

**Indian Perspective on Enforcement of Settlement Agreement
Arrived at in Mediation Proceedings.**

By

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Introduction:

The means of enforcing a settlement agreement may vary from State to State, depending upon the nature of legislation passed, in this regard, by the relevant State.¹ However, given the fact that no legislation has been made concerning the enforcement of settlement agreement(s), arrived at through the mediation process, the settlement agreement is usually enforceable in terms of the common law principles of contract and binds the conduct of the parties, vis-a-vis the dispute settled by them through such an accord. The basic elements of a contract are offer, acceptance and consideration. Therefore, a settlement agreement is valid and binding when there is a definitive offer and acceptance, thereby resulting in a meeting of the minds on the contract of settlement. However, there is no meeting of the minds where the contract of settlement is vitiated by a defect of consent. Similarly, some States have also provided, for such settlement arrived at through mediation, to be adopted and given effect as a decree of the Court, so as to bind the parties to their mutually agreed terms. The parties are required to give their “explicit consent” to the application for the mediation settlement enforcement order by agreeing “in the mediation settlement agreement that a mediation settlement enforcement order should be made in respect of that mediation settlement”. To this end “the parties must file any evidence of explicit consent to the application” and “the court will make an order making the settlement agreement enforceable”.² Another means of enforcing a settlement arrived at by way of mediation, is to get such settlement recorded as an arbitration award between the parties, in such a case the mediator acts as an

¹ Article 14 of the UNCITRAL Model Law on International Commercial Conciliation.

² Article 6 of the EU Mediation Directive 2008/52/EC and the English Civil Procedure Code; Indian Civil Procedure Code 1908.

arbitrator, for the purpose of rendering the settlement between the parties as an arbitration award.³

The Indian Position:

Which instruments are available in India to make a mediation settlement enforceable?

The instruments which are primarily available in the domestic mediation law in India are the following:

- (i) The (Indian) Arbitration and Conciliation Act, 1996 (Part - III).
- (ii) Section 89 of the Code of Civil Procedure, 1908 which is the provision which enables the Courts to refer the matter for mediation in any other Alternative Dispute Resolution (ADR) mode.
- (iii) The Industrial Disputes Act, 1947 provides for industrial disputes to be settled through mediation by Government appointed Officers.
- (iv) The Hindu Marriage Act, 1955, the Special Marriage Act, 1954 and Family Courts Act, 1964.

In all the above legislations, the Courts are required to explore at the outset a possibility of mediation/settlement between parties.

- (v) The Legal Services Authorities Act, 1987 which provides for setting up of Lok Adalats.

As regards international settlements in international commercial disputes, the (Indian) Arbitration and Conciliation Act, 1996 defines and lays down the application and scope of conciliation as follows:-

"Section 61 - Application and scope - (1) Save as otherwise provided by any law for the time in force and unless parties have otherwise agreed, this part shall apply to conciliation of

³ The enforcement of a settlement agreement as a consent award: references to article 14 of the UNCITRAL Model Law on International Commercial Conciliation and to articles 30 and 31 of the UNCITRAL Model Law on International Commercial Arbitration.

disputes arising out of legal relationship, whether contractual or not and to all proceedings relating thereto."

Part - III of the (Indian) Arbitration and Conciliation Act further lays down the method, the procedure to be followed during the conciliation proceedings, under the law which is enforced in India the conciliation can be done between the following:-

1. An individual who is a national of, or habitually resident in, any country other than India; or
2. A body corporate which is incorporated in any country other than India; or
3. A company or an association or a body of individuals whose central management and control is exercised in any country other than India; or
4. The Government of a foreign country.

The settlements in international commercial conciliation can be enforced in different class for example by :

Incorporation in an arbitral award of agreed terms that can be enforced in international jurisdictions by virtue of legislation enforcing international conventions such as the New York and Geneva Conventions.

Treating the settlement as a contract and enforcing it as such in India under the Contract Act, 1872, Specific Relief Act, 1963 and the Code of Civil Procedure, 1908.

Incorporation in a decree of the Court, such a decree can be enforced in India under the Code of Civil Procedure, 1908, provides for enforcement of Indian and Foreign decrees. However, it is important and significant to note that under Section 80 of the (Indian) Arbitration and Conciliation Act, 1996, it is provided that unless the parties agree, the Conciliator / Mediator shall not act as an Arbitrator or as a representative or Counsel of a party in any arbitral or judicial proceedings in respect of a dispute that is the subject of the conciliation/mediation proceedings. Also, the

Conciliator/Mediator shall not be presented by parties as a witness in any arbitral or judicial proceedings.

Section 77 of the (Indian) Arbitration and Conciliation Act further lays down that resort to arbitral or judicial proceedings shall not be initiated during conciliation/mediation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject matter of the conciliation proceedings except that a party may initiate arbitral or judicial proceedings where, in its opinion, such proceedings are necessary for preserving its rights.

It is also significant to mention that in India, conciliation/mediation are treated synonymous with each other as held by the Supreme Court of India in its decision in *Afcons Infrastructure Ltd. and another Vs. Cherian Varkey Construction Co. (P) Ltd. and Ors.*⁴.

The Supreme Court of India has issued under the aegis of the mediation and conciliation project committee, the Supreme Court of India a mediation Training Manual of India.⁵

This effort by the mediation and conciliation project committee has proved to be a great help to mediation centres established in India as all High Courts, District Courts have setup mediation centres to which the Courts regularly refer matters for mediation.

The mediation centres have also adopted mediation conciliation rules. Delhi High Court has also published Mediation and Conciliation Rules, 2004 which categorically under Rules 24 and 25 lays down the procedure to be followed for implementation of a settlement agreement reached through mediation. Rule 24 reads as follows:-

"Rule 24: Settlement Agreement

(a) Where an agreement is reached between the parties in regard to all the issues in the suit or proceeding or some of the issues, the

⁴ (2010) 8 SCC 24

⁵ *The Supreme Court of India a mediation Training Manual of India:*
<http://supremecourtofindia.nic.in/MEDIATION%20TRAINING%20MANUAL%20OF%20INDIA.pdf>

same shall be reduced to writing and signed by the parties or their constituted attorney. If any counsel has represented the parties, the conciliator/mediator may obtain his signature also on the settlement agreement.

- 1. The agreement of the parties so signed shall be submitted to the mediator/conciliator who shall, with a covering letter signed by him, forward the same to the Court in which the suit or proceeding is pending.*
- 2. Where no agreement is arrived at between the parties, before the time limit stated in Rule 18 or where, the mediator/conciliator is of the view that no settlement is possible, he shall report the same to the Court in writing."*

Rule 25 reads as follows:-

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

- (a) On receipt of any settlement, the court shall fix a date of hearing normally within seven days but in any case not beyond a period of fourteen days. On such date of hearing, if the court is satisfied that the parties have settled their dispute(s), it shall pass a decree in accordance with terms thereof.*
- (b) If the settlement dispose of only certain issues arising in the suit or proceeding, on the basis of which any decree is passed as stated in Clause (a), the court shall proceed further to decide remaining issues."*

In the end two judgments delivered by the Delhi High Court are of utmost significance, as they authoritatively lay down that Agreements arrived at in a mediation have to be enforced, once disputes between parties have been settled by process of mediation in public interest. This is to attach importance to such a process and treat settlement as solemn settlement, enforceable in law as held in the cases of :

- (a) Jaibir and others Vs. State and another, 142 (2007) Delhi Law Times 141*
- (b) Surinder Kaur and others Vs. Pritam Singh and others, 154 (2008) Delhi Law Times 598*

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