



*Centre for Arbitration and
Consultancy Development*

Mediation Rules

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Centre for Arbitration and Consultancy Development

Rules of Mediation

1. Title.

- a) These Rules shall be called the Mediation Rules of the Centre for Arbitration and Consultancy Development (“Centre”).
- b) These rules shall apply where the parties have agreed in writing, that a dispute which has arisen, or a dispute which may arise, between them should be resolved by amicable settlement by the Centre for Arbitration and Consultancy Development’ under its Rules of Mediation.

2. Appointment of mediator.

- a) Parties may agree on the name of the sole mediator for mediating between them from the panel of mediators maintained with the Centre.
- b) Where the parties are unable to agree on the appointment of a mediator they may make an application in writing to the Centre, requesting for the appointment of a mediator. Then the centre shall appoint a mediator, as it deems fit, from the panel of mediators and shall notify the parties of his/ her name and address.

3. Panel of mediators.

- a) The Centre shall, for the purpose of appointing the mediator between the parties prepare a panel of the mediators from-
 - a. The legal fraternity including practising lawyers and retired judges;
 - b. Former civil servants and persons with experience of holding authoritative positions under the Central and State Government of India;
 - c. Entrepreneurs and senior executives in the corporate sectors;
 - d. Persons having achieved mark of significance in any trade or vocation in India or outside.
- b) The consent of the persons whose names are included in the panel shall be obtained before empanelling them.
- c) The panel of mediators appointed shall normally be for a period of three years from the date of appointment and further extension of the panel of mediators or any mediator shall be at the discretion of the Centre, as the case may be.

4. Disqualifications of persons.

The following persons shall be deemed to be disqualified for being empanelled as mediators:

- a) Any person who has been adjudged as insolvent or persons-
 - i. Against whom criminal charges involving moral turpitude are framed by a criminal court and are pending; or
 - ii. Persons who have been convicted by a criminal court for any offence involving moral turpitude.
- b) Any person who is interested or connected with the subject-matter of dispute(s) or is related to any one of the parties or to those who represent them, unless such objection is waived by all the parties in writing.
- c) Any legal practitioner who has or is appearing for any of the parties in the suit or in other proceedings(s).
- d) Such other categories of persons as may be notified by the Centre.

5. Addition to or deletion from panel.

The Centre may in its discretion, from time to time, add or delete any person in the panel of mediators.

6. Preference.

The Centre shall, while nominating any person from the panel of mediators referred to in Rule 3, consider his suitability for resolving the dispute(s) involved and shall give preference to those who have proven record of successful mediation or who have special qualification or experience in the mediation.

7. Duty of mediator to disclose certain facts.

- a) When a person is approached in connection with his proposed appointment as mediator, he shall disclose any circumstance likely to give rise to a reasonable doubt as to his independence or impartiality.
- b) Every Mediator shall from the time of his appointment and throughout continuance of the mediation proceedings, without delay, disclose to the parties, about the existence of any circumstance referred to in Clause (a).

8. Withdrawal of appointment.

Upon information furnished by the mediator under Rule 7 or upon any other information received from the parties or other persons, if the Centre is satisfied, that the said information has raised a reasonable doubt as to the mediator's independence or impartiality, it may withdraw the appointment and replace him by another mediator.

9. Procedure of mediation.

- a) The parties may agree on the procedure to be followed by the mediator in the conduct of the mediation proceedings.
- b) Where the parties do not agree on any particular procedure to be followed by the mediator, the mediator shall follow the procedure hereinafter mentioned, namely:
 - i. He shall fix, in consultation with the parties, a time schedule, the dates and the time of each mediation session, where all parties have to be present;
 - ii. He shall hold the mediation at the place prescribed by the Centre, or the place where the parties and the mediator jointly agree;
 - iii. He may conduct joint or separate meetings with the parties;
 - iv. Each party shall, ten days before the commencement of first mediation session, provide to the mediator a brief memorandum setting forth the issues, which according to it, need to be resolved, and its position in respect to those issues and all information reasonably required for the mediator to understand the issue; such memorandum shall also be mutually exchanged between the parties. However, in suitable/appropriate cases, the period of ten days may be curtailed as per the discretion of the mediator;
 - v. Each party shall furnish to the mediator such other information as may be required by him in connection with the issues to be resolved.
- c) Where there is more than one mediator, the mediator nominated by each party may first confer with the party that nominated him and thereafter interact with the other mediator, with a view to resolve the dispute(s).

10. Mediator not bound by Indian Evidence Act, 1872 or Code of Civil Procedure, 1908.

The mediator shall not be bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872, but shall be guided by the principles of fairness and justice, having regard to the rights and obligations of the parties, usages of trade, if any, and the circumstances of the dispute(s).

11. Representation of parties.

- a) The parties shall ordinarily be present personally or through constituted attorney at the sessions or meetings notified by the mediator. However, they may be represented by the counsel with permission of the mediator in such sessions or meetings.
- b) The party not residing in India may be represented by the constituted attorney at the sessions or meetings. However, it may

- be represented by the counsel with permission of the mediator in such sessions or meetings.
- c) The representation of the parties can happen through online mediation platform as well, provided it is agreed upon by all the parties.

12. Role of mediator.

The mediator shall attempt to facilitate voluntary resolution of the dispute(s) by the parties, and communicate the view of each party to the other, assist them in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and generating options in an attempt to solve the dispute(s), emphasizing that it is the responsibility of the parties to take decision which affect them; he shall not impose any terms of settlement on the parties.

13. Parties alone responsible for taking decision.

The parties shall be made to understand that the mediator only facilitates in arriving at a decision to resolve dispute(s) and that he will not and cannot impose any settlement nor does the mediator give any assurance that the mediation will result in a settlement. The mediator shall not impose any decision on the parties.

14. Time limit for completion of mediation.

On the expiry of ninety days from the date fixed for the first appearance of the parties before the mediator, the mediation shall stand terminated, unless requested by any of the parties, and upon hearing all the parties, mediator is of the view that extension of time is necessary or may be useful; but such extension shall not be beyond a further period of 30 (thirty) days.

15. Parties to act in good faith.

All the parties shall commit to participate in the proceedings in good faith with the intention to settle the dispute (s).

16. Confidentiality and inadmissibility of information.

- a) When a mediator receives factual information concerning the dispute(s) from any party, he/she shall disclose the substance of that information to the other party, so that the other party may have an opportunity to present such explanation as it may consider appropriate. Provided that, when a party gives information to the mediator subject to a specific condition that it be kept

- confidential, the mediator shall not disclose that information to the other party.
- b) Receipt or perusal, or preparation of records, reports or other documents by the mediator, while serving in that capacity shall be confidential and the mediator shall not be compelled to divulge information regarding those documents nor as to what transpired during the mediation before any court, tribunal or any other authority or any person or group of persons.
 - c) Parties shall maintain confidentiality in respect of events that transpired during the mediation and shall not rely on or introduce the said information in other proceedings as to :
 - i. Views expressed by a party in the course of the mediation proceedings;
 - ii. Documents obtained during the mediation which were expressly required to be treated as confidential or other notes, drafts or information given by the parties or the mediator;
 - iii. Proposals made or views expressed by the mediator.
 - iv. admission made by a party in the course of mediation proceedings;
 - v. The fact that a party had or had not indicated willingness to accept a proposal;
 - d) There shall be no audio or video recording of the mediation proceedings.
 - e) No statement of parties or the witnesses shall be recorded by the mediator.

17. Privacy.

The Mediation sessions or meetings would be conducted in privacy where the persons as mentioned in Rule 11 shall be entitled to represent parties. However, other persons may attend only with the permission of the parties and with the consent of the mediator.

18. Immunity.

No mediator shall be held liable for anything bonafide done or omitted to be done by him during the mediation proceedings 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 proceedings.

19. Communication between mediator and the Court.

- a) In order to preserve the confidence of parties in the Court and the neutrality of the mediator, there should be no communication between the mediator and the Court, except as stated in clauses (b) and (c) of this Rule.
- b) 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.
- c) Communication between the mediator and the Court shall be limited to communication by the mediator:
 - i. With the Court about the failure of the party to attend;
 - ii. With the Court about the consent of the parties;
 - iii. Regarding his assessment that the case is not suited for settlement through the mediation
 - iv. That the parties have settled the dispute(s).

20. Termination of mediation procedure.

- a) Where an agreement is reached between the parties in regard to all the issues 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 mediator may obtain his signature also on the settlement agreement.
- b) Where no agreement is arrived at between the parties or the mediator is of the view that no settlement is possible, he shall report the same to the Centre in writing.
- c) A copy of the agreement so signed by the parties shall be submitted to the mediator who shall, forward a copy of the same to the Centre for their records.

21. Fee of mediator and costs.

- a) The expense of the mediation including the fee of the mediator, costs of administrative assistance, and other ancillary expenses concerned, shall be borne equally by the various contesting parties.
- b) Where there are two mediators, the fee payable to the mediators shall be shared equally by the parties.
- c) Each party shall bear the costs for production of witnesses on his side including experts, or for production of documents.
- d) A registration fee of Rs. 7500/- shall be paid by each party along with the application for mediation. The registration fee includes

cost towards administrative charges. The registration fee will not be refunded and become the property of the Centre.

- e) The mediator's fee will be fixed separately with regard to the amount in dispute, as under:-

Amount in Dispute	Mediator's Fee
UptoRs. 10 Lacs	Rs. 25,000/-
Between Rs. 10 Lacsto Rs.50 Lacs	Rs. 45,000/-
Between Rs. 50 lacs to Rs. 2 Crore	Rs. 75,000/-
Above Rs. 2 Crore	Rs. 100,000/-

22.Ethics to be followed by mediator.

The mediator shall:

- i. Follow and observe these Rules strictly and with due diligence;
- ii. Not carry on any activity or conduct which could reasonably be considered as conduct unbecoming of a mediator;
- iii. Uphold the integrity and fairness of the mediation process;
- iv. Ensure that the parties involved in the mediation are fairly informed and have an adequate understanding of the procedural aspects of the process;
- v. Satisfy himself/herself that he/she is qualified to undertake and complete the assignment in a professional manner;
- vi. Disclose any interest or relationship likely to affect impartiality or which might seek an appearance of partiality or bias;
- vii. Avoid, while communicating with the parties, any impropriety or appearance of impropriety;
- viii. Be faithful to the relationship of trust and confidentiality imposed in the office of mediator;
- ix. Conduct all proceedings related to the resolutions of a dispute, in accordance with the applicable law;
- x. Recognize that the mediation is based on principles of self-determination by the parties and that the mediation process relies upon the ability of parties to reach a voluntary, undisclosed agreement;

- xi. Maintain the reasonable expectations of the parties as to confidentiality, refrain from promises or guarantees of results.

23. Residuary Provision

The Centre may take appropriate decisions or carry out amendments, as it considers necessary in respect of all matters, which are not specifically provided in these Rules.

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