



## **ADR IN INDIA**

### **Major Legislations and important provisions**

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## **THE INDIAN TELEGRAPH ACT, 1885**

### **Section 7B. Arbitration of disputes.—**

Except as otherwise expressly provided in this Act, if any dispute concerning any telegraph line, appliance or apparatus arises between the telegraph authority and the person for whose benefit the line, appliance or apparatus is, or has been, provided, the dispute shall be determined by arbitration and shall, for the purposes of such determination, be referred to an arbitrator appointed by the Central Government either specially for the determination of that dispute or generally for the determination of disputes under this section.

The award of the arbitrator appointed under sub-section (1) shall be conclusive between the parties to the dispute and shall not be questioned in any Court.

**CODE OF CIVIL PROCEDURE, 1908**

**Section 89 – Settlement of Disputes Outside the Court**

Where it appears to the Court that the dispute between the parties may be settled and there exists elements of settlement which may be acceptable to the parties, the Court may—

(a) refer the dispute to arbitration, and thereafter, the provisions of the Arbitration and Conciliation Act, 1996 shall apply as if the proceedings for arbitration were referred for settlement under the provisions of that Act; or

(b) refer the parties to mediation, to the court annexed mediation centre or to any other mediator as per the option of the parties, in accordance with the provisions of the Mediation Act, 2021; or

(c) refer the dispute to Lok Adalat, in accordance with the provisions of sub-section (1) of section 20 of Legal Services Authorities Act, 1987 and thereafter, all other provisions of that Act shall apply in respect of the dispute;

(d) effect compromise between the parties and shall follow such procedure as deemed fit for judicial settlement."

## **INDUSTRIAL DISPUTE ACT, 1947**

### **Section 4 - Conciliation officers**

(1) The appropriate Government may, by notification in the Official Gazette, appoint such number of persons as it thinks fit, to be conciliation officers, charged with the duty of mediating in and promoting the settlement of industrial disputes.

(2) A conciliation officer may be appointed for a specified area or for specified industries in a specified area or for one or more specified industries and either permanently or for a limited period.

### **Section 12 – Duties of conciliation officers.-**

(1) Where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice under section 22 has been given, shall hold conciliation proceedings in the prescribed manner.

(2) The conciliation officer shall, for the purpose of bringing about a settlement of the dispute, without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(3) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation officer shall send a report thereof to the appropriate Government or an officer authorized in this behalf by the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.

(4) If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.

(5) If, on a consideration of the report referred to in sub- section (4), the appropriate Government is satisfied that there is a case for reference to a Board, Labour Court, Tribunal or National Tribunal, it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor.

(6) A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government: Provided that, subject to the approval of the conciliation officer, the time for the submission of the report

may be extended by such period as may be agreed upon in writing by all the parties to the dispute.

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## **THE INDUSTRIAL RELATION CODE, 2020**

### **Section 42 – Voluntary reference to dispute to arbitration**

(1) Where any industrial dispute exists or is apprehended and the employer and the workers agree to refer the dispute to arbitration, they may, by a written agreement, refer the dispute to arbitration, and the reference shall be to such person or persons as an arbitrator or arbitrators as may be specified in the arbitration agreement.

(2) Where an arbitration agreement provides for a reference of the dispute to an even number of arbitrators, the agreement shall provide for the appointment of another person as umpire who shall enter upon the reference, if the arbitrators are equally divided in their opinion, and the award of the umpire shall prevail and shall be deemed to be the arbitration award for the purposes of this Code.

(3) An arbitration agreement referred to in sub-section (1) shall be in such form and shall be signed by the parties thereto in such manner as may be prescribed.

(4) A copy of the arbitration agreement shall be forwarded to the appropriate Government and the conciliation officer.

(5) Where an industrial dispute has been referred to arbitration and the appropriate Government is satisfied that the persons making the reference represent the majority of each party, the appropriate Government may issue a notification in such manner as may be prescribed; and when any such notification is issued, the employers and workers who are not parties to the arbitration agreement but are concerned in the dispute, shall be given an opportunity of presenting their case before the arbitrator or arbitrators:

(6) The arbitrator or arbitrators shall investigate the dispute and submit to the appropriate Government the arbitration award signed by the arbitrator or all the arbitrators, as the case may be.

(7) Where an industrial dispute has been referred to arbitration and a notification has been issued under sub-section (5), the appropriate Government may, by order, prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference.

AS ON 30/01/2022

(8) Nothing in the Arbitration and Conciliation Act, 1996, shall apply to arbitrations under this section.

## **FAMILY COURT ACT, 1984**

An Act to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith.

### **Section 9. Duty of Family Court to make efforts for settlement.**

(1) In every suit or proceeding, endeavour shall be made by the Family Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist and persuade the parties in arriving at a settlement in respect of the subject-matter of the suit or proceeding and for this purpose a Family Court may, subject to any rules made by the High Court, follow such procedure as it may deem fit.

(2) If, in any suit or proceeding, at any stage, it appears to the Family Court that there is a reasonable possibility of a settlement between the parties, the Family Court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect such a settlement.

## **LEGAL SERVICES AUTHORITY ACT, 1987**

### **Authority (National Legal Services Authority)**

The Central Authority shall perform all or any of the following functions, namely:—

\* \* \* \* \*

(f) encourage the settlement of disputes by way of negotiations, arbitration and conciliation;

### **Section 19 – Organization of Lok Adalats**

Every State Authority or District Authority or the Supreme Court Legal Services Committee or every High Court Legal Services Committee or, as the case may be, Taluk Legal Services Committee may organize Lok Adalats at such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit.

A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of—

- (i) any case pending before; or
- (ii) any matter which is falling within the jurisdiction of, and is not brought before, any Court for which the Lok Adalat is organised:

### **20. Cognizance of cases by Lok Adalats.**

(1) Where in any case referred to in clause (i) of sub-section (5) of section 19,—

- (i) (a) the parties thereof agree; or (b) one of the parties thereof makes an application to the Court, for referring the case to the Lok Adalat for settlement and if such court is prima facie satisfied that there are chances of such settlement; or
- (ii) the court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat, the Court shall refer the case to the Lok Adalat:

### **21. Award of Lok Adalat.**

Every award of the Lok Adalat shall be deemed to be a decree of a civil court or, as the case may be, an order of any other court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under

sub-section (1) of section 20, the court-fee paid in such case shall be refunded in the manner provided under the Court-fees Act, 1870.

Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award.

### **Pre-Litigation Conciliation and Settlement**

“public utility service” means any—

(i) transport service for the carriage of passengers or goods by air, road or water; or

(ii) postal, telegraph or telephone service; or

(iii) supply of power, light or water to the public by any establishment; or

(iv) system of public conservancy or sanitation; or

(v) service in hospital or dispensary; or

(vi) insurance service, and includes any service which the Central Government or the State Government, as the case may be, in the public interest, by notification, declare to be a public utility service.

### **Section 22B – Establishment of Permanent Lok Adalats**

Notwithstanding anything contained in Section 19, the Central Authority or, as the case may be, every State Authority shall, by notification, establish Permanent Lok Adalats at such places and for exercising such jurisdiction in respect of one or more public utility services and for such areas as may be specified in the notification.

### **Section 22C. Cognizance of cases by Permanent Lok Adalat.**

Any party to a dispute may, before the dispute is brought before any court, make an application to the Permanent Lok Adalat for the settlement of dispute:

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Any party to a dispute may, before the dispute is brought before any court, make an application to the Permanent Lok Adalat for the settlement of dispute:

The Permanent Lok Adalat shall, during conduct of conciliation proceedings under sub-section (4), assist the parties in their attempt to reach an amicable settlement of the dispute in an independent and impartial manner.

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**Section 22E. Award of Permanent Lok Adalat to be final.**

Every award of the Permanent Lok Adalat under this Act made either on merit or in terms of a settlement agreement shall be final and binding on all the parties thereto and on persons claiming under them.

## **ARBITRATION & CONCILIATION ACT, 1996**

### **ARBITRATION**

Section 2(a) “**arbitration**” means any arbitration whether or not administered by permanent arbitral institution;

#### **Section 7. Arbitration agreement.**

(1) “arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in—

(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication including communication through electronic means which provide a record of the agreement; or

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

#### **Section 10. Number of arbitrators.**

(1) The parties are free to determine the number of arbitrators, provided that such number shall not be an even number.

(2) Failing the determination referred to in sub-section (1), the arbitral tribunal shall consist of a sole arbitrator.

#### **Section 11. Appointment of arbitrators.**

(1) A person of any nationality may be an arbitrator, unless otherwise agreed by the parties.

(2) Subject to sub-section (6), the parties are free to agree on a procedure for appointing the arbitrator or arbitrators.

(3) Failing any agreement referred to in sub-section (2), in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator.

### **Section 21. Commencement of arbitral proceedings.**

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

### **Section 29A. Time limit for arbitral award.**

The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of 12 months from the date of completion of pleadings under sub-section (4) of section 23:

Provided that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavor may be made to dispose of the matter within a period of 12 months from the date of completion of pleadings under sub-section (4) of section 23.

If the award is made within a period of 6 months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.

### **Section 30. Settlement.**

(1) It is not incompatible with an arbitration agreement for an arbitral tribunal to encourage settlement of the dispute and, with the agreement of the parties, the arbitral tribunal may use mediation, conciliation or other procedures at any time during the arbitral proceedings to encourage settlement.

(2) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

### **Section 43B – Establishment and Incorporation of Arbitration Council of India**

(1) The Central Government shall, by notification in the Official Gazette, establish, for the purposes of this Act, a Council to be known as the Arbitration 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.

(4) The Council may, with the prior approval of the Central Government, establish offices at other places in India.

### **Section 43D. – Duties and Functions of Council**

(1) It shall be the duty of the Council to take all such measures as may be necessary to promote and encourage arbitration, mediation, conciliation or other alternative dispute resolution mechanism and for that purpose to frame policy and guidelines for the establishment, operation and maintenance of uniform professional standards in respect of all matters relating to arbitration.

(2) For the purposes of performing the duties and discharging the functions under this Act, the Council may—

(a) frame policies governing the grading of arbitral institutions;

(b) recognise professional institutes providing accreditation of arbitrators;

(c) review the grading of arbitral institutions and arbitrators;

(d) hold training, workshops and courses in the area of arbitration in collaboration of law firms, law universities and arbitral institutes;

(e) frame, review and update norms to ensure satisfactory level of arbitration and conciliation;

(f) act as a forum for exchange of views and techniques to be adopted for creating a platform to make India a robust centre for domestic and international arbitration and conciliation;

(g) make recommendations to the Central Government on various measures to be adopted to make provision for easy resolution of commercial disputes;

(h) promote institutional arbitration by strengthening arbitral institutions;

(i) conduct examination and training on various subjects relating to arbitration and conciliation and award certificates thereof;

(j) establish and maintain depository of arbitral awards made in India;

(k) make recommendations regarding personnel, training and infrastructure of arbitral institutions; and

(l) such other functions as may be decided by the Central Government.

### **Section 43D – Duties and Functions of Arbitration Council of India**

(1) It shall be the duty of the Council to take all such measures as may be necessary to promote and encourage arbitration, mediation, conciliation or other alternative dispute resolution mechanism and for that purpose to frame policy and guidelines for the establishment, operation and maintenance of uniform professional standards in respect of all matters relating to arbitration.

(2) For the purposes of performing the duties and discharging the functions under this Act, the Council may—

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(e) frame, review and update norms to ensure satisfactory level of arbitration and conciliation;

(f) act as a forum for exchange of views and techniques to be adopted for creating a platform to make India a robust centre for domestic and international arbitration and conciliation; \* \* \* \* \*

(i) conduct examination and training on various subjects relating to arbitration and conciliation and award certificates thereof;

### **CONCILIATION**

#### **Section 61 – Application and Scope**

(1) Save as otherwise provided by any law for the time being in force and unless the parties have otherwise agreed, this Part shall apply to conciliation of disputes arising out of legal relationship, whether contractual or not.

(2) This Part shall not apply where by virtue of any law for the time being in force certain disputes may not be submitted to conciliation

#### **Section 62.**

(1) The party initiating conciliation shall send to the other party a written invitation to conciliate under this Part, briefly identifying the subject of the dispute.

(2) Conciliation proceedings, shall commence when the other party accepts in writing the invitation to conciliate.

(3) If the other party rejects the invitation, there will be no conciliation proceedings.

(4) If the party initiating conciliation does not receive a reply within thirty days from the date on which he sends the invitation, or within such other period of time as specified in the invitation, he may elect to treat this as a rejection of the invitation to conciliate and if he so elects, he shall inform in writing the other party accordingly

### **Section 63 – Number of Conciliators.**

(1) There shall be one conciliator unless the parties agree that there shall be two or three conciliators.

(2) Where there is more than one conciliator, they ought, as a general rule, to act jointly.

### **Section 64 – Appointment of Conciliators**

(1) Subject to sub-section (2)—

(a) in conciliation proceedings, with one conciliator, the parties may agree on the name of a sole conciliator;

(b) in conciliation proceedings with two conciliators, each party may appoint one conciliator;

(c) in conciliation proceedings with three conciliators, each party may appoint one conciliator and the parties may agree on the name of the third conciliator who shall act as the presiding conciliator.

(2) Parties may enlist the assistance of a suitable institution or person in connection with the appointment of conciliators, and in particular,—

(a) a party may request such an institution or person to recommend the names of suitable individuals to act as conciliator; or

(b) the parties may agree that the appointment of one or more conciliators be made directly by such an institution or person: Provided that in recommending or appointing individuals to act as conciliator, the institution or person shall have regard to such considerations as are likely to secure the appointment of an independent and impartial conciliator and, with respect to a sole or third conciliator, shall take into account the advisability of appointing a conciliator of a nationality other than the nationalities of the parties.

### **Section 65 – Submissions of Statements to Conciliator**

(1) The conciliator, upon his appointment, may request each party to submit to him a brief written statement describing the general nature of the dispute

and the points at issue. Each party shall send a copy of such statement to the other party.

(2) The conciliator may request each party to submit to him a further written statement of his position and the facts and grounds in support thereof, supplemented by any documents and other evidence that such party deems appropriate. The party shall send a copy of such statement, documents and other evidence to the other party.

(3) At any stage of the conciliation proceedings, the conciliator may request a party to submit to him such additional information as he deems appropriate.

### **Section 67 – Role of Conciliators**

(1) The conciliator shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.

(2) The conciliator shall be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.

(3) The conciliator may conduct the conciliation proceedings in such a manner as he considers appropriate, taking into account the circumstances of the case, the wishes the parties may express, including any request by a party that the conciliator hear oral statements, and the need for a speedy settlement of the dispute.

(4) The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons therefor.

### **Section 73 – Settlement Agreement**

(1) When it appears to the conciliator that there exist elements of a settlement which may be acceptable to the parties, he shall formulate the terms of a possible settlement and submit them to the parties for their observations. After receiving the observations of the parties, the conciliator may reformulate the terms of a possible settlement in the light of such observations.

(2) If the parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement. If requested by the parties, the conciliator may draw up, or assist the parties in drawing up, the settlement agreement.

(3) When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them respectively.

**Section 74 – Status and Effect of Settlement Agreement**

The settlement agreement 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.

## **MICRO, SMALL AND MEDIUM ENTERPRISES DEVELOPMENT ACT, 2006**

### **Section 18 – Reference to Micro & Small Enterprises Facilitation Council**

(1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

(3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act.

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

(5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference

## **COMPANIES ACT, 2013**

### **Section 442 – Mediation and Conciliation Panel.**

(1) The Central Government shall maintain a panel of experts to be called as the Mediation and Conciliation Panel consisting of such number of experts having such qualifications as may be prescribed for mediation between the parties during the pendency of any proceedings before the Central Government or the Tribunal or the Appellate Tribunal under this Act.

(2) Any of the parties to the proceedings may, at any time during the proceedings before the Central Government or the Tribunal or the Appellate Tribunal, apply to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, in such form along with such fees as may be prescribed, for referring the matter pertaining to such proceedings to the Mediation and Conciliation Panel and the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, shall appoint one or more experts from the panel referred to in sub-section (1).

(3) The Central Government or the Tribunal or the Appellate Tribunal before which any proceeding is pending may, *suo motu*, refer any matter pertaining to such proceeding to such number of experts from the Mediation and Conciliation Panel as the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, deems fit.

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(5) The Mediation and Conciliation Panel shall follow such procedure as may be prescribed and dispose of the matter referred to it within a period of three months from the date of such reference and forward its recommendations to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.

(6) Any party aggrieved by the recommendation of the Mediation and Conciliation Panel may file objections to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.

**COMMERCIAL ACT, 2015**

**Section 12A – Pre-Institution Mediation and Settlement (w.e.f. 3/05/2018)**

(1) A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.

(2) The Central Government may, by notification, authorize the Authorities constituted under the Legal Services Authorities Act, 1987 (39 of 1987), for the purposes of pre-institution mediation.

(3) Notwithstanding anything contained in the Legal Services Authorities Act, 1987 (39 of 1987), the Authority authorised by the Central Government under sub-section (2) shall complete the process of mediation within a period of three months from the date of application made by the plaintiff under sub-section (1):

Provided that the period of mediation may be extended for a further period of two months with the consent of the parties:

Provided further that, the period during which the parties remained occupied with the pre-institution mediation, such period shall not be computed for the purpose of limitation under the Limitation Act, 1963.

(4) If the parties to the commercial dispute arrive at a settlement, the same shall be reduced into writing and shall be signed by the parties to the dispute and the mediator. (5) The settlement arrived at under this section shall have the same status and effect as if it is an arbitral award on agreed terms under sub-section (4) of section 30 of the Arbitration and Conciliation Act, 1996.

## **THE NEW DELHI INTERNATIONAL ARBITRATION CENTRE ACT, 2019**

An Act to provide for the establishment and incorporation of the New Delhi International Arbitration Centre for the purpose of creating an independent and autonomous regime for institutionalized arbitration and for acquisition and transfer of the undertakings of the International Centre for Alternative Dispute Resolution and to vest such undertakings in the New Delhi International Arbitration Centre for the better management of arbitration so as to make it a hub for institutional arbitration and to declare the New Delhi International Arbitration Centre to be an institution of national importance and for matters connected therewith or incidental thereto.

WHEREAS dispute resolution process has a huge impact on the Indian economy and global perception on doing business in our country and it has become necessary to inspire confidence and credibility among the litigants of commercial disputes; AND WHEREAS rapidly changing economic activity demands expeditious settlement of disputes and creation and establishment of institutional arbitration

### **Section 3 – Establishment & Incorporation of New Delhi International Arbitration Centre**

(1) The Central Government shall, by notification, establish a body to be called the New Delhi International Arbitration Centre for the purposes of exercising the powers and discharging the functions under this Act.

(2) The Centre 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.

### **Section 4. NDIAC Institute of National Importance**

(1) Whereas, the objects of the New Delhi International Arbitration Centre are such as to make it as an institution of national importance, it is hereby declared that the New Delhi International Arbitration Centre is an institution of national importance.

(2) The head office of the Centre shall be at New Delhi and it may with the previous approval of the Central Government, establish branches at other places in India and abroad

**Section 14. The objects of the Centre shall be,—**

- (a) to bring targeted reforms to develop itself as a flagship institution for conducting international and domestic arbitration;
- (b) to promote research and study, providing teaching and training, and organizing conferences and seminars in arbitration, conciliation, mediation and other alternative dispute resolution matters;
- (c) to provide facilities and administrative assistance for conciliation, mediation and arbitral proceedings;
- (d) to maintain panels of accredited arbitrators, conciliators and mediators both at national and international level or specialists such as surveyors and investigators;
- (e) to collaborate with other national and international institutions and organizations for ensuring credibility of the Centre as a specialized institution in arbitration and conciliation;
- (f) to set up facilities in India and abroad to promote the activities of the Centre;
- (g) to lay down parameters for different modes of alternative dispute resolution mechanisms being adopted by the Centre; and
- (h) such other objectives as it may deem fit with the approval of the Central Government

**Section 15 Functions of Centre**

Without prejudice to the provisions contained in section 14, the Centre shall strive,—

- (a) to facilitate for conducting international and domestic arbitration and conciliation in the most professional manner;
- (b) to provide cost effective and timely services for the conduct of arbitration and conciliation at national and international level;
- (c) to promote studies in the field of alternative dispute resolution and related matters, and to promote reforms in the system of settlement of disputes;
- (d) to undertake teaching and to provide for diffusion of knowledge of law and procedures on alternative dispute resolution and related matters and to award certificates and other academic or professional distinction;
- (e) to impart training in alternative dispute resolution and related matters to those who are handling arbitration, conciliation and mediation;

(f) to co-operate with other societies, institutions and organizations, national or international for promoting alternative dispute resolution; and

(g) to perform such other functions as may be entrusted to it by the Central Government for promoting alternative dispute resolution.

### **Section 28 – Chamber of Arbitration**

(1) The Centre shall, establish a Chamber of Arbitration which shall empanel the Arbitrators and also scrutinize the applications for admission in the panel of reputed arbitrators to maintain a permanent panel of arbitrators.

(2) The Chamber of Arbitration shall consist of experienced arbitration practitioners of repute, at national and international level and persons having wide experience in the area of alternative dispute resolution and conciliation.

(3) The Centre shall by regulations lay down the criteria for admission to the panel of the cadre so as to maintain a pool of reputed arbitrators having expertise in international commercial arbitration and arbitration other than international commercial arbitration.

(4) The Registrar to the Secretariat of the Centre shall act as the Member-Secretary to the Chamber of Arbitration.

### **Section 29 – Arbitration Academy**

(1) The Centre may establish an Arbitration Academy—

(a) to train the arbitrators, particularly in the area of international commercial arbitration to compete on par with the reputed international arbitral institutions;

(b) to conduct research in the area of alternative dispute resolution and allied areas; and

(c) to give suggestions for achieving the objectives of the Act.

(2) For the purposes of sub-section (1), there may be constituted a permanent three-member committee in order to suggest and to submit a report to the Centre with respect to the amendments, if any, necessary to the rules and regulations made under this Act.

## **CONSUMER PROTECTION ACT, 2019**

(25) "**mediation**" means the process by which a mediator mediates the consumer disputes;

(26) "**mediator**" means a mediator referred to in section 75

### **Section 37 – Reference to Mediation.**

(1) At the first hearing of the complaint after its admission, or at any later stage, if it appears to the District Commission that there exists elements of a settlement which may be acceptable to the parties, except in such cases as may be prescribed, it may direct the parties to give in writing, within five days, consent to have their dispute settled by mediation in accordance with the provisions of Chapter V.

(2) Where the parties agree for settlement by mediation and give their consent in writing, the District Commission shall, within five days of receipt of such consent, refer the matter for mediation, and in such case, the provisions of Chapter V, relating to mediation, shall apply.

### **Section 74 – Establishment of Consumer Mediation Cell.**

(1) The State Government shall establish, by notification, a consumer mediation cell to be attached to each of the District Commissions and the State Commissions of that State.

(2) The Central Government shall establish, by notification, a consumer mediation cell to be attached to the National Commission and each of the regional Benches.

(3) A consumer mediation cell shall consist of such persons as may be prescribed.

(4) Every consumer mediation cell shall maintain—

(a) a list of empanelled mediators;

(b) a list of cases handled by the cell;

(c) record of proceeding; and (d) any other information as may be specified by regulations.

(5) Every consumer mediation cell shall submit a quarterly report to the District Commission, State Commission or the National Commission to which it is attached, in the manner specified by regulations.

**Section 76 – Nomination of Mediators from Panel.**

The District Commission, the State Commission or the National Commission shall, while nominating any person from the panel of mediators referred to in section 75, consider his suitability for resolving the consumer dispute involved.

**Section 79 – Procedure for Mediation.**

(1) The mediation shall be held in the consumer mediation cell attached to the District Commission, the State Commission or the National Commission, as the case may be

(2) Where a consumer dispute is referred for mediation by the District Commission or the State Commission or the National Commission, as the case may be, the mediator nominated by such Commission shall have regard to the rights and obligations of the parties, the usages of trade, if any, the circumstances giving rise to the consumer dispute and such other relevant factors, as he may deem necessary and shall be guided by the principles of natural justice while carrying out mediation.

**Section 80 – Settlement through Mediation.**

(1) Pursuant to mediation, if an agreement is reached between the parties with respect to all of the issues involved in the consumer dispute or with respect to only some of the issues, the terms of such agreement shall be reduced to writing accordingly, and signed by the parties to such dispute or their authorised representatives.

(2) The mediator shall prepare a settlement report of the settlement and forward the signed agreement along with such report to the concerned Commission

(3) Where no agreement is reached between the parties within the specified time or the mediator is of the opinion that settlement is not possible, he shall prepare his report accordingly and submit the same to the concerned Commission.

**Section 81. – Recording Statement and Passing of Order**

1. The District Commission or the State Commission or the National Commission, as the case may be, shall, within seven days of the receipt of the settlement report, pass suitable order recording such settlement of consumer dispute and dispose of the matter accordingly.

2. Where the consumer dispute is settled only in part, the District Commission or the State Commission or the National Commission, as the case may be, shall record settlement of the issues which have

been so settled and continue to hear other issues involved in such consumer dispute.

3. Where the consumer dispute could not be settled by mediation, the District Commission or the State Commission or the National Commission, as the case may be, shall continue to hear all the issues involved in such consumer dispute.

## **THE RESERVE BANK - INTEGRATED OMBUDSMAN SCHEME, 2021**

The Scheme integrates the existing three Ombudsman schemes of RBI namely, (i) the Banking Ombudsman Scheme, 2006; (ii) the Ombudsman Scheme for Non-Banking Financial Companies, 2018; and (iii) the Ombudsman Scheme for Digital Transactions, 2019. The Scheme, framed by the Reserve Bank in exercise of the powers conferred on it under Section 35A of the Banking Regulation Act, 1949, Section 45L of the Reserve Bank of India Act, 1934, and Section 18 of the Payment and Settlement Systems Act, 2007, will provide cost-free redress of customer complaints involving deficiency in services rendered by entities regulated by RBI, if not resolved to the satisfaction of the customers or not replied within a period of 30 days by the regulated entity.

### **Clause 14. Resolution of Complaints**

(1) The Ombudsman/Deputy Ombudsman shall endeavour to promote settlement of a complaint by agreement between the complainant and the Regulated Entity through facilitation or conciliation or mediation.

## **MEDIATION BILL, 2021**

Bill 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.

### **Section 2. Application**

(1) Subject to sub-section (2), 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.

(2) The provisions of sub-section (1) shall not apply 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, except where the matter pertains to a commercial dispute:

Provided that nothing shall prevent the Central Government or a State Government from notifying, such kind of dispute, as it deems appropriate for such Government, for resolution through mediation under this Act, wherein such Government, or agencies, public bodies, corporations and local bodies including entities controlled or owned by them, is a party.

### **Section 4 – Mediation**

Mediation shall be a process, whether referred to by the expression mediation, pre-litigation mediation, online mediation, community mediation, conciliation or an expression of similar import, whereby party or parties, request a third person referred to as mediator or mediation service provider to assist them in their attempt to reach an amicable settlement of a dispute

### **Section 5. 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

### **Section 6 – Pre-Litigation Mediation**

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

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, 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; (ii) empanelled by a court annexed mediation centre; (iii) empanelled by an Authority constituted under the Legal Services Authorities Act, 1987; and

(iv) empanelled by a mediation service provider recognized 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, as the case may be.

(5) The courts and an Authority constituted under the Legal Services Authorities Act, 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, 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 failure report prepared by the mediator shall be forwarded to the Claims Tribunal, which has referred the matter for mediation, for adjudication.

**Section 16. 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 day on which a party issues notice to the other party or parties for mediation and settlement of their disputes; or

(b) in other cases—

(i) on the day the parties have agreed to appoint a mediator of their choice for mediation and settlement of disputes between them; or

(ii) on the day when one of the parties applies to a mediation service provider for settlement of disputes through mediation by appointment of a mediator.

**Section 17 – Conduct of Mediation**

(1) The mediator shall assist the parties in an independent, neutral and impartial manner in their attempt to reach an amicable settlement of their dispute.

(2) 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.

**Section 18 – 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, reducing misunderstandings, clarifying priorities, exploring areas of compromise and generating options in an attempt to resolve the dispute expeditiously, emphasizing that it is the responsibility of the parties to take decision regarding their claims.

**Section 20 – Withdrawal by parties from mediation**

(1) A party may withdraw from mediation at any time after the first two mediation sessions.

(2) Where any party fails to attend the first two mediation sessions without any reasonable cause which resulted in the failure of mediation, the court or tribunal, in subsequent litigation on the same subject matter between the parties, may take the said conduct of such party into consideration and impose such costs as deems fit.

### **Section 21 – 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 180 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 one hundred and eighty days.

### **Section 22 – Mediated settlement agreement**

(A mediated settlement agreement means and 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

### **Section 27 Proceedings of Lok Adalat and Permanent Lok Adalat**

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.

### **Section 28- 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 29, the mediated settlement agreement shall be enforced in accordance with the provisions of the Code of Civil Procedure, 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 32 – 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.

### **Section 33 – 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.

### **Section 40 – Duties and Functions of the 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 manner of registration of mediators and renew, withdraw, suspend or cancel registration on the basis of conditions as may be specified;

(e) lay down standards for professional and ethical conduct of mediators under sub-section (2) of section 17;

(f) 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;

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

- (h) recognise mediation institutes and mediation service providers and renew, withdraw, suspend or cancel such recognition;
- (i) specify the criteria for recognition of mediation institutes and mediation service providers;
- (j) call for any information or record of mediation institutes and mediation service providers;
- (k) lay down standards for professional and ethical conduct of the mediation institutes and mediation service providers;
- (l) publish such information, data, research studies and such other information as may be required; (m) 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
- (n) perform any other function as may be assigned to it by the Central Government.

#### **Section 41 – Mediation Service Providers**

The mediation service provider recognised by the Council shall be graded by it in the manner as may be specified.

#### **Section 42 – 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 settlement agreements in accordance with the provisions of section 22; and
- (f) such other functions as may be specified

#### **Section 44 – Community Mediation**

(1) Any dispute likely to affect peace, harmony and tranquility 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 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 or the District Magistrate or Sub-Divisional Magistrate, as the case may be, shall constitute panel of three mediators.

(4) For the purpose of this section, the Authority or District Magistrate or the Sub-Divisional Magistrate, as the case may be, shall notify a permanent panel of 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) persons 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; and
- (d) 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 45 – Procedure for Community Mediation**

(1) Any community mediation shall be conducted by the panel of 3 mediators referred to in sub-section (3) of section 44 who shall devise suitable procedure for the purpose of resolving the dispute.

(2) The 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 mediation under this Act, the same may be reduced into writing with the signature of the parties and authenticated by the mediator, a copy of which he provided to the parties and in cases where no settlement agreement is arrived at, a failure report may be submitted by the mediator 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 tranquility amongst the

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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 sub-sections (7) and (8) of section 22 shall, *mutatis mutandis* apply, in relation to the registration of mediated settlement agreement under this section.