

THE MEDIATION ACT, 2023

(No. 32 of 2023, dt. 14-9-2023)

[As amended SO 4506(E), dt. 13-10-2023, w.e.f. 13-10-2023]

An Act to promote and facilitate mediation, especially institutional mediation, for resolution of disputes, commercial or otherwise, enforce mediated settlement agreements, provide for a body for registration of mediators, to encourage community mediation and to make online mediation as acceptable and cost effective process and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Seventy-fourth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

¹1. Short title, extent and commencement

- (1) This Act may be called the Mediation Act, 2023.
- (2) It shall extend to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

CHAPTER II

APPLICATION

2. Application

This Act shall apply where mediation is conducted in India, and—

- (i) all or both parties habitually reside in or are incorporated in or have their place of business in India; or
- (ii) the mediation agreement provides that any dispute shall be resolved in accordance with the provisions of this Act; or
- (iii) there is an international mediation; or
- (iv) wherein one of the parties to the dispute is the Central Government or a State Government or agencies, public bodies, corporations and local bodies, including entities controlled or owned by such Government and where the matter pertains to a commercial dispute; or
- (v) to any other kind of dispute if deemed appropriate and notified by the Central Government or a State Government from time to time, for resolution through mediation under this Act, wherein such Governments, or agencies, public bodies, corporations and local bodies including entities controlled or owned by them, is a party.

¹ Enforced w.e.f. 9-10-2023 vide SO 4384(E), dt. 9-10-2023.

COMMENTS

This section provides for applicability of the Act. This Act shall apply where mediation is conducted in India. Mediation agreement provides that any disputes shall be resolved in accordance with the provisions of this Act.

13. Definitions

In this Act, unless the context otherwise requires,—

- (a) “commercial dispute” means a dispute defined in clause (c) of sub-section (1) of section 2 of the Commercial Courts Act, 2015 (4 of 2016);
- (b) “community mediator” means a mediator for the purposes of conduct of community mediation under Chapter X;
- (c) “Council” means the Mediation Council of India established under section 31;
- (d) “court” means the competent court in India having pecuniary and territorial jurisdiction and having jurisdiction to decide the disputes forming the subject matter of mediation, if the same had been the subject matter of a suit or proceeding;
- (e) “court-annexed mediation” means mediation including pre-litigation mediation conducted at the mediation centres established by any court or tribunal;
- (f) “institutional mediation” means mediation conducted under the aegis of a mediation service provider;
- (g) “international mediation” means mediation undertaken under this Act and relates to a commercial dispute arising out of a legal relationship, contractual or otherwise, under any law for the time being in force in India, and where at least one of the parties, is—
 - (i) an individual who is a national of, or habitually resides in, any country other than India; or
 - (ii) a body corporate including a Limited Liability Partnership of any nature, with its place of business outside India; or
 - (iii) an association or body of individuals whose place of business is outside India; or
 - (iv) the Government of a foreign country;
- (h) “mediation” includes a process, whether referred to by the expression mediation, pre-litigation mediation, online mediation, community mediation, conciliation or an expression of similar import, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person referred to as mediator, who does not have the authority to impose a settlement upon the parties to the dispute;
- (i) “mediator” means a person who is appointed to be a mediator, by the parties or by a mediation service provider, to undertake mediation, and includes a person registered as mediator with the Council.

1 Enforced w.e.f. 9-10-2023 vide SO 4384(E), dt. 9-10-2023.

Explanation: Where more than one mediator is appointed for a mediation, reference to a mediator under this Act shall be a reference to all the mediators;

- (j) “mediation agreement” means a mediation agreement referred to in sub-section (1) of section 4;
- (k) “mediation communication” means communication made, whether in electronic form or otherwise, through—
 - (i) anything said or done;
 - (ii) any document; or
 - (iii) any information provided,for the purposes of, or in relation to, or in the course of mediation, and includes a mediation agreement or a mediated settlement agreement;
- (l) “mediation institute” means a body or organisation that provides training, continuous education and certification of mediators and carries out such other functions under this Act;
- (m) “mediation service provider” means a mediation service provider referred to in sub-section (1) of section 40;
- (n) “mediated settlement agreement” means mediated settlement agreement referred to in sub-section (1) of section 19;
- (o) “Member” means a Full-Time or Part-Time Member of the Council and includes the Chairperson;
- (p) “notification” means notification published in the Official Gazette and the expression “notified” with its cognate meanings and grammatical variations shall be construed accordingly;
- (q) “online mediation” means online mediation referred to in section 30;
- (r) “participants” means persons other than the parties who participate in the mediation and includes advisers, advocates, consultants and any technical experts and observers;
- (s) “party” means a party to a mediation agreement or mediation proceeding whose agreement or consent is necessary to resolve the dispute and includes their successors;
- (t) “place of business” includes—
 - (a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a party stores its goods, supplies or receives goods or services or both; or
 - (b) a place where a party maintains its books of account; or
 - (c) a place where a party is engaged in business through an agent, by whatever name called;
- (u) “pre-litigation mediation” means a process of undertaking mediation, as provided under section 5, for settlement of disputes prior to the filing

of a suit or proceeding of civil or commercial nature in respect thereof, before a court or notified tribunal under sub-section (2) of section 5;

- (v) “prescribed” means prescribed by rules made by the Central Government under this Act;
- (w) “Schedule” means the Schedule annexed to this Act;
- (x) “secure electronic signature” with reference to online mediation means, electronic signatures referred to in section 15 of the Information Technology Act, 2000 (21 of 2000); and
- (y) “specified” means specified by regulations made by the Council under this Act.

COMMENTS

This section provides for various expressions applied in this Act, such as “commercial disputes”, “community mediator”, “council”, “court”, “court-annexed mediation”, “institutional mediation”, “international mediation”, “mediation”, “mediator”, “mediation agreement”, “mediation service provider”, “place of business”, etc.

CHAPTER III

MEDIATION

4. Mediation agreement

(1) A mediation agreement shall be in writing, by or between parties and anyone claiming through them, to submit to mediation all or certain disputes which have arisen or which may arise between the parties.

(2) A mediation agreement may be in the form of a mediation clause in a contract or in the form of a separate agreement.

(3) A mediation agreement is in writing, if it is contained in or recorded as—

- (a) any document signed by the parties;
- (b) an exchange of communications or letters including through electronic form as provided under the Information Technology Act, 2000 (21 of 2000);
- (c) any pleadings in a suit or any other proceedings in which existence of mediation agreement is alleged by one party and not denied by the other.

(4) A reference in any agreement containing a mediation clause shall constitute a mediation agreement if the agreement is in writing and the reference is such as to make the mediation clause as part of the agreement.

(5) The parties may agree to submit to mediation any dispute arising between them under an agreement, whether entered prior to arising of the dispute or subsequent thereto.

(6) A mediation agreement in case of international mediation shall refer to an agreement for resolution in matters of commercial disputes referred to in clause (a) of section 3.

COMMENTS

This section provides that mediation agreement shall be in writing, by or between parties and anyone claiming through them, to submit to mediation all or certain disputes which have arisen or which may arise between the parties. It further provides that mediation agreement may be in the form of a mediation clause in a contract or in the form of a separate agreement.

5. Pre-litigation mediation

(1) Subject to other provisions of this Act, whether any mediation agreement exists or not, the parties before filing any suit or proceedings of civil or commercial nature in any court, may voluntarily and with mutual consent take steps to settle the disputes by pre-litigation mediation in accordance with the provisions of this Act:

PROVIDED that pre-litigation mediation in matters of commercial disputes of Specified Value shall be undertaken in accordance with the provisions of section 12A of the Commercial Courts Act, 2015 (4 of 2016), and the rules made thereunder.

(2) The provisions of sub-section (1) shall be applicable to the tribunals notified by the Central Government or a State Government, as the case may be.

(3) For the purposes of sub-sections (1) and (2), unless otherwise agreed upon by the parties, a mediator,—

- (i) registered with the Council; or
- (ii) empanelled by a court-annexed mediation centre; or
- (iii) empanelled by an Authority constituted under the Legal Services Authorities Act, 1987(39 of 1987); or
- (iv) empanelled by a mediation service provider recognised under this Act,

shall conduct pre-litigation mediation.

(4) For conducting pre-litigation mediation under clauses (ii) and (iii) of sub-section (3), a party may request any person designated for this purpose by the High Courts, or an Authority constituted under the Legal Services Authorities Act, 1987 (39 of 1987), as the case may be.

(5) The court-annexed mediation centre and an Authority constituted under the Legal Services Authorities Act, 1987(39 of 1987), shall maintain a panel of mediators for the purposes of pre-litigation mediation.

(6) Notwithstanding anything contained in sub-sections (1) and (2) and the Motor Vehicles Act, 1988 (59 of 1988), when an application for compensation arising out of an accident is made before the Claims Tribunal, if the settlement as provided for in section 149 of that Act is not arrived at between the parties, the Claims Tribunal shall refer the parties for mediation to a mediator or mediation service provider under this Act.

(7) Where the parties arrive at a settlement agreement under sub-section (6), it shall be placed before the Claims Tribunal for its consideration.

(8) If the parties do not reach to settlement agreement under sub-section (6), a non-settlement report prepared by the mediator shall be forwarded to the Claims Tribunal, which has referred the matter for mediation, for adjudication.

COMMENTS

This section provides that whether any mediation agreement exists or not, any party before filing any suit or proceedings of civil or commercial nature in any Court shall, take steps to settle the disputes by pre-litigation mediation in accordance with the provisions of this Act. It further provides that pre-litigation mediation in matters of commercial disputes of Specified Value, shall be undertaken in accordance with the provisions of section 12A of the Commercial Courts Act, 2015, and the rules made thereunder.

6. Disputes or matters not fit for mediation

(1) A mediation under this Act shall not be conducted for resolution of any dispute or matter contained in the indicative list under the First Schedule:

PROVIDED that nothing contained herein shall prevent any court, if deemed appropriate, from referring any dispute relating to compoundable offences including the matrimonial offences which are compoundable and pending between the parties, to mediation:

PROVIDED FURTHER that the outcome of such mediation shall not be deemed to be a judgment or decree of court referred to in sub-section (2) of section 27, and shall be further considered by the court in accordance with the law for the time being in force.

(2) If the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification, amend the First Schedule.

COMMENTS

This section provides an indicative list of disputes or matters which cannot be referred to mediation except some compoundable offences or matrimonial offences connected with or arising out of civil proceedings which can be referred to mediation by Court, if deemed appropriate. Settlement arrived in these cases not to have effect of judgement or decree of Court. The Central Government is empowered to amend First Schedule.

7. Power of court or tribunal to refer parties to mediation

(1) Notwithstanding the non-settlement of dispute under sub-section (1) of section 5, the court or tribunal may, at any stage of proceeding, refer the parties to undertake mediation.

(2) If the court or tribunal refers the parties to undertake mediation, it may pass suitable interim order to protect the interest of any party if deemed appropriate.

(3) The parties shall not be under obligation to come to a settlement in the mediation pursuant to a reference under sub-section (1).

COMMENTS

This section provides for the power of court or tribunal to refer parties to mediation. If the court or tribunal refers to parties to undertake mediation, may pass interim order to protect the interests of any party if deemed appropriate.

CHAPTER IV**MEDIATORS****8. Appointment of mediators**

(1) Unless otherwise agreed upon by the parties, a person of any nationality may be appointed as a mediator:

PROVIDED that mediator of any foreign nationality shall possess such qualification, experience and accreditation as may be specified.

(2) The parties shall be free to agree upon the name of mediator and the procedure for their appointment.

(3) If the parties do not reach any agreement on a matter referred to in sub-section (2), then the party seeking initiation of mediation shall make an application to a mediation service provider for the appointment of a mediator.

(4) Upon receiving an application under sub-section (3), the mediation service provider shall, within a period of seven days, appoint,—

- (i) the mediator as agreed by the parties; or
- (ii) in case the parties are unable to reach agreement as to the appointment of mediator or mediator agreed by them refuses to act as mediator, a mediator from the panel maintained by it, with his consent.

(5) The person appointed under clause (i) of sub-section (4) shall communicate his willingness or otherwise within a period of seven days from the date of receipt of communication of such appointment.

9. Preference of parties

The mediation service provider shall, while appointing any person from the panel of mediators maintained by it, consider his suitability and the preference of the parties for resolving the dispute.

10. Conflict of interest and disclosure

(1) The person appointed as a mediator shall, prior to the conduct of mediation, disclose in writing to the parties regarding any circumstance or potential circumstance, personal, professional, financial, or otherwise, that may constitute any conflict of interest or that is likely to give rise to justifiable doubts as to his independence or impartiality as a mediator.

(2) During the mediation, the mediator shall, without delay, disclose to the parties in writing any conflict of interest, referred to in sub-section (1), that has newly arisen or has come to his knowledge.

(3) Upon disclosure under sub-section (1) or sub-section (2), the parties shall have the option to waive any objection if all of them express in writing, which shall be construed as the consent of parties.

(4) Upon disclosure under sub-section (1) or sub-section (2), if either party desires to replace the mediator, then, in case of—

- (i) institutional mediation, such party shall apply to the mediation service provider for termination of the mandate of mediator;
- (ii) mediation other than institutional mediation, such party shall terminate the mandate of mediator.

COMMENTS

This section provides that when a person is appointed as a mediator, he shall disclose in writing to the parties about any circumstances or potential circumstances, personal, professional or financial, that may constitute conflict of interest or that is likely to give rise to justifiable doubts as to such mediator's independence or impartiality in the conduct of the mediation process.

11. Termination of mandate of mediator

A mediation service provider may terminate the mandate of a mediator upon—

- (i) the receipt of application from a party under clause (i) of sub-section (4) of section 10; or
- (ii) the receipt of information about the mediator being involved in a matter of conflict of interest from participants or any other person; or
- (iii) his withdrawal from mediation for any reason:

PROVIDED that termination under clause (ii) shall be effected if, after giving a hearing to the mediator, mediation service provider finds that there is justifiable doubt as to the independence or impartiality of the mediator and that the same has been brought to the notice of parties and that either party desires to replace the mediator.

12. Replacement of mediator

Upon termination of the mandate of mediator—

- (i) in case of mediation other than institutional mediation under clause (ii) of sub-section (4) of section 10, the parties may, appoint another mediator within a period of seven days from such termination; and
- (ii) under section 11, the mediation service provider shall appoint another mediator from the panel maintained by it within a period of seven days from such termination.

CHAPTER V**MEDIATION PROCEEDINGS****13. Territorial jurisdiction to undertake mediation**

Every mediation under this Act shall be undertaken within the territorial jurisdiction of the court or tribunal of competent jurisdiction to decide the subject matter of dispute:

PROVIDED that on the mutual consent of the parties, mediation may be conducted at any place outside the territorial jurisdiction of the court or tribunal, or by way of online mediation.

Explanation : For the removal of doubts, it is clarified that where the parties agree to conduct the mediation at any place outside the territorial jurisdiction or online, for the purpose of enforcement, challenge and registration of the mediated settlement agreement, the same shall be deemed to have been undertaken within the territorial jurisdiction of the court or tribunal of competent jurisdiction.

COMMENTS

This section provides that mediation under this Act shall take place within the territorial jurisdiction of the court or tribunal of competent jurisdiction unless parties agree to conduct mediation outside the said territorial jurisdiction or by way of online mediation.

14. Commencement of mediation

The mediation proceedings with respect to a particular dispute shall be deemed to have commenced—

- (a) where there is an existing agreement between the parties to settle the dispute through mediation, the date on which a party or parties receives notice from the party initiating the mediation, to refer such dispute to mediation; or
- (b) in other cases—
 - (i) where the parties have agreed to appoint a mediator of their choice for mediation and settlement of disputes between them on the date the mediator provides his consent to appointment; or
 - (ii) where one of the parties applies to a mediation service provider for settlement of disputes through mediation, the date of appointment of a mediator.

COMMENTS

This section provides that mediation proceedings with respect to a particular dispute shall be deemed to have commenced on the date on which a party issues notice to the other party in case of prior mediation agreement and in other cases on the day the parties have agreed to appoint a mediator of their choice or on the day when a party applies to a mediation service provider for mediation.

15. Conduct of mediation

- (1) The mediation process shall be conducted in the manner as may be specified.
- (2) The mediator shall assist the parties in an independent, neutral and impartial manner in their attempt to reach an amicable settlement of their dispute.
- (3) The mediator shall at all times be guided by the principles of objectivity and fairness and protect the voluntariness, confidentiality and self-determination of the parties, and the standards for professional and ethical conduct as may be specified.
- (4) The mediation process may include the mediator taking such measures as may be considered appropriate, taking into account the circumstances of the case, including meeting with parties or participants, jointly or separately, as frequently as deemed fit by the mediator, both in order to convene the mediation, and during the mediation for the orderly and timely conduct of the process and to maintain its integrity.
- (5) The mediator shall not be bound by the Code of Civil Procedure, 1908(5 of 1908), or the Indian Evidence Act, 1872 (1 of 1872).
- (6) The mediator with the consent of the parties shall determine the language or languages to be used in the mediation process.

COMMENTS

This section provides that the mediator shall assist the parties in an independent, neutral and impartial manner in their attempt to reach an amicable settlement of their dispute and he shall be guided by the principles of objectivity and fairness and protect the voluntariness, confidentiality and self-determination of the parties. It further provides that mediator shall not be bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872.

16. Role of mediator

- (1) The mediator shall attempt to facilitate voluntary resolution of the dispute by the parties and communicate the view of each party to the other to

the extent agreed to by them, assist them in identifying issues, advancing better understanding, clarifying priorities, exploring areas of settlement and generating options in an attempt to resolve the dispute expeditiously, emphasising that it is the responsibility of the parties to take decision regarding their claims.

(2) The parties shall be informed expressly by the mediator that he only facilitates in arriving at a decision to resolve a dispute and that he shall not impose any settlement nor give any assurance that the mediation may result in a settlement.

COMMENTS

This section provides that mediator shall attempt to facilitate voluntary resolution of the dispute by the parties, and communicate the view of each party to the other to the extent agreed to by them, assist them in identifying issues, reducing misunderstanding, clarifying priorities, exploring areas of compromise and generating options in an attempt to resolve the dispute.

17. Role of mediator in other proceedings

The mediator shall not—

- (a) 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 matter of the mediation proceedings;
- (b) be presented by the parties as a witness in any arbitral or judicial proceeding.

COMMENTS

This section provides that mediator 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 mediation proceedings and he shall not be presented by the parties as a witness in any arbitral or judicial proceeding.

18. Time-limit for completion of mediation

(1) Notwithstanding anything contained in any other law for the time being in force, mediation under this Act shall be completed within a period of one hundred and twenty days from the date fixed for the first appearance before the mediator.

(2) The period for mediation mentioned under sub-section (1) may be extended for a further period as agreed by the parties, but not exceeding sixty days.

COMMENTS

This section provides that mediation under this Act shall be completed within a period of one hundred and twenty days from the date fixed for the first appearance before the mediator and the period can be extended by further period by the parties but not exceeding 60 days.

19. Mediated settlement agreement

(1) A mediated settlement agreement includes an agreement in writing between some or all of the parties resulting from mediation, settling some or all of the disputes between such parties, and authenticated by the mediator:

PROVIDED that the terms of the mediated settlement agreement may extend beyond the disputes referred to mediation.

Explanation : A mediated settlement agreement which is void under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful settlement agreement within the meaning of mediated settlement agreement.