

Mediation and Conciliation Rules

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1. BACKGROUND

While the most logical conclusion to a dispute ought to be a viable resolution, with the passage of time, it has been often distorted to proving one is right and setting a precedent. Ideally in such civil, and more particularly, commercial disputes, the parties can attempt to address their differences across a table, identify and communicate their core interests and goals, and come up with their own feasible solutions. They can go then ahead and implement their solution and the dispute will be resolved without recourse to a court of law.

But, if this was so easy and parties could do it on their own, they would have never resorted to an adversarial method! Well, our answer is this: It is important to understand that a dispute also, has many decibels. Beyond a certain volume, the dispute becomes difficult to resolve without third party intervention or possibly an active facilitation.

Adversarial methods like litigation and arbitration, of course, have immense benefits when it comes to establishing a precedent in law and maybe even, development of the principles of jurisprudence. But in the process, the parties fight a legal battle against each other to be declared as a legal victor, a winner.

The relationship, already weakened by the conflict deteriorates sharply as the process unfolds. A difference of opinion escalates to a disagreement, and with time, a disagreement escalates to a dispute. To come to a solution, a dispute needs to be de-escalated back to a difference of opinion where doors of constructive communication are opened again. While, adversarial processes only escalate the conflict further and communication comes to a dead-end, this is where mediation comes handy.

Mediation and conciliation are out of court dispute settlement mechanisms that focus on the commercial interests of the parties rather than what is 'fair' and who is 'wrong'. Mediation is a voluntary and non-binding negotiation process. In mediation, a third, impartial and neutral party manages the interaction between the disputing parties. This neutral party is known as a mediator.

The facilitation of negotiation between disputing parties by the mediator ensures constructive negotiation between the disputing parties and helps them agree on a resolution that is fair, durable, and workable. It is the disputants themselves and not the mediator who create and finally agree on how the dispute needs to be resolved. In a way, mediation is nothing but the use of negotiation to resolve a dispute outside the traditional dispute resolution framework.

During mediation, the mediator communicates with both parties and tries to unearth their actual underlying interests in the dispute. The mediator does not take evidence or hear pleadings because he/she is not the decision maker. He/she helps the parties clearly articulate their key disputed issues and encourages them to devise commercially feasible solutions which will meet not just the immediate interests of the parties but also provide long lasting solutions. The mediator holds joint meetings with all disputing parties and private meetings with each disputing party to brainstorm possibilities out of the dispute. The outcome of a mediation is a settlement agreement which the disputing parties execute. Some schools of thought also propagate converting the mediation settlement into an arbitration or conciliation award. In such a case, the possibility of appeal is very low since the parties have voluntarily agreed to the terms of the award.

In addition to dispute resolution, mediation allows building stronger relationships between the parties and focuses on people cohesion more than the actual problem. The mediator has to use psychological and communication skills in order to understand the parties and influence them to agree on a single solution.

The parties may refer the dispute to mediation at any stage of the dispute:

- Before arbitration
- After arbitration but before passing of award by arbitrator
- Before initiating court proceedings
- During the court proceedings
- At appeal stage of court proceedings right upto the Supreme Court of India

The process of mediation may be initiated by the disputing parties by appointing one or more individual private mediators chosen mutually by the disputants or referring the matter to a mediation service provider. While direct appointment of mediation is generally referred to as private mediation, referring the dispute to a service provider is known as institutional mediation.

Unlike many other jurisdictions, there is no legal requirement to engage in pre-litigation mediation in India. Importantly, there is no prohibition either. The numbers of pre-litigation mediation are very low and no statistical data is available to analyse its impact. Based on an international experience, it is safe to presume that pre-litigation mediation is the most likely to result in a settlement. Post litigation mediation including those coming within the jurisdiction of commercial courts is governed by Section 89 of Code of Civil Procedure, 1908. Corporate disputes among shareholders and debtor-creditors under Companies Act, 2013 are governed by Section 442. The parties may obtain stay of court proceedings during the term of the mediation proceedings. Sometimes, the court *suo moto* refers civil disputes to mediation. In such cases, the disputes are usually referred to the court annexed, government run mediation centres. In the event of settlement of dispute in post litigation mediation, the court fees paid by parties is refunded.

A settlement agreement in a conciliation proceeding is enforceable in law as an arbitration award under Section 74 of Arbitration and Conciliation Act, 1996.

2. DEFINITIONS

2.1. Unless repugnant to the context, the meaning of the following terms used in the Rules shall be as follows:

2.1.1. “**Arb-Med-Arb**” shall mean a process where the parties shall attempt to settle the dispute through mediation after initiation of arbitration proceedings. If the dispute is not resolved through mediation, the parties shall continue with arbitration. If the dispute is resolved through mediation, the mediation settlement terms shall be referred to the arbitrator who shall record the consent terms as award through mutual consent under Section 73 of Arbitration and Conciliation Act, 1996;

2.1.2. “**Conciliation**” shall mean mediation conducted as per the procedure for conciliation followed as provided under Arbitration and Conciliation Act, 1996. A settlement agreement in a conciliation proceeding is enforceable in law as an arbitration award under Section 74 of Arbitration and Conciliation Act, 1996;

2.1.3. “**Med-Arb**” shall mean the process by which the parties shall first refer the dispute to mediation. If the dispute is not settled through mediation, the mediator shall submit possible terms of settlement to the parties. If the parties agree on the terms of settlement, the mediator shall record the terms of settlement as award through mutual consent under Section 73 of Arbitration and Conciliation Act, 1996. If the parties do not agree to the terms of settlement, the mediator or any other arbitrator appointed by the parties shall conduct arbitration in relation to the dispute;

2.1.4. **“Mediation”** shall mean voluntary and confidential process of facilitated negotiation where a neutral third party known as the mediator assists parties in to reach a mutually acceptable settlement to their dispute(s). The role of the mediator may be facilitative, evaluative and/or transformative. However, only the parties shall have the right to mutually decide the final terms on which the dispute is settled;

2.1.5. **“Private Body”** shall mean and include without limitation any sole proprietor, partnership firm, limited liability partnership, company, association of persons, Hindu Undivided Family, individual, juridical person or any other body corporate, professionals such as chartered accountants, company secretaries, advocates, psychologists, civil engineers, architects, doctors, and firms of such professionals, government companies, government bodies, government departments and ministries and any other entity covered by definition of State under Article 12 of Constitution of India and all such entities whether situated in India or outside India;

2.1.6. Whatever settlement procedure is used, the term **“Proceedings”** as used in the Rules refers to the process beginning with its commencement and ending with its completion or termination pursuant to the Rules.

2.2. For meaning and definition of the following terms, please refer to the clauses as follows:

<i>Term</i>	<i>Definition in Clause</i>
CMC	3.1
Mediator	3.3
Rules	3.1

3. APPLICATION OF RULES

3.1. These Mediation and Conciliation Rules (the **“Rules”**) shall apply to all mediations/conciliations administered by the as "Centre for Mediation and Conciliation" –An initiative of Bombay Chamber of Commerce and Industry" (**“CMC”**). The application of these Rules includes without limitation the following:

3.1.1. Where parties have an agreement in writing which provides for settlement of disputes between the parties under these Rules. Such an agreement may have been:

- (a) Entered into before the dispute arose, such as, in the contractual documents itself; or
- (b) Arrived at after the emergence of the dispute on the invitation of one party and acceptance by the other parties; or
- (c) Arrived at on the invitation of CMC.

3.1.2. To disputes referred to CMC for mediation/conciliation by any court of law in India or outside India, including any tribunal, forum, statutory or regulatory authority; and

3.1.3. To disputes referred to CMC for mediation/conciliation by any arbitrator or arbitral tribunal, whether in India or outside India;

- 3.1.4. To disputes referred to CMC for mediation/conciliation by any Private Body;
- 3.2. Where a mediation is administered pursuant to the Arb-Med-Arb Rules or Med-Arb Rules, the Rules and the mediation process shall be modified as necessary to be consistent with the terms of the Arb-Med-Arb Rules or Med-Arb Rules. The Rules include the Schedule of Mediation Costs in effect at the commencement of the Proceedings mediation, as separately amended from time to time by CMC.
- 3.3. The Rules provide for the appointment of one or more neutral third party, (the “**Mediator**”), to assist the parties in settling their dispute.
- 3.4. Mediation shall be used under the Rules unless, prior to the confirmation or appointment of the Mediator or with the agreement of the Mediator, the parties agree upon a different settlement procedure or a combination of settlement procedures. The term “mediation” as used in the Rules shall be deemed to cover such settlement procedure or procedures and the term “Mediator” shall be deemed to cover the neutral who conducts such settlement procedure or procedures.
- 3.5. In exceptional cases if the parties wish to modify or waive any provision of the Rules when applicable to them, the parties shall be required to make such request to the Mediator. If the Mediator endorses such a modification or waiver, the Mediator shall inform CMC in writing of such request. CMC may accept the request in whole or part or reject the request in writing stating reasons within 14 working days of receipt of such request.
- 3.6. CMC is the only body authorized to administer Proceedings under the Rules.

4. INITIATION OF MEDIATION (VOLUNTARY)

- 4.1. Any party or parties to a dispute wishing to initiate mediation may do so by filing with CMC a submission to mediation or a written request for mediation pursuant to these Rules.
- 4.2. A request for mediation should contain a brief statement of the nature of the dispute. It shall also set forth the contact information i.e. the names, addresses and telephone, e-mail or other communication references of the parties to the dispute and the counsel, if any, who will represent them in the mediation. It shall be accompanied by a copy of the mediation agreement/ agreement containing mediation clause, if any.
- 4.3. A copy of the request for mediation should be sent to all other parties to the mediation unless the request has been filed jointly by all parties.
- 4.4. Together with the request for mediation, the party or parties filing the request shall pay a non-refundable Filing Fee in force on the date the Request is filed. The Schedule of Filing Fee is provided at Annexure 1.
- 4.5. CMC shall acknowledge receipt of the request and of the filing fee in writing to the parties.

- 4.6. If the request is not made pursuant to an agreement to mediate or joint request for mediation by all parties to the dispute, CMC will promptly contact the other parties regarding the proposal for mediation, and may assist the parties in considering the proposal. Where the parties do not reach an agreement to refer their dispute to the Rules within 30 days from the date of the receipt of the request by CMC or within such additional time as may be reasonably determined by CMC, the Proceedings shall not commence.
- 4.7. In the event of any doubt as to the existence of an agreement to mediate, CMC may request further information from the parties or take such other steps as may be appropriate.
- 4.8. The date of commencement of mediation shall be:
- 4.8.1. The date on which CMC receives communication that a matter is referred to CMC for mediation by court of law or authority as stated above; or
- 4.8.2. The date on which joint request for mediation is filed by all parties to a dispute; or
- 4.8.3. The date on which a mediator is appointed for a dispute where one or more parties to a dispute has filed a request for mediation.

5. COURT ANNEXED MEDIATION

- 5.1. Any mediation referred to CMC by any court or tribunal of India shall be governed by this Rule 5. The court annexed mediation shall be conducted as per these Rules unless contrary to any directions or order of the referring court, tribunal or other judicial decisions governing court annexed mediations in India.
- 5.2. The appointment of mediator and mediation fees of court annexed mediation shall be as per the directions and orders of the referring court or tribunal.
- 5.3. In order to preserve the confidence of parties in the Court and the neutrality of the mediator/conciliator, there should be no communication between the mediator/ conciliator and the Court, except as stated in clauses 5.4 and 5.5 of this Rule.
- 5.4. If any communication between the mediator and the Court is necessary, it shall be in writing and copies of the same shall be given to the parties or the constituted attorney or the counsel.
- 5.5. Communication between the mediator and the Court shall be limited to communication by the mediator:
- 5.5.1. with the Court about the failure of the party to attend;
- 5.5.2. with the Court about the consent of the parties;
- 5.5.3. regarding his assessment that the case is not suited for settlement through the mediation/conciliation;
- 5.5.4. that the parties have settled the dispute(s).
- 5.6. In case of court referred mediation, on the expiry of ninety days from the date of first meeting between the parties with the mediator, the mediation shall stand terminated. No extension of time shall be granted unless the Court, which referred the matter, either *suo moto*, or upon request by

any of the parties, and upon hearing all the parties, is of the view that extension of time is necessary or may be useful. In all cases, extension of time shall be at the discretion of the court of law referring the dispute to mediation.

- 5.7. Where an agreement is reached between the parties in regard to all the issues in the suit or proceeding or some of the issues, the same shall be reduced to writing and signed by the parties or their constituted attorney. If any counsel has represented the parties, the conciliator/mediator may obtain his signature also on the settlement agreement. The agreement of the parties so signed shall be submitted to the mediator who shall, with a covering letter signed by him, forward the same to the Court in which the suit or proceeding is pending. Where no agreement is arrived at between the parties, before the time limit stated or where, the mediator is of the view that no settlement is possible, he shall report the same to the Court in writing.

6. APPOINTMENT OF MEDIATOR

- 6.1. Upon receipt of a request for mediation under Rule 4, and if the parties have not jointly notified CMC of their mutual choice of a mediator, CMC will provide the parties with a list of no fewer than three persons who would, in CMC's view, be qualified to mediate the dispute along with fee schedule and profile of each such person. In compiling the list, CMC will take into account the nationalities of the parties, the language in which the mediation will be conducted, the place of the mediation and any substantive expertise, particularly domain knowledge, that may be required or helpful. Each party may strike up to two names and will number the remaining name(s) in the order of preference. In light of the parties' expressed preferences, CMC will appoint the mediator. Normally, a single mediator will be appointed, unless the parties agree otherwise. CMC may recommend co-mediators in appropriate cases.
- 6.2. Each party shall return the marked list to CMC within seven days after the date on which the list is received by it. Any party failing to return a marked list within that period of time shall be deemed to have assented to all candidates appearing on the list.
- 6.3. If the lists which have been returned do not show a person who is acceptable as mediator to both parties, CMC shall be authorized to appoint the mediator. CMC shall similarly be authorized to do so if a person is not able or does not wish to accept CMC's invitation to be the mediator, or if there appear to be other reasons precluding that person from being the mediator, or if the chosen mediator after acceptance seeks to reclude himself/herself, and there does not remain on the lists a person who is acceptable as mediator to both parties.
- 6.4. The prospective mediator shall, by accepting appointment, be deemed to have undertaken to make available sufficient time to enable the mediation to be conducted expeditiously.

7. DISCLOSURES AND REPLACEMENT OF A MEDIATOR

- 7.1. Before confirmation or appointment, a prospective mediator shall make a written declaration of his or her acceptance, availability, impartiality and independence, and shall also immediately disclose to the parties any known actual or potential conflicts of interest which could reasonably raise any question of his or her impartiality and independence.

- 7.2. Any party may object to the appointment of the mediator on the basis of any disclosed actual or potential conflict, or choose to waive the conflict.
- 7.3. If any party has valid objections to the appointment of the mediator, the party shall notify CMC and all the other parties in writing as soon as possible and CMC may within 10 days of receipt of notification of the objections, appoint another mediator.
- 7.4. CMC may replace the mediator in the course of the mediation if a conflict arises or in exceptional circumstances raised by the mediator or any of the parties.
- 7.5. Notwithstanding the procedure provided above, CMC shall be authorized to otherwise appoint the mediator if it determines in its discretion that the procedure described therein is not appropriate for the case.

8. FEES AND COSTS

- 8.1. The party or parties filing a request for mediation shall pay CMC a non-refundable Filing Fee, as set out in [•].
- 8.2. The amount and currency of the fees of the mediator and the modalities and timing of their payment shall be fixed by CMC, after consultation with the mediator and the parties.
- 8.3. Following commencement of the mediation, CMC shall request all parties to pay one or more deposits to cover CMC's administrative fees, as set out in [•], the mediator's fees, and other expenses of CMC and the mediator.
- 8.4. CMC may stay or terminate the mediation if any requested deposit is not paid.
- 8.5. Upon termination of the mediation, CMC shall fix the total costs of the mediation and reimburse the parties for any excess payment or bill the parties for any balance required pursuant to the Rules.
- 8.6. All deposits requested and costs fixed by CMC shall be borne equally by the parties, except where they have agreed otherwise in writing.
- 8.7. Any party is free to pay the unpaid balance of any deposits and costs should another party fail to pay its share.
- 8.8. Any other expenditure incurred by the respective parties shall remain the responsibility of that party, unless otherwise agreed by the parties.

9. REPRESENTATION

Any party may be represented by a person of the party's choice. Representation by counsel is not mandatory. Parties other than natural persons are expected to have present throughout the mediation an officer, partner or other employee authorized to make decisions concerning the

resolution of the dispute and finalization of terms of settlement. The parties shall inform CMC of the names of their representatives and advisors attending the mediation within such time as CMC may specify.

10. CONDUCT OF MEDIATION AND AUTHORITY OF MEDIATOR

- 10.1. The mediator may conduct the mediation in such a manner as he or she considers appropriate, taking into account the circumstances of the case, the wishes of the parties and the need for a speedy settlement of the dispute within the ambit of these Rules. The mediator does not have the authority to impose a settlement on the parties. The mediator is authorized to conduct both joint and separate meetings with the parties. If requested, the mediator may make oral or written recommendations concerning an appropriate resolution of the dispute.
- 10.2. Where appropriate, CMC may arrange for a pre-mediation conference to discuss the manner and procedure for the conduct of the mediation, including setting relevant timelines. For the avoidance of doubt, the pre-mediation conference may take place in person or any other audio, audio visual means.
- 10.3. The mediator may communicate with the parties orally, in writing, in person, electronically, or otherwise, and may do so jointly or separately, before and during the scheduled mediation, and, in the event that there is no full settlement during the scheduled mediation, for a period of time after the scheduled mediation in order to facilitate the achievement of a full settlement.
- 10.4. The mediator may obtain expert advice or assistance in technical matters with the parties' prior consent and the parties shall bear any expenses incurred in this regard.
- 10.5. Where the mediator believes that any issues in dispute between the parties are not susceptible to resolution through mediation, the mediator may propose, for the consideration of the parties, procedures or means for resolving those issues which the mediator considers are most likely, having regard to the circumstances of the dispute and any business relationship between the parties, to lead to the most efficient, least costly and most productive settlement of those issues. In particular, the mediator may so propose:
 - 10.5.1. neutral evaluation of one or more particular issues;
 - 10.5.2. an expert determination of one or more particular issues;
 - 10.5.3. arbitration on issues not resolved through mediation;
 - 10.5.4. the submission of last offers of settlement by each party and, in the absence of a settlement through mediation, arbitration conducted on the basis of those last offers pursuant to an arbitral procedure in which the mission of the arbitral tribunal is confined to determining which of the last offers shall prevail.

11. PLACE AND LANGUAGE OF MEDIATION

- 11.1. The mediator will fix the date and the time of each mediation session.

11.2. In the absence of an agreement of the parties, CMC may determine the location of any physical meeting of the Mediator and the parties or may invite the Mediator to do so after the Mediator has been confirmed or appointed.

11.3. In the absence of an agreement of the parties, CMC may determine the language(s) in which the mediation shall be conducted or may invite the Mediator to do so after the Mediator has been confirmed or appointed.

12. PRIVACY OF MEDIATION PROCEEDINGS

Mediation sessions are private. Persons other than the parties and their representatives may attend only with the permission of the parties and with the consent of the mediator.

13. CONFIDENTIALITY

13.1. All information, records, reports or other documents received by a mediator while serving in that capacity will be confidential. The mediator will not be compelled to divulge such records or to testify or give evidence in regard to the mediation in any adversary proceeding or judicial forum. The parties will maintain the confidentiality of the mediation and will not rely upon or introduce as evidence in any arbitral, judicial or other proceeding:

13.1.1. views expressed or suggestions or offers made by another party or the mediator in the course of the mediation proceedings except any last offers submitted to arbitration as per Rule 10.5.4;

13.1.2. admissions made by another party in the course of the mediation proceedings relating to the merits of the dispute; or

13.1.3. the fact that another party had or had not indicated a willingness to accept a proposal for settlement made by another party or by the mediator.

13.2. Where the mediator receives factual information concerning the dispute from a party, he shall only disclose such part of the information as is permitted to be disclosed by the disclosing party.

13.3. Any settlement agreement between the parties shall be kept confidential, except that a party shall have the right to disclose it to the extent that such disclosure is required by applicable law or necessary for purposes of its implementation or enforcement.

13.4. Facts, documents or other things otherwise admissible in evidence in any arbitral, judicial or other proceeding will not be rendered inadmissible by reason of their use in the mediation.

13.5. Each person involved in the mediation, including, in particular, the mediator, the parties and their representatives and advisors, any independent experts and any other persons present during the meetings of the parties with the mediator, shall respect the confidentiality of the mediation and may not, unless otherwise agreed by the parties and the mediator, use or disclose to any outside party any information concerning, or obtained in the course of, the mediation. Each such person shall sign an appropriate confidentiality undertaking prior to taking part in the mediation.

14. CONSEQUENCES OF NON-ATTENDANCE OF PARTIES AT SESSIONS OR MEETINGS ON DUE DATES

If a party is unable to attend a mediation meeting, the party is required to inform the mediator and other parties at least 3 working days in advance failing which CMC is liable to charge fees for the scheduled mediation meeting on the defaulting party.

15. PARTIES TO ACT IN GOOD FAITH

All parties shall act in good faith to prepare for the mediation and in the course of participating in the mediation.

16. TERMINATION OF MEDIATION

16.1. Any of the parties may withdraw from the mediation at any time and shall immediately inform the mediator and the other representatives in writing.

16.2. The mediation commenced pursuant to the Rules shall terminate upon:

16.2.1. the issuance of written confirmation of termination by CMC after the occurrence of the earliest of:

16.2.2. any party giving written notice of withdrawal to CMC, the mediator and the other parties;

16.2.3. the mediator giving written notice to CMC and the parties that the mediation should be terminated;

16.2.4. CMC giving written notice to the parties that any time limit set for the mediation, including any extension thereof, has expired; or

16.2.5. CMC giving written notice to the parties that any payment by one or more parties pursuant to the Rules has not been made for more than 14 days after the due date for payment.

16.3. The mediator may also adjourn the mediation in order to allow parties to consider specific proposals, get further information or for any other reason that the mediator considers helpful in furthering the mediation process. The mediation will then reconvene with the agreement of the parties.

16.4. Upon the termination of the mediation, the mediator shall promptly send to CMC a notice in writing that the mediation is terminated and shall indicate the date on which it terminated, whether or not the mediation resulted in a settlement of the dispute and, if so, whether the settlement was full or partial. The mediator shall send to the parties a copy of the notice so addressed to the CMC.

- 16.5. The CMC shall keep the said notice of the mediator confidential and shall not, without the written authorization of the parties, disclose either the existence or the result of the mediation to any person.
- 16.6. The CMC may, however, include information concerning the mediation in any aggregate statistical data that it publishes concerning its activities, provided that such information does not reveal the identity of the parties or enable the particular circumstances of the dispute to be identified.

17. SETTLEMENT AGREEMENT

- 17.1. Any settlement reached in the mediation will not be legally binding until it has been reduced to writing and signed by, or on behalf of, the parties. For the avoidance of doubt, a settlement agreement may take the form of an electronic record, and be signed by electronic signature.
- 17.2. Where any settlement agreement has been reached, the mediator shall promptly notify CMC of the same, and provide CMC with a copy of such agreement. The copy of settlement agreement shall be retained by CMC for a term of three years from the date of execution of settlement agreement for the purpose of record.
- 17.3. If requested, the mediator may draw up or assist the parties in drawing up the settlement agreement. The mediator shall authenticate the settlement agreement (and each original thereof) and furnish an authenticated original to each of the parties.
- 17.4. A settlement agreement in conciliation shall have the same status and effect as if it is an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal under Section 30 of the Arbitration and Conciliation Act, 1996 or such other applicable law as may be in force or applicable.
- 17.5. Where the dispute has been referred to mediation/conciliation by any court of law, tribunal, statutory or regulatory authority, the mediator shall submit a report to CMC for submission to the referring forum.
- 17.6. CMC shall along with the report of the mediator submit its own report as may be required to the referring forum. CMC shall also forward a copy of the settlement agreement of the parties duly authenticated by the mediator, or in place and stead thereof, the joint letter of the parties that they have settled the dispute and do not seek to enter into a written agreement for the said purpose or disclose the same when entered into.

18. IMMUNITY

No mediator shall be held liable for anything bonafide done or omitted to be done by him during the mediation/conciliation proceedings for civil or criminal action nor shall he be summoned by any party to the suit or proceeding to appear in a Court of law to testify in regard to information received by him or action taken by him or in respect of drafts or records prepared by him or shown to him during the mediation/conciliation proceedings.

19. ROLE OF MEDIATOR IN OTHER PROCEEDINGS

Unless all parties agree in writing, the mediator may not act as an arbitrator or as a representative of, or counsel to, a party in any arbitral or judicial proceedings relating to the dispute that was the subject of the mediation.

20. RESORT TO ARBITRAL OR JUDICIAL PROCEEDINGS

The parties undertake not to initiate, during the mediation, any arbitral or judicial proceedings in respect of a dispute that is the subject of the mediation, except that a party may initiate arbitral or judicial proceedings when, in its opinion, such proceedings either are necessary to toll a limitations period, including a statute of limitations that may be applicable, or are necessary otherwise to preserve its rights in the event that the mediation is unsuccessful. In the event any arbitral or judicial proceedings are initiated by the parties as provided above, the mediation shall stand suspended till the parties do not inform the court or arbitral tribunal of the mediation and obtain stay or adjournment on such proceedings till completion of mediation. All details of commencement of arbitration or judicial proceedings and next date of hearing granted by the court/ tribunal shall be provided in writing by the parties to CMC within seven days of filing or court order as the case may be.

If any arbitral or judicial proceedings have already been initiated at the commencement of mediation proceedings, the parties undertake to inform the arbitral tribunal or judicial authority of the mediation proceedings and subsequent termination of mediation or settlement of the dispute.

21. GOVERNING LAW AND JURISDICTION

The mediation shall be governed by, construed and take effect in accordance with the laws where the mediation takes place and to any agreement between the parties in relation to the mediation process. The courts of the State where the mediation takes place have exclusive jurisdiction to settle any claim, dispute or matter of difference that may arise out of or in connection with the mediation.

22. DISPUTES WITH CMC

- 22.1. All disputes between CMC and service recipient(s) under these Rules shall be referred to a sub-committee of members appointed by the Committee of CMC for resolution and redressal.
- 22.2. In the event of failure of sub-committee to resolve the dispute, the dispute shall be referred to med-arb under these Rules and other applicable rules of CMC.
- 22.3. The arbitration shall be governed by Arbitration and Conciliation Act, 1996. The venue of mediation and arbitration shall be Mumbai. The language of mediation and arbitration shall be English. The award of the arbitrator or settlement agreement through mediation shall be recorded in the form of conciliation consent terms under Arbitration and Conciliation Act, 1996 or such other law as may be in force or applicable.

22.4. All disputes between CMC and service recipient(s) under these Rules shall be governed by applicable laws of India. The courts at Mumbai shall have exclusive jurisdiction over the disputes.

23. EXCLUSION OF LIABILITY

The mediator, CMC and its employees shall not be liable to any person for any act or omission in connection with the mediation, unless there is fraudulent or wilful misconduct.

24. INTERPRETATION AND APPLICATION OF THE RULES

The mediator will interpret and apply these Rules insofar as they relate to the mediator's duties and responsibilities. All other procedures will be interpreted and applied by CMC.

25. WAIVER OF DEFAMATION

The parties and, by accepting appointment, the mediator agree that any statements or comments, whether written or oral, made or used by them or their representatives in preparation for or in the course of the mediation shall not be relied upon to found or maintain any action for defamation, libel, slander or any related complaint, and this Rule may be pleaded as a bar to any such action.

26. SUSPENSION OF LIMITATION PERIOD

The parties agree that, to the extent permitted by the applicable law, the running of the limitation period under any applicable statute of limitations or an equivalent rule shall be suspended in relation to the dispute that is the subject of the mediation from the date of the commencement of the mediation until the date of the termination of the mediation.

27. REFUND OF COURT FEES ON SETTLEMENT¹

The parties undertaking mediation and successfully settling their dispute are eligible to obtain refund of court fees of any judicial proceedings initiated by the parties in relation to the dispute. CMC shall cooperate with the parties and provide any necessary documentation required to avail such refund of court fees

¹ Section 16, Court Fees Act, 1870