confirming our acceptance of the conciliation process as contained in the Policy Guidelines of the Port Authority dated 02.06.2017 and 02.03.2022, more specifically to the provisions contained in sections 63 and 64 of the Arbitration and Conciliation (Amendment) Act, 2015.

Yours sincerely,

( )  
 Chairman/CMD