COMMERCIAL COURTS (PRE-INSTITUTION MEDIATION AND SETTLEMENT) RULES 2018

REGD. NO. D. L.-33004/99 Che Gazette of -3Jndia 4461 No. 4461 EXTRAORDINARY PART 11—Section 3—Sub-section (i) PUBLISHED BY AUTHORITY frär, 3, 2018/3m•rq 12, 1940 NEW DELHI, TUESDAY, JULY 3, 2018/ASHADHA 12, 1940 2018 ær.qr.@. 2015 (2016 4) IF (1) 2fi fr (2) QTfr7it FifiT €11, VI-Or- (1) Fif*Fr (TÜ 1. 2018 I "3frÄqq" 2015 (2016 Tr 4) t; U) "37Tä-q-$' it 3 F) RAE" ft 2 (1) (vr) 3760 GI/2018 (1) 2 THE GAZETTE OF INDIA EXTRAORDINARY [PART 11—SEC. .3(i)] FT) "Rirft frFft (30 "qqz:åa-r' ; (2) erät qtr 1987 (1987 39) I 3. (1) zrr Fit ÄT VTf$fiT?r *7TT; (2) *tr-zr 1 q-r?r fr vr Röfr (3) 78t frtrfr ÜT, 78t (2) (4) GT8t (3) 3Fft7 7T$r q-r7T AT qv-t ft-it*ft C*TFfiZT€r t, vrfüTr€t 3fi$r 1 -3 frité fröft (5) fitrfr (2) (3) (6) R•öft (5) tt t, 1 -3 frqhé t, q-q-n,-äf5FT (8) tÄTfhr€t *-trr fr 3Ffr 3ßfr ft ü7TT I 3 (iii) (iv) (v) (vi) (vii) (viii) (ix) q-•Ä-q-r frAT t, å-n:t q-q-afi-a-r a-tf q-r t, 1 FTT-5 frtiié (2) xrfhT?r fr 3 (1) 3TffrT 3 (2) (3) 7 (1) (vii) 3+fi7 7 (I) (ix) frTiÉ 8. q;FTT- 10. (1) åq-r 3T#ft7 (2) v-rßh-or zq-ft (1) tr-tT-6 11. 2 12. 4 (i) (iii) (iv) (v) (vii) (viii) (ix) (x) THE GAZEITE OF INDIA : EXTRAORDINARY [PART IT—SEC. 3(i)] f?--€T a-fi figT7FT ; zrr ZET 1. 2015 4. (5000 : 3(i)] Rit#ft : 3(2) 3(3) 1. FT a-rcr) (Rüfr 7M) 2015 ft IF (VTfhT€t zrr qr qfr;-qT a-ä 3. vfrAT q-T-q7TT I 4. 2 ft qT?ft 7T?T 5 6 THE GAZETTE OF INDIA : EXTRAORDINARY 3(4) (6) [PART IT—SEC. 5. 3 (4) 3(6) frTité : 7(1) (vii) 7. ft åz-*t : 11-uvg 3(i)] 7 1. 2. 5. 6. 7. åFit : 7(1) (ix) 10 (2) 11 11 3(4) fi-q-q 3(6) 15,000/- 30,000/- 7(1) (ix) 7(1) (vii) 11 1. 2. 3. 10,00,000 8 4

5. THE GAZETTE OF INDIA EXTRAORDINARY 50,000/- 75,000/- [PART IT—SEC. 3(i)] 100,00,000 F. T!-60011 I MINISTRY OF LAW AND JUSTICE (Department of Legal Affairs) NOTIFICATION New Delhi, the 3rd July, 2018 G.S.R. exercise of the powers conferred by sub-section (2) of section 2 IA read with sub-section (I) of section 12A of the Commercial Courts Act, 2015 (4 of 2016), the Central Government hereby makes the following rules, namely:- I

2. Short title and commencement.— (I) These rules may be called the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018. (2) They shall come into force on the date of their publication in the Official Gazette. Definitions.- (l) In these rules unless the context otherwise requires,- (a) (b) (c) (d) (d) (e) (f) (g) (h) (i) (2) "Act" means the Commercial Courts Act, 2015 (4 of 2016); "applicant" means a person who approaches the Authority under rule 3 for the initiation of mediation process; "Authority ' means the Authority notified by the Central Government under sub-section (2) of section 12A of the Act; "commercial dispute" means the commercial dispute as defined in clause (c) of sub-section (l) of section 2 of the Act; "Form" means the Form specified in the Schedule to these rules; "mediation" means a process undertaken by a Mediator to resolve, reconcile and settle a commercial dispute between the parties thereto. "Mediator" means a person empanelled by the Authority for conducting the mediation; "opposite party" means a party against whom relief is sought in a commercial dispute; "Schedule" means the Schedule appended to these rules; and "settlement" means the settlement of commercial dispute arrived at by the parties to the mediation; The words and expressions used and not defined in these rules, shall have the same meanings respectively as assigned to them in the Act or the Legal Services Authorities Act, 1987 (39 of 1987) or in any other law for the time being in force 3. Initiation of mediation process.- (I) A party to a commercial dispute may make an application to the Authority as per

Form-I specified in Schedule-I, either online or by post or by hand, for initiation of mediation process under the Act along with a ike of one thousand rupees payable to the Authority either by way of demand draft or through online; [•FT 11—7äTrg 3(i)] 9 (2) The Authority shall, having regard to the territorial and pecuniary jurisdiction and the nature of commercial dispute, issue a notice, as per Form-2 specified in Schedule-I through a registered or speed post and electronic means including e-mail and the like to the opposite party to appear and give consent to participate in the mediation process on such date not beyond a period of ten days from the date of issue of the said notice. (3) Where no response is received from the opposite party either by post or by e-mail, the Authority shall issue a final notice to it in the manner as specified ili sub-rule (2). (4) Where the notice issued under sub-rule (3) remains unacknowledged or where the opposite party refüses to palticipate in the mediation process, the Authority shall treat the mediation process to be a non-starter and make a report as per Form 3 specified in the Schedule-I and endorse the same to the applicant and the opposite party. (5) Where the opposite party. after receiving the notice • under sub-rule (2) or (3) seeks further time for his appearance, the Authority may. if it thinks fit, fix an alternate date not later than ten days from the date of receipt of such request from the opposite party. (6) Where the opposite party fails to appear on the date fixed under sub-rule (5), the Authority shall treat the mediation process to be a non-starter and make a report in this behalf as per Form 3 specified in Schedule-I and endorse the same to the applicant and the opposite party. (7) Where both the parties to the commercial dispute appear before the Auth01ity and give consent to participate in the mediation process, the Authority shall assign the commercial dispute to a Mediator and fix a date for their appearance before the said Mediator. (8) The Authority shall ensure that the mediation process is completed within a period of three months from the date of receipt of application for pre-institution mediation unless the period is extended for further two months with the consent of the applicant and the opposite party

4. Venue for conducting mediation.— The venue for conducting of the mediation shall be the premises of the Authority

5. Role of Mediator.— The Mediator shall, on receipt of the assignment under sub-rule (7) of rule 3, facilitate the voluntary resolution of the commercial dispute between the parties and assist them in reaching a settlement

6. Representation of parties.— A party to a commercial dispute shall appear before the Authority or Mediator, as the case may be, either personally or through his duly authorised representative or Counsel

7. Procedure of mediation.— (l) The mediation shall be conducted as per the following procedure- (i) At the commencement of mediation, the Mediator shall explain to the parties the mediation process; (ii) The date and time of each mediation sitting shall be fixed by the Mediator in consultation with the parties to the commercial dispute. (iii) The Mediator may, during the course of mediation, hold meetings with the parties jointly or separately. as he thinks fit; (ivi The applicant or opposite party may share their settlement proposals with the Mediator in separate sittings with specific instruction as to what part thereof can be shared with the other party; 10 THE GAZETI'E OF INDIA : EXTRAORDINARY [PART IT—SEC. 3(i)] (v) The parties to the mediation can exchange settlement proposals with each other during mediation sitting either orally or in writing; (vi) During the process of mediation, the Mediator shall maintain confidentiality of discussions made in the separate sittings with each party and only those facts which a party permits can be shajvd with the other party; (vii) Once both the parties reach to a mutually agreed settlement, the same shall be reduced in writing by the Mediator and shall be signed by the parties to the commercial dispute and the Mediator as per

Form-4 specified in the Schedule-I; (viii) The Mediator shall provide the settlement agreement, in original. to all the parties to a commercial dispute and shall also forward a signed copy of the same to the Authority; and (ix) Where no settlement is arrived at between the parties within the time specified in the sub-section (3) of section 12A of the Act or where the Mediator is of the opinion that the settlement is not possible. the Mediator shall submit a report to the Authority. with reasons in writing, as per Form-5 specified in Schedule-I. (2) The Authority or the Mediator, as the case may be, shall not retain the hard or soft copies of the documents exchanged between the parties or submitted to the Mediator or notes prepared by the Mediator beyond a period of six months other than the application for mediation under sub-rule (I) of rule 3, notice issued under sub-rule (2) or (3) of rule 3, settlement agreement under clause (vii) of sub-rule (l) of rule 7 and the Failure report under clause (ix) of sub-rule (l) of rule 7

8. Parties to act in good faith.— All the parties to a commercial dispute shall participate in the mediation process in good faith with an intention to settle the dispute

9. Confidentiality of mediation.— The Mediator, parties or their authorized representatives or Counsel shall maintain confidentiality about the mediation and the Mediator shall not allow stenographic or audio or video recording of the mediation sittings. IO. Maintenance and publication of mediation data.— (I) The District Legal Services Authority shall forward the detailed data of the mediation dealt by it under the Act to the State Legal Services Authority. (2) The State Legal Services Authority shall, maintain the data of all mediations carried out by it or under its jurisdiction and publish the same, on quarterly basis, on its website as per

Form-6 specified in the Schedule-I

11. Mediation Fee Before the commencement of the mediation, the parties to the commercial dispute shall pay to the Authority a one-time mediation fee, to be shared equally, as per the quantum of claim as specified in Schedule-ll

12. Ethics to be followed by Mediator.—The Mediator shall- (i) (ii) (iii) (iv) (v) uphold the integrity and fairness of the mediation process; ensure that the parties involved in the mediation are fairly informed and have an adequate understanding of the procedural aspects of the mediation process; disclose any financial interest or other interest in the subject-matter of the commercial dispute; avoid any impropriety, while communicating with the parties to the commercial dispute: be faithful to the relationship of trust and confidentiality reposed in him; 11-ÜTZ 3(i)] 11 (vi) (vii) (viii) (ix) (x) conduct mediation related to the resolution of a commercial dispute, in accordance with the applicable laws for the time being in force; recognise that the mediation is based on the principles of self-determination by the parties and that mediation process relies upon the ability of parties to reach a voluntary agreement: refrain from promises or guarantees of results; not meet the parties, their representatives, or their counsels or communicate with them, privately except during the mediation sittings in the premises of the Authority; not interact with the media or make public the details of commercial dispute case, being mediated by him or any other allied activity carried out by him as a Mediator, which may prejudice the interests of the parties to the commercial dispute. SCHEDULE -1

FORM-I: MEDIATION APPLICATION FORM [See Rule 3(1)] Name of the Authority and address DETAILS OF PARTIES: 1. 2. 3

4. Name of applicant . Address and contact details of applicant: Address:- Telephone. No. Name of opposite party: Mobile. Address and contact details of opposite party: E-mail 11): E-mail 11): Address:- Telephone. No. DETAILS OF DISPUTE: Mobile. I. 2. 3. 4

5. Nature of dispute as per section 2 (I of the Commercial Courts Act 2015 (4 of 2016): Quantum of claim: Territorial jurisdiction of the competent court: Brief synopsis of commercial dispute (not to exceed 5000 words): Additional points of relevance: 12 DETAILS OF FEE PAID: Fee paid by DD No. Online transaction No. Date: THE GAZETTE OF INDIA : EXTRAORDINARY [PART 11—SEC. dated dated Name of Bank and branch Name and Signature of Applicant Note: Form shall be submitted to the Authority with a fee of one thousand rupees. For Office Use: Form received on : File No. allotted: Mode of sending notice to the opposite party: Notice to opposite party sent on: Whether Notice acknowledged by opposite party or not: Date of Non-starter re ort/ Assi nment of commercial dis ute to Mediator: I. 2

3. FORM-2: Notice/Final Notice to the Opposite party for Pre-Institution Mediation [See Rule 3(2) and Rule 3(3)1 Name of the Authority and address Whereas a commercial dispute has been submitted to (name of Authority) by (name of applicant) against (name of opposite party) requesting for pre-institution mediation in terms of section 124 of Chapter IIIA of Commercial Courts Act, 2015.A copy of the mediation application Form is attached herewith. The opposite party is hereby directed to appear in person or through his duly authorised representative or Counsel on . .....(Date) . . ...(Time) at the (Authority address) and convey his consent to participate in mediation process. Failure to appear before the Authority by opposite party would be deemed as his refusal to participate in mediation process initiated by the applicant. I. 2. 3. 4. 5

6. Date: 13 4. In case, the date and time mentioned in para 2 is sought to be rescheduled the same can be done by the opposite party either on its own or through its authorised representative or counsel by making a request in writing at-least two days prior to the scheduled date of appearance. Signature of the Authority Date:

Form 3:Non-Starter Report [See Rule 3 (4) and (6)/ Name of the Authority and address Name of the applicant: Date of application for Pre-Institution mediation: Name of the opposite party: Date scheduled for appearance of opposite party: Report made under rule 3(4) or 3(6): Non Starter Report reason: Copy to: I. 2. 3. 4. 5

Form 4: Settlement [See Rule 7 (1) (vii)l Name of the Authority and address Name of the Mediator: Name of the applicant: Name of the opposite party: Date of application for Pre-Institution mediation: Venue of mediation: Date(s) of mediation: 14 7

8. Date: THE GAZETI'E OF INDIA : EXTRAORDINARY No.of sittings and duration of sittings: Terms of settlement: [PART IT—SEC. 3(i)] Signature of Applicant Signature of Opposite Party Signature of Mediator

8. Date: Name of the Mediator: Name of the applicant: Name of the opposite party: Date of application for Pre-Institution mediation: Venue of mediation: Date(s) of mediation: No.of sittings and duration of sittings: Reasons for failure: Signature of Applicant Signature of Opposite Party Signature of Mediator

Form 6: Mediation Data [See Rule 10 No the Authority application received by Authority Nature of Applicant Party Individual Corporate Nature Of ()pposite Individual Corporate No. of applications slab-wise as Fr Schedule-II No. of application disposed off asper Rule 3(4) and 3(6) No. of application referred for mediation No. of application where no settlement arrived at as per Rulc 7(lYix) No. of application where parties reached a settlement as per Rule 7(lXvii) 15 S.NO 1. 2. 3. 4

5. QUANTUM OF CLAIM From Rs.to From Rs. to Rs. From Rs. to Rs. From Rs. to Above Rs. SCHEDULE-11 Mediation Fee [See Rule 111 MEDIATION FEE PAYABLE TO AUTHORITY (in Indian rupees). Rs. 15 000/ Rs. 30 000/ Rs. 40 Rs. 50 000/ Rs. 75000/ Dr. RAJIV MANI, Ju secy. and Legal Adviser