

Dispute Resolution Mechanism Under MCS Act

1

Any Dispute Between The Two Parties Can Be Solved By The Two Parties Alone. Its Their EGO Which Decides Where The Dispute Will Be Solved At Home, Office, Restaurant, Police Station Or In Courts.

**Manoj Pandit
Advocate**

Disputes

2

- Non payment of maintenance charges/ share of contribution in Housing/other co-op. societies under any pretext
- Transfer related matter
- Leakages between 2 loors/lats
- Overall maintenance of Internal Roads/ Street Lights/Common Amenities – Use/ Misuse/Entitlements
- Managing committee Elections/Office Bearers/Their Conduct – Fraud/ Embezzlement
- Parking space allotment/ reshuffling/ guest-parking
- Change of use from Residence to Commercial
- Repairs and illegal construction
- Matters related to leave & license
- Nomination procedure
- Recovery of dues by co-operative societies.
- Sports and other activities of members or their family members

Redressal Process

3

There are no problems without solution

If you focuses on problem you will see more problems...

If you focus on solution you will see multiple solutions...

Solutions may come through mutual discussions or through third party interventions like arbitration or through Judiciary.

Managing Committee

General Body

Registrar/Sub-registrar

Courts.

Redressal Option Available

4

Member can approach for solving their grievance

The Deputy Registrar of CHS (at the concerned Ward Office)

The District Registrar of Co-operative Housing Societies at
City - Malhotra House, 6 Floor, Opp. GPO, Fort, Mumbai 400 001
Western suburbs - MHADA Bldg., Bandra East, Mumbai 400 051
Eastern suburbs - Vardavat mansion, Station Rd, Thane W 400 601

The Mumbai District Co-operative Housing Federation Ltd., 103, Vikas
Premises, 1 Floor, Dr. NGN Vaidya Marg, Behind SBI, Fort, Mumbai 400 001

The Commissioner and Registrar, Cooperative Housing Societies (Maharashtra
State), Central Building, Station Road, Pune 411 001. Email: commcoop@
rediffmail.com

Redressal Option Available



5

The Registrar of Co-operative Societies
Co-operative Societies Dept., Sakhar Sankul Bldg., Pune 411 005.

The Chief Secretary of the Co-operatives
3rd Floor, Mantralaya, Mumbai 400 020

State Minister of Housing & Co-operatives
7th Floor, Mantralaya, Mumbai 400 020

Co-operative Court or

Consumer Courts

Sections of MCS Act



6

- Sec. 91 Disputes
- Sec. 91a Constitution of Co-op. Courts
- Sec. 92 Limitation
- Sec. 93 Transfer of Disputes From One Co-operative Court To Another
Suspension of Proceedings In Certain Cases
- Sec. 94 Procedure for Settlement of Disputes And Power Of Co-op. Court
- Sec. 95 Attachment Before Award or Order And Inter-locutory Orders
- Sec. 96 Decision of Co-op. Court
- Sec. 97 Appeal Against Decision Under Section 96 And Order Under Section 95.
- Sec. 98 Money How Recovered
- Sec. 99 Private Transfer of Property Made After Issue of Certificate Void
Against Society
- Sec. 100 Transfer of Property Which Cannot Be Sold.
- Sec. 101 Recovery of Arrears Due to Certain Societies as Arrears of Land Revenue.

Disputes– Section 91

7

- (1) Notwithstanding [anything contained] in any other law for the time being in force, any dispute touching the constitution, [elections of the committee or its officers other than elections of committees of the specified societies including its officers], conduct of general meetings, management or business of a society shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated, or by a creditor of the society, [to a co-operative Court], if both the parties thereto are not or either of the following :—
- (a) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or -nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the society, or the Liquidator of the society ^ [or the official Assignee of a deregistered society] ;
 - (b) a member, past member or a person claiming through a member, past member or a deceased member of society, or a society which is a member of the society [for a person who claims to be a member of the society] ;

Disputes– Section 91



8

- (c) a person other than a member of the society, with whom the society, has any transactions in respect of which any restrictions or regulations have been imposed, made or prescribed under section 43, 44 or 45 and any person claiming through such person ;
- (d) a surety of a member, past member or deceased member, or surety of a person other than a member with whom the society has any transactions in respect of which restrictions have been prescribed under section 45, whether such surety or person is or is not a member of the society];
- (e) any other society, or the Liquidator of such a society [or de-registered society or the official Assignee of such a de-registered society] :

Disputes– Section 91

9

[Provided that, an industrial dispute as defined in clause (k) of section 2 of the Industrial Disputes Act, 1947, or rejection of nomination paper at the election to a committee of any society other a notified society under section 73-IC or a society specified by or under section 73-G, or refusal of admission to membership by a society to any person qualified therefore, [or any proceeding for the recovery of the amount as arrear of land revenue on a certificate granted by the Registrar under sub-section (1) or (2) of section 191 or sub-section (1) of section 137 or, the recovery proceeding of the Registrar or any officer subordinate to him or an officer of society notified by the State Government, who is empowered by the Registrar under sub-section (1) of section 156 shall not be deemed to be a dispute for the purposes of this section.]

(3) Save as otherwise provided under [sub-section (2) of section 93], no Court shall have jurisdiction to entertain any suit or other proceeding in respect of any dispute referred to in sub-section (1).

Filing of Dispute



Dispute can be taken to the co-operative court if both the parties thereto are one or other of the following:

- (a) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the society, or the Liquidator of the society or the official Assignee of a de-registered society.
- (b) a member, past member of a person claiming through a member, past member of a deceased member of society, or a society which is a member of the society or a person who claims to be a member of the society;

Filing of Dispute

11

- (c) a person other than a member of the society, with whom the society, has any transactions in respect of which any restrictions or regulations have been imposed, made or prescribed under sections 43, 44 or 45, and any person claiming through such person;
- (d) a surety of a member, past member or deceased member, or surety of a person other than a member with whom the society has any transactions in respect of which restrictions have been prescribed under section 45, whether such surety or person is or is not a member of the society;
- (e) any other society, or the Liquidator of such a society or de-registered society or the official Assignee of such a de-registered society.

Case Law

12

Section 91 of the Maharashtra Co-operative Societies Act requires that the dispute should be there between the society and its members.

Ramagauri Keshvlal Virani vs Walkeshwar Triveni Co-Operative ... on 5 July, 1999

- 1. Heard Mr. Naik for the petitioner and Mr. Deodhar for the respondent No. 1 society.
- 2. The society-respondent No. 1 filed a dispute against the present petitioner in respect of the terrace on the 7th floor of the building in Wing 'A'.

Case Law

13

- It was contended by Mr.Naik that the dispute against the petitioner did not fall under the section 91 of Maharashtra Cooperative society Act, 1960.
- The purchase was in the year 1966 and became a member of society in 1968, which according to Mr. Naik, the dispute cannot be held in Cooperative Courts.
- On the other hand, Mr.Deodhar for the society- Respondent No1 Concluded that section 91 of the Maharashtra Cooperative Societies Act states that membership of the parties to the dispute has to be considered on the date of filing of the dispute.

Case Law

14

- And based on the petitioner had purchased the property in 1966 and became a member in 1968 and continued to be a member in 1973 when the dispute was filed.
- Further, the case was filed in assertion for right over the terrace; which was in interest of other members.
- Hence, the society had right to file the dispute in interest of its other members.
- That dispute came to be decided in favour of the society against which the petitioner filed an appeal, but the same was also dismissed.

Co-op Courts - Section 91A

15

- (1) The State Government may, by notification in the Official Gazette, constitute one or more Cooperative Courts for the adjudication of disputes [referred to them] under section 91 or section 105 or other provisions of this Act.
- (2) A Co-operative Court shall consist of one member appointed by the State Government possessing such qualifications as may be prescribed.
- (3) A Co-operative Court shall have jurisdiction over the whole State or any part there of as may be specified in the notification under sub-section (1).

Sec 92 The Limitation Act

16

(1) Notwithstanding anything contained in, [the Limitation Act, 1963] but subject to the specific provisions made in this Act, the period of limitation in the case of a dispute referred to [the Co-operative Court] under the last preceding section shall—

(a) when the dispute relates to the recovery of any sum, including interest thereon, due to as society by a member thereof be, computed from the date on which such member dies or ceases to be a member of the society;

(b) when the dispute is between a society or its committee and any past committee, any past or present officer, or past or present agent or past or present servant or the nominee heir or legal representative or a deceased officer. deceased agent or deceased servant of the society, or a member, or past member, or the nominee, heir or legal representative of a deceased member, and when the dispute relates to any act or omission on the part of either party to the dispute, be six years from the date on which the act or omission with reference to which the dispute arose, took place;

Sec 92 The Limitation Act

17

(c) when the dispute is in respect of any matter touching the constitution, management or business of a society which has been ordered to be wound up under section 102, or in respect of which a nominated committee or an administrator has been appointed under [section 77A or 78], be six years from the date of the order issued under section 102, or [section 77A or 78] as the case may be:

(d) when the dispute is in respect of an election of [a committee or officers] of the society, be two months] from the date of the declaration of the result of the election.

- (2) The period of limitation in the case of any other dispute shall be regulated by the provisions of [the Limitation Act, 1963], as if the dispute were a suit, and [the 1963. Co-operative Court] a Civil Court.
- (3) Notwithstanding anything contained in sub-sections (7) and (2), [the Co-operative Court] may admit a dispute after the expiry of the limitation period and the dispute so admitted shall be a dispute which shall not be barred on the ground that the period of limitation had expired.

Transfer of Disputes - Sec 93

MP

18

Transfer of disputes from one Co-operative Court to another and suspension of proceedings in certain cases. -

President of the Cooperative Appellate Court.

Suspension of a dispute by the Cooperative Court

Elements of Settlement for the parties:

Arbitration

Conciliation

Judicial Settlement, including settlement through Lok Adalat;

Mediation

Transfer of Disputes - Sec 93

MP

19

Where the dispute has been referred

- For Arbitration or conciliation, the provision of the Arbitration and Conciliation Act, 1996.
- For Lok Adalat-Provisions of the Legal Services Authorities Act, 1987
- For Judicial Settlement- Adalat-Provisions of the Legal Services Authorities Act, 1987
- For mediation, A compromise between the parties.

Procedure and power of Co-op Court - Section 94

MP

20

Co-operative Court shall hear the dispute in the manner prescribed.

Court shall have power to summon and enforce attendance of witnesses including the parties.

To compel the production of documents by the same means and as far as possible in the same manner, as is provided in the case of a Civil Court by the code of Civil procedure, 1908.

Save as otherwise provided in this Act, every dispute in relation to any election shall be heard and decided by the Cooperative Court as expeditiously as possible and endeavor shall be made to conclude the hearing and decision within six months from the date on which the dispute is filed before it.

Except with the permission of the Co-operative Court no party shall be represented at the hearing of a dispute by a legal practitioner.

Procedure and power of Co-op Court - Section 94

A person joining as party to the dispute.

Where a dispute has been instituted in the name of the wrong person, or where all the defendants have not been included.

Removing and adding a party

Any person who is a party to the dispute and entitled to more than one relief in respect of the same cause of action may claim all or any of such reliefs; but if he omits to claim for all such reliefs he shall not forward a claim for any relief so omitted, except with the leave of the Co-operative Court.

Setting aside the day of decision of a dispute for the party.

Save as otherwise directed by the State Government in any case or class of cases, every dispute shall be decided in such summary manner as may be prescribed and as expeditiously as possible.

Inter-Locutory Orders – Sec 95

22

(1) Where, a dispute has been referred to the Co-operative Court under Attachment section 93 or 105 or whether the Registrar or the person authorised under section 88 (hereinafter in this section referred to as “the authorised person”) hears a person against whom charges are framed under that section and the Cooperative Court or the Registrar or the authorised person, as the case may be, is satisfied on inquiry or otherwise that a party to such dispute or the person against whom proceedings are pending under section 88, with intent to defeat, delay or obstruct the execution of any award or the carrying out of any order that may be made,—

- (a) is about to dispose of the whole or any part of his property, or
- (b) is about to remove the whole or any part of his property from its or his jurisdiction, the Court may unless adequate security is furnished, direct conditional attachment of the said property, and such attachment shall have the same effect as if made by a competent Civil Court.

Inter-Locutory Orders – Sec 95

23

(2) Where attachment of property is directed under sub-section (1), the Co-operative Court or the Registrar or the authorised person, as the case may be, shall issue a notice calling upon the person whose property is so attached to furnish security as it or he thinks adequate within a specified period. If the person fails to provide the security so demanded, the authority issuing the notice may confirm the order and, after the decision in the dispute or the completion of the proceedings under section 88. may direct the disposal of the property so attached towards the claim if awarded.

(3) Attachment under this section shall not affect the right subsisting prior to the attachment of the property, of persons not parties to the proceedings in connection with which the attachment is made; or bar any person holding a decree against the person whose property is attached from applying for the sale of the property under attachment in execution of such decree.

(4) The Co-operative Court, the Registrar or the authorised person, as the case may be, may in order to prevent the ends of justice being defeated make such interlocutory orders pending the decision in a dispute referred to in sub-section (1) as may appear to be just and convenient.]

Decision of Co-operative Court

Section 96 & 97

24

When a dispute is referred to arbitration, the Co-operative Court may, after giving a reasonable opportunity to the parties to the dispute to be heard, made an award on the dispute, on the expenses incurred by the parties to the dispute in connection with the proceedings, and fees and expenses payable to the Co-operative Court. In case of money claim preferred by society against a member, the amount of award representing the interest shall not be less than the amount of interest accrued there on in accordance with the contractual rate of interest, but where such money claim relates to any loan referred to in section 44 A, the provisions of that section shall apply to such money claim as they apply to loan under section 44A.

Any party aggrieved by any decision or [the Co-operative Court] under the last preceding section or order passed [by the Co-operative Court or the Registrar or the authorized person) under section 95 may within two months from the date of the decision or order, appeal to [the Co-operative Appellate Court.]

Money Recovery - Section 98

25

Every order passed by the Official Assignee of a de-registered society under sub-section (3) of section 21 A or every order passed by the Registrar or a person authorised by him under section 88 or by the Registrar²[or the Co-operative Court under section 95 or by the Co-operative Court under section 96, every order passed in appeal under the last preceding section every order passed by a Liquidator under section 105, every order passed by the State Government in appeal against orders passed under section 105 and every order passed in revision under section 154 shall, if not carried out,-

- (a) On a certificate signed by the Official Assignee or the Registrar or the Cooperative Court or a Liquidator, be deemed to be a decree of a Civil Court, and shall be executed in the same manner as a decree of such Court, or
- (b) be executed according to the law and under the rules for the time being in force for the recovery of arrears of land revenue:

Provided that, any application for the recovery in such manner of any such sum shall be made by the Collector, and shall be accompanied by a certificate signed by the Registrar. Such application shall be made within twelve years from the date fixed in the order and if no such date is fixed, from the date of the order.

Transfer of Property

Void Against Society—section 99

26

Any private transfer or delivery of, or encumbrance or charge on, property made or created after the issue of the certificate of the Registrar, [Co-operative Court], Liquidator or Assistant Registrar, as the case may be, under section 98 shall be null and void as against the society on whose application the said certificate was issued.

Transfer of property which cannot be sold—Section 100

27

- (1) When in any execution of an; order sought to be executed under section transfer of 98, [or in the recovery of any amount under section 101 or section 137], any property which cannot be sold for want of buyers, if such property is in occupancy of the defaulter or of some person in his behalf, or of some person claiming under a title created by the defaulter subsequently to the issue of the certificate of the Registrar, [Court], Liquidator or the Assistant Registrar, under clause (a) or (b) of section 98, [or under section 101 or 137], the Court or the Collector or the Registrar, as the case may be, may not withstanding anything contained in any law for the time being in force direct that the said property or any portion thereof shall be transferred to the society which has applied for the execution of the said order, in the manner prescribed.
- (2) Where property is transferred to the society under the foregoing sub-section or where property is sold under section 98 [101 or 137], the Court, the Collector, or the Registrar as the case may be, may in accordance with the rules, place the society or the purchaser, as the case may be, in possession of the property transferred or sold. section.

Transfer of property which cannot be sold—Section 100

28

(3) Subject to such rules as may be made in this behalf, and to any rights encumbrances, charges or equities lawfully subsisting in favour of any person, such property or portion thereof shall be held under sub-section (1) by the said society on such terms and conditions as may be agreed upon between the Court, the Collector or the Registrar, as the case may be, and the said society subject to the general or special orders of the State Government, the Collector or the Registrar may delegate to an officer, not below the rank of an Assistant or the Deputy Collector or the Assistant Registrar, powers exercisable by the Collector or the Registrar under this

Recovery of Arrears as Arrears of Land Revenue Sec 101

MP

29

[(1) Notwithstanding anything contained in sections 91, 93 and 98 on an application made by a resource society undertaking the financing of crop and seasonal finance as defined under the Bombay Agricultural Debtors Relief Act, 1947 [or advancing loans for other agricultural purposes repayable during a period of not less than eighteen months and not more than five years] for the recovery of arrears of any sum advanced by it to any of its members on account of the financing of crop or seasonal finance [or for other agricultural purposes as aforesaid] or by a crop-protection society For the recovery of the arrears of the initial cost or of any contribution for obtaining services required for crop-protection which may be due from its members or other owners of lands included in the proposal (who may have refused to become members) or by a lift irrigation society for the recovery of arrears of any subscription due from its members for obtaining services required for providing water supply to them [or by a Taluka or Block level village artisans multi-purpose society advancing loans and arranging or cash credit facilities or artisans or the recovery of arrears of its dues.] [or by a co-operative housing society for the recovery of

Recovery of Arrears as Arrears of Land Revenue Sec 101

arrears of its dues, or by a co-operative dairy society advancing loans for the recovery of arrears of any sum advanced by it to any of its members or by an urban co-operative bank for the recovery of arrears of its dues, or by salary-earners co-operative society for the recovery of arrears of its dues or by a fisheries co-operative society for the recovery of arrears of its dues, [or by any such society, class of societies, as the State Government may, from time to time, notify in the *Official Gazette, for the recovery of any sum* advanced to, or any subscription or any other amount due from, the members of the society or class of societies so notified] and on the society concerned furnishing a statement of accounts in respect of the arrears Registrar may, after making such inquiries as he deems fit, grant a certificate for the recovery of the amount stated therein to be due as arrears,]

Explanation.—For the purpose of this sub-section, the expression “other agricultural purposes ”. Includes dairy, pisciculture and poultry.]

Recovery of Arrears as Arrears of Land Revenue Sec 101

(2) Where the Registrar is satisfied that [the concerned society has failed to take action under the foregoing sub-section in respect of any amount due as arrears.] the Registrar may, of his motion, after making such inquiries, as he deems fit, grant a certificate for the recovery of the amount stated therein to be due as arrears, and such a certificate shall be deemed to have been issued as if on an application made by the society concerned.

(3) A certificate granted by the Registrar under, sub-section (1) or (2) shall be final and a conclusive proof of the arrears stated to be due therein, and the same shall be recoverable according to the law for the time being in force for the recovery of land revenue.

(4) It shall be lawful for the Collector and the Registrar to take precautionary Born. measures authorised by sections 140 to 144 of the *Bombay Land Revenue Code, 1879 or any law or provision corresponding thereto for the time being in force, until the arrears due to [the concerned society], together with interest and any incidental charges incurred in the recovery of such arrears, are paid, or security for payment of such arrears is furnished to the satisfaction of the Registrar.

ALTERNATIVE DISPUTE RESOLUTION (ADR) METHODS



INTRODUCTION

33

- An indisputable fact of life is the potential existence of conflict or disputes in any human organization. Co-operative societies are not exempted.
- An indispensable process for making social life peaceful.
- Dispute resolution process tries to resolve and check conflicts, which enables persons and group to maintain co-operation. It is indispensable tool of social life and security of the social order, otherwise it may be difficult for the individuals to carry on the life together.
- Alternative Dispute Resolution (ADR) is a term used to describe several different modes of resolving legal disputes. It is experienced by the business world as well as common men that it is impracticable for many individuals to file law suits and get timely justice.
- The Courts are burdened by huge amount of cases.
- To remove the burden on the judicial system ADR Mechanism has been developed in response thereof.

INTRODUCTION

34

- ADR methods are being increasingly acknowledged in the field of law and commercial sectors both at National and International levels. Its diverse methods can help the parties to resolve their disputes at their own terms cheaply and expeditiously.
- ADR techniques are in addition to justice through Courts. ADR techniques can be used in almost all contentious matters, which are capable of being resolved, under law, by agreement between the parties.
- ADR techniques can be employed in several categories of disputes, especially civil, commercial, industrial and family disputes. It is found that, alternative dispute redressal methods offer the best solution in respect of commercial disputes where the economic growth of the Country rests.
- The goal of ADR is enshrined in the Indian Constitution's Preamble itself, which enjoins the state: "to secure to all the citizens of India, justice-social, economic and political-liberty, equality and fraternity".

DIFFERENT TYPES OF ADR



- The different types of dispute resolution usually involve a third party referred to as neutral, a skilled helper who either assists the parties in a dispute or conflict to reach at a decision by agreement or facilitates in arriving at a solution to the problem between the party to the dispute.
- The alternative disputes resolution mechanism by the very methodology used, it can preserve and enhance personal and business relationships that might otherwise be damages by the adversarial process. It is also flexible because it allows the contestants to choose procedures, which fit the nature of the dispute and the business context in which it occurs.
- The term “Alternative Disputes Resolution” takes in its fold, various modes of settlement including, Lok Adalats, arbitration, conciliation and Mediation. This technique of Alternative Disputes Resolution has been used by many countries for effective disputes resolution.

DIFFERENT TYPES OF ADR

- In India, the Parliament has amended the Civil Procedure Code by inserting Section 89 as well as Order 10 Rule 1-A to 1-C. Section 89 of the Civil Procedure Code provides for the settlement of disputes outside the Court. It is based on the recommendations made by the Law Commission of India and Malimath Committee.
- On joint reading of Section 89 read with Rule 1-A of Order 10 of Civil Procedure Code, it transpires that the Court to direct the parties to opt for any of the five modes of the Alternative Dispute Resolution and on their option refer the matter.
- Thus, the five different methods of ADR can be summarized as follows: -
 1. Negotiation
 2. Arbitration
 3. Conciliation
 4. Mediation
 5. Judicial Settlement & Lok Adalat

NEGOTIATION

37

Negotiation

Negotiation involves two parties discussing and compromising to obtain an agreed solution

Negotiation is usually carried out without legal representatives, but each party can take their own legal representation to assist



Negotiation is not binding

NEGOTIATION

38

Seven Elements of Negotiation

- ✓ Interests: What do the parties want?
- ✓ Options: What are likely areas of agreement?
- ✓ Alternatives: What if we don't agree?
- ✓ Legitimacy: How persuasive is each party?
- ✓ Communication: Are both parties willing to discuss and listen?
- ✓ Relationship: Are both parties ready to establish operational relationship?
- ✓ Commitment: What's the structure of commitment from both parties.

NEGOTIATION PROCESS

39

Negotiation Process

- Prepare objectives and strategy
- Discuss and exchange information
- Propose solution
- Bargain and review areas of concession
- Conclude, draft and endorse agreement.

ARBITRATION

40

Arbitration

Arbitration involves an independent third party who actually makes suggestions and actually imposes a decision on the parties.

The magistrates' court refers all civil disputes involving claims less than 10,000 to arbitration



Arbitration is binding

ARBITRATION

41

- Arbitration, a form of alternative dispute resolution (ADR), is a technique for the resolution of disputes outside the courts, where the parties to a dispute refer it to one or more persons – arbitrators, by whose decision they agree to be bound.
- It is a resolution technique in which a third party reviews the evidence in the case and imposes a decision that is legally binding for both sides and enforceable.
- Arbitration can be either voluntary or mandatory.
- Mandatory Arbitration can only come from statute or from a contract that is voluntarily entered into, where the parties agree to hold all existing or future disputes to arbitration, without necessarily knowing, specifically, what disputes will ever occur.
- In view of provisions of Section 89 of the Civil Procedure Code, if the matter is referred to the Arbitration then the provisions of the Arbitration and Conciliation Act, 1996 will govern the case.

ADVANTAGES OF ARBITRATION

42

Advantages of ADR

Often takes less time than
court

**generally cheaper than
litigation**

Less formal than courts

confidential, unlike a
court, which is usually
open to the public

not adversarial
and therefore
both parties can
come away from
the process
feeling as if they
have won

Held at more suitable venues

DISADVANTAGES OF ARBITRATION 1\iP

43

Disadvantages of ADR

Not suitable for all disputes

Decisions are not legally binding (except Arbitration)

Dispute may still end up in Court

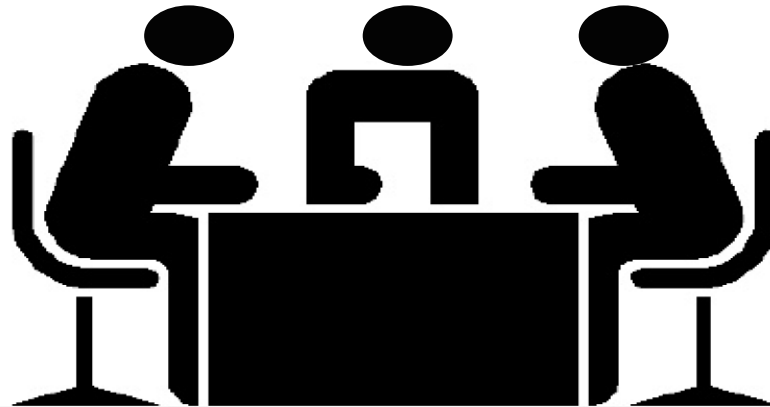
Need both parties to voluntarily participate

CONCILIATION

44

Conciliation

Conciliation involves a third party who may make suggestions to the parties.



The decisions are not binding

CONCILIATION

45

- Conciliation is an alternative dispute resolution process whereby the parties to a dispute use a conciliator, who meets with the parties separately in order to resolve their differences.
- They do this by lowering tensions, improving communications, interpreting issues, providing technical assistance, exploring potential solutions and bring about a negotiated settlement. It differs from Arbitration in that.
- Conciliation is a voluntary proceeding, where the parties involved are free to agree and attempt to resolve their dispute by conciliation.
- The process is flexible, allowing parties to define the time, structure and content of the conciliation proceedings. These proceedings are rarely public.
- They are interest-based, as the conciliator will when proposing a settlement, not only take into account the parties' legal positions, but also their; commercial, financial and /or personal interests.

CONCILIATION

46

- Most commercial disputes, in which it is not essential that there should be a binding and enforceable decision, are amenable to conciliation. Conciliation may be particularly suitable where the parties in dispute wish to safeguard and maintain their commercial relationships.
- Conciliation is a voluntary process whereby the conciliator, a trained and qualified neutral, facilitates negotiations between disputing parties and assists them in understanding their conflicts at issue and their interests in order to arrive at a mutually acceptable agreement.
- Conciliation involves discussions among the parties and the conciliator with an aim to explore sustainable and equitable resolutions by targeting the existent issues involved in the dispute and creating options for a settlement that are acceptable to all parties.
- The conciliator does not decide for the parties, but strives to support them in generating options in order to find a solution that is compatible to both parties. The process is risk free and not binding on the parties till they sign the agreement.

CONCILIATION

47

➤ Once a solution is reached between the disputing parties before a conciliator, the agreement had the effect of an arbitration award and is legally tenable in any court in the country.

➤ The following types of disputes are usually conducive for conciliation:

- commercial,
- financial,
- family,
- real estate,
- employment, intellectual property,
- insolvency,
- insurance,
- service,
- partnerships,
- environmental and product liability.
- Apart from commercial transactions, the mechanism of Conciliation is also adopted for settling various types of disputes such as labour disputes, service matters, antitrust matters, consumer protection, taxation, excise etc

MEDIATION

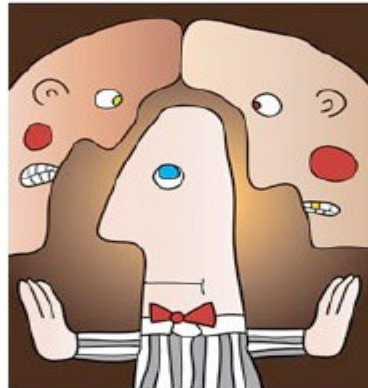
48

Mediation

Mediation involves an impartial third party who listens and directs discussion but does not suggest outcomes.

Mediation is voluntary

All parties have
their say



Atmosphere is
informal

Mediation is not binding

MEDIATION

49

- Mediation settlement is a voluntary and informal process of resolution of disputes.
- It is a simple, voluntary, party centered and structured negotiation process, where a neutral third party assists the parties in amicably resolving their disputes by using specified communication and negotiation techniques.
- Mediation is a process where it is controlled by the parties themselves.
- The mediator only acts as a facilitator in helping the parties to reach a negotiated settlement of their dispute.
- The mediator makes no decisions and does not impose his view of what a fair settlement should be.
- In the mediation process, each side meets with a experienced neutral mediator. The session begins with each side describing the problem and the resolution they desire – from their point of view.

MEDIATION

50

- Once each sides' respective positions are aired, the mediator then separates them into private rooms, beginning a process of "Caucus Meeting" and thereafter "joint meetings with the parties".
- The end product is the agreement of both the sides. The mediator has no power to dictate his decision over the party.
- There is a *win – win situation in the mediation.*
- The chief advantages of the mediation are: -
 1. The agreement which is that of the parties themselves;
 2. The dispute is quickly resolved without great stress and expenditure;
 3. The relationship between the parties are preserved; and
 4. The confidentiality is maintained.

MEDIATION

51

Disputes unsuitable for mediation

circumstances where both parties are not willing to attend mediation

disputes where there is no continuing relationship between the parties

disputes where there is evidence of a gross imbalance of power

where there are overwhelming emotions involved

where there is a history of broken promises

JUDICIAL SETTLEMENT

- Section 89 of the Civil Procedure Code refers to the Judicial Settlement as one of the mode of alternative dispute resolution.
- But there are no specified rules framed so far for such settlement.
- It has been provided therein that when there is a Judicial Settlement the provisions of the Legal Services Authorities Act, 1987 will apply. It means that in a Judicial Settlement the concerned Judge tries to settle the dispute between the parties amicably.
- If at the instance of judiciary any amicable settlement is resorted to and arrived at in the given case then such settlement will be deemed to be decree within the meaning of the Legal Services Authorities Act, 1987.
- There are no written guidelines prescribed in India as to judicial settlement.

LOK ADALAT

53

- It is a judicial institution and a dispute settlement agency developed by the people themselves for social justice based on settlement or compromise reached through systematic negotiations.
- Lok Adalats accept even cases pending in the regular courts within their jurisdiction.
- Section 89 of the Civil Procedure Code provides as to referring the pending Civil disputes to the Lok Adalat.
- When the matter is referred to the Lok Adalat then the provisions of the Legal Services Authorities Act, 1987 will apply. So far as the holding of Lok Adalat is concerned, Section 19 of the Legal Services Authorities Act, 1987 provides as under: -

Section 19 Legal Services Authorities Act, 1987

➤ Section 19 Organization of Lok Adalats :

- 1) Every State Authority or District Authority or the Supreme Court Legal Services Committee or every High Court Legal Services Committee or, as the case may be, Taluka Legal Services Committee may organise Lok Adalats at such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit.
- 2) Every Lok Adalat organised for an area shall consist of such number of:-
 - (a) serving or retired judicial officers; and
 - (b) other persons, of the area as may be specified by the State Authority or the District Authority or the Supreme Court Legal Services Committee or the High Court Legal Services Committee, or as the case may be, the Taluka Legal Services Committee, organising such Lok Adalat.
- 3) The experience and qualifications of other persons referred to in clause (b) of sub-section (2) for Lok Adalats organised by the Supreme Court Legal Services Committee shall be such as may be prescribed by the Central Government in consultation with the Chief Justice of India.

Section 19 Legal Services Authorities Act, 1987

(4) The experience and qualifications of other persons referred to in clause (b) of subsection (2) for Lok Adalats other than referred to in subsection (3) shall be such as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

(5) A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of –

- (i) any case pending before it; or
- (ii) any matter which is falling within the jurisdiction of, and is not brought before any court for which the Lok Adalat is organised : Provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law.

➤ If any matter is referred to the Lok Adalat and the members of the Lok Adalat will try to settle the dispute between the parties amicably, if the dispute is resolved then the same will be referred to the concerned Court, which will pass necessary decree therein. The decree passed therein will be final and binding to the parties and no appeal will lie against that decree.

LOK ADALAT

56

- In view of the aforesaid provisions of the Legal Services Authorities Act, 1987 if any matter is referred to the Lok Adalat, the members of the Lok Adalat will try to settle the dispute between the parties amicably, if the dispute is resolved then the same will be referred to the concerned Court, which will pass necessary decree therein.
- The decree passed therein will be final and binding to the parties and no appeal will lie against that decree.
- On the flip side, the main condition of the Lok Adalat is that both parties in dispute have to be agreeable to a settlement. Also, the decision of the Lok Adalat is binding on the parties to the dispute and its order is capable of execution through legal process.
- No appeal lies against the order of finality attached to such a determination is sometimes a retarding factor for however be passed by Lok Adalat, only after obtaining the assent of all the parties to dispute. In certain situations, permanent Lok Adalat can pass an award on merits, even without the consent of parties which is binding no appeal is possible.

ADVANTAGES OF LOK ADALAT

57

- Lok Adalat are especially effective in settlement of money claims.
- Disputes like partition suits, damages and even matrimonial cases can also be easily settled before a Lok Adalat as the scope for compromise is higher in these cases.
- Lok Adalat is a definite boon to the litigant public, where they can get their disputes settled fast and free of cost.
- The appearance of lawyers on behalf of the parties, at the Lok Adalats is not barred.

Thank you



MANOJ PANDIT
Advocate

(c) M & P Management Consultants Pvt. Ltd.