



**KARNATAKA STATE LEGAL SERVICES AUTHORITY
BENGALURU**

**GUIDELINES FOR PRE-INSTITUTION
MEDIATION AND SETTLEMENT**

Chapter – III of the Commercial Courts Act, 2015 as amended vide Act No. 28/2018 has introduced the concept of Pre-Institution Mediation and Settlement. 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 provision 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.

In the State of Karnataka vide Government Order in LAW/LCE/48/2019 dated 9-10-2019 in all the districts, the Commercial Courts have been designated. It is informed to all DLSAs that in the existing mediation centre at all the districts, a separate cell is to be demarcated for the purpose of handling Pre-Institution Mediation cases. At present in all DLSAs the said Pre-institution Mediation Cell is functional. In order to facilitate the new system of Pre-institution Mediation and Settlement, it is felt necessary to formulate a detailed guidelines.

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 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:** Member Secretary, DLSA shall be a Nodal Officer for implementation of Act and Rules. He shall function under the monitoring by Chairperson of DLSA. It shall be the duty of the Nodal officer to verify the Filing Register, Cash Register, Assignment Register and Disposal Register which are attached herewith as **Annexures- A to C** herewith.
- (4) **Panel of Mediators:** The Chairperson and Member Secretary of DLSA shall prepare a separate list of expert mediators for handling

Pre-Institution Mediation and Settlement in respect of commercial disputes about 10 to 15 in number. The said list along with the documents depicting their expertise, year of service as mediators, percentage of success in the cases mediated by them in the recent past etc., shall be submitted to KSLSA for getting the approval of Hon'ble Executive Chairman, KSLSA. Thereafter KSLSA under due enquiry would finalise and notify the panel of mediators for the purpose of Pre-Institution Mediation and Settlement of commercial disputes. The said panel may be revamped once in 3 years or as per requirement from time to time.

(5) **Venue for conducting mediation:** shall be the premises of mediation centre in each districts, specially ear marked for conducting Pre-Institution Mediation and Settlement of commercial disputes. In case of online mediation, the link shall be created from the said venue.

(6) **Conduct of mediation process:**

- (i) The application in respect of mediation in commercial disputes shall be entertained by the DLSAs concerned having with regard to territorial, pecuniary jurisdiction and the nature of commercial dispute in terms of the Rules.
- (ii) Along with the application for initiation of mediation process as per Rule 3, the party must deposit application fee of Rs. 1,000/- payable to the authority either by way of demand draft or through online payment.
- (iii) The party initiating mediation process must compulsorily furnish the true and correct postal address and E-mail address of the opponent under an affidavit.
- (iv) After the scrutiny of application, the Member Secretary of concerned DLSAs shall issue notice to the other party through registered or speed post and through E-mail.
- (v) Where the notice issued and the E-mail sent remains unacknowledged and where the opposite party refuses to participate in the mediation process, the DLSA shall treat the mediation process to be a non-starter.
- (vi) Upon the appearance of the opposite party if there is a consent to participate in the mediation process, the Member Secretary, DLSA shall assign an empanelled mediator in consultation

with the incharge mediation center of the respective jurisdiction and fix a date for appearance of the parties before the mediator. Provided one time mediation fee as prescribed under Schedule-II attached to the Rules is deposited by both the parties in equal proportion within 10 days.

- (vii) If the mediation fee as provided under Schedule-II is not deposited, the DLSA shall process it as non starter. If any one party to the proceeding has deposited mediation fee, the DLSA shall refund it without interest within 3 days of determining it to be a non starter.
- (viii) The assigned mediator shall conduct the process of mediation by adhering to the procedure and ethics as contemplated under Act and Rules.
- (ix) Once the process of mediation is over, the record thereof shall be made over by the mediator to the Member Secretary of the concerned DLSA along with his report.

(7) Financial Details:

- (a) The application fee of Rs. 1,000/- and the mediation fee as provided under Schedule-II of the Rules shall be deposited by the parties in the joint SB account opened by the Chairperson and Member Secretary of the DLSAs, as per the directions letter dated 13-08-2018 of KSLSA. The bank account details maintained by DLSAs shall be furnished to the KSLSA. The amount of fee under the Rules shall be deposited by the parties only through online channels or Demand Draft. The said account shall be operated by Chairperson and Member Secretary, DLSA jointly.
- (b) The DLSAs shall utilize the said funds for issuance of process and other activities related to the Pre-Institution Mediation and Settlement. Primarily expenses towards the honorarium of the advocate mediators and the expenses as contemplated in the Rules shall be made out of the said account. The deficit amount in the account shall be utilized for other purpose only with the prior approval or direction of KSLSA.
- (c) Separate record of the fees received and the expenses incurred out shall be maintained by the Nodal Officer. The DLSA shall

submit quarterly report on the financial aspects to KSLSA in the format enclosed as **Annexure-D** herewith.

- (d) **Honorarium to the advocate mediators:** The Advocate Mediators shall be paid honorarium as per the following schedule:

Sl. No.	Quantum of Claim in Commercial Dispute/Nature of case	Honorarium for settled cases	Honorarium for unsettled cases
1	From Rs. 3,00,000/- to Rs. 10,00,000/	Rs. 7,500/-	Rs. 2,500/-
2	From Rs. 10,00,000/- to Rs. 50,00,000/	Rs. 15,000/-	Rs. 2,500/-
3	From Rs. 50,00,000/- to Rs. 1,00,00,000/-	Rs. 20,000/-	Rs. 2,500/-
4	From Rs. 1,00,00,000/- to Rs. 3,00,00,000/-	Rs. 25,000/-	Rs. 5,000/-
5	Above Rs. 3,00,00,000/-	Rs. 37,500/-	Rs. 5,000/-

- (8) **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.
- (9) **Complaint against the 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, DLSA who shall examine the same and take appropriate steps in consultation with Incharge, Mediation Centre.
- (10) **Administrative Support:** KSLSA would also work towards the establishment of administrative support for the mediators empanelled by it in due course.
- (11) **Review of the work of the Mediator and all the arrangements for Pre-Institution Mediation and Settlement:** KSLSA 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, KSLSA may issue Office Orders/Circulars from time to time.

- (12) **Training to Mediators** : Periodical Training/Refresher Course shall be arranged atleast once in a year by KSLSA/DLSA concerned in coordination with Bangalore Mediation Centre.
- (13) **Online Platform**: The parties are at liberty to seek permission to conduct mediation on the online platform. In such cases the mediation Centre shall generate a link in the designated software for video conferencing and create tripartite video conferencing between the applicant, the opposite party and learned mediator. The procedure prescribed for conducting online PIMS shall be followed.
- (14) **Binding Effect of Online Mediation**: The settlement, if any 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.
- (15) **Limitation**: After the receipt of one time fees of Rs. 1,000/-, the process of affecting service shall be completed within 10 days. After appearance and upon consent of both the parties, the mediation fee as per Schedule-II must be deposited within 10 days thereafter. The time frame of mediation shall be 3 months from the date of application made by the plaintiff/applicant and extending of time only at the instance of both the parties.
- (16) **Non-refundable fees**: No party can claim the refund of onetime application fee of Rs. 1,000/-, once the process has been issued to the opposite party. Only in Non-starter cases the party who has deposited the Mediation fees as per Schedule-II is entitled for refund. No party can claim the refund of mediation fee, once the mediator is assigned by the Member Secretary of the concerned DLSA.

Date :
Bengaluru

(H. Shashidhara Shetty),
Member Secretary,
KSLSA, Bengaluru

Encls :-

- 1) SOP of conducting online PIMS.

FILING REGISTER

Pre - Institution Mediation and Settlement

Name of the District: _____

Sl. No.	Application No.	Date of Application	Name of the parties, Address, Mobile no. and email id		Category of cases u/s 2(1) (c) of the Act (please specify)	Mediation Fee				Name of the Bank
			Applicant	Opposite party.		Initial Fee u/R 3(1) of the Rules		Mediation Fee u/R 11 of the Rules		
						DD	Online	DD	Online	
1.	PIMS – 1/2018									

ASSIGNMENT REGISTER

Pre - Institution Mediation and Settlement

Name of the District: _____

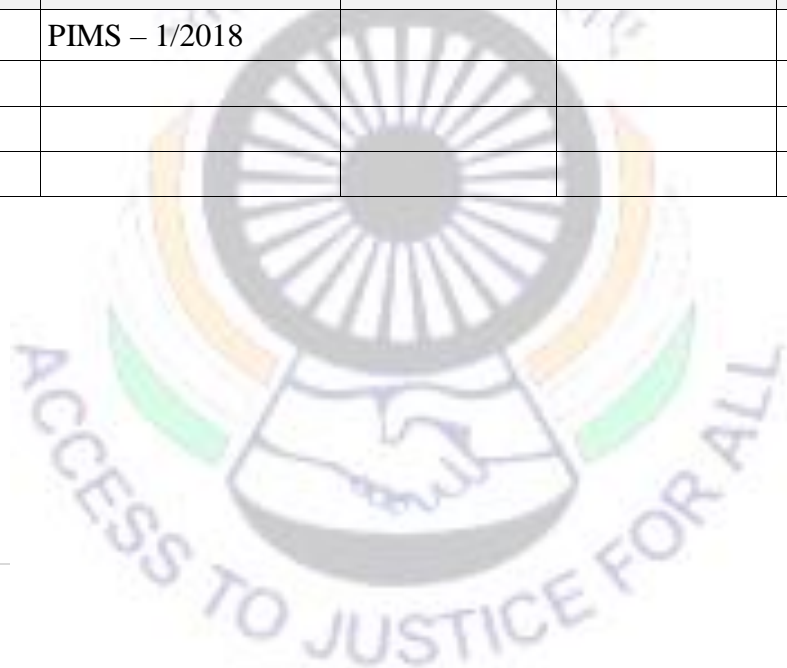
Sl. No.	Application No.	Names of the parties, Address, Mobile nos. and email ids		Category of cases u/s 2(1) (c) of the Act	Date of Application received	Date of Notice/ Final Notice issued	Name of the Mediator	Dates of Mediation	Status of the cases Settled/ Non Starters/ Failure	Amount paid to Mediator	Signature of the Mediator
		Applicant	Opposite party								
1.	PIMS – 1/2018										

DISPOSAL REGISTER

Pre - Institution Mediation and Settlement

Name of the District: _____

Sl. No.	Application No.	Date of application	Date of Disposal	Type of settlement		
				Settled	Not settled	Non Starters
1.	PIMS – 1/2018					



QUATERLY REPORT

Financial aspects of Pre-Institution Mediation and Settlement Cases in Commercial Disputes
for the quarter ending _____

Name of the District: _____

Sl.No.	Number of PIMS Cases instituted	Total Amount received as Initial Fee u/R(1) of the Rules	Number of cases referred to Mediation	Total Amount paid by the parties as Mediation Fee u/R 11 of the Rules	Honorarium paid to the Mediators	Amount refund to parties in non-starter cases	Other Expenses incurred while conducting mediation	Balance Amount in the Account