

Guidelines for Pre-Institution Mediation in Commercial Courts

The Central Government has, under Section 12A (2) of Commercial Courts Act 2015, notified the State Legal Services Authority and the District Legal Services Authorities as the authority competent to conduct pre institution mediation and settlement in suits before Commercial Courts.

Hence the following guidelines are issued for the pre institution mediation by the competent authority.

Definitions

Act - means the Commercial Courts Act 2015.

Rules - means - The Commercial Courts (Pre-institution Mediation and Settlement) Rules 2018.

Application - means an application contemplated under Section 12 A of the Act. All other definitions in the Act and Rules, wherever the context require, shall be read as part of this guidelines.

Clause 1

An application for pre-institution mediation in respect of a suit before a Commercial Court shall be filed in Form No.1 of Schedule I of the Rules before the District Legal Services Authority within whose jurisdictional area the Commercial Court is situated.

Clause 2

Administration fee of Rs.1000/- shall be remitted to DISA or HCLSC, as the case may be, on filing the application.

Clause 3

On receipt of the duly completed application, it shall be assigned a PIM (Pre-Institution Mediation (Commercial Courts) No. and receipt of the application and administration fee shall be entered in the register appended to this guideline to be maintained by the authority.

Clause 4

Within 24 hours of receipt of an application the authority shall issue Form No.2 notice as prescribed under Schedule I of the Rules to the

opposite party, calling upon to appear, at a time and date not later than 10 days from the date of issue of Form No.2 notice, so as to convey its consent for mediation. Expense for issuance of notice shall be met from the administrative expense remitted by the applicant. If there is no response despite receipt of the notice a final notice shall be issued.

Clause 5

If the opposite party does not appear despite the final notice or appear and refuse to give consent for mediation then a Form No.3 report (Non starter Report) as per Schedule I of the Rules shall be issued by the authority to the applicant.

Clause 6

If the opposite party appear and give consent for mediation, the parties shall be directed to remit the prescribed mediator's fees as per Schedule II of the Rules in equal proportion within 10 days.

Clause 7

If the mediator's fee is not remitted by both or any of the party then also Non starter Report in Form No.3 shall be issued to the applicant.

Simultaneous to issue of Form No.3 report mediator's fee if any remitted is to be refunded to the party who remitted it.

Clause 8

If both party remit mediator's fee, a mediator shall be appointed as per the turn list specifically showing the date within which mediation shall be completed, which shall be maximum period of 3 months from the date of receipt of the application, extendable by 2 more months for valid reasons.

Clause 9

If settlement is arrived at, the mediator shall prepare the terms of settlement in Form No.4 of Schedule I of the rules. The parties, the Mediator and the Counsel, if any, for the parties shall sign the settlement in such number of originals equivalent to the number of parties and originals shall be issued to the parties by the Mediator. Requisite stamp fee for it shall be borne by the respective parties. A signed copy of the settlement with a report shall be forthwith forwarded by the Mediator to the authority.

Clause 10

If no settlement is arrived, a Form No.5 Failure Report under Schedule I, signed by the Mediator and by the parties, shall be sent by the Mediator to the authority. Copy of that report under the seal and signature of the authority shall be issued by the authority to the applicant.

Clause 11

The mediator's fee (in settled matter and non settled matter) shall be disbursed to Mediator by the authority within 15 days of receipt of settlement report or failure report, as the case may be. Fee shall be disbursed after deducting the TDS.

Clause 12

The person competent to sign and issue notice, non starter report and failure report on behalf of the authority shall be the Secretary of

DLSA. However, extension of time beyond three months, with consent of parties, shall be granted only with the permission of Chairman, DLSA.

Clause 13

The mediator-wise monthly, quarterly and yearly statistics of each authority shall be sent to KeLSA by 5th of every month and a copy shall be forwarded to KSMCC and the data shall be uploaded in the web portal of KSMCC and KeLSA.

Clause 14

The unexpended administration fee accumulated shall be used by the authority for printing Form No.1 to Form No. 5 and register, and incidental expenses, for which detailed report shall be sent to KeLSA and expense shall be incurred only on getting express sanction from KeLSA.

Clause 15

Simultaneous to disbursement of mediator's fee, the entries in the register in respect of an application shall be completed. The register shall

be verified and signed by the Secretary of the authority by 5th of every month simultaneous to submission of data to KelSA.

Dated this the 17th Day of June 2020

Approved.

CA (J) 26.6.20

JUSTICE C.T. RAVIKUMAR - Executive Chairman, KelSA & Patron, KSMCC

*The same entry to add in the
certification suggested by the Hon'ble Members
Board.*

JUSTICE K. VINOD CHANDRAN - President, Board of Governors, KSMCC

JUSTICE A. MUHAMED MUSTAQUE - Member, Board of Governors, KSMCC

JUSTICE P.V. ASHA - Member, Board of Governors, KSMCC

JUSTICE SUNIL THOMAS - Member, Board of Governors, KSMCC