THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

SUPPLEMENT
PROFESSIONAL PROGRAMME
(New Syllabus 2022)

for

June, 2025 Examination

ARBITRATION, MEDIATION & CONCILIATION

GROUP 2

ELECTIVE PAPER 7.1

Index

S. No.	Lesson	Pages
1	Lesson 1: Arbitration: Introduction, Agreements and its Institutions	2
2	Lesson 3: Arbitration Procedure, Appointment of an Arbitrator and Other Aspects	3-11
	Lesson 4: Arbitral Proceedings, Pleadings and Evidence	12-14
3	Lesson 5: Preparation and Execution of Arbitral Award	15-19
4	Lesson 6: Challenge to Award and Appeals	20-24
5	Lesson 8: Arbitration under Investor's Grievances Redressal Mechanism of Stock Exchanges	25-76
6	Lesson 9: Conceptual Framework of International Commercial Arbitration	77-84
7	Lesson 10: International Law of Arbitration	85-34
8	Lesson 12: Conciliation Proceedings and International Perspective of Conciliation	95
9	Lesson 13: Mediation: An Introduction and its Process along with Rules	96-107
10	Lesson 15: Various Modes and Scope of Mediation including Role of Mediation in other ADR Domains	108-110

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

1. 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://legalaffairs.gov.in/sites/default/files/arbitration-and-conciliation%28amendment%29-act-2019.pdf

2. NTPC LTD. v. M/S SPML Infra Ltd. decided by Supreme Court on 10.04.2024

The pre-referral jurisdiction of the courts under Section 11(6) inheres two inquiries: (i) primarily the existence and the validity of an arbitration agreement and (ii) secondary inquiry with respect to the non-arbitrability of the dispute

Brief Facts

The present appeal arose out of a decision of the High Court of Delhi, allowing the Respondent's application under Section 11(6) of the Arbitration and Conciliation Act, 19962 for the constitution of an Arbitral Tribunal. It is the case of Appellant NTPC that there were no subsisting disputes between the parties in view of the Settlement Agreement and that the application for arbitration is an afterthought and abuse of the process.

The Appellant and Respondent entered into a contract for "Installation Services for Station Piping Package for Simhadri Super Thermal Power Project Stage II". In terms of the contract agreement, SPML furnished Performance Bank Guarantees and Advanced Bank Guarantees to secure the Appellant.

Pursuant to the successful completion of the project, a Completion Certificate was issued by NTPC. NTPC informed SPML that the final payment under the contract would be released upon the receipt of a No-Demand Certificate from SPML. The No-Demand Certificate was issued by SPML and NTPC also released the final payment. The Bank Guarantees were however withheld.

NTPC informed SPML that the Bank Guarantees were withheld on account of pending liabilities and disputes between the parties with respect to other projects. SPML naturally protested. SPML informed NTPC that the retention of Bank Guarantees, despite issuance of the Completion Certificate and the No-Demand Certificate, by linking them to some other projects, was unjustified. Following the protest, SPML raised a demand from NTPC as liabilities recoverable for actions attributable to NTPC under this very contract.

SPML called upon NTPC to appoint an Adjudicator for resolving pending disputes in terms of the General and Special Conditions of Contract. As no action was taken by NTPC, SPML moved the Delhi High Court by filing Writ Petition, for the release of the Bank Guarantees.

While issuing notice, the High Court directed NTPC not to encash the Bank Guarantees, and further directed SPML to keep the Bank Guarantees alive.

Pending the Writ Petition, negotiations between the parties culminated in a Settlement Agreement. Through the Settlement Agreement, NTPC agreed to release the withheld Bank Guarantees. SPML also agreed to withdraw its pending Writ Petition and undertook not to initiate any other proceedings, including arbitration, under the subject contract.

Following the Settlement Agreement, the Bank Guarantees were released by NTPC. SPML withdrew the Writ Petition.

After the aforesaid settlement of the disputes, followed by its implementation, SPML repudiated the Settlement Agreement and filed the present application under Section 11(6) of the Arbitration & Conciliation Act, 1996 in the Delhi High Court. In this Arbitration Petition, SPML alleged coercion and economic duress in the execution of the Settlement Agreement. The allegation was, that the retention of the Bank Guarantees compelled SPML to accept the terms of Settlement Agreement. SPML also averred that NTPC had failed to appoint an arbitrator in spite of repeated requests, and therefore the High Court must constitute an Arbitral Tribunal, in exercise of its jurisdiction under the Act.

The High Court examined the correspondence between the parties in detail. It rejected the first contention of NTPC that SPML should have first resorted to an alternative dispute resolution mechanism under the Dispute Resolution Clause. It noted that such a request was, in fact, made by SPML on an earlier occasion, but NTPC failed to respond to the same. On the request for arbitration and the allegation of economic duress that allegedly prevailed in signing the Settlement Agreement.

Issue

In the present case, the court was primarily concerned with the pre-referral jurisdiction of the High Court under Section 11 of the Act and would like to underscore the limited scope within which an application under Section 11(6) of the Act has to be considered.

Decision

The position of law with respect to the pre-referral jurisdiction, as it existed before the advent of Section 11(6A) in the Act, was based on a well-articulated principle formulated by Supreme Court in *National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd*. In Boghara Polyfab, the Supreme Court held that the issue of non-arbitrability of a dispute will have to be examined by the court in cases where accord and discharge of the contract is alleged. Following the principle in Boghara Polyfab, the Court in *Union of India & Ors. v. Master Construction Co.* observed that when the validity of a discharge voucher, no-claim certificate or a settlement agreement is in dispute, the court must prima facie examine the credibility of the allegations before referring the parties to arbitration. Yet again in *New India Assurance Co. Ltd. v. Genus Power Infrastructure Ltd.*, this Court observed that allegations of fraud, coercion, duress or undue influence must be *prima facie* substantiated through evidence by the party raising the allegations.

Taking cognizance of the legislative change, this Court in *Duro Felguera*, noted that post the 2015 Amendments, the jurisdiction of the court under Section 11(6) of the Act is limited to examining whether an arbitration agreement exists between the parties – "nothing more, nothing less".

Eye of the Needle: The referred precedents crystallise the position of law that the pre-referral jurisdiction of the courts under Section 11(6) of the Act is very narrow and inheres two inquiries. The primary inquiry is about the existence and the validity of an arbitration agreement, which also includes an inquiry as to the parties to the agreement and the applicant's privity to the said agreement. These are matters which require a thorough examination by the referral court. The secondary inquiry that may arise at the reference stage itself is with respect to the non-arbitrability of the dispute.

For details:
https://main.sci.gov.in/supremecourt/2021/13794/13794_2021_1_1501_43311_Judgement_10-Apr-2023.pdf

3. NBCC (India) Limited versus Zillion Infra Projects Pvt. Ltd. decided by Supreme Court on 19.03.2024

Reference in one contract to the terms and conditions of the other contract would not ipso facto make the arbitration clause applicable unless there is a specific mention/reference thereto

Facts

The appellant, NBCC (India) Limited is a Government of India undertaking, engaged in construction of power plants and other infrastructure projects. The respondent, M/s Zillion Infraprojects Pvt. Ltd. is engaged in the construction and infrastructure sector. The appellant issued an Invitation to tender majorly for Construction of the Weir. The Respondent submitted the bid and appellant awarded the contract for Construction of the Weir to the respondent. A dispute arose and the respondent issued a notice invoking arbitration and further seeking consent

for the appointment of a former Judge of a High Court, as Sole Arbitrator. The appellant did not respond so the respondent filed an application at the High Court under Section 11(6) of the Arbitration Act. The High Court confirmed the proposed appointment of the former Judge of the Delhi High Court, as the Sole Arbitrator. Aggrieved by the orders, the appellant filed the appeals before Supreme Court.

Issue

Learned Senior Counsel *inter alia* submitted before the Supreme Court that a mere reference to the terms and conditions without there being an incorporation in the L.O.I. would not make the *lis* between the parties amenable to the arbitration proceedings. Relying on the judgment of Supreme Court in the case of *M.R. Engineers and Contractors Private Limited vs. Som Datt Builders Limited*, he submitted that unless the L.O.I. specifically provides for incorporation of the arbitration clause, a reference to the arbitration proceedings would not be permitted in view of the provisions of sub-section (5) of Section 7 of the Arbitration Act.

Decision

The Hon'ble Supreme Court held that:

"when there is a reference in the second contract to the terms and conditions of the first contract, the arbitration clause would not ipso facto be applicable to the second contract unless there is a specific mention/reference thereto.

We are of the considered view that the present case is not a case of 'incorporation' but a case of 'reference'. As such, a general reference would not have the effect of incorporating the arbitration clause. In any case, Clause 7.0 of the L.O.I., which is also a part of the agreement, makes it amply clear that the redressal of the dispute between the NBCC and the respondent has to be only through civil courts having jurisdiction of Delhi alone."

For details: https://www.sci.gov.in/wp-admin/admin-ajax.php?action=get_judgements_pdf&diary_no=127472021&type=j&order_date=2024-03-19

4. *GOQII TECHNOLOGIES PRIVATE LIMITED v. SOKRATI TECHNOLOGIES PRIVATE LIMITED, Supreme Court INSC 853*

The scope of inquiry under Section 11 of the Arbitration and Conciliation Act, 1996 is limited to ascertaining the *prima facie* existence of an arbitration agreement.

Background/Facts of the Case

This appeal arose from the final judgment and order dated 30.04.2024 ("impugned judgment") passed by the High Court of Judicature at Bombay. The High Court dismissed the application preferred by Goqii Technologies Private Limited ("the appellant") under Section 11 of the Arbitration and Conciliation Act, 1996 ("the Act, 1996") seeking appointment of an arbitrator to

adjudicate disputes and claims in terms of Clause 18.12 of the Master Services Agreement ("MSA") executed between the appellant and Sokrati Technologies Private Limited ("the respondent").

The High Court *vide* the impugned judgment, dismissed the application seeking the appointment of an arbitrator, observing that it lacked in merit and substance. The High Court noted that the independent audit report revealed significant concerns regarding the performance of the digital marketing campaigns executed by the respondent. The High Court was of the view that although the report highlighted poor returns on investment and inconsistent metrics, yet it did not support the assertions made by the appellant regarding fraudulent practices of the respondent. Further, the High Court observed that the appellant failed to demonstrate any substantial discrepancies in the report that would justify withholding payment for the invoices raised. It observed that while further investigation was suggested in the report, the appellant's attempt to invoke arbitration based on non-existent disputes constituted a manifestly dishonest claim and therefore dismissed the application.

Key Issue/Allegation

Whether the High Court committed any error in dismissing the appellant's application under Section 11 of the Act, 1996?

Decision

The scope of inquiry under Section 11 of the Act, 1996 is limited to ascertaining the *prima facie* existence of an arbitration agreement. In the present case, the High Court exceeded this limited scope by undertaking a detailed examination of the factual matrix. The High Court erroneously proceeded to assess the auditor's report in detail and dismissed the arbitration application. In our view, such an approach does not give effect to the legislative intent behind the 2015 amendment to the Act, 1996 which limited the judicial scrutiny at the stage of Section 11 solely to the prima facie determination of the existence of an arbitration agreement.

For details: https://api.sci.gov.in/supremecourt/2024/30129/30129_2024_1_1507_57037_Judgement_07-Nov-2024.pdf

5. Ajay Madhusudan Patel & Ors. V. Jyotrindra S. Patel & Ors., 2024 INSC 710, decided by Supreme Court on 20.09.2024

Facts of the Case/Background

This petition has been filed under Section 11(6) read with Section 11(9) of the Arbitration and Conciliation Act, 1996 ("the Act, 1996") seeking appointment of a Sole Arbitrator under an Agreement entered into between the petitioner AMP Group and respondent JRS Group.

Key Issue/Allegations

Whether the SRG Group, being a non-signatory to the FAA, should also be referred to arbitration along with the AMP and JRS Groups?

Decision

The Hon'ble Apex Court in Cox and Kings held that the definition of "parties" under Section 2(1)(h) read with Section 7 of the Act, 1996 includes both the signatory as well as non-signatory parties. Persons or entities who have not formally signed the arbitration agreement or the underlying contract containing the arbitration agreement may also intend to be bound by the terms of the agreement. Further, the requirement of a written agreement under Section 7 of the Act, 1996 does not exclude the possibility of binding non-signatory parties if there is a defined legal relationship between the signatory and non-signatory parties. Therefore, the issue as to who is a "party" to an arbitration agreement is primarily an issue of consent. Actions or conduct could be an indicator of the consent of a party to be bound by the arbitration agreement. This aspect is also evident from a reading of Section 7(4)(b) which emphasises on the manifestation of the consent of persons or entities through actions of exchanging documents.

It is evident that the intention of the parties to be bound by an arbitration agreement can be gauged from the circumstances that surround the participation of the non-signatory party in the negotiation, performance, and termination of the underlying contract containing such an agreement. Further, when the conduct of the non-signatory is in harmony with the conduct of the others, it might lead the other party or parties to legitimately believe that the non-signatory was a veritable party to the contract containing the arbitration agreement. However, in order to infer consent of the non-signatory party, their involvement in the negotiation or performance of the contract must be positive, direct and substantial and not be merely incidental. Thus, the conduct of the non-signatory party along with the other attending circumstances may lead the referral court to draw a legitimate inference that it is a veritable party to the arbitration agreement.

Therefore, considering the complexity involved in the determination of the question whether the SRG Group is a veritable party to the arbitration agreement or not, we are of the view that it would be appropriate for the arbitral tribunal to take a call on the question after taking into consideration the evidence that may be adduced by the parties before it and the application of the legal doctrine as elaborated in the decision in Cox and Kings.

6. Cox & Kings Ltd. V. SAP India Pvt. Ltd. & Anr decided by Supreme Court on 09th September, 2024 by Supreme Court

Jurisdiction of the Court under Section 11(6) of the Arbitration and Conciliation Act, 1996 is limited to examining whether an arbitration agreement exists between the parties. Section 16 empowers the Arbitral Tribunal to rule on its own jurisdiction, including any ruling on any objections with respect to the existence or validity of arbitration agreement.

This case can be referred to *inter alia* understand the issues relating to the scope of powers of the referral court and scope of enquiry at the referral stage.

The Apex Court said that having heard the learned counsel appearing for the parties and having gone through the materials on record, the short question that falls for our consideration is whether the application of the petitioner for the appointment of an arbitrator deserves to be allowed.

On the scope of powers of the referral court at the stage of Section 11(6), it was observed by the Supreme Court in *Lombardi Engg. Ltd. v. Uttarakhand Jal Vidyut Nigam Ltd.* reported in 2023 INSC 976 as follows:

"26. Taking cognizance of the legislative change, this Court in Duro Felguera, S.A. v. Gangavaram Port Ltd. [Duro Felguera, S.A. v. Gangavaram Port Ltd., (2017) 9 SCC 729 : (2017) 4 SCC (Civ) 764] , noted that post 2015 Amendment, the jurisdiction of the Court under Section 11(6) of the 1996 Act is limited to examining whether an arbitration agreement exists between the parties — "nothing more, nothing less."

In a recent decision in *SBI General Insurance Co. Ltd. v. Krish Spinning reported in 2024 INSC 532*, it was observed by us that the arbitral tribunal is the preferred first authority to look into the questions of arbitrability and jurisdiction, and the courts at the referral stage should not venture into contested questions involving complex facts.

Further, on the scope of enquiry at the referral stage for the determination of whether a non-signatory can be impleaded as a party in the arbitration proceedings, it was observed by the Constitution Bench in Cox and Kings as follows:

"158. Section 16 of the Arbitration Act enshrines the principle of competence-competence in Indian arbitration law. The provision empowers the Arbitral Tribunal to rule on its own jurisdiction, including any ruling on any objections with respect to the existence or validity of arbitration agreement. Section 16 is an inclusive provision which comprehends all preliminary issues touching upon the jurisdiction of the Arbitral Tribunal. [Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd., (2020) 2 SCC 455 : (2020) 1 SCC (Civ) 570] The doctrine of competence-competence is intended to minimise judicial intervention at the threshold stage. The issue of determining parties to an arbitration agreement goes to the very root of the jurisdictional competence of the Arbitral Tribunal.

For details:

https://api.sci.gov.in/supremecourt/2020/21647/21647_2020_1_1502_55461_Judgement_09-Sep-2024.pdf

7. M/S Arif Azim Co Ltd v. M/S Aptech Ltd. 2024 INSC 155, decided by Supreme Court on 01.03.2024

The appointment of Arbitrator is covered under Article 137 of the Limitation Act, 1963 which is the residual provision.

Two-pronged test for consideration of the courts – first, whether the petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 is barred by limitation; and secondly, whether the claims sought to be arbitrated are ex-facie dead claims. In either of the case, the court may refuse to appoint an arbitral tribunal.

In this case, *inter alia* the following two important questions were considered:

I. Whether the Limitation Act, 1963 is applicable to an application for appointment of arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996?

II. Whether the court may refuse to make a reference under Section 11 of Act, 1996 where the claims are ex-facie and hopelessly time-barred?

The Apex court inter alia has laid down that the plain reading of Section 11(6) of the Act, 1996, which provides for the appointment of arbitrators, indicates that no time-limit has been prescribed for filing an application under the said section. However, Section 43 of the Act, 1996 provides that the Limitation Act, 1963 would apply to arbitrations as it applies to proceedings in court.

Since none of the Articles in the Schedule to the Limitation Act, 1963 provide a time period for filing an application under Section 11(6) of the Act, 1996, it would be covered by Article 137 of the Limitation Act, 1963 which is the residual provision.

In his authoritative commentary, "International Commercial Arbitration, Wolters Kluwer, 3rd Edition, pp. 2873-2875", Gary B. Born has observed that as a general rule, limitation statutes are applicable to arbitration proceedings.

The Apex Court laid down that having traversed the statutory framework and case law, we are of the clear view that there is no doubt as to the applicability of the Limitation Act, 1963 to arbitration proceedings in general and that of Article 137 of the Limitation Act, 1963 to a petition under Section 11(6) of the Act, 1996 in particular.

For answering to the second question, the following paragraph may be referred,

"Thus, from an exhaustive analysis of the position of law on the issues, we are of the view that while considering the issue of limitation in relation to a petition under Section 11(6) of the Act, 1996, the courts should satisfy themselves on two aspects by employing a two-pronged test – first, whether the petition under Section 11(6) of the Act, 1996 is barred by limitation; and

secondly, whether the claims sought to be arbitrated are ex-facie dead claims and are thus barred by limitation on the date of commencement of arbitration proceedings. If either of these issues are answered against the party seeking referral of disputes to arbitration, the court may refuse to appoint an arbitral tribunal."

For details:
https://scourtapp.nic.in/supremecourt/2023/16419/16419_2023_1_1501_51000_Judgement_01-Mar-2024.pdf

Lesson 4: Arbitral Proceedings, Pleadings and Evidence

Bombay Slum Redevelopment Corporation Private Limited v. Samir Narain Bhojwani, 2024 INSC 478 decided by Supreme Court on 8th July, 2024

In this case, Supreme Court recorded serious concerns about bulky pleadings and evidence during Arbitral Proceedings.

The Apex Court has said that Before we part with the judgment, we must record some serious concerns based on our judicial experience. Case after case, we find that the arbitral proceedings have become synonymous with very bulky pleadings and evidence and very long, time-consuming submissions, leading to very lengthy awards. Moreover, there is a tendency to rely upon a large number of precedents, relevant or irrelevant. The result of all this is that we have very long hearings before the Courts in Sections 34 and 37 proceedings.

By way of illustration, we are referring to the factual aspects of the present case. The award runs into 139 pages. The petition under Section 34 of the Arbitration Act runs into 93 pages and incorporates 151 grounds. The judgment of the learned Single Judge dealing with the petition under Section 34 consists of 101 pages. One of the contributing factors is that more than 35 decisions were relied upon by the parties before the learned Single Judge. On the same point, multiple judgments have been cited, taking similar views. As per the practice in the High Court of Judicature at Bombay, a memorandum of appeal under Section 37 of the Arbitration Act does not contain the facts but only the grounds of challenge. In the memorandum of appeal preferred by the respondent consisting of 46 pages, 164 grounds have been incorporated. Considering the narrow scope of interference under Sections 34 and 37 of the Arbitration Act, we cannot comprehend how there could be 151 grounds in a petition under Section 34 and 164 grounds in an appeal under Section 37. It is not surprising that this appeal has a synopsis running into 45 pages, and it contains as many as 54 grounds of challenge.

In many cases, the proceedings under Sections 34 and 37 are being treated as if the same are appeals under Section 96 of the CPC. When members of the bar take up so many grounds in petitions under Section 34, which are not covered by Section 34, there is a tendency to urge all those grounds which are not available in law and waste the Court's time. The time of our Courts is precious, considering the huge pendency. This is happening in a large number of cases. All this makes the arbitral procedure inefficient and unfair. It is high time that the members of the Bar show restraint by incorporating only legally permissible grounds in petitions under Section 34 and the appeals under Section 37. Everyone associated with the arbitral proceedings must remember that brevity will make the arbitral proceedings and the proceedings under Sections 34 and 37 more effective. All that we say is that all the stakeholders need to introspect. Otherwise, the very object of adopting the UNCITRAL model will be frustrated.

We are not called upon to consider whether the arbitral proceedings are cost-effective. In an appropriate case, the issue will have to be considered. Arbitration must become a tool for expeditious, effective, and cost-effective dispute resolution.

For details: https://scourtapp.nic.in/supremecourt/2023/30144/30144_2023_6_1508_53522_Judgement_08-Jul-2024.pdf

2. ***Elfit Arabia & Anr v. Concept Hotel BARONS Limited & Ors decided by Supreme Court on 9th July, 2024***

The institution of the proceedings under Section 138 does not imply a 'continuing cause of action' for the purpose of initiating arbitration.

Facts of the Case

The petitioner, an entity incorporated in the United Arab Emirates, was purportedly approached by the respondents to finance a telecommunication project undertaken by Telesuprecon Nigeria Limited (TNL). Accordingly, the Memorandum of Understanding (MoU) which forms the basis of the petition under Section 11(6) of the Arbitration and Conciliation Act 19961 was executed on 1 June 2004. Pursuant to the terms of the MoU, the petitioners claim to have disbursed funds on various occasions. On 2 August 2006, a supplementary MoU was executed, setting out the terms of repayment and settlement of the petitioners' dues. The respondents agreed to lien their property as comfort and issue cheques in support of their finances.

…. Cheques were given to the petitioner from time to time during the course of meetings between the parties to negotiate repayment. On 7 May 2011, fifteen cheques which had been furnished to the petitioner for a consolidated amount of Rs. 7.30 crores were presented for payment but allegedly dishonoured. Accordingly, on 2 June 2011, the petitioners issued a legal notice to the respondents to implement the MoU and make the necessary payment.

Eleven years thereafter, on 4 July 2022, the petitioners invoked arbitration in terms of clause 19 of the MoU. The respondent failed to reply to the notice invoking arbitration. Therefore, the petitioner issued a fresh notice dated 27 October 2022 calling upon the respondent to refer the dispute to arbitration. The petitioner did not receive a response to the second notice and instituted the present petition before this court for the appointment of an arbitrator.

According to the petitioner, in the interregnum, proceedings under Section 138 of the Negotiable Instruments Act 1881 were instituted against the respondents. An order of acquittal was passed by the Magistrate on 23 July 2018. Proceedings are pending before the High Court of Bombay in appeal.

The respondents contend that the claims of the petitioner are barred by limitation and urge this Court to dismiss the petition. Whether a claim is barred by limitation lies ordinarily within the

domain of the arbitral tribunal. However, a court exercising jurisdiction under Section 11(6) of the Act may reject ex facie non-arbitrable or dead claims, to protect the other party from being drawn into a protracted arbitration process, that is bound to eventually fail. The court must 'cut the deadwood' by refraining from appointing an arbitrator when claims are ex facie time-barred and dead, or there is no subsisting dispute.

Decision

This examination does not involve a full review of contested facts but only a primary review, where uncontested facts speak for themselves. Such limited scrutiny is necessary as it is the duty of the court to protect the parties from being compelled to arbitrate when the claim is demonstrably barred by limitation. If courts do not intervene within this limited compass and mechanically refer every dispute to arbitration, it may undermine the effectiveness of the arbitration process itself.

Having regard to the uncontested chronology of events detailed in paragraphs 1 to 4 above, it is abundantly clear that the notices invoking arbitration dated 4 July 2022 and 27 October 2022 were issued eleven years after the cause of action arose in 2011. This is well beyond the limitation period of three years, and the claim which is sought to be raised is hopelessly barred by limitation.

The initiation of arbitration and criminal proceedings under Section 138 of the Negotiable Instruments Act 1881 are separate and independent proceedings that arise from two separate causes of action. Therefore, the institution of the proceedings under Section 138 does not imply a 'continuing cause of action' for the purpose of initiating arbitration, as erroneously contended by the petitioner.

The facts of the present case undoubtedly fall within the narrow compass of interference that courts must exercise at this stage. If this Court were to refer the dispute to arbitration, it would amount to compelling the parties to arbitrate a 'deadwood' claim that is ex-facie time-barred.

Lesson 5: Preparation and Execution of Arbitral Award

1. 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.

2. M/S Larsen Air Conditioning and Refrigration Company versus Union of India & Ors. decided by Supreme Court on 11.08.2023

Old Arbitration Act contained a provision which enabled the court to modify an award. However, that power has been consciously omitted by Parliament, while enacting the Arbitration and Conciliation Act, 1996.

Facts

The dispute between the appellant and Union of India ('respondent-state') arose from a contract entered into pursuant to being awarded the tender. In the course of work, certain disputes arose. The respondent-state referred the dispute to arbitration. The tribunal published its award and directed the first four respondents to pay 18% *pendente lite* and future compound interest on the award in respect of certain Claims.

The respondent-state challenged the award under Section 34 of the Arbitration and Conciliation Act, 1996 ('the Act'). The district court, dismissed the challenge on the ground that it could not sit in appeal over the award and since the respondent-state had failed to file any proof of the

grounds alleged. Aggrieved, the respondent-state, preferred an appeal before the High Court. In the interim, the respondent-state deposited ₹10,00,000 in the District Court, Kanpur against ₹1,82,878.11 due at the time.

Partly allowing the appeal, the High Court disapproved the reasoning in the award on one of the claims; it held that the sum of ₹3 lakhs awarded towards compensation for loss caused due to non-issue of tender document and paralysing business could not have been granted. The High Court held that it could not be said that the proceedings (in the present case) were under the Arbitration Act, 1940, and therefore, the rate of interest granted should not be 18%. The High Court referred to Supreme court's judgments in *K. Marappan v. Superintending Engineer TBPHLC Circle Anantapur, M/s Raveechee & Co. v. Union of India* and *Ambica Construction v. Union of India* while deciding this question of *pendente lite* interest; it was held that the bar to award interest on the amounts payable under the contract would not be sufficient to deny the payment of interest *pendente lite*. The High Court proceeded to reduce the rate of interest from 18% (as ordered by the arbitrator), to 9% per annum.

Issue

Reduction of Rate of Interest by the Courts

Decision

The Hon'ble Supreme Court said that the limited and extremely circumscribed jurisdiction of the court under Section 34 of the Act, permits the court to interfere with an award, sans the grounds of patent illegality, i.e., that "illegality must go to the root of the matter and cannot be of a trivial nature"; and that the tribunal "must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground" [ref: Associate Builders]. The other ground would be denial of natural justice. In appeal, Section 37 of the Act grants narrower scope to the appellate court to review the findings in an award, if it has been upheld, or substantially upheld under Section 34. It is important to notice that the old Act contained a provision which enabled the court to modify an award. However, that power has been consciously omitted by Parliament, while enacting the Act of 1996. This means that the Parliamentary intent was to exclude power to modify an award, in any manner, to the court.

…. the impugned judgment warrants interference and is hereby set aside to the extent of modification of rate of interest for past, *pendente lite* and future interest. The 18% per annum rate of interest, as awarded by the arbitrator is reinstated.

For details: https://main.sci.gov.in/supremecourt/2019/35835/35835_2019_8_1501_46026_Judgement_11-Aug-2023.pdf

3. R.P. Garg v. The Chief General Manager, Telecom Department & Ors., 2024 INSC 743 decided by Supreme Court on 10.09.2024

Facts of the Case/Background

The Arbitrator denied payment of such interest under a misplaced impression that the contract between the parties prohibited it. The executing Court affirmed the finding of the Arbitrator and rejected the prayer. However, allowing the appeal, the District Court held that the appellant will be entitled to post award interest. By the order impugned before Hon'ble Apex Court, the High Court allowed the revision and set aside the District Court order while holding that the contract between the parties did not permit grant of post award interest.

Key Issue/Allegations

Whether the appellant is entitled to post award interest on the sum awarded by the Arbitrator.

Decision

For the reasons to follow, while allowing the appeal the Apex Court have held that as this is a case arising out of the Arbitration and Conciliation Act, 1996, by operation of Section 31(7)(b), the sum directed to be paid under the Arbitral Award shall carry interest. This is a first principle. A sum directed to be paid by an Arbitral Award must carry interest. In this view of the matter, we have restored the judgment of the District Court granting 18% interest from the date of the award to its realization.

The interest granted by the First Appellate Court only related to post award period, and therefore, for this period, the agreement between the parties has no bearing. Section 31(7)(b) deals with grant of interest for post award period i.e., from the date of the award till its realization. The statutory scheme relating to grant of interest provided in Section 31(7) creates a distinction between interest payable before and after the award. So far as the interest before the passing of the award is concerned, it is regulated by Section 31(7)(a) of the Act which provides that the grant of interest shall be subject to the agreement between the parties. This is evident from the specific expression at the commencement of the sub-section which says "unless otherwise agreed by the parties".

So far as the entitlement of the post-award interest is concerned, sub-Section (b) of Section 31(7) provides that the sum directed to be paid by the Arbitral Tribunal shall carry interest. The rate of interest can be provided by the Arbitrator and in default the statutory prescription will apply. Clause (b) of Section 31(7) is therefore in contrast with clause (a) and is not subject to party autonomy. In other words, clause (b) does not give the parties the right to "contract out" interest for the post-award period. The expression 'unless the award otherwise directs' in Section 31(7)(b) relates to rate of interest and not entitlement of interest. The only distinction made by Section 31(7)(b) is that the rate of interest granted under the Award is to be given precedence over the statutorily prescribed rate.

4. *Dani Wooltex Corporation & Ors. versus Sheil Properties Pvt. Ltd. & Anr. decided by Supreme Court on 16th May, 2024*

Under clause 32(2)(c) of Arbitration and Conciliation Act, 1996, the mere existence of a reason for terminating the proceedings is not sufficient. The reason must be such that the continuation of the proceedings has become unnecessary or impossible.

In this case, the issue was about the legality and validity of the order of termination of the arbitral proceedings under clause (c) of sub-section (2) of Section 32 of the Arbitration and Conciliation Act, 1996.

Section 32 provides for the termination of the arbitral proceedings in the following contingencies:

a. On making final arbitral award;

b. On the Claimant withdrawing his claim as provided under clause (a) of sub-section (2) of Section 32;

c. Parties agreeing on termination of arbitral proceedings as provided under clause (b) of subsection (2) of Section 32; or

d. When the Arbitral Tribunal finds that the continuation of proceedings has become unnecessary or impossible for any other reason, as provided under clause (c) of sub-section (2) of Section 32.

Therefore, clause (c) of sub-section (2) of Section 32 can be invoked for reasons other than those mentioned in subsection (1) of Section 32 and clauses (a) and (b) of sub-section (2) of Section 32. Under clause (c), the mere existence of a reason for terminating the proceedings is not sufficient. The reason must be such that the continuation of the proceedings has become unnecessary or impossible.

if the party fails to appear for a hearing after filing a claim, the learned Arbitrator cannot say that continuing the arbitral proceedings has become unnecessary. Abandonment by the claimant of his claim may be grounds for saying that the arbitral proceedings have become unnecessary. However, the abandonment must be established. Abandonment can be either express or implied. Abandonment cannot be readily inferred. One can say that there is an implied abandonment when admitted or proved facts are so clinching and convincing that the only inference which can be drawn is of the abandonment. Mere absence in proceedings or failure to participate does not, per se, amount to abandonment. Only if the established conduct of a claimant is such that it leads only to one conclusion that the claimant has given up, his/her claim can an inference of abandonment be drawn. Merely because a claimant, after filing his statement of claim, does not move the Arbitral Tribunal to fix a date for the

hearing, it cannot be said that the claimant has abandoned his claim. The reason is that the Arbitral Tribunal has a duty to fix a date for a hearing. If the parties remain absent, the Arbitral Tribunal can take recourse to Section 25.

For details: https://api.sci.gov.in/supremecourt/2023/32360/32360_2023_7_1501_53220_Judgement_16-May-2024.pdf

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.

3. M/s Alpine Housing Development Corporation Pvt. Ltd. v. Ashok S. Dhariwal and Others decided by Supreme Court on 19.01.2023

In exceptional cases and if it is brought to the court on the matters not containing the record of the arbitrator that certain things are relevant to the issues arising under section 34(2)(a), then the party who has assailed the award can be permitted to file affidavit in the form of evidence

Brief Facts

This appeal was filed from a Judgment passed by High Court of Karnataka in which the court had set aside the order passed by the learned Additional City Civil and Sessions Judge, Bengaluru, has permitted the respondents – original writ petitioners to adduce evidence in an application under Section 34 of the Arbitration & Conciliation Act, 1996.

That against the award passed by the learned arbitrators, an application under Section 34 of the Act was filed by the respondents. The respondents filed an interim application in section 34 application to adduce additional evidence. At this stage, it is required to be noted that as such the award passed by the learned arbitrators was an *ex-parte* award and no evidence was led by the respondents herein, who subsequently assailed the award by way of section 34 application. The appellant filed objections to the said interim application seeking permission to adduce evidence on the ground that the same was not maintainable in accordance with the provisions of the Arbitration Act, 1996.

Issue

The short question which is posed for the consideration of Supreme Court was, whether the applicant can be permitted to adduce evidence to support the ground relating to Public Policy in an application filed under Section 34 of the Arbitration & Conciliation Act, 1996?

Decision

The Hon'ble Supreme Court said that the ratio of the three decisions(referred in the Judgment) on the scope and ambit of section 34(2)(a) pre-amendment would be that applications under sections 34 of the Act are summary proceedings; an award can be set aside only on the grounds set out in section 34(2)(a) and section 34(2) (b); speedy resolution of the arbitral disputes has been the reason for enactment of 1996 Act and continues to be a reason for adding amendments to the said Act to strengthen the aforesaid object; therefore in the proceedings under section 34 of the Arbitration Act, the issues are not required to be framed, otherwise if the issues are to be framed and oral evidence is taken in a summary proceedings, the said object will be defeated; an application for setting aside the arbitral award will not ordinarily require anything beyond the record that was before the arbitrator, however, if there are matters not containing such records and the relevant determination to the issues arising under section 34(2)(a), they may be brought to the notice of the Court by way of affidavits filed by both the parties' the cross-examination of the persons swearing in to the affidavits should not be allowed unless absolutely necessary as the truth will emerge on the reading of the affidavits filed by both the parties. Therefore, in an exceptional case being made out and if it is brought to the court on the matters not containing the record of the arbitrator that certain things are relevant to the determination of the issues arising under section 34(2)(a), then the party who has assailed the award on the grounds set out in section 34(2)(a) can be permitted to file affidavit in the form of evidence. However, the same shall be allowed **unless absolutely necessary**.

For details: https://main.sci.gov.in/supremecourt/2022/2236/2236_2022_4_1503_41103_Judgement_19-Jan-2023.pdf

4. M/s Hindustan Contruction Company Limited v. M/s National Highway Authority of India decided by Supreme Court on 24.08.2023

Dissenting Award not to be treated as award even if Majority Award is Set aside

A dissenting opinion cannot be treated as an award if the majority award is set aside. It might provide useful clues in case there is a procedural issue which becomes critical during the challenge hearings. This court is of the opinion that there is another dimension to the matter. When a majority award is challenged by the aggrieved party, the focus of the court and the aggrieved party is to point out the errors or illegalities in the majority award. The minority award (or dissenting opinion, as the learned authors point out) only embodies the views of the arbitrator disagreeing with the majority. There is no occasion for anyone- such as the party aggrieved by the majority award, or, more crucially, the party who succeeds in the majority award, to

challenge the soundness, plausibility, illegality or perversity in the approach or conclusions in the dissenting opinion.

For
details: https://main.sci.gov.in/supremecourt/2012/40706/40706_2012_5_1501_46332_Judgement_24-Aug-2023.pdf

Lesson 8: Arbitration under Investor's Grievances Redressal Mechanism of Stock Exchanges

Key Concepts

- Investor Service Centres
- SEBI Complaint Redressal (SCORES) Platform
- Online Resolution of Disputes
- Market Infrastructure Institutions
- Online Conciliation
- Online Arbitration
- Market Participant
- ODR Portal
- ODR Institutions

Learning Objectives

- To understand:
- System of Investors grievances redressal mechanism (IGRM)
- Arbitration or Conciliation proceedings under the mechanism
- Procedure under the mechanism
- Regulatory actions
- Surveillance actions

Lesson Outline

- Introduction
- Investor Grievance Redressal Mechanism
- Regulatory Actions
- Conciliation and Arbitration proceedings under the Mechanism and Procedure
- Surveillance Actions
- Case Studies on Arbitration under Stock Exchange Grievance Redressal Mechanism

REGULATORY FRAMEWORK

- SEBI Act, 1992
- Securities and Exchange Board of India (Alternative Dispute Resolution Mechanism) (Amendment) Regulations, 2023
- Circulars and Guidelines Issued by SEBI

INTRODUCTION

Arbitration is an alternative dispute resolution mechanism that has gained significant importance in the field of investor grievance redressal. It is a process by which parties can resolve their disputes outside of court in a private and confidential manner.

INVESTOR GRIEVANCE REDRESSAL MECHANISM[1]

The Stock Exchanges shall set up Investor Service Centres (ISCs) at such locations as prescribed by SEBI from time to time or as it may deem fit to facilitate resolution of complaints against listed companies or against Stock Exchange's Trading Members.

Any investor having grievance against Trading Member can register complaint with the Stock Exchanges in respect of transactions executed on Exchanges in the prescribed Complaint form at the nearest Investor Service Centre (ISCs) along with necessary supporting documents or e-Complaint through Exchange website, or E-mail, or in writing to the Exchange.

Upon receipt of the complaint Exchange shall ensure that the investor complaint(s) are resolved within 15 days from the date of receipt of the complaint.

On receipt of the complaint by the Exchange, if any additional information /documents are required, the same shall be sought by the Exchange from the complainant within 7 days from the date of receipt of complaint. The complainant shall provide the information as per the communication received from the Exchange. In such case, the period of 15 days shall be counted from the date of receipt of additional information sought.

On receipt of complaint, Member shall immediately act upon the same and revert with the details of redressal to the Exchange by uploading the response and supporting documents in the online portal of the Exchange within the timelines specified by the Exchange in the communication sent to the member.

The correspondence with the Trading Member & Investor (who is client of a Member) may be done on e-mail. For this purpose, communication may be done on e-mail, if the e-mail id of the

[1] Source: Website of Bombay Stock Exchange and may be accessed from the link: https://www.bseindia.com/downloads1/Investor_Grievance_Redressal_Mechanism.pdf

investor is available in the database or on the email id from which the client has been corresponding.

The Trading Member and Clearing Member is required to provide a dedicated email id for the correspondence to the Exchange. The Exchange shall communicate the complaints received from the investor/ client to the Trading Member on the dedicated e-mail id provided by the Member.

On receipt of the complaint, the Trading Member shall immediately act upon the same and revert with the details of redressal to the Exchange through Exchange specified software/ letter/ e-mail.

In case the matter does not get resolved within 15 days from date of registration of complaint by the Exchange or receipt of additional information from the complainant, the Exchange shall initiate a pre-conciliation call between the parties.

The Exchange shall maintain record of all the complaints addressed/redressed within 15 days from the date of receipt of the complaint/additional information. If a complaint is not resolved within the stipulated time frame, then the reason for non-redressal in the given time frame is also recorded and penalty for non-redressal will be levied in accordance with Exchange circulars.

In case no reply is received from the Trading Member, or the reply received from the Trading Member does not satisfy the complainant or the matter is not getting settled amicably, then as directed by SEBI, for ensuring speedy and effective resolution of disputes, the investor may, if so desired, opt for resolution through the Online Dispute Resolution mechanism ("ODR"), which will facilitate for online conciliation and arbitration.

In case the complainant opts for Online Dispute Resolution mechanism or other appropriate civil remedies while the complaint is pending with Exchange, the complaint shall be treated as disposed.

The above mentioned is the procedure with Bombay Stock Exchange. However, minor changes may be made in the procedure by other exchanges subject to the compliance of the regulatory framework and directions of SEBI.

Investor Service Centres Of Stock Exchanges (June 26, 2023)

SEBI vide Circular No. SMD/POLICY/CIR-32/97 dated December 03, 1997 advised all stock exchanges to open or maintain atleast one Investor Service Centre (ISC) for the benefit of the investors. Such centres are required to, *inter alia*, provide counseling service and provide certain basic minimum facilities to the investors. The major stock exchanges were allowed to open as many ISCs as required.

Subsequently, vide SEBI Circulars No. CIR/MRD/DSA/03/2012 dated January 20, 2012, No. CIR/MIRSD/2/2012 dated February 15, 2012 and No. CIR/MRD/ICC/21/2013 dated July 05, 2013, it was mandated that apart from the ISCs that are operating in metro cities (viz., New Delhi, Mumbai, Chennai and Kolkata), stock exchanges having nationwide terminals shall open

ISCs in Ahmedabad, Hyderabad, Kanpur, Indore, Bangalore, Pune, Jaipur, Ghaziabad, Lucknow, Gurgaon, Patna and Vadodara.

Considering significant development in the securities market including technological advancements since the issuance of abovementioned circulars, a need was felt to review the provisions related to ISCs of stock exchanges. Based on consultation with the stock exchanges, the following was decided by SEBI:

In order to reach out to the investors across India, the stock exchanges shall make use of the existing ISCs at locations mentioned at paragraph-2 above and open additional ISCs wherever required; or as specified or to be specified by the Board from time to time. The ISCs can be set up either by one stock exchange or jointly by two or more stock exchanges as per their mutual agreement.

1. ISCs shall at least provide the following basic minimum facilities:

i. Four financial daily newspapers with at least one in the regional language of the place where the ISC is situated. In case, the financial newspaper is not available in the regional language of the place, any leading newspaper in that regional language shall be provided.

ii. A dedicated desktop or laptop with internet connectivity to enable the investors to access various relevant information available in public domain and also to access SEBI's and stock exchange's grievance redressal portals.

iii. Facilities for receiving investor complaints in both physical and electronic form. One dedicated staff shall be posted at the ISC to register investor complaints and also to guide & counsel the investors. The updated status of all complaints shall be maintained in electronic form.

iv. Facilitation desks at all ISCs to assist the investors in the dispute resolution process. These desks shall, *inter alia*, provide investors the required documents or details, if any, for making application to investor Grievance Redressal Panels and filing arbitration applications (including appellate arbitration).

v. Arbitration and appellate arbitration facility at all ISCs including video-calling facility to investors for attending their online arbitration (including appellate arbitration) or Grievance Redressal meetings, if any.

vi. A meeting room for at least 5 to 6 persons and additional sitting space for at least 5 to 6 persons.

vii. Other infrastructure facilities such as telephone, photocopier, printer, scanner, internet access, furniture, etc.

viii. A library on relevant laws (including Acts, Rules, Regulations, Circulars or master circulars, Guidelines, etc. and bye-laws, rules, regulations and circulars or master circulars of stock

exchanges, clearing corporations and depositories), common booklets on various areas of securities markets, educational materials, etc. for the investors. In case of receipt of request for physical copies of relevant laws, the same shall be provided at a minimal cost.

ix. A register or database of visitors (including investors) for future correspondence, whenever required.

2. For up-gradation of knowledge of officials at ISCs, stock exchanges shall ensure that:

i. All the officials at ISCs have been provided adequate training on various areas of securities market, how to counsel or guide the investors to appropriately lodge their complaints (including lodging of complaints on SCORES platforms), how to resolve the investor grievances, promotion of investor education and awareness to enhance securities market literacy and retail participation, etc.

ii. The training on securities market should, *inter-alia*, cover the following areas:

a) Overview of securities market (both primary and secondary markets);

b) Functions and operations of Stock Exchanges, Clearing Corporations and Depositories;

c) Functions and operations of market intermediaries dealing with investors such as, Stock Brokers, Depository Participants, Mutual Funds, Investment Advisers, Research Analysts, Portfolio Managers, Registrar and Transfer Agents, etc.

iii. The officials at ISCs should also have requisite NISM certification covering the areas mentioned above.

3. **Applicability**

The provisions of this circular, except provisions at point no. 2 above, shall come into effect from the 90th day of issuance of this circular.

The requirements at point no. 2 above shall be complied with in a phased manner i.e. by at least one official at ISCs shall comply with the requirements within 6 months and all officials at ISCs shall comply within 12 months, from the date of issuance of this circular.

The existing provisions on ISCs issued through various SEBI circulars mentioned as under shall be rescinded with effect from the date of implementation of this circular:

i. SEBI Circular No. SMD/POLICY/CIR-32/97 dated December 03, 1997.

ii. Para 4 of SEBI Circular No. CIR/MRD/DSA/03/2012 dated January 20, 2012.

iii. SEBI Circular No. CIR/MIRSD/2/2012 dated February 15, 2012.

iv. SEBI Circular No. CIR/MRD/ICC/21/2013 dated July 05, 2013.

v. Para 5 of SEBI Circular No. CIR/MRD/ICC/30/2013 dated September 26, 2013.

REGULATORY ACTIONS

Redressal of Investor Grievances through the SEBI Complaint Redressal (SCORES) platform and Linking it to Online Dispute Resolution Platform (September 20, 2023)

SEBI Complaint Redressal System (SCORES) is a centralised web based complaint redressal facilitation platform launched in 2011 *vide* circular dated June 3, 2011 (bearing reference number CIR/OIAE/2/2011) to provide a facilitative platform for the benefit of the aggrieved investors, whose grievances against (a) listed company, (b) registered intermediary or (c) market infrastructure institution ("**Entities**") remain unresolved. Since then, SEBI has revised and strengthened the process of facilitating the redressal of grievances by such Entities. Earlier, the process of investor grievances redressal on SCORES is governed by the Master Circular dated November 07, 2022 on "Processing of investor complaints against listed companies in SEBI Complaints Redress System – SCORES" (bearing reference SEBI/HO/OIAE/IGRD/P/CIR/2022 /0150).

In order to strengthen the existing investor grievance handling mechanism through SCORES by making the entire redressal process of grievances in the securities market comprehensive by providing a solution that makes the process more efficient by reducing timelines and by introducing auto-routing and auto-escalation of complaint, SEBI notified the Securities and Exchange Board of India (Facilitation of Grievance Redressal Mechanism) (Amendment) Regulations, 2023 and amended the regulations as mentioned under '**Schedule I**' vide notification dated August 16, 2023. Consequently, it became necessary to revise the extant process for redressal of investors' grievances against Entities and provide for a mechanism through which Designated Bodies (as specified in '**Schedule II**') may monitor the process of the redressal of investors' grievances by Entities.

This Circular has rescinded the Master Circular SEBI/HO/OIAE/IGRD/P/CIR/2022/0150 dated November 07, 2022.

Implementation of this circular:

Notwithstanding anything contained in this circular or any other circular, the Entities shall, submit the Action Taken Report ("**ATR**") on SCORES within 21 calendar days from the date of receipt of the complaint.

The provisions of this circular related to work flow of processing of investor grievances by Entities and framework for monitoring and handling of investor complaints by the Designated Bodies has come into force with effect from December 04, 2023.

The designated bodies referred to in the **Schedule II** ("**Designated Bodies**") may apply for SCORES Authentication and/or for Application Programming Interface (API) integration as per **Annexure I** within such period so as to ensure that Designated Bodies can comply with provisions of this circular by December 04, 2023 and onwards.

The revised framework for handling of complaints received through SCORES platform for Entities and for monitoring the complaints by designated bodies is specified in '**Annexure I'** to this circular. A pictographic representation of the process is also set out in '**Schedule III**'.

The other general provisions applicable to all Entities concerning SCORES portal are at '**Annexure II**'.

Framework for handling of investor grievances received through SCORES by Entities and monitoring of the redressal process by designated bodies. (Annexure I)

1. Submission of the Complaint and handling of the Complaint by the Entity:

1.1. All Entities shall review the investors' grievances redressal mechanism from time to time to further strengthen it and rectify the existing shortcomings, if any, in line with this circular.

1.2. All Entities who are in receipt of the complaints of the investors ("**Complaint**") through SCORES, shall resolve the complaint within 21 calendar days of receipt of such Complaint.

1.3. The Complaints lodged on SCORES against any Entity shall be automatically forwarded to the concerned Entity through SCORES for resolution and submission of ATR. Entities shall resolve the Complaint and upload the ATR on SCORES within 21 calendar days of receipt of the Complaint. The ATR of the entity will be automatically routed to the complainant.

1.4. The Complaint against the Entity shall be simultaneously forwarded through SCORES to the relevant Designated Body as mentioned under **Schedule II**. The Designated Body shall ensure that the concerned Entity submits the ATRs within the stipulated time of 21 calendar days.

1.5. The Designated Body shall monitor the ATRs submitted by the entities under their domain and inform the concerned entity to improve the quality of redressal of grievances, wherever required.

1.6. SEBI may concurrently monitor grievance redressal process by entities and Designated Bodies.

2. **First review of the Complaint:**

2.1. In case complainant is satisfied with the resolution provided by the entity vide the ATR or complainant does not choose to review the Complaint, the Complaint shall be disposed on SCORES. However, if the complainant is not satisfied, the complainant may request for a review of the resolution provided by the entity within 15 calendar days from the date of the ATR.

2.2. In case the complainant has requested for a review of the resolution provided by the entity or the entity has not submitted the ATR within the stipulated time of 21 calendar days, the concerned Designated Body shall take cognizance of the Complaint for first review of the resolution through SCORES. The Designated Body shall take up the first review with the

concerned Entity, wherever required. The concerned Entity shall submit the ATR to the Designated Body within the time stipulated by the Designated Body.

2.3. The Designated Body may seek clarification on the ATR submitted by the Entity for the first review. The concerned Entity shall provide clarification to the respective Designated Body, wherever sought and within such timeline, as the Designated Body may stipulate. The Designated Body shall stipulate the timeline in such as manner to ensure that the Designated Body submits the revised ATR to the complainant on SCORES within 10 calendar days of the review sought.

2.4. The Designated Bodies shall be responsible for:

2.4.1. Monitoring and handling grievance redressal of investors against respective entities under their domain as stipulated under **Schedule II**.

2.4.2. Taking non-enforcement actions including issuing advisories, caution letters for non-redressal of investor grievances and referring to SEBI for enforcement actions.

3. **Second Review of the Complaint:**

3.1. The complainant may seek a second review of the Complaint within 15 calendar days from the date of the submission of the ATR by the Designated Body. In case the complainant is satisfied with the ATR provided by the concerned Designated Body or complainant does not choose to review the Complaint within the period of 15 calendar days, the Complaint shall be disposed on SCORES.

3.2. In case the complainant is not satisfied with the ATR provided by the Designated Body or the concerned Designated Body has not submitted the ATR within 10 calendar days, SEBI may take cognizance of the Complaint for second review through SCORES.

3.3. SEBI may take up the review with stakeholders involved, including the concerned entity or/and Designated Body. The concerned entity or/and Designated Body shall take immediate action on receipt of second review complaint from SEBI and submit revised ATR to SEBI through SCORES, within the timeline specified by SEBI.

3.4. SEBI or the Designated Body (as the case may be) may seek clarification on the ATR submitted by the concerned entity for SEBI review complaint. The concerned entity shall provide clarification to the respective Designated Body and/or SEBI, wherever sought and within such timeline as specified. The second review Complaint shall be treated as ‘resolved’ or ‘disposed’ or ‘closed’ only when SEBI ‘disposes’ or ‘closes’ the Complaint in SCORES. Hence, mere filing of ATR with respect to SEBI review complaint will not mean that the SEBI review complaint is disposed.

4. **SCORES authentication for registered intermediaries and market infrastructure institutions:**

4.1. The procedure for generation of SCORES user ID and password is fully automated for all SEBI registered intermediaries and MIIs registered or recognised by SEBI after August 02, 2019. SCORES user ID and password details shall be sent through auto-generated e-mails, upon completion of process of online grant of registration by SEBI.

4.2. The SCORES user ID and password details shall be sent to the e-mail ID of the Contact Person or the Compliance Officer as provided in the online Registration Form (submitted through the SEBI Intermediaries Portal – https://siportal.sebi.gov.in).

4.3. Stock Brokers and Depository Participants shall also obtain SCORES authentication. The procedure for obtaining SCORES authentication shall be as may be specified.

5. **SCORES authentication for companies intending to list their securities on recognized stock exchanges:**

5.1. All companies intending to get their securities listed on the recognized stock exchanges shall obtain SCORES authentication through the online mechanism available at the SCORES website www.scores.gov.in.

5.2. The companies shall be required to apply for the authentication through the online form available on the abovementioned SCORES website in accordance with the instruction document provided on the website.

5.3. Companies shall attach a declaration, with the online form, on the letter head of the company signed by the Compliance Officer, as under:

5.3.1. Companies intending to list on Main Board: A declaration that the Draft Red Herring Prospectus has been submitted to SEBI.

5.3.2. Companies intending to list on SME/Debt Platform of stock exchange: A declaration that an application to list its securities has been submitted with the stock exchange/in-principal approval to list its securities has been obtained from the stock exchange.

5.4. The SCORES credentials shall be sent to the e-mail ID of the Compliance Officer or the Dealing Officer as provided in the online form.

5.5. Complaints against listed companies can be processed by companies in-house or through its Registrar to Issue and Share Transfer Agent (RTI/STA). In case the complaints are processed by the RTI/STA on behalf of the listed company, any failure on the part of the RTI/STA to redress the complaint or failure to update Action Taken Report (ATR) in SCORES, will be treated as failure of the listed company to furnish information to SEBI and non redressal of investor complaints by the listed company.

5.6. The Entities can update their primary e-mail address in SCORES where all notifications related to SCORES complaints are sent.

6. **Access to SCORES Portal and other requirements applicable to Designated Bodies:**

6.1. The Designated Bodies shall take SCORES Authentication from SEBI. The Designated Bodies shall fill the form placed at **Schedule IV** and submit the same to scores@sebi.gov.in. The SCORES user id and password details shall be sent to the e-mail id provided in the Registration Form.

6.2. The Designated Bodies shall provide generic e-mail id for the purpose of obtaining SCORES authentication. Further the Designated Bodies shall appoint one nodal officer for the purpose. The details of the nodal officer shall be updated with SEBI, through SCORES or/and through e-mail intimation.

6.3. The Designated bodies who already have a complaint redressal portal of their own and desires to integrate it to SCORES through Application Programming Interface (API) shall write to SEBI at scores@sebi.gov.in for the same. It may be noted that SCORES Authentication is mandatory for all the Designated Bodies even though integrated to SCORES through API.

6.4. The Designated Bodies shall have adequate infrastructure/systems in place like manpower etc. to comply with the requirements and process laid down in this circular.

6.5. The Designated Bodies shall have adequate systems in place to curb leakage of any data received through SCORES.

6.6. The Designated Bodies shall maintain Management Information Systems (MIS) reports, which shall be shared with the concerned entities so the latter can adequately track timelines for submission of ATR. SEBI may also require the Designated Bodies to furnish MIS reports in such form and on such periodicity as it may specify from time to time.

6.7. SEBI may appoint or remove any Designated Body for various class of registered intermediaries from time to time.

7. **Action for failure to redress investor complaints by listed companies:**

7.1. The procedure and actions mentioned below shall only be applicable for categories of complaints placed at **Schedule V**.

7.2. The Designated Stock Exchange (DSE) shall levy a fine of ₹ 1000 per day per complaint on the listed company for violation of Regulation 13 (1) of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 (LODR Regulations) read with SEBI circular no. SEBI/HO/CFD/CMD/CIR/P/2020/12 dated January 22, 2020.

7.3. Fines shall also be levied on companies, which are suspended from trading on the stock exchanges.

7.4. DSE shall issue a notice intimating the listed company about the levy of fines while also directing it to submit ATRs on the pending complaints and payment of the fines within 15 days from the date of such notice.

7.5. In case the listed company fails to redress the grievances and/or pay fine levied within 15 days from the date of such notice, the concerned DSE shall issue notices to the promoter(s) of such listed company, to ensure submission of ATRs on the pending complaints and payment of fines by the listed company within 10 days from the date of such notice.

7.6. In case the listed entity fails to comply with the aforesaid requirement and/ or pay fine levied within the stipulated period as per the notices, the DSE shall forthwith intimate the depositories to freeze the entire shareholding of the promoter(s) in such listed company as well as all other securities held in the demat account of the promoter(s).

7.7. The depository(ies) shall immediately freeze such demat accounts and also intimate the promoter(s) about the details of non-compliances resulting in freezing of their demat accounts.

7.8. In case the listed entity fails to pay the fine or resolve the complaint despite receipt of the notice as stated above, the DSE may initiate other action as deemed appropriate.

7.9. While issuing the aforementioned notices, the DSE shall also send intimation to other recognized stock exchange(s) where the shares of such company are listed.

7.10. The fine shall be computed and levied on a monthly basis during the non-compliance period.

7.11. Amount of fine shall continue to accrue till the date of filing of ATR to the effect of redressal of grievance by the company or till the company is compulsorily delisted, whichever is earlier.

7.12. Upon exhaustion of all options as mentioned hereinabove, and if the number of pending complaints exceed 20 or the value involved in such complaints is more than ₹ 10 lakhs, stock exchanges shall forward all the complaints against such listed companies to SEBI for further action, if any.

7.13. Stock exchanges may deviate from the above procedure and actions, if found necessary, only after recording reasons in writing.

7.14. Stock exchanges shall intimate SEBI through SCORES about all actions taken against the listed company for non-resolution of the complaints and non-payment of fines.

7.15. The time-line the actions to be taken by stock exchanges for non-resolution of investor grievances is provided in **Schedule VI**.

General provisions regarding investor grievance redressal(Annexure II)

1. Investors shall first take up their grievances for redressal with the entity concerned, through their designated persons/officials who handle issues relating to compliance and redressal of investor grievances.

2. Investors who wish to lodge a Complaint on SCORES (complainant) are required to register themselves on www.scores.gov.in by clicking on "Register here" under the "Investor Corner". While filing the registration form, details like Name of the investor, Permanent Account Number (PAN), contact details, email id, are required to be provided for effective communication and speedy redressal of the grievances. Upon successful registration, a unique user id and a password shall be generated and communicated through an acknowledgement email to the complainant.

3. In order to enhance ease, speed and accuracy in the redressal of grievance, the investor may lodge the Complaint against any Entity on SCORES within a period of one year from the date of occurrence of the cause of action, where:

3.1. The complainant has approached the Entity for redressal of the complaint and the Entity has rejected the complaint or the complainant has not received any communication from the concerned Entity; or

3.2. The complainant is not satisfied with the reply received or the redressal by the concerned Entity.

4. If any complaint filed on SCORES beyond the limitation period specified above, SEBI may reject such complaint.

5. The following types of complaints shall not be dealt through SCORES:

5.1. Complaints against companies which are unlisted/delisted and companies on Dissemination Board of Stock Exchanges (except complaints on valuation of securities).

5.2. Complaints relating to cases pending in a court or subject matter of quasi-judicial proceedings, disputes pending with Online Dispute Resolution mechanism under the aegis of Market Infrastructure Institutions etc.

5.3. Complaints falling under the purview of other regulatory bodies such as Reserve Bank of India, (RBI), Insurance Regulatory and Development Authority of India (IRDAI), Pension Fund Regulatory and Development Authority of India (PFRDAI), Competition Commission of India (CCI), or complaints falling under the purview of other ministries.

5.4. Complaints against a company under resolution under the relevant provisions of the Insolvency and Bankruptcy Code, 2016 (IBC).

5.5. Complaints against the companies where the name of company is struck off from Register of Companies (RoC) or a vanishing company as published by MCA.

5.6. Liquidated Companies or companies under liquidation.

5.7. Complaints which are in the nature of market intelligence i.e., information given to SEBI regarding violation of any of the provisions of the securities laws.

6. Notwithstanding anything specified in this circular, SEBI shall handle the first review complaint for categories of intermediaries where no Designated Body has been appointed for the purpose.

7. The complainant in the event of being dissatisfied shall give reasons for not being satisfied with the ATR and provide clear reasons for review at any stage.

8. SCORES shall only be a facilitative platform for investors to get redressal of their grievances from the concerned entity.

9. In cases where investors raise issues, which require adjudication on any third party rights, on questions of law or fact or which is in the nature of a *lis* between parties, or if investors are not satisfied with disposal on SCORES post SEBI review, they shall seek appropriate remedies through the Online Dispute Resolution mechanism in securities market. In addition, investors have the option to approach legal forums including civil courts, consumer courts etc.

10. Investors can approach the Online Dispute Resolution mechanism or other appropriate civil remedies at any point of time. In case the complainant opts for Online Dispute Resolution mechanism or other appropriate civil remedies while the complaint is pending on SCORES, the complaint shall be treated as disposed on SCORES.

Schedule I

(To SEBI/HO/OIAE/IGRD/CIR/P/2023/156 dated September 20, 2023)

S.no	Regulations	Clauses
1.	Securities and Exchange Board of India (Stock Brokers) Regulations, 1992	9(e)
2.	Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992	9(a)(1)(c); 28C
3.	Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations,1993	9(a)(1)(e); 15C
4.	Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993	9(A)(1)(c); 14B

5.	Securities and Exchange Board of India (Bankers to an Issue) Regulations, 1994	8(A)(1)(d); 16B
6.	Securities and Exchange Board of India (Mutual Funds) Regulations, 1996	60A
7.	Securities and Exchange Board of India (Collective Investment Scheme) Regulations, 1999	11(F); 14B
8.	SEBI (Issue and Listing of Securitised Debt Instruments and Security Receipts) Regulations, 2008	7C; 11(3)(r); 11A
9.	Securities and Exchange Board of India {KYC (Know Your Client) Registration Agency} Regulations, 2011	16C
10.	Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012	24A
11.	Securities and Exchange Board of India (Investment Advisers) Regulations, 2013	21(1)
12.	Securities and Exchange Board of India (Research Analysts) Regulations, 2014	26B
13.	Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014	26F
14.	Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014	26L
15.	Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015	13
16.	Securities and Exchange Board of India (Issue and Listing of Municipal Debt Securities) Regulations, 2015	27C
17.	Securities and Exchange Board of India (Depositories and Participants) Regulation, 2018	7(g), 36(2)(f); 72
18.	Securities and Exchange Board of India (Portfolio Managers) Regulations, 2020	11(d); 34A
19.	Securities and Exchange Board of India (Vault Managers) Regulations 2021	16b

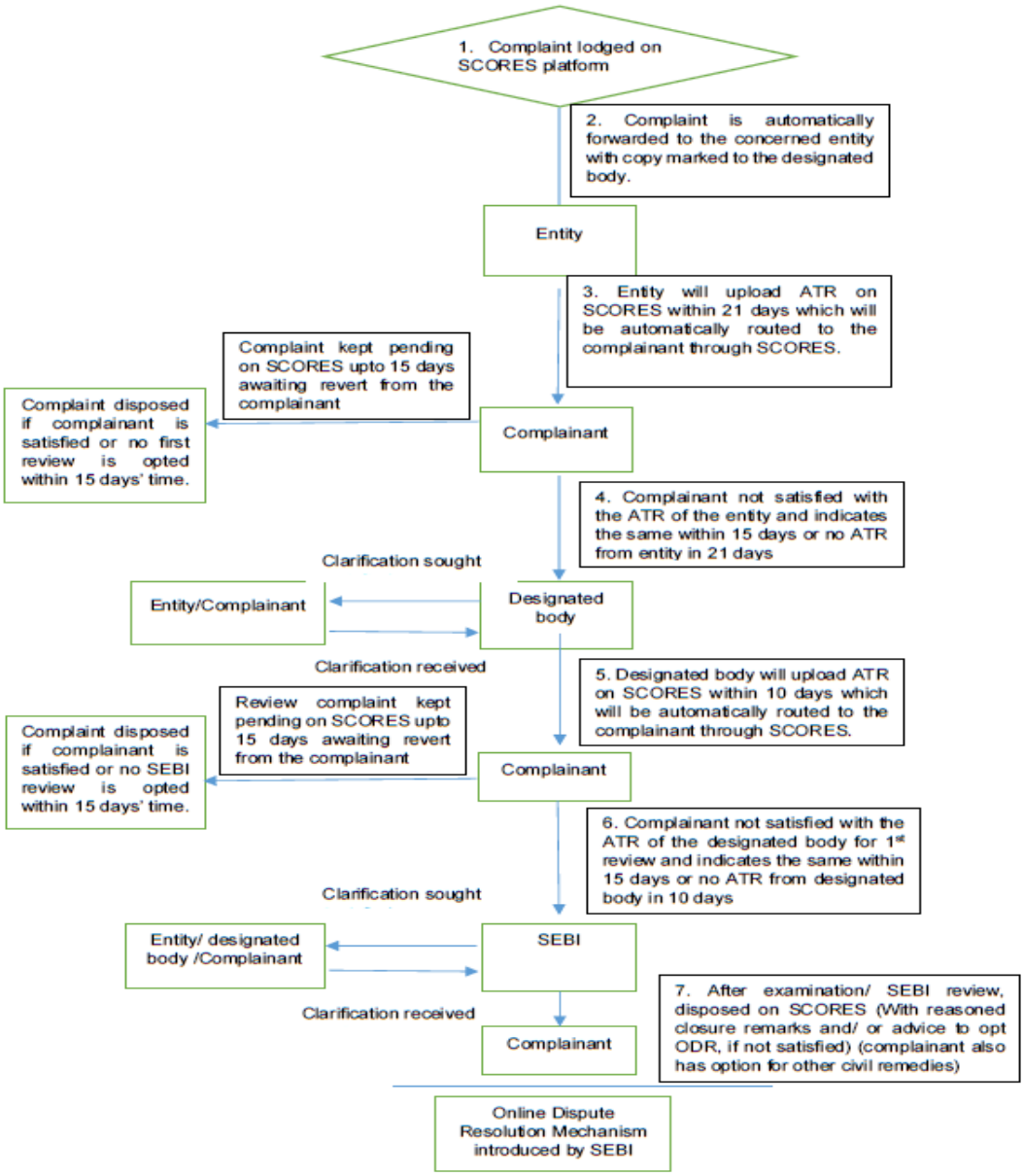
Schedule II

(To SEBI/HO/OIAE/IGRD/CIR/P/2023/156 dated September 20, 2023)

Sr. No.	Intermediary	Name of the Designated Body
1	Listed companies	Stock Exchanges
2	Merchant Bankers	Association of Investment Bankers of India (AIBI)
3	Bankers to an Issue	Association of Investment Bankers of India (AIBI)
4	Real Estate Investment Trusts	Indian REITs Association
5	Municipal Debt Securities	Stock Exchanges
6	Debenture Trustees	Trustees Association of India
7	Portfolio Managers	Association of Portfolio Managers in India (APMI)
8	Mutual Funds	Association of Mutual Funds in India (AMFI)
9	Depository Participants	Depositories
10	Investment Advisers	BSE Administration & Supervision Ltd. (BASL)
11	Registrars to an Issue and Share Transfer Agents	Stock Exchanges
12	Stock Brokers	Stock Exchanges
13	Vault Managers	Depositories

Schedule III

(To SEBI/HO/OIAE/IGRD/CIR/P/2023/156 dated September 20, 2023)



Schedule IV

(To SEBI/HO/OIAE/IGRD/CIR/P/2023/156 dated September 20, 2023)

A. Name of the Designated Body:

_____

B. Registered Office Address:

_____
_____
_____

C. Identification Number (PAN or specify)

_____

D. Date of incorporation: _____

E. SCORES Details:

I. E-mail ID (For the purpose of SCORES Authentication)

_____

II. Phone Number: _____

III. Mobile Number (Optional): _____

F. Nodal Officer Details:

I. Name: _____

II. Designation: _____

III. Mobile Number: _____

IV. E-mail ID: _____

V. Phone Number (Optional): _____

Schedule V

(To SEBI/HO/OIAE/IGRD/CIR/P/2023/156 dated September 20, 2023)

1. Non updation of address /Signature or Corrections etc.
2. Non-receipt of Bonus
3. Non receipt of Dividend
4. Non receipt duplicate debt securities certificate
5. Non-receipt of duplicate share certificate
6. Non receipt of fractional entitlement
7. Non receipt of interest for delay in dividend
8. Non receipt of interest for delay in payment of interest on debt security
9. Non receipt of interest for delay in redemption proceeds of debt security
10. Non receipt of interest for delay in refunds
11. Non receipt of interest on securities
12. Non receipt of redemption amount of debt securities
13. Non receipt of refund in Public/ Rights issue
14. Non receipt of Rights Issue form
15. Non receipt of securities after conversion/ endorsement/ consolidation/ splitting
16. Non receipt of securities after transfer
17. Non receipt of securities in public/ rights issue
18. Non receipt of shares after conversion/ endorsement/ consolidation/ splitting
19. Non receipt of shares after transfer
20. Non receipt of shares after transmission
21. Non receipt of shares in public/ rights issue (including allotment letter)
22. Non-receipt of interest for delay in dispatch/credit of securities
23. Receipt of refund/ dividend in physical mode instead of electronic mode
24. Receipt of shares in physical mode instead of electronic mode
25. Demat/Remat
26. Complaints of any other nature as may be informed from time to time

Schedule VI

Timelines for handling of complaints and actions in case of non-compliances

Sr. No.	Activity	No of calendar days
1.	**Complaint handling:**	
a.	Complaint received in SCORES by the listed company	T
2.	**Action in case of non-compliances:**	
a.	Notice to Listed company intimating the fine @ ₹ 1000/- per day, per complaint to be levied for not resolving the complaints within 60 days	T+61
b.	Notice to Promoters for non-resolution of complaints and non-payment of fine to the stock exchange.	T+76
c.	Freezing of promoter's shareholdings (i.e. entire shareholding of the promoter(s) in listed company as well as all other securities held in the demat account of the promoter(s)) in demat account.	T+86
d.	Stock exchanges may take any other actions, as deemed appropriate.	
e.	Once Stock exchange has exhausted all options and yet the number of pending complaints exceed 20 or the value involved is more than ₹ 10 lakhs, the Exchange to forward the details of such Listed companies to SEBI for further action, if any	

SCORES 2.0 New Technology to strengthen SEBI Complaint Redressal System for Investors

In its continuous pursuit of protection of interests of investors in the securities market, SEBI has launched the new version of the SEBI Complaint Redress System (SCORES 2.0) on 1st April, 2024.

The new version of SCORES strengthens the investor complaint redress mechanism in the securities market by making the process more efficient through auto-routing, auto-escalation, monitoring by the 'Designated Bodies and reduction of timelines. The new SCORES system has also been made more user friendly.

SCORES is an online system where investors in securities market can lodge their complaints through web URL and an App.

SEBI vide Circular dated September 20, 2023 had appointed the Designated Bodies and defined the roles and responsibilities of the SEBI regulated entities and the Designated Bodies.

The website URL for SCORES 2.0 from April 01, 2024 is https://scores.sebi.gov.in

The salient features of SCORES 2.0 are as follows:

i. Reduced and uniform timelines for redressal of investor complaints across the Securities Market i.e. 21 Calendar days from date of receipt of complaint.

ii. Introduction of auto-routing of complaints to the concerned regulated entity so as to eliminate time lapses, if any, in the flow of complaints.

iii. Monitoring of the timely redressal of the investors' complaints by the 'Designated Bodies'.

iv. Providing two levels of review: First review by the 'Designated Body' if the investor is dissatisfied with the resolution provided by the concerned regulated entity. Second review by SEBI if the investor is still dissatisfied after the first review.

v. Introduction of auto-escalation of complaint to the next level in case of nonadherence to the prescribed timelines by the regulated entity or the Designated Body as the case may be.

vi. Integration with KYC Registration Agency database for easy registration of the investor on to SCORES.

CONCILIATION ARBITRATION PROCEEDINGS UNDER THE MECHANISM AND PROCEDURE

Master Circular for Online Resolution of Disputes in the Indian Securities Market updated as on December 20, 2023 (December 28, 2023)

In furtherance of the interests of investors and consequent to the gazette notification (dated July 3, 2023) of the SEBI (Alternative Dispute Resolution Mechanism) (Amendment) Regulations, 2023 the existing dispute resolution mechanism in the Indian securities market was streamlined under the aegis of Stock Exchanges and Depositories (collectively referred to as Market Infrastructure Institutions (**MIIs**)[presently excluding Clearing Corporations and its constituents], by expanding their scope and by establishing a common Online Dispute Resolution Portal ("**ODR Portal**") which harnesses online conciliation and online arbitration for resolution of disputes arising in the Indian Securities Market.

Investors and Listed Companies/Specified Intermediaries/Regulated entities under the ambit of ODR

Disputes between Investors/Clients (including institutional/corporate clients) and listed companies (including their registrar and share transfer agents) or any of the specified intermediaries / regulated entities in securities market (as specified in **Schedule A**) arising out of latter's activities in the securities market, will be resolved in accordance with this circular and by harnessing online conciliation and/or online arbitration as specified in this circular. Listed companies / specified intermediaries / regulated entities OR their clients/investors (or holders on account of nominations or transmission being given effect to) may also refer any unresolved issue of any service requests / service related complaints2 for due resolution by harnessing online conciliation and/or online arbitration as specified in this circular.

Disputes between institutional or corporate clients and specified intermediaries / regulated entities in securities market as specified in **Schedule B** can be resolved, at the option of the institutional or corporate clients:

a. in accordance with this circular and by harnessing online conciliation and/or online arbitration as specified in this circular; OR

b. by harnessing any independent institutional mediation, independent institutional conciliation and / or independent arbitration institution in India.

Seat and Venue

The seat and venue of mediation, conciliation and/or arbitration shall be in India and can be conducted online.

Fees Charges and Cost

The fees, charges and costs for the independent mediation institution or independent conciliation institution and/or independent arbitration institution (and of the mediators/conciliators/arbitrators), and other applicable costs, charges and expenses may be as prescribed by such institution/s or as agreed upon by the parties with such institution/s.

The claims / complaints / disputes that arise from the activities or roles performed or to be performed by the specified intermediaries or regulated entities pertaining to the Indian securities market are in scope of this clause.

For existing and continuing contractual arrangements between institutional or corporate clients and specified intermediaries / regulated entities in the securities market as specified in **Schedule B**, such option should be exercised within a period of six months, failing which option as specified in (a) above will be deemed to have been exercised. For all new contractual arrangements, such choice should be exercised at the time of entering into such arrangements.

Disputes between MII and its constituents which are contractual in nature shall be included in the framework at a future date as may be specified while expressly excluding disputes/appeals/reviews/challenges pertaining to the regulatory, enforcement role and roles of similar nature played by MIIs.

Introduction of the common Online Dispute Resolution Portal

The MIIs shall, in consultation with their empaneled ODR Institutions, establish and operate a common Online Dispute Resolution Portal ("**ODR Portal**"). The MIIs will make joint efforts to develop and operationalize the ODR Platform. For the purposes of implementation of this circular, the MIIs shall enter into an agreement amongst themselves, which will, *inter alia,* outline the nature of their responsibilities, the cost of development, operating, upgradation, maintenance (including security of data of investors and intermediaries as specified by the Board from time to time) and for inspection and/or audit of the ODR Platform. The Board may, from time to time, undertake inspection in order to ensure proper functioning of ODR Portal and MIIs shall provide complete cooperation to the Board in this regard.

It is clarified that MIIs which are initially excluded from the round robin system (as described below) are not required to incur any costs for development and maintenance of the ODR Portal during the period of such exclusion.

Each MIIs will identify and empanel one or more independent ODR Institutions which are capable of undertaking time-bound online conciliation and/or online arbitration (in accordance with the Arbitration and Conciliation Act, 1996 and any other applicable laws) that harness online/audio-video technologies and have duly qualified conciliators and arbitrators. The norms for empanelment of ODR Institutions are specified in **Schedule C** of this circular as also the continuing obligations of the ODR Institutions. The ODR Portal shall have due connectivity with each such ODR Institution as is required for undertaking the role and activities envisaged in this circular. Such ODR Portal shall establish due connectivity with the SEBI SCORES portal / SEBI Intermediary portal.

All the MIIs shall participate on the ODR Portal and provide investors/clients and listed companies (including their registrar and share transfer agents) and the specified intermediaries / regulated entities in the securities market access to the ODR Portal for resolution of disputes between an investor/client and listed companies (including their registrar and share transfer agents) and the specified intermediaries / regulated entities in the securities market, through time bound online conciliation and/or online arbitration.

All listed companies / specified intermediaries / regulated entities in the securities market (collectively referred to as "**Market Participant/s**") shall enroll on the ODR Portal within the timelines as specified (as mentioned later) and shall be deemed to have been enrolled on the ODR Portal at the end such specified timeline. The enrolment process shall also include executing electronic terms/agreements with MIIs and the ODR Institutions, which shall be deemed to be executed at the end such specified timeline. Facility to enroll Market Participants into the ODR Portal by utilising the credentials used for SEBI SCORES portal / SEBI Intermediary portal may be also provided in the ODR Portal. Entities that obtain registration

from the Board as an intermediary or issuers that are getting their securities listed on or after the date of implementation of this circular, shall enroll in the ODR Portal immediately upon grant of registration or listing, as the case may be.

All market participants and MIIs are advised to display a link to the ODR Portal on the home page of their websites and mobile apps.

The modalities of the ODR Portal along with the relevant operational guidelines and instructions may be specified by the Board from time to time.

Initiation of the dispute resolution process

An investor/client shall first take up his/her/their grievance with the Market Participant by lodging a complaint directly with the concerned Market Participant. If the grievance is not redressed satisfactorily, the investor/client may, in accordance with the SCORES guidelines, escalate the same through the SCORES Portal in accordance with the process laid out therein. After exhausting these options for resolution of the grievance, if the investor/client is still not satisfied with the outcome, he/she/they can initiate dispute resolution through the ODR Portal.

Alternatively, the investor/client can initiate dispute resolution through the ODR Portal if the grievance lodged with the concerned Market Participant was not satisfactorily resolved or at any stage of the subsequent escalations mentioned [above] (prior to or at the end of such escalation/s). The concerned Market Participant may also initiate dispute resolution through the ODR Portal after having given due notice of at least 15 calendar days to the investor/client for resolution of the dispute which has not been satisfactorily resolved between them.

The dispute resolution through the ODR Portal can be initiated when the complaint/dispute is not under consideration in terms of the above 1st paragraph above or SCOREs guidelines as applicable or not pending before any arbitral process, court, tribunal or consumer forum or are non-arbitrable in terms of Indian law (including when moratorium under the Insolvency and Bankruptcy Code is in operation due to the insolvency process or if liquidation or winding up process has been commenced against the Market Participant) or is against the Government of India / President of India or a State Government / Governor of a State.

It is clarified that Listed companies (and their registrars and transfer agents), specified intermediaries and regulated entities specified in Schedules A and B as well as institutional or corporate clients shall initiate claims or disputes in accordance with paragraph (a) and/or (b)[in the topic **Investors and Listed Companies/Specified Intermediaries/Regulated entities under the ambit of ODR**], as applicable, unless the matter is non-arbitrable in terms of Indian law (including when moratorium under the Insolvency and Bankruptcy Code is in operation due to the insolvency process or if liquidation or winding up process has been commenced) or is against the Government of India / President of India or a State Government / Governor of a State.

The dispute resolution through the ODR Portal can be initiated when within the applicable law of limitation (reckoned from the date when the issue arose/occurred that has resulted in the complaint/date of the last transaction or the date of disputed transaction, whichever is later).

ODR Portal and allocation system

The ODR Portal shall have the necessary features and facilities to, *inter alia*, enrol the investor/client and the Market Participant, and to file the complaint/dispute and to upload any documents or papers pertaining thereto. It shall also have a facility to provide status updates on the complaint / dispute which would be obtained from the ODR Institutions. The features and facilities shall be periodically reviewed and upgraded by the MIIs as well as new features and facilities added from time to time as required by the Board. The ODR Portal shall be subject to inspection and/or audit for, inter alia, verifying the adherence to these norms and applicable SEBI regulations, circulars and advisories.

A complaint/dispute initiated through the ODR Portal will be referred to an ODR Institution empaneled by a MII and the allocation system on a market-wide basis will be a round-robin system to govern the allocation of each such dispute among all such empaneled ODR Institution/s *subject that* for an initial period (as specified by the Board):

a. complaints/disputes arising with a specific trading member for an exchange transaction or a listed company, shall be referred to the ODR Institution/s empaneled by the relevant Stock Exchange6, and disputes arising with a specific depository participant, shall be referred to the ODR institution/s empaneled by the relevant DepositoryIf the MII has empaneled more than one ODR Institution, then at such level as well, a round robin system will govern allocation of references among them.

b. Further, Stock Exchanges operating only commodities segment, the ODR Institution/s empaneled by such Stock Exchange is/are excluded from the market-wide round robin system. Other conditions in (a) above will continue to apply to such Stock Exchanges and ODR Institution/s.

c. Further, references to ODR Institutions shall be made after a review of such complaint/dispute by the relevant MII with the aim of amicable resolution and which review shall be concluded within 21 calendar days (or such other period that the Board may specify).

Conciliation

The ODR Institution that receives the reference of the complaint/dispute shall appoint a sole independent and neutral conciliator from its panel of conciliators. Such conciliator shall have relevant qualifications or expertise (please refer to **Schedule D)**, and should not be connected with or linked to any disputing party. MIIs shall ensure that appropriate measures are put in place regarding appointment of conciliators by the ODR Institutions.

Such conciliator shall conduct one or more meeting/s for the disputing parties to reach an amicable and consensual resolution within 21 calendar days (unless extended for a maximum period of 10 calendar days by consent of the disputing parties to be recorded in writing/electronically) from the date of appointment of conciliator by the ODR Institution, which shall do so within 5 days of receipt of reference of the complaint/dispute by the ODR Institution. Apart from attempting to actively facilitate consensual resolution of the complaint/dispute, the

conciliator may consider advising the Market Participant to render required service in case of service-related complaints/disputes and/or consider issuance of findings on admissibility of the complaint/dispute or otherwise in case of trade related complaints/dispute (as the case may be).

If the process of conciliation is successful, the same shall be concluded by a duly executed settlement agreement between the disputing parties. Such an agreement shall be executed and stamped through an online mode, as permissible in law. When such agreement requires the Market Participant to pay the admissible claim value to the investor/client, the MII shall monitor the due payment/adherence to the terms of the settlement agreement until due receipt by the investor/client and/or performance of the required terms of settlement agreement.

In case the matter is not resolved through the conciliation process within the 21 calendar days (or within the extended period of 10 calendar days, extended by consent of the disputing parties):

a. the conciliator should ascertain the admissible claim value of the complaint/dispute that the conciliator determines is payable to the investor/client and notify the disputing parties as well as the ODR Institution and the MII of the same. Such determination should also be made in all claims/complaints/disputes where the monetary value has not been ascribed by the person initiating the dispute. The nature of determination made by the conciliator is only to provide an admissible claim value of the complaint / dispute for purposes of appropriate slab for computation of fees being applied for online arbitration. Subject to the forgoing, the investor / client, the market participant and the arbitrator/s would not be bound by such determination for the making or defending or deciding the claim / complaint / dispute, as the case may be.

b. An investor/client may pursue online arbitration (which will be administered by the ODR Institution, which also facilitated the conduct of conciliation) on or after the conclusion of a conciliation process when the matter has not been resolved through such process, subject to payment of fees as applicable for online arbitration. The Market Participant against whom the investor/client pursues the online arbitration shall participate in the arbitration process. Accordingly, within 10 days of the initiation of the online arbitration by the investor/client, the Market Participant shall make the deposit of 100% of the admissible claim value with the relevant MII and make the payment of the fees as applicable for online arbitration. Non-adherence of the foregoing by the Market Participant may result in action against the Market Participant by MIIs and/or the Board.

c. In case the Market Participant wishes to pursue online arbitration (which will be administered by the ODR Institution which facilitated the conduct of conciliation), it shall intimate the ODR Institution within 10 days of the conclusion of the conciliation process of its intent to do so and within further 5 days of this intimation, shall deposit 100% of the admissible claim value with the relevant MII and make the payment of fees as applicable for online arbitration for initiating the online arbitration. In case the Market Participant fails to deposit the amount then they may not initiate online arbitration and they may also face consequences as determined necessary or appropriate by the Stock Exchange and could also be liable to be declared as not ‘Fit and Proper’ in terms of the SEBI (Intermediaries) Regulations, 2008 and would be, inter-alia, liable to have their registration cancelled or their business activities suspended. A listed company that fails to deposit the amount may also face consequences as determined necessary or appropriate by the

Stock Exchange. On an application made by the investor/client in this behalf to the relevant MII, the MII may, from the deposit received, release such amount to the investor/client not exceeding Rs. 5,00,000/- (Rupees Five lakhs) or such sum as may be specified from time to time. On or before release of the said amount to the investor/client, the MII shall obtain appropriate undertaking/ indemnity / security in such form, manner and substance from the investor/client to ensure return of the amount so released, in case the arbitration proceedings are decided against the investor/client. If the arbitration proceeding is decided against the investor/client, subject to the terms of the arbitral award, such investor/client should return the released amounts. If the investor/client fails to return the amount released, then the investor/client (based on PAN of the investor/client) shall not be allowed to trade on any of the Stock Exchanges or participate in the Indian Securities Market till such time the investor/client returns the amount to the Market Participant. Further, the securities lying in the demat account(s) or the mutual fund holdings of the investor/client shall be frozen till such time as the investor/client returns the amount to the Market Participant. If security had been obtained, the same could be enforced/realised and adjusted towards the amount required to be returned. In the event, the arbitration proceeding is decided in favour of the investor/client, subject to the terms of the arbitral award, the MII shall release the balance deposit held by it (as deposited by the Market Participant) to the investor/client. The MII shall also monitor the due compliance by the Market Participant with the terms of the arbitral award.

Arbitration

When the investor/client and/or the Market Participant pursue online arbitration, the ODR Institution shall appoint a sole independent and neutral arbitrator from its panel of arbitrators within 5 calendar days of reference and receipt of fees, costs and charges as applicable. Such arbitrator shall have relevant qualifications or expertise (please refer to **Schedule D**), and should not be connected with or linked to any disputing party. In the event that the aggregate of the claim and/or counter-claim amount exceeds Rs 30,00,000/- (Rupees Thirty Lakhs) or such amount as the Board may specify from time to time, the matter shall be referred to an Arbitral Tribunal consisting of three Arbitrators within 5 calendar days of reference and receipt of fees, costs and charges as applicable. MIIs shall ensure that measures are put in place regarding appointment of arbitrators by the ODR Institutions. In the instance where the parties wish to withdraw from arbitration before the arbitrator has been appointed then the fees shall be refunded after deducting the applicable expenses not exceeding Rs 100/- (Rupees One Hundred). However, withdrawal shall not be permitted after appointment of an arbitrator.

Subject to value of claim and/or counter-claim being in excess of Rs 1,00,000/- (Rupees One Lakh), the Sole Arbitrator or Arbitral Tribunal shall conduct one or more hearing/s and pass the arbitral award within 30 calendar days (or such other period as the Board may specify) of the appointment in the matter. When the value of claim and/or counter-claim is Rs 1,00,000/- (Rupees One Lakh) or below (or such other sum as the Board may specify from time to time), the Sole Arbitrator shall conduct a document-only arbitration process and pass the arbitral award within 30 calendar days (or such other period as the Board may specify) of the appointment in the matter. However, the arbitrator, for reasons to be recorded in writing/electronically , may grant a hearing to the parties to the dispute. The Sole Arbitrator or Arbitral Tribunal shall be at liberty to extend such time for disputes exceeding claims and/or counterclaims of Rs 1,00,000/-

(Rupees One Lakh) (or such other sum as the Board may specify from time to time), upto a further period of 30 calendar days (or such other period as the Board may specify) and for reasons to be recorded in writing/electronically, when the matter requires detailed consideration. The Sole Arbitrator or Arbitral Tribunal may, having regard to the nature of the claim and/or counterclaim, provide interim relief as may be required for reasons to be recorded after affording hearing to the parties to the dispute. The parties may make an application under the relevant section of the Arbitration and Conciliation Act, 1996 for correction/rectification of the award.

Upon the conclusion of the arbitration proceedings and issuance of the arbitral award, subject to the terms of the arbitral award, when such arbitral award requires payment of any amount by the Market Participant or performance by it of a certain nature, then such payment shall be made by the Market Participant within a period of 15 calendar days from the date of the arbitral award (unless such award requires payment sooner), and/or performance within such period as specified by the arbitral award. The MII shall monitor the due payment/adherence to the terms of the arbitral award until due receipt by the investor/client and/or performance of the terms of arbitral award. In the event, the parties do not comply with the arbitral award, the relevant MII shall inform the Board regarding such non-compliance on a periodic basis. Furthermore, the relevant MII shall provide necessary assistance to the investor/client for enforcement of the arbitral award.

Upon the issuance/pronouncement of the arbitral award, the party against whom order has been passed, will be required to submit its intention to challenge the award under Section 34 of the Arbitration Act within 7 calendar days in the ODR Portal for onward notification to the party/ies in whose favour the arbitral award has been passed and the relevant MII. Further, in the course of such a challenge, if a stay is not granted within 3 months from the date of the receipt of award, complete adherence to the terms of the arbitral award must be done.

If the Market Participant wishes to challenge such an arbitral award, then the Market Participant must deposit 100% of the amounts payable in terms of the arbitral award with the relevant MII prior to initiation of the challenge. In case the specified intermediary/regulated entity fails to deposit the amount then they may also face consequences as determined necessary or appropriate by the Stock Exchange and could also be liable to be declared as not 'Fit and Proper' in terms of the SEBI (Intermediaries) Regulations, 2008 and would be inter-alia, liable to have their registration cancelled or their business activities suspended. A listed company that fails to deposit the amount may also face consequences as determined necessary or appropriate by the Stock Exchange. On an application made by the investor/client in this behalf to the relevant MII, the MII may, from the deposit received, release such amount to the investor/client not exceeding Rs 5,00,000/- (Rupees five lakhs) or such sum as may be specified from time to time. On or before release of the said amount to the investor/client, the MII shall obtain appropriate undertaking/ indemnity / security from the investor/client to ensure return of the amount so released, in case the challenge is decided against the investor/client. If the challenge is decided against the investor/client, subject to the judgement of the appellate forum, such investor/client should return the released amounts. If the investor/client fails to return the amount released, then the investor/client (based on PAN of the investor/client) shall not be allowed to trade on any of the Stock Exchanges or participate in the Indian Securities Market till such time the investor/client returns the amount to the Market Participant.

Further, the securities lying in the demat account(s) or the mutual fund holdings of the investor/client shall be frozen till such time as the investor/client returns the amount to the Market Participant. If security had been obtained, the same could be enforced/realised and adjusted towards the amount required to be returned. In the event, the challenge is decided in favour of the investor/client, subject to the terms of the judgement of the appellate forum, the MII shall release the balance deposit held by it (as deposited by the Market Participant) to the investor/client. The MII shall also monitor the due compliance by the Market Participant with the terms of the arbitral award/judgement of the appellate forum.

Form of Proceedings

The ODR Institutions shall conduct conciliation and arbitration in the online mode, enabling online/audio-video participation by the investor/client, the Market Participant and the conciliator or the arbitrator as the case may be. The investor/client may also participate in such online conciliation and arbitration by accessing/utilizing the facilities of Investor Service Centers (ISCs) operated by any of the MIIs.

The venue and seat of the online proceedings shall be deemed to be the place:

a) In case of disputes between investor/client and listed companies (including their registrar and share transfer agents) or any of the specified intermediaries / regulated entities in securities market (as specified in Schedule A): where the investor resides permanently or, where the investor is not an individual, the place where it is registered in India or has its principal place of business in India, as provided in the relevant KYC documents

b) In case of disputes between institutional or corporate clients and specified intermediaries / regulated entities in securities market as specified in Schedule B:

(i) where the institutional or corporate clients has its registered in India or has its principal place of business in India, as provided in the relevant KYC documents, and

(ii) if in case the institutional or corporate client is not registered in India or does not have its principal place of business in India, then the place where the specified intermediaries / regulated entities in securities market as specified in Schedule B has its registered in India or has its principal place of business in India or

(iii) such court of competent jurisdiction in India as the institutional or corporate clients and specified intermediaries / regulated entities in securities market as specified in Schedule B may agree upon.

Fees & Charges

The costs of the dispute resolution mechanism on the ODR Portal will be borne in the following manner:

a. There shall be no fees for registration of a complaint/dispute on the ODR Portal.

b. Fees for conciliation process (*irrespective of claim or counter-claim value*) will be as under:

	Amount in Rupees
Conciliator's fee (to be collected by ODR Institution and paid to Conciliator) - for successful conciliation - for unsuccessful conciliation	₹ 4,800/- ₹ 3,240/-
ODR Institution's fees, in addition to the conciliator's fees (to be collected by ODR Institution)	₹ 600/-
Applicable GST, Stamp Duty, etc. on actual outgoings shall be borne by the concerned Market Participant	

Such fees may be borne by the MIIs and will be recoverable by them from the concerned Market Participant against whom the complaint/dispute is raised. Such fees shall be borne directly by the concerned Market Participant if it is initiating the dispute process. The Market Participant shall not shift the incidence of such fees to the investor/client at any time.

Unsuccessful Conciliation: In the event the disputing parties are not able to arrive at a settlement within the stipulated time (or such extended period as agreed to by them) it shall be said to be unsuccessful conciliation.

Late Fees: Initiation of conciliation process after six months from the date of transaction/dispute arising will require payment of Rs 1,000/- by the initiator of the complaint/dispute (whether such initiator be the investor/client or the Market Participant) and shall be collected by the MIIs and applied as specified by the Board from time to time.

c. The fees for the arbitration process will be as under:

	Rs. 0 –1 lakh *	Above Rs. 1 lakh - 10 lakh	Above Rs. 10 lakh - 20 lakh	Above Rs. 20 lakh - 30 lakh	Above Rs. 30 lakh - 50 lakh	Above Rs. 50 lakh – Rs. 1 crore
Arbitrator's fee (*to be collected by*	₹4,800/-	₹8,000/-	₹12,000/-	₹16,000/-	₹60,000/- **	₹1,20,000/- **

ODR Institution and paid to Arbitrator)						
ODR Institution's fees, in addition to the arbitrator's fees (*to be collected by ODR Institution)*	₹600/-	₹1,000/-	₹1,500/-	₹2,000/-	₹7,500/-	₹15,000/-
Applicable GST, Stamp Duty, etc. on actual outgoings						

* This slab will be applicable for service request related disputes also
** Fee for panel of arbitrators shall be split into a ratio of 40:30:30 with the higher proportion being payable to the arbitrator writing the arbitral award.

Further, for claims of Rs. 1 crore and above, an ad valorem fees @ 1% of the claim value or Rs.1,20,000/-, whichever is more, towards Arbitrator's Fees** (to be collected by the ODR institution and paid to the arbitrator) and fees @ Rs 35,000/- towards ODR Institution's Fees, in addition to the arbitrator's fees (to be collected by the ODR institution), together with Applicable GST, Stamp Duty, etc. on actual outgoings, shall be applicable.

Such fees will be payable at the time of initiation of the arbitration by the initiator (whether the investor/client *or* the concerned Market Participant), and by the person against whom the arbitration has been initiated. When the person initiating the arbitration has not specified a claim amount or has specified a lower claim amount, the admissible claim value as determined by the conciliator shall be reckoned for arriving at the claim value in such arbitration being initiated. The investor may choose to initiate arbitration for a higher claim value subject to payment of applicable fees and charges.

Such fees have to be deposited at the time of choosing to initiate arbitration through the ODR Portal within 7 days or such period as specified from time to time. In case the person against whom the arbitration has been initiated fails to deposit the fee payable within such period as

specified then the person choosing to initiate the arbitration can deposit the fees payable on such person's behalf and shall be recoverable from such person through the arbitration process.

Subject to the terms of the arbitral award, the person who is successful in the arbitration proceedings shall receive a refund of amounts deposited by such person.

Late Fees: Arbitration initiated after one month of failure of conciliation and upto six months, the fees payable would be double of the non-refundable fees specified in the table above. Arbitration initiated after six months by a Market Participant will require payment of, additional fee of 50% of the fees, specified in the table above applicable per additional month of delay and which shall be on non-refundable basis. Such late fees shall be collected by the MIIs and applied in relation to operationalization and effective functioning of the ODR Platform and for the purposes as specified by the Board from time to time. The concerned ODR Institution may collect this fee on behalf of the MII as per mutually agreed terms between them.

The fees shall be uniform across MIIs, ODR Institutions, conciliators and arbitrators.

All other usage or administrative fees as well as out-of-pocket expenses borne by the MIIs or the ODR Institutions in the management or operation or use of the ODR Portal would be subsumed in these fees and would not be separately chargeable.

Empanelment and Training of the Panel of Conciliator and Arbitrators

All MIIs and the ODR Institutions empaneled by the MIIs shall ensure that:

a. The number of conciliators and arbitrators on the panel of the ODR Institutions is commensurate to the number of references of complaints/disputes received so that a conciliator / arbitrator / panel of arbitrators handle a reasonable number of references simultaneously and that all references are disposed of within the prescribed time.

b. The conciliators and arbitrators on the panel of the ODR Institutions should have undergone training and certification program/s or possess sufficient experience for such individual being regarded qualified or expert in online dispute resolution (conciliation or arbitration) and technology, finance, securities law, securities product or services, etc. to cater to the specific nature of a given complaint/dispute arising in the Indian securities market or such programs as specified by the Board from time to time (including courses provided by National Institute for Securities Market – NISM). Such training shall be taken on a periodic basis and at least annually.

Initially, all the members of IGRCs or arbitrators who have been at present approved by the Board shall be eligible to be empaneled by the ODR Institutions.

c. The conciliators and arbitrators on the panel of the ODR Institutions shall be evaluated annually. MIIs will require the empaneled ODR Institution to submit an evaluation report to the MII.

d. Information on conciliators and arbitrators on the panel of the ODR Institutions will be disseminated on the website of each ODR Institution, including brief profile, qualifications, training and certifications, areas of experience, number of conciliation/arbitration matters handled, etc.

e. The mode and manner for an individual to be added to the panel of the ODR Institutions shall be specified by it, including the required experience and/or training and certifications.

f. The conciliator or arbitrators should be neutral and independent in respect of each and every matter or reference received by them, and not connected with or linked to any disputing party in any manner whatsoever.

Roles and Responsibilities of MIIs

MIIs shall enter into appropriate agreements with ODR Institutions outlining the role and responsibilities of each party in adherence to this circular, and also specify mechanism for handling and resolution of their inter-se disputes. The MIIs and the ODR Institutions empaneled by MIIs may also enter into necessary and appropriate contractual frameworks with the Market Participants, for them and their investors/clients in the Indian Securities Market, participating on the ODR Portal and in the ODR mechanism as specified.

All MIIs (and the ODR Institutions empaneled by MIIs as applicable) shall enter into agreements with financial institutions/Banks for opening accounts and effective receipt, payment and disbursal of any amount including the fees, payments as required to be made vide the settlement agreement / arbitral awards or at the time of initiating an arbitration or challenge to an arbitral award, etc.

MIIs shall ensure that resolution of complaints/disputes referred on the ODR Portal are undertaken by the ODR Institutions empaneled by the MIIs within the stipulated timelines.

MIIs and the ODR Institutions empaneled by the MIIs, shall maintain Management Information Systems (**MIS**) reports, which shall be shared with the concerned Market Participant so the latter can adequately track timelines of any dispute. The Board may also require MIIs to furnish MIS reports in such form and on such periodicity as it may specify.

MIIs and the ODR Institutions empaneled by the MIIs, shall maintain relevant records, including directions/recommendations/orders passed at pre-conciliation, conciliation and arbitration stage for the period as specified in the extant law, and produced to relevant authorities as and when required. MIIs shall also ensure, in terms of their internal processes and contractual arrangements with ODR Institutions, that documents are adequately preserved, including in cases of change in the ODR Institution.

The ODR Portal and the facilities provided by the ODR Institutions will be user-friendly and accessible online/through audio-video to all the concerned parties and stakeholders, at all times.

The ODR Institutions to whom the dispute is referred and the Market Participant which is party to the dispute shall provide complete cooperation to the conciliator and/or arbitrator and/or panel of arbitrators including providing any information required to resolve the complaint in effective manner and within stipulated timelines.

MIIs, ODR Institutions and the Market Participants shall make reasonable efforts to undertake promotion of investor education and investor awareness programmes through seminars, workshops, publications, training programmes etc. aimed at creating awareness about the ODR Portal for the Indian Securities Market.

The MIIs shall lay down or modify their Code of Conduct, outlining the ethical standards that every party viz. the ODR Institution empaneled by the MIIs, Market Participants, the conciliators, the arbitrators must follow, and espouse the interests of investors in the Indian Securities Market, and resolve their complaints/disputes efficiently and in a time-bound manner.

The MIIs and the ODR Institution empaneled by the MIIs shall publish at such frequency as specified, statistics on the ODR Portal which provide information as to:

a. Aggregate references of complaints/disputes received

b. Aggregate number of complaints/disputes resolved by means of conciliation

c. Aggregate number of complaints/disputes resolved by means of arbitration

d. Aggregate value of claims decided in favour of investors/clients

e. Summary of complaints/disputes on the ODR Portal against each category of specified intermediary or regulated entity and against listed companies

Responsibilities of the Market Participants

All agreements, contractual frameworks or relationships entered into by Market Participants with investors/clients in the Indian Securities market presently existing or entered into hereafter shall stand amended or be deemed to incorporate provision to the effect that the parties agree to undertake online conciliation and/or online arbitration by participating in the ODR Portal and/or undertaking dispute resolution in the manner specified in this Circular.

The Market Participants shall promptly attend to all complaints or disputes raised by its investors or clients in accordance with applicable SEBI rules, regulations and circulars. The communications shall clearly specify, the availability of the SCOREs portal and the ODR Portal to the investor/client and that the same could be accessed by such investor/client if unsatisfied with the response (or the lack thereof) of the Market Participant.

The Market Participants shall duly train their staff in attending to complaints/disputes and in handling the references arising from the SCOREs portal or the ODR Portal, and in participating

in online conciliation and arbitration. Due cooperation and coordination with the MIIs and with the ODR Institutions shall be ensured by the Market Participants.

The Board may require the Market Participants to maintain such level of interest-free deposit with the MIIs or with the concerned designated body identified vide the revised SCOREs guidelines and shall be such sums that it considers necessary and appropriate for honouring of any arbitral awards or amounts payable pending initiation of arbitration or challenge to an arbitral award. The amount of such deposit may vary depending on the category of Market Participant and may factor in the extent and nature of complaints or disputes against any specified Market Participant that are observable.

Timelines for Implementation

The provisions of this Circular will be implemented in phases:

The first phase shall include:

a. development of the ODR Portal, empanelment of ODR Institutions by the MIIs, empanelment of conciliators and arbitrators by such ODR Institutions on or before August 1, 2023

b. registration of Trading Members and Depository Participants on the ODR Portal by August 15, 2023, and

c. commencement of registering of complaints/disputes against brokers and depository participants and their resolution on and from August 16, 2023.

The second phase shall include:

a. registration of all other Market Participants on the ODR Portal by September 15, 2023

b. commencement of registering of complaints/disputes against all other Market Participants and their resolution on and from September 16, 2023, and

c. implementation of related processes and requirements envisaged in this Circular shall be in effect by September 16, 2023.

The Market Participants are directed to bring the provisions of this circular to the notice of the investors/clients and also to disseminate the same on their website.

This Circular supersedes the circulars/directions (and /or sections of the same dealing with mediation, conciliation and arbitration) issued by the Board till date on the subject matter and such supersession shall be the date of implementation of the first phase or second phase, as applicable, specified above. For ease of reference, such circulars are listed below:

a. Circular No. SEBI/HO/MRD1/ICC1/CIR/P/2022/94 dated July 4, 2022

b. Circular No. SEBI/HO/MRDSD/DOS3/P/CIR/2022/78 dated June 3, 2022
c. Circular No: SEBI/HO/MIRSD/MIRSD_RTAMB/P/CIR/2022/76 dated May 30, 2022
d. Circular No.: SEBI/HO/CFD/SSEP/CIR/P/2022/48 dated April 8, 2022
e. Circular No SEBI/HO/CDMRD/DoC/P/CIR/2021/649 dated October 22, 2021
f. Circular No. SEBI/HO/MRD1/ICC1/CIR/P/2021/625 dated September 2, 2021
g. Circular No. SEBI/HO/MIRSD/DOC/CIR/P/2020/226 dated November 6, 2020
h. Circular No. SEBI/HO/MRD/DDAP/CIR/P/2020/16 dated January 28, 2020
i. Circular No. CIR/CDMRD/DCE/CIR/P/2018/48 dated March 14, 2018
j. Circular No. CIR/CDMRD/DEICE/CIR/P/2017/77 dated July 11, 2017
k. Circular No: CIR/CDMRD/DEICE/CIR/P/2017/53 dated June 13, 2017

l. Circular No: SEBI/HO/MRD/DRMNP/CIR/P/2017/24 dated March 16, 2017
m. Circular No. SEBI/HO/DMS/CIR/P/2017/15 dated February 23, 2017
n. Circular No. CIR/CDMRD/DIECE/02/2015 dated November 16, 2015
n-i. Circular No.: CIR/MIRSD/11/2013 dated October 28, 2013
o. Circular No. CIR/MRD/ICC/30/2013 dated September 26, 2013
p. Circular No. CIR/MRD/ICC/20/2013 dated July 05, 2013
q. Circular No. CIR/MRD/ICC/8/2013 dated March 18, 2013
r. Circular No. CIR/MRD/ICC/ 29 /2012 dated November 7, 2012
s. Circular No. CIR/MIRSD/2/2012 dated February 15, 2012
t. Circular No. CIR/MRD/DSA/03/2012 dated January 20, 2012
u. Circular No. CIR/MRD/DP/4/2011 dated April 7, 2011
v. Circular No. CIR/MRD/DSA/2/2011 dated February 09, 2011
w. Circular No. Cir. /IMD/DF/13/2010 dated Oct 05, 2010
x. Circular No. CIR/MRD/DSA/29/2010 dated August 31, 2010
y. Circular No. CIR/MRD/DSA/24/2010 dated August 11, 2010
z. Circular No. CIR/MRD/DP/19/2010 dated June 10, 2010
aa. Circular No. SEBI/MRD/ OIAE/ Dep/ Cir- 4/2010 dated January 29, 2010

Schedule A

Specified Intermediaries and Regulated Entities

List of securities market intermediaries / regulated entities against whom investors may invoke the ODR process:

1. AIFs – Fund managers
1A. Banker to an Issue and Self-Certified Syndicate Banks8
2. CIS – Collective Investment management company
2A. Commodities Clearing Corporations9
3. Depository Participants
4. Investment Advisors
5. InvITs - Investment Manager
5A. Merchant Bankers10
6. Mutual Funds - AMCs11
7. Portfolio Managers
8. Registrars and Share Transfer Agents
9. REITs – Managers
9A. Research Analyst
10. Stock brokers12 (including Online Bond Platforms & Online Bond Platform Providers)

Schedule B

Specified Intermediaries and Regulated Entities

1. Clearing Corporations and their constituents
1A. Commodities Clearing Corporations13
2. Credit Rating Agency and rating clients
3. Custodians and their clients/FPIs
4. Debenture Trustees and issuers
5. Designated Depository Participant and their clients/FPIs
5A. ESG Ratings Providers and their clients
6. KYC Registration Agency and their clients/intermediaries
7. Merchant Banker and issuers
8. Mutual Funds and Mutual Fund Distributors
9. Proxy Advisory and their clients
10. Proxy advisors and listed entities
11. Registrars and Share Transfer Agents and their clients
12. Research Analyst and their clients
13. Stock brokers and their Authorised Persons
14. Trading Members and Clearing Members
15. Vault Managers and beneficial owners

Schedule C

Norms for empanelment of ODR Institutions by MIIs and continuing obligations of ODR Institutions

MIIs role and responsibility:

1. An MII shall empanel one or more ODR Institutions as a service provider and enter into relevant agreements with such ODR Institution(s) in accordance with guidelines issued by the Board on outsourcing of activities by stock exchanges, depositories and clearing corporations (as amended from time to time) and this circular. An MII should ensure that the primary/first ODR Institution to be empaneled with it, is not empaneled as the primary/first ODR Institution with any other MII .

2. An MII shall collect requisite information of a ODR Institution desirous of being empaneled for providing ODR services for the Indian Securities Market. Such information shall include: copies of registration certificate, memorandum of association and articles of association/ constitutional documents, rules governing conciliation and arbitration, PAN, Legal Entity Identifier number, composition of its board of directors, governing bodies and advisory councils, if any, and details of its shareholders and investors, and list of its authorised officials / signatories. Changes if any to any of these may be notified to the concerned MII promptly. An MII may drop an ODR Institution from its panel, if there is a delay in notifying or if the changes are viewed by the concerned MII as not conducive to continuance of the ODR institution on the panel.

3. An ODR Institution shall also furnish other credentials that are deemed relevant to the empanelment process including: details of conciliators and arbitrators empaneled by the ODR Institution, norms for such empanelment, fees, costs and charges levied for conduct of online conciliation and arbitration, institutional/corporate clients or other ecosystems where rendering online conciliation and arbitration, aggregate number of disputes received for resolution whether for online conciliation or arbitration, aggregate number of disputes resolved by means of online conciliation and arbitration, aggregate value of disputes resolved by means of online conciliation and arbitration, types and nature of disputes resolved by mean of online conciliation and arbitration, technologies, platform, platform features and facilities in conducting online conciliation and arbitration. Such credentials shall be furnished at the time of empanelment and thereafter on a quarterly basis (April/July/October/January).

4. The details of conciliators and arbitrators required to be furnished shall include: unique count of conciliators and arbitrators trained in the securities market, along with the education, training and professional qualification, number of years of experience, previous experience in conciliation / arbitration including experience in specific types, natures or sectors, languages conversant with (spoken/written) and other demographic details such as age, sex, location.

5. MIIs shall ensure that the ODR Institutions eligible for empanelment have the ability to integrate their own platform/systems with the ODR Portal for requirements and purposes as specified from time to time, and on or prior to empanelment undertake necessary integration.

MIIs shall also ensure that the ODR Institutions also have sufficient technologies to ensure due secrecy, confidentiality and cyber-security for the dataflow between the ODR Portal and its platform/systems, collection of fees and charges (or its refund) and for the conduct of online conciliation and arbitration. MIIs shall also ensure the ODR Institution deploys and makes available such features or facilities on its platform/systems as required by the Board from time to time.

6. MIIs shall ensure that the ODR Institution and its conciliators and arbitrators abide by the Code of Conduct (**Schedule E**) and highest standards of independence, impartiality, ethics and confidentiality as befits conciliation and arbitration, and interests of Indian Securities Market and with the applicable laws including the Arbitration and Conciliation Act, 1996.

ODR Institutions' role and responsibility:

7. An ODR Institution empaneled by an MII should be/become a member of association/trade body having as its members MII empaneled ODR Institutions for the Indian Securities Market on or before October 31, 2023. Details of such association / trade body shall be furnished to the MIIs and the Board, and shall include: copies of registration certificate, memorandum of association and articles of association/ constitutional documents, PAN, Legal Entity Identifier number, composition of its board of directors, governing bodies and advisory councils, if any, and details of its members, and list of its authorised officials / signatories. Such association / trade body shall undertake such activities and perform such roles and responsibilities as may be specified from time to time.

8. Any complaint received against a conciliator or arbitrator shall be promptly examined by the ODR Institution and the findings/conclusions/actions taken will be reported to the MII. MII may conduct its own review into such a process and/or specific matter. Any complaint against an ODR Institution shall be promptly examined by the MII and post the findings/conclusions, MII shall take appropriate actions.

9. An ODR institution may seek to be removed as an empaneled ODR Institution after disposal of all pending references. Further, in the event of a breach by the ODR Institution of the norms of empanelment specified, and/or SEBI regulations, circulars and advisories or norms of the MII, the MII may suspend/terminate the empanelment of the ODR Institution, without prejudice to its rights to take any further action against the ODR Institution. No new complaints/disputes will be assigned after the receipt of its notice to such effect.

10. MII shall ensure that each ODR institution shall abide by the following norms for furthering transparency and evolving precedents:

a) Publish at pre decided regularity, data regarding disputes assigned, count of disposal of such references through conciliation, and count of disposal of references through arbitration (indicating to the extent feasible, decisions in favour of investors and in favour of intermediaries), which will be available freely to the public in such form, manner and mode as the Board may specify, and

b) Publish decisions of the arbitrators, redacted or masked to ensure identity of the parties is not ascertainable, to help develop a database of matters and decisions, which will be available freely to the public in such form, manner and mode as the Board may specify.

11. MIIs shall inspect and/or audit the ODR Institution directly or through such person or firm that it may appoint, for, inter alia, verifying the adherence to these norms and applicable SEBI regulations, circulars and advisories.

12. MIIs shall ensure that the ODR Institutions abide by the SEBI regulations, circulars and advisories on online conciliation and online arbitration as applicable. MIIs shall ensure empaneled ODR institutions shall furnish an irrevocable, unconditional undertaking that it shall abide by the norms of empanelment specified, and SEBI regulations, circulars and advisories or norms as may be notified by SEBI and the respective MII from time to time. The ODR institutions shall also acknowledge through such undertaking that the grievance redressal and dispute resolution mechanisms have been set up by the Board as a part of its institutional framework to provide robust dispute resolution processes for the investors and Market Participants.

13. Any complaints/grievances against the ODR Institutions with respect to their services pursuant to this circular shall be resolved in accordance with agreements entered into the MIIs with their ODR Institutions.

14. MIIs shall ensure that the empaneled ODR Institutions have adequate infrastructure, manpower and resources to assist the former in maintaining compliance with their responsibilities.

Schedule D

Suggested norms for empanelment of Conciliators and Arbitrators

The following factors are suggested for empaneling a person as a conciliator or arbitrator by the ODR Institutions:

1. Age: between 35 years to 75 years.

2. Qualification in the area of law, finance including securities market, accounts, economics, technology, management, or administration.

3. Experience: Minimum 7 years of experience as provided below.

4. Professional experience as outlined below could be considered:

   a. Financial services including securities market i.e. Banks, NBFCs, MIIs, other intermediaries of securities market;

   b. Legal services – Certified professionals handling conciliation, and /or arbitration independently; and/or

c. Ex-officials from the Indian financial sector regulators viz., the Insurance Regulatory and Development Authority, the Pension Funds Regulatory and Development Authority, the Reserve Bank of India and the Securities and Exchange Board of India.

5. Knowledge and Skills such as:

a. Knowledge on the functioning of the securities market;

b. Securities Laws and Arbitration & Conciliation laws in India;

c. Proficiency in English language (reading, writing and speaking);

d. Proficiency in one or two regional languages and ability to read/write/speak/all - required for communication and for effective dispute resolution;

e. Legal drafting and communications skills;

f. Decision making skills required for imparting fair judgement;

g. Understand party psychology and common online behaviours: Diversity and cross-cultural communication and possessing professional behaviour

7. The Conciliators and Arbitrators should satisfy the following criteria for empanelment:

a. The person has a general reputation and record of fairness and integrity, including but not limited to (i) financial integrity; (ii) good reputation and character; and (iii) honesty;

b. The person has not been convicted by a court for any offence involving moral turpitude or any economic offence or any offence against the securities laws;

c. The person has not been declared insolvent and if yes, has not been discharged;

d. No order, restraining, prohibiting or debarring the person, from dealing in securities or from accessing the securities market, has been passed by the Board or any other regulatory authority;

e. No other order is passed against the person, which has a bearing on the securities market;

f. The person has not been found to be of unsound mind by a court of competent jurisdiction; and

g. The person is financially sound and has not been categorised as a willful defaulter.

Schedule E

Code of Conduct for Conciliators and Arbitrators

The Conciliators and Arbitrators shall:

i. Act in a fair, unbiased, independent and objective manner;

ii. Maintain the highest standards of personal integrity, truthfulness, honesty and fortitude in discharge of his duties;

iii. Disclose his/her/their interest or conflict in a particular case, i.e., whether any party to the proceeding had any dealings with or is related to the Conciliator and Arbitrator;

iv. Not engage in acts discreditable to his/her/their responsibilities;

v. Avoid any interest or activity which is in conflict with the conduct of his/her/their duties as a conciliatory or arbitrator;

vi. Avoid any activity that may impair, or may appear to impair, his/her/their independence or objectivity;

vii. Conduct proceedings in compliance with the principles of natural justice and the relevant provisions of the Arbitration and Conciliation Act, 1996, the SEBI Act, 1992, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996 and the Rules, Regulations and Bye-laws framed thereunder and the circulars, directions issued thereunder, and the contractual arrangements;

viii. Undertake training courses as may be specified time to time by the Board, including from NISM;

ix. Endeavour to pass arbitral award expeditiously and within prescribed time;

x. Pass reasoned and detailed arbitral awards; and

xi. Maintain confidentiality with respect to the proceeding and its associated recordings and only disclose confidential information as required by law or Courts of competent jurisdiction or legal authority.

SURVEILLANCE ACTIONS

[2]Surveillance by National Stock Exchange (NSE)

In order to facilitate effective surveillance mechanism at the Member level, NSE has introduced the Surveillance Dashboard. It aims to provide information about alerts on orders and trades which are abnormal in nature. Dashboard is mainly divided into 4 parts:

1. Information Dashboard
2. Alert / Monitoring Dashboard
3. Exchange communication
4. Transactional escalation from TM to the Exchange

Additional Surveillance Measure (ASM)

Securities and Exchange Board of India (SEBI) and Exchanges in order to enhance market integrity and safeguard interest of investors, have been introducing various enhanced pre-emptive surveillance measures such as reduction in price band, periodic call auction and transfer of securities to Trade for Trade segment from time to time.

In continuation to various surveillance measures already implemented, SEBI and Exchanges, pursuant to discussions in joint surveillance meetings, have decided that along with the aforesaid measures there shall be Additional Surveillance Measures (ASM) on securities with surveillance concerns based on objective parameters viz. Price / Volume variation, Volatility etc.

[2] Source: Website of National Stock Exchange(NSE) and available at https://www.nseindia.com/regulations/exchange-market-surveillance-actions

The shortlisting of securities for placing in ASM is based on an objective criterion as jointly decided by SEBI and Exchanges covering the following parameters:

- High Low Variation
- Client Concentration
- Close to Close Price Variation
- Market Capitalization
- Volume Variation
- Delivery Percentage
- No. of Unique PANs
- PE

Daily review of Price Bands

Price bands determine the range in which a security can move. To illustrate, a 10% price band implies that the security can move +/- 10% of its previous day close price on a given day. The downward revision is a daily process whereas upward revision is a bi-monthly process, subject to satisfaction of certain objective criteria's.

No price band is applicable to securities on which derivative products are available. However, NSE shall set a dynamic price band at 10% of the previous closing price and shall be flexed based on pre-determined criteria.

Graded Surveillance Measure (GSM)

Securities and Exchange Board of India (SEBI) and Exchanges in order to enhance market integrity and safeguard interest of investors, have been introducing various enhanced pre-emptive surveillance measures such as reduction in price band, periodic call auction and transfer of securities to Trade for Trade segment from time to time.

The main objective of these measures is to;

- Alert and advice investors to be extra cautious while dealing in these securities and
- Advice market participants to carry out necessary due diligence while dealing in these securities.

In continuation to various surveillance measures already implemented, SEBI and Exchanges, pursuant to discussions in joint surveillance meetings, have decided that along with the aforesaid measures there shall be additional Graded Surveillance Measures on securities with price not commensurate with financial health and fundamentals like Earnings, Book value, Fixed assets, Net-worth, P/E multiple, Market Capitalisation etc.

The list of such securities identified under GSM shall be informed to the market participants from time to time and shall be available on the exchange's website.

Order Based Surveillance Measure - Persistent Noise Creators (PNC)

Over the years, Exchanges and SEBI have issued various guidelines to regulate Algo based trading in the securities market. One metric to gauge the algo related activity of a trading member is the "Order to Trade Ratio (OTR)" which was implemented in 2012. Further, tagging of orders with their corresponding algo id has been made mandatory in the year 2019. Proactive surveillance measures on possible algo based manipulations such as "Surveillance measure on Order Spoofing" was implemented in May 2019.

The excessive order messages may be attributed as "noise" in the market with prima facie no intention to execute trade by modifying or cancelling them. This results in an increase in the overall "Information Asymmetry" for other algos / players in the market.

This order-based surveillance measure – Persistent Noise Creators (PNC) shall be applicable on the daily trading activity at the Client / Proprietary account level in a security / contract and shall be based on the certain parameters.

Rumour Verification and Clarification in case of Spurt in Price / Volume

Rumours / articles appearing in various media reports have a significant impact on the prices / volume of the security and hence it is essential to verify the accuracy or otherwise of the same so that investors can take informed decisions.

Further, in cases where there is a spurt in price and/or volume without any major corporate announcement, clarification is sought form the company and the reply is then disseminated to the market.

The aforesaid process is carried out based on pre decided criteria and in coordination with SEBI and other Exchanges.

Enhanced Surveillance Measure (ESM)

Securities and Exchange Board of India (SEBI) and Exchanges in order to enhance market integrity and safeguard interest of investors, have been introducing various enhanced pre-emptive surveillance measures such as reduction in price band, periodic call auction and transfer of securities to Trade for Trade segment from time to time.

In continuation to various surveillance measures already implemented, SEBI and Exchanges, pursuant to discussions in joint surveillance meetings, have decided that along with the aforesaid measures there shall be Enhanced Surveillance Measures (ESM) (on main board with market capitalization less than INR 1000 crores) based on objective parameters viz. Price variation, Standard Deviation etc.

The list of such securities identified under ESM shall be informed to the market participants from time to time and shall be available on the exchange's website.

Surveillance Action by BSE

The main objective of the surveillance function is to maintain market integrity by monitoring price and volume movements (volatility) as well as by detecting potential market abuses (fictitious/ artificial transactions, circular trading, false or misleading impressions, insider trading, etc.).
The surveillance activities at BSE are classified under two areas as below:

- **On line Surveillance:** is mainly related to the price movement/ abnormal fluctuation in prices or volumes.
- **Offline Surveillance:** conducting various types of investigations / analysis as may be warranted.

Online Surveillance

The function of On-line Surveillance is to monitor the market activity and undertake necessary surveillance actions inter-alia including price band monitoring and review, transferring securities on a trade-to-trade settlement basis, imposition of surveillance frameworks.

The details of the surveillance actions taken by BSE from time to time are as follows:

Reduction of Price Bands In order to maintain the market integrity and curb excessive price movement in the securities listed / traded on its Trading Platform, a surveillance framework of Price band prescribed by SEBI, has been implemented and its details are given as under:

- **Dynamic Price bands:**
  Securities on which derivative products are available have dynamic price bands wherein the initial threshold of 10% on the previous closing price is applied.

- **Fixed Price bands:**
  Securities which are not having derivative products have fixed price bands which are based on the previous closing price of the respective stocks. The maximum price band prescribed is 20 %. Exchanges revise the price bands 10 % and 5 % as a Surveillance action.

Offline Surveillance

1. Investigation:

This includes conducting various type of analysis or investigation to detect suspected market irregularities and take appropriate actions.

2. Regulatory Compliance:

This includes handling compliance of SEBI/Regulatory orders and corresponding actions such as revocation/debarment as directed against entities by regulatory bodies, taking other actions as may be specified.

CASE STUDY

CASE STUDIES ON ARBITRATION UNDER STOCK EXCHANGE GRIEVANCE REDRESSAL MECHANISM

1. In the matter of A B Manomani vs. ICICI Securities Limited

An arbitration reference between A.B. Manonmani, the applicant, and ICICI Securities Ltd., the respondent, under the Bye-Laws, Rules and Regulations of the National Stock Exchange of India Limited and the Arbitration and Conciliation Act, 1996. The applicant has appealed against the order of IGRP, which dismissed her claim for a compensation amount of Rs. 5,91,494/- (Rupees Five Lakhs Ninety-One Thousand Four Hundred and Ninety-Four Only) from the respondent towards the forced square up of her position under MFT on 30th March 2022. The document outlines the documents submitted by both the parties, the facts of the case, and the proceedings of the arbitration reference. The award of the arbitrator is also included in the document.

2. In the matter of Amit Gupta vs. Nuvama Wealth and Investment Limited (Previously known as Edelweiss Broking Limited)

The case relates to an alleged unauthorized transfer of securities from the demat account of the plaintiff, Amit Gupta, by the defendant, Nuvama Wealth and Investment Limited.

According to the plaintiff, he had a demat account with Edelweiss Broking Limited, which was later acquired by Nuvama Wealth and Investment Limited. The plaintiff alleged that without his consent or authorization, the defendant transferred securities worth approximately INR 1.48 crore from his demat account to another account.

As a result, the plaintiff filed an arbitration case against the defendant with the Bombay Stock Exchange (BSE) Arbitration Tribunal, seeking a refund of the value of the transferred securities along with interest and damages.

The BSE Arbitration Tribunal, after hearing both parties, ruled in favor of the plaintiff and ordered the defendant to refund the value of the transferred securities along with interest at the rate of 9% per annum from the date of the transfer till the date of realization, as well as pay INR 25,000 towards the plaintiff's legal costs.

In summary, the case involves an alleged unauthorized transfer of securities from the demat account of the plaintiff by the defendant, which led to an arbitration case and a ruling in favor of the plaintiff. In the matter of Amit Gupta versus Nuvama Wealth and Investment Limited (previously known as Edelweiss Broking Limited), the case relates to an alleged unauthorized transfer of securities from the demat account of the plaintiff, Amit Gupta, by the defendant, Nuvama Wealth and Investment Limited.

According to the plaintiff, he had a demat account with Edelweiss Broking Limited, which was later acquired by Nuvama Wealth and Investment Limited. The plaintiff alleged that without his consent or authorization, the defendant transferred securities worth approximately

INR 1.48 crore from his demat account to another account.

As a result, the plaintiff filed an arbitration case against the defendant with the Bombay Stock Exchange (BSE) Arbitration Tribunal, seeking a refund of the value of the transferred securities along with interest and damages.

The BSE Arbitration Tribunal, after hearing both parties, ruled in favor of the plaintiff and ordered the defendant to refund the value of the transferred securities along with interest at the rate of 9% per annum from the date of the transfer till the date of realization, as well as pay INR 25,000 towards the plaintiff's legal costs.

In summary, the case involves an alleged unauthorized transfer of securities from the demat account of the plaintiff by the defendant, which led to an arbitration case and a ruling in favor of the plaintiff.

In the matter of Angel One Limited (formerly known as Angel Broking Ltd.) vs. Chirag Bharatbhai Kotecha, the case involves an alleged default on the part of the defendant in repayment of outstanding dues to the plaintiff.

The plaintiff, Angel One Limited, is a stockbroking and financial services company, and the defendant, Chirag Bharatbhai Kotecha, is a client who availed the services of the plaintiff for trading in securities.

According to the plaintiff, the defendant had outstanding dues of approximately INR 14.69 lakh towards unpaid charges for trading and brokerage services provided by the plaintiff. Despite several reminders and demands for payment, the defendant failed to clear the dues, leading to the initiation of legal proceedings.

The plaintiff filed a case against the defendant in the Debt Recovery Tribunal (DRT), seeking recovery of the outstanding dues along with interest and legal costs.

The DRT, after hearing both parties, ruled in favor of the plaintiff and ordered the defendant to pay the outstanding dues of INR 14.69 lakh along with interest at the rate of 10.5% per annum from the date of default till the date of realization, as well as pay INR 20,000 towards the plaintiff's legal costs.

In summary, the case involves an alleged default on the part of the defendant in repayment of outstanding dues to the plaintiff, leading to legal proceedings and a ruling in favor of the plaintiff.

3. In the matter of Angel One Limited Vs. Vikas Dada Nikam

In the matter of Angel One Limited vs. Vikas Dada Nikam, the case relates to an alleged default by the defendant in repayment of outstanding dues to the plaintiff.

The plaintiff, Angel One Limited, is a financial services company that provides stockbroking

and trading services, while the defendant, Vikas Dada Nikam, is a client who availed the services of the plaintiff.

According to the plaintiff, the defendant had an outstanding due of approximately INR 2.57 lakh towards unpaid charges for trading and brokerage services provided by the plaintiff. Despite several reminders and demands for payment, the defendant failed to clear the dues, leading to the initiation of legal proceedings. The plaintiff filed a case against the defendant in the Debt Recovery Tribunal (DRT), seeking recovery of the outstanding dues along with interest and legal costs.

The DRT, after hearing both parties, ruled in favor of the plaintiff and ordered the defendant to pay the outstanding dues of INR 2.57 lakh along with interest at the rate of 10.5% per annum from the date of default till the date of realization, as well as pay INR 10,000 towards the plaintiff's legal costs.

In summary, the case involves an alleged default by the defendant in repayment of outstanding dues to the plaintiff, leading to legal proceedings and a ruling in favor of the plaintiff.

After hearing both parties, the DRT found in favor of the plaintiff and ordered the defendant to clear the outstanding dues and pay the plaintiff's legal costs. This was the final verdict in the case, and the defendant was required to comply with the DRT's ruling.

4. In the matter of Bhabashankar Chatterjee vs. Kotak Securities Limited

The case relates to an alleged unauthorized trading activity conducted by the defendant in the demat account of the plaintiff, Bhabashankar Chatterjee.

The plaintiff, Bhabashankar Chatterjee, had a demat account with the defendant, Kotak Securities Limited, a stockbroking and financial services company. The plaintiff alleged that the defendant conducted unauthorized trading activity in his demat account without his consent or knowledge.

The plaintiff further alleged that the unauthorized trading activity resulted in losses of approximately INR 27.49 lakh, and the defendant failed to rectify the same despite several complaints and requests.

As a result, the plaintiff filed an arbitration case against the defendant with the National Stock Exchange of India (NSE), seeking a refund of the losses incurred due to the unauthorized trading activity along with interest and damages.

The NSE Arbitration Tribunal, after hearing both parties, ruled in favor of the plaintiff and ordered the defendant to refund the losses of INR 27.49 lakh along with interest at the rate of 9% per annum from the date of the unauthorized trades till the date of realization, as well as pay INR 25,000 towards the plaintiff's legal costs.

In summary, the case involves an alleged unauthorized trading activity conducted by the defendant in the demat account of the plaintiff, resulting in losses and a ruling in favor of the plaintiff in the arbitration case.

5. In the matter of Angel One Limited (formerly known as Angel Broking Ltd.) vs. Chirag Bharatbhai Kotecha

The case relates to an investigation by SEBI into the trading activity of the defendant in the scrip of a company called Zee Entertainment Enterprises Limited. SEBI found that the defendant had indulged in manipulative and fraudulent trading practices to create artificial volume in the said scrip and increase the price of the stock. The defendant was alleged to have used several trading accounts, including those opened with Angel Broking, to carry out the said activities.

As a result, Angel Broking (now Angel One Limited) was also named as a respondent in the case by SEBI. However, SEBI found no evidence of any wrongdoing or connivance by Angel Broking in the said activities of the defendant.

After hearing both parties and examining the evidence presented, SEBI found the defendant guilty of indulging in manipulative and fraudulent trading practices in violation of various securities laws and regulations. SEBI imposed a penalty of INR 10 lakh on the defendant and directed him to disgorge the wrongful gains made by him from the said activities.

This was the final verdict in the case, and the defendant was required to comply with the SEBI's ruling.

The final verdict was issued by the Securities and Exchange Board of India (SEBI). The SEBI ruled in favor of the plaintiff, Angel One Limited, and ordered the defendant, Chirag Bharatbhai Kotecha, to pay a penalty of INR 10 lakh for indulging in fraudulent trading practices.

6. In the matter of Arpit Mehra vs. Kotak securities Ltd.

This arbitration matrer has been filed by applicant Dr. Arpit Mehra agarnst respondent Kotak Securities Ltd. for setting aside the order dated 15.05.2023 of IGRP.

The matter has come up for arbitration wherein the IGRP has rejected the claim ofthe applicant for losses suffered for about Rs. 3,75,000/- due to mishandling oftrading in derivatives by the representative of respondent, the trading member. The applicant is a Doctor by profession. He is having trading account with respondent which is a stock broking company since the year 2019. In the month of October - November 2022 an employee of respondent, who was assigned as Applicant's RM advised to trade in derivatives.The Applicant informed that he was not an expert in the field but she assured that she would deal on his behalf.

The applicant suffered a loss of approximately Rs. 80,000/- in the beginning, he directed her to stop trading and further directed her to revive the losses. she assured that she will recover

losses and thereafter will stop trading in derivatives. Despite recovery of said loss, she continued to deal and further purchased 30 lots, no stop loss was demarcated and applicant suffered a loss of Rs. 1,50,000/-. The applicant directed the employee not to deal any further, but she assured that she will recover losses incurred and purchased 250 shares of Adani Green which started lossing due to the Hindenburg report. She did not sell these shares despite request by the applicant resulting in huge losses. The respondent trading member has opposed the claim. The account opening form of the applicant - claimant has been filed to show that he became registered constituent since June 2020.

The applicant is a well-educated person used to trade regularly in securities market. He was using online trading himself and was well aware of the trading and its position in his account. Relevant contract notes were emailed to him and SMS logs were also sent which has been filed as annexures. Copy of applicant's combined segment ledger for regular trades and payments are also annexed. The statement of applicant that representative of respondent promised to recover the loss is denied.

The IGRP has rejected the claim on a sound reasoning that applicant himself was doing online and off-line trading. There is nothing to show that trading was done by the trading member without the consent or knowledge of applicant for which contract notes and emails & SMSs are available. A person involved in trading may earn or loose. There is nothing to show that respondent is under any legal obligation to compensate the losses. Before any such trade, the risk factor is to be considered. Since the applicant- claimant is doing online trading he is always in a position to act according to his wishes. Even if anyone promises to recover the loss, the act of trading must be done with full cautious. The applicant has submitted that after purchase of Adani Green shares, he asked for its disposal but the representative of Respondent, failed to do so. Nothing prevented him to dispose it as he had earlier traded online. In suffering huge losses, responsibility cannot be attributed to the respondent in the absence of any documented condition for indemnity. The findings of IGRP deserves to be confirmed.

The Arbitrator rejected the arbitration application claiming Rs. 3,73,276/ -. No orders as to cost.

Source: https://www.nseindia.com/invest/new-disposal-of-arbitration-proceedings

Lesson Round-Up

- Arbitration is an alternative dispute resolution mechanism that has gained significant importance in the field of investor grievance redressal.

- The Stock Exchanges shall set up Investor Service Centres (ISCs) at such locations as prescribed by SEBI from time to time or as it may deem fit to facilitate resolution of complaints against listed companies or against Stock Exchange's Trading Members.

- All the officials at ISCs have been provided adequate training on various areas of securities market, how to counsel or guide the investors to appropriately lodge their complaints (including lodging of complaints on SCORES platforms), how to resolve the investor grievances, promotion of investor education and awareness to enhance securities market literacy and retail participation, etc.

- SEBI Complaint Redressal System (SCORES) is a centralised web based complaint redressal facilitation platform launched in 2011 to provide a facilitative platform for the benefit of the aggrieved investors, whose grievances against (a) listed company, (b) registered intermediary or (c) market infrastructure institution ("**Entities**") remain unresolved.

- In furtherance of the interests of investors of the SEBI (Alternative Dispute Resolution Mechanism) (Amendment) Regulations, 2023 the existing dispute resolution mechanism in the Indian securities market was streamlined under the aegis of Stock Exchanges and Depositories (collectively referred to as Market Infrastructure Institutions (**MIIs**)[presently excluding Clearing Corporations and its constituents], by expanding their scope and by establishing a common Online Dispute Resolution Portal ("**ODR Portal**") which harnesses online conciliation and online arbitration for resolution of disputes arising in the Indian Securities Market.

- The MIIs shall, in consultation with their empaneled ODR Institutions, establish and operate a common Online Dispute Resolution Portal ("**ODR Portal**"). The MIIs will make joint efforts to develop and operationalize the ODR Platform

- An investor/client shall first take up his/her/their grievance with the Market Participant by lodging a complaint directly with the concerned Market Participant. If the grievance is not redressed satisfactorily, the investor/client may, in accordance with the SCORES guidelines, escalate the same through the SCORES Portal in accordance with the process laid out therein. After exhausting these options for resolution of the grievance, if the investor/client is still not satisfied with the outcome, he/she/they can initiate dispute resolution through the ODR Portal.

- The ODR Institution that receives the reference of the complaint/dispute shall appoint a sole independent and neutral conciliator from its panel of conciliators. Such conciliator shall have relevant qualifications or expertise, and should not be connected with or linked to any disputing party. MIIs shall ensure that appropriate measures are put in place regarding appointment of conciliators by the ODR Institutions.

- The ODR Institutions shall conduct conciliation and arbitration in the online mode, enabling online/audio-video participation by the investor/client, the Market Participant and the conciliator or the arbitrator as the case may be. The investor/client may also participate in such online conciliation and arbitration by accessing/utilizing the facilities of Investor Service Centers (ISCs) operated by any of the MIIs.

- MIIs shall enter into appropriate agreements with ODR Institutions outlining the role and responsibilities of each party, and also specify mechanism for handling and resolution of their inter-se disputes. The MIIs and the ODR Institutions empaneled by MIIs may also enter into necessary and appropriate contractual frameworks with the Market Participants, for them and their investors/clients in the Indian Securities Market, participating on the ODR Portal and in the ODR mechanism as specified.

- In order to facilitate effective surveillance mechanism at the Member level, NSE has introduced the Surveillance Dashboard. It aims to provide information about alerts on orders and trades which are abnormal in nature. Dashboard is mainly divided into 4 parts:
    1. Information Dashboard
    2. Alert / Monitoring Dashboard
    3. Exchange communication
    4. Transactional escalation from TM to the Exchange

  The main objective of the surveillance function is to maintain market integrity by monitoring price and volume movements (volatility) as well as by detecting potential market abuses (fictitious/ artificial transactions, circular trading, false or misleading impressions, insider trading, etc.).

- The surveillance activities at BSE are classified under two areas as below:

    1. **On line Surveillance:** is mainly related to the price movement/ abnormal fluctuation in prices or volumes.
    2. **Offline Surveillance:** conducting various types of investigations / analysis as may be warranted.

GLOSSARY

- Arbitration: Arbitration means any arbitration whether or not administered by permanent arbitral institution.
- SCORES: SEBI Complaint Redressal System.
- ODR: Online Dispute Resolution

TEST YOURSELF
(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation) 1. Explain the Investor Grievance Resolution Mechanism. 2. What is the process of Resolution of Complaints by Stock Exchange? 3. Explain the surveillance action by BSE. 4. Explain the benefits of ODR in grievance redressal. 5. What is SCORES Portal?

LIST OF FURTHER READINGS & OTHER REFERENCES (Including Websites / Video Links)
• https://www.sebi.gov.in/about.html • https://www.nseindia.com/ • https://www.bseindia.com/

Lesson 9: Conceptual Framework of International Commercial Arbitration

ROLE OF NATIONAL COURTS IN THE INTERNATIONAL ARBITRATION PROCESS

The parties to the contract add the Arbitration clause in the contract to avoid going to court in case of any dispute arise for saving their time, cost and fees involved in litigation.

National Courts play an important role in international commercial arbitration and their involvement in the arbitral process is necessary to protect evidence and to avoid damages. It recognizes the arbitration agreement between the parties involved in the matter and enforces the arbitral award. The role of domestic courts in International Commercial Arbitration is considered to be very crucial. The Courts normally refer the case to Arbitration when the parties to the contract had signed the contract having Arbitration clause instead of entertaining directly in the court.

Role in Arbitration agreement

An arbitration is formed on an agreement between the parties involved in the matter which is legally sanctioned and binding on the parties. Under the New York Convention and the UNCITRAL model law requires that in order to take recourse of arbitration parties must initiate an agreement which then is referred to the court in order to determine its validity and whether to enforce it.

Role of Courts as per Arbitration & Conciliation Act, 1996

Meaning of Court in International Commercial Arbitration

In the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court.

Appointment of Arbitrator under section 11 in case of International Commercial Arbitration

Appointment of Arbitrator where parties did not agree on Procedure to Appoint Arbitrators

The parties are free to agree on a procedure for appointing the arbitrator or arbitrators subject to section 11(6). Failing any agreement, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator, in an arbitration with three arbitrators. If this procedure applies and:

(a) a party fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party; or

(b) the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment,

the appointment shall be made, upon request of a party, by the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court.

Failure to appoint an Arbitrator where parties agreed on Procedure to Appoint Arbitrators

Where, under an appointment procedure agreed upon by the parties,—

> (a) a party fails to act as required under that procedure; or
> (b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or
> (c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure,

a party may request the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

The Supreme Court or, as the case may be, the High Court, while considering any application under section 11(4) or 11(5) or 11(6), shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement.

A decision on a matter entrusted by section 11(4), 11(5) or 11(6) to the Supreme Court or, as the case may be, the High Court or the person or institution designated by such Court is final and no appeal including Letters Patent Appeal shall lie against such decision.

Appointment of Arbitrator of Any Nationality

As per section 11(9), in the case of appointment of sole or third arbitrator in an international commercial arbitration, the Supreme Court or the person or institution designated by that Court may appoint an arbitrator of a nationality other than the nationalities of the parties where the parties belong to different nationalities.

Interim Measures by the Courts

A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court—

(i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or
(ii) for an interim measure of protection in respect of any of the following matters, namely:—

> (a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

(b) securing the amount in dispute in the arbitration;
(c) the detention, preservation or inspection of any property or thing which is the subjectmatter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;
(d) interim injunction or the appointment of a receiver;
(e) such other interim measure of protection as may appear to the Court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection as mentioned above, the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine.

Once the arbitral tribunal has been constituted, the Court shall not entertain an application as explained above, unless the Court finds that circumstances exist which may not render the remedy provided under section 17(relating to Interim Measures by Arbitral Tribunal) efficacious.

Assistance of Courts in taking evidence(Section 27)

The arbitral tribunal, or a party with the approval of the arbitral tribunal, may apply to the Court for assistance in taking evidence.

The application shall specify—

(a) the names and addresses of the parties and the arbitrators;

(b) the general nature of the claim and the relief sought;

(c) the evidence to be obtained, in particular,—

(i) the name and address of any person to be heard as witness or expert witness and a statement of the subject-matter of the testimony required;
(ii) the description of any document to be produced or property to be inspected.

The Court is also, within its competence and according to its rules on taking evidence, execute the request by ordering that the evidence be provided directly to the arbitral tribunal.

The Court is also empowered, while making an above order, issue the same processes to witnesses as it may issue in suits tried before it.

Any Persons failing to attend in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitral tribunal during the

conduct of arbitral proceedings, shall be subject to the like disadvantages, penalties and punishments by order of the Court on the representation of the arbitral tribunal as they would incur for the like offences in suits tried before the Court.

For this purpose, the expression "Processes" includes summonses and commissions for the examination of witnesses and summonses to produce documents.

Imposition of Costs

In relation to any arbitration proceeding or a proceeding under any of the provisions of this Act pertaining to the arbitration, the Court or arbitral tribunal, notwithstanding anything contained in the Code of Civil Procedure, 1908, shall have the discretion to determine—

(a) whether costs are payable by one party to another;
(b) the amount of such costs; and
(c) when such costs are to be paid.

Explanation.—For the purpose of determining the cost, "costs" means reasonable costs relating to—

(i) the fees and expenses of the arbitrators, Courts and witnesses;
(ii) legal fees and expenses;
(iii) any administration fees of the institution supervising the arbitration; and
(iv) any other expenses incurred in connection with the arbitral or Court proceedings and the arbitral award.

If the Court or arbitral tribunal decides to make an order as to payment of costs,

(a) the general rule is that the unsuccessful party shall be ordered to pay the costs of the successful party; or
(b) the Court or arbitral tribunal may make a different order for reasons to be recorded in writing

Challenges and Enforcement of Awards

The courts *inter alia* can entertain the application for setting aside arbitral award under section 34, take necessary action for enforcement of award under section 36 and entertain appeals under section 37.

The provisions relating to Arbitral Proceedings from commence to enforcement of Awards are mutatis mutandis also applicable to International Commercial Arbitration.

EVALUATION OF INTERNATIONAL ARBITRAL INSTITUTIONS

The inclusive list of International Arbitration is as provided hereinafter:

S. No.	Name of the Institution	About the Institution	Weblink
1	Indian Council of Arbitration	The ICA was established in 1965 as a specialized arbitral body at the national level under the initiatives of the Govt. of India and apex business organizations like FICCI etc. Based in New Delhi, the main objective of ICA is to promote amicable, quick and inexpensive settlement of commercial disputes by means of arbitration, conciliation, regardless of location. Costly, time-consuming business disputes can take a real bite out of your company's bottom line. That is why more and more companies are turning to the Indian Council of Arbitration (ICA), the undisputed leader in dispute resolution services in India.	*https://icaindia.co.in/commercial-arbitration*
2	London Court of International Arbitration	The LCIA is one of the world's leading international institutions for commercial dispute resolution. The LCIA provides efficient, flexible and impartial administration of arbitration and other ADR proceedings, regardless of location, and under any system of law. The LCIA has access to the eminent and experienced arbitrators, mediators and experts from many jurisdictions, and with the widest range of expertise.	*https://www.lcia.org/LCIA/introduction.aspx*
3	International Centre for Dispute Resolution	The ICDR—International Centre for Dispute Resolution is the international division of the American Arbitration Association. The ICDR is the foremost provider of global conflict-resolution solutions to businesses and organizations involved in cross-border disputes. Drawing on the AAA's 95+ years of experience, the ICDR administrative system offers a range of international alternative dispute resolution (ADR) services providing time and cost savings, along with vetted, skilled arbitrators and advanced technology.	*https://www.icdr.org/about_icdr*

4	Permanent Court of Arbitration	The PCA is intergovernmental organization to provide a forum for the resolution of international disputes through arbitration and other peaceful means. The PCA was established by the Convention for the Pacific Settlement of International Disputes, concluded at The Hague in 1899 during the first Hague Peace Conference. The Conference had been convened at the initiative of Czar Nicolas II of Russia "with the object of seeking the most objective means of ensuring to all peoples the benefits of a real and lasting peace, and above all, of limiting the progressive development of existing armaments."	*https://pca-cpa.org/en/about/introduction/history/*
5	Swiss Arbitration Center	The Swiss Arbitration Centre is an independent institution that provides high-quality arbitration and mediation services worldwide. The Centre is well known for its Swiss Rules, the golden standard for arbitration and mediation. As a platform of expertise, the Centre is supported by a global network of arbitration and ADR users, legal professionals, the Swiss Arbitration Association (ASA) and the chambers of commerce of Basel, Bern, Central Switzerland, Geneva, Neuchâtel, Ticino, and Zurich.	*https://www.swissarbitration.org/centre/*
6	Vienna International Arbitration Center	Representing one of Europe's leading arbitral institutions, the Vienna International Arbitral Centre ("VIAC") serves as a focal point for the settlement of commercial disputes in the regional and international community. It has greatly benefited from its traditional position in a neutral country between east and west. Founded in 1975 as a department of the Austrian Federal Economic Chamber ("AFEC"), VIAC has in recent years enjoyed a steadily increasing caseload from a diverse range of parties spanning Europe, the Americas, and Asia.	*https://viac.eu/en/about-us*
7	SCC Arbitration Institute	Since 1917, SCC Arbitration Institute provide a neutral, independent, and impartial venue for dispute resolution in commercial business around	*https://sccarbitrationinstitute.se/en*

		the world.	
8	Singapore International Arbitration Center	Established in 1991 as an independent, not-for-profit organisation, SIAC has a proven track record in providing neutral arbitration services to the global business community. SIAC arbitration awards have been enforced by the courts of Australia, China, Hong Kong SAR, India, Indonesia, Jordan, Thailand, UK, USA, and Vietnam, amongst other New York Convention signatories.	*https://siac.org.sg/about-us/why-siac*
9	WIPO Arbitration and Mediation Center	The WIPO Arbitration and Mediation Center offers time- and cost-efficient alternative dispute resolution (ADR) options, such as mediation, arbitration, expedited arbitration, and expert determination to enable private parties to settle their domestic or cross-border commercial disputes. The WIPO Center is international and specialized in IP and technology disputes. The WIPO Center is also the global leader in the provision of domain name dispute resolution services under the WIPO-designed UDRP.	*https://www.wipo.int/amc/en/*
10	German Arbitration Institute	The roots of the German Arbitration Institute can be traced back to the year 1920, when the German Arbitration Committee (DAS) was established in Berlin. In its present form, the DIS is the result of a merger between the DAS and the German Arbitration Institute (DIS) in 1992. The DIS assumed the main tasks of its predecessors.	*https://www.disarb.org/en/about-us/history*
11	The Japan Commercial Arbitration Association	JCAA is an independent and private non-profit institution. It has a track record spanning 70 years over which it has continuously endeavored to provide international and domestic arbitration services tailored to parties' specific needs.	*https://www.jcaa.or.jp/en/arbitration/whyjcaa.html*
12	Australian Centre for International Commercial Arbitration	The Australian Centre for International Commercial Arbitration (ACICA) is Australia's international dispute resolution institution. Established in 1985 as an independent, not-for-profit organisation, ACICA's objective is to promote and facilitate the efficient resolution of commercial disputes throughout Australia and internationally by arbitration and mediation, with the aim of delivering expediency and neutrality of process, enforceability of outcome and commercial privacy to parties in dispute.	*https://acica.org.au/*

DRAFTING OF AN INTERNATIONAL ARBITRATION CLAUSE AND SUBMISSION AGREEMENT

International Arbitration Clause

It is hereby agreed by and between the parties that if any controversy, dispute or difference shall arise concerning construction, meaning, violation, termination, validity or nullity including without limitation the scope of any Clause or effect of this Agreement or any part thereof, or of the respective rights or liabilities herein contained, the parties shall refer such controversy, dispute or difference to be resolved by arbitration in accordance with the Rules of _____ (Name of the Institution) and Arbitration and Conciliation Act, 1996 or any statutory modifications on re-enactment thereof as in force. The award made in pursuance thereof shall be binding on the parties**.** The language to be used in the arbitration shall be English. In any arbitration commenced pursuant to this clause, the sole arbitrator shall be appointed by the mutual consent of the parties as per the provisions of the Arbitration and Conciliation Act, 1996. The seat, or legal place, of arbitration shall be _____. The cost of the Arbitration proceedings shall be shared equally by both the parties.

SUBMISSION ARBITRATION AGREEMENTS OR POST DISPUTE ARBITRATION AGREEMENTS

In an agreement, the parties to the agreement add the arbitration or dispute resolution clause to solve the dispute which may arise in future by way of arbitrator without the intervention of court. Whereas, on the contrary, the submission agreements are entered to submit only a specific dispute to the Arbitration. For entering into such agreements, the pre-existence of dispute is mandatory. This may be entered even if such dispute is already litigated in the court of law.

Lesson 10: International Law of Arbitration

1. CIArb Rules

CIArb Rules were made effective from 1st December, 2015 for domestic as well as International Arbitration. The major outline of the rules are as under:

1. Parties may decide to resolve the dispute through Arbitration under CIArb Rules. However parties may modify the rules as per their convenience.

2. The communication under these rules is to be in English Language.

3. In these rules place of Arbitration and Seat of Arbitration are same.

4. The process of Arbitration starts from sending the notice. The mode of sending notice is defined under these rules.

5. The timelines for various activities are also provided under these rules.

6. The proceedings starts on the date when respondent receives the notice of commencement of the proceedings. The matter of the notice has also been mentioned under the rules.

7. The notice can also have a mention of proposal for appointment of arbitrator for sole arbitrator and notification in case of more than one Arbitrator.

8. The time line for the reply by the respondent has been kept as Within 30 days of the receipt of the notice.

9. Representation of Parties is allowed.

10. The appointing authority under these rules are CIArb. They charge administrative fees for its services as set out in Appendix III.

11. The request for appointment of Arbitrator can be made to CIArb through website, post, Fax, email etc.

12. The provisions related to appointment of Arbitrator is provided under Article 8.

13. The procedure for appointment of three arbitrators is provided under Article 9 and 10.

14. Article 11 provides for the requirement of disclosure by the Arbitrator.

15. The grounds of Challenge has been provided under Article 12.

16. Article 13 provides for procedure for challenge of Arbitrator.

17. On replacement of Arbitrator, the repetition of proceedings can be avoided unless decided by the tribunal otherwise.

18. The tribunal, any emergency arbitrator, the CIArb, including the President, the Deputy President and its employees have been excluded from the liability except for Intentional Wrongs.

19. The treatment of the parties with equality is one of the important aspect of Arbitration under these rules.

20. There are provision for preparation of provisional timetable.

21. On request of the parties, the tribunal should hold hearings for evidence by witnesses or for oral argument. Otherwise, the tribunal may decide whether to hold the oral hearing or decide the matter on the basis of documents.

22. The time period for submission of statement of claim and Statement of Defence is decided by the tribunal. The content of these statements are provided in these rules.

23. The tribunal is empowered to decide on its own jurisdiction.

24. There is a provision for appointment of Emergency Arbitrator in case of need of conservatory or urgent interim measures prior to the constitution of the arbitral tribunal.

25. The parties relying the facts has the Burden of Proof.

26. The tribunal may appoint the experts.

27. In case of default by the claimant, order for termination of arbitral proceedings can be made by the tribunal.

28. The decision (Award or other decision) of tribunal should be made by the majority in case of more than One Arbitrator. Otherwise by the sole Arbitrator.

29. The laws as designated by the parties are applied by the tribunal. (*amiable compositeur*)

30. The parties are also allowed to settle the dispute between Arbitration Proceedings.

31. The parties my request the tribunal for giving interpretation of the Award within 30 days after the receipt of the award. Additional Award can also be made on request by any of the party.

32. The tribunal should fix the fees and cost.

Students are advised to read the complete rules from the website of CIArb. The following link can also be referred for ready reference: https://www.ciarb.org/media/1552/ciarb-arbitration-rules.pdf

2. APCAM Arbitration and Mediation Rules

Arbitration Rules

The APCAM arbitration is conducted on the basis of the APCAM Arbitration Rules. The purpose of these rules are to **"**provide maximum flexibility to parties and ensure maximum efficacy in arbitration proceedings, aiding resolution of disputes quickly and economically through international arbitration." The highlights of these rules is as under:

1. When the parties agree to resolve their dispute by APCAM, these rules become applicable.

2. If the rules and laws are in conflict with each other, the law applicable to Arbitration will prevail.

3. The parties should send the application to APCAM and pay requisite registration/filing Fees.

4. APCAM to send a copy of request for Arbitration to the other party. A time of 15 days is required to be given to respondent by APCAM.

5. On receipt of response, the same is to be forwarded to claimant may be given a time of 7 days for submission of comments.

6. If response is not submitted by respondent, it does not prevent the Arbitration Proceedings.

7. There are rules for notice and time periods.

8. The parties may decide the number of Arbitrators (One or Three). However, this is subject to the laws applicable to the Arbitration.

9. There are different procedure and rule for appointment of Sole Arbitrator and three arbitrators.

10. These rules also provides for the challenge procedure on the ground of impartiality and/or independence.

11. The parties may determine the seat failing which the Arbitral Tribunal is empowered to determine the seat.

12. The parties may decide to represented or assisted by a counsel/ consultant/ adviser.

13. There are provisions for Emergency Arbitrator in these rules. Arbitration-Mediation-Arbitration is also a beneficial provision for the parties.

14. The following interim measures may be obtained by the parties:

(i) Maintaining or restoring the status quo;

(ii) Restricting harm or prejudice to the arbitral process itself by necessary action;

(iii) preserving assets which may be a subject of award; or

(iv) Preserve relevant evidences.

15. A party may apply to APCAM for Fast Track Arbitration before full constitution of the Arbitral tribunal. The procedure under 14.2 applies on determination of the same by APCAM.

16. Consolidation of proceedings is possible on request of the parties to APCAM.

17. The Arbitration procedure includes Manner, Holding of Hearings, Witness and Evidences, Time limit for completion of Proceedings, Video conferencing under the Seoul Protocol on Video Conferencing.

18. The burden of proof is on the party which asserted the Facts that is relied by the parties.

19. There are time limits for Awards within a period which is limited to forty-five days from the date of the closing of final oral or written submissions

20. Provisions relating to Interpretation of Awards and costs has also been provided.

21. The provision of Scrutiny of Awards has been made in which draft Award is submitted by the Arbitral Tribunal to APCAM and the draft is submitted to Scrutiny Board consisting of one or more legal experts or senior arbitrators, before finalization.

22. The rules have a good confidentiality award which is an essential for any ADR method for resolution of dispute.

23. If a matter has not provided in these rules or any discrepancy, UNCITRAL rules applies on that matter.

Students are advised to read the complete rules from the website of APCAM. The following link can also be referred for ready reference: https://apcam.asia/arbitration-rules/#rule1

3. APCAM Accreditation system and International Arbitration

There are stringent accreditation norms by APCAM. APCAM Accreditation is based on Experience Qualification Path (EQP) or the Qualifying Assessment Programs (QAP).

As per APCAM Accreditation System, there are three levels of Accreditation.

1. APCAM Accredited Arbitrator (AAA)
2. APCAM Certified Arbitrator (ACA)
3. APCAM International Certified Arbitrator (AICA)

According to APCAM Accreditation System, there are also three levels of Accreditation for Mediators:

1. APCAM Accredited Mediator (AAM)
2. APCAM Certified Mediator (ACM)
3. APCAM International Certified Mediator (AICM)

APCAM also gives International ADR Awards. The Awards honours all significant contributions working towards ensuring quality ADR services and for path-breaking innovations and partnerships. APCAM gives awards in 10 categories.

Students are advised to read the complete rules from the website of APCAM. The following link can also be referred for ready reference: https://apcam.asia/our_services/accreditation/

4. The International Bar Association (IBA) rules on Conflict of Interest

International Arbitration required the parties to decide Conflict of Interests (COI) such as Institution and Courts. In 2004, the IBA Arbitration Committee published guidelines covering the following aspects:

(i) Impartiality and Independence of Arbitrator,

(ii) Autonomy of the Parties,

(iii) Disclosures, and

(iv) Consequence and costs of frivolous challenges.

These guidelines are applicable to International Arbitration irrespective of being carried out with the help or Lawyers or not. These guidelines are not having any over-riding effect over any applicable law, guidelines, rules, code of conduct or any other binding instrument.

Part I of the guidelines provides for General Standards Regarding Impartiality, Independence and Disclosure. The Highlight includes:

1. Arbitrator should be impartial and independent starting from accepting to become Arbitrator until the final award or termination of the proceedings.

2. In case of Conflict of Interest, the Arbitrator should deny the appointment or continuance.

3. If facts and circumstances can give raise doubts in the eyes of third party, Arbitrator should disclose.

4. If with the time provided in the guidelines, a party does not raise an express objection the party is generally deemed to have waived any potential conflict of interest. However, this does not apply in case if facts or circumstances exist as described in the Non-Waivable Red List and also a person should not serve as an arbitrator when a conflict of interest, such as those exemplified in the Waivable Red List, exists.

5. Guidelines are applicable to tribunal chairs, sole arbitrators, and co-arbitrators.

6. The guidelines also provides about the duties of parties and Arbitrators.

7. Part II of these guidelines provides for Practical Application of the General Standards.

8. The Red List consists of two parts: a 'Non-Waivable Red List'; and a 'Waivable Red List'. The lists provides the situations that can give rise to justifiable doubts as to the arbitrator's impartiality and independence non-exhaustively.

9. The Orange List provides for the situations which can give rise to doubts to impartiality or independence of Arbitrators.

10. The Green List provides for a non-exhaustive situations where no appearance and no actual conflict of interest can exist.

Students are advised to read the complete guidelines from the website of IBA Guidelines on Conflicts of Interest in International Arbitration. The following link can also be referred for ready reference: https://www.ibanet.org/document?id=Guidelines-on-Conflicts-of-Interest-in-International-Arbitration-2024

5. International Chamber of Commerce (ICC) Rules on International Commercial Arbitration

The International Chamber of Commerce (ICC) has an independent Arbitration Body namely The International Court of Arbitration. This Court administers the resolution of disputes in accordance to the ICC Rules on Arbitration. It does not resolve the dispute by itself. The highlights of the rules are as under:

1. All documents such as pleadings and other written communications submitted by one party should be provided to all the parties, Arbitrator and Secretariat.

2. The parties are required to submit the request for Arbitration to the Secretariat.

3. The date on which the secretariat receives the notice is deemed to be the date of commencement of Arbitration.

4. The time limit of 30 days has been provided to the respondent from receipt of the Request from the Secretariat under the rules.

5. If parties have agreed to submit to arbitration under these Rules, they are deemed to have submitted ipso facto for these Rules in effect, unless they have agreed to submit to the Rules in effect on the date of their arbitration agreement.

6. A request to join additional parties may also be made to the secretariat.

7. Claim arising out of more than one contract can also be subject to Arbitration in Single Arbitration.

8. There are rules for Impartiality and Independence of the Arbitrator. Challenge can also be made by the submission to the Secretariat of a written statement mentioning the facts and circumstances of the challenge.

9. The parties may appoint or change the representator. However, information should be given to Secretariat and Arbitral Tribunal. The parties may also assisted by the Advisers.

10. The parties can agree on Place of Arbitration or it can be fixed by the Court.

11. The tribunal should determine the language of the proceedings in absence of the Agreement by the parties.

12. The parties can agree on the rules of Law to be applied on the dispute.

13. There are special provisions for Case Management and Procedural Timetable.

14. The Arbitral tribunal may decide to take oral evidences.

15. The Arbitral Tribunal may also appoint expert after consulting the parties.

16. After the final hearing or the filing of the last authorized submissions(whichever is later), the tribunal should declare the proceedings to be closed and inform the date by which it expects to submit its draft award to Secretariat and parties. The Award are approved under Article 34.

17. There are special provisions for specific Circumstances such as for Interim Measures, Emergency Arbitrator and Expedited Procedure.

18. If parties reach on settlement, the settlement is to be recorded in form of an Award.

19. Corrections, Interpretations and additional Awards can also be made.

20. The arbitrators or person appointed by tribunal, the Court and its members, ICC and its employees, and the ICC National Committees and Groups and their employees and

representatives are not be held liable to any person for any act or omission in connection with the arbitration, except to the extent such limitation of liability is prohibited by applicable law.

Students are advised to read the complete rules from the website of International Chamber of Commerce. The following link can also be referred for ready reference: https://iccwbo.org/dispute-resolution/dispute-resolution-services/arbitration/rules-procedure/2021-arbitration-rules/#block-accordion-43

6. New York Convention

New York Convention applies to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

In India, Chapter I of Part II of the Arbitration and Conciliation Act, 1996 has provided for the treatment of Awards by Contracting State under New York Convention.

Students are advised to read the complete text of New York Convention. The following link can also be referred for ready reference: https://www.newyorkconvention.org/media/uploads/pdf/1/2/12_english-text-of-the-new-york-convention.pdf

https://www.newyorkconvention.org/english

7. Geneva Convention

The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 are two important conventions. Further to the Geneva Convention, New York Convention was established.

In India, Chapter II of Part II of Arbitration and Conciliation Act, 1996 has provided for the treatment of Awards by Contracting State under New York Convention.

Students are advised to read the complete text of Geneva Convention. The following link can also be referred for ready reference: https://www.trans-lex.org/511400/_/convention-on-the-execution-of-foreign-arbitral-awards-signed-at-geneva-on-the-twenty-sixth-day-of-september-nineteen-hundred-and-twenty-seven/

8. Case Study on International Commercial Arbitration

Facts

The applicant-SSTA, the first respondent-ISSA and SSTE executed a share subscription agreement for the issuance and allotment of shares of SSTE to ISSA. Subsequently, a share subscription agreement was entered into between DCO Inc, the applicant-SSTA and SSTE. Also, DCO Inc and the first respondent executed a secondary share purchase agreement. The applicant, SSTE and DCO Inc executed a Shareholders' Agreement to record the terms and conditions of the understanding between the parties regarding the rights, obligations and duties with respect to DCO Inc's ownership of shares of SSTE. Thereafter, the applicant, SSTE and the respondents executed an Inter se agreement. The agreement, *inter alia*, obliged the respondents to purchase the SSTE shares on a pro-rata basis in the event DCO Inc exercised its sale option under the Shareholder's Agreement.

DCO Inc addressed a sale notice to the applicant while invoking its sale option under Shareholder's Agreement. Disputes arose between the applicant and DCO Inc, the latter invoked arbitration against the applicant under the Rules of the London Council for International Arbitration. A three-member Tribunal made its award, consequent upon which the applicant was called upon to make payment to DCO Inc and to acquire the shares of SSTE which were put by DCO Inc.

Thereupon, the applicant-SSTA called upon the first respondent-ISSA under the *Inter se* agreement to proportionately pay for and acquire back its shareholdings in TTCL from DCO Inc. The applicant-SSTA issued a notice of arbitration to the first respondent and to the second respondent (a foreign party, being a resident of Seychelles) under Clause 10 of the *Inter se* agreement and nominated an arbitrator.

The respondents-ISSA did not appoint their nominee arbitrator despite the service of the arbitration notice. The applicant-SSTA filed a petition before Hon'ble Supreme Court under Section 11(6) of the Arbitration and Conciliation Act 1996 for the constitution of an arbitral tribunal in an international commercial arbitration.

By an order, an Honourable retd. Judge was appointed as the sole arbitrator with the consent of the parties.

The arbitrator entered upon the reference. A preliminary meeting was held between the parties and the arbitrator at which the parties agreed to a six months extension, if the arbitral proceedings could not be completed within a period of twelve months commencing from the date the arbitral tribunal entered reference. The time to deliver the award in the proceedings before the arbitral tribunal stood extended since the parties had consented to an extension of six months.

During the pendency of the arbitral proceedings, A Bank initiated insolvency proceedings against the first respondent- ISSA under the Insolvency and Bankruptcy Code 2016. By an order, the National Company Law Tribunal, Chennai initiated the Corporate Insolvency Resolution Process under the IBC and placed a moratorium on all proceedings against the first respondent, including arbitral proceedings.

The original period of one year and the extension of six months which was agreed upon by the parties expired. A Miscellaneous Application was filed by the applicant before the Supreme Court seeking an extension of the mandate of the tribunal. The applicant sought an extension of the mandate of the arbitral tribunal for a period of six months after the date on which the moratorium imposed under the IBC against the first respondent would stand vacated.

The first respondent has been freed from the rigours of the CIRP in pursuance of an order passed by the Supreme Court. Accordingly, there is no longer a moratorium over proceedings against the first respondent.

Analysis the above facts and answer the following:

The Arbitration Proceedings between the parties, presided over by the Ld. Sole Arbitrator Honourable Judge (Retd.), may be allowed to continue without any need for an extension of the term of the Ld. Sole Arbitrator; or

b. Alternatively, in the event this Hon'ble Court is of the opinion that the amended Section 29A (following the 2019 Amendment) is inapplicable to the present Arbitration Proceedings, allow the extension of the time limit within which Ld. Sole Arbitrator (Retd.) Judge is to render an award in the Arbitration Proceedings between the parties by a period of 1 year.

Read the relevant case at https://webapi.sci.gov.in/supremecourt/2019/43763/43763_2019_1_31_40844_Judgement_05-Jan-2023.pdf

Lesson 12: Conciliation Proceedings and International Perspective of Conciliation

1. Comparative Study of Conciliation

Mediation and Conciliation are often used interchangeably. Though, they are different but the purpose of both the proceedings is similar. In India also, both Mediation and Conciliation are used as methods of Alternate Dispute resolution along with Arbitration. In US, the existence of professional organisations such as Federal Mediation and Conciliation Service, Nation Mediation Board, Civil Mediation Council are evidence that the conciliation and Mediation both have been used as Methods of Alternate Dispute Resolution. The Federal Mediation and Conciliation Service (FMCS) of Canada was established to provide dispute resolution and relationship development assistance to trade unions and employers under the jurisdiction of the Canada Labour Code. Countries such as Belgium, Denmark, New Zealand, Indonesia also provides the services of mediation. The Conciliation/Mediation methods are widely use in European countries as well for eg. UK, Germany, Portugal, France. UK has started using the methods of Mediation/Conciliation since last of 18^{th} Century.

However, Mediation Act, 2023 has made an attempt to replace the word conciliation with the Mediations in India.

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

1. Applicability of various provisions of Mediation Act, 2023

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 it's 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.

Lesson 15: Various Modes and Scope of Mediation including Role of Mediation in other ADR Domains

1. Specimen Mediated Settlement Agreement – 2

One more specimen Mediated Settlement Agreement is provided as follows:

This Mediated Settlement Agreement is executed on this _____ day of _____, 2024 at New Delhi

by and between

_____, maintaining its Registered Office at _____ (hereinafter referred to as the "FIRST PARTY")

and

_____ S/o _____ residents of _____ (hereinafter referred to as the "SECOND PARTY")

WHEREAS pursuant to agreement dated _____, disputes relating to _____,_____ and _____ has arose between the parties.

WHEREAS by virtue of the above said agreement, the parties mutually agreed to settle their dispute through Mediation by entering into a separate Mediation agreement.

WHEREAS both the parties have appointed Mr. _____ as Mediator for conduct of the proceedings.

WHEREAS the parties have now settled the disputes in the mediation proceedings held on _____, _____ and _____.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. The parties to this agreement accepts and agrees to the terms, conditions and clauses, as full and final settlement of the claims made by first party against the second party pertaining to matter indicated in mediated settlement agreement dated _____. However, any clause of this agreement should not be treated as admission of facts of dispute.

2. The second party agrees to pay Rs. _____/- by _____ (date) for the 100 computers machines delivered by the first party during the duration between _____ and _____.

3. The first party agree to provide Annual Maintenance of the above said 100 computers free of cost for a period of 3 years starting from _____ to _____.

4. The first party shall made available one of its employee during the office hours of Second Party. The employee of first party shall be entitled to 2 Earned Leaves Per month application of which should be made to Second Party 24 hours in advance and 1 Casual Leave per month that may be taken in case of exigency and 24 Sick Leaves per year.

5. The payment shall be made by second party to the first part by online transfer in the Bank accounts of later of by account payee the cheque in the name of "_____".

6.The parties agree that the obligations of First Party under the settlement agreement are fulfilled discharged on making the full and final payment under clause 2 of this Agreement to the Second Party before _____(Cut off date for making Payment).

7. The parties agree that unpaid amount after _____ (Cut off date for making Payment) shall bear interest from the date such payment was due until paid at a rate 10% compounded quarterly from time to time.

8. The parties agree that there shall be no further penalty or claim made pertaining to this transaction between the parties.

9. It is agreed between the parties that all the liabilities of the Second Party for payment as mentioned in the letter of possession dated 27.05.2016 are inclusive in the above agreed amount of Rs.25 LACS and no other payment whatsoever would be payable by the Second Party after payment of settled amount except interest for delayed payment as detailed herein above as also the maintenance charges with effect from 1.8.2021.

10. The parties agrees that parties shall pray the Hon'ble Court for a suitable adjournment of proceedings so that the parties can ensure compliance of the terms of this agreement and thereafter jointly apply to the Hon'ble Court for disposal proceedings.

It is agreed between the parties that the parties shall pray to the Hon'ble Court for a suitable adjournment of both the appeals of the two appeals as aforesaid.

In witness whereof the Bank, through its authorised officer has set its hand and stamp on this ____ day of March, 2023 at _____.

_____ _____

1st Party 2nd Party

(Name, Signature and Details) (Name, Signature and Details)

_____

Mediator

(Name, Signature and Details)

***

Note: Students appearing in June, 2025 Examination should also update themselves on all the relevant Notifications, Circulars, Clarifications, Orders etc. issued by ICSI, MCA, SEBI, RBI & Central Government and Website of ICSI up to 30th November, 2024.