

CHAPTER 4 - DRAFTING OF AGREEMENTS, DEEDS & DOCUMENTS

SPECIMEN MEDIATED SETTLEMENT AGREEMENT

MEDIATED SETTLEMENT AGREEMENT

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

BY AND BETWEEN

A Limited (Hereinafter referred to as the "FIRST PARTY" and unless the text otherwise expresses shall include its liquidators, administrators etc)

AND

Mr B (Hereinafter referred to as the "SECOND PARTY" and unless the text otherwise expresses shall include its legal heirs, administrators etc)

WHEREAS A Limited is a company formed and registered under the provisions of Companies Act, 2013 and has its registered office situated at _____

AND WHEREAS B, age ____, S/o _____, resident of _____

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

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

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



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

NOW THIS MEDIATED SETTLEMENT AGREEMENT WITNESSETH AS UNDER:

1. Consent to Settlement:

That the parties to this agreement accepts and agree 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. Terms of settlement:

That the second party agrees to pay Rs. _____/- by _____ (date) for the 100 computers machines delivered by the first party. The payment shall be made by second party to the first part by online transfer by account payee cheque.

That 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 _____.

That the parties agree that delay in unpaid amount after _____ shall bear interest from the date such payment was due until paid at 10% per annum.

3. Availability of employee:

That the first party shall make available one of its employee during the office hours of Second Party. The employee of first party shall be entitled to 24 Paid Leaves per year.

4. Discharge of obligations:

That the parties agree that the obligations of First Party under the settlement agreement are fulfilled on making the full and final payment under clause 2 of this Agreement to the Second Party before _____.



That it is further agreed between the parties that all the liabilities of the Second Party for payment are as stated above 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.

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

5. Adjournment of court proceedings:

That the parties agree 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.

IN WITNESS WHEREOF BOTH THE PARTIES TO THIS AGREEMENT HAVE JOINED THEIR RESPECTIVE HANDS ON THE DATE MENTIONED ABOVE TO GIVE EFFECT TO THIS AGREEMENT

For A Limited

Signature

Party of the first part

Name

Signature

Party of the second part

Name

Mediator

Signature

Name

**WITNESSES:**

Name

Signature

Address

Name

Signature

Address

CHAPTER 5 - DRAFTING OF COMMERCIAL CONTRACTS

FAQS ON LLP AGREEMENT

JUST FOR ONE READ

How the mutual rights and duties of partners inter-se and those of partners and LLPs would be governed?

The mutual rights and duties of partners inter se and those of the LLP and its partners shall be governed by the agreement between partners or between the LLP and the partners. This Agreement would be known as "LLP Agreement".

Whether LLP Agreement would be mandatory for all LLPs?

As per provisions of the LLP Act, in the absence of agreement as to any matter, the mutual rights and liabilities shall be as provided for under Schedule I to the Act. Therefore, in case any LLP proposes to exclude provisions/requirements of Schedule I to the Act, it would have to enter into an LLP Agreement, specifically excluding applicability of any or all paragraphs of Schedule I.

CHAPTER 8 - COMMERCIAL CONTRACT MANAGEMENT

COMPLIANCE WITH LAWS

JUST FOR ONE READ

The laws which are generally required to be complied includes the following:

- i. Indian Contract Act, 1872
- ii. Indian Stamp Act, 1899
- iii. Registration Act, 1908

However, in specific case the following laws *inter alia* are also required to be complied with:

- i. Powers-of Attorney Act, 1882
- ii. Sale of Goods Act, 1930
- iii. Transfer of Property Act, 1882
- iv. Arbitration and Conciliation Act, 1996
- v. Specific Relief Act, 1973

However, this list is not exhaustive. Many other laws may also be applicable along with the Law of Contracts.

ILLUSTRATION TO SECTION 73

JUST FOR ONE READ

- (a) A contracts to sell and deliver 50 maunds of saltpetre to B, at a certain price to be paid on delivery. A breaks his promise. B is entitled to receive from A, by way of compensation, the sum, if any, by which the contract price falls short of the price for which B might have obtained 50 maunds of saltpetre of like quality at the time when the saltpetre ought to have been delivered.
- (b) A hires B's ship to go to Bombay, and there take on board, on the first of January, a cargo, which A is to provide, and to bring it to Calcutta, the freight to be paid when earned. B's ship does not go to Bombay, but A has opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. A avails himself of

those opportunities, but is put to trouble and expense in doing so. A is entitled to receive compensation from B in respect of such trouble and expense.

- (c) A contracts to buy of B, at a stated price, 50 maunds of rice, no time being fixed for delivery. A afterwards informs B that he will not accept the rice if tendered to him. B is entitled to receive from A, by way of compensation, the amount, if any, by which the contract price exceeds that which B can obtain for the rice at the time when A informs B that he will not accept it.
- (d) A contracts to buy B's ship for 60,000 rupees, but breaks his promise. A must pay to B, by way of compensation, the excess, if any, of the contract price over the price which B can obtain for the ship at the time of the breach of promise.
- (e) A, the owner of a boat, contracts with B to take a cargo of jute to Mirzapur, for sale at that place, starting on a specified day. The boat, owing to some avoidable cause, does not start at the time appointed, whereby the arrival of the cargo at Mirzapur is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of jute falls. The measure of the compensation payable to B by A is the difference between the price which B could have obtained for the cargo at Mirzapur at the time when it would have arrived if forwarded in due course, and its market price at the time when it actually arrived.
- (f) A contracts to repair B's house in a certain manner, and receives payment in advance. A repairs the house, but not according to contract. B is entitled to recover from A the cost of making the repairs conform to the contract.
- (g) A contracts to let his ship to B for a year, from the first of January, for a certain price. Freights rise, and, on the first of January, the hire obtainable for the ship is higher than the contract price. A breaks his promise. He must pay to B, by way of compensation, a sum equal to the difference between the contract price and the price for which B could hire a similar ship for a year on and from the first of January.
- (h) A contracts to supply B with a certain quantity of iron at a fixed price, being a higher price than that for which A could procure and deliver the iron. B wrongfully refuses to receive the iron. B must pay to A, by way of compensation, the difference between the contract price of the iron and the sum for which A could have obtained and delivered it.

- (i) A delivers to B, a common carrier, a machine, to be conveyed, without delay, to A's mill informing B that his mill is stopped for want of the machine. B unreasonably delays the delivery of the machine, and A, in consequence, loses a profitable contract with the Government. A is entitled to receive from B, by way of compensation, the average amount of profit which would have been made by the working of the mill during the time that delivery of it was delayed, but not the loss sustained through the loss of the Government contract.
- (j) A, having contracted with B to supply B with 1,000 tons of iron at 100 rupees a ton, to be delivered at a stated time, contracts with C for the purchase of 1,000 tons of iron at 80 rupees a ton, telling C that he does so for the purpose of performing his contract with B. C fails to perform his contract with A, who cannot procure other iron, and B, in consequence, rescinds the contract. C must pay to A 20,000 rupees, being the profit which A would have made by the performance of his contract with B.
- (k) A contracts with B to make and deliver to B, by a fixed day, for a specified price, a certain piece of machinery. A does not deliver the piece of machinery at the time specified, and in consequence of this, B is obliged to procure another at a higher price than that which he was to have paid to A, and is prevented from performing a contract which B had made with a third person at the time of his contract with A (but which had not been then communicated to A), and is compelled to make compensation for breach of that contract. A must pay to B, by way of compensation, the difference between the contract price of the piece of machinery and the sum paid by B for another, but not the sum paid by B to the third person by way of compensation.
- (l) A, a builder, contracts to erect and finish a house by the first of January, in order that B may give possession of it at that time to C, to whom B has contracted to let it. A is informed of the contract between B and C. A builds the house so badly that, before the first of January, it falls down and has to be re-built by B, who, in consequence, loses the rent which he was to have received from C, and is obliged to make compensation to C for the breach of his contract. A must make compensation to B for the cost of rebuilding the house, for the rent lost, and for the compensation made to C.
- (m) A sells certain merchandise to B, warranting it to be of a particular quality, and B, in reliance upon this warranty, sells it to C with a similar warranty. The goods prove to be not according

to the warranty, and B becomes liable to pay C a sum of money by way of compensation. B is entitled to be reimbursed this sum by A.

- (n) A contracts to pay a sum of money to B on a day specified. A does not pay the money on that day, B, in consequence of not receiving the money on that day, is unable to pay his debts, and is totally ruined. A is not liable to make good to B anything except the principal sum he contracted to pay, together with interest up to the day of payment.
- (o) A contracts to deliver 50 maunds of saltpetre to B on the first of January, at a certain price. B afterwards, before the first of January, contracts to sell the saltpetre to C at a price higher than the market price of the first of January. A breaks his promise. In estimating the compensation payable by A to B, the market price of the first of January, and not the profit which would have arisen to B from the sale to C, is to be taken into account.
- (p) A contracts to sell and deliver 500 bales of cotton to B on a fixed day. A knows nothing of B's mode of conducting his business. A breaks his promise, and B, having no cotton, is obliged to close his mill. A is not responsible to B for the loss caused to B by the closing of the mill.
- (q) A contracts to sell and deliver to B, on the first of January, certain cloth which B intends to manufacture into caps of a particular kind, for which there is no demand, except at that season. The cloth is not delivered till after the appointed time, and too late to be used that year in making caps. B is entitled to receive from A, by way of compensation, the difference between the contract price of the cloth and its market price at the time of delivery, but not the profits which he expected to obtain by making caps, nor the expenses which he has been put to in making preparation for the manufacture.
- (r) A, a ship-owner, contracts with B to convey him from Calcutta to Sydney in A's ship, sailing on the first of January, and B pays to A, by way of deposit, one-half of his passage money. The ship does not sail on the first of January, and B, after being in consequence detained in Calcutta for some time and thereby put to some expense, proceeds to Sydney in another vessel, and, in consequence, arriving too late in Sydney, loses a sum of money. A is liable to repay to B his deposit, with interest, and the expense to which he is put by his detention in Calcutta, and the excess, if any, of the passage-money paid for the second ship over that agreed upon for the first, but not the sum of money which B lost by arriving in Sydney too late.

ILLUSTRATIONS TO SECTION 74

JUST FOR ONE READ

- (a) A contracts with B to pay B Rs. 1,000, if he fails to pay B Rs. 500 on a given day. A fails to pay B Rs. 500 on that day. B is entitled to recover from A such compensation, not exceeding Rs. 1,000, as the Court considers reasonable.
- (b) A contracts with B that, if A practises as a surgeon within Calcutta, he will pay B Rs. 5,000. A practises as a surgeon in Calcutta. B is entitled to such compensation; not exceeding Rs. 5,000, as the Court considers reasonable.
- (c) A gives a recognizance binding him in a penalty of Rs. 500 to appear in Court on a certain day. He forfeits his recognizance. He is liable to pay the whole penalty.
- (d) A gives B a bond for the repayment of Rs. 1,000 with interest at 12 per cent. at the end of six months, with a stipulation that, in case of default, interest shall be payable at the rate of 75 percent from the date of default. This is a stipulation by way of penalty, and B is only entitled to recover from A such compensation as the Court considers reasonable.
- (e) A, who owes money to B a money-lender, undertakes to repay him by delivering to him 10 maunds of grain on a certain date, and stipulates that, in the event of his not delivering the stipulated amount by the stipulated date, he shall be liable to deliver 20 maunds. This is a stipulation by way of penalty, and B is only entitled to reasonable compensation in case of breach.
- (f) A undertakes to repay B a loan of Rs. 1,000 by five equal monthly instalments, with a stipulation that in default of payment of any instalment, the whole shall become due. This stipulation is not by way of penalty, and the contract may be enforced according to its terms.
- (g) A borrows Rs. 100 from B and gives him a bond for Rs. 200 payable by five yearly instalments of Rs. 40, with a stipulation that, in default of payment of any instalment, the whole shall become due. This is a stipulation by way of penalty.

INJUNCTION

1. **Temporary Injunctions:** Temporary injunctions are such as are to continue until a specific time, or until the further order of the court, and they may be granted at any stage of a suit, and are regulated by the Code of Civil Procedure, 1908.
2. **Perpetual Injunction:** A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit; the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.
3. **Mandatory Injunction:** When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

CHAPTER 12 - APPLICATIONS, PETITIONS AND APPEALS UNDER COMPANIES ACT, 2013

RULE 25 - MERGER OR AMALGAMATION OF CERTAIN COMPANIES

(REFER PAGE 12.37 OF MAIN NOTES POINT 5 & 6)

IMPORTANT

NEW CLAUSES

sub-rules (5) and (6) of rule 25, the following sub-rules shall be substituted, namely:-

(5) Where *no objection or suggestion is received within a period of thirty days* of receipt of copy of scheme under sub-section (2) of section 233, from the Registrar of Companies and Official Liquidator by the Central Government and the Central Government is of the opinion that the scheme is in the public interest or in the interest of creditors, *it may, within a period of fifteen days after the expiry of said thirty days*, issue a confirmation order of such scheme of merger or amalgamation in Form No. CAA.12.

Provided that *if the Central Government does not issue the confirmation order within a period of sixty days of the receipt of the scheme under sub-section (2) of section 233, it shall be deemed that it has no objection to the scheme and a confirmation order shall be issued accordingly.*

(6) Where *objections or suggestions are received within a period of thirty days* of receipt of copy of scheme under sub-section (2) of section 233 from the Registrar of Companies or Official Liquidator or both by the Central Government and -

- (a) such objections or suggestions of Registrar of Companies or Official Liquidator, *are not sustainable* and the Central Government is of the opinion that the scheme is in the public interest or in the interest of creditors, *it may within a period of thirty days after expiry of thirty days referred to above, issue a confirmation order* of such scheme of merger or amalgamation in Form No. CAA.12.
- (b) the Central Government is of the opinion, whether on the basis of such objections or otherwise, that the *scheme is not in the public interest or in the interest of creditors, it may within sixty days of the receipt* of the scheme file an application before the Tribunal in Form No. CAA.13

stating the objections or opinion and requesting that Tribunal may consider the scheme under section 232 of the Act:

Provided that if the Central Government does not issue a confirmation order under clause (a) or does not file any application under clause (b) within a period of sixty days of the receipt of the scheme under subsection (2) of section 233 of the Act, it shall be deemed that it has no objection to the scheme and a confirmation order shall be issued accordingly.

OLD CLAUSES (REFER PAGE 12.38 OF MAIN NOTES POINT 5 & 6)

TO BE IGNORED

(5) Where no objection or suggestion is received to the scheme from the Registrar of companies and official Liquidator or where the objection or suggestion of registrar and official liquidator is deemed to be not sustainable and the central government shall issue a confirmation order of such scheme of merger or amalgamation in Form No. CAA.12.

(6) Where objections or suggestions are received from the registrar of companies or official liquidator and the central government is of the opinion, whether on the basis of such objections or otherwise, that the scheme is not in the public interest of creditors, it may file an application before the tribunal in Form No.CAA.13 within sixty days of the receipt of the scheme stating its objections or opinion and requesting that tribunal may consider the scheme under section 232 of the act.

MERGER OR AMALGAMATION OF A FOREIGN COMPANY WITH A COMPANY AND VICE VERSA (RULE 25A)

ADDITION

- (1) A foreign company incorporated outside India may merge with an Indian company after obtaining prior approval of Reserve Bank of India and after complying with the provisions of sections 230 to 232 of the Act and these rules.
- (2) The transferee company shall ensure that valuation is conducted by valuers who are members of a recognised professional body in the jurisdiction of the transferee company and further that such valuation is in accordance with internationally accepted principles on accounting and



valuation. A declaration to this effect shall be attached with the application made to Reserve Bank of India for obtaining its approval.

(3) The *concerned company shall file an application before the Tribunal as* per provisions of section 230-232 of the Act and these rules after obtaining approvals specified.

(4) Notwithstanding anything contained in sub-rule (3), in case of a compromise or an arrangement or merger or demerger between an Indian company and a company or body corporate which has been incorporated in a country which shares land border with India, a declaration in Form No. CAA-16 shall be required at the stage of submission of application under section 230 of the Act.

CHAPTER 13 – ADJUDICATIONS & APPEALS UNDER SEBI LAWS

EXAMPLE OF SYNCHRONISED TRADING TO UNDERSTAND FACTORS TO BE TAKEN INTO ACCOUNT WHILE ADJUDGING QUANTUM OF PENALTY

ADDITION

JUST FOR ONE READ

SEBI suspected manipulation in the trading of Futures & Options segment (F&O), and found that the company and some other firms had undertaken fictitious trades.

Order of Adjudicating Officer

According to the A.O., a manipulative/deceptive devise had been used for synchronization and reversal of trades and the trades were essentially fraudulent/fictitious in nature and resulted in creating a misleading appearance of active trading in those securities.

Judgement of SAT

However, the Order was struck down by the Securities Appellate Tribunal (SAT) in 2011 on grounds that synchronization and reversal of trades effected by the parties with a significant price difference, some in a few seconds and majority, in any case, on the same day had no impact on the market, had not affected the NIFTY index in any manner nor induced investors. SAT held that such trades are illegal only when they manipulate the market in any manner and induce investors.

Judgement of Supreme Court

It was held that the trade reversals in the instant case amply demonstrated that the parties did not intend to transfer beneficial ownership through these transactions. Rather, the repeated reversals adversely affected the price discovery system, deprived other market players from participating in the trades, were a misuse of market mechanism and therefore violative of transparent norms of trading in securities.

Considering the perfect matching of quantity, price and time and sale in the impugned transactions, parties being persistent in the number of such trade transactions with huge price variations (without any major variation in the price of the underlying securities) wherein one



party repeatedly booked profits whilst the other repeatedly incurred losses, the Supreme Court noted that it would be too naïve to hold that such transactions were by mere coincidence.

ROLE OF MENS REA IN LEVYING PENALTY

ADDITION

JUST FOR ONE READ

Under the SEBI Act, 1992, SCRA, 1956 and the Depositories Act, 1996 (collectively also known as securities laws), SEBI pursues two streams of enforcement actions i.e., Administrative /Civil (or) Criminal. Administrative/civil actions include issuing directions such as remedial orders, cease and desist orders, suspension or cancellation of certificate of registration and imposition of monetary penalty under the respective statutes and action pursued or defended in a court of law/tribunal.

Criminal action involves initiating prosecution proceedings against violators by filing complaint before a criminal court.

CHAPTER 14 - APPEARANCES BEFORE OTHER REGULATORY AND QUASI JUDICIAL AUTHORITIES

APPEARANCE UNDER THE COMPETITION ACT, 2002

AMENDMENT

According to section 35(2) of the Competition Act, 2002, a *party may call upon experts from the fields of economics, commerce, international trade or from any other discipline to provide an expert opinion in connection with any matter related to a case.*

A CS in a competent professional that may give advices to the parties under section 35(2) on calling upon by any party.