



**OFFICE OF THE STATE LEGAL SERVICES AUTHORITY, WEST BENGAL**  
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No. 2661/SLSA- 319/2019

Dated 11<sup>th</sup> December, 2020

NOTIFICATION

# **Standard Operating Procedure**

*For*

# **Pre-Institution Mediation and Settlement**

## **SOP: Pre-Institution Mediation**

Under the guidance of the Hon'ble Executive Chairman, State Legal Services Authority, West Bengal and Hon'ble President and the Hon'ble Members Mediation and Conciliation Committee, High Court Calcutta, the instant SOP is another step in making the process of mediation easily accessible to people at large.

### **Pre-Institution Mediation, The current practise and the procedure:**

In the year 2018 a significant amendment has been introduced in The Commercial Courts, Commercial Appellate Courts, Commercial Division and Commercial Appellate Division of High Court Act and the amended act is now known as *The Commercial Courts Act 2015* (hereinafter as the Act) .

The said amendment introduced Chapter IIIA to the Act provides for Pre-Institution Mediation and Settlement. The newly inserted Section 12A provides that a suit which does not contemplate any urgent interim relief under the said 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.

The State and District Legal Services Authorities are authorised for the purposes of pre-institution mediation. The time frame prescribed in this regard is three months from the date of application made by the plaintiff, which however can be extended further by two months only with the consent of the

parties. The settlement, if arrived at, 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 relevant portion of the Ordinance is as under:-

*“12A. Pre-Institution Mediation and Settlement:*

*(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, authorise the Authorities constituted under the Legal Services Authorities Act, 1987, for the purposes of pre-institution mediation.*

*(3) Notwithstanding anything contained in the Legal Services Authorities Act, 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 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.”*

Pursuant to the said Act, the Ministry of Law & Justice (Department of Legal Affairs) has issued a notification dated 03.07.2018 whereby the **Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018** have been notified. On the same date another notification was issued whereby the Central Govt. has authorized the State Authority and District Authority constituted under the Legal Services Authorities Act, 1987 to make necessary rules to give effect to and for the purposes of pre-institution mediation and settlement under Chapter IIIA of the Commercial Courts Act, 2015.

It may also be mentioned that Hon'ble The Chief Justice, High Court, Calcutta has been pleased to constitute Calcutta High Court Commercial Division and Commercial Appellate Division vide notification No. 2810-G dated 16<sup>th</sup> July, 2016 in pursuance to section 4(1) of the Commercial Courts Act, 2015.

Thereafter the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Ordinance, 2018 was notified by the Govt. of India vide The Gazette of India notification No.3 of 2018 dated 3<sup>rd</sup> day of May,2018 and in view of the aforesaid Ordinance and notification pre-institution mediation in appropriate Commercial cases have become mandatory.

On the 3<sup>rd</sup> day of July, 2018, the Ministry of Law and justice, Govt. of India has also come up with notification No.G.S.R.606 (E), thereby notifying the Commercial Courts (Pre-institution Mediation and Settlement) Rules, 2018.

In West Bengal, the Mediation is carried out through the Mediation Centres in Calcutta High Court and in each of the sub-divisional Court complex under the aegis of the Hon'ble Mediation and Conciliation Committee, High Court Calcutta as per the Civil Procedure Mediation Rules, 2006 as enacted by the Hon'ble High Court at Calcutta.

Since, the ADR Centres in Districts as well as the Mediation Centre, Calcutta High Court have complete infrastructure for carrying out mediation effectively, it is proposed to utilise the existing infrastructure, space and staff for conducting Pre-Institution Mediation and Settlement contemplated under the Act as amended. Accordingly, this Standard Operating Procedure is being developed to facilitate the working of this arrangement.

In view of the aforesaid Act and notifications, the State Legal Services Authority West Bengal (hereinafter as the WBSLSA), through its respective District Legal Services Authorities (hereinafter as the DLSAs) and Mediation and Conciliation Committee High Court Calcutta (hereinafter as the MCC) are required to facilitate the conduct of mediation in all matters covered by the aforesaid Act, as amended by the Ordinance. The Mediation is carried out through the Mediation Centre in each of the Court complex under the aegis of MCC.

The applications in respect of commercial dispute are received by the Mediation Centre, High Court, Calcutta / the DLSA concerned as per territorial and pecuniary jurisdiction and nature of commercial dispute.

Upon the Mediation Centre, High Court, Calcutta / the DLSA being approached by an interested party/ the plaintiff (hereinafter as the plaintiff), service is affected upon the opposite party/ the proposed defendant/ the respondent (hereinafter as the defendant) through Email/Whatsapp/Postal-Mail, upon payment of fixed fee of Rs 1000/-. The said fee can be deposited by way

of demand draft in the name of the “*State Legal Services Authority, West Bengal*”. The demand draft will be deposited with the Mediation Centre, High Court, Calcutta or the DLSA concerned, as the case may be, who in turn will transmit the demand draft to the WBSLSA and issue notice upon the defendant forthwith. On the appearance of the defendant, consequent to the completion of process of service, if willingness is shown by both the parties, the Hon’ble Mediation and Conciliation Committee, High Court, Calcutta and/or the Chairman, DLSA/ SCLSCs, as the case may be, shall assign an empanelled mediator of the respective jurisdiction and fix a date for their appearance before the Mediator. In the event of no service or refusal of the defendant to enter into mediation process or on the denial of the claim of the plaintiff by the defendant, the matter is marked as *non starter* and the plaintiff is at liberty to approach the concerned court to exercise his rights and seek remedies as per the law.

The aforementioned account in which one-time fee is deposited shall be operated by the Officers of the WBSLSA as per existing norms.

### **1. Approaching the authority:**

The application for pre-institution mediation shall be filed with the Mediation Centre, High Court, Calcutta (in case of commercial disputes pertaining to the Commercial Division of the High Court, Calcutta) or before the Office of the District Legal Services Authority concerned (depending on the territorial and pecuniary jurisdiction).

### **2. The fees**

The fixed one-time fee of Rs.1000/- shall be payable by Demand Draft in the name of the “*State Legal Services Authority, West Bengal*”. The demand draft alongwith the application for pre-institution mediation will be submitted with the Mediation Centre, High Court, Calcutta or the DLSA concerned, as the

case may be, who in turn will transmit the demand draft to the WBSLSA forthwith.

### **3. Service**

The service shall be effected upon the defendant through post or Email and Whatsapp. The postal address, Email id and the Whatsapp number of the defendant shall be provided by the plaintiff, along with an affidavit declaring that the said address and the number are correct and have been in use in the last 30 days. The Mediation Centre will take the responsibility to serve the notice regarding the cases of the High Court Calcutta and in case of others the concerned DLSA/SDLSCs will serve the notices and in that case the cost will be borne from the **fees** received for this purpose by the SLSA.

### **4. Upon completion of Service**

On due service upon the defendant, by means aforementioned, if the said defendant refuses to participate in the mediation process or refuses to acknowledge the claim of the plaintiff, the process shall be marked as *non starter*. The same shall be the case if service is not effected upon the defendant, despite reasonable attempts. In case where the defendant chooses to participate in the mediation process, an empanelled Mediator shall be appointed in the matter.

### **5. Conducting Mediation**

The mediation shall be conducted physically or on online platform as specified by the concerned DLSA/Mediation Centre. In case of online mediation, the mediation centre shall generate a link to facilitate the tripartite video conferencing between the plaintiff, the defendant and the Ld. Mediator. The settlement, if arrived at, 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.

If, despite efforts of the Ld. Mediator, the plaintiff and the defendant fail to reach at any consensus, the plaintiff shall be within his rights to approach the court of law to enforce his remedies, as per the law.

## **6. Limitation period**

After the receipt of one time fees, the process of affecting service shall be completed within 10 days. The time frame for mediation shall be three months from the date of application made by the plaintiff, which may be extended *only with the consent of the parties*.

### **The modalities for carrying out Pre-Institution Mediation and Settlement would-be as under:**

- (A) This SOP shall be read in addition to the existing Civil Procedure Mediation Rules, 2006 of the High Court, Calcutta.
- (B) **Words and Expressions used but not defined** – The words and expressions used but not defined herein shall have the same meaning as assigned to them in the commercial Courts Act 2015, as amended and in Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018 (hereinafter referred as the Rules).
- (C) **Conduct of Pre-Institution Mediation and Settlement** – Subject to the details and clarification provided hereinafter, the procedure for the Pre-Institution Mediation and Settlement shall be the same as prescribed in the Rules.



(D) **The Nodal Officers** – Officer-in-Charge Mediation Centre, High Court, Calcutta /Secretary, DLSA shall be the Nodal Officer for conduct of Pre-Institution Mediation and Settlement who shall work in consultation with the Member Secretary, WBSLSA and the Member Secretary, MCC, Calcutta High Court. The staff attached to the Mediation Centre and the DLSAs shall provide all sorts of support for conduct of Pre-institution Mediation.

(E) **Panel of Mediators** – The panel of trained Mediators for conducting pre-litigation Mediation in Commercial Disputes in West Bengal has already been approved by the Hon'ble Mediation and Conciliation Committee, High Court, Calcutta and the same will be circulated to all the DLSAs and the SDLSCs of West Bengal by the SLSA time to time.

(F) **Judicial Officers as Mediators** - The Secretary DLSAs shall keep the panel of trained Judicial Officer Mediators updated by making necessary changes in the same that may take place on account of transfer, retirement or training.

7. **Platform for conducting Mediation** – The mediation shall be conducted physically or online platform specified by the concerned DLSA/MCC. The Mediation Centre and/or the DLSA/SDLSCs shall generate a link to facilitate the tripartite video conferencing between the plaintiff, the proposed defendant/respondent and the Ld. Mediator.

8. **Conduct of Mediation Process** –

(i) The application in respect of a commercial dispute shall be entertained by the Mediation Centre, High Court, Calcutta (for matters coming under the exclusive jurisdiction of the Commercial Division of the High Court, Calcutta as well as matters under the concurrent jurisdiction of the City

Civil Court, Calcutta and Commercial Division of the High Court, Calcutta) /the DLSA concerned having regard to territorial and pecuniary jurisdiction and the nature of commercial dispute in terms of the Rules.

(ii) After the process of issuance of notice is complete and both the parties (the plaintiff and the defendant) give their consent to participate in the mediation process, the Hon'ble Mediation & Conciliation Committee in case of High Court and the Chairman of DLSAs or SDLSCs in case of district and sub-divisions shall assign an empanelled mediator, and fix a date for their appearance before the Mediator, on the link shared by the mediation centre.

(iii) Once the process of mediation is over, the record thereof shall be made over by the Mediator to the appropriate authority and shall be preserved in a sealed cover as a privileged communication and shall be treated as confidential not to be shared or disclosed at all.

(iv) The Judge Mediator, in case of mediation being not successful, shall recuse himself/herself from the matter on judicial side.

9. **Financial Details** – (a) The Mediation Fee payable by the parties as per Rule 11 of PIMS Rules, 2018 shall be paid by Demand Draft drawn in the name of “*State Legal Services Authority, West Bengal*” in case of Pre-institution Mediation before the Mediation Centre and Demand Draft in the name of the concerned “*District Legal Services Authority, ..... (name of the district)*” for Pre-institution Mediation before the DLSAs. The WBSLSA and the DLSA concerned shall deposit the Demand Draft with its bank account and shall keep an account of such fee under the head titled “*Mediation Fee- Pre-institution Mediation in Commercial Dispute*”.

Primarily, expenses towards the honorarium of the Advocate mediators and expenses as contemplated in the Rules shall be met out of the said fund.

10. **Honorarium to the Mediators** – The Advocate Mediators shall be paid honorarium as per Schedule- I.
11. **Administrative and Technical support-** All administrative and technical support shall be provided by the respective DLSAs for conducting pre-institution mediation in a congenial atmosphere.
12. **Venue for conducting Mediation** – The venue for conducting mediation shall be the Mediation Centre, High Court Calcutta and the ADR Centres in each of the Districts or separate Mediation Centres, wherever available, and the facilities and infrastructure of the said Mediation Centres will be used for the said purposes. Pre-institution Mediation in Commercial Dispute shall be conducted at such place chosen by the concerned District Judge in respect of the district in which the ADR Centre is not yet functional and for conducting for such mediation, each venue must be provided with befitting infrastructure.
13. **Refund:** No party can claim the refund of one-time fee, once the process has been issued to the defendant through Post/Email/Whatsapp.
14. **Ethics to be followed by Mediator** – The Mediator shall follow the ethics as provided under Rule 12 of the Rules. However, to avoid any justifiable doubt as to his independence or impartiality, the Mediator shall follow the principles as laid down in the Fifth Schedule to the Arbitration and Conciliation Act, 1996. It is clarified that the word ‘Arbitrator’ in the above said Schedule shall be read as ‘Mediator’ for the purposes of this Protocol.

15. **Complaint against Mediator** – In case any party has a complaint with the mediator or is not satisfied with the working of the mediator, the complaint shall be made to the Hon’ble MCC, High Court, Calcutta.

16. **Review of the work of the Mediator and all the arrangements for Pre-Institution Mediation and Settlement** –The Hon’ble MCC, High Court, Calcutta with the assistance of the WBSLSA shall review the working of the Mediators empanelled by it from time to time as also the arrangements for conduct of Pre-Institution Mediation and Settlement and make necessary changes in the same. For the smooth functioning of Pre-Institution Mediation and Settlements, the Member Secretary, MCC, High Court, Calcutta may issue Office Orders/Circulars from time to time in consultation with the Member Secretary, WBSLSA.

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### Schedule I

#### *Honorarium to the Mediators, who are the retired Hon'ble Judges of High Court*

S.No.	Quantum of Claim in Commercial Dispute/ Nature of case	Honorarium for settled cases
1.	From Rs.3,00,000/- to Rs.10,00,000/-	Rs.10,000/-
2.	From Rs.10,00,000/- to Rs.50,00,000/-	Rs.20,000/-
3.	From Rs.50,00,000/- to Rs.1,00,00,000/-	Rs.27,000/-
4.	From Rs.1,00,00,000/- to Rs.3,00,00,000/-	Rs.33,000/-
5.	Above Rs.3,00,00,000/-	Rs.50,500/-
6.	For each unsettled case	1/3 <sup>rd</sup> of the honorarium payable for the settled cases

#### *Honorarium to the trained Mediators*

S.No.	Quantum of Claim in Commercial Dispute/ Nature of case	Honorarium for settled cases
1.	From Rs.3,00,000/- to Rs.10,00,000/-	Rs. 7,500/-
2.	From Rs.10,00,000/- to Rs.50,00,000/-	Rs.15,000/-
3.	From Rs.50,00,000/- to Rs.1,00,00,000/-	Rs.20,000/-
4.	From Rs.1,00,00,000/- to Rs.3,00,00,000/-	Rs.25,000/-
5.	Above Rs.3,00,00,000/-	Rs.37,500/-
6.	For each unsettled case up to Rs.2,00,00,000/-	Rs. 2,500/-
7.	For each unsettled case above Rs. 2,00,00,000/-	Rs. 5,000/-

Sd./-  
(DURGA KHAITAN)  
Member Secretary  
State Legal Services Authority  
West Bengal