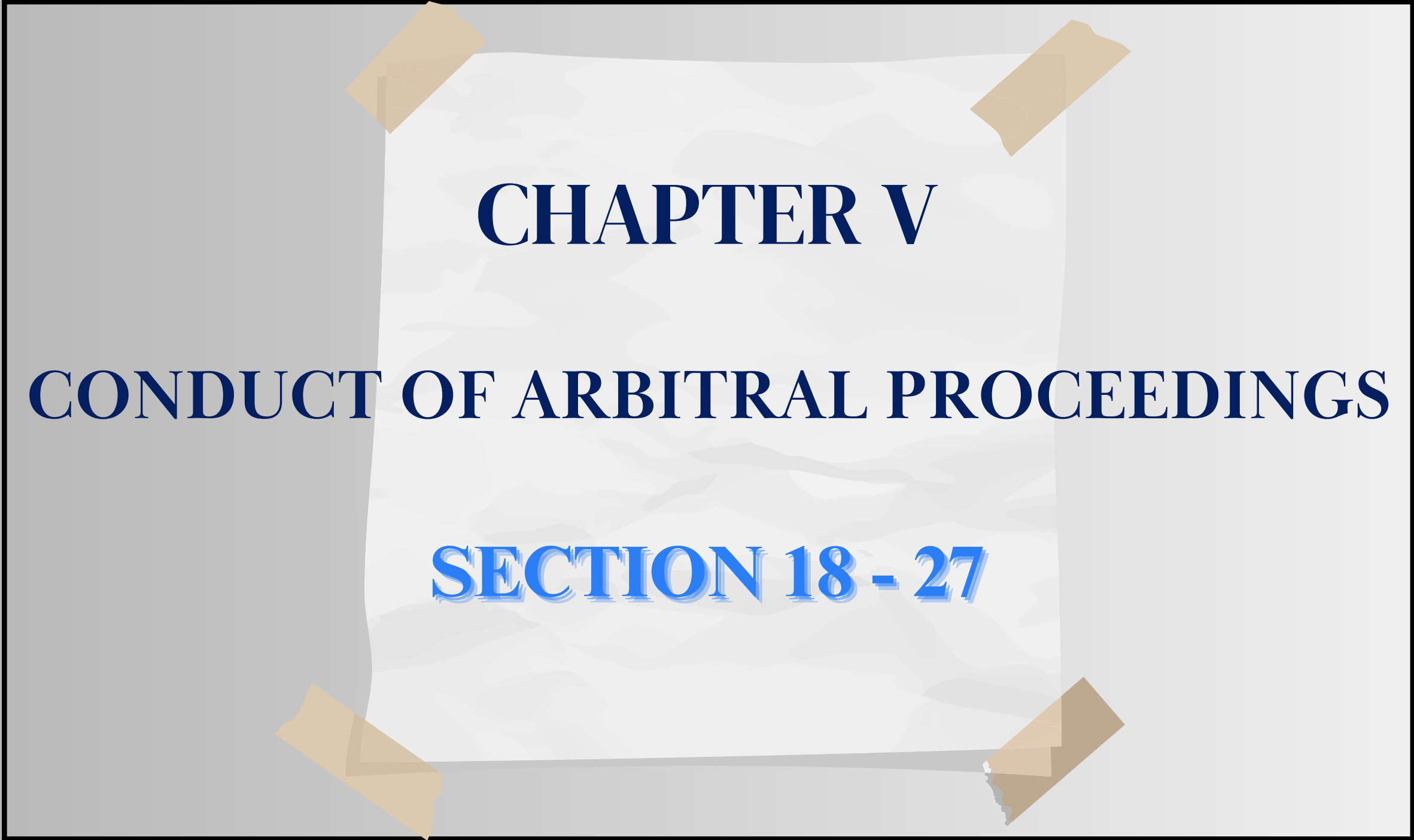
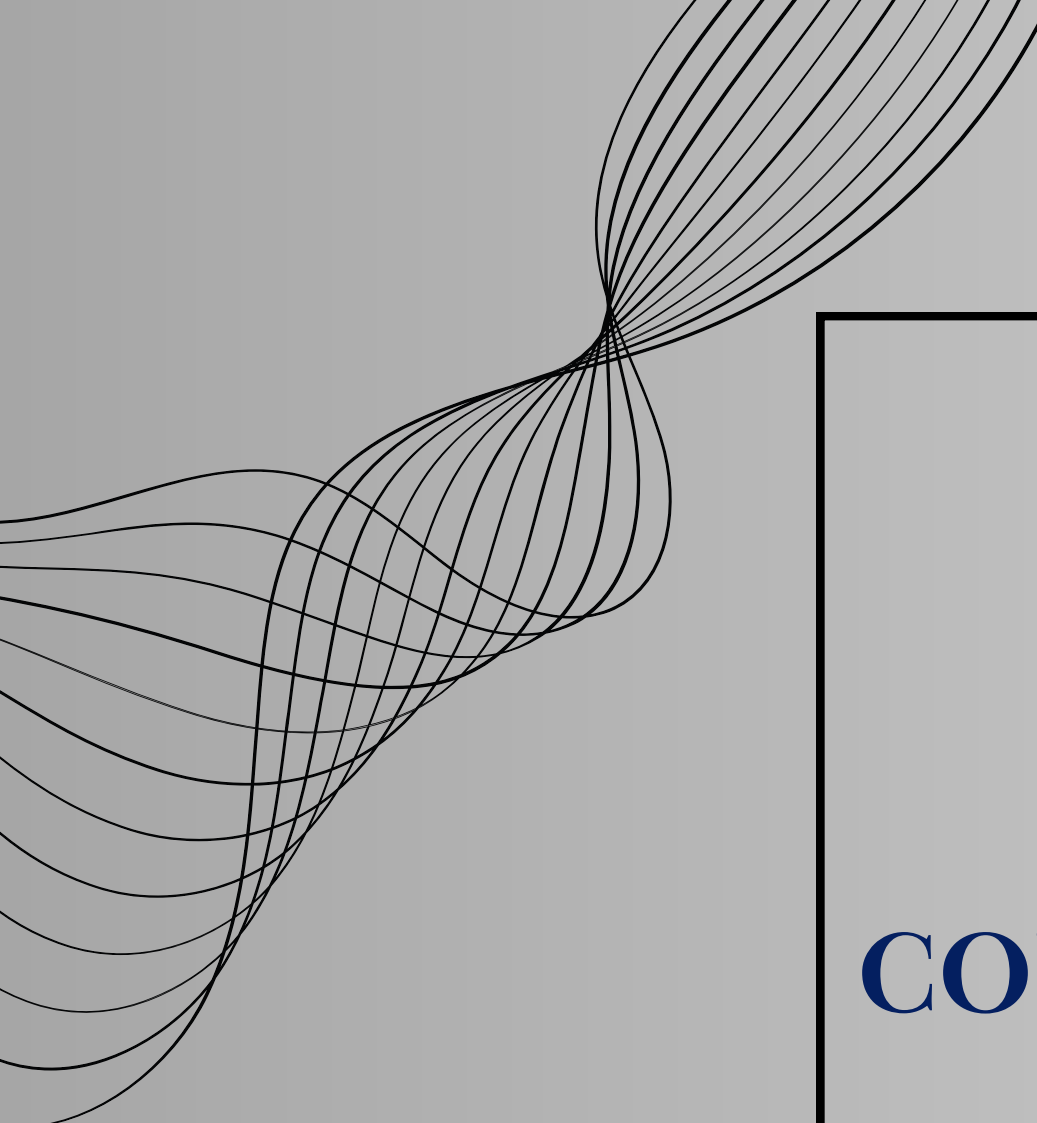
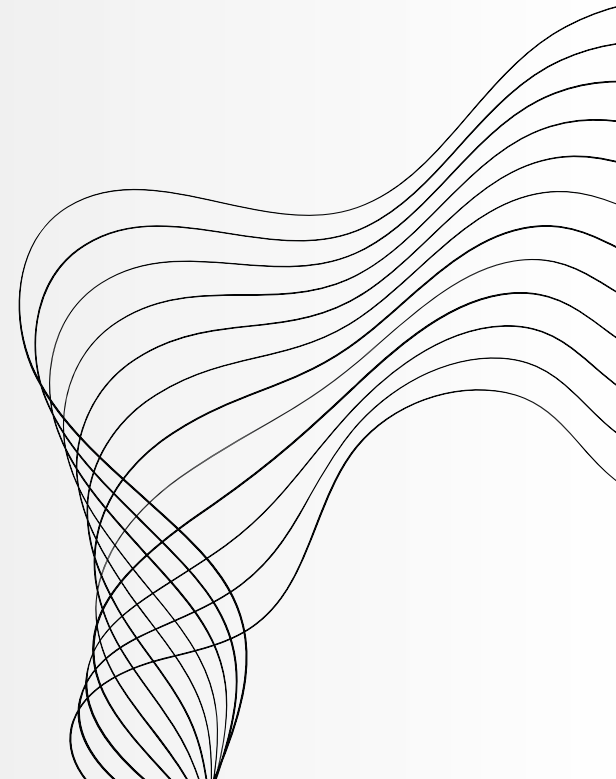




CHAPTER V

CONDUCT OF ARBITRAL PROCEEDINGS

SECTION 18 - 27



SECTION 18 - EQUAL TREATMENT OF PARTIES

The parties shall be treated with equality and each party shall be given a full opportunity to present his case.

CASE LAW

- **PR SHAH, SHARES & STOCK BROKERS PBT LTD VS. BHH SECURITIES PVT LTD (2012)1SCC 594**
- **UOI VS. BHARATH BUILDERS AND CONTRACTORS 2012 (4) ARB 448 (KERALA)**
- **ASSOCIATE BUILDERS VS. DELHI DEVELOPMENT AUTHORITY (2015) 2 3SCC 49**

SECTION 19 - DETERMINATION OF RULES OF PROCEDURE

- 1. The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).**
- 2. Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.**
- 3. Failing any agreement referred to in sub-section (2), the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate.**
- 4. The power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence.**

CASE LAW

- SREI INFRASTRUCTURE FINANCE LTD VS. TUFF DRILLING PVT LTD (2018) 11 SCC 470
- MP HOUSING BOARD VS. PROGRESSIVE WRITERS AND PUBLISHERS (2009) 5 SCC 678
- KANPUR JAL SANSTHAN VS. BAPU CONSTRUCTION (2015) 5 SCC 267
- S SONY & CO VS. DELHI DEVELOPMENT AUTHORITY 1994 (1) ARB LR 190 (DEL)
- SHIV KUMAR WASAL VS. DELHI DEVELOPMENT AUTHORITY 1993 (2) ARB LR 495 (DEL)

SECTION 20 - PLACE OF ARBITRATION

1. The parties are free to agree on the place of arbitration.
2. Failing any agreement referred to in sub-section (1), the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.
3. Notwithstanding sub-section (1) or sub-section (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.

CASE LAW

- **BHARAT ALUMINIUM COMPANY LTD VS KAISER ALUMINIUM TECHNICAL SERVICES, (2012) 9 SCC 552**
- **INOX RENEWABLES LTD. VS JAYESH ELECTRICALS LTD., 2021 SCC ONLINE SC 448**
- **INDUS MOBILE DISTRIBUTION (P) LTD. VS DATAWIND INNOVATION (P)LTD., (2017) 7 SCC678**
- **BGS SSG SOMA JV VS NHPC LTD (2020) 4 SCC234**
- **UOI VS HARDY EXPLORATION AND PRODUCTION (INDIA) INC., (2019) 13 SCC 472**
- **SANSBIN CHEMICALS INDUSTRY VS ORIENTAL CARBONS AND CHEMICALS LTD., (2001) 3 SCC 341**
- **DOZCO INDIA P LTD VS DOOSAN INFRACORE CO. LTD (2011) 6 SCC 179**
- **VIDEOCON INDUSTRIES LTD VS. UOI (2011) 6 SCC 161**
- **BRAHMANI RIVER PELLETS LTD VS. KAMACHI INDUSTRIES LTD (2020) 5 SCC 462**
- **ENERCON (INDIA) LTD VS ENERCON GMBH AIR 2014 SC 3152**
- **SANSHIN CHEMICALS INDUSTRY VS. ORIENTAL CARBONS AND CHEMICALS LTD (2001) 3 SCC 341**
- **N S NAYAK AND SONS VS. STATE OF GOA (2003) 6 SCC 56**

SECTION 21 - COMMENCEMENT OF ARBITRAL PROCEEDINGS

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

CASE LAW

- **U.P. STATE SUGAR CORPN. LTD VS JAIN CONSTRUCTIONS CO. (2004) 7 SCC 332**
- **STATE OF GOA VS PRAVEEN ENTERPRISES, (2012) 12 SCC 581**
- **BHARAT PETROLEUM CORP. LTD. VS GO AIRLINES (INDIA) LTD., (2019) 10 SCC 250**
- **SURINDER KUMAR BERI VS. DEEPAK BERI 2018 (171) DRJ 414**

SECTION 22 - LANGUAGE

- 1. The parties are free to agree upon the language or languages to be used in the arbitral proceedings.**
- 2. Failing any agreement referred to in sub-section (1), the arbitral tribunal shall determine the language or languages to be used in the arbitral proceedings.**
- 3. The agreement or determination, unless otherwise specified, shall apply to any written statement by a party, any hearing and any arbitral award, decision or other communication by the arbitral tribunal.**
- 4. The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.**

SECTION 23 - STATEMENT OF CLAIM AND DEFENCE.

- 1. Within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of those statements.**
- 2. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.**
- 3. Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.**

CASE LAW

- **STATE OF GOA VS PRAVEEN ENTERPRISES, (2012) 12 SCC 581**
- **VIRENDRA KASHUNATH RAWAT VS. VINAYAK N JOSHI (1999) 1 SCC 47**
- **BHARAT COKING COAL LTD VS. RAJ KISHORE SINGH (2000) 9 SCC 174**
- **STATE OF GOA VS. PRAVEEN ENTERPRISES (2012) 12 SCC 581**

SECTION 24 - HEARINGS AND WRITTEN PROCEEDINGS.

(1) Unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials:

Provided that the arbitral tribunal shall hold oral hearings, at an appropriate stage of the proceedings, on a request by a party, unless the parties have agreed that no oral hearing shall be held:

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of documents, goods or other property.

(3) All statements, documents or other information supplied to, or applications made to the arbitral tribunal by one party shall be communicated to the other party, and any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

CASE LAW

- **MALLIKARJUN VS. GULBARGA UNIVERSITY (2004) 1 SCC 372**
- **SUKHBIR SINGH VS. HINDUSTAN PETROLEUM CORP 2020 SCC ONLINE DEL 228**

SECTION 25 - DEFAULT OF A PARTY

Unless otherwise agreed by the parties, where, without showing sufficient cause,—

- 1. the claimant fails to communicate his statement of claim in accordance with sub-section (1) of section 23, the arbitral tribunal shall terminate the proceedings;**
- 2. the respondent fails to communicate his statement of defence in accordance with sub-section (1) of section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant;**
- 3. a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.**

CASE LAW

- Srei Infrastructure Finance Ltd. vs Tuff Drilling Private Limited, (2018) 11 SCC 470
- Sarpanch Lonand Grampanchayat vs. Ramgiri Gosavi AIR 1968 SC 222
- Parimal vs. Veena (2011) SCC 545
- D Khosla & Co vs. YN Rao (1994) 2 Arb LR 315 (Del)

SECTION 26 - EXPERT APPOINTMENT BY ARBITRAL TRIBUNAL.

1. Unless otherwise agreed by the parties, the arbitral tribunal may—
 - appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal, and
 - 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.
2. Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in an oral hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.
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.

CASE LAW

SSANGYONG ENGINEERING AND CONSTRUCTION CO. LTD. V. NATIONAL
HIGHWAYS AUTHORITY OF INDIA (NHAI), (2019) 15 SCC 131

RAMESH CHANDRA AGARWAL VS. REGENCY HOSPITAL LTD (2009) 9 SCC 709

SECTION 27 - COURT ASSISTANCE IN TAKING EVIDENCE.

1. The arbitral tribunal, or a party with the approval of the arbitral tribunal, may apply to the Court for assistance in taking evidence.

2. The application shall specify—

- the names and addresses of the parties and the arbitrators;
- the general nature of the claim and the relief sought;
- the evidence to be obtained, in particular,—

(i) the name and address of any person to be heard as witness or expert witness and a statement of the subject-matter of the testimony required;

(ii) the description of any document to be produced or property to be inspected.

3. The Court may, within its competence and according to its rules on taking evidence, execute the request by ordering that the evidence be provided directly to the arbitral tribunal.

4. The Court may, while making an order under sub-section (3), issue the same processes to witnesses as it may issue in suits tried before it.

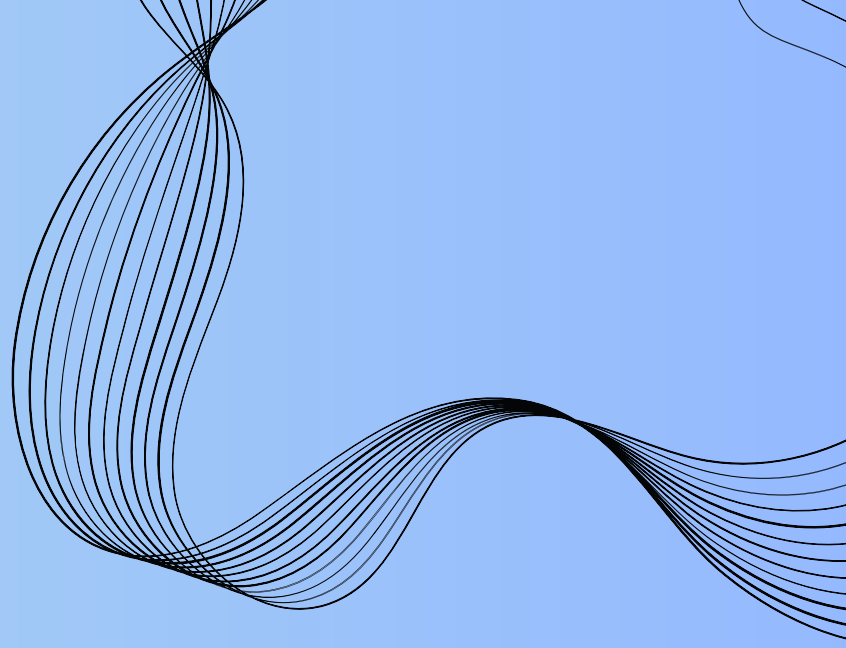
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Persons failing to attend in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitral tribunal during the conduct of arbitral proceedings, shall be subject to the like disadvantages, penalties and punishments by order of the Court on the representation of the arbitral tribunal as they would incur for the like offences in suits tried before the Court.

(6) In this section the expression “Processes” includes summonses and commissions for the examination of witnesses and summonses to produce documents.

CASE LAW

- ALKA CHANDEWAR VS SHAMSHUL ISHRAR KHAN, (2017) 16 SCC 119
- RELIANCE POLYCRETE LTD VS. NATIONAL AGRICULTURE COOPERATIVE MARKETING FEDERATION OF INDIA AIR 1983 MAD 194
- DELTA DISTILLERIES LTD VS. UNITED SPIRITS LTD (2014) 1 SCC 113
- GOPAL KRISHNAJI KETKAR VS. MOHAMAD HAJI LATIF AIR 1968 SC 1413
- THYSSSEN KRUPP WERKSTRFFE GMBH VS. STEEL AUTHORITIES OF INDIA LTD 2010 (6) RAJ 5 (DEL)



THANK YOU

THE FLOOR IS OPEN FOR DISCUSSION

REGARDS

ADV. AMITESH CHANDRA MISHRA

