

RULES
OF
MEDIATION
OF
THE BENGAL CHAMBER OF COMMERCE

Rules of Mediation

PRELIMINARY

RULES AND APPLICATION

1. (1) These rules may be called the Rules of Mediation of The Bengal Chamber of Commerce & Industry.

(2) These rules shall apply where the parties have agreed in writing, that -

(a) a dispute which has arisen, or

(b) a dispute which may arise,

between them in respect of a defined legal relationship, whether contractual or not, should be resolved by amicable settlement by The Bengal Chamber of Commerce under its Rules of Mediation.

(3) The parties may agree to exclude or vary any of these Rules at any time.

(4) Where any of these Rules is in conflict with a provision of law from which the parties cannot derogate, that provision prevails.

DEFINITIONS

2. In these rules, unless the context otherwise requires, -

(a) "Arbitration Committee" means the Arbitration Committee of the Chamber formed under the Rules of Arbitration;

(b) "Registrar" means the Registrar appointed under the Rules of Arbitration.

- (c) “Rules of Arbitration” means the Rules of Arbitration of the Chamber.
- (d) “Rules of Mediation” or “Rules” means these Rules;
- (e) “Managing Committee” means the Managing Committee of the Chamber;
- (f) “Chamber” means The Bengal Chamber of Commerce & Industry;
- (g) “Panel of Mediators” means the panel of persons approved by the Arbitration Committee to act as mediators;
- (h) “Party” means a party to the agreement referred to in rule 1(2) ;
- (i) Singular would include plural and vice versa.

PANEL OF CONCILIATORS

3.1 A Panel of Mediators shall be appointed by the Arbitration Committee from –

- (i) The legal fraternity including practising lawyers and retired Judges;
- (ii) Entrepreneurs and corporate professionals in business, professions and industry;
- (iii) Former civil servants and persons with experience of holding authoritative positions under the Central or State Governments in India;
- (iv) Persons based in India having achieved mark of significance in any vocation or trade;
- (v) Persons having specialised qualifications or outstanding credentials in mediation.

3.2 The Arbitration Committee may at any time add the name of any person to the Panel of Mediators or delete the name of any person from the panel.

3.3 The Registrar shall prepare and maintain the Panel of Mediators together with comprehensive information about their qualification, expertise and experience.

3.4 A consent in writing of persons so selected should be obtained before placing his or her name in the Panel of Mediators. The person so agreeing shall sign an undertaking in favour of the Chamber to conduct the proceedings, if assigned to him or her by the Chamber with utmost integrity, fairness, judicious approach, best intellect and application of mind committed to the interests of justice, law and equity.

NUMBER OF MEDIATORS

4. Unless the parties otherwise agree there shall be one Mediator who shall be appointed within 14 days from the commencement of the mediation procedure as mentioned in Rule 5 below.

COMMENCEMENT OF MEDIATION PROCEDURE

5.1 The party initiating mediation shall send to the other party or parties a written invitation to mediate under these Rules, briefly setting out the matters in dispute.

5.2 The mediation procedure shall be deemed to have commenced when the other party or parties accept in writing the invitation to mediation.

5.3 If the other party, or if one of the other parties, rejects the invitation to mediation, or if the other party or parties fail to respond to the invitation within 14 days or any other period that may be stated in the invitation, there will be no mediation procedure for the time being. Provided that, if there are more than two parties and one accepts but the other or others do not, then mediation in accordance with these Rules between the party making the invitation and the party accepting shall take place if they so agree.

APPOINTMENT OF MEDIATOR

6.1 If the parties agree to mediate but are unable to agree on the appointment of a Mediator they may make an application in writing to the Registrar, for the appointment of a Mediator. Such application shall be accompanied by a brief summary of the matter in dispute. A copy of the application and summary shall be sent to the other parties to the mediation. The Registrar, may call for such further information as he may require. He shall then in consultation with the Arbitration Committee appoint the Mediator from the Panel of Mediators and shall notify the parties of his name and address.

6.2 Where the parties have agreed that each party should appoint a Mediator and one or more of the parties has/have failed to make the appointment, the party or parties who have made the appointment may apply in writing to the Registrar, for the appointment of Mediator on behalf of the defaulting party or parties and the procedure indicated in the preceding paragraph shall be followed.

EXCHANGE OF INFORMATION

7.1 Each party will send to the Mediator within 14 days of his appointment, or such other period as may be agreed, copies of a concise Summary of its case in the dispute and all documents to which the summary refers and any other documents to which it may wish to refer in the Mediation. A copy of the Summary and documents will be sent simultaneously to any other party to the Mediation.

7.2 In addition, each party may send to the Mediator and/or bring to the Mediation further documentation which it wishes to disclose in confidence to the Mediator but not to the other party or parties, clearly stating to the Mediator that such documents are confidential.

DUTIES & OBLIGATIONS OF THE MEDIATOR

8.1 The Mediator shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute. He shall be guided by the principle of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade in question and the circumstances surrounding the dispute including any previous business practices between the parties or some of them.

8.2 Mediator shall conduct the mediation in such manner as he considers appropriate, taking into account the circumstances of the case, any wishes the parties may express, including any request that the Mediator hear oral statements, and the need for a speedy settlement of the dispute.

8.3 The Mediator may at any time make proposals for the settlement of disputes. Such proposal may be oral or in writing and need not be accompanied by any reasons therefor.

8.4 The Mediator may invite the parties to meet with him or may communicate with them orally or in writing. He may meet or communicate with the parties together or any of them separately. Where the Mediator receives factual information concerning the dispute from a party, he may disclose the substance of that information to the other party or parties so that other party or those other parties may have the opportunity to present any explanation which it or they may consider appropriate. However, when a party gives information to the Mediator subject to the specific condition that it be kept confidential the Mediator shall not disclose that information to any other party.

8.5 The Mediator may, with the consent of the parties, call any witness he thinks may be able to assist in the mediation.

CO-OPERATION OF THE PARTIES IN MEDIATION

9. The parties will in good faith co-operate with the Mediator and in particular will endeavour to comply with requests by him to submit written materials, provide evidence and attend meetings.

SETTLEMENT AGREEMENT

10.1 Where it appears to the Mediator that there are elements of a settlement which would be acceptable to the parties, he may formulate the terms of a possible settlement and submit them to the parties for their observations. He may reformulate the terms in the light of such observations.

10.2 If the parties reach mutual agreement on the settlement of the dispute the Mediator shall draw up a written agreement. The parties shall sign the settlement agreement. Such settlement agreement shall be signed in the presence of the Chamber.

10.3 The conciliator and the Chamber shall authenticate the settlement agreement and furnish a copy thereof to each of the parties.

10.4 The parties, by signing the settlement agreement, shall put to an end to the dispute and would be bound by the agreement for all times to come.

10.5 The Mediator may, if so requested by the parties, draw up the settlement agreement in the form of an arbitration award or, where the matter has been referred to arbitration before the commencement of the mediation, the parties may agree that the settlement agreement be drawn up in the form of an arbitration award by the Arbitral Tribunal already appointed.

CONFIDENTIALITY

11. The Mediator and the parties must keep confidential all matters relating to the mediation proceedings. Confidentiality extends also to the settlement agreement (or any arbitration award made) except where its disclosure is necessary for the purposes of implementation and enforcement.

TERMINATION OF MEDIATION PROCEDURE

12. The mediation procedure is terminated :-

(a) By the signing of the settlement agreement by the parties or by the signing of an arbitration award, on the date of such agreement or award ;

(b) By a written declaration of the parties to the effect that further efforts in mediation are no longer justified, on the date of the declaration;

(c) By a written declaration by a party to the other party or parties to the effect that the mediation procedure is terminated, on the date of the declaration ;

(d) By a written declaration of the Mediator to the effect that further efforts at mediation are no longer justified, on the date of the declaration.

RESORT OF ARBITRATION OR JUDICIAL PROCEEDING

13. Where the disputes referred to mediation are the subject of any arbitration or judicial proceedings either party may advise the Arbitration Tribunal or court that they have agreed to mediation. The arbitration or judicial proceedings shall however continue during the conduct of the mediation. The mediation procedure may not interrupt time limits and either party may initiate arbitration or judicial proceedings at any time where in his opinion such proceedings are necessary for preserving his rights.

COSTS

14.1 Upon termination of the mediation proceedings, the Mediator shall fix the costs of the mediation and give written notice thereof to the parties. The fee of the Mediator and fee and charges shall be fixed by the Mediator in accordance with the Schedule.

Provided that the Chamber may, on request from the Mediator, fix the fee of the Mediator at a figure higher than that set out in the Schedule if, in exceptional circumstances of the case, this appears to be necessary.

14.2 For the purpose of sub-rule (1), “costs” means costs relating to -

- (a) the fee and expenses of the Mediator;
- (b) any expert advice requested by the Mediator with the consent of the parties;
- (c) any other expenses incurred in connection with the mediation proceedings and the settlement agreement.

14.3 Where more than one Mediator is appointed, each Mediator shall be paid separately the fee set out in the Schedule.

14.4 The costs shall be borne equally by the parties unless the settlement agreement provides for a different apportionment. All other expenses incurred by a party shall be borne by that party.

15.1 The Chamber shall direct each party to deposit with the Chamber an equal amount as an advance for the costs referred to in rule 14.2 which is expected to be incurred.

15.2 During the course of the mediation proceedings, the Chamber may direct supplementary deposits with the Chamber in an equal amount from each party for the costs referred to in sub-rule 1.

15.3 If the required deposits under sub-rules 1 and 2 are not made in full within thirty days, the Chamber will inform the parties in order that one or the other party may make the required deposit and if the required deposit is not made, the Mediator may suspend the proceedings, or may make a written declaration of termination of the proceedings to the parties, effective on the date of that declaration.

15.4 Subject to any settlement agreement, upon termination of the conciliation proceedings, the Chamber shall apply the deposits to the costs of the proceedings render an accounting to the parties of the deposits received and applied and return any unexpended balance, to the parties.

15.5 However, if the Mediator should be of the opinion that any party has not genuinely tried to co-operate in the mediation or has been obstructive so that the mediation procedure has been thwarted or has been made more expensive, he may order that party shall pay all or part of the costs of any other party; and, if such costs cannot be amicably agreed, the Mediator may assess and decide the amount to be paid and a certificate signed by the Mediator shall be conclusive and binding on the parties.

ROLE OF MEDIATOR IN OTHER PROCEEDINGS

16. The Mediator shall not act as arbitrator, witness, lawyer, adviser or representative of any party in arbitration or judicial proceedings in respect of the dispute that is the subject of the mediation procedure.

ADMISSIBILITY OF EVIDENCE IN OTHER PROCEEDINGS

17.1 Unless all parties to the mediation procedure otherwise agree, the parties undertake not to reveal, introduce or rely on the following as evidence in any arbitration or judicial proceedings, whether or not those proceedings relate to the dispute that is the subject of the mediation procedure :-

(a) Views expressed or proposals made by any party with a view to possible settlement to of the dispute ;

- (b) Admissions made by the party in the course of the mediation procedure ;
- (c) Proposals made by the Mediator ;
- (d) The fact that a party has indicated its willingness to accept a proposal to settlement made by the Mediator.

17.2 The parties further undertake, unless all other parties otherwise agree, not to refer to or rely on any documents which might have been disclosed during the mediation procedure, whether voluntarily or at the request of the Mediator or other party but which would otherwise have been privileged and to return all such documents and copies thereof to the party disclosing them.

FEES AND EXPENSES

18.1 Registration Fee

A registration fee of Rs.5000/- shall be paid along with the application for mediation. The registration fee will not be refunded and become the property of the Chamber.

18.2 Administrative Fee

(1) The fee of the Chamber for making appointment of Mediator and for providing administrative services, are based upon the amount in dispute as disclosed when the statement of dispute is submitted to the Chamber.

(2) The Rules provide that the costs of mediation include the costs of the administrative and Mediator's fees. The Schedule of fee is given as under. These costs are, borne equally by the parties unless the settlement agreement provides for a different apportionment.

SCHEDULE OF FEES

18.3 The Administrative fee (of Chamber) and Mediator's fee (for each Mediator) will be fixed separately with regard to the amount in dispute in each case, as under:

Amount in Dispute	Mediator's Fee	Administrative Fee
Upto Rs.5 lacs (Rs.500,000)	Rs.30,000/-	Rs.15,000/-
From Rs.5 lac one to Rs.25 lac (Rs.500,001 to 2,500,000)	Rs.30,000/- plus Rs.1,500 per lac or part thereof subject to a ceiling of Rs.60,000/-	Rs.15,000/- plus Rs.750/- per lac or part thereof subject to a ceiling of Rs.30,000/-
From Rs.25 lac one to Rs.1 Crore (Rs.2,500,001 to Rs.10,000,000)	Rs.60,000/- plus Rs.1,200 per lac or part thereof subject to a ceiling of Rs.1,50,000/-	Rs.30,000/- plus Rs.600/- per lac or part thereof subject to a ceiling of Rs.75,000/-
From Rs.1 Crore one to Rs.5 Crore (Rs.10,000,001 to Rs.50,000,000)	Rs.1,50,000/- plus Rs.22,500 per crore or part thereof subject to a ceiling of Rs.2,40,000/-	Rs.75,000/- plus Rs.11,250/- per crore or part thereof subject to a ceiling of Rs.1,20,000/-
From Rs.5 crore one to Rs.10 Crore (Rs.50,000,001 to Rs.100,000,000)	Rs.2,40,000/- plus Rs.15,000 per crore or part thereof subject to a ceiling	Rs.1,20,000/- plus Rs.8,000/- per crore or part thereof subject to a ceiling of Rs.1,60,000/-

			of Rs.3,15,000/-	
Over	Rs.10	crore	Rs.3,15,000/-	Rs.1,60,000/-
(Rs.1,00,000,000)			plus	plus Rs.6,000/-
			Rs.12,000	per crore or part
			per	thereof.
			crore	
			or part thereof.	

18.4 Notwithstanding the provisions in Rule 18.3, the Arbitration Committee may prescribe the Mediator's fees and the Administrative fees of the Chamber at a figure higher than those prescribed in the said Sub-Rules, if in the exceptional circumstances of the case this appears to be necessary.

18.5 The Mediator may be paid an amount of Rs.750/- towards local conveyance for attending each mediation proceeding in the city of his residence. Any traveling and other expenses incurred by the Mediator or the Registrar for attending the mediation proceeding in a city other than the place of residence, shall also be reimbursed to him as provided hereinafter. All the above expenses shall form part of the mediation costs.

18.6 A Mediator who has to travel shall be paid traveling expenses by air or rail (air conditioned wherever available) or car (which neither air nor rail transport is available) at actuals. In addition, he may be paid out of pocket expenses at actuals for boarding, lodging and local transport subject to maximum of Rs.15,000/- per day in metropolitan towns, Rs.5000/- in class A cities and Rs.2,500/- in other cities. A Mediator who makes his own arrangements for boarding, lodging, local transport etc. may be paid out of pocket expenses at the rate of Rs.1500/- per day, without production of vouchers. The limits for stay of the Chamber officials will be of those applicable to Chamber service rules.

19. The functions of the Chamber herein assigned would be discharged by the Arbitration Committee or the Registrar, as the case may, in the name of the chamber.

20. The Chamber Committee may revise, amend or alter these Rules or the Schedule of Fees and other monies to be charged and paid as and when they think necessary.