

CONSULTATION PAPER ON ADR AND MEDIATION RULES

Introduction

In the judgment of the Supreme Court of India in *Salem Bar Association vs. Union of India*, the Supreme Court has requested this committee to prepare draft model rules for Alternative Disputes Resolution (ADR) and also draft rules for mediation under section 89(2)(d) of the Code of Civil Procedure, 1908. Pursuant to the said judgment, we have prepared the following set of draft rules. They are in two parts – the first part consisting of the procedure to be followed by the parties and the Court in the matter of choosing the particular method of ADR. The second part consists of draft rules of mediation under section 89(2)(d) of the Code of Civil Procedure, 1908.

(Draft) Alternative Dispute Resolution and Mediation Rules, 2003

In exercise of the rule making power under Part X of the Code of Civil Procedure, 1908 (5 of 1908) and clause (d) of sub-section (2) of section 89 of the said Code, the High Court of, is hereby issuing the following Rules:

Part I

Alternative Dispute Resolution Rules

Rule 1: Title:

These Rules in Part I shall be called the ‘Alternative Dispute Resolution Rules 2003’.

Rule 2: Procedure for directing parties to opt for alternative modes of settlement:

- (a) The Court shall, after recording admissions and denials at the first hearing of the suit under Rule 1 of Order X, and where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, formulate the terms and settlement and give them to the parties for their observations under sub-section (1) of Section 89, to be furnished to the Court within fifteen days of the first hearing.
- (b) At the next hearing, which shall be not later than fifteen days of the first hearing, the Court shall reformulate the terms of a possible settlement and direct the parties to opt for one of the modes of settlement of disputes outside the Court as specified in clauses (a) to (d) of sub-section (1) of Section 89 read with Rule 1A of Order X, in the manner stated hereunder,
 - Provided that the Court, in the exercise of such power, shall not refer any dispute to arbitration or to settlement through Lok Adalat or judicial settlement, under the Legal Services Authority Act, 1987, as envisaged under clauses (a) and (c) of sub-section (1) of sec. 89, without the written consent of all the parties to the suit.

Rule 3: Persons authorized to take decision for the Union of India, State Governments and others:

For the purpose of Rule 2, where one of the parties is the Union of India or the Government of a State or a Union Territory or a local authority or a Public Sector Undertaking or a statutory corporation or body or public authority, such parties shall be directed by the High Court to nominate a person or group of persons who will be authorized to take a final decision as the mode of Alternative Disputes Resolution it prefers to opt for and such decision shall be communicated to the concerned court within the period specified in these Rules by the said person or group of persons so authorized.

Rule 4: Court to give guidance to parties while giving direction to opt:

(a) Before directing the parties to exercise option under clause (b) of Rule 2, the Court shall give such guidance as it deems fit to the parties, by drawing their attention to the relevant factors which parties will have to take into account, before they exercise their option as to the particular mode of settlement, namely:

- (i) that it will be to the advantage of the parties, so far as time and expense are concerned, to opt for one of these modes of settlement rather than seek a trial on the disputes arising in the suit;
- (ii) that, where there is no relationship between the parties which requires to be preserved, it will be in the interests of the parties to seek reference of the matter to arbitration as envisaged in clause (a) of sub-section (1) of sec. 89.
- (iii) that, where there is a relationship between the parties which requires to be preserved, it will be in the interests of parties to seek reference of the matter to conciliation or mediation, as envisaged in clauses (b) or (d) of sub-section (1) of sec. 89.

Explanation: Disputes arising in matrimonial, maintenance and child custody matters shall, among others, be treated as cases where a relationship between the parties has to be preserved

- (iv) that, where parties are interested in a final settlement which may lead to a compromise, it will be in the interests of the parties 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 different modes of settlement, namely, arbitration, conciliation, mediation and judicial settlement as explained below:

‘Arbitration’ means the process by which an arbitrator appointed by parties or by the Court, as the case may be, adjudicates the disputes between the parties to the suit and passes an award by the application of the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1990), in so far as they refer to arbitration.

‘Conciliation’ means the process by which a conciliator who is appointed by parties or by the Court, as the case may be, conciliates the disputes between the parties to the suit by the application of 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 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 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 emphasizing that it is the parties’ own responsibility for making decisions which affect them.

‘Settlement including Lok Adalat’ 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 by virtue of the Legal Services Authority Act, 1987 (39 of 1987).

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

- (a) Where all parties to the suit decide to exercise their option and to 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 said 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 application, transfer the matter to the Lok Adalat under sub-section (1) of section 20 of the Legal Services Authority Act, 1987 (39 of 1987) and then all the other provisions of that Act 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 then the Court shall, within fifteen days of the application, transfer the matter to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and then all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the proceedings were referred for settlement under the provision of that Act;
- (d) Where all the parties are unable to opt or agree to refer the dispute to arbitration, or Lok Adalat, or the 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 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 proceeding were referred for settlement by way of conciliation under the provisions of that Act;
- (e) (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 application, refer the matter to mediation and then the Mediation Rules, 2003 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 to be preserved, the Court shall refer the matter to conciliation or mediation, as the case may be.
- (g) (i) Where none of the parties apply for reference either to arbitration, or Lok Adalat, or judicial settlement, or for conciliation or mediation, within fifteen days of the direction 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 day so fixed, the Court shall, whether parties agree or not, and if there exist elements of the settlement which may be acceptable to the parties, 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 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, 2003 in Part II shall apply.

Rule 6: Appearance before the Court upon failure of attempts to settle disputes by conciliation or judicial settlement 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 1A of Order X and clauses (b) to (g) of Rule 5 of these Rules and has not been settled or where it is felt that it would not be proper in the interests of justice to proceed further with the matter, the suit shall be referred back to the Court with a direction to the parties to appear before the Court on a specific date.
- (2) Upon the reference of the matter back to the Court, the Court shall proceed with the suit in accordance with law.

Rule 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 in places where the High Court and the District Courts or Courts of equal status are located, by requesting bodies recognized by the High Court 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 and 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 referred to in clause (a) and for the purpose of preparing a detailed manual of procedure for alternative dispute 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 dispute resolution, the manner in which any one of the said 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 dispute resolution procedures throughout the State or States 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 dispute resolution procedures, and in particular in regard to conciliation and mediation, shall be given preference for purposes of appointment in the matter of resolution of disputes by the said procedures.

Rule 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

(DRAFT) MEDIATION RULESRule 1: Title:

These Rules in Part II shall be called the Mediation Rules, 2003.

Rule 2: Appointment of mediator:

- (a) Parties to a suit may all agree on the name of the sole mediator for mediating between them.
- (b) Where, there are two sets of parties and are unable to agree on a sole mediator, each set of parties shall nominate a mediator.
- (c) Where parties agree on a sole mediator under clause (a) or where parties nominate more than one mediator under clause (b), the mediator need not necessarily be 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 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.

Rule 3: Panel of mediators:

- (a) The High Court shall, for the purpose of appointing mediators between parties in suits filed on its original side, prepare a panel of mediators and publish the same on its Notice Board, within thirty days of the coming into force of these Rules, with copy to the Bar Association attached to the original side of the High Court.
- (b) (i) The Courts of the Principal District and Sessions Judge in each District or the Courts of the Principal Judge of the City Civil Court or Courts of equal status shall, for the purposes of appointing mediators to mediate between parties in suits filed on their original side, prepare a panel of mediators, within a period of sixty days of the commencement of these Rules, after obtaining the approval of the High Court to the names included in the panel, and shall publish the same on their respective Notice Boards.
 - (ii) Copies of the said panels referred to in clause (i) shall be forwarded to all the Courts of equivalent jurisdiction or Courts subordinate to the Courts referred to in sub-clause (i) and to 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 shall contain a detailed Annexure giving details of the qualifications of the mediators and their professional or technical experience in different fields.

Rule 4: Qualifications of persons to be empanelled under Rule 3:

The following persons shall be treated as qualified and eligible for being enlisted in the panel of mediators under Rule 3, namely:

- (a) (i) Retired Judges of the Supreme Court of India;
- (ii) Retired Judges of the High Courts;
- (iii) Retired District and Sessions Judges or retired Judges of the City Civil Court or Courts of equivalent status.
- (b) Legal practitioners with at least fifteen years standing at the Bar at the level of the Supreme Court or the High Court; or the District Courts or Courts of equivalent status.

(c) Experts or other professionals with at least fifteen years standing; or retired senior bureaucrats or retired senior executives;

(d) Institutions which are themselves experts in mediation and have been recognized as such by the High Court.

Rule 5: Disqualifications of persons:

The following persons shall be deemed to be disqualified for being empanelled as mediators:

- (i) any person who has been adjudged as insolvent or persons
 - (a) against whom criminal charges involving moral turpitude are framed by a criminal court and are pending, or
 - (b) persons who have been convicted by a criminal court for any offence involving moral turpitude;
- (ii) any person against whom disciplinary proceedings have been initiated by the appropriate disciplinary authority which are pending or have resulted in a punishment.
- (iii) any person who is interested or connected with the subject-matter of dispute or is related to any one of the parties or to those who represent them, unless such objection is waived by all the parties in writing.
- (iv) any legal practitioner who has or is appearing for any of the parties in the suit or in any other suit or proceedings.
- (v) such other categories of persons as may be notified by the High Court.

Rule 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 particular class of dispute involved in the suit and shall give preference to those who have proven record of successful mediation or who have special qualification or experience in mediation.

Rule 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, any circumstances likely to give rise to a justifiable doubt as to his independence or impartiality.

(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).

Rule 8: Cancellation of appointment:

Upon information furnished by the mediator under Rule 6 or upon any other information received from the parties or other persons, if the Court, in which the suit is filed, is satisfied, after conducting such inquiry as it deems fit, and after giving a 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.

Rule 9: Removal or deletion from panel:

(a) A person whose name is placed in the panel referred to in Rule 3 may be removed or his name be deleted from the said panel, by the Court which empanelled him, if:

- (i) he resigns or withdraws his name from the panel for any reason;

- (ii) he is declared insolvent by any Court or is declared of unsound mind;
- (iii) he exhibits or displays conduct, during the continuance of the mediation proceedings, which is unbecoming of a mediator;
- (iv) the Court which empanelled, upon receipt of information, if it is satisfied, after conducting such inquiry as it deem fit, is of the view, that it is not possible or desirable to continue the name of that person in the panel,
provided that, before removing or deleting his name, under clause (iii) and (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.

Rule 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 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 forth the issues, which according to it, need to be resolved, and its position in respect to those issues and all information reasonably required for the mediator to understand the issue; 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 resolving the disputes

Rule 11: Mediator not bound by Evidence Act, 1872 or Code of Civil Procedure, 1908:

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

Rule 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 a party is absenting himself before the mediator without sufficient reason, the Court may take action against the said party by imposition of costs or by taking action for contempt.
- (c) The parties not resident in India, may be represented by their counsel or power of attorney holders at the sessions or meetings.

Rule 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.

Rule 14: Offer of settlement by parties:

- (a) Any party to the suit may, 'without prejudice', offer a settlement to the other party at any stage of the proceedings, with notice to the mediator.
- (b) Any party to the suit may make a, 'with prejudice' offer, to the other party at any stage of the proceedings, with notice to the mediator.

Rule 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 misunderstandings, 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 effect them; he shall not impose any terms of settlement on the parties.

Rule 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. The mediator shall not impose any decision on the parties.

Rule 17: Representation of parties:

Parties may be present before the mediator personally or through their counsel or lawful power of attorney holders.

Rule 18: 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 mediation shall stand terminated, unless the Court, which referred the matter, either suo motu, 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; but such extension shall not be beyond a further period of thirty days.

Rule 19: Parties to act in good faith:

While no one can be compelled to commit to settle his case in advance of mediation, all parties shall commit to participate in the proceedings in good faith with the intention to settle the disputes, if possible.

Rule 20: Confidentiality, disclosure and inadmissibility of information:

- (1) When a mediator receives factual 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, or 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 other 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.

Rule 21: 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 permission of the parties and with the consent of the mediator.

Rule 22: 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 or records prepared by him or shown to him during the mediation proceedings.

Rule 23: Communication between mediator and the Court:

- (a) In order to preserve the confidence of parties in the Court and the neutrality of the mediator, there should 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.
- (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 suited for settlement through mediation;
 - (iv) that the parties have settled the dispute or disputes.

Rule 24: 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 to writing and signed by the parties or their power of attorney holder. If any counsel have represented the parties, they shall attest the signature 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 stated in Rule 22 or where, the mediator is of the view that no settlement is possible, he shall report the same to the said Court in writing.

Rule 25: Court to fix a date for recording settlement and passing decree:

- (1) Within seven days of the receipt of any settlement, the Court shall issue notice to the parties fixing a day for recording the settlement, such date not being beyond a further period of fourteen days from the date of receipt of settlement, and the Court shall record the settlement.
- (2) The Court shall then pass a decree in accordance with the settlement so recorded, if the settlement disposes of all the issues in the suit.
- (3) If the settlement disposes of only certain issues arising in the suit, the Court shall record the settlement on the date fixed for recording the settlement and shall include the terms of the said settlement in the judgment, while deciding the other issues.

Rule 26: Fee of mediator and costs:

- (1) At the time of referring the disputes to mediation, 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 two sets of parties.
- (4) The expense of the mediation including the fee of the mediator, costs of administrative assistance, and other ancillary expenses concerned, shall be born 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 40% of the probable costs of the mediation, as referred to in clause (3), including his fee. The remaining 60% 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 sub-rule (5), the Court shall, on the application of the mediator, or any party, issue appropriate directions to the concerned parties.
- (8) The expense of mediation including fee, if not paid by the parties, the Court shall, on the application of the mediator or parties, direct the concerned parties to pay, and if they do not pay, the Court shall recover the said amounts as if there was a decree for the said amount.

Rule 27: 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 and 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 imposed in the office of mediator;
- (9) conduct all proceedings related to the resolutions of a dispute, in accordance with the applicable law;
- (10) recognize 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.

Rule 28: Transitory provisions:

Until a panel of arbitrators is prepared by the High Court and the District Court as stated in Rule 2, the Courts, referred to in Rule 2, may nominate a mediator of their choice if the mediator belongs to the various classes of persons referred to in Rule 2 and is duly qualified and is not disqualified, taking into account the suitability of the mediator for resolving the particular dispute.