

Frequently Asked Questions (FAQs)

CCIE Mechanism

Q. What is the basic procedure to refer a dispute to CCIE? Who will take the call?

Ans. Both the developer and the contractor are free to suggest the option of resolution of dispute through CCIE mechanism to the other party.

In case the option is suggested by the developer, the dispute would be referred to CCIE, subject to the acceptance of the same by the contractor.

If the request for conciliation has been raised by the contractor, the developer may try to resolve the matter internally within 30 days, failing which, the matter shall be referred to the CCIE **by the Developer**. However, the CMD/Board of the Developer may determine an amount below which the developer would not go for conciliation, after weighing the nature and quantum of disputes in the concerned organization.

Q. Is it mandatory for the contractor to go for conciliation through CCIE?

Ans. It is not mandatory for the contractor to go for conciliation through CCIE. However, provision of CCIE may be suitably incorporated in the contract document by CPSEs so that there is an option to use this mechanism. In addition, it is to be clarified that once, the parties agree to go for the conciliation through CCIE mechanism, the option of arbitration will not be available.

Q. What will be the next step if the contractor does not agree with the decision of the CCIE?

Ans. The CCIE proceedings would be considered successful and a decision would be made, only if the same is agreed to by both parties. In case any party does not agree, conciliation proceedings would be considered to have been failed and the parties may seek legal remedies from appropriate court of law. However, the option of arbitration will not be available.

Q. What will happen to cases which are already under arbitration proceedings?

Ans. In such cases, where the dispute is already pending before the Arbitration Tribunals or the Courts, both the parties [i.e. Developer and Contractor] need to agree to refer the matter to CCIE. In the event of such agreement, both the parties have to withdraw from the arbitration proceedings and to forego their rights to proceed for further arbitration in the subject matter. However, other legal remedies would remain open to the parties.

Q. Is the CCIE mechanism applicable for Thermal Power projects also?

Ans. Yes, the CCIE mechanism is applicable for all projects, including Thermal Power Projects, being executed by CPSEs/Statutory bodies under the administrative control of the Ministry of Power.

Q. What would be the nature of order passed by CCIE?

Ans. In the event of the conciliation proceedings being successful, the parties to the dispute would sign a written settlement agreement and the conciliators would authenticate the same. Such settlement agreement would then be binding on the parties as per Section 73 of the Arbitration and Conciliation Act, 1996

Q. Can claims which are not in contractual terms & conditions, but are reasonable, such as extended contract tenure expenses due to non-availability of Right of Way be made before CCIE?

Ans. Yes, all reasonable claims above a certain threshold can be referred to the CCIE. The CCIE will be able to reconcile the differences between parties and reach a solution which is mutually agreed upon even outside of the contractual terms and conditions.

Q. What is the rationale behind not allowing conciliation and arbitration to go on simultaneously?

Ans. The purpose of CCIE mechanism is to provide a swift and cost-effective resolution of disputes, which often lead to time and cost overrun in projects. Allowing arbitration alongside conciliation proceedings would lead to duplication of efforts. Further, Conciliation and Arbitration Act, 1996 (Clause 77) also does not allow conciliation and arbitration to go on simultaneously. Efforts in conciliation should not lead to loss of more of precious time.

Q. What would be the cost of conciliation through CCIE and who will bear the cost?

Ans. Details are provided in O.M. dated 29.12.2021.

Q. Can the CCIE go beyond contract boundary for resolution of disputes?

Ans. Yes, CCIE is authorized to go beyond contractual provision for swift resolution of disputes, subject to acceptance by the parties.

Q. What is the maximum threshold value for claims that can be settled under CCIE?

Ans. There is no maximum threshold of claims.

Q. What is the time frame for raising disputes by Contractor?

Ans. The time frame for raising disputes would be as per terms of the contract. However, the claims which are much delayed in time is bound to be adversely viewed.

Q. Whether the contractor would be permitted to engage advocate to conduct the proceeding before CCIE?

Ans. The procedure of CCIE shall not be treated as alternate arbitration proceedings where both parties come with Statement of claims/defence, arguments/counter arguments, rejoinders, written submissions etc., aided by their respective lawyers. The forum of CCIE is a conciliation forum, where mutual give and take constitutes the essence, rather than strict legal positions of the parties. Hence, the parties are expected to be brief and to the point before the committee with regard to their respective stance and view the exercise in the spirit of conciliation / settlement. Advocates may not be required for the proceedings before CCIE.

Q. Whether there is any standard format w.r.t. undertaking to be submitted by the parties before referring a matter to CCIE?

Ans. An undertaking may be provided by the parties in a format that will be devised by CEA in due course.

Q. Whether the conciliation committee has power to give its own verdict in a situation where one party is not ready to accept the suggestion of the committee? What is meant by the term settlement in MoP OM dated 29.12.2021?

Ans. No. The conciliation committee has no power to give its own verdict in a situation where one party is not ready to accept the suggestion of the Committee. Settlement agreement has the same meaning as per Arbitration and Conciliation Act, 1996.

Q. Will the CPSEs be provided immunity from Vigilance Scrutiny in case of Amicable Settlement?

Ans. The forum of CCIE is a conciliation forum, where mutual give and take constitutes the essence, rather than strict legal positions of the parties. However, the CCIE mechanism will not bypass the appropriate and applicable CVC guidelines. There is no separate legal immunity to CCIE. However, bonafide decisions will find protection in the transparent procedure adopted by the CCIEs.

Q. How many cases can be referred to each CCIE at any point in time?

Ans. No upper limit has been fixed for the number of cases that can be referred to each CCIE but, a CCIE will normally be considered unavailable to take new cases if it is handling cases to such an extent that there would be avoidable delay in the event of more cases being taken up by the same CCIE. The work of maintaining details of CCIE, its members, work load and allocation of a dispute to CCIE has been entrusted to CEA.

Q. What is the grace period provision if a dispute is not resolved by the CCIE in 03 months?

Ans. In exceptional cases, if any dispute so merits, the time period may be extended at the discretion of Conciliation Committee (with reasons to be recorded in writing), for a further period of three months.

Q. Is the CCIE mechanism applicable for overseas contractors also?

Ans. The option of conciliation through CCIE shall be available to overseas contractors also for all projects being executed by CPSEs under administrative control of Ministry of Power, subject to consent by both parties.

Q. Where will be the Secretariat of CCIE located?

Ans. The Secretariat of CCIE shall be located at the Hydro Project Monitoring Division of Central Electricity Authority. Contact details are given below:

CE(HPM),

7th floor Sewa Bhawan R.K. Puram

NEW DELHI, 110066 ,

E-mail- cea-hpmd@gov.in, manoj.cea@gov.in

Q. Will CCIE mechanism result in removal of DAB / DRB and Arbitration provisions in future projects?

Ans. No. The existing provisions of DAB/DRB (in the form of IE for Hydro projects) and arbitration shall remain in future projects. However, the option of arbitration will not be available, in case the parties choose to go for conciliation through CCIE.

Q. What is the guarantee that decision of three member CCIE will be accepted by CPSUs?

Ans. Once the conciliation process succeeds in reaching a settlement agreement, at the level of the Conciliation Committee, further legal proceedings by the CPSU/Statutory Body/ Autonomous Body under MoP, will be allowed only after obtaining the approval of Ministry of Power.

Q. Does the CCIE have internal guidelines on evaluation of claims or evidences required to substantiate the claims

Ans. CCIEs can frame such guidelines, if they wish. No guidelines are provided by the Ministry of Power. The CCIE are expected to be working with the necessary flexibility to arrive at an amicable and genuine solution.

Q. Can the contractor deny the request of the developer to opt for conciliation through CCIE?

Ans. Yes, contractor can deny request of the developer to opt for conciliation through CCIE.

Q. If a contract has 3 claims; can the contractor choose to settle 2 claims through CCIE and 1 claim through arbitration in the same contract?

Ans. Yes, the contractor has a right to opt for CCIE mechanism to settle 02 claims and arbitration mechanism for the remaining claim, subject to the consent of the other party.

Q. Is the CCIE mechanism applicable for EPC Projects only?

Ans. The CCIE mechanism is applicable to all type of projects in power sector.

Independent Engineer Mechanism

Q. Is the decision of Independent Engineer binding on parties?

Ans. No. The first step in dispute resolution i.e. “Independent Engineer” is a replacement of DRB. In case of dissatisfaction, the aggrieved party can seek arbitration/conciliation as next step as per dispute resolution mechanism provided in the contract.

Q. Will the IE be authorized to go beyond the contract boundary as part of Dispute avoidance mechanism?

Ans. The IE can suggest reasonable measures beyond the contract terms for early resolution of disputes, subject to the acceptance by the parties.

Q. What would be remuneration of the IEs and who will bear the cost?

Ans. Details are provided in O.M. dated 27.09.2021.

Q. What steps have been taken to avoid conflict of interest of IEs?

Ans. In order to avoid conflict of interest, it shall be ensured that the IE should not have been engaged for providing any service to any of the parties i.e. the developer or the contractor in the last three years.

Q. Will the IE be equipped to assess and quantify claims?

Ans. Yes, the IE will be equipped to assess and quantify the claim.

Q. Is the dispute avoidance mechanism through IE applicable for thermal, transmission and distribution projects as well?

Ans. The dispute avoidance mechanism through IE is applicable for hydro projects only at present.

A presentation on “Dispute Resolution by Conciliation Committee of Independent Experts”

Topics

- Present Dispute Resolution Mechanism
- MoP OM regarding Constitution of Independent Engineer (for hydro contracts), Conciliation Committee of Independent Experts (CCIE) (for entire power sector) & Guidelines for early settlement of disputes - Salient points
- Steps in dispute resolution through CCIE
- Constitution of the CCIE's
- Mechanism of allocation of work (disputes) to CCIE's
- Monitoring, Analysis and Feedback Mechanism
- Conclusion

Claim, Dispute and Arbitration

Stage-I
(DAB/DRB) / IE

- EIC to decide Contractor's claim within 42 days
- In case of disagreement/ dispute- DAB/ DRB- 84 DAYS (to be substituted by IE -30 DAYS)

Stage-II
(Amicable Settlement/
Committee of Directors / Other
Internal Mechanism)

- The parties may go for amicable settlement or other internal mechanism for dispute resolution (56 DAYS)

Stage-III-
Arbitration (12 MONTHS)
/Conciliation (3 MONTHS)

- On receipt of reference of dispute through Conciliation Mechanism, the CPSU may try to crystallize the the issues and make efforts to resolve the issue internally within 30 days.
- If remaining unresolved, the same shall be referred to CCIE. CEA to allot the panel.

Dispute Avoidance Mechanism through Independent Engineer in hydro sector- OM dated 27.09.21- Salient Features

The salient features of the OM regarding constitution of IE are-

- Applicable for hydro CPSE's executing power projects
- The dispute avoidance process shall be conducted as per MoP OM dated 27.09.21
- DAB/ DRB to be replaced with IE
- IE expected to provide timely resolution of conflicts at inception stage, reduce conversion of initial disagreements over issues into full fledged disputes and ensure timely completion of projects
- As per SOP, IE to resolve disagreement within 30 days
- The 1st panel of 19 IE already issued by MoP vide OM dated 29.11.2021.
- CPSE and Contractor to jointly select one IE

Conciliation Committee of Independent Experts for resolution of disputes- [OM dated 29th Dec'21](#)

The salient features of the OM regarding constitution of CCIE are-

- 3 CCIE to be constituted initially for settlement of disputes arising in contracts of CPSU's/ Statutory Bodies executing power projects. 3 members in each CCIE.
- The conciliation process shall be conducted under Part-III of the [Arbitration and Conciliation Act, 1996](#).
- The conciliation process may be initiated by the Contractor/ Employer
- Amount to dispute to be above a threshold level & to be decided by the head of the organization of the developer of the project
- Contractor may give preference to any one of the three CCIE's
- Dispute to be settled in not more than 5 sittings/3 months (max 6 m)
- The conciliator should not have provided any service to any of the parties within last 5 years
- CEA to look after the work of maintaining details of CCIE's, work load and allocation of dispute

Guidelines for early settlement of disputes and to minimize the arbitral claims/ disputes in hydro power sector - [OM dated 16.03.2022](#)

The salient features of the OM are-

- Due diligence in selection of Arbitrators.
- Contractors who repeatedly rise unjustified or inflated claims and engage in frivolous litigation/ arbitrations to be identified and debarred
- Delegation of power to EIC/ HoP
- Digitization of records and real time data recording

Steps for dispute resolution through CCIE

- **On receipt of reference of dispute through Conciliation Mechanism, the CPSU may try to crystallize the issues and make efforts to resolve the issue internally within 30 days.**
- **If remaining unresolved, the same shall be referred to CCIE. CEA to allot the panel.**
- **CCIE to resolve the dispute within 3 months.**

CCIE Panel- Main features as per OM

- Panel to be valid for 3 years (max 5 years).
- Initially 3 CCIE panel. Panel can be suitably increased.
- One of the members to be sector expert.
- No Conflict of Interest

CCIE-As per MoP OM dated 22-03-2022 & 03-05-2022

CCIE- 1

- Shri Anup Wadhawan, Ex-Secretary (Commerce), Gol
- Shri Ravinder Kumar Sharma, Ex-MD, HBSEBL
- Shri Mrinal Kanti Bhattacharya, Ex-Executive Director, Indian Bank

CCIE-2

- Ms. Rashmi Verma, Ex-Secretary (Tourism), Gol
- Shri Dharendra Veer Singh, Ex-CMD, TF{DC (India) Ltd
- Shri Naveen Bhushan Gupta, Ex-Director (Finance), PFC Ltd.

CCIE-3

- Shri P. S. Kharola, Ex-Secretary (Civil Aviation), Gol
 - Shri Anil Kumar Jha, Ex-Director (Technical), NTPC Ltd.
 - Shri Chinmaya Gangopadhyaya, Ex-Director (Projects), PFC Ltd.
- Coal Mining Expert Member- Shri Tapas Kumar Nag, Ex-CMD, NCL (disputes related to coal mines)

Mechanism of Allocation of work to CCIE's & Feedback Mechanism

- CEA will look after the work of maintaining details of the CCIE's, work load and allocation of disputes to CCIE panels.
- **1st step- Prerequisites for dispute resolution through CCIE's**
- CEA will see the conflict of interest while allotting the dispute to a particular panel.
- The amount pertaining to dispute (if quantifiable) should be above a threshold level (say Rs 10 crores)- CPSE to decide & intimate to CEA or the limit can be made uniform for all CPSE's
- The matter of dispute has been taken up with first with the Dispute Avoidance Mechanism (through IE), if applicable; provisions related to the Conciliation Mechanism have been incorporated in the contract documents; 30 days period for amicable settlement completed and both parties agree to resolve the dispute through CCIE.

Mechanism of Allocation of work to CCIE's

2nd step- Allocation of works to CCIE Panel

- The contractor may select one of the 3 CCIE and intimate to CEA (CI 4.4).
- CEA will analyze whether that CCIE can be allotted the concerned dispute keeping in view the suitability of the technical expert to handle the issue, work load at that point of time with the CCIE panelists, and conflict of interest, if any.
- Work load that can be handled by a panel - Depends on the claim amount and complexity of the dispute. Ideally, not more than 3-5 disputes at any point of time can quantify as sufficient work load. Disputes pertaining to hydro sector are generally more complex in nature. Consent from presiding conciliator of the CCIE panel will be taken if the work load is beyond 5 cases.
- Efforts will be made to make all the CCIE panel equally loaded. CEA to allot the dispute within 15 days after both parties have consented to go for conciliation process for dispute resolution.

Mechanism of Allocation of work to CCIE's

3rd Step- Monitoring, Analysis & Feedback Mechanism

- A Database of the disputes viz. allocation of work, time taken to settle dispute, settlement amount/claim amount, etc. will be maintained by CEA.
- Analysis will be done related to time taken to settle claim, claim amount settled and reduction vis-à-vis original claim, % cases referred to it and settled (success %) for settlement of the dispute by various CCIE panels, recommendations for improvement in contract conditions/ administration, etc.

Mechanism of Allocation of work to CCIE's

c) Analysis will be done regarding the sector where more disputes are involved and if technical expert found insufficient, than more technical/ other experts from that sector can be empanelled.

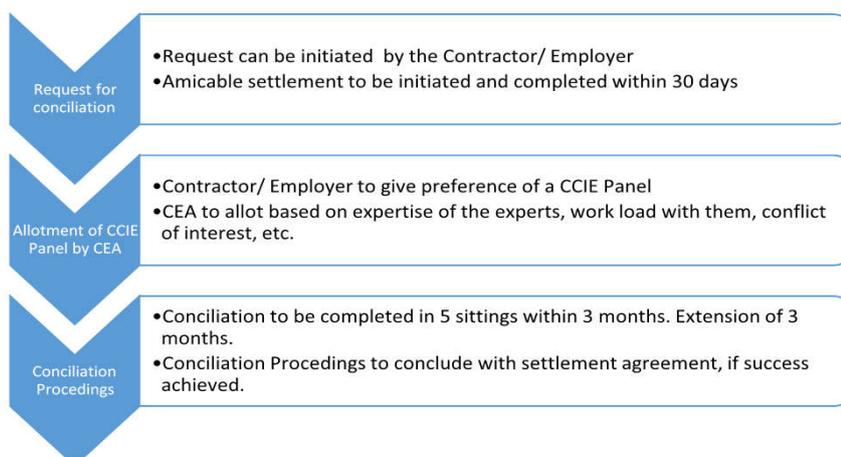
d) In case, dispute settlement is getting delayed due to increased work load, CEA will intimate MoP and no of panels may be increased.

e) A Quaterly report on the status of dispute allocation and resolution will be submitted to MoP. All CPSU's to submit monthly report to CEA.

4th Step- Lesson learnt and Improvement in contract formulation and contract administration

Based on the settlement agreement, and recommendations of CCIE, if any, efforts will be made to compile the lessons learnt and suggest improvement in contract formulation and contract administration

Flow Chart



**Summary of Conciliation Cases taken up by CCIEs (NHAI)
(status as on 28.06.2021)**

Particulars	Total
Nos. of Cases referred	187
Nos. of cases ongoing	65
Nos. of cases succeeded/settled	105 (86%)
Nos. of cases failed	17 (14%)

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Year-wise Summary of Successful Cases (NHAI)

Sl. No.	Particulars	Overall Till date (28.06.2021)	2021-22	2020-21	2019-20	2018-19	2017-18
(i)	No. of Cases Resolved	105	10	60	27	8	Nil
(ii)	Amount Claimed by Concessionaire/ Contractor (Rs. in Cr.)	25,323	1,167	14,207.	6,931	3,019	
(iii)	Amount Counter Claimed by NHAI (Rs. in Cr.)	6,606	345	3,431	1,819	1,011	
(iv)	Settlement Amount (Rs. in Cr.)	9,319 (37%)	328	5,313	2,434	1,245	

Note: Claims of contractors have been settled through CCIE at 37% of the originally claimed amount which has substantially reduced the financial burden on NHAI.

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Conclusion

- ✓ The allotment of work to the CCIE panel will be based on present assignments with the CCIE panelists (conciliators), no conflict of interest, amount of dispute, complexity of dispute, technical expertise available and performance of the panels.
- ✓ Monitoring, Analysis and Feedback Mechanism
- ✓ Lessons learnt from dispute resolution will form part of the improvement exercise in future contract formulation and contract administration.
- ✓ Suggestions, for improvement in the Conciliation mechanism for making the mechanism more efficient.



Thank you