

Arbitration (Court Procedure) Rules, 2059(2002)

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In exercise of the power conferred by Section 43 of the Arbitration Act, 2055(1999) The Supreme Court has framed the following Rules.

Chapter-1

Preliminary

1. **Short title and commencement:** (1) These Rules may be called “Arbitration (Court Procedure) Rules 2059(2002).”
(2) These Rules shall come into force immediately.
2. **Definition:** Unless the subject or context otherwise requires, in these Rules,-
 - (a) "Act" means “Arbitration Act, 2055(1999).”
 - (b) "Division Bench" means the division bench constituted pursuant to the Appellate Court Rules 2048 (1991).
 - (c) “Registrar” means the Registrar of Appellate Court.
 - (d) “Legal Practitioner” means the person registered in legal practitioner pursuant to the prevailing law.

Chapter-2

Provision relating to registration of document

3. **Requirements to be fulfilled in the document:** (1) In addition to the provisions mentioned in these rules, provisions of chapter 3 of the Appellate Court Rules, 2048 shall be applied concerning to the general

requirements to be fulfilled for the document produced in appellate court for registration.

(2) In addition to the provisions mentioned in these rules, provisions of chapter 4 of the District Court Rules, 2052(1995) shall be applied concerning to the general requirements to be fulfilled for the document produced in district court for registration.

4. Required fee in the court: (1) Notwithstanding anything mentioned in prevailing laws, for filing Petition or complaint or written response in appellate court, fee will be charged as follows:

- (a) Rupees five hundred for filing application relating to the appointment of arbitrator and written response in the same pursuant to section 7 or 8 of the Act,
- (b) Rupees one thousand for filing complaint or petition as per section 11 or 16 of the Act and rupees five hundred for filing written response in the same,
- (c) Rupees five hundred for filing petition under section 21 and 25 of the Act and rupees two hundred and fifty for filing written response in the same,
- (d) 0.05 percent of the amount determined by the arbitrator for filing petition with the claim to invalidate the decision of the arbitrator made under section 30 of the Act,
- (e) Rupees five hundred for the petitions except those mentioned in sub-clause (a), (b), (c) and (d).

(2) If the petitioner, complaint or producer of written response is any government office notwithstanding anything mentioned in sub-rule (1) any fee will not be charged for such office in submitting any documents or written response in the court through arbitrator.

Chapter-3

Procedure relating to appointment of arbitrator

5. **Appointment of arbitrator:** (1) Any party filing petition in appellate court as per section 7 sub-section (1) of the Act, shall mention the following matters:

- (a) Name, surname, address and other descriptions of petitioner and respondent including place of transaction that facilitate in completion of issuance of summon,
- (b) Brief of the dispute,
- (c) Expected remedy,
- (d) Name and address of the arbitrator appointed prior to the registration of the petition,
- (e) Matter about failure in appointing arbitrator by following the process laid down in agreement as mentioned in section 7 sub-section (1) of the Act or absence of the matter in the agreement about the appointment of arbitrator,
- (f) Name, surname, address, occupation, specialization area, and consent to be arbitrator of at least three persons those are eligible to be arbitrator,
- (g) That the copy of the agreement between petitioner and respondent is attached,
- (h) That the copy of the petition is attached for the purpose of sending it to other party.

(2) While filing petition pursuant to section 8 sub-section (2) of the Act, that should be mentioned if the person appointed as arbitrator

has resigned or denied to be arbitrator or he/she has died or the position has become vacant because of any other reason and the evidence relating to such matter in addition to the matter referred in sub-rule (1).

(3) Upon receiving the petition pursuant to sub-rule (1), appellate court shall issue notice to the other party attaching copy of petition for the presence with written response including evidence within ten days excluding the time taken for the journey if there is any reason for not providing remedy as per the demand of petitioner.

(4) Other party appointing arbitrator pursuant to the Act or agreement registration of petition should inform appellate court in written in that regard.

(5) Upon the receiving information about the appointment of arbitrator pursuant to sub-section (4) appellate court shall identify the matter, postpone the petition filed under sub-rule (1) and notify about it to petitioner and arbitrator.

(6) Except of the condition of sub-rule (5), after receiving written response or on the lapse of limitation to file it pursuant to sub-rule (3), appellate court shall appoint arbitrator to the proposed person if there is a consensus between all parties about him/her and appoint an appropriate person within the limitation pursuant to section 7 and 8 and conclude the petition filed pursuant to sub-rule (1).

(7) Appellate court may collect additional information or clarification from petitioner and respondent about fact in issue before concluding petition pursuant to sub-rule (6).

(8) While appointing arbitrator pursuant to sub-rule (6) or appointing third arbitrator pursuant to sub-rule (9) appellate court shall reach in decision taking consideration of aspects including as to whether there is consent of the person being arbitrator to be so and the aspects

mentioned in rule 6 sub-rule (5) beside the aspects mentioned in section 10 of the Act.

(9) If the arbitrators to be appointed on behalf of parties to the agreement are appointed pursuant to sub-rule (5) and (6) and the appointment of third arbitrator is remaining, except otherwise provided in agreement, appellate court shall provide seven days' limitation to the arbitrator to appoint third arbitrator. Court shall appoint third arbitrator taking opinion of arbitrators and parties, if arbitrators fail to appoint third arbitrator within given limitation.

(10) Upon the concluding process of appointing arbitrator pursuant to sub-rule (6) and (9) appellate court shall notify the matter to concerning parties and arbitrator.

(11) Notwithstanding anything contained elsewhere in these rules, appellate court shall obtain opinion of concern ministry of Nepal government before appointing arbitrator in such disputes in which decision of arbitrator may directly or indirectly creates economic obligation on Nepal government. Upon the receiving stipulation of opinion, concern ministry shall send its opinion within fifteen days. Failure to receive the opinion within such time frame shall not deem to bar to make decision on appointing arbitrator.

6. Roster of arbitrators to be maintained: (1) For the purpose of appointing arbitrator, every year, Registrar shall prepare a roster of persons of different sector being qualified, experienced and appropriate to be arbitrator with their description including their name, surname, telephone, fax, email, address, occupation, educational qualification and area of specialization.

(2) Preparing roster pursuant to sub-rule (1) of persons to be arbitrator, assistance can be taken from any commercial, technical,

industrial enterprise and organization relating to job and function of mediator within or out of its jurisdiction in Nepal.

(3) Any person may apply for inclusion of his/her name in the roster pursuant to sub-rule (1). If the applicant is found qualified to be arbitrator his/her name may be included in the roster of the persons being arbitrator.

(4) Roster with description prepared by Registrar pursuant to sub-rule (1) shall be submitted in full court of appellate court. Such roster deemed to be finally prepared upon the acceptance of such full court. Such roster shall be sent to Supreme Court for record.

(5) While accepting roster of persons being arbitrator pursuant to sub-rule (4) qualification, experience, character, impartiality, honesty and reputation of such person shall be taken in consideration.

7. Complaint relating to removal of arbitrator and

proceedings:(1) Person who is not satisfied with the decision pursuant to section 11 sub-section (3) of the Act for removing arbitrator may file complaint in appellate court within thirty days from the date of receipt of notice about the decision pursuant to section 11 sub-section (4) of the Act. Following aspects shall be mentioned in such complaint:

- (a) Name, surname and address of complainant and respondent, place of transaction and other description that ease issuance of a notice,
- (b) Name and address of arbitrator intended for removal,
- (c) Brief of the decision rendered pursuant to section 11 sub-sections (3) of the Act,
- (d) Cause and evidence for removal,

(e) That attested copy of agreement and decision rendered pursuant to section 11 sub-sections (3) of the Act are attached.

(2) If the court befalls convinced about the presence of condition of section 11 sub-section (2) there in, in course of preliminary hearing of the complaint, the court shall issue an order for the presence of respondent ascertaining date for hearing providing with reasonable time.

(3) In ascertained date for hearing pursuant to sub-rule (2) appellate court shall adjudge the complaint by hearing the statement of parties present and being based on the evidence produced there in and shall notify to arbitrator about the same.

(4) If there is a demand for the issuance of interim order to the arbitrator for not to persuade the process of arbitration until the adjudgement of the complaint pursuant to sub-rule (1), the court shall settle such question in course of preliminary hearing itself pursuant to sub-rule (3) considering as to whether there is sufficient basis and cause regarding such demand.

8. Validity and efficacy of contract and complaint and adjudgment regarding jurisdiction of arbitrator: (1) The party not satisfying with the decision of the arbitrator pursuant to Section 16 sub-section (1) of the Act shall mention following aspects while submitting application in Appellate Court pursuant to sub-section (2) of the same section:

- (a) Name, surname and address of complainant and respondent, place of transaction and other description that ease issuance of notice,
- (b) Name, surname, address of arbitrator and location of office,

- (c) Brief of agreement,
- (d) What is the issue raised among jurisdiction of arbitrator or validity or efficacy of contract and basis and evidence of the same,
- (e) Intended remedy,
- (f) That attested copy of decision rendered pursuant to section 16 sub-sections (1) of the Act and agreement are attached.

(2) If it appears that the decision of arbitrator can be altered in course of preliminary hearing of complaint filed pursuant to sub-rule (1), a memorandum to that effect shall be executed and order shall be issued for the presence of respondent providing reasonable time specifying date for hearing.

(3) If the parties are present on the date specified by the Appellate Court pursuant to sub-rule (2), the court shall adjudge the application hearing their statement and evaluating available evidences generally within 30 days from the submission of application by and inform the arbitrator about it.

9. Application against interim or interlocutory order and proceeding:

(1) Following aspects shall be mentioned in the application to be filed in appellate court pursuant to section 21 sub-section (2) of the Act,

- (a) Name, surname and address of complainant and respondent, place of transaction and other description that ease issuance of notice,
- (b) Name, surname, address of arbitrator and location of office,

- (c) Brief of the subject matter assigned to arbitrator and description of main task performed by arbitrator,
- (d) Brief of the decision of arbitrator including interim and interlocutory order and claim, ground and evidence to invalidate them,
- (e) Intended remedy,
- (f) That attested copy of order or decision rendered pursuant to section 21 sub-section (1) part (g) of the Act, attested copy of other essential documents and copy of agreement are attached,
- (g) Other aspects required.

(2) If it appears that the decision of arbitrator can be altered in course of preliminary hearing of petition filed pursuant to sub-rule (1), the court shall issue an order attaching copy of the petition for the presence of other party with written response with the reason for not issuing order as per the demand of petitioner.

(3) In course of hearing pursuant to sub-section (2) if the court realize some aspects to be elaborated and clarify by arbitrator, it can order the arbitrator to do so in specific time.

(4) If the parties are present on specified date pursuant to sub-rule (2), the court shall adjudge the application hearing their statement and evaluating evidence generally within 30 days from the submission of application and inform the arbitrator and absent parties about it.

10. Procedure for taking assistance of court in examination of evidence: (1) In case of requirement of assistance of court for the purpose of examination of evidence pursuant to section 23 of the Act, arbitrator shall request to the concerned district court in written form.

(2) Following aspects shall be mentioned in the request pursuant to sub-rule (1):

- (a) Name, surname and address of claimant and respondent,
- (b) Nature of dispute and subject matter of intended remedy before arbitrator,
- (c) Type of assistance required from district court on what type of evidence to be examined relating to the dispute under consideration before arbitrator,

(3) While requesting to district court for the purpose of causing a document to be executed elaborating any matter from any person clear questions shall be prepared about the matter to be asked. Upon the receipt of request mentioning questions to be asked district court should summon such person, draw the answer as per the question and send it following procedure pursuant to prevailing laws.

(4) Upon the receipt of application pursuant to sub-rule (2) district court may order the concerned person to be present self before the arbitrator and deliver the statement or to submit documentary evidence to be submitted if it is remaining on his/her hold and that substantially affect the decision of arbitrator or to do other required work and task or to deliver statement by presenting before arbitrator or to submit any documentary evidence.

(5) District court may initiate proceedings and punish against contempt of its own to a person not complying with the order pursuant to sub-rule (3) or (4).

Chapter-4

Provision relating to invalidation and execution of decision

11. Petition against the decision of arbitrator and proceedings: (1)

Following aspects shall be mentioned while filing a petition in appellate court pursuant to section 30 sub-section (1) of the Act:

- (a) Name, surname and address of complainant and respondent, place of transaction and other description that ease issuance of notice,
- (b) Name, surname, address of arbitrator and location of office,
- (c) Subject assigned to arbitrator for decision,
- (d) Brief of the decision of arbitrator,
- (e) Whether the decision of arbitrator should be invalidated or be re-decided,
- (f) Under which of the basis mentioned in section 30 sub-section (2), the decision of arbitrator shall be invalidated or be re-decided and the basis and evidence to do so,
- (g) That the copy of the petition pursuant to section 30 sub-sections (1) is provided to arbitrator and concern party,
- (h) That the attested copy of decision of arbitrator and other order and copy of agreement relating to arbitration are attached with the petition.

(2) If it appears during the preliminary hearing of petition filed under sub-rule (1) that the claim mentioned in petition may be established, the court shall demand to send the concerned file and issue an order summoning respondent to be present for discussion providing

with seven days time. While presenting within such time, respondent may submit written response if he/she desires.

(3) The court shall adjudge the petition filed pursuant to sub-rule (1) generally within 15 days from upon the presence of respondent if he/she is summoned pursuant to sub-rule (2) or upon the lapses of the limitation to be present. The court shall inform the arbitrator and absent party as well about such decision.

12. Filing application for execution of decision: (1) Application for execution of the decision of arbitrator pursuant to section 32 of the Act should be filed in execution section of district court.

(2) Following aspects shall be mentioned in the application pursuant to sub-rule (1):

- (a) Name, surname and address of complainant and respondent, place of transaction and other description that ease to serve notice,
- (b) Name, surname, address of arbitrator and location of office,
- (c) Subject assigned to arbitrator for decision,
- (d) Date of the decision of arbitrator, description of decision and amount calculated,
- (e) It there is a demand of recovery of amount fixed by decision from any movable or immovable property, clear description of that,
- (f) That the attested copy of decision of arbitrator and the proof of receipt of notice about decision having the date of such receipt mentioned,
- (g) If the claim is for recovery of amount from any bond, bank guarantee or deposited amount taken by arbitrator issuing

interim or interlocutory order pursuant to section 21 of the Act,

(h) That the decision of arbitrator is remaining final.

(2) If an application is filed pursuant to sub-rule (2), the court shall check whether the arbitrator's decision is final or not and if final, it shall receive concerned file and record the arrear pursuant to the decision in main record book.

(3) While executing decision of arbitrator, district court shall execute it equivalently as its own decision.

(13) Provision relating to execution of decision made abroad: (1)

Parties intending execution of the decision made in abroad pursuant to section 34 sub-section (1) may apply in appellate court.

(2) In addition to the documents mentioned in section 34 sub-section (1) of the Act, following aspects shall be mentioned in the application pursuant to sub-rule (1):

(a) Description including Name, surname and address of respondent, place of transaction and of electronic communication medium of contact address like telephone, fax, email, other description subsidiary to serve notice or correspond,

(b) That conditions mentioned in section 34 sub-section (2) is fulfilled.

(3) In course of preliminary hearing of the application pursuant to sub-rule (1), if it appears that the decision of arbitrator rendered abroad should be executed, the court shall issue notice to respondent for being present with written counter-claim within 90 days if there is any reason for not executing that decision.

(4) If respondent is summoned pursuant to sub-rule (3) appellate court hears the case generally within ten days upon the presence of respondent or upon the lapses of time to be present and if it appears that the conditions mentioned in section 34 sub section (2) are fulfilled, original file shall be sent to the concerned district court including order for execution of the decision of arbitrator.

(5) Upon the receipt of the order pursuant to sub-rule (4), district court shall execute the decision of arbitrator rendered abroad equivalent to the decision of arbitrator rendered within Nepal according to the provisions provisioned in these rules.

Chapter-5

Miscellaneous

(14) Proceedings by taking deposition: (1) Appellate court shall proceed hearing of issue taking deposition of applicant or complainer upon the filing of application or complaint and of respondent upon the filing of counter claim or written response pursuant to the Act and these rules. While fixing the date for presence of parties the court shall mention the cause clearly that for what purpose the date for presence is fixed and such matter shall be mentioned in the deposition receipt attached in file as well.

(2) Even if the applicant or complainer become absent and the date fixed for presence is expired, if their legal practitioner become present and wants to proceed on complaint or application, nothing shall bar the court to hear and decide.

(3) If any party become absent in the date fixed by the court for making presence owing circumstance beyond control applies within seven days excluding the time taken for the journey, for extension of

time limit or the date fixed for making presence, the court may extend the time limit or date fixed for making presence for once not exceeding seven days.

(4) If party, hi/her attorney or legal practitioner become absent and the date fixed for making presence expires, such application or complain shall be kept on pending.

(15) Provision relating to serving summon: (1) Summon or notice to be served to party pursuant to the Act and these rules can be served to the legal practitioner appointed by party or to the authorized person of the party for the same work. Summon or notice served in such way shall be deemed equivalent as served to the concerned party.

(2) If court has to send summon or notice to party residing within country or abroad it shall be sent following the process determined in section 20 sub-section (1).

(3) Notwithstanding anything contained in sub-rule (2), while serving summon or notice to the person residing abroad such summon or notice can be sent following the procedure pursuant to the law of that country. Summon served in such way shall be deemed as served pursuant to section 20 of the Act.

(16) Report of activities: Appellate court should keep record of its activities and Send a report in Supreme Court including such matter.

(17) No stopping of hearing: If the court has summoned the party for presence in hearing of the application or complaint filed pursuant to the Act or these rules, but such party or his/her legal representative pursuant to law or law practitioner is absent, hearing of case shall not be stopped only for such cause.

(18) Hearing of application or complaint: Hearing on summoning other party pursuant to rule 5 sub-rule (3) of these rules shall be conducted by

single bench of appellate court. Excluding that, all application or complaint to be filed pursuant to the Act and these rules shall be heard by division bench of appellate court.

(19) **Submitting translation of decision:** If the decision of arbitrator is to be submitted pursuant to the Act and these rules and if such decision written other than in Nepali language, authentic translation in Nepali language shall be submitted with such decision.

(20) **Provision relating to archive:** (1) Registrar in case of appellate court and Registrar (Srestedar) in case of district court shall perform the task of keeping demanded file and received documents systematically, protecting archive, corresponding, sending file and other pursuant to the act and these rules.

(2) While sending the file by arbitrator pursuant to section 42 sub-section (2) of the Act, it shall be sent to archive section of district court.

(21) **Recovery of fees:** Pursuant to section 41 sub-section (2), any party may apply accompanied by receipt within the limitation of Court Fee Act, 2017 in execution section of district court for the recovery of the fee paid in course of execution of decision of arbitrator from other party. Upon the receipt of such application district court shall provide with recovery of such fee equivalent to court fee pursuant to prevailing laws applying the process applied in civil cases.

(22) **Arbitration in the cases filed in court:** (1) Both of the parties may apply in the court for the settlement of commercial nature of civil cases having possibility of compromise according to prevailing laws and filed in court pursuant to section 3 sub-sections (2) and of the Act.

(2) Parties shall mention following aspects for filing application pursuant to sub-rule (1).

- (a) Brief of the case,
- (b) Name, surname and address of the person being arbitrator,
- (c) That the person being arbitrator does not have disqualification mentioned in section 10 of the Act,
- (d) That the settlement of the arbitrator shall be acceptable.

(3) Upon the filing of application pursuant to sub-rule (2) such application shall be presented in the bench. The bench may issue an order for sending the case to be compromised by an arbitrator hearing counter-claim of both parties in oral as well and taking consideration of as to whether the condition of section 4 sub-section (2) is prevailing or not.

(4) Where a compromise is so executed by arbitrator pursuant to sub-rule (3) no complaint shall be entertained except a complaint that the other party has not complied with the deed of compromise.

23. Shall be pursuant to rules: On matters referred in these rules, it shall be as per these rules. Except that regarding other matter, it shall be as per Appellate Court Rules, 2048 ()

Regarding other procedure to be followed by appellate court and it shall be as per District Court Rules, 2052 regarding other procedure to be followed by district court.