

The Alternative Disputes Resolution Rules, 2004 and the Mediation Rules

RAJASTHAN

India

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Rule

THE-ALTERNATIVE-DISPUTES-RESOLUTION-RULES-2004-AND-THE-MEDIATION-RULES-2005

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Part I – Alternative Disputes Resolution Rules

1.

These Rules shall be called the 'Alternative Disputes Resolution Rules, 2004'.

2. Procedure for directing the parties to opt for alternative modes of settlement.

(a) If after recording admissions and denials at the first hearing of the suit under Order X Rule 1; it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, it shall formulate the terms of settlement and give the same to the parties for their observations. The parties shall furnish their observations to the Court within next fifteen days. (b) On

the next date of hearing, which shall be not later than fifteen days fixed for furnishing the observations of the parties, the Court may re-formulate the terms of possible settlement and direct the parties to opt for one of the modes of settlement of dispute out of Court as specified in clauses (a) to (d) of sub-section (1) of Section 89 read with Order X Rule 1-A in the manner stated hereunder: Provided that the Court, in exercise of such power, shall not refer any dispute to arbitration or for settlement through Lok Adalat or judicial settlement under the Legal Services Authorities Act, 1987, as envisaged under clauses (a) and (c) of sub-section (1) of Section 89, without the written consent of all the parties to the suit.

3. Persons authorised to take decision on behalf of the Union of India, State Governments and others.

- Where one of the parties to the suit is the Union of India, State Government, Union Territory, Local Authority, a Public Sector Undertaking, a Statutory Corporation or body or Public Authority, such party shall be directed by the Court concerned at the time of issuing notice to nominate a person or group of persons who will be empowered to take a final decision as to the mode of alternative dispute resolution which it may prefer to opt for. Such a decision shall be communicated to the concerned Court within the period specified in the notice and latest within a period of 30 days from the date of receipt of notice: Provided that the High Court may direct such parties to nominate one or more persons who may be authorised to take final decision as to mode of alternative dispute resolution which the party concerned may prefer to Part Within three months of the receipt of direction from the High Court, such party shall furnish a list of nominated persons, which shall circulate the same to all the Courts.

4. Court to give guidance to parties while giving direction to opt.

- Before directing the parties to exercise option under clause (b) of Rule 2, the Court shall give such guidance to them as it deems fit, by drawing their attention to the following factors which they shall take into account, before exercising their option as to the particular mode of settlement: (i) that it will be to the advantage of the parties, so far as time and expenses are concerned, to opt for one of the modes of settlement rather than seek a trial of the dispute arising in the suit; (ii) that where there is relationship between the parties which requires to be preserved, it will be in their interest to seek reference of the matter to conciliation or mediation, as envisaged in clauses (b) or (d) of sub-section (1) of Section 89; (iii) that where there is no relationship between the parties which requires to be preserved, it will be in their interest to seek reference of the matter to arbitration as envisaged in clause (a) of sub-section (1) of Section 89. Explanation. - Disputes arising in matrimonial, maintenance and child custody matters shall, among others, be treated as cases where a relationship between the parties is required to be preserved. (iv) that where the parties are interested in final settlement which may lead to a compromise, it will be in their interest to seek reference of the matter to judicial settlement including Lok Adalat as envisaged in clause (c) of sub-section (1) of Section 89. (v) the difference between the various modes of settlement, namely, arbitration, conciliation, mediation and judicial settlement is as explained below: 'Arbitration' means the process by which an arbitrator appointed by the parties or by the Court, as the case may be, adjudicates the disputes between them and passes an award by applying the provisions of the

Arbitration and Conciliation Act, 1996 (26 of 1996), in so far as they refer to arbitration.'Conciliation' means the process by which a conciliator who is appointed by the parties or by the Court, as the case may be, conciliates the disputes between them by applying the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) in so far as they relate to conciliation, and in particular, in exercise of his powers under Sections 67 and 73 of that Act, by making proposals for a settlement of the dispute and by formulating or reformulating the terms of a possible settlement; and has a greater role than a mediator.'Mediation' means the process by which a mediator appointed by the parties or by the court, as the case may be, mediates the disputes between them by applying the provisions of the Mediation Rules contained in Part II and in particular by facilitating discussion between the parties directly or by communicating with each other through the mediator, by assisting the parties in identifying the issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise, generating options in an attempt to solve the dispute and emphasizing that it is their own responsibility for making decisions which affect them.'Judicial Settlement' means a final settlement by way of compromise before a Lok Adalat or before a suitable institution or person, which shall be deemed to be a settlement before a Lok Adalat within the meaning of the Legal Services Authorities Act, 1987 (39 of 1987).

5. Procedure for reference by the Court to the different modes of settlement.

(a)Where all the parties to the suit decide to exercise their option and agree for settlement by arbitration, they shall apply to the Court, within fifteen days of the direction of the court under clause (b) of Rule 2 and the Court shall, within fifteen days of the receipt of such application, refer the matter to arbitration and then the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings were referred for settlement by way of arbitration under the provisions of that Act;(b)Where all the parties to the suit decide to exercise their option and to agree for settlement by the Lok Adalat, they shall apply to the Court within fifteen days of the direction under clause (b) of Rule 2 and the court shall, within fifteen days of the receipt of application, transfer the matter to the Lok Adalat and then all the provisions of the Legal Services Authorities Act, 1987 shall apply as if the proceedings were referred for settlement by Lok Adalat under the provisions of that Act;(c)Where all the parties to the suit decide to exercise their option and to agree for judicial settlement, they shall apply to the Court within fifteen days of the direction under clause (b) of Rule 2 and the Court shall, within fifteen days of the receipt of application, transfer the matter to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authorities Act, 1987 (39 of 1987) shall apply as if the proceedings were referred for settlement under the provisions of that Act;(d)where all the parties are unable to opt or agree to refer the dispute to arbitration, Lok Adalat or judicial settlement, within fifteen days of the direction of the Court under clause (b) of Rule 2, they shall consider if they could agree for reference to conciliation or mediation, within the same period.(e)(i)where all the parties opt and agree for conciliation, they shall apply to the Court, within fifteen days of the direction under Rule 2 and the Court shall, within fifteen days of the receipt of application refer the matter to conciliation and then the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply, as if the proceedings were referred for settlement by way of conciliation under the provisions of that Act;(ii)where all the parties opt and agree for mediation, they shall apply to the Court, within fifteen days of the direction under Rule 2 and the Court shall, within fifteen days of the

receipt of application, refer the matter to mediation and then the Mediation Rules contained in Part II shall apply. (f) where under clause (d), all the parties are not able to opt and agree for conciliation or mediation, one or more parties may apply to the Court within fifteen days of the direction under clause (b) of Rule 2, seeking settlement through conciliation or mediation, as the case may be, and in that event, the Court shall, within a further period of fifteen days issue notice to the other parties to respond to the application; and (i) In case all the parties agree, the Court shall refer the matter to conciliation or mediation, as the case may be, as stated in clause (e); (ii) In case all the parties do not agree and where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties and that there is a relationship between the parties which has been preserved, the Court shall refer the matter to conciliation or mediation, as the case maybe. (g) (i) Where none of the parties apply for reference either to arbitration, Lok Adalat, Judicial Settlement, conciliation or mediation, within fifteen days of the direction given under clause (b) of Rule 2, the Court shall, within a further period of fifteen days, issue notices to the parties or their representatives fixing the matter for hearing on the question of making a reference either to conciliation or mediation. (ii) After hearing the parties or their representatives on the date so fixed, the Court shall, whether parties agree or not, and if there exist elements of settlement which may be acceptable to them, refer the matter to: (a) conciliation if the Court considers that the matter is fit for conciliation and then the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply, as if the proceedings were referred for settlement by way of conciliation under the provisions of that Act; or (b) mediation, if the Court considers that the matter is fit for mediation and then the provisions of the Mediation Rules contained in Part II shall apply.

6. Appearance before the Court upon failure of attempts to settle disputes by Judicial settlement, conciliation or mediation.

(1) Where a suit has been referred for settlement under one of the modes referred to in clause (b) to (d) of sub-section (2) of Section 89, read with Rule 1-A of Order X and clause (b) to (g) of Rule 5 of these Rules and has not been settled or where it is felt that it would not be in the interest of justice to proceed with the matter, the suit shall be referred back to the Court with a direction to the parties to appear before it on a specified date. (2) Upon reference of the matter back to the Court, it shall proceed with the suit in accordance with law.

7. Training in alternative methods of resolution of disputes and preparation of manual.

(a) The High Court shall take steps to have training courses conducted by requesting bodies recognised by it or the Universities imparting legal education or retired faculty members or other persons who, according to the High Court are well-versed in the techniques of alternative methods of disputes resolution to conduct training courses for lawyers and judicial officers. (b) (i) The High Court shall nominate a committee of judges, faculty members including retired persons belonging to the above categories, senior members of the Bar, members of the Bar specially qualified in the techniques of alternative disputes resolution, for the purpose of preparing a detailed manual of procedure for alternative disputes resolution to be used by the Courts in the State as well as by the

arbitrators, members of the Lok Adalat, conciliators and mediators.(ii)The said manual shall describe the various methods of alternative disputes resolution, the manner in which any one of the side methods is to be opted for, the suitability of any particular method for any particular type of dispute and shall specifically deal with the role of conciliators and mediators in disputes which are commercial or domestic in nature or which relate to matrimonial, maintenance and child custody matters.(c)The High Court and the District Courts shall periodically conduct seminars and workshops on the subject of alternative disputes resolution procedures throughout the State over which the High Court has jurisdiction with a view to bring awareness of such procedures and to impart training to lawyers and judicial officers.(d)Persons who gain experience in the matter of alternative disputes resolution procedures, and in particular with regard to conciliation and mediation, shall be given preference for purpose of appointment in the matter of resolution of disputes by the said procedures.

8. Applicability to other proceedings.

- The provisions of these Rules may be applied to proceedings before the Courts, including Family Courts constituted under the Family Courts Act (66 of 1984), while dealing with matrimonial, maintenance and child custody disputes.

Part II – Mediation Rules

1. These Rules shall be called the Mediation Rules.

2. Appointment of mediator. - (a) The parties to a suit may agree on the name of a sole mediator for mediating between them. In that event he shall be appointed as mediator. If the parties fail to agree on the name of a mediator, then the Court shall appoint one or more mediator out of the panel of mediators referred to in Rule 3.

(b)Where the parties are unable to agree on the name of a sole mediator, then each set of parties shall nominate a mediator.(c)Where the parties agree on the name of a sole mediator, he need not necessarily be a person from the panel of mediators referred to in Rule 3, nor bear the qualifications referred to in Rule 4 but should not be a person who suffers from any of the disqualifications referred to in Rule 5.(d)Where there are more than two sets of parties having diverse interests, each set shall nominate a person on its behalf and the said nominees shall select the sole mediator and failing unanimity in that behalf, the Court shall appoint a sole mediator.

3. Panel of mediators. - (a) The High Court shall, for the purpose of appointing mediators in the cases filed on its original side prepare a panel of mediators. Such panel shall be published on the notice board of the High Court, within three months of the coming into force of these Rules. A copy of

the panel of mediators shall be sent to the High Court Bar Association.

(b)(i)The District Judge in each District shall, for the purpose of appointing mediators to mediate between parties in the suits filed on the original side, prepare a panel of mediators, within a period of three months of the commencement of these Rules. Such panel shall be published on the notice boards of various Courts after obtaining approval of the High Court.(ii)Copies of the panels referred to in clause (i) shall be forwarded to all the Courts subordinate to the District Judge and the Bar Associations attached to each of the Courts.(c)The consent of the persons whose names are included in the panel shall be obtained before empanelling them.(d)The panel of names of mediators shall be accompanied by an Annexure containing details of the qualifications of the mediators, and their professional or technical experience in different fields.

4. Qualifications of persons to be empanelled under Rule 3. - The following persons shall be treated as qualified and eligible for being empanelled as mediators under Rule 3:-

(a)(i)Retired Judges of the Supreme Court of India;(ii)Retried Judges of the High Courts;(iii)Retired District and Sessions Judges/Additional District and Sessions Judges and retired Civil Judges.(b)Legal practioners with atleast fifteen years standing at the Bar in the Supreme Court, High Court or District Court.(c)Experts or other professionals with atleast fifteen years standing or retired senior bureaucrats or retired senior executives.(d)Institutions which are themselves experts in mediation and have been recognised as such by the High Court.

5. Disqualifications. - The following shall be the disqualifications for being empanelled as mediator:-

(i)any person who has been adjudged insolvent;(ii)any person against whom criminal charges involving moral turpitude have been framed by a criminal court and are pending; or(iii)any person who has been convicted by a criminal court for any offence involving moral turpitude;(iv)any person against whom disciplinary proceedings have been initiated by the competent authority or who has been punished in such proceedings;(v)such other categories of persons as may be notified by the High Court.

6. Preference. - The Court shall, while nominating any person from the panel of mediators referred to in Rule 3, consider his suitability for resolving the nature of dispute involved in the suit and shall give preference to those who have proved record of successful mediation or who have special qualification or experience in mediation.

7. Duty of mediator to disclose certain facts. - (a) When a person is approached in connection with his possible appointment as a mediator, he shall disclose in writing to the parties the factors which may give rise to a justifiable doubt as to his independence or impartiality. If any such factor comes into existence after his appointment as mediator, the same shall be disclosed to the parties in writing without delay.

Note.-While appointing mediator the Court concerned shall ensure that the person to be appointed is not interested or connected with the subject matter of the dispute and is not related to any of the parties or to those who represent them. However, the parties shall be free to waive such objection in writing.(b)Every mediator shall, from the time of his appointment and throughout the continuance of the mediation proceedings, without delay, disclose to the parties in writing, about the existence of any of the circumstances referred to in clause (a).

8. Cancellation of appointment. - Upon information furnished by the mediator under Rule 7 or upon any other information received from the parties or any other person, if the court concerned is satisfied after conducting such inquiry' as it deems fit and after giving opportunity of hearing to the mediator, that the said information has raised a justifiable doubt as to the mediator's independence or impartiality, it shall cancel the appointment by a reasoned order and replace him by another mediator.

9. Removal or deletion from panel. - The names of a person placed in the panel referred to in Rule 3 may be removed or deleted from the said panel by the Court concerned if:-

(i)he incurs any of the disqualifications referred to in Rule 5;(ii)he resigns or withdraws his name from the panel for any reason;(iii)he exhibits or displays conduct, during the continuance of the mediation proceedings, which is unbecoming of a mediator;(iv)upon receipt of an information and after conducting such enquiry as it deems fit, the Court concerned is satisfied that it is not desirable to continue the name of that person in the pane:Provided that, before removing or deleting his name, under clauses (iii) or (iv), the Court shall hear the mediator whose name is proposed to be removed or deleted from the panel and shall pass a reasoned order.

10. Procedure of mediation. - (a) The parties may agree on the procedure to be followed by the mediator in the conduct of the mediation proceedings.

(b)Where the parties do not agree on any particular procedure to be followed by the mediator, the mediator shall follow the procedure hereinafter mentioned, namely:-(i)he shall fix, in consultation with the parties, a time schedule, the dates and the time of each mediation session, where all the parties have to be present;(ii)he shall hold the mediation at any convenient location agreeable to

him and the parties, as he may determine;(iii)he may conduct joint or separate meetings with the parties;(iv)each party shall, ten days before a session, provide to the mediator a brief memorandum setting for the issues, which according to it, need to be resolved, and its position in respect of those issues and all information reasonably required for the mediator to understand the issues such memoranda shall also be mutually exchanged between the parties;(v)each party shall furnish to the mediator such other information as may be required by him in connection with the issues to be resolved.(c)Where there is more than one mediator, the mediator nominated by each party shall first confer with the party that nominated him and shall thereafter interact with the other mediators, with a view to resolve the disputes.

11. Mediator not bound by Evidence Act, 1872 or Code of Civil Procedure, 1908. - The mediator shall not be bound by the provisions of Evidence Act, 1872 or Code of Civil Procedure, 1908, but shall be guided by the principles of fairness and justice, having regard to the rights and obligations of the parties, usages of trade, if any, and the circumstances of the dispute.

12. Non-attendance of parties at sessions or meetings on due dates. - (a) The parties shall be present personally or through their counsel or power of attorney holders at the meetings or sessions notified by the mediator.

(b)If a party fails to attend a session or a meeting notified by the mediator, other parties or the mediator can apply to the Court in which the suit is filed, to issue appropriate directions to that party to attend before the mediator and if the Court finds that such party is absenting himself before the mediator without sufficient cause, the Court may take action against the said party by imposition of costs or by taking action for contempt.

13. Administrative assistance. - In order to facilitate the conduct of mediation proceedings, the parties or the mediator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

14. Offer of settlement by the parties. - Any party to the suit may, without prejudice, to the rights of either party, offer a settlement to the other party at any stage of the proceedings with notice to the mediator.

15. Role of mediator. - The mediator shall attempt to facilitate voluntary resolution of the dispute by the parties and communicate the view of each party to the other, assist them in identifying issues, reducing misunderstanding, clarifying priorities, exploring areas of compromise and generating options in an attempt to solve the dispute, emphasizing that it is the responsibility of the parties to take decision which affect them. However,

he shall not impose terms of settlement on the parties.

16. Parties alone responsible for taking decision. - The parties must understand that the mediator only facilitates in arriving at a decision to resolve disputes and that he will not and cannot impose any settlement nor does the mediator give any warranty that the mediation will result in a settlement.

17. Time limit for completion of mediation. - On the expiry of sixty days from the date fixed for the first appearance of the parties before the mediator, the mediator shall stand terminated, unless the Court, which referred the matter, either suo moto or upon request by any of the parties and upon hearing all the parties, is of the view that extension of time is necessary or may be useful then he may extend the time but such extension shall not be beyond a further period of thirty days.

18. Parties to act in good faith. - All the parties shall participate in the mediation proceedings in good faith with the intention to settle the dispute.

19. Confidentiality, disclosure and inadmissibility of information. - (1) When a mediator receives information concerning the dispute from any party, he shall disclose the substance of that information to the other party, so that the other party may have an opportunity to present such explanation as it may consider appropriate:

Provided that, when a party gives information to the mediator subject to a specific condition that it be kept confidential, the mediator shall not disclose that information to the other party.(2)Receipt or perusal, preparation of records, reports or other documents by the mediator, while serving in that capacity, shall be confidential and the mediator shall not be compelled to divulge information regarding those documents nor as to what transpired during the mediation.(3)Parties shall maintain confidentiality in respect of events that transpired during mediation and shall not rely on or introduce the said information in any other proceedings as to:(a)views expressed by a party in the course of the mediation proceedings;(b)documents obtained during the mediation which were expressly required to be treated as confidential or notes, drafts or information given by parties or mediators;(c)proposals made or views expressed by the mediator;(d)admission made by a party in the course of mediation proceedings;(e)the fact that a party had or had not indicated willingness to accept a proposal.(4)There shall be no stenographic or audio or video recording of the mediation proceedings.

20. Privacy. - Mediation sessions and meetings are private, only the concerned parties or their counsel or power of attorney holders can attend. Other persons may attend only with the consent of the parties and with the permission of the mediator.

21. Immunity. - No mediator shall be held liable for anything bona fide done or omitted to be done by him during the mediation proceedings for civil or criminal action nor shall he be summoned by any party to the suit to appear in a Court of law to testify in regard to information received by him or action taken by him or in respect of drafts of records prepared by him or shown to him during the mediation proceeding.

22. Communication between mediator and the Court. - (a) In order to preserve the confidence of the parties in the Court and neutrality of the mediator, there shall be no communication between the mediator and the Court, except as stated in clauses (b) and (c) of this Rule.

(b) If any communication between the mediator and the Court is necessary, it shall be in writing and copies of the same shall be given to the parties or their counsel or power of attorney holder. (c) Communication between the mediator and the Court shall be limited to communication by the mediator: (i) with the Court about the failure of party to attend; (ii) with the Court with the consent of the parties; (iii) regarding his assessment that the case is not suitable for settlement through mediation; (iv) that the parties have settled the dispute or disputes.

23. Settlement Agreement. - (1) Where an agreement is reached between the parties in regard to all the issues in the suit or some of the issues, the same shall be reduced into writing and signed by the parties or their power of attorney holders. If any counsel have represented the parties, they shall attest the signatures of their respective clients.

(2) The agreement of the parties so signed and attested shall be submitted to the mediator who shall, with a covering letter signed by him, forward the same to the Court in which the suit is pending. (3) Where no agreement is arrived at between the parties, before the time limit specified in Rule 17 or where the mediator is of the view that no settlement is possible, he shall report the same to the Court in writing.

24. Court to fix a date for recording settlement and passing decree. - (1) Within seven days of the receipt of a settlement, the Court shall issue notice to the parties fixing a date for their appearance which date shall not be beyond 14 days from the date of receipt of the settlement and the Court shall

then take the settlement on record.

(2) Thereafter, the Court shall pass a decree in accordance with the settlement, so taken on record, if the same disposes of all the issues in the suit. (3) If the settlement disposes of only certain issues arising in the suit, the Court shall take on record the settlement on the date fixed and shall include the terms of the said settlement in the judgment, while deciding the other issues.

25. Fee of mediator and costs. - (1) At the time of referring the dispute to the mediator the Court shall after consulting the mediator and the parties, fix the fee of the mediator.

(2) As far as possible, a consolidated sum may be fixed rather than for each session or meeting. (3) Where there are two mediators as in clause (b) of Rule 2, the Court shall fix the fee payable to the mediators which shall be shared equally by the parties. (4) The expenses of the mediation including the fee of the mediator, costs of administrative assistance, and other ancillary expenses concerned, shall be borne equally by the various contesting parties or as may be otherwise directed by the Court. (5) Each party shall bear the costs for production of witnesses on his side including experts, or for production of documents. (6) The mediator may, before the commencement of mediation, direct the parties to deposit equal sums tentatively, to the extent of 50% of the probable costs of mediation, as referred to in clause (3), including his fee. The remaining 50% shall be deposited with the mediator, after the conclusion of mediation. The amount deposited towards costs shall be expended by the mediator by obtaining receipts and a statement of account shall be filed, by the mediator in the Court. (7) If any party or parties do not pay the amount referred to in sub-rule (5), the Court shall, on the application of the mediator, or any party, issue appropriate directions to the defaulting party. If the defaulting party does not pay the amount of expenses including fee, the Court shall recover the same as if it was a decree for the said amount.

26. Ethics to be followed by mediator. - The mediator shall-

(1) follow and observe these Rules strictly and with due diligence; (2) not carry on any activity or conduct which could reasonably be considered as conduct unbecoming of a mediator; (3) uphold the integrity and fairness of the mediation process; (4) ensure that the parties involved in the mediation are fairly informed and have an adequate understanding of the procedural aspects of the process; (5) satisfy himself/herself that he/she is qualified to undertake and complete the assignment in a professional manner; (6) disclose any interest or relationship likely to affect impartiality or which might seek an appearance of partiality or bias; (7) avoid, while communicating with the parties, any impropriety or appearance of impropriety; (8) be faithful to the relationship of trust and confidentiality reposed in the office of mediator; (9) conduct all proceedings related to the resolution of a dispute, in accordance with the applicable law; (10) recognise that mediation is based on principles of self-determination by the parties and that mediation process relies upon the ability of parties to reach a voluntary, undisclosed agreement; (11) maintain the reasonable expectations of the parties as to confidentiality; (12) refrain from promises or guarantees of results.

27. Transitory provisions. - Until a panel of mediators is prepared by the High Court or the District Court as provided under Rule 3, the Court concerned may nominate a mediator of its choice provided that he is fully qualified and does not Suffer from any disqualification.