Oil and Natural Gas Corporation Limited

Review on Arbitration Cases

Highlights

Non-finalisation of rates before hiring of vessels and supply of gas without finalisation of price led to disputes over the rates/price and consequent reference to arbitration in two cases.

(Para 3.2.6 ii)

Ambiguity/lacuna in clauses of contracts led to disputes and reference to arbitration in four cases, and eventually these being decided against ONGC.

(Para 3.2.6 iii)

The number of cases handled at a time by an arbitrator ranged between one to 20 cases and there was no clear-cut policy for payment of fee to the arbitrators. The arbitrators were appointed from outside the regions, in deviation with its policy.

(Para 3.2.7)

There was no uniform policy in different regions of ONGC in regard to appointment of advocates and payment of fee to them.

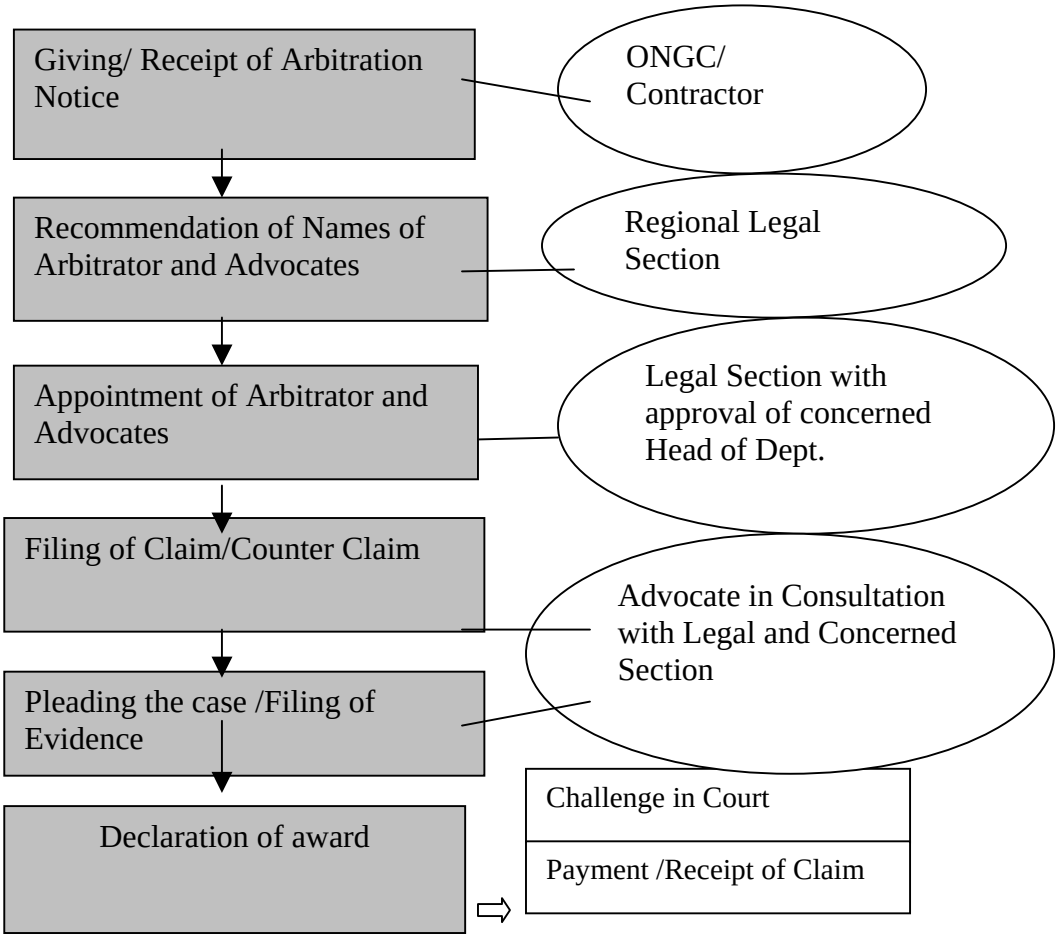
(Para 3.2.8)

3.2.1 Introduction

In terms of the existing contractual provisions of various contracts in Oil and Natural Gas Corporation Limited (ONGC), arbitration was generally the forum agreed to for resolution of disputes with the contractors that could not be solved by mutual settlement. Arbitration clause in the contracts stipulated that if any dispute or difference at any time arose between the parties, the same would be referred to arbitration in accordance with the provisions of the Indian Arbitration Act and Rules made thereunder. The clause also stated the place, language and procedure for appointment of arbitrators.

3.2.2 System description

The functional wings in ONGC entered into various contracts for goods and services. Arbitration clause was provided for in the contract as per the requirements of the Indian Arbitration Acts, 1940 and 1996. Once a dispute arose, the arbitration clause was invoked. The process of arbitration is given below:



In order to handle the legal matters ONGC in each of its regions established legal sections, headed by the Deputy General Managers/Legal Officers, who reported to the Chief General Manager (Legal Services) at the corporate level who, in turn, reported to the Director (HR).

As per the guidelines contained in the compendium of important circulars of ONGC, the appointment of arbitrators was to be done in accordance with the following instructions.

Criteria	**Category of arbitration**
Arbitration matters involving claim below Rs.20 lakh	ONGC officer above E-6 (Deputy General Manager) level was appointed as arbitrator
Contract value above Rs.20 lakh but below Rs.1 crore	Sole arbitrator
Contract value of Rs.1 crore and above	Arbitration tribunal
Contract with foreign parties	Arbitration tribunal

3.2.3 Scope of Audit

This review was conducted during February 2004 to June 2004 and covers 195 arbitration cases out of 212 existing/settled cases in the five regions of ONGC {Dehradun, Mumbai Region Business Centre (MRBC), Western Region Business Centre (WRBC), Southern Region Business Centre (SRBC) and Eastern Region Business Centre (ERBC)}. These include 126 (out of 136) live cases existing as on 31 March 2004 and 69 cases (out of 76 cases) settled during the last six years (1998-99 to 2003-04).

3.2.4 Audit Methodology

- The Audit team studied the provisions of the Indian Arbitration Acts 1940 and 1996;
- collected various circulars relating to arbitration matters issued by the corporate office of ONGC and studied them;
- reviewed Board Agenda relating to arbitration matters;
- scrutinised the report of the internal committee constituted by ONGC to review various issues relating to arbitration and the recommendations of such committee relating to arbitration process;
- framed a questionnaire and check list for scrutinising files relating to arbitration cases and
- scrutinised the legal section files relating to arbitration matters pending before the Arbitrators.

3.2.5 Audit Objectives

The Audit Objectives of the review were as under:

(i) To ascertain whether ONGC followed effective contract management practices, which could have prevented disputes in the contracts.

(ii) To ascertain whether ONGC set up a mechanism for handling the arbitration cases in an effective, efficient and economical fashion.

3.2.6 Findings relating to Audit Objective-I

Audit observed that there were cases where the disputes could have been avoided had ONGC managed the contract properly. The details are as follows:

(i) Failure to ascertain availability of tools to be imported from USA

(a) ONGC, during October 2000, awarded a contract for upgradation of seismic survey vessel M.V.Sagar Sandhani to Western Geco International Limited. The vessel was to be handed over by the contractor on 9 July 2001. However, the handing over of the vessel was delayed due to restrictions imposed by the US Government on supply of the 'Geo hydrophones' to be fitted on the vessel. Consequently, the vessel was handed over to ONGC on 5 May 2002, after a delay of nine months and 28 days. ONGC deducted US$ 8.53 million (Rs.41.50 crore) for excess engagement of vessel, liquidated

damages etc. The contractor went into arbitration in September 2003 mainly on the grounds of 'force majeure[*]' situation.

(b) ONGC gave a letter of award to M/s. Halliburton Offshore Services, Inc. (HOSI) in March 2001 for hiring electro-logging services. As per projected requirement the Reservoir Monitoring Tool (RMT) was a critical tool to be used. This tool was a proprietary tool of HOSI, which had its head Office in USA. Following the letter of award, HOSI was unable to mobilise RMT due to restrictions imposed by the US Government. As such ONGC terminated the contract in December 2001 on account of non-mobilisation of RMT tool. The contractor went into arbitration in December 2001 for wrongful termination of the contract and non-payment of its dues. The contractor claimed an amount of US$ 26 million (Rs.126.56 crore) plus Indian Rs.11.38 crore.

In both the above cases, the disputes leading to arbitration were rooted in ONGC's inability to foresee uncertainty associated with the availability of tools proposed to be sourced from USA.

The Management stated (January 2005) that both the above contractors were firms registered outside India (i.e. Norway and Cayman Islands respectively) and they had quoted for the above equipment. Therefore, it was not expected that they would fail to obtain the equipment from USA.

The Management reply is not tenable because both the equipment were defence sensitive and invited US sanctions against India following the nuclear tests conducted by India in 1998. Had ONGC ascertained whether sanctions were imposed on these equipment by USA and a suitable clause linked in the contract for alternate equipment, in case of non-availability of these equipment, the disputes and the reference to the arbitration could have been avoided. Further, the above case was subsequently referred to an Outside Expert Committee, which gave its recommendation in September 2004, but the copy of the award was not made available to Audit.

(ii) Non finalisation of rates/terms before entering into contract

In the following cases the contractors went into arbitration owing to ambiguity in regard to rates/ad hoc rates at which their services were being hired.

(a) ONGC entered into a contract with M/s. Great Eastern Shipping for deployment of two vessels (Malaviya-2 and Malaviya-8) on 31 December 1990. The charter hire rates were not agreed to between ONGC and the contractor. Consequently it was decided to hire the equipment /vessel on interim ad-hoc rate of Rs.58,374 pending finalisation of the rates by mutual consent. The vessels were deployed from 31 December 1990 to 31 March 1991. However, the contractor and ONGC were unable to arrive at a mutually agreed rate. The contractor went into arbitration claiming an amount of Rs.42.96 lakh towards difference in rates (market rate: Rs.80,000 per day less ad-hoc rate: Rs.58,374 per day)

[*] ***The contract had a 'force majeure clause' according to which, in the event of either party being rendered unable by force mejeure (i.e. acts of God, war, fire, floods, Acts/Regulations of respective Governments etc.) to perform any obligation under the contract, the relative obligation shall be suspended for the period during which such cause lasts.***

for the period from 31 December 1990 to 31 March 1991. The arbitrators declared an award in favour of the contractor in November 1997, stating that the ad-hoc rates considered, while hiring the vessels, did not reflect market rates for similar vessels.

The Management did not respond to the above audit observation (January 2005).

(b) ONGC commenced supply of gas to seven gas consumers in April 1989 without finalising an agreement and signing the contract specifying the terms and conditions. The Agreement entered into with the parties in December 1991 provided for recovery of transportation charges also. Accordingly ONGC recovered these charges from April 1989 i.e. from the commencement of supply. The gas consumers served a notice to go in for arbitration (December 1992/February 1993) disputing the recovery of transportation charges by ONGC for the period from April 1989 to May 1991 and claimed a refund of Rs.2.50 crore. ONGC appointed its arbitrator in 1994 but the consumers' arbitrator died subsequently and the court appointed a new arbitrator in April 1999. The decision of the arbitration was awaited (January 2005).

The Management stated (January 2005) that the gas consumers were billed to pay for the transportation charges as the contract signed in December 1991, effective from April 1989, provided for the transportation charges.

The fact remains that, in both the above cases, the non-finalisation of rates before entering into the contracts resulted in the disputes and consequent reference to arbitration.

(iii) Lacunae in contract clauses

(a) ONGC placed a supply order (November 1998) on M/s. Suria Paint & Oil Works, Chennai, for supply of linseed oil valued at Rs.39.32 lakh. The supply order provided that 'the material sampled/bonded and accepted after lab test was liable for further testing at the destination and if found substandard, the supplier was liable to replace the same'. Accordingly the material was tested at Chennai on 31 December 1998. On being found to be conforming to the specifications, it was dispatched to Nhava and 100 per cent payment was released. ONGC re-sampled and tested the material at Nhava and it was found that the paint did not conform to specifications. ONGC, therefore, asked the supplier (February 1999) to replace the material. When the supplier failed to comply, ONGC initiated arbitration proceedings, claiming from the supplier an amount of Rs.40.06 lakh. The claim was, however, rejected by the Sole Arbitrator (December 2001) stating that clause number ten of the supply order stated that the same sample of linseed oil sampled/bonded at Chennai and accepted after lab test should have been tested at the destination and that the relevant clause in the contract did not allow for taking a fresh sample.

The Management stated (January 2005) that the contract had a clear provision for further sampling and testing of the material at the destination.

The reply was not tenable as the contract stipulated only the testing of the samples at the destination and the contract was silent about fresh sampling at the destination. In order to avoid dispute, ONGC should have had an explicit and clear clause in the contract for fresh sampling at the destination.

(b) ONGC awarded a contract (May 1992) for construction of warehouse complex at Uran to M/s. My Construction Company. After completion of work the contractor claimed extra amount of Rs.17.71 lakh for providing extra thickness of fibreglass and removing encroachment on the land. ONGC refused to pay the amount and the contractor went into arbitration in January 1995. The arbitrator allowed (June 2001) the extra claim made by the contractor (Rs.17.71 lakh) on the plea that the contract had not specified the thickness of fibreglass and the hut owners were not the original land owners (as per contract terms only solving of the problems raised by original land owners was the responsibility of the contractor). Thus, due to lacunae in the contract clauses ONGC had to bear an additional expenditure of Rs.17.71 lakh.

The Management stated (January 2005) that the contract was drawn in line with standard practice. The Management added that the issue regarding vacation of encroachment had been found to be addressed in the bidders' conference and the agency had, at that time, not raised any query regarding the thickness of the fibreglass.

The reply is not acceptable because, in order to avoid dispute, the contract should have specified the thickness of the fibreglass and explicitly stated the responsibility of the contractor towards the removal of encroachment. The contractor took advantage of the absence of clear terms in the contract and, therefore, the arbitration award went against ONGC.

(c) ONGC placed a supply order (April 1988) for supply of port point depressant (PPD) on M/s. Dai-Ichi. The order had provision for placement of repeat order of upto 50 per cent of the original ordered quantity. ONGC accordingly placed repeat orders in February 1990/January 1992,which contained a delivery schedule for the supply of material. These repeat orders could not be executed due to disputes raised by the supplier over some of the terms of the repeat orders. However, while finalising the amended repeat order (October 1992) no delivery schedule was specified. The supply was delayed (February 1993) and resulted in ONGC recovering an amount of Rs.24.06 lakh towards liquidated damages. The supplier went for arbitration. The arbitrator allowed (March 2001) the supplier a refund of liquidated damages on the ground that the amended repeat order did not provide for a specific delivery schedule. Thus, by failing to specify a delivery schedule in the amended repeat supply order ONGC placed itself in a disadvantageous position during the arbitration proceedings.

The Management stated (January 2005) that the supplier raised various issues in February 1992 but did not comment on the delivery schedule given by ONGC to the supplier in January 1992 and the letter provided that all other terms and conditions of the order would remain unaltered. However, the arbitrator held that the rights and liabilities were to be governed by the amended repeat order of October 1992.

The reply is not acceptable because the delivery schedule was a variable factor and the same should have been specified in the amended order. The contractor took advantage of the absence of the delivery schedule in the amended order by referring the matter to arbitration.

(d) ONGC entered into a contract with M/s. Birla Technette Gas Exploration Limited (February 1993) for drilling of oil wells in Gandhar belt at Ankleshwar Asset on meter

rate basis. In 1998, the contractor went into arbitration to pursue its claim for payment of cost of escalation of fuel (high speed diesel) and lubricants amounting to Rs.1.07 crore on the ground that the contract contained the following clause.

'If there is a change in or enactment of any law in India or interpretation of existing law in India after the date of opening the price bid which result in substantial variation in operating cost (increase or decrease) to contractor under this agreement, the variation in cost (increase or decrease) will be discussed and mutually agreed to between the two parties and the increase/reduction in cost will then be borne by/or reimbursed to operator'.

It was observed that the term substantial variation in the clause of the contract was ambiguous, as the same was not expressed in quantitative terms. As such, the ambiguity in regard to the substantial variation in operating cost was left to interpretation in any manner. The party thus took advantage of this ambiguous term used in the contract and filed a claim for Rs.1.07 crore on account of price escalation of high speed diesel and other lubricants. The award went in favour of the contractor (June 2000).

The Management, while endorsing the audit observations, stated (January 2005) that the improvement in the contract clauses was a continuous exercise and they had since prescribed a standard clause regarding change in law to take care of the shortcoming in the contract clause.

It would thus emerge that a substantial number of arbitration cases were grounded in inadequate attention to detail in drafting of contracts, which left scope for disputes with the contractors and led to arbitration proceedings against ONGC.

(iv) Deployment of hired equipment after expiry of contract period

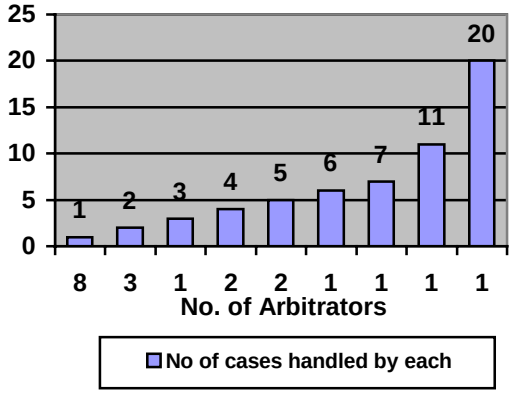
ONGC entered into a contract with M/s. Sedco Forex, during May 1995, for hiring rig Trident- II at a day rate of US$ 22,000 per day. The contract was initially for a period of one year and could be extended by ONGC in two instalments of six months each at mutually agreed price. As per terms of the contract, at the end of contract/extended period (13 May 1997), the well in progress/wells on platform on which rigs were deployed, were to be completed by the contractor at the same day rate. The rig was, however, deployed by ONGC on a new well no. B-121 'D', that was spudded (July 1997) after the expiry of the extended period of contract, without fixing a mutually agreed price. The contractor claimed higher day rates for rig deployment after expiry of the contract period, which ONGC refused to pay. The contractor went into arbitration in August 1997. The arbitrators in their award (September 1998) accepted its claim for payment at higher rate and allowed it an amount of US$ 2.54 million (Rs.10.04 crore).

The Management stated (January 2005) that the well 'D' was initially not planned to be completed by Trindent-II as it was not a conventional well but it was released as a conventional well after May 1997. The Management added that the well 'D' was spudded prior to 13 May 1997 but the Arbitrator did not consider it under the category of 'wells in progress'.

The Management reply is not tenable because as per the Well Completion Report the well 'D' was spudded in July 1997 (i.e. after the expiry of the extended period of the contract) and hence the well could not be considered to be a 'well in progress'. Had the well been released as conventional well and spudded before the expiry of the extended contract period, the reference of the dispute to arbitration could have been avoided.

3.2.7 Findings relating to Audit Objective-II

Appointment of Arbitrators



(i) ONGC had not framed a clear policy relating to distribution of cases among the arbitrators. The basis on which a case was assigned to an arbitrator was not recorded. In WRBC and MRBC regions of ONGC, Audit found that the cases with arbitrators varied from one to 20 cases with an arbitrator at a time.

(ii) The retired High Court/ Supreme Court judges, who were on the panel of ONGC as arbitrators, were entitled to and accorded facilities equivalent to Directors of ONGC with regard to accommodation, travelling, local conveyance etc. In order to bring economy in legal expenses, ONGC's Corporate office vide circular no. Legal/HQ/ARB/98 dated 10 July 1998 had emphasised that in order to minimise cost it should be ensured that arbitrators were invariably appointed from the place where the arbitration proceedings were likely to be held. However, Audit found that of 72 cases in MRBC, in 38 cases the arbitrator was from outside the region. Similarly, of eight cases in WRBC, in three cases the arbitrator was from outside the region.

(iii) ONGC had not framed a clear-cut policy for payment of fee to arbitrators. Payment of fees was determined on case to case basis. The fees of the arbitrators were not fixed at the time of empanelment but decided by the arbitrators themselves at the time of appointment. ONGC did not have any control in respect of arbitrator's fees and generally a fee demanded by the arbitrators was accepted. The fee was generally on 'per sitting basis' and not on 'per case basis'. This resulted in increase in legal expenses with each additional sitting.

Audit felt that ONGC might consider approaching institutions like the Indian Council of Arbitration, which charged lump sum fee per arbitration case on the basis of amount of claim of individual cases and a one-time registration fee, for settlement of disputes.

The Management, while noting the audit observations, stated (January 2005) that instructions had been issued in November 2004 that the appointment of arbitrators should be made with prior consultation with Chief, Legal services and utmost care would be taken to make the system more effective. The Management also assured that it would work on the suggestion of Audit for approaching the institutions like Indian Council of Arbitration.

3.2.8 Appointment of Advocates

ONGC had also not framed any clear-cut guidelines/procedures for appointment of advocates for pleading its cases in arbitration or for payment of fees to them. There was no uniformity in the procedure followed by ONGC in different regions for appointment of advocates as well as payment of fees to the advocates. The following comparative table shows the difference of procedures being followed in various regions: -

	MRBC	**WRBC**	**SRBC**	**Other regions/locations**			
				Dehradun	**New Delhi**	**CRBC**	**ERBC**
Fees	In the range of Rs.4500 to Rs.7500 per day	Rs. 5000 per hearing	On the basis of fee schedule fixed by the High Court	Rs.1000 per hearing (Rs.2000 outside Dehradun)	Rs.500 (Jr. Advocates) Rs.2500 (Middle Level Advocates)	Rs.4000 per hearing	Rs.750 (Jr. Advocates) Rs.2000 (Middle Level Advocates)
Maxi-mum fees per case	No max. limit	Rs. 60,000-	No max. limit	No max. limit	No max. limit	No max. limit	No max. limit

During the year 2002, the Internal Audit Department of ONGC had conducted a study relating to procedure for appointment of advocates by its various regions and it observed that various regions were not following uniform guidelines or system for empanelment of advocates. The time interval of their empanelment was irregular. Across the regions, there was no uniform list of services required to be provided by the advocates. Although the findings of the Internal Audit were presented to the Board of Directors of the Company by the Director (Finance), no remedial/corrective action was taken by ONGC to streamline the procedure for appointment of advocates.

The Management stated (January 2005) that they had the schedule of fee for different places duly approved considering the locations and the status of the advocates. The Management added that a working committee of Senior Officers of Law Department was constituted to look into the report on 'System of empanelment of advocates and periodic review of their performance'.

The fact remains that no resolute action was taken (December 2004) on the recommendation of Internal Audit for having uniform guidelines as regards the time interval for empanelment of advocates, the list of services to be provided by them and the procedure for appointment of advocates.

3.2.9 Pendency of arbitration cases

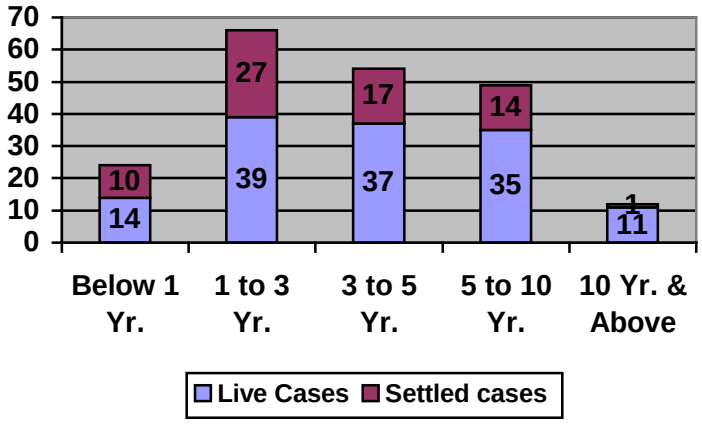
The table below shows the pendency of arbitration cases in ONGC.

(Number of arbitration cases)

Years	MRBC		Dehradun/CRBC/ ERBC		WRBC		SRBC		Total	
	Live	Settled	Live	Settled	Live	*Settled	Live	Settled	Live	Settled
1<	13	4	0	6	1	NA	0	0	14	10
1-3	17	14	15	12	7	NA	0	1	39	27
3-5	17	8	15	9	4	NA	1	0	37	17
5-10	20	9	14	4	1	NA	0	1	35	14
>10	7	1	4	0	0	NA	0	0	11	1
Total	**74**	**36**	**48**	**31**	**13**	**-**	**1**	**2**	**136**	**69**

* Details in respect of 7 settled cases of WRBC were not available.

ONGC had 11 arbitration cases going on for more than 10 years. The highest pendency (seven) was in MRBC region. Of the cases settled, it was noticed that the largest number of cases were settled between one to three years.



The Committee on Public Undertakings (1992-93) also had taken note of inordinate delays and recommended that a time-bound program should be drawn up in settling the cases through conciliation/negotiations.

Audit found that ONGC had taken a policy decision (July 1998) to resolve the disputed cases by conciliation through an Outside Expert Committee (OEC). However, despite the formulation of the policy, ONGC took considerable time to initiate and approve the proposals for referring the individual cases for settlement by OEC. In respect of MRBC, three cases pending before arbitrators for more than 10 years were being referred to OEC. Proposal for referring the cases to OEC was submitted in January 2003 to ONGC corporate office, whose approval was still awaited (December 2004). It was also observed that in two cases in WRBC the time taken for constituting the OEC was eight and 12 months respectively. In two cases in MRBC, ONGC took nearly a year to constitute OEC, resulting in the contractor refusing to refer the cases to OEC. Consequently, the arbitration proceedings had to be recommenced.

Audit found that OECs took an average time of 10.6 months, to settle the five cases referred to them, which was substantially less then the average period of 46 months taken for settlement of cases referred for arbitration. In view of the above it is recommended that ONGC should refer cases to OEC expeditiously so as to settle them in a timely fashion.

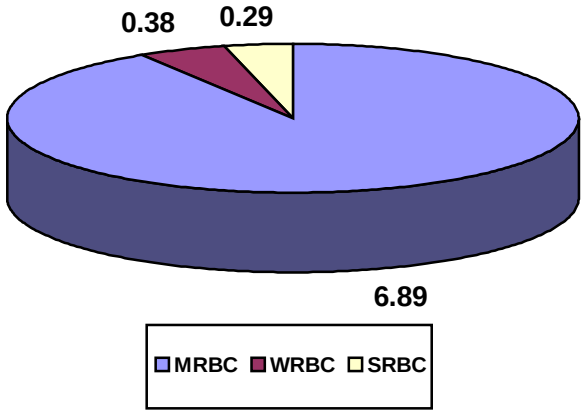
The Management, while accepting the audit observations, stated (January 2005) that instructions had been issued to all senior legal executives to go in for suitable arbitrators considering their age, knowledge, integrity, experience and disposal rate so as to have expeditious disposal of the cases. The Management added that, as per policy of ONGC, consent of the parties were sought for reference of their cases to OEC for conciliation instead of going for arbitration, so as to minimise cost and time.

3.2.10 Cost of arbitration

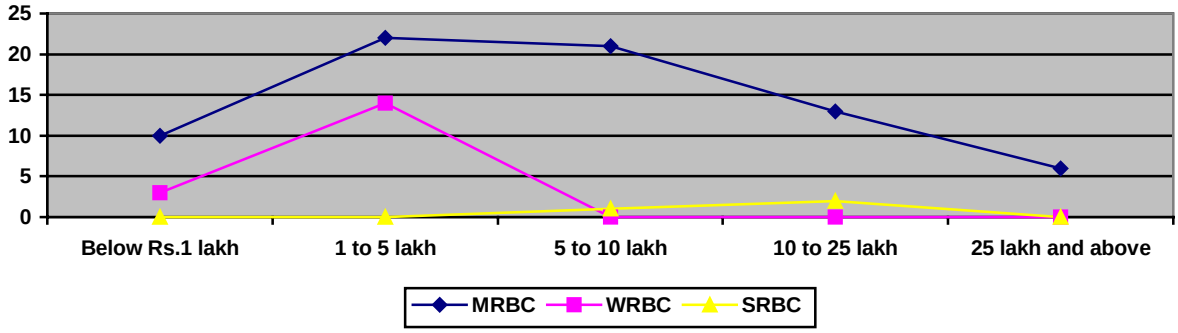
The total cost of arbitration during the period under review was Rs.7.56 crore. The largest expenditure on this count was incurred by MRBC, which spent Rs.6.89 crore on arbitration. The region-wise detail of the cost is given in the table below:

(Rs. in crore)

Region	**Settled**	**Live**	**Total**
MRBC	2.80	4.09	**6.89**
WRBC	0.11	0.27	**0.38**
SRBC	0.17	0.12	**0.29**
Total	**3.08**	**4.48**	**7.56**



The cost per arbitration case ranged from Rs.44,000 to Rs.48.58 lakh. The details for three regions are given below. Most of the cases in MRBC region cost between Rs.5 lakh to Rs.10 lakh, while most of the cases in WRBC region cost Rs.1 lakh to Rs.5 lakh. SRBC had only three cases of which two cases cost Rs.10 lakh to Rs.25 lakh each.



(Number of arbitration cases)

Region	Below Rs.1 lakh	Rs.1 lakh to 5 lakh	Rs.5 lakh to 10 lakh	Rs.10 lakh to 25 lakh	Rs.25 lakh and above	Total
*MRBC	10	22	21	12	6	**71**
*WRBC	3	14	0	0	0	**17**
SRBC	0	0	1	2	0	**3**
Total	**13**	**36**	**22**	**14**	**6**	**91**

* Details of the cost in respect of 39 cases of MRBC and 3 cases of WRBC were not available.

3.2.11 Defence of the case

Audit found that in some of the arbitration cases ONGC failed to produce records before arbitrators.

(i) ONGC placed an order for the first time on M/s. Ruchika Cables (December 1989) for supply of 100 CDP seismic cables. ONGC was to supply connectors to the party for fixing the cable. The firm intimated (January 1993) that the cables were ready and waiting for connectors. ONGC supplied connectors without obtaining any security for the same. A joint inspection of the material supplied by the contractor was carried out (July 1994). The cables did not conform to the specifications and were rejected. ONGC cancelled the order and asked the firm in September/October 1994 to return the connectors. As the party did not respond, ONGC filed a case against the firm (July 1997) for the recovery of the cost of connectors along with interest amounting to Rs.36.31 lakh. During the arbitration proceedings, the arbitrator directed ONGC (September 2001) to submit a copy of Joint Inspection Report indicating rejection of cables. But ONGC could not submit the Joint Inspection Report as the concerned file had been stolen. Thereafter, more than three years had elapsed but ONGC could not submit the required Report before the arbitrator. The case was pending in arbitration.

The Management accepted the audit observation and stated (January 2005) that the 'First Information Report' and 'non-traceable reports' were filed with the arbitrator and pronouncement of the award was expected soon.

The Arbitrator announced the award on 20 January and directed ONGC to pay Rs.3.76 lakh to the firm towards cost of 76 cables and connection charges thereof, which the firm had already done, and the firm to return the balance connectors to ONGC.

(ii) M/s. Birla Technette Gas Exploration Limited was awarded a contract for the work of drilling of oil wells on meter rate basis in Gandhar belt at Ankleshwar Asset. The contractor initiated (1998) an arbitration case to pursue its claim for refund of Rs.33.20 lakh recovered by ONGC towards damages caused to the oil well due to negligence on the part of the contractor and interest thereon. It was observed that the recovery made by ONGC on account of damages of oil wells was as per the terms and conditions of the contract but ONGC failed to establish in the arbitration proceedings, the negligence on the part of the contractor that caused damage to the oil wells. The arbitrators allowed (June 2000) the full claim of the contractor.

The Management stated (January 2005) that the arbitration award was challenged in the Court as none of the arbitrators had technical knowledge regarding the well and its difficulties.

The Management's contention is not tenable because ONGC was to appoint one of the arbitrators of the arbitration tribunal and, therefore, it was responsible for not appointing a technical person as arbitrator.

3.2.12 Collection of award

Audit found that in the following cases ONGC was unable to collect the award given by the arbitrator.

(i) ONGC entered into a contract with M/s. Geo Consultant Instrument, USA (August 1980) for providing services at a total cost of US$ 0.78 million (including US$ 0.18 million towards consultancy). The firm was paid a processing fee of US$ 0.43 million and a consultancy fee of US$ 0.12 million between 1980 and 1983 without obtaining any guarantee or security. The firm defaulted and failed to deliver required services, as it did not undertake the work as envisaged in the contract. ONGC invoked (October 1988) the arbitration clause of the contract, five years after default had occurred. Though the arbitrator gave an award of US$ 0.55 million (Rs.2.67 crore) in favour of ONGC (January 2002), ONGC was unable to collect the award as later investigations through the Indian Embassy in USA revealed that the firm was non-existent.

The Management stated (January 2005) that action was being taken to engage an advocate for filing the original award in District court, Dehradun, for making it a decree.

(ii) ONGC placed a supply order (October 1993) for procurement of 292 drums of pipes/lubricants on M/s. M J Enterprises, Kolkata, at a total cost of Rs.13.09 lakh. However, the material supplied failed to meet the declared specifications and the supplier

did not replace the same. ONGC initiated (January 1997) arbitration for recovery of an amount of Rs.7.48 lakh with interest. The arbitrator awarded an amount of Rs.6.82 lakh with interest in favour of ONGC in October 1997 but the same could not be executed, as the whereabouts of the firm were not known.

The Management accepted (January 2005) that in the absence of the whereabouts of the contractor the awards/decree were pending for execution.

3.2.13 Conclusion/recommendations

A more efficient and effective contract management mechanism may reduce the incidence of disputes and arbitration in ONGC. It also needs to frame clear policies relating to appointment of Arbitrators and Advocates, payment of fees and time period for finalising the cases in order to ensure timely and economical settlement of cases. Timely pursuance of the conciliation mechanism may also help ONGC in settlement of pending cases.

The Management, while appreciating the audit observations, stated (January 2005) that ONGC was initiating process to further improve the policy regarding engagement of advocates and arbitrators and assured that it would continue in its endeavour to constantly improve the systems, procedures and contract management programme.

The review was issued to the Ministry in October 2004; its reply was awaited (March 2005).