



MEDIATION- Post COVID 19 Dispute Resolution Mechanism.

In India traditionally dispute resolution mechanism is Court and now Arbitration is evolving as one of Alternate Dispute Resolution mechanisms. Taking into consideration the burden on courts, time required for getting the justice and cost involved in both the mechanisms, businesses (especially startups, MSME and emerging companies) need a mechanism, which can address the disputes at a faster pace and at a lesser cost.

Mediation may be an answer to this.

What is Mediation?

It is a process in which through a trained professional i.e. mediator, parties themselves negotiate and arrive at mutually acceptable resolution to their differences or disputes. Role of mediator in this process is to facilitate the negotiation between the parties and lead parties towards the amicable resolution of the disputes or differences between them.

Why do businesses need Mediation ?

In India there is huge pendency of cases in the courts. Litigants are spending lacs of rupees over the litigations. Arbitration also at least takes around 2 yrs to receive the first award, which will be subject to the challenge in High Court and thereafter in Supreme Court. All this provides a wide scope for adopting Mediation as an Alternate Dispute Resolution mechanism especially by startups, MSME and emerging companies. Recognizing this, from August 2018, Mediation has been made mandatory for commercial disputes in India, under the Commercial Courts Act, 2015. Further, Mediation is also globally gaining importance as an Alternate Dispute Resolution Mechanism.

Everybody agrees that no business is in the business of dispute. Disputes are irrupted primarily due to ego issues, differences in execution of contracts, lack of regular communication between the parties, trust issue and also due to economic compulsion arising out of force majeure events like COVID 19. The COVID 19 outbreak has disrupted the business globally and there is a possibility of arising differences or disputes between the parties to the contract after COVID 19 on various contractual issues unless parties act sensibly. Businesses must take into consideration that COVID 19 is a bad patch and occasional, where as maintaining business relationship is critical for sustaining the business from long term perspective. Under the circumstances, Mediation would be a useful mechanism to the parties to address their disputes without going to the courts or arbitration. Even if parties do not have a Mediation clause

in the agreement, parties can amicably agree to make an attempt to refer the dispute to the Mediation.

Following **advantages of Mediation** are self-explanatory and will prompt businesses to make an attempt of Mediation before approaching courts or arbitration as the case may be.

1 Speedy settlement

Mediation being an informal process and negotiation between the parties across the table, takes less time as compared to courts and arbitration to arrive at the settlement.

2. Cost competitive.

No stamp duty, no court fees. Even lawyers may also not be required in this process as parties negotiate with each other on the basis of facts. Fees of mediators and institutions conducting the Mediation are competitive generally based on the amounts in dispute.

3. Win-win result

Beauty of Mediation is that nobody wins or loses in Mediation as parties mutually agree to and arrive at the solution to the dispute. Whereas, in court or arbitration, judgment or award is passed in favor of one of the parties to the dispute. This many times spoils the relationship between the parties and may close the doors for future business.

4. Maintenance of privacy or confidentiality

Unlike court or arbitration (unless it is agreed in the contract that arbitration will be confidential), the Mediation is private and confidential. The discussions or negotiations between the parties would not go beyond the four walls, even if parties could not arrive at an amicable solution to their disputes. In case parties fail to arrive at resolution to the dispute in Mediation, during court or arbitration proceedings such discussions and negotiations between the parties are not recognized as evidence.

5. Businesses can see Mediation as a tool towards ease of doing business.

Parties can approach private mediators or approach Center for Mediation and Conciliation an initiative of Bombay Chamber of Commerce, Mumbai. Courts also provide this facility.

Happy to help in case more information is required on Mediation.

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