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### **Mediation takes one more step forward in India**

The Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs) vide a Notification dated 15<sup>th</sup> July, 2020<sup>1</sup> in exercise of the powers conferred by sub-section (1) and clauses (r) and (zf) of sub-section (2) of section 101 of the Consumer Protection Act, 2019 (35 of 2019), the Central Government has framed the rules which are called Consumer Protection (Mediation) Rules, 2020. The same have also been ordered to be brought in force from 20<sup>th</sup> July, 2020.

While the entire country is waiting for a separate standalone statutory legislation for Mediation in India, the above referred step taken by the Ministry of Consumer Affairs is laudable.

According to these rules, under Section 3, every Mediation Cell set up in a Commission, shall have a panel of Mediators on the recommendation of a Selection Committee consisting of the President and a Member of that Commission. Sub-clause 2 of Rule 3 further rules that the Mediation Cell shall have such support staff as may be decided by the President of that Commission in consultation with the concerned Government and that Government shall provide all administrative assistance and infrastructure facilities required by the Commission.

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<sup>1</sup> <https://consumeraffairs.nic.in/sites/default/files/Mediation%20Rules.pdf>

It is noteworthy that under Rule 4, the matters which cannot be referred for Mediation are specified and the same are as follows:-

- "(a) the matters relating to proceedings in respect of medical negligence resulting in grievous injury or death;
- (b) matters which relate to defaults or offences for which applications for compounding of offences have been made by one or more parties;
- (c) cases involving serious and specified allegations of fraud, fabrication of documents, forgery, impersonation, coercion;
- (d) cases relating to prosecution for criminal and non-compoundable offences;
- (e) cases which involve public interest or the interest of numerous persons who are not parties before the Commission.

Provided that, in any case other than those mentioned in this rule, the Commission before which the case is pending may choose not to refer it to mediation if it appears to the Commission that no elements of a settlement exist which may be acceptable to the parties or that mediation is otherwise not appropriate having regard to the circumstances of the case and the respective positions of the parties."

Apart from the above, it is also specified in Rule 5 that where the Commission refers the parties to mediation, the complainant shall be entitled to receive full amount of application fee paid in respect of such complaint, if a settlement is reached between such parties.

The Rules further take care that if the parties provide to initiate any arbitral or judicial proceedings in respect of a matter which is the subject matter of the mediation and also when such parties have expressly undertaken not to initiate any such proceedings, the parties are debarred from initiating any such proceeding under Rule 6.

One more interesting aspect that has been taken care of by these Rules is in Rule 7 which lays down that settlement agreement will not be discharged on the death of a party and shall be enforceable by or against the legal representative of the deceased party under Rule 7.

The step taken by the Ministry of Consumer Affairs by framing the aforementioned Rules is laudable and will definitely allow the parties to settle their disputes which are either pending before the Commission for a very long period and will also allow the Mediators to come up with certain out of the box solution to cases which ultimately keep pending for long time either due to the backlog or due to some technical objections taken by the parties.

Date: 22<sup>nd</sup> July, 2020

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