



राष्ट्रीय विधिक सेवा प्राधिकरण  
**NATIONAL LEGAL SERVICES AUTHORITY**  
(Constituted under the Legal Services Authorities Act, 1987)

12/11, जाम नगर हाऊस  
शाहजहाँ रोड, नई दिल्ली-110011

12/11, Jam Nagar House  
Shahjahan Road, New Delhi-110011

सुरेन्द्र एस.राठी

निदेशक

**SURINDER S. RATHI**

(Delhi Higher Judicial Service)

Director

F.No. L/17/2018/NALSA/  
Date 13.7.2018

To,

All the Member Secretaries  
State Legal Services Authorities

Sub: Launching of Mandatory Pre Suit Pre-Institution Mediation in  
Commercial Disputes in Legal Services Authorities.

Sir/Madam,

With an aim to achieve expeditious adjudication of Commercial Disputes, in the year 2015, the "Commercial Courts, Commercial Division Commercial Appellate Division of High Courts Act, 2015" was promulgated and notified by the Central Government. It paved the way for constitution of Commercial Courts at the District Judge level and in some states also at the High Court level where High Courts were having original civil jurisdiction for example Delhi.

This Act was applicable to all 'Commercial Disputes' as defined in Section 2(c) of the Act which is as under:-

2. Definitions.—(1) In this Act, unless the context otherwise requires,—

(c) —commercial dispute|| means a dispute arising out of—

(i) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;

(ii) export or import of merchandise or services;

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- (iii) issues relating to admiralty and maritime law;
- (iv) transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same;
- (v) carriage of goods;
- (vi) construction and infrastructure contracts, including tenders;
- (vii) agreements relating to immovable property used exclusively in trade or commerce;
- (viii) franchising agreements;
- (ix) distribution and licensing agreements;
- (x) management and consultancy agreements;
- (xi) joint venture agreements;
- (xii) shareholders agreements;
- (xiii) subscription and investment agreements pertaining to the services industry including outsourcing services and financial services;
- (xiv) mercantile agency and mercantile usage;
- (xv) partnership agreements;
- (xvi) technology development agreements; 2 patent, design, domain names, geographical indications and semiconductor integrated circuits;
- (xviii) agreements for sale of goods or provision of services;
- (xix) exploitation of oil and gas reserves or other natural resources including electromagnetic spectrum;
- (xx) insurance and re-insurance;
- (xxi) contracts of agency relating to any of the above; and
- (xxii) such other commercial disputes as may be notified by the Central Government.

Explanation.—A commercial dispute shall not cease to be a commercial dispute merely because—

- (a) it also involves action for recovery of immovable property or for realisation of monies out of immovable property given as security or involves any other relief pertaining to immovable property;
- (b) one of the contracting parties is the State or any of its agencies or instrumentalities, or a private body carrying out public functions;
- (d) —Commercial Division|| means the Commercial Division in a High Court constituted under sub-section (1) of section 4;



(e) —District Judge|| shall have the same meaning as assigned to it in clause (a) of article 236 of the Constitution of India;

(f) —document|| means any matter expressed or described upon any substance by means of letters, figures or marks, or electronic means, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter;

(g) —notification|| means a notification published in the Official Gazette and the expression —notify|| with its cognate meanings and grammatical variations shall be construed accordingly;

(h) —Schedule|| means the Schedule appended to the Act; and (i) —Specified Value||, in relation to a commercial dispute, shall mean the value of the subjectmatter in respect of a suit as determined in accordance with section 12 which shall not be less than one crore rupees or such higher value, as may be notified by the Central Government.

In the original 2015 Act, all commercial disputes having pecuniary value of One Crore and above alone were covered.

Lately, on 3<sup>rd</sup> of May 2018, Hon'ble President of India has signed the ordinance titled 'Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (amendments) Ordinance, 2018. The copy of the ordinance is Annexure 'A'.

The highlights of this ordinance is that they have reduced the earlier longish title of the Act to the smaller one i.e The Commercial Courts Act,2015. They have included Chapter III-A in the Act titled 'Pre-Institution Mediation and Settlement'. Copy of the Amended Act is attached herewith as Annexure B.

Section 12(A) has been introduced in the Act which provides that but for cases which contemplates urgent interim relief, no suit qua a commercial dispute shall be instituted in the court of competent jurisdiction unless the plaintiff first exhausts the remedy of Pre-Institution Mediation before the Legal Services Institutions constituted under Legal Services Authorities Act,1987.



Meaning thereby, that except in cases wherein urgent relief of interim stay is sought, all commercial disputes will be first raised by the plaintiff before the State Legal Services Authority or the District Legal Services Authority by way of a Mediation Application. The Legal Services Authority is supposed to carry out Mediation between the parties at the Pre-Institution stage for a period of Three months which is extendable by another Two months with the consent of the parties. The ordinance brought another important change i.e decrease in the " Specified Value" of the commercial disputes from Rs One Crore and above to Rs Three lacs and above as per Section 2(i) of the Act. The Amended Act provides for establishment of Commercial Courts and Commercial Appellate Courts even at the District Judge level.

Lately, in exercise of power conferred u/S 21(A) of the Amended Act, in active consultation with NALSA, Ministry of Law & Justice has drafted Rules for governing the above referred Pre-Institution Mediations. The rules titled ' The Commercial Courts ( Pre-Institution Mediation and Settlement) Rules, 2018' , have now been notified on 3.7.2018. Copy of the same is annexed herewith at Annexure 'C'.

Similarly, another notification of the even date was issued in terms of Section 12(A)(2) of the Act notifying State Legal Services Authorities and the District Legal Services Authorities to carry out Pre-Institution Mediation and Settlement. Copy of the above notification is at Annexure 'D' .

Given the fact that definition of term Commercial Dispute in Section 2 ( c) of the Act is quite expansive, almost 2/3<sup>rd</sup> or around 60-70% of civil disputes would be covered in the same. In so far as the amended law provides that these many Commercial Disputes shall be first raised before our Legal Services Institutions, there is urgent need to take stock of the facilities available with us both at the State as well as District level pan India.



In this regard, communications were exchanged between NALSA and Ministry of Law & Justice right from the month of May 2018 wherein NALSA highlighted the need to take stock of preparedness of the Legal Services Institutions under the following heads:

- (i) Physical Infrastructure
- (ii) Human Resources/Staff availability
- (iii) Non availability of dedicated agencies to serve notice at the Pre-Institution stage.
- (iv) Availability of adequate funds with SLSAs and DLSAs . Variation in the fees/honorarium payable to the Mediators in the successful /un-successful mediations currently prevalent.

More so when the Pre-Suit Mediation is not supposed to be free for the intended litigants and there is provision for charging of fee from both sides which is proportionate to the value of the Commercial Dispute mediated (refer Schedule II of the Rules).

In this regard, a communication was issued by NALSA to all the SLSAs on 17.5.2018 ( copy annexed with at Annexure' E'). The reports received from various SLSAs have been collated at Annexure' F' .

In the light of above change in the statutory position, different High Courts have already started notifying the Commercial at the District Court levels. Once the rules are notified and the Commercial Court Divisions and Appellate Courts are also notified, various Facilitation Centres may soon stop accepting the Commercial Dispute suits of the Value Three Lacs and above for want of mandatory Pre-Institution Mediation before Legal Services Institutions.



Accordingly, we need to gear up for receiving a regular flow of such Pre-Institution Mediation matters at our SLSA and DLSA. Districts where ADR Centres have been established may be in comparatively better position infrastructurally to handle such cases as against the Districts who are yet to have functional ADR Centres.

All the SLSAs are accordingly requested to further assess the preparedness on following lines so that we can evaluate over them when we meet on 26<sup>th</sup> & 27<sup>th</sup> July, 2018 of this month.


- (i) Fair assessment of number of Commercial Disputes which would reach the Legal Services Institutions in each districts for Pre-Institution Mediation. The figure may be assessed on daily, weekly, monthly and yearly basis. The same can be assessed with the help of data available with District Court Administration with the help of Chairperson of DLSAs.
- (ii) Number of footfalls expected in the Legal Services Institutions /ADR Centres qua the above assessed cases on daily, weekly, monthly and yearly basis.
- (iii) Assessments of availability of Physical infrastructure like Parking area, Air conditioned /air cooled waiting hall, male/female rest rooms, drinking water, Tea and Coffee vending machines, Reception/Help Desks etc.
- (iv) Availability of adequate staff at all levels i.e Incharge Pre-Institution Mediations/ Superintendent/Accountant/Steno(English/vernacular language)/UDC/LDC/Data Entry Operator and Peons dedicated to Pre-Institution Mediation.
- (v) Availability of adequate number of Trained Mediators in every District which is commensurate to handle the assessed inflow of Commercial Disputes on all working days from 10:00 am to 5:00 pm.



- (vi) Need of Data Entry for collating the regular data qua Mediation.
- (vii) Assessment of need of Process Serving Agency for local services apart from usage of facility of Indian Postal Services and private courier agency as well as serving electronic means.
- (viii) Availability of adequately furnished air conditioned cubicals to provide privacy during mediation sittings so that simultaneous Mediations can be held throughout the day.
- (ix) Availability of adequate hardwares including Computers, Printers, Photocopier, Scanner etc. with lare or private net linkages.
- (x) Need for additional funds to spruce up the present preparedness for all the above heads with breakup under immediate, midterm and long term need heads.
- (xi) Other preparatory needs may be specified/highlighted.

The response to the queries may be sent in a week time.

Yours sincerely,



13.07.2018

(Surinder S. Rathi)  
Director, NALSA



GOVERNMENT OF TELANGANA  
**TELANGANA STATE LEGAL SERVICES AUTHORITY**  
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**B.R. MADHUSUDHAN RAO**  
**Member Secretary**  
(District & Sessions Judge)

ROC.No.3782/TSLSA/2018, Date:09.08.2018

Sir / Madam,

Sub: upload the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Ordinance, 2018, Act 2015 and Rules, 2018 in the District Court's Web site - Request - Regarding.

Ref: 1. NALSA letter in F.No. L/17/2018/NALSA, dated 13.07.2018  
2. Note file Orders dated 09.08.2018 of Hon'ble Executive Chairman, TSLSA

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Adverting to the subject and references cited, I am directed to forward the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Ordinance, 2018, Act 2015 and Rules, 2018 and request you to direct the concerned, to upload the same in the District Court's web site and report compliance, **by 16.08.2018**, so as to place the same before Hon'ble Executive Chairman, Telangana State Legal Services Authority.

Yours faithfully

**MEMBER SECRETARY**

Encl: a/a.

To  
All Chairpersons,  
District Legal Services Authorities in the State of Telangana.