

Comprehensive Standard Operating Procedure (SOP) for Commercial Courts (Pre-Institution Mediation and Settlement)

Section 12A of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (hereinafter referred to as 'the Act') provides for pre-institution mediation and settlement (hereinafter referred to as PIMS).

2. 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 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."

3. Pursuant to the Act coming into force, 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 is 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 the Act.

4. In view of the above said, Maharashtra State Legal Services Authority, Mumbai (hereinafter referred to as 'MSLSA') and the District Legal Services Authorities (hereinafter referred to as DLSAs) in the State of Maharashtra are facilitating the process of mediation in all matters covered by the Act.

5. In the State of Maharashtra, majority of the Mediation is being conducted through the Mediation Centres situated in Alternate Dispute Resolution Centres (hereinafter referred to as 'ADR Centre'). In Bombay High Court, it is being conducted at Main Mediation Centre. In few districts, where separate ADR building is not available, it is being carried in the Court Rooms designated for court annexed Mediation. These Mediation Centres have basic infrastructure. Since separate infrastructure for PIMS is not yet established in the State of Maharashtra, the existing infrastructure is being used for conducting PIMS in commercial disputes. The existing staff and stenographers are assisting in the mediation process of such centres for PIMS contemplated under the Act.

6. There is need to develop a mechanism for maintenance, refurbishment and development of the infrastructure including required manpower for smooth functioning of PIMS at these Mediation Centres. Further, there are some grey areas in the Statute, such as payment of mediation fees, the conduct of mediation process, financial details, Panel of Mediators etc. Therefore, for the purpose of smooth and uniform functioning of PIMS throughout all the Mediation Centres in the State of Maharashtra, a Standard Operating Protocol is necessary. As such, this **Comprehensive Standard Operating Procedure (SOP)** is developed for PIMS in Commercial Disputes in the State of Maharashtra.

7. The modalities for carrying out PIMS 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 Act and in Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018 (hereinafter referred to as ‘the Rules’).

b. Conduct of PIMS – 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. Nodal Officers –

(i) At the Districts, DLSA Secretary shall be the Nodal Officer for implementation of the Act and the Rules, and for conduct of PIMS.

(ii) For the matters falling under Original Jurisdiction of Bombay High Court, the Deputy Registrar, Main Mediation Centre, Bombay High Court shall work as Nodal Officer under the directions of Member Secretary, MSLSA. However, the issues going to the root of the application like tenability of the application, appointment/removal/re-appointment of Mediator shall be dealt with and decided by the Member Secretary.

d. Panel of Mediators – i) Main Mediation Centre, Bombay High Court and all the DLSA in the State have already maintained a separate panel of Mediators for PIMS purposes. The practice shall be continued.

ii) Along with the persons/Institutions possessing qualifications as prescribed by Rule 4 of Part II of the Civil Procedure Alternative Dispute Resolution and Mediation Rules, 2006 framed by the High Court of Judicature at Bombay, the persons, who have undergone 40 hours intensive Mediation training from any reputed Institution can also be empanelled with the approval from Hon’ble Main Mediation Monitoring Committee, Bombay High Court.

iii) The panel of Mediators may be reviewed/revamped for time to time as per requirement.

e. Venue for conducting Mediation –

i) Preferably the venue for conducting mediation will be the premises of Mediation Centre located in District Courts Complex and High Court.

ii) In cases, where the Mediation Institutions or the Mediator on panel is having its own facilities and infrastructure for conducting Mediation, it can be utilized for the PIMS purposes with the consent of the parties. However such institution or Mediator shall not be entitled to charge additional fees/charges etc. for the same.

iii) In cases, where all the parties to Mediation or any party to the mediation with the consent of other parties wish to conduct Mediation at any other places like hotel/conference hall, they may utilize such facility with previous permission from the Authority. The costs/charges of such facilities shall be borne by concerned party/parties.

f. Conduct of Mediation Process –

(i) The application for PIMS in respect of commercial dispute in any particular District shall be entertained by the DLSA concerned, having regard to territorial and pecuniary jurisdiction and nature of commercial dispute in terms of the Rules.

(ii) The application in the commercial dispute cases falling under the Original Jurisdiction of Bombay High Court shall be filed before MSLSA, having regard to territorial and pecuniary jurisdiction and nature of commercial dispute. The MSLSA shall then forward the application to Main Mediation Centre, Bombay High Court for further process as per the Rules.

(iii) Where the other party appears before the Deputy Registrar, Mediation or Secretary of DLSA in pursuance to the notice or suo moto and both the parties give consent to participate in the mediation process, the Deputy Registrar, Mediation/Secretary, as the case may be, shall issue notice to the party for payment of Mediation fees in accordance with Schedule II of the Rules.

(iv) As per Rule 11, the parties to the commercial dispute, shall pay one time Mediation fees to the Authority **before**

commencement of mediation. Where the applicant fails to pay such fees, the application for PIMS shall be closed and the certificate shall be issued that 'no mediation process is commenced / undertaken as provided under section 12A of the Act, because of non-payment of the mediation fees by the applicant. The cases where the opposite party fails to pay the fees, it shall be deemed to be his refusal to participate in the mediation process and 'Non-Starter' shall be issued in accordance with Rule 3(4). In case of any of these contingencies, the amount paid by the other party towards his part of the fees shall, on demand be refunded to the said party.

(v) At DLSA, the Secretary after payment of fees by the parties as per Rule 11, shall assign an Empanelled Mediator and fix a date for the appearance of the parties before the appointed Mediator and intimate the parties and the appointed Mediator accordingly through email or by other electronic means or by speed post.

(vi) At Main Mediation Centre, Bombay High Court, the Deputy Registrar, Mediation shall, after payment of fees by the parties as per Rule 11, move a submission before Member Secretary for appointment of an empanelled Mediator. After the appointment of Mediator, he shall fix a date for the appearance of the parties before the Mediator and intimate the parties and appointed Mediator accordingly through email or by other electronic means or by speed post.

(vii) The mode of Online Mediation may be availed in PIMS. Where both the parties agree for Online Mediation, the Secretary or the Deputy Registrar-Mediation as the case may be, directly refer the matter for Online Mediation. Where only one party is ready to go for online mediation, the concerned authority shall take decision to refer the matter for Online Mediation, by giving due consideration to the reasons shown by the other party. Where the mediation is to be conducted online, procedure laid down by Hon'ble Main Mediation Monitoring Committee, Bombay High Court, in Standard Operating Procedure dated 15/01/2021 for conducting Mediation Session through Video Conferencing shall be followed.

(viii) The parties shall appear before the Mediator for the mediation process, on the date as fixed by the Authority or by

the Mediator as the case may be or on such other day as fixed by the Mediator with the consent of both the parties.

(ix) Where, inspite of two or three bonafide attempts by the appointed Mediator, the parties remain absent and mediation process does not start for the said reasons, necessary consequences shall ensue viz.

- a. Where the applicant fails to appear, the application for PIMS shall be closed and the certificate shall be issued that 'no mediation process is commenced / undertaken as provided under section 12A of the Act, because of non-participation by the applicant.
- b. Where the opposite party fails to appear, it shall be deemed to be his refusal to participate in the mediation process and 'Non-Starter' shall be issued vide Rule 3(4).

In any of the above contingencies, the defaulting party shall not be entitled for refund of his part of fees deposited, if any as per Rule 11. However, the party acting bonafide, on demand may get the refund of his part of fees deposited as per Rule 11.

(x) Once the process of mediation is over, the record thereof shall be made over by the Mediator to the Deputy Registrar, MMC/ DLSA Secretary, as the case may be.

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

(xii) In appropriate cases, where the mediation is not completed within the period specified in Rule 3(8) of the Rules, and where matter is likely to settle, and both parties are agreed to extend the period, the Authority shall extended further period, agreeable to both parties.

g. Financial Details –

(i) The fee received from the parties as per Rule 3 (1) as well as Rule 11 shall be deposited only in the bank account maintained by MSLSA and each DLSA in the State for PIMS purpose.

Regarding fees under Rule 3 (1):

(ii) The fees paid by the party as per Rule 3(1) shall be non-refundable. MSLSA and DLSA shall utilize the fees paid under this Rule for issuance of process. MSLSA and DLSA with prior approval of MSLSA may utilise said fees for other activities related to Pre-Institution Mediation and Settlement. Separate record of the expenses incurred out of the said fund shall be maintained by the both the Authorities. DLSAs shall submit quarterly report regarding such fees / funds to the MSLSA.

Regarding fees under Rule 11:

(iii) Where both the parties to the commercial dispute appear before the Authority and give consent to participate in the mediation process as per Rule 3 (7), the DLSA Secretary / Deputy Registrar, as the case may be, shall issue a notice to both the parties asking them to pay to the Authority one time mediation fee either by Demand Draft or through online process. The details of the Authority's PIMS bank account shall be mentioned in such notice for the purpose of online payment of Mediation fees.

(iv) 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 infrastructure 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 MSLSA, towards maintenance, refurbishment and development of the infrastructure, 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, MSLSA, Mumbai, 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.

(v) **Honorarium to the Mediators** -

The Mediators other than the Judge Mediator shall be paid honorarium as per the following schedule:

Sr. No.	Quantum of Claim in Commercial Dispute/ Nature of case	One time Mediation fee as prescribed in Schedule II	Honorarium to be paid the Mediator for settled cases	Honorarium to be paid the Mediator for unsettled cases
1.	Above Rs.3,00,000/- but not exceeding Rs.10,00,000/-	Rs. 15,000/-	Rs10,000/-	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/-
6.	Where the matter is resulted in to non-commencement or non-starter under clause f (ix)(a) or (b) of this scheme, the appointed Mediator would get honorarium @ Rs. 5000/- at Main Mediation Centre, BHC and @ 2,500/- at rest of the places.			
7.	In the case of Judge Mediator, entire fees paid by the parties shall be utilised by the Authority for the purpose mentioned in clause 7 g (iv) of this SOP.			

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.

i. 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.

j. 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 Member Secretary, MSLSA/Secretary DLSA who shall examine the same and take appropriate steps.

k. MSLSA 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. For the smooth functioning of Pre-Institution Mediation and Settlements, Member Secretary, MSLSA may issue Office Orders/Circulars from time to time.

8. Notwithstanding anything contained in this SOP, where any provision of this SOP is in conflict with any of the provisions made in the Civil Procedure Alternative Dispute Resolution and Mediation Rules, 2006 and Commercial Courts (PIMS) Rules, 2018, the provisions of both the Rules shall prevail.

9. The decision on any point, aspect/issue, taken by the Executive Chairman, MSLSA, Mumbai regarding this SOP, shall be final.

10. This SOP will come in force prospectively with effect from the date as declared by the Executive Chairman, MSLSA, Mumbai

11. This SOP shall be made available on MSLSA website.

