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**ARBITRATION, MEDIATION &
CONCILIATION**

GROUP 2

ELECTIVE PAPER 7.1

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Lesson 1: Arbitration: Introduction, Agreements and its Institutions

1. Chennai Metro Rail Limited Administrative Building v. M/s Transtonnelstroy Afcons (JV) & Anr. decided by Supreme Court on 19th October, 2023

In this case, Chennai Metro Rail Limited (“Chennai Metro”), a joint venture between the Central Government and the Government of Tamil Nadu, had awarded the contract to the respondent (“Afcons”).

The tribunal recorded the agreement of parties, that the hearing fee for each arbitrator was fixed at ₹ 1,00,000/- per session of hearing date. A member of tribunal was substituted. Further, in the 10th Meeting, the tribunal sought to revise the fee payable from ₹ 1,00,000/- to ₹ 2,00,000/-. Chennai Metro objected to this revision and Afcons requested the tribunal to keep its direction for modification of fee, in abeyance till the decision of this court.

Later, Afcons informed Chennai Metro that it had paid the revised fee for five hearings but Chennai Metro filed an application before the Madras High Court. In this proceeding under Section 14, the relief sought was a declaration that the mandate of the tribunal was terminated in respect of the disputes referred to them.

All three members of the tribunal filed affidavits, in response to the Section 14 petition acknowledging that Supreme Court’s judgment in *ONGC v. AFCONS Gunasa JV2* (hereafter “ONGC”) had decided the issue and thus members of the tribunal decided to revert back to the originally agreed fee i.e., ₹1,00,000.

Initially, the High Court granted an interim order, staying the proceedings. However, after hearing counsel for the parties, and considering the materials on the record, the court dismissed the application, filed by Chennai Metro through the impugned judgment.

In the present SLP filed before Hon’ble Supreme Court, it was decided that the attempt by Chennai Metro to say that the concept of *de jure* ineligibility because of existence of justifiable doubts about impartiality or independence of the tribunal on unenumerated grounds [or other than those outlined as statutory ineligibility conditions in terms of Sections 12 (5)], therefore cannot be sustained. We can hardly conceive of grounds other than those mentioned in the said schedule, occasioning an application in terms of Section 12(3). In case, this court were in fact make an exception to uphold Chennai Metro’s plea, the consequences could well be an explosion in the court docket and other unforeseen results. Skipping the statutory route carefully devised by Parliament can cast yet more spells of uncertainty upon the arbitration process....

Lesson 3: Arbitration Procedure, Appointment of an Arbitrator and Other Aspects

Applicability of provisions relating to Arbitration Council of India (October 13, 2023)

The Central Government has appointed 12th day of October, 2023 as the date on which the provisions of section 10 of the Arbitration and Conciliation (Amendment) Act, 2019 (said Act) has come into force.

Section 10 of the said Act has inserted Part IA containing sections 43A to 43M to the Arbitration and Conciliation Act, 1996, which are relating to the Arbitration Council of India.

Details of Change

Part IA has come into force w.e.f. 12th day of October, 2023.

For details: <https://egazette.gov.in/WriteReadData/2023/249358.pdf>

<https://legallaffairs.gov.in/sites/default/files/arbitration-and-conciliation%28amendment%29-act-2019.pdf>

Lesson 5: Preparation and Execution of Arbitral Award

M/s Obulapuram Mining Company Pvt. Ltd. v. R.K. Mining Private Limited decided by High Court of Andhra Pradesh on 12th September, 2023

In this case, the essential objection before the court was raised that after the Commercial Courts Act, 2015 came into force an Award can only be executed before the Commercial Court and that the regular District Judge did not have the jurisdiction to entertain this case. He points out that initially by virtue of G.O.Ms.No.74, dated 10.06.2016, the Principal District and Sessions Courts in all the districts of the State of Andhra Pradesh were designated as Commercial Courts.

The contention of the respondents on the other hand, as far as jurisdiction is concerned, was that the Commercial Courts do not have the power to execute an Arbitration Award. Learned senior counsel contends that the execution of an Award, even if the same relates to a dispute of commercial value and commercial industry, can only be before a regular Civil Court as per the provisions of Order 21 of the Code of Civil Procedure, 1908.

The Hon'ble High Court of Andhra Pradesh in the Judgement stated that with reference to the provisions of Arbitration and Conciliation Act, 1996, Commercial Courts Act and Code of Civil Procedure that *“A reading of these sections and amendments in seriatim shows that the intention of the legislature was only to modify and streamline the procedures and practices relating to suits and applications in suits etc., which are pending for disposal.”*

The silence or failure to refer to Order 21 does not mean that the Commercial Court cannot execute a decree. A purposive interpretation has to be given to the provisions of the Act. If it is not so interpreted the Commercial Courts will be powerless in many aspects.

Lesson 6: Challenge to Award and Appeals

1. Konkan Railway Corporation Limited v. Chenab Bridge Project Undertaking decided by Supreme Court dated 17th August, 2023

This case may be studied for the purpose of deeper understanding of the law and scope relating to Appealable orders provided under section 37 of the Arbitration and Conciliation Act, 1996(Act).

This appeal by Konkan Railway Corporation Limited challenges the legality of the order passed by the Division Bench of the High Court while exercising jurisdiction under Section 37 of the Act.

In the present case, the Arbitral Tribunal interpreted the contractual clauses and rejected the Respondent's claims pertaining to Disputes I, III and IV. The findings were affirmed by the Single Judge of the High Court in a challenge under Section 34 of the Act, who concluded that the interpretation of the Arbitral Tribunal was clearly a possible view, that was reasonable and fair-minded in approach.

The Single Judge of the High Court affirmed the findings of the Arbitral Tribunal. The reason for upholding the decision of the Tribunal is not that the Single Judge exercising jurisdiction under Section 34 of the Act is in complete agreement with the interpretation of the contractual clauses by the Arbitral Tribunal. The Learned Judge exercising jurisdiction under Section 34 of the Act kept in mind the scope of challenge to an Arbitral Award as elucidated by a number of decisions of this Court. Section 34 jurisdiction will not be exercised merely because an alternative view on facts and interpretation of contract exists.

In appeal under Section 37 of the Act, the Division Bench of the High Court took a different position. It opined that the construction of the clauses by the Arbitral Tribunal was not even a possible view.

The principle of interpretation of contracts adopted by the Division Bench of the High Court that when two constructions are possible, then courts must prefer the one which gives effect and voice to all clauses, does not have absolute application. The said interpretation is subject to the jurisdiction which a court is called upon to exercise. While exercising jurisdiction under Section 37 of the Act, the Court is concerned about the jurisdiction that the Section 34 Court exercised while considering the challenge to the Arbitral Award. The jurisdiction under Section 34 of the Act is exercised only to see if the Arbitral Tribunal's view is perverse or manifestly arbitrary. Accordingly, the question of reinterpreting the contract on an alternative view does not arise. If this is the principle applicable to exercise of jurisdiction under Section 34 of the Act, a Division Bench exercising jurisdiction under Section 37 of the Act cannot reverse an Award, much less the decision of a Single Judge, on the ground that they have not given effect and voice to all clauses of the contract. This is where the Division Bench of the High Court committed an error, in re-interpreting a contractual clause while exercising jurisdiction under Section 37 of the Act.

In any event, the decision in *Radha Sundar Dutta* (supra), relied on by the High Court was decided in 1959, and it pertains to proceedings arising under the Village Chaukidari Act, 1870 and Bengal Patni Taluks Regulation of 1819. Reliance on this judgment particularly for interfering with the concurrent interpretations of the contractual clause by the Arbitral Tribunal and Single Judge under Section 34 of the Act is not justified.

2. M/s Unibros v. All India Radio decided by Supreme Court dated October 19, 2023

This case is important to develop enhanced understanding of Law relating to setting aside of an Award more particularly on the grounds of “opposed to Public Policy of India” under section 34 of Arbitration and Conciliation Act, 1996.

This appeal, at the instance of M/s Unibros (“appellant”), registers a challenge to the judgment and order passed by the High Court of Delhi (“High Court”) dismissing an appeal carried by the appellant under section 37 of the Arbitration and Conciliation Act, 1996 (“the Act”). Vide the impugned judgment, a Division Bench affirmed the judgment and order of a learned Single Judge whereby an objection of the All India Radio (“respondent”) under section 34 of the Act was allowed resulting in setting aside of an arbitral Award to the extent it awarded loss of profit to the appellant.

The court said that the contentions advanced on behalf of the appellant tasks us to resolve a recurring issue which, while not unprecedented, has consistently confronted the courts leading it to navigate various circumstances under which a claim for loss of profit may be allowed in cases of delay simpliciter in the execution of a contract.

In para 16, the Hon’ble Court stated that to support a claim for loss of profit arising from a delayed contract or missed opportunities from other available contracts that the appellant could have earned elsewhere by taking up any, it becomes imperative for the claimant to substantiate the presence of a viable opportunity through compelling evidence. This evidence should convincingly demonstrate that had the contract been executed promptly, the contractor could have secured supplementary profits utilizing its existing resources elsewhere.

Para 17 states that One might ask, what would be the nature and quality of such evidence? In our opinion, it will be contingent upon the facts and circumstances of each case. However, it may generally include independent contemporaneous evidence such as other potential projects that the contractor had in the pipeline that could have been undertaken if not for the delays, the total number of tendering opportunities that the contractor received and declined owing to the prolongation of the contract, financial statements, or any clauses in the contract related to delays, extensions of time, and compensation for loss of profit. While this list is not exhaustive and may include any other piece of evidence that the court may find relevant, what is cut and dried is that in adjudging a claim towards loss of profits, the court may not make a guess in the dark; the credibility of the evidence, therefore, is the evidence of the credibility of such claim.

Para 18 stated that Hudson’s formula, while attained acceptability and is well understood in trade, does not, however, apply in a vacuum. Hudson’s formula, as well as other methods used to

calculate claims for loss of off-site overheads and profit, do not directly measure the contractor's exact costs. Instead, they provide an estimate of the losses the contractor may have suffered. While these formulae are helpful when needed, they alone cannot prove the contractor's loss of profit. They are useful in assessing losses, but only if the contractor has shown with evidence the loss of profits and opportunities it suffered owing to the prolongation.

19. The law, as it should stand thus, is that for claims related to loss of profit, profitability or opportunities to succeed, one would be required to establish the following conditions: first, there was a delay in the completion of the contract; second, such delay is not attributable to the claimant; third, the claimant's status as an established contractor, handling substantial projects; and fourth, credible evidence to substantiate the claim of loss of profitability. On perusal of the records, we are satisfied that the fourth condition, namely, the evidence to substantiate the claim of loss of profitability remains unfulfilled in the present case.

20. The First Award was interfered with by the High Court for the reasons noted above. The Arbitrator, in view of such previous determination made by the High Court, could have granted damages to the appellant based on the evidence on record. There was, so to say, none which on proof could have translated into an award for damages towards loss of profit. A claim for damages, whether general or special, cannot as a matter of course result in an award without proof of the claimant having suffered injury. The arbitral award in question, in our opinion, is patently illegal in that it is based on no evidence and is, thus, outrightly perverse; therefore, again, it is in conflict with the "public policy of India" as contemplated by section 34(2)(b) of the Act.

Lesson 13: Mediation: An Introduction and its Process along with Rules

Mediation Act, 2023 has received the assent of the Hon'ble President of India on the 14th September, 2023. The object of this law *inter alia* is to promote and facilitate mediation, resolution of disputes, enforce mediated settlement agreements, provide for a body for registration of mediators, to encourage community mediation and to make online mediation as acceptable and cost effective process. The provisions of this law will come into force on such date(s) as the Central Government will notify. However, the following sections of the Mediation Act, 2013 has already come into force w.e.f. 9th October, 2023.

These sections are as follows:

CHAPTER I: PRELIMINARY

Section 1. Short title, extent and commencement

- (1) This Act may be called the Mediation Act, 2023.
- (2) It shall extend to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

CHAPTER II: APPLICATION

Section 3: Definitions

In this Act, unless the context otherwise requires, —

- (a) “commercial dispute” means a dispute defined in of section 2(1)(c) of the Commercial Courts Act, 2015 (4 of 2016);
- (b) “community mediator” means a mediator for the purposes of conduct of community mediation under Chapter X;
- (c) “Council” means the Mediation Council of India established under section 31;
- (d) “court” means the competent court in India having pecuniary and territorial jurisdiction and having jurisdiction to decide the disputes forming the subject matter of mediation, if the same had been the subject matter of a suit or proceeding;

(e) “court-annexed mediation” means mediation including pre-litigation mediation conducted at the mediation centres established by any court or tribunal;

(f) “institutional mediation” means mediation conducted under the aegis of a mediation service provider;

(g) “international mediation” means mediation undertaken under this Act and relates to a commercial dispute arising out of a legal relationship, contractual or otherwise, under any law for the time being in force in India, and where at least one of the parties, is.—

(i) an individual who is a national of, or habitually resides in, any country other than India; or

(ii) a body corporate including a Limited Liability Partnership of any nature, with its place of business outside India; or

(iii) an association or body of individuals whose place of business is outside India; or (iv) the Government of a foreign country;

(h) “mediation” includes a process, whether referred to by the expression mediation, pre-litigation mediation, online mediation, community mediation, conciliation or an expression of similar import, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person referred to as mediator, who does not have the authority to impose a settlement upon the parties to the dispute;

(i) “mediator” means a person who is appointed to be a mediator, by the parties or by a mediation service provider, to undertake mediation, and includes a person registered as mediator with the Council.

Explanation.—Where more than one mediator is appointed for a mediation, reference to a mediator under this Act shall be a reference to all the mediators;

(j) “mediation agreement” means a mediation agreement referred to in sub-section (1) of section 4;

(k) “mediation communication” means communication made, whether in electronic form or otherwise, through—

(i) anything said or done;

(ii) any document; or

(iii) any information provided,

for the purposes of, or in relation to, or in the course of mediation, and includes a mediation agreement or a mediated settlement agreement;

(l) “mediation institute” means a body or organisation that provides training, continuous education and certification of mediators and carries out such other functions under this Act;

- (m) “mediation service provider” means a mediation service provider referred to in sub-section (1) of section 40;
- (n) “mediated settlement agreement” means mediated settlement agreement referred to in sub-section (1) of section 19;
- (o) “Member” means a Full-Time or Part-Time Member of the Council and includes the Chairperson;
- (p) “notification” means notification published in the Official Gazette and the expression “notified” with its cognate meanings and grammatical variations shall be construed accordingly;
- (q) “online mediation” means online mediation referred to in section 30;
- (r) “participants” means persons other than the parties who participate in the mediation and includes advisers, advocates, consultants and any technical experts and observers;
- (s) “party” means a party to a mediation agreement or mediation proceeding whose agreement or consent is necessary to resolve the dispute and includes their successors;
- (t) “place of business” includes—
- (a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a party stores its goods, supplies or receives goods or services or both; or
 - (b) a place where a party maintains its books of account; or
 - (c) a place where a party is engaged in business through an agent, by whatever name called;
- (u) “pre-litigation mediation” means a process of undertaking mediation, as provided under section 5, for settlement of disputes prior to the filing of a suit or proceeding of civil or commercial nature in respect thereof, before a court or notified tribunal under sub-section (2) of section 5;
- (v) “prescribed” means prescribed by rules made by the Central Government under this Act;
- (w) “Schedule” means the Schedule annexed to this Act;
- (x) “secure electronic signature” with reference to online mediation means, electronic signatures referred to in section 15 of the Information Technology Act, 2000 (21 of 2000); and
- (y) “specified” means specified by regulations made by the Council under this Act.

CHAPTER V: MEDIATION PROCEEDINGS

Section 26: Proceedings of Lok Adalat and Permanent Lok Adalat not to be affected

The provisions of this Act shall not apply to the proceedings conducted by Lok Adalat and Permanent Lok Adalat under the Legal Services Authorities Act, 1987.

Details of provision

The proceedings under by Lok Adalat and Permanent Lok Adalat are to be conducted according to the provisions of the Legal Services Authorities Act, 1987 only.

CHAPTER VIII: MEDIATION COUNCIL OF INDIA

Section 31: Establishment and incorporation of Mediation Council

(1) The Central Government shall, by notification, establish for the purposes of this Act, a Council to be known as the Mediation Council of India to perform the duties and discharge the functions under this Act.

(2) The Council shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to enter into contract, and shall, by the said name, sue or be sued.

(3) The head office of the Council shall be at Delhi or at such other place as may be notified by the Central Government.

(4) The Council may, in consultation with the Central Government, establish offices at other places in India and abroad.

Details of provision

This section empowers the Central Government to establish Mediation Council of India. It further provides the provisions relating to nature of the Mediation Council i.e. Body Corporate and its offices.

Section 32: Composition of Council

(1) The Council shall consist of the following members, namely:—

(a) a person of ability, integrity and standing having adequate knowledge and professional experience or shown capacity in dealing with problems relating to law, alternative dispute

resolution preferably mediation, public affairs or administration to be appointed by the Central Government— Chairperson;

(b) a person having knowledge and experience in law related to mediation or alternative dispute resolution mechanisms, to be appointed by the Central Government—Member;

(c) an eminent person having experience in research or teaching in the field of mediation and alternative dispute resolution laws, to be appointed by the Central Government—Member;

(d) Secretary to the Government of India in the Department of Legal Affairs, Ministry of Law and Justice or his representative not below the rank of Joint Secretary—Member, ex officio;

(e) Secretary to the Government of India in the Department of Expenditure, Ministry of Finance or his representative not below the rank of Joint Secretary—Member, ex officio;

(f) Chief Executive Officer—Member-Secretary, ex officio; and

(g) one representative of a recognised body of commerce and industry, chosen by the Central Government—Part-Time Member.

(2) The Members of the Council, other than ex officio members, shall hold office as such, for a term of four years from the date on which they enter upon their office and shall be eligible for re-appointment:

Provided that no Member other than ex officio Member shall hold office after he has attained the age of seventy years, in the case of Chairperson, and sixty-seven years, in the case of other Members:

Provided further that if the Chairperson is appointed on Part-Time basis, then, at least one of the Members appointed under clauses (b) or (c) shall be a Full-Time Member.

(3) The salaries, allowances and other terms and conditions of Members other than ex officio Members shall be such as may be prescribed.

(4) The Part-Time Member shall be entitled to such travelling and other allowances as may be prescribed.

Details of provision

This section provides the provisions with respect to composition of Mediation Council including qualification, salary, allowances, terms & conditions of Chairperson and Members of the Mediation Council.

Section 33: Vacancies, etc., not to invalidate proceedings of Council.

No act or proceeding of the Council shall be invalid merely by reason of—

(a) any vacancy or any defect, in the constitution of the Council;

(b) any defect in the appointment of a person as a Member of the Council; or

(c) any irregularity in the procedure of the Council not affecting the merits of the case.

Details of provision

The provision of this section nullifies the effect of vacancy, defect or irregularity on proceedings/actions.

Section 34: Resignation

The Member may, by notice in writing, under his hand addressed to the Central Government, resign his office:

Provided that the Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is earlier.

Details of provision

The provision of this section provides for manner of resignation by the members of Mediation Council.

Section 35: Removal

The Central Government may, remove any Member from his office, if he—

- (a) is an undischarged insolvent; or
- (b) has engaged at any time, during his term of office, in any paid employment without the permission of the Central Government; or
- (c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member; or
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest; or
- (f) has become physically or mentally incapable of acting as a Member:

Provided that where a Member is proposed to be removed on any ground, he shall be informed of charges against him and given an opportunity of being heard in respect of those charges.

Details of provision

The provisions of this section provides the situations when a member of Mediation Council may be removed by the Central Government.

Section 36: Appointment of experts and constitution of Committees

The Council may, appoint such experts and constitute such committees of experts as it may consider necessary to discharge its functions on such terms and conditions as may be specified.

Details of provision

The provisions relating to appointment of experts and constitution of committee by the Mediation Council has been provided under this section.

Section 37: Secretariat and Chief Executive Officer of Council

- (1) There shall be a Chief Executive Officer of the Council, who shall be responsible for the day to day administration and implementation of the decisions of the Council.
- (2) The qualification, appointment and other terms and conditions of service of the Chief Executive Officer shall be such as may be specified.
- (3) There shall be a Secretariat to the Council consisting of such number of officers and employees as may be specified.
- (4) The qualification, appointment and other terms and conditions of the service of the employees and other officers of the Council shall be such as may be specified.
- (5) The Central Government shall provide such number of officers and employees as may be necessary for the functioning of the Council till regulations are made under this section.

Details of provision

This section provides the provisions relating to CEO and Secretariat of the Council.

Section 38: Duties and functions of Council

The Council shall—

- (a) endeavour to promote domestic and international mediation in India through appropriate guidelines; (b) endeavour to develop India to be a robust centre for domestic and international mediation;
- (c) lay down the guidelines for the continuous education, certification and assessment of mediators by the recognised mediation institutes;
- (d) provide for the manner of conduct of mediation proceedings, section 15(1);
- (e) provide for manner of registration of mediators and renew, withdraw, suspend or cancel registration on the basis of conditions as may be specified;
- (f) lay down standards for professional and ethical conduct of mediators under section 15(3);
- (g) hold trainings, workshops and courses in the area of mediation in collaboration with mediation service providers, law firms and universities and other stakeholders, both Indian and international, and any other mediation institutes;

- (h) enter into memoranda of understanding or agreements with domestic and international bodies or organisations or institutions;
- (i) recognise mediation institutes and mediation service providers and renew, withdraw, suspend or cancel such recognition;
- (j) specify the criteria for recognition of mediation institutes and mediation service providers;
- (k) call for any information or record of mediation institutes and mediation service providers; (l) lay down standards for professional and ethical conduct of the mediation institutes and mediation service providers;
- (m) publish such information, data, research studies and such other information as may be required;
- (n) maintain an electronic depository of the mediated settlement agreements made in India and for such other records related thereto in such manner as may be specified; and
- (o) perform any other function as may be assigned to it by the Central Government.

Details of provision

Duties of the Mediation Council has been provided under section 38.

CHAPTER XI: MISCELLANEOUS

Section 45: Mediation Fund

- (1) There shall be a fund to be called “Mediation Fund” (“Fund”) for the purposes of promotion, facilitation and encouragement of mediation under this Act, which shall be administered by the Council.
- (2) There shall be credited to the Fund the following, namely:—
 - (a) all monies provided by the Central Government;
 - (b) all fees and other charges received from mediation service provider, mediation institutes or bodies or persons;
 - (c) all monies received by the Council in the form of donations, grants, contributions and income from other sources;
 - (d) grants made by the Central Government or the State Government for the purposes of the Fund;
 - (e) amounts deposited by persons as contributions to the Fund;
 - (f) amounts received in the Fund from any other source; and
 - (g) interest on the above or other income received out of the investment made from the Fund.
- (3) The Fund shall be applied towards meeting the salaries and other allowances of Member, Chief Executive Officer, Officers and employees and the expenses of the Council including expenses incurred in the exercise of its powers and discharge of its duties under this Act.

Section 46: Accounts and audit

(1) The Council shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, including the balance sheet, in such form and manner as may be prescribed in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Council shall be audited by the Comptroller and Auditor-General of India and any expenditure incurred by him in connection with such audit shall be payable by the Council to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Council shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the audit of the Government accounts, and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect the offices of the Council.

(4) The accounts of the Council as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

Section 47: Power of Central Government to issue directions

(1) Without prejudice to the foregoing provisions of this Act, the Council shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

Provided that the views of the Council shall be taken into consideration before any direction is given under this sub-section.

(2) The decision of the Central Government whether a question is one of policy or not shall be final.

Details of provision

The provision of this section empowers Central Government to issue directions after considering the views of the Mediation Council and make the council bound by such directions on questions of policy.

Section 50: Protection of action taken in good faith

No suit, prosecution or other legal proceeding shall lie against the Central Government or a State Government or any officer of such Government, or the Member or Officer or employee of the Council or a mediator, mediation institutes, mediation service providers, which is done or is intended to be done in good faith under this Act or the rules or regulations made thereunder.

Details of provision

This section extends protection to the Central Government, State Government, its officers, members or officer or employee of the Mediation Council or mediator, mediation institutes, mediation service providers, for any action taken in good faith under Mediation Act, 2023 or the rules or regulations made thereunder.

Section 51: Power to make rules

(1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may make provision for—

- (a) the salaries and allowances and the terms and conditions of the Members under sub-section (3) of section 32;
- (b) the travelling and other allowances payable to the Part-Time Member under sub-section (4) of section 32;
- (c) the form and manner of annual statement of accounts, including the balance sheet under sub-section (1) of section 46; and
- (d) any other matter which is to be, or may be prescribed.

Details of provision

This section empowers the Central Government to make rules under Mediation Act, 2023.

Section 52: Power to make regulations

(1) The Council may, with the previous approval of the Central Government, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may make provision for—

- (a) qualification, experience and accreditation for mediators of foreign nationality under the proviso to sub-section (1) of section 8;
- (b) manner of conducting mediation proceeding under sub-section (1) of section 15;
- (c) standards for professional and ethical conduct of mediators under sub-section (3) of section 15;
- (d) manner of registration of mediated settlement agreement under sub-section (1) of section 20;
- (e) fees for registration of mediated settlement agreement under the proviso to sub-section (2) of section 20;
- (f) cost of mediation under sub-section (1) of section 25;
- (g) manner of process of conducting online mediation under sub-section (2) of section 30;
- (h) the terms and conditions of experts and committees of experts under section 36;
- (i) qualifications, appointment and other terms and conditions of service of the Chief Executive Officer under sub-section (2) of section 37;

- (j) the number of officers and employees of the Secretariat of the Council under sub-section (3) of section 37;
- (k) the qualification, appointment and other terms and conditions of the employees and other officers of the Council under sub-section (4) of section 37;
- (l) conditions for registration of mediators and renewal, withdrawal, suspension or cancellations of such registrations under clause (e) of section 38;
- (m) criteria for recognition of mediation institutes and mediation service providers under clause (j) of section 38;
- (n) manner of maintenance of electronic depository of mediated settlement agreement under clause (n) of section 38;
- (o) manner for recognition of mediation service provider under sub-section (2) of section 40;
- (p) such other functions of mediation service provider under clause (f) of section 41;
- (q) duties and functions to be performed by mediation institutes under section 42; and
- (r) any other matter in respect of which provision is necessary for the performance of functions of the Council under this Act.

Details of provision

This section empowers the Mediation Council to make regulations under Mediation Act, 2023.

Section 53: Laying

Every notification issued under sub-section (2) of section 6, sub-section (2) of section 55, rule and regulation made under this Act shall be laid, as soon as may be after it is issued or made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification, rule or regulation or both Houses agree that the notification, rule or regulation should not be issued or made, the notification, rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification, rule or regulation.

Details of provision

This section requires notification, rule and regulation to be laid before each house of the parliament.

Section 54: Power to remove difficulties

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of a period of five years from the date of commencement of this Act.

(2) Every order made under sub-section (1) shall be laid, as soon as may be after it is made, before each House of Parliament.

Details of provision

Under this section, the Central Government is empowered to make provisions for removing the difficulties within the expiry of a period of five years from the date of commencement of this Act. The order for removing the difficulties under this section is also required to be laid before each house of parliament.

Section 56: Act not to apply to pending proceedings

This Act shall not apply to, or in relation to, any mediation or conciliation commenced before the coming into force of this Act.

Detail of provision

This provision make the existing mediation or conciliation proceedings out of the purview of Mediations Act, 2023.

Section 57: Transitory provision

The rules in force governing the conduct of court-annexed mediation shall continue to apply until regulations are made under sub-section (1) of section 15:

Provided that the rules shall continue to apply in all court-annexed mediation pending as on the date of coming into force of the regulations.

Details of provision

Under this section, the concerned rules that are applicable on court-annexed mediation shall continue to apply until regulations are made by the Mediation Council. Further, these rules shall continue to apply in court-annexed mediation pending as on the date of coming into force of the regulations.

Note: Students appearing in June, 2024 Examination should also update themselves on all the relevant Notifications, Circulars, Clarifications, Orders etc. issued by MCA, SEBI, RBI & Central Government upto 30th November, 2023.