

DELHI STATE LEGAL SERVICES AUTHORITY, PATIALA HOUSE COURTS, NEW DELHI
MANUAL –4
NORMS SET FOR THE DISCHARGE OF FUNCTIONS

ALTERNATE DISPUTE RESOLUTION

Alternate Dispute Resolution Wing (ADR Wing) has two sections:-

A. Lok Adalat

B. Mediation

A. (i) LOK ADALAT

(1) 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 organized:

Provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law.

(2) 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.

Provided that no case shall be referred to the Lok Adalat under sub-clause (b) of clause (i) or clause (ii) by such court except after giving a reasonable opportunity of being heard to the parties.

This Authority organizes National Lok Adalat, Special Lok Adalat from time to time.

(ii) PERMANENT LOK ADALAT

(1) 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;

Provided that the Permanent Lok Adalat shall not have jurisdiction in respect of any matter relating to an offence not compoundable under any law;

Provided further that the Permanent Lok Adalat shall also not have jurisdiction in the matter where the value of the property in dispute exceeds ten lakh rupees;

Provided also that the Central Government may, by notification, increase the limit of ten lakh rupees specified in the second proviso in consultation with the Central Authority.

(2) After an application is made under sub-section (1) to the Permanent Lok Adalat, no party to that application shall invoke jurisdiction of any court in the same dispute.

In Delhi, there are three Permanent Lok Adalat functional for settlement of matters pertaining to electricity. Permanent Lok Adalat-I and Permanent Lok Adalat-II at Mata Sundri Road, Near ITO, Delhi while Permanent Lok Adalat-III at Vikas Puri, Delhi

AMICABLE SETTLEMENT OF CASES BY WAY OF CONCILIATION

Efforts are made by the Counsellors of the Authority who are either Retired Judicial Officers, Police Officers and Officers from Govt. and non-Govt. Organizations appointed at all District Authorities to settle the matters amicably between the parties before opting for the legal recourse.

B. MEDIATION

(i) Mediation in IPR cases pending before Trade Marks Registry:-

Delhi State Legal Services Authority in coordination with the Registrar, Trade Marks Registry has initiated the process of settlement of cases through mediation pending before the Registrar, Trade Marks, Delhi. In this regard, the Standard Operating Protocol (SOP) has been prepared and its content in brief is as under (it is also available on the website of DSLSA):-

1. STAGE OF REFERENCE

In Opposition/Rectification matter pending in the Trade Marks Registry, Delhi at any stage, wherein the final hearing is not concluded and either party has expressly desired in writing by submitting prescribed consent form for mediation, may be referred for mediation to DSLSA by the Registrar/competent authority nominated/authorised by the Registrar in this behalf.

2. APPLICATION / CONSENT FOR REFERENCE

- (i) Reference to Mediation can be made by the Registrar/competent authority nominated/authorised by the Registrar in this behalf wherein either of the party to a pending matter voluntarily submits consent on prescribed form for reference of its disputes to Mediation;
- (ii) Both the parties may appear themselves in person or through their authorized representative for reference of their matter/dispute to Mediation before the Registrar/competent authority nominated/authorised by the Registrar in this behalf;
- (iii) One or the other party may not only submit its own consent but it may also

submit before the Registrar/competent authority nominated/auth

- (iv) orised by the Registrar in this behalf, the Consent Form duly executed by the opposite party or its authorised representative or attorney for reference of matter/dispute to mediation;
- (v) The Registrar of the Trade Marks or competent authority nominated/authorised by the Registrar in this behalf may also refer the any Opposition/Rectification matter pending before him to Mediation if he is satisfied that there is existing element of settlement in such pending matter and he may call upon the parties to submit themselves to the jurisdiction of the Mediator for amicable settlement of their disputes.

3. PROCEDURE ON REFERENCE

- i) When a case is received from the office of Registrar Trade Marks for Mediation, the office of DSLSA shall issue a notice to both/all the parties of the given case to appear before designated/nominated authority by DSLSA on a certain date and place either personally or through the authorized representative of the parties;
- ii) Once parties and/or their authorized representative put in their appearance and agrees for the Mediation, the matter shall be assigned to one of the Mediator;
- iii) The DSLSA while issuing notice to any of the parties or the parties to a pending case may also call upon them to submit their consent for voluntarily participating in the Mediation process on a dedicated email address as also by FAX or otherwise by a consent order sent through Special Messenger to this Office;
- iv) The parties/authorised agents/representatives appearing before the designated/nominated authority for mediation shall be required to deposit the Consent Form in original before such authority, who shall make such Consent Form an integral part of mediation record before proceeding further.
- v) The Mediator will take up the matter for mediation as per the norms and module framed by Mediation & Conciliation Project Committee, Supreme Court of India

and shall conduct themselves in accordance with the Mediation & Conciliation Rules framed by the High Court of Delhi in exercise of power under Part 10 of the CPC, 1908 (5) 1908 and Clause (d) of sub Section 2 of Section 89 of the Code, as far as applicable. The Mediator shall also take into account the statutory provisions stipulated under the Trade Marks Act, 1999 and Rules made thereunder while adjudicating upon the settlement;

- vi) The Mediation shall be conducted at the Central Office, DSLSA on three earmarked working days in a week as per the convenience of the Advocate/ Mediator as also the varying party;
- vii) The Mediation may also be held at such other places that may be made available by the office of Registrar of Trade Marks or Delhi Mediation Centre or the Delhi Dispute Resolution Society.

4. PANEL OF MEDIATORS /CONCILIATORS

- (i) The DSLSA in order to carry out the Pilot Project for Resolution of disputes in an amicable manner has already trained 17 advocates as per the approval of Mediation & Conciliation Project Committee conveyed through its Registrar vide Ref. No. NIL dated 06.05.2015 and as per the training module that is framed by the Mediation Conciliation Project Committee, Supreme Court of India.

(ii) Mediation in Pre-FIR matrimonial cases at CAW Cells:-

DSLSA with coordination of Crime Against Women Cell (CAW Cell) is also conducting mediation in Pre-FIR matrimonial cases at CAW Cell, **PS-Sec. 3, Rohini** and CAW Cell, **PS-Kirti Nagar**.

In addition to this, facility of mediation is also being provided at **Samadhan Centre, PS Burari**.

(iii) Pre-Institution Mediation in Commercial Matters:-

DSLSA with Coordination of Delhi Mediation Centre is conducting pre-institution mediation in Commercial Matters. The Comprehensive Standard Operating Procedure (SOP) for Commercial Courts (Pre-Institution Mediation and Settlement) is as follows:-

The Commercial Courts, Commercial Appellate Courts, Commercial Division and Commercial Appellate Division of High Court Act was enacted in 2015. Thereafter the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Ordinance, 2018 was notified on 03.07.2018 by Ministry of Law and Justice, Govt. of India whereby Chapter IIIA has been added to the Act which provides for pre-institution mediation and settlement.

It is pertinent to mention here that Section 12A provides that 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.

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 ordinance, 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 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 High Court vide order No.58/DHC/Gaz./G-1/VI.E.2(a)/2018 dated 07.07.2018, in pursuance to the Ordinance of 2018 has ordered that all the District & Sessions Judges/Addl. District & Sessions of respective districts are nominated as Commercial Courts as an interim measure to deal with the commercial matters valued between rupees three lacs to rupees two crores.

In view of the aforesaid Ordinance and notifications, DSLSA and through it the respective DLSAs/DHCLSC are now mandated to facilitate conduct of mediation in all matters covered by the aforesaid Act as amended by the Ordinance.

However, in Delhi, the Mediation is carried out through the Mediation Centre in each of the Court complex under the aegis of Delhi Mediation Centre under the High Court and at the Delhi High Court by the 'Samadhan' Complex of the Delhi High Court.

Since, the court annexed Mediation Centre in District Courts as well as Delhi High Court have complete infrastructure and carry out mediation effectively, it is proposed to utilise the existing infrastructure such as space for conducting mediation, staff and stenographer who will assist in the mediation process of such centres for Pre-Institution Mediation and Settlement contemplated under the above said Act as amended by the Ordinance with the DLSA and DHCLSC functioning as a platform to coordinate and facilitate the Pre-Institution Mediation Settlement. Accordingly, this Standard Operating Protocol is being developed to facilitate the working of this arrangement.

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

1. **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, Commercial Appellate Courts, Commercial Divisions and Commercial Appellate Divisions of High Courts Act, 2015 (hereinafter referred as 'the Act') and in Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018 (hereinafter referred as 'Rules').
2. **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.
3. **Nodal Officers** – Secretary, DHCLSC/DLSA shall be the Nodal Officer for implementation of the Act and the Rules, and for conduct of Pre-Institution Mediation and Settlement who shall work in consultation with the Incharge, Mediation Centres in the Districts/Delhi High Court.

4. **Panel of Mediators** – Empanelled mediators who are registered with Delhi Mediation Centre and High Court Mediation Centre for the District Courts and High Court respectively shall stand empanelled with Delhi State Legal Services Authority and Delhi High Court Legal Services Committee respectively. If the need so arises, the mediators may also be empanelled from the mediators trained by other accredited institution, subject to approval of the Executive Chairperson, DSLSA. The said panel may be reviewed as per requirement from time to time.
5. **Venue for conducting Mediation** – The venue for conducting mediation shall be the premises of Mediation Centre located in District Courts Complex and “Samadhan” Complex of Delhi High Court Mediation and Conciliation Centre. The facilities and infrastructure of the said Mediation Centres will be used for the said purposes.
6. **Conduct of Mediation Process** – (i) The application in respect of commercial dispute shall be entertained by the DHCLSC/DLSA concerned having regard to territorial and pecuniary jurisdiction and nature of commercial dispute in terms of Rules.
 - (ii) After the process of issuance of notice is complete and the other party appears before the Secretary of the DHCLSC/DLSA and both the parties give consent to participate in the mediation process, the DHCLSC/DLSA through its Secretary shall assign an empanelled mediator in consultation with the Incharge Mediation Centre of the respective jurisdiction and fix a date for their appearance before the Mediator.
 - (iii) Once the process of mediation is over, the record thereof shall be made over by the Mediator to the Secretary of the DHCLSC/DLSA.
 - (iv) The Judge Mediator, in case of mediation being not successful, shall recuse himself/herself from the matter on judicial side.
7. **Financial Details** – (a) The fee by the parties, as per Rules, will be deposited in the bank account maintained by DSLSA in the name of “**DSLSA Mediation**”. The details of the said bank account will be circulated to DHCLSC/DLSAs/Mediation Centres. The amount

of fee under the Rules shall be deposited in this account by the parties either by Demand Draft or through online. The said account shall be operated by Special Secretary, DSLSA and Assistant Account Officer, DSLSA.

(b) DSLSA will place sufficient funds at the disposal of the DHCLSC and DSLAs from time to time from the said account for the purpose of carrying out Pre-Institution Mediation and Settlement. The DHCLSC/DLSA concerned shall utilize the said funds for issuance of process and other activities related to Pre-Institution Mediation and Settlement and maintain separate record of the expenses incurred out of the said fund and submit quarterly report to the DSLSA.

(c) Initially if sufficient funds are not available in this account, the DSLSA out of NALSA Fund or State Legal Aid Fund (Grant-in-Aid) or the Cost Fund shall place certain funds at the disposal of the DHCLSC/DLSA which shall be reimbursed after funds are received in the said account.

(c) Primarily, expenses towards the honorarium of the Advocate mediators and expenses as contemplated in the Rules shall be made out of the said Account.

8. **Honorarium to the Advocate Mediators** – The Advocate Mediators shall be paid honorarium as per the following schedule:

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/-

9. ***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.
10. ***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 Secretary DHCSLC/DLSA who shall examine the same and take appropriate steps in consultation with Incharge, Mediation Centre.
11. DLSA would also work towards the establishment of administrative support for the mediators empanelled by it in due course.
12. ***Review of the work of the Mediator and all the arrangements for Pre-Institution Mediation and Settlement*** –DLSA in consultation with the concerned Mediation Centre shall review 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, Member Secretary, DLSA may issue Office Orders/Circulars from time to time.
