The Mediation Act, 2023

Act 32 of 2023. 65 sections. Bare Act with the official footnotes.

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Every section online, with the old and new law side by side and exam questions:
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[14th September, 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

Section 1. 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[1] 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.

[1] 9th day of October, 2023, vide notification No. S.O. 4384(E), for Ss.1, 3, 26, Ss.31 to 38 (both inclusive), Ss. 45 to 47 (both inclusive), Ss. 50 to 54 (both inclusive), and Ss.56 to 57 (both inclusive), dated 9th October, 2023 see Gazette of India, Extraordinary, Part II, sec. 3(ii).

CHAPTER II APPLICATION

Section 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.

Section 3. 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.

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 it's 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.

CHAPTER III MEDIATION

Section 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.

Section 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.

Section 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.

Section 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).

CHAPTER IV MEDIATORS

Section 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.

Section 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.

Section 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.

Section 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.

Section 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

Section 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.

Section 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.

Section 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.

Section 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 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.

Section 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.

Section 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.

Section 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.

(2) Where a mediated settlement agreement is reached between the parties with regard to all or some of the disputes, the same shall be reduced in to writing and signed by the parties.

(3) Subject to the provisions of section 26, the mediated settlement agreement signed,-

(i) in case of institutional mediation, shall be submitted to the mediator, who shall, after authenticating the same,

forward it with a covering letter signed by him, to the mediation service provider and also provide a copy to the parties;

(ii) in all other cases, shall be submitted to the mediator who shall, after authenticating the mediated settlement agreement, provide a copy to all the parties.

(4) The parties, may, at any time during the mediation process, make an agreement with respect to any of the disputes which is the subject matter of mediation.

(5) Any mediated settlement agreement under this section includes a settlement agreement resulting from online mediation.

Section 20. Registration of mediated settlement agreement

(1) For the purposes of record, mediated settlement agreement arrived at between the parties, other than those arrived in a court or tribunal referred mediation or award of Lok Adalat or final award of the Permanent Lok Adalat under section 21 or section 22E of the Legal Services Authorities Act, 1987 (39 of 1987), may, at the option of parties, be registered with an Authority constituted under the said Act, or any other body as may be notified by the Central Government, in such manner as may be specified and such Authority or body shall issue a unique registration number to such settlement agreements:

Provided that the mediated settlement agreement under this section may be registered with such Authority or the body situated within the territorial jurisdiction of the court or tribunal of competent jurisdiction to decide the subject matter of dispute.

Explanation.-For the removal of doubts, it is clarified that nothing contained in this sub-section shall affect the rights of parties to enforce the mediated settlement agreement under section 27 or challenge the same under section 28.

(2) The registration referred to in sub-section (1) may be made by the parties or mediation service provider within a period of one hundred and eighty days from the date of receipt of authenticated copy of mediated settlement agreement:

Provided that mediated settlement agreement may be allowed to be registered after the expiry of period of one hundred and eighty days on payment of such fee as may be specified in consultation with the Authority or any other body referred to in sub-section (1).

Section 21. Non-settlement report

Subject to the provisions of section 26, where no agreement is arrived at between the parties, within the time period as provided under section 18, or where, the mediator is of the view that no settlement is possible, he shall, -

(i) in the case of institutional mediation, submit a non-settlement report to the mediation service provider in writing;

(ii) in all other cases, prepare a non-settlement report and provide a signed copy to all the parties:

Provided that the report referred to in this section shall not disclose the cause of non- settlement, or any other matter or thing referring to their conduct, during mediation.

Section 22. Confidentiality

(1) Subject to the other provisions of this Act, the mediator, mediation service provider, the parties and participants in the mediation shall keep confidential all the following matters relating to the mediation proceedings, namely: -

(i) acknowledgements, opinions, suggestions, promises, proposals, apologies and admissions made during the mediation;

(ii) acceptance of, or willingness to, accept proposals made or exchanged in the mediation;

(iii) documents prepared solely for the conduct of mediation or in relation thereto;

(iv) any other mediation communication.

(2) No audio or video recording of the mediation proceedings shall be made or maintained by the parties or the participants including the mediator and mediation service provider, whether conducted in person or online to ensure confidentiality of the conduct of mediation proceedings.

(3) No party to the mediation shall in any proceeding before a court or tribunal including arbitral tribunal, rely on or introduce as evidence any information or communication set forth in clauses (i) to (iv) of sub-section (1), including any information in electronic form, or verbal communication and the court or tribunal including arbitral tribunal shall not take cognizance of such information or evidence.

(4) The provisions of this section shall not prevent the mediator from compiling or disclosing general information concerning matters that have been subject of mediation, for research, reporting or training purposes, if the

information does not expressly or indirectly identify a party or participants or the specific disputes in the mediation.

Explanation.-For the removal of doubts, it is hereby clarified that nothing contained in this section shall apply to the mediated settlement agreement where its disclosure is necessary for the purpose of registration, enforcement and challenge.

Section 23. Admissibility and privilege against disclosure

(1) No mediator or participant in the mediation, including experts and advisers engaged for the purpose of the mediation and persons involved in the administration of the mediation, shall at any time be permitted, or compelled to disclose to any court or tribunal, or in any adjudicatory proceedings, by whatever description, any communication in mediation, or to state the contents or conditions of any document or nature or conduct of parties during mediation including the content of negotiations or offers or counter offers with which they have become acquainted during the mediation:

Provided that nothing in this section and section 22 shall protect from disclosure, information sought or provided to prove or dispute a claim or complaint of professional misconduct of mediator or malpractice based on conduct occurring during the mediation.

(2) There shall be no privilege or confidentiality that will attach to-

(a) a threat or statement of a plan to commit an offence punishable under any law for the time being in force;

(b) information relating to domestic violence or child abuse; and

(c) statements made during a mediation showing a significant imminent threat to public health or safety.

Section 24. Termination of mediation

The mediation proceedings under this Act shall be deemed to terminate-

(a) on the date of signing and authentication of the mediated settlement agreement; or

(b) on the date of the written declaration of the mediator, after consultation with the parties or otherwise, to the effect that further efforts at mediation are no longer justified; or

(c) on the date of the communication by a party or parties in writing, addressed to the mediator and the other parties to the effect that the party wishes to opt out of mediation;

(d) on the expiry of time limit under section 18.

Section 25. Cost of mediation

(1) The cost of mediation, other than community mediation shall be such as may be specified.

(2) Unless otherwise agreed by the parties, all costs of mediation, including the fees of the mediator and the charges of the mediation service provider shall be borne equally by the parties.

Section 26. Proceedings of Lok Adalat and Permanent Lok Adalat not to be affected

The provisions of this Act shall not apply to the proceedings conducted by Lok Adalat and Permanent Lok Adalat under the Legal Services Authorities Act, 1987 (39 of 1987).

CHAPTER VI ENFORCEMENT OF MEDIATED SETTLEMENT AGREEMENT

Section 27. Enforcement of mediated settlement agreement

(1) A mediated settlement agreement resulting from a mediation signed by the parties and authenticated by the mediator shall be final and binding on the parties and persons claiming under them respectively and enforceable as per the provisions of sub-section (2).

(2) Subject to the provisions of section 28, the mediated settlement agreement shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a judgment or decree passed by a court, and may, accordingly, be relied on by any of the parties or persons claiming through them, by way of defence, set off or otherwise in any legal proceeding.

Section 28. Challenge to mediated settlement agreement

(1) Notwithstanding anything contained in any other law for the time being in force, in any case in which the mediated settlement agreement is arrived at between the parties and is sought to be challenged by either of the parties, such party may file an application before the court or tribunal of competent jurisdiction.

(2) A mediated settlement agreement may be challenged only on all or any of the following grounds, namely:-

(i) fraud;

(ii) corruption;

(iii) impersonation;

(iv) where the mediation was conducted in disputes or matters not fit for mediation under section 6.

(3) An application for challenging the mediated settlement agreement shall not be made after ninety days have elapsed from the date on which the party making that application has received the copy of mediated settlement agreement under sub-section (3) of section 19:

Provided that if the court or tribunal, as the case may be, is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of ninety days, it may entertain the application within a further period of ninety days.

Section 29. Limitation

Notwithstanding anything contained in the Limitation Act, 1963 (36 of 1963) or in any other law for the time being in force, in computing the period of limitation fixed for any proceeding relating to disputes in respect of which a mediation has been undertaken under this Act, the period from the date of commencement of mediation under section 14, and up to,-

(i) submission of report under section 21; or

(ii) termination of mediation under section 24, shall be excluded.

CHAPTER VII ONLINE MEDIATION

Section 30. Online mediation

(1) Online mediation including pre-litigation mediation may be conducted at any stage of mediation under this Act, with the written consent of the parties including by the use of electronic form or computer networks but not limited to an encrypted electronic mail service, secure chat rooms or conferencing by video or audio mode or both.

(2) The process of online mediation shall be in such manner as may be specified.

(3) The conduct of online mediation shall be in the circumstances, which ensure that the essential elements of integrity of proceedings and confidentiality are maintained at all times and the mediator may take such appropriate steps in this regard as he deems fit.

(4) Subject to the other provisions of this Act, the mediation communications in the case of online mediation shall, ensure confidentiality of mediation.

CHAPTER VIII MEDIATION COUNCIL OF INDIA

Section 31. Establishment and incorporation of Mediation Council

(1) The Central Government shall, by notification, establish for the purposes of this Act, a Council to be known as the Mediation Council of India to perform the duties and discharge the functions under this Act.

(2) The Council shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to enter into contract, and shall, by the said name, sue or be sued.

(3) The head office of the Council shall be at Delhi or at such other place as may be notified by the Central Government.

(4) The Council may, in consultation with the Central Government, establish offices at other places in India and abroad.

Section 32. Composition of Council

(1) The Council shall consist of the following members, namely:-

(a) a person of ability, integrity and standing having adequate knowledge and professional experience or shown capacity in dealing with problems relating to law, alternative dispute resolution preferably mediation, public affairs or administration to be appointed by the Central Government- Chairperson;

(b) a person having knowledge and experience in law related to mediation or alternative dispute resolution mechanisms, to be appointed by the Central Government-Member;

(c) an eminent person having experience in research or teaching in the field of mediation and alternative dispute resolution laws, to be appointed by the Central Government-Member;

(d) Secretary to the Government of India in the Department of Legal Affairs, Ministry of Law and Justice or his representative not below the rank of Joint Secretary-Member, ex officio;

(e) Secretary to the Government of India in the Department of Expenditure, Ministry of Finance or his representative not below the rank of Joint Secretary-Member, ex officio;

(f) Chief Executive Officer-Member-Secretary, ex officio; and

(g) one representative of a recognised body of commerce and industry, chosen by the Central Government-Part-Time Member.

(2) The Members of the Council, other than ex officio members, shall hold office as such, for a term of four years from the date on which they enter upon their office and shall be eligible for re-appointment:

Provided that no Member other than ex officio Member shall hold office after he has attained the age of seventy years, in the case of Chairperson, and sixty-seven years, in the case of other Members:

Provided further that if the Chairperson is appointed on Part-Time basis, then, at least one of the Members appointed under clauses (b) or (c) shall be a Full-Time Member.

(3) The salaries, allowances and other terms and conditions of Members other than ex officio Members shall be such as may be prescribed.

(4) The [1][Part-Time Member] shall be entitled to such travelling and other allowances as may be prescribed.

[1] Subs. by Notification No. S.O. 4506(E), for " Member" (w.e.f. 13-10-2023).

Section 33. Vacancies, etc., not to invalidate proceedings of Council

No act or proceeding of the Council shall be invalid merely by reason of-

(a) any vacancy or any defect, in the constitution of the Council;

(b) any defect in the appointment of a person as a Member of the Council; or

(c) any irregularity in the procedure of the Council not affecting the merits of the case.

Section 34. Resignation

The Member may, by notice in writing, under his hand addressed to the Central Government, resign his office:

Provided that the Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is earlier.

Section 35. Removal

The Central Government may, remove any Member from his office, if he-

(a) is an undischarged insolvent; or

(b) has engaged at any time, during his term of office, in any paid employment without the permission of the Central Government; or

(c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest; or

(f) has become physically or mentally incapable of acting as a Member:

Provided that where a Member is proposed to be removed on any ground, he shall be informed of charges against him and given an opportunity of being heard in respect of those charges.

Section 36. Appointment of experts and constitution of Committees

The Council may, appoint such experts and constitute such committees of experts as it may consider necessary to discharge its functions on such terms and conditions as may be specified.

Section 37. Secretariat and Chief Executive Officer of Council

(1) There shall be a Chief Executive Officer of the Council, who shall be responsible for the day to day administration and implementation of the decisions of the Council.

(2) The qualification, appointment and other terms and conditions of service of the Chief Executive Officer shall be such as may be specified.

(3) There shall be a Secretariat to the Council consisting of such number of officers and employees as may be

specified.

(4) The qualification, appointment and other terms and conditions of the service of the employees and other officers of the Council shall be such as may be specified.

(5) The Central Government shall provide such number of officers and employees as may be necessary for the functioning of the Council till regulations are made under this section.

Section 38. Duties and functions of Council

The Council shall-

(a) endeavour to promote domestic and international mediation in India through appropriate guidelines;

(b) endeavour to develop India to be a robust centre for domestic and international mediation;

(c) lay down the guidelines for the continuous education, certification and assessment of mediators by the recognised mediation institutes;

(d) provide for the manner of conduct of mediation proceedings, under sub-section (1) of section 15;

(e) provide for manner of registration of mediators and renew, withdraw, suspend or cancel registration on the basis of conditions as may be specified;

(f) lay down standards for professional and ethical conduct of mediators under sub-section (3) of section 15;

(g) hold trainings, workshops and courses in the area of mediation in collaboration with mediation service providers, law firms and universities and other stakeholders, both Indian and international, and any other mediation institutes;

(h) enter into memoranda of understanding or agreements with domestic and international bodies or organisations or institutions;

(i) recognise mediation institutes and mediation service providers and renew, withdraw, suspend or cancel such recognition;

(j) specify the criteria for recognition of mediation institutes and mediation service providers;

(k) call for any information or record of mediation institutes and mediation service providers;

(l) lay down standards for professional and ethical conduct of the mediation institutes and mediation service providers;

(m) publish such information, data, research studies and such other information as may be required;

(n) maintain an electronic depository of the mediated settlement agreements made in India and for such other records related thereto in such manner as may be specified; and

(o) perform any other function as may be assigned to it by the Central Government.

Section 39. Monitoring and reporting

(1) The Council shall, as soon as practicable after the end of each year or at such other intervals as directed by the Central Government, prepare a report on the implementation of the provisions of this Act during the year or such interval and forward a copy thereof to the Central Government.

(2) The Central Government may take such additional measures as it deems necessary to supplement the functioning of the Council and for the effective implementation of the provisions of the Act.

CHAPTER IX MEDIATION SERVICE PROVIDERS AND MEDIATION INSTITUTES

Section 40. Mediation service provider

(1) "mediation service provider" includes-

(a) a body or an organisation that provides for the conduct of mediation under this Act and the rules and regulations made thereunder and is recognised by the Council; or

(b) an Authority constituted under the Legal Services Authorities Act, 1987 (39 of 1987); or

(c) a court-annexed mediation centre; or

(d) any other body as may be notified by the Central Government:

Provided that the bodies referred to in clauses (b), (c) and (d) shall be deemed to be mediation service providers recognised by the Council.

(2) The mediation service provider shall be recognised by the Council in the manner as may be specified.

Section 41. Functions of mediation service providers

The mediation service providers shall perform the following functions, namely:-

(a) accredit mediators and maintain panel of mediators;

(b) provide the services of mediator for conduct of mediation;

(c) provide all facilities, secretarial assistance and infrastructure for the efficient conduct of mediation;

(d) promote professional and ethical conduct amongst mediators;

(e) facilitate registration of mediated settlement agreements in accordance with the provisions of section 20; and

(f) such other functions as may be specified.

Section 42. Mediation institutes

The Council shall recognize mediation institutes to perform such duties and exercise such functions as may be specified.

CHAPTER X COMMUNITY MEDIATION

Section 43. Community mediation

(1) Any dispute likely to affect peace, harmony and tranquillity amongst the residents or families of any area or locality may be settled through community mediation with prior mutual consent of the parties to the dispute.

(2) For the purposes of sub-section (1), any of the parties shall make an application before the concerned Authority constituted under the Legal Services Authorities Act, 1987 (39 of 1987) or District Magistrate or Sub-Divisional Magistrate in areas where no such Authority has been constituted, for referring the dispute to mediation.

(3) In order to facilitate settlement of a dispute for which an application has been received under sub-section (2), the concerned Authority constituted under the Legal Services Authorities Act, 1987 (39 of 1987) or the District Magistrate or Sub-Divisional Magistrate, as the case may be, shall constitute panel of three community mediators.

(4) For the purposes of this section, the Authority or District Magistrate or the Sub-Divisional Magistrate, as the case may be, shall notify a permanent panel of community mediators, which may be revised from time to time.

(5) The following persons may be included in the panel referred to in sub-section (4)-

(a) person of standing and integrity who are respectable in the community;

(b) any local person whose contribution to the society has been recognised;

(c) representative of area or resident welfare associations;

(d) person having experience in the field of mediation; and

(e) any other person deemed appropriate.

(6) While making panel referred to in sub-section (4) the representation of women or any other class or category of persons may be considered.

Section 44. Procedure for community mediation

(1) Any community mediation shall be conducted by the panel of three community mediators referred to in sub-section (3) of section 43 who shall devise suitable procedure for the purpose of resolving the dispute.

(2) The community mediators shall endeavour to resolve disputes through community mediation and provide assistance to parties for resolving disputes amicably.

(3) In every case where a settlement agreement is arrived at through community mediation under this Act, the same may be reduced into writing with the signature of the parties and authenticated by the community mediators, a copy of which be provided to the parties and in cases where no settlement agreement is arrived at, a non-settlement report may be submitted by the community mediators to the Authority or the District Magistrate or the Sub-Divisional Magistrate, as the case may be, and to the parties.

(4) Any settlement agreement arrived at under this Chapter shall be for the purpose of maintaining the peace, harmony and tranquillity amongst the residents or families of any area or locality but shall not be enforceable as a judgment or decree of a civil court.

(5) The provisions of section 20 shall, mutatis mutandis apply, in relation to the registration of mediated settlement agreement under this section.

CHAPTER XI MISCELLANEOUS

Section 45. Mediation Fund

(1) There shall be a fund to be called "Mediation Fund" (hereinafter referred to as the "Fund") for the purposes of promotion, facilitation and encouragement of mediation under this Act, which shall be administered by the Council.

(2) There shall be credited to the Fund the following, namely:-

(a) all monies provided by the Central Government;

(b) all fees and other charges received from mediation service provider, mediation institutes or bodies or persons;

(c) all monies received by the Council in the form of donations, grants, contributions and income from other sources;

(d) grants made by the Central Government or the State Government for the purposes of the Fund;

(e) amounts deposited by persons as contributions to the Fund;

(f) amounts received in the Fund from any other source; and

(g) interest on the above or other income received out of the investment made from the Fund.

(3) The Fund shall be applied towards meeting the salaries and other allowances of Member, Chief Executive Officer, Officers and employees and the expenses of the Council including expenses incurred in the exercise of its powers and discharge of its duties under this Act.

Section 46. Accounts and audit

(1) The Council shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, including the balance sheet, in such form and manner as may be prescribed in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Council shall be audited by the Comptroller and Auditor-General of India and any expenditure incurred by him in connection with such audit shall be payable by the Council to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Council shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the audit of the Government accounts, and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect the offices of the Council.

(4) The accounts of the Council as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

Section 47. Power of Central Government to issue directions

(1) Without prejudice to the foregoing provisions of this Act, the Council shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

Provided that the views of the Council shall be taken into consideration before any direction is given under this sub-section.

(2) The decision of the Central Government whether a question is one of policy or not shall be final.

Section 48. Power to frame schemes or guidelines

Subject to the provisions of this Act, the Central Government or the State Government or any of its entity or agency, as the case may be, may frame any schemes or guidelines, for resolution of any dispute through mediation or conciliation in cases where the Central Government or the State Government or any of its entity or agency is one of the parties and in such cases mediation or conciliation may be conducted in accordance with such schemes or guidelines.

Section 49. Mediated settlement agreement where Government or its, agency, etc., is a party

Notwithstanding anything contained in this Act, no dispute including a commercial dispute, wherein the Central Government or State Government or any of its agencies, public bodies, corporations and local bodies including entities controlled or owned by them is a party, the settlement agreement arrived at shall be signed only after obtaining the prior written consent of the competent authority of such Government or any of its entity or agencies,

public bodies, corporations and local bodies, as the case may be.

Section 50. Protection of action taken in good faith

No suit, prosecution or other legal proceeding shall lie against the Central Government or a State Government or any officer of such Government, or the Member or Officer or employee of the Council or a mediator, mediation institutes, mediation service providers, which is done or is intended to be done in good faith under this Act or the rules or regulations made thereunder.

Section 51. Power to make rules

(1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may make provision for-

(a) the salaries and allowances and the terms and conditions of the Members under sub-section (3) of section 32;

(b) the travelling and other allowances payable to the [1][Part-Time Member] under sub-section (4) of section 32;

(c) the form and manner of annual statement of accounts, including the balance sheet under sub-section (1) of section 46; and

(d) any other matter which is to be, or may be prescribed.

[1] Subs. by Notification No. S.O. 4506(E), for "Member" (w.e.f. 13-10-2023).

Section 52. Power to make regulations

(1) The Council may, with the previous approval of the Central Government, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may make provision for-

(a) qualification, experience and accreditation for mediators of foreign nationality under the proviso to sub-section (1) of section 8;

(b) manner of conducting mediation proceeding under sub-section (1) of section15;

(c) standards for professional and ethical conduct of mediators under sub-section (3) of section 15;

(d) manner of registration of mediated settlement agreement under sub-section (1) of section 20;

(e) fees for registration of mediated settlement agreement under the proviso to sub-section (2) of section 20;

(f) cost of mediation under sub-section (1) of section 25;

(g) manner of process of conducting online mediation under sub-section (2) of section 30;

(h) the terms and conditions of experts and committees of experts under section 36;

(i) qualifications, appointment and other terms and conditions of service of the Chief Executive Officer under sub-section (2) of section 37;

(j) the number of officers and employees of the Secretariat of the Council under sub-section (3) of section 37;

(k) the qualification, appointment and other terms and conditions of the employees and other officers of the Council under sub-section (4) of section 37;

(l) conditions for registration of mediators and renewal, withdrawal, suspension or cancellations of such registrations under clause (e) of section 38;

(m) criteria for recognition of mediation institutes and mediation service providers under clause (j) of section 38;

(n) manner of maintenance of electronic depository of mediated settlement agreement under clause (n) of section 38;

(o) manner for recognition of mediation service provider under sub-section (2) of section 40;

(p) such other functions of mediation service provider under clause (f) of section 41;

(q) duties and functions to be performed by mediation institutes under section 42; and

(r) any other matter in respect of which provision is necessary for the performance of functions of the Council under this Act.

Section 53. Laying

Every notification issued under sub-section (2) of section 6, sub-section (2) of section 55, rule and regulation made under this Act shall be laid, as soon as may be after it is issued or made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive

sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification, rule or regulation or both Houses agree that the notification, rule or regulation should not be issued or made, the notification, rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification, rule or regulation.

Section 54. Power to remove difficulties

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of a period of five years from the date of commencement of this Act.

(2) Every order made under sub-section (1) shall be laid, as soon as may be after it is made, before each House of Parliament.

Section 55. Provisions of Act to have overriding effect on mediation or conciliation contained in other laws

(1) Subject to the enactments mentioned in the Second Schedule, the provisions of this Act shall have overriding effect for conduct of mediation or conciliation notwithstanding anything inconsistent therewith contained in any other law for the time being in force, and any instrument having force of law.

(2) If the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification, amend the Second Schedule and thereupon it shall be deemed to have been amended accordingly.

Section 56. Act not to apply to pending proceedings

This Act shall not apply to, or in relation to, any mediation or conciliation commenced before the coming into force of this Act.

Section 57. Transitory provision

The rules in force governing the conduct of court-annexed mediation shall continue to apply until regulations are made under sub-section (1) of section 15:

Provided that the rules shall continue to apply in all court-annexed mediation pending as on the date of coming into force of the regulations.

Section 58. Amendment of Act 9 of 1872

The Indian Contract Act, 1872, shall be amended in the manner specified in the Third Schedule.

Section 59. Amendment of Act 5 of 1908

The Code of Civil Procedure, 1908, shall be amended in the manner specified in the Fourth Schedule.

Section 60. Amendment of 39 of 1987

The Legal Services Authorities Act, 1987,shall be amended in the manner specified in the Fifth Schedule.

Section 61. Amendment of 26 of 1996

The Arbitration and Conciliation Act, 1996, shall be amended in the manner specified in the Sixth Schedule.

Section 62. Amendment of 27 of 2006

The Micro, Small and Medium Enterprises Development Act, 2006, shall be amended in the manner specified in the Seventh Schedule.

Section 63. Amendment of 18 of 2013

The Companies Act, 2013, shall be amended in the manner specified in the Eighth Schedule.

Section 64. Amendment of 4 of 2016

The Commercial Courts Act, 2015, shall be amended in the manner specified in the Ninth Schedule.

Section 65. Amendment of 35 of 2019

The Consumer Protection Act, 2019, shall be amended in the manner specified in the Tenth Schedule.

Schedules

The Schedules are not reproduced in this PDF. Each is in the official file, at the page given:

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