

# **Uttar Pradesh State Legal Services Authority**

## **Comprehensive Standard Operating Procedure (SOP)**

### **For**

## **Commercial Courts (Pre-Institution Mediation and Settlement)**

Under the able guidance of the Hon'ble Executive Chairman, Uttar Pradesh State Legal Services Authority, the instant SOP is a step in making the process of mediation easily accessible to people at large.

The Commercial Courts, Commercial Appellate Courts, Commercial Division and Commercial Appellate Division of High Court Act were enacted in 2015. Thereafter a significant amendment has been introduced in The Commercial Courts, Commercial Appellate Courts, Commercial Division and Commercial Appellate Division of High Court Act in the Year 2018. 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 authorized 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 10 of the Arbitration and Conciliation Act, 1996,

The relevant portion of the Act 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, authorize 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 authorized 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.

Since, the ADR Centers in Districts have complete infrastructure for carrying out mediation effectively, it is proposed to utilize 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 Uttar Pradesh State Legal Services Authority, (hereinafter as the UPSLSA), through its respective District Legal Services Authorities (hereinafter as the DLSAs) are required to facilitate the conduct of mediation in all matters covered by the aforesaid Act, as amended.

The applications in respect of commercial dispute are received by the DLSA concerned as per territorial and pecuniary jurisdiction and nature of commercial dispute.

When the DLSA is 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 concerned district. On the appearance of the defendant, consequent to the completion of process of service, if willingness is shown by both the parties, the Chairman, DLSA shall assign an empanelled mediator 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 Secretary DLSA as per existing norms.

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

(A) **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).

(B) **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.

(C) **The Nodal Officers:-** Secretary, DLSA shall be the Nodal Officer for conduct of Pre-Institution Mediation and Settlement who shall work in consultation with the Member Secretary, UPSLSA. The staff attached to the DLSAs shall provide all sorts of support for conduct of Pre-institution Mediation.

(D) **Panel of Mediators:-** The application for Pre-Litigation settlement of Commercial disputes shall be referred to a mediator from the Panel of Mediators appointed for Mediation. The appointment of Mediators in districts, are conducted as per the Uttar Pradesh Civil Procedure (District Courts) Mediation Rule, 2021.

(E) **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.

2. **Application to the Authority:-**The application for pre-institution mediation shall be presented before the Office of the District Legal Services Authority concerned (depending on the territorial and pecuniary jurisdiction).

3. **Fees:-**The fixed one-time fee of Rs 1000/- shall be payable by Demand Draft in the name of the concerned district. The demand draft along with the application for pre-institution mediation will be submitted with the concerned DLSA. The fees paid by the party as per Rule 3(1) shall be non refundable. DLSA shall utilize the fees paid under this Rule for issuance of process and other expenses incurred during process related to Pre Institution Mediation and Settlement. Separate record of the expenses incurred out of the said fund shall be maintained by the District Legal Services Authorities. DLSAs shall submit quarterly report regarding such fees/funds to the UPSLSA.

4. **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 concerned DLSA will serve the notices and in that case the cost will be borne from the fees received for this purpose by the DLSA.

5. **Procedure after 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.

6. **Conduction of Mediation:-** 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 shall assign an empanelled mediator, and fix a date for their appearance before the Mediator, on the link shared by the DLSA.

- a. The mediation shall be conducted physically or on online platform and specified by the concerned DLSA. In case of online mediation, the concerned DLSA 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.
- b. 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.

- c. 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.
- d. The Judge Mediator, in case of mediation being not successful, shall recuse himself/herself from the matter on judicial side.

7. **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.

8. **Financial Details**:-

(a) The Mediation Fee payable by the parties as per Rule II of PIMS Rules, 2018 shall be paid by Demand Draft drawn in the name of the concerned "District Legal Services Authority, .....(name of the district)" for Pre-institution Mediation before the DLSAs. 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".

As per Rule 11, one time Mediation fees shall be paid to the Authority and not directly to the Mediator. The Authority, after completion of the mediation process, needs to pay the honorarium. to the Mediators, excluding Judge Mediator, from the mediation fees paid under Rule 11. To provide better facilities to the parties, the Authority bears the expenses towards the maintenance of the facilities etc. Therefore, the Authority may utilize a portion of the deposited fees, having regard to the nature of the dispute and outcome of Mediation process and with the previous approval from UPSLSA, towards maintenance, refurbishment and development of

the facilities, conducting training of the stakeholders, publishing advertisement, conducting awareness campaign. for making available substantial manpower (Contractual/outsourcing) and for any other purpose approved by the Hon'ble Executive Chairman, UPSLSA, for the smooth working of PIMS. In the case of Judge Mediator, entire fees paid by the parties shall be utilised for the above purpose.

9. **Honorarium to the Mediators:-** The Advocate Mediators shall be paid honorarium as per following Schedule-

Sr. No.	Quantum of Claim in Commercial Dispute/nature of case	One time Mediation fee as prescribed in scheduled II	Honorarium to be paid to the Mediator for settled cases	Honorarium to be paid to the Mediator for unsettled cases with minimum 03 sittings
1.	Above Rs. 3,00,000/- but not exceeding Rs. 10,00,000/-	Rs. 15,000/-	Rs. 10,000/-	Rs. 7,500/-
2.	Above Rs. 10,00,000/- but not exceeding Rs. 50,00,000/-	Rs. 30,000/-	Rs. 25,000/-	Rs.15,000/-
3.	Above Rs. 50,00,000/- but not exceeding Rs. 1,00,00,000/-	Rs. 40,000/-	Rs.35,000/-	Rs. 20,000/-
4.	Above Rs. 1,00,00,000/- but not exceeding Rs. 3,00,00,000/-	Rs. 50,000/-	Rs.40,000/-	Rs. 25,000/-
5.	Above Rs. 3,00,00,000/-	Rs. 75,000/-	Rs. 65,000/-	Rs. 37,500/-

The payment of honorarium under this Schedule shall be applicable with prospective effect and the fees in the matters referred prior to the date of enforcement of this SOP shall be paid as per previous practice.

10. **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

11. **Venue for conducting Mediation:-** The venue for conducting mediation shall be ADR Centre in each of the Districts or separate Mediation Centre, 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.

12. **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.

13. **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 concerned DLSA.

14. **Review of the work of the Mediator and all the arrangements for Pre Institution Mediation and Settlement**- The UPSLSA shall review the working of the Mediators empanelled from time to time & also the arrangements for conduct of Pre-Institution Mediation and Settlement and make necessary changes in the same.