GROUNDS OF CHALLENGING A SETTLEMENT UNDER MEDIATION

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What is Mediation

Mediation is another of the methods of alternative dispute resolution (ADR) available to parties. Mediation is essentially a negotiation facilitated by a neutral third party. Unlike arbitration, which is a process of ADR somewhat similar to trial, mediation doesn't involve decision making by the neutral third party. ADR procedures can be initiated by the parties or may be compelled by legislation, the courts, or contractual terms.

Is Mediation Right for You?

When parties are unwilling or unable to resolve a dispute, one good option is to turn to mediation. Mediation is generally a short-term, structured, task-oriented, and "hands-on" process.

In mediation, the disputing parties work with a neutral third party, the mediator, to resolve their disputes. The mediator facilitates the resolution of the parties' disputes by supervising the exchange of information and the bargaining process. The mediator helps the parties find common ground and deal with unrealistic expectations. He or she may also offer creative solutions and assist in drafting a final settlement. The role of the mediator is to interpret concerns, relay information between the parties, frame issues, and define the problems.

When to Mediate

Mediation is usually a voluntary process, although sometimes statutes, rules, or court orders may require participation in mediation. Mediation is common in small claims courts, housing courts, family courts, and some criminal court programs and neighborhood justice centers.

Unlike the litigation process, where a neutral third party (usually a judge) imposes a decision over the matter, the parties and their mediator ordinarily control the mediation process -- deciding when and where the mediation takes place, who will be present, how the mediation will be paid for, and how the mediator will interact with the parties.

After a Mediation

If a resolution is reached, mediation agreements may be oral or written, and content varies with the type of mediation. Whether a mediation agreement is binding depends on the law in the individual jurisdictions, but most mediation agreements are considered enforceable contracts. In

some court-ordered mediations, the agreement becomes a court judgment. If an agreement is not reached, however, the parties may decide to pursue their claims in other forums.

The mediation process is generally considered more prompt, inexpensive, and procedurally simple than formal litigation. It allows the parties to focus on the underlying circumstances that contributed to the dispute, rather than on narrow legal issues. The mediation process does not focus on truth or fault. Questions of which party is right or wrong are generally less important than the issue of how the problem can be resolved. Disputing parties who are seeking vindication of their rights or a determination of fault will not likely be satisfied with the mediation process.

BENEFITS OF THE MEDIATION PROCESS

To Parties

There are numerous reasons why a party to a dispute might choose mediation over traditional litigation or other forms of alternative dispute resolution. Some of them are affordability, timely resolution, private sessions, confidentiality, participation in the resolution of the dispute, and in many cases preservation of the interrelationship between the parties.

The cost of mediation is less than the average cost in time and money for the litigation of a dispute. The mediator's hourly rate is generally lower than the hourly rate for a lawyer. Parties can often schedule mediation within weeks of a decision to mediate or a court order to mediate.

Mediators offer their services in the evenings, weekends and regular weekdays. There are no spectators to the mediation and whatever is said in the mediation can not be repeated or reported by the mediator to another party. The Settlement Agreement is the only record of the proceedings. The Agreement to Mediate which is signed by the parties prior to the conference will often remind the parties of the confidentiality of the session and that the mediator is not available as a voluntary witness in a trial of the matter.

The ability to fashion user friendly resolutions to a dispute is an attractive component of mediation. The parties are empowered to solve their problem in workable terms to achieve a "win-win" solution. This often promotes healing where one party feels tremendously aggrieved or allows the parties to continue their business, employment or personal relationship. In many cases the parties strengthen their working relationship for greater workplace efficiency.

To Attorneys

The ability to move cases to resolution is an ever present problem for attorneys as they seek to improve the financial status of their practice. This is complicated by court dockets that are backlogged and much time is spent waiting for a judge or jury to be assigned even on a day when a case is scheduled. Continuances are often requested by opposing counsel in routine matters which if resolved would limit the amount of manpower allocated to a particular case.

Mediation offers an opportunity to improve case management/resolution and client satisfaction. An employment discrimination complaint can take years to litigate. Using various forms of alternative dispute resolution available in the area of employment law, an attorney can resolve such complaints in months after the investigation is complete. A personal injury case with a simple soft tissue injury can be mediated in a matter of weeks after submission of the demand letter to the insurance company in areas where insurance companies have agreed to mediate certain classes of cases.

Swift, efficient movement of workers'compensation cases, contested divorces with complicated property and custody issues and business contract disputes can improve the financial status of your firm. The corollary benefits are customer/client satisfaction, increased client referrals and more time for complex cases.

Mediation offers the opportunity to improve your bottom line by adding a service to your practice. You can become a court appointed mediator for court ordered mediations, advertise your services to members of the bar who are looking for mediators with special expertise or collaborate with a group of lawyers to provide a mediation service for a particular industry or area of law.

HOW DOES IT WORK?

The conference is held at a mutually agreeable neutral place. It can be the office of the mediator or another private facility unavailable to spectators. However, the initial mediation may continue with subsequent telephone negotiations between the mediator and the parties where appropriate. Generally mediators will employ face to face negotiations or conduct co-mediations in potentially inflammatory circumstances such as domestic relations.

Present at the session are the parties, their attorneys, if represented, the mediator and others as agreed to in advance. In community mediations there is generally a large number of persons present and often there are co-mediators. The room is spacious and decorum is difficult.

Parties to a mediation may or may not be represented by counsel. When counsel is present the parties may be encouraged to work with the mediators and to confer with the attorneys on legal issues. In general, protocol with the attorneys is set prior to the session. Attendance at the mediation by the party with the authority to settle is essential. In personal injury or workers compensation mediation, the insurance adjusters must advise the mediator that their supervisor or another person with full settlement authority is readily available by telephone.

The session, at the discretion of the mediator or the forum, may be process-centered (facilitative) or substance-orientation (case settlement or evaluative). Case settlement is often preferred by most courts which use mediation for their small claims cases. Evaluative mediation is used for industry specific mediations where an expert is required to understand the nature of the controversy.

A facilitative mediation will progress through several stages:

Initially the mediator will give an opening statement which may or may not be memorized but which will include pertinent information for the parties. It will begin with an introduction and a description of her/his training and experience, do an ethics check and get the names of the parties and their counsel or representatives. Then, administrative matters are discussed: The mediators fee; signing the Agreement to Mediate if not done in the initial contact phase; confidentiality of the proceedings; and the opportunity for subsequent review by counsel of any agreement. Next, the schedule for the conference and any future meetings are determined with breaks, lunch and additional rooms for private meetings. The process is described with a few simple rules of conduct: The parties will use common courtesy and allow each other to complete statements without interruption. They may use the writing pads and pencils provided to allow preservation of thoughts but must allow the pads to be collected and destroyed at the end of each session.

This is the longest period in which the mediator is expected to speak and throughout this opening will encourage the paries toward a good faith effort of settlement and full disclosure to the mediator. All conversations and materials presented in the mediation session are confidential unless otherwise discoverable in a court.

Problem Determination: During this stage, each party will give an account of the facts and circumstances which lead to the dispute. Issues will be identified and summarized.

Generation of Options and Alternatives: The disputants, jointly or in separate sessions (Caucus) with the mediator, will identify areas of settlement. The mediator may summarize the results of the private sessions with each party and encourage options. A realistic assessment of the strengths and weaknesses of each party's own position will be the goal of this stage. Negotiations and decision making by the parties will continue unless the mediator declares an impasse and ends the mediation or continues the mediation in a subsequent session.

Clarification and Agreement Writing: The terms of any settlement will be written by the parties. If legal counsel is not present, the parties may elect to have the document reviewed by counsel and signed at a later date.

PENALTIES FOR FAILING TO REACH A SETTLEMENT?

There are no legal penalties for failing to settle at mediation. In states where mediation is court ordered there may be penalties for failing to attend the mediation conference and making a good faith effort to settle.

When the parties fail to settle, the case may be filed in an administrative agency or court of competent jurisdiction or set for the next action under the forum's procedure. Generally the only report of an unsuccessful mediation is the referral back by the mediator to the court or agency for further processing.

QUALIFICATIONS OF A MEDIATOR

Most jurisdictions, administrative agencies and dispute resolution companies require mediators to have a minimum of 20- 40 hours of general mediation training, a designated amount of mediation experience, either as an observer or a co-mediator with an experienced mediator and a college degree or higher. Applicants must submit proof of completion of training, experience, education, and letters of reference from persons who have used their service, evaluated them as a co-mediator and/or can attest to their character. Most forums prefer to train their mediators or to certify various companies or college programs for mediation training. Mediation training received from a non-certified or approved entity is often held to a high scrutiny as to the level of competency of the trainers and their program.

In most states, a law degree is not required to be a mediator. However states which allow nonlawyers to be mediators have more stringent experience and mediation requirements for the applicants. Four to six hours of training in Understanding the Judicial System of a state is generally a requirement for a nonlawyer or an out of state lawyer who seeks mediation certification in a state in which he/she is not licensed. This requirement is crucial when the mediator seeks court appointed mediations. A similar requirement can be found in instances where an agency certification is sought.

MEDIATOR ETHICS

State mediator statutes have ethics provisions and generally a requirement to complete a certain number of hours in a training course on ethics. Most training programs allocate a substantial number of hours to ethics considerations. If there are no locally adopted rules, the trainers will discuss standards of the American Arbitration Association (AAA), the Society for Professionals in Dispute Resolution (SPIDR) or the National Association of Security Dealers (NASD). Is there any legal definition in your jurisdiction of the terms ‘ADR’, ‘conciliation’ and ‘mediation’?

In India, ADR is generally understood as a term encompassing various modes of settling disputes outside the traditional judicial system. It refers to various methods such as arbitration, negotiation, mediation, conciliation, Lok Adalats, etc.

Rule 4 of the Civil Procedure - Alternate Dispute Resolution Rules, 2003 (ADR Rules) defines mediation by stating that:

Settlement by ‘Mediation’ means the process by which a mediator appointed by parties or by the Court, as the case may be, mediates the dispute between the parties to the suit by the application of the provisions of the Mediation Rules, 2003 in Part II, and in particular, by facilitating discussion between parties directly or by communicating with each other through the mediator, by assisting parties in identifying issues, reducing misunderstandings, clarifying priorities,

exploring areas of compromise, generating options in an attempt to solve the dispute and emphasising that it is the parties own responsibility for making decisions which affect them.

In Afcons Infrastructure Ltd v M/s Cherian Varkey Construction [2010] (7) SCALE 293, the Supreme Court clarified that the words ‘mediation’ and ‘conciliation’ are used synonymously. In this commentary, the words ‘mediation’ and ‘mediator’ are used; they should be taken also to mean ‘conciliation’ and ‘conciliator’.

Mediation models

What is the history of commercial mediation in your jurisdiction? And which mediation models are practised?

Commercial mediation in India was given life in 1996 when the Indian parliament amended the Civil Procedure Code (CPC) and introduced section 89, which empowered courts to direct settlement of disputes by mediation amongst other means. This provision governs mediation in the court system in India. The year 1996 also saw the introduction of the Arbitration and Conciliation Act (ACA). The provisions of the ACA govern private mediation (conciliation) in India.

The primary mediation style is evaluative. Disputants seem to prefer having an authority figure as the mediator, and are more comfortable being led in the mediation rather than the mediator being more hands-off. This is a cultural trait quite common in Asia. The parties expect the mediator to give them his or her view of the weakness of their case, and to actively participate in finding solutions; indeed, they would be disappointed if they felt that the mediator was not fully engaged with them in resolving the dispute. Interests, as well as rights, are focused on. Some mediators prefer to be facilitative. Transformative mediation is rare.

However, it needs also to be said that most mediators will start off being facilitative, encouraging movement to come from the parties, and become evaluative later in the process when the interventionist skills become necessary to break an impasse and come up with solutions.

Domestic mediation law

Are there any domestic laws specifically governing mediation and its practice?

There are two principal enactments that deal with mediation in India- the CPC and the ACA. Section 89 of the CPC and the rules framed by various high courts under that section deal with court-annexed mediation while Part III of the ACA deals with private mediation. Part II of the Civil Procedure Alternate Dispute Resolution and Mediation Rules (the Mediation Rules) also provides for various rules relating to mediation.

Other legislation that covers mediation is the Commercial Courts Act 2015, whereby it is mandatory for parties to exhaust the remedy of pre-institution mediation under the Act before

instituting a suit. The Commercial Courts (Pre-Institution Mediation and Settlement) Rules 2018 (the PIMS Rules) have been framed by the government under the Act.

These laws are not based on the UNCITRAL Model Law on International Commercial Conciliation.

Singapore Convention

Is your state expected to sign and ratify the UN Convention on International Settlement Agreements Resulting from Mediation when it comes into force?

Yes.

Incentives to mediate

To what extent, and how, is mediation encouraged in your jurisdiction?

Mediation is encouraged very strongly by the courts in India. Many high courts have set up mediation centres housed within the premises of the courts. The courts provide staff and facilities to the mediation centres and also bear the expenses. A huge number of lawyers and others have been trained to become mediators, and the court also pays an honorarium to the mediators. The process is generally free for the parties.

A large number of cases are referred to mediation by the courts. Although consent of parties is invariably taken before referring a case for settlement by mediation, the court does have the power to direct parties to attend the mediation, if at least to get to know more about the process of mediation.

Judges, leading lawyers and policy makers speak very positively about mediation. However, mediation is yet to catch on significantly in the private field. With the success of court-annexed mediation in India, attention is now being focused on private commercial mediation. Leading business organisations and industrial leaders are getting involved for the same.

Sanctions for failure to mediate

Are there any sanctions if a party to a dispute proposes mediation and the other ignores the proposal, refuses to mediate or frustrates the mediation process?

No, there are no legal sanctions for ignoring or refusing a proposal for mediation. However, if a dispute has reached the stage of litigation, the courts can suggest mediation in the course of proceedings and, invariably, such suggestions are accepted by parties.

Prevalence of mediation

How common is commercial mediation compared with litigation?

Commercial mediation is fairly new in India and, hence, litigation remains the most popular mode of settling disputes. Therefore, the percentage of commercial cases settled by mediation would be small in comparison to cases litigated.

Of the cases settled by mediation, cases that have been referred to mediation by the courts would be an overwhelming majority in comparison to cases where mediation has been attempted voluntarily by the parties.

Mediators

Accreditation

Is there a professional body for mediators, and is it necessary to be accredited to describe oneself as a 'mediator'? What are the key requirements to gain accreditation? Is continuing professional development compulsory, and what requirements are laid down?

There is a professional association of mediators in India called Mediators India.

It is not necessary to be accredited to practise as a mediator in India. However, accreditation is necessary for empanelment with court and tribunal mediation panels. With growing awareness of mediation, there will be a preference for certified accredited mediators.

In India, court-annexed mediation centres conduct two training courses: a basic training course that is 40 hours in duration and an advanced training course that is 20 hours in duration. Accreditation of mediators takes place after completion of the basic training course, 20 hours of mediation (including co-mediation) and completion of the advanced training course.

There is no requirement that mediators must undertake continuous professional education or development courses. In the court mediation system, the mediation centres do arrange for refresher courses and mediators are encouraged to attend the same.

Liability

What immunities or potential liabilities does a mediator have? Is professional liability insurance available or required?

The ACA and the CPC spell out the duties of mediators that pertain to disclosure, avoiding improper conduct, maintaining confidentiality, not imposing settlements, etc. The PIMS Rules also impose certain ethical duties on mediators.

However, no potential liability is spelt out in the statutes for mediators. In fact, Rule 22 of the Mediation Rules and Rule 23 of the Companies (Mediation) Rules provide that mediators shall not be liable for anything bona fide done by them or omitted to be done by them during the mediation process and are immune from civil or criminal action. In the court mediation system, mediators can be removed from the panel for misconduct or poor performance.

Professional liability insurance is neither available nor required.

Mediation agreements

Is it required, or customary, for a written mediation agreement to be entered into by the parties and the mediator? What would be the main terms?

In the court mediation process, there is no obligation to have an agreement between the parties and the mediator, since the rules under the CPC govern the mediation.

In other mediations, while there is no legal mandate, it is customary to have such written agreement. This will include provisions regarding confidentiality and the process to be followed.

Appointment

How are mediators appointed?

In the court system, the Civil Procedure (Mediation) Rules regulate the accreditation, empanelment of mediators and appointments in individual cases. Such appointments are usually based on the roster; in exceptional cases mediators may be specified by name by the referring judge himself or herself or acting on the suggestion of parties.

In the field of private mediation, the practice of including mediation clauses in contracts is gaining popularity. Such clauses may specify the name of a mediator to settle disputes or the name of an institution whose assistance may be sought in appointing a mediator.

Conflicts of interest

Must mediators disclose possible conflicts of interest? What would be considered a conflict of interest? What are the consequences of failure to disclose a conflict?

Mediators are obliged to inform the parties about conflicts of interest. This must be done before the proceedings commence, or, if a conflict arises thereafter, as soon as the mediator is aware of it. Both the ACA and the Mediation Rules require such disclosure. As per the Mediation Rules, anything that would give rise to a justifiable doubt as to the mediator's independence or impartiality must be disclosed. This would include, but would not be limited to, the mediator having financial interests in a corporate party, etc.

If the mediator fails to disclose a conflict of interest, he or she would be liable to face civil action. In the case of court-referred mediations, a report regarding such conduct of the mediator may also be submitted the court and the court may consider taking any action that it deems fit.

Fees

Are mediators' fees regulated, or are they negotiable? What is the usual range of fees?

In the court-run mediation scheme, the mediation service is usually free for the parties. The court, however, pays an honorarium to the mediators.

In the field of private mediation, there is no statutory or legal regulation of the fees of the mediators. The fee is negotiable, is usually on a time spent basis and varies from 25,000 rupees to 300,000 rupees per day. The parties usually share the mediator's fees equally.

In the context of pre-institution mediation under the Commercial Courts Act, a fee structure is in the process of being devised. If the parties choose the mediator by themselves, they can negotiate a fee with the mediator. If the state agency's services are used for appointment of a mediator, a fee will be fixed for the same.

Procedure

Counsel and witnesses

Are the parties typically represented by lawyers in commercial mediation? Are fact- and expert witnesses commonly used?

It is extremely common to see parties being represented by lawyers in commercial mediations in India. However, fact and expert witnesses are rarely used.

Procedural rules

Are there rules governing the mediation procedure? If not, what is the typical procedure before and during the hearing?

In court-appointed mediation proceedings, the mediator is free to decide on the mediation procedure to be followed or to follow the Civil Procedure Mediation Rules. Some mediators request parties to file a brief statement of facts and issues prior to the first session. At the first session the process of mediation is explained fully, facts and issues are ascertained and (if they have not done so already) the mediators may request statements or summaries to be filed.

In private mediation, it is quite common for the mediator to require parties to submit a statement of facts and a summary of legal proceedings ahead of the mediation. Parties are requested to come to mediation prepared with the facts and with authority to settle the dispute. The mediator may also ask for further notes for additional information during the course of the mediation.

Mediation usually begins with a plenary (joint) session. The mediator will usually hold separate sessions with the parties during the course of mediation as and when he or she deems necessary.

Prior to the mediation, the following take place:

the mediator will ensure that he or she has no conflict of interest in the matter, and will withdraw if any exists;

the terms of engagement of the mediator (fees and expenses, etc) are made known and agreed to by the parties; and

the confidentiality agreement is signed between the parties and the mediator.

Steps (ii) and (iii) do not apply in court-referred mediations.

At the mediation proceedings, at the first joint session, the mediator will:

ensure that all required are attending and have the requisite authority to do so, and make the necessary introductions;

explain the concept of mediation and answer queries on the same;

request parties to each make their opening statement;

request the lawyers to make the supplementary statements on the law relevant to the matter;

see if any further facts are needed, and determine how to ascertain them; and

identify the issues that need to be resolved to arrive at a settlement.

Thereafter at the separate sessions the mediator will:

explore the long-term interests of the parties;

identify the weakness in their case, and the lack of good alternatives to settlement (in the evaluative mode);

encourage and engage with the parties in identifying options for settlement;

focus on possible settlement options and refine them; and

draft, or help draft, the written settlement agreement.

Steps (iii) to (v) may also take place in joint sessions.

As per the PIMS rules, the following is the prescribed procedure:

At the beginning, the mediator shall explain the process to the parties. The time and date of each mediation sitting shall be fixed in consultation with the parties.

The mediator may hold sessions jointly or separately with the parties as he or she deems fit.

The parties may share their settlement proposals with the mediator with instructions as to what can be shared with the other party. The parties may also share settlement proposals with each other orally or in writing.

Once a settlement is reached, it shall be reduced to writing, and signed by the parties and the mediator. The settlement shall be provided to all parties and a signed copy will be sent to the authority under the Commercial Courts Act.

When no settlement is arrived at within the time limit allowed under the Act, or if the mediator is of the view that settlement is not possible, the mediator shall submit a report stating the same to the authority under the Act.

Tolling effect on limitation periods

Does commencement of mediation interrupt the limitation period for a court or arbitration claim?

As per the Commercial Courts Act 2015, any period during which the parties 'remain occupied' with the pre-institution mediation under the Act shall not be computed for the purposes of limitation.

In other cases, the mediation proceeding does not suspend the limitation period for a court claim. Section 77 of the ACA prohibits parties to conciliation from initiating any arbitral or judicial proceedings during the conciliation proceedings in respect of a dispute that is the subject matter of the conciliation proceedings, except that a party may do so where such proceedings are necessary to preserve its rights. So, in the event that the limitation period is close to expiring, the claimant is advised to initiate arbitral or judicial proceedings.

Forthcoming legislation is likely to address this issue and is expected to exclude the period of mediation from the period of limitation.

Enforceability of mediation clauses

Is a dispute resolution clause providing for mediation enforceable? What is the legal basis for enforceability?

A dispute resolution clause providing for mediation would be enforceable in India in the sense that if a suit is filed, then a court would most likely enforce the clause and send parties to mediation in pursuance of its power under section 89 of the CPC.

Confidentiality of proceedings

Are mediation proceedings strictly private and confidential?

Mediation proceedings are strictly private and confidential in India. Section 75 of the ACA provides that, notwithstanding anything contained in any other law in force in India, the conciliator and the parties shall keep all matters relating to the mediation proceedings confidential, and that confidentiality extends to the settlement agreement except where its disclosure is necessary for implementation and enforcement.

Best practices dictate that in a private commercial mediation, parties to the dispute and the mediator sign a confidentiality agreement prior to the commencement of mediation proceedings.

Section 80(b) of the ACA specifically provides that the conciliator shall not be presented by the parties as a witness in any arbitral or judicial proceedings.

Section 81 of the ACA makes the following inadmissible as evidence in arbitral or judicial proceeding:

views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;

admissions made by the other party in the course of the conciliation proceedings;

proposals made by the conciliator; and

the fact that the other party had indicated to accept a proposal for settlement made by the conciliator.

In court-referred mediations, confidentiality is protected by the rules drawn up by courts under the CPC to regulate cases referred by judges to mediation (Rule 20 of the Model Civil Procedure (Mediation) Rules 2003). These rules are similar to the rules set out in the ACA. In their reports to the court, the mediators must only state whether the case has been settled or not; no further details are to be given.

Confidential information given by one side to the mediator in the mediation process cannot be revealed to the other party.

In the case of a breach of confidentiality, the injured party can sue for breach of contract, negligence or wilful misconduct. It can seek damages or a permanent injunction against disclosure. It may also be entitled to seek interlocutory injunctions to prevent disclosure. The court will take a serious view of a breach of confidentiality.

Success rate

What is the likelihood of a commercial mediation being successful?

It is generally observed that the likelihood of a commercial mediation being successful is above 50 per cent.

Settlement agreements

Formalities

Must a settlement agreement be in writing to be enforceable? Are there other formalities?

Section 73 of the ACA provides for the drawing up and signing of a written settlement agreement. The settlement agreement must also be witnessed. When the parties sign the settlement agreement, it shall be final and binding on the parties claiming under them respectively. The mediator is required to authenticate the settlement agreement and furnish a copy of the same to each of the parties.

In the case of a settlement arrived at in a court-annexed mediation or judicial settlement, the same should be reduced to writing and presented to the court, which will pass an order or decree on the terms thereof.

Challenging settlements

In what circumstances can the mediation settlement agreement be challenged in court? Can the mediator be called to give evidence regarding the mediation or the alleged settlement?

As per the ACA and the Commercial Courts Act, the mediation settlement has the same status as an arbitral award and hence can be challenged on the same grounds as an arbitral award.

The vitiating factors are in the nature of fraud, coercion, corruption, incapacity of a party or the settlement being contrary to public policy or a fundamental policy of Indian law.

In India, a mediator cannot be called to give evidence in relation to the mediation or the alleged settlement in any judicial or arbitral proceeding. This provision exists to protect the confidentiality of the mediation process.

Enforceability of settlements

Are there rules regarding enforcement of mediation settlement agreements? And on what basis is the mediation settlement agreement enforceable?

Section 74 of the ACA provides that a settlement agreement has the same effect as an arbitral award on agreed terms. The position in the Commercial Courts Act is also the same as a settlement in a pre-institution mediation proceeding under the Act and is given the same status as that of an arbitral award under the ACA. Such an arbitral award is enforceable as a decree of court as per section 36 of the ACA.

In cases of settlements in court-annexed mediations, the settlement is enforced through the courts as the court passes an order or decree in terms of the written settlement.

Stays in favour of mediation

Duty to stay proceedings

Must courts stay their proceedings in favour of mediation?

It is common practice for a court to stay the proceedings before it if a dispute has been referred to mediation. However, if any urgent relief is required for a party (such as an interim injunction), the same may be heard and considered by the courts.