

MINISTRY OF CORPORATE AFFAIRS

NOTIFICATION

New Delhi, the 9th September, 2016

G.S.R. 877 (E).—In exercise of the powers conferred under section 442 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules, namely :

1. Short Title and Commencement .—(1) These rules may be called the Companies (Mediation and Conciliation) Rules, 2016.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions .—(1) In these rules, unless the context otherwise requires,—

- (a) “Act” means the Companies Act, 2013 (18 of 2013);
- (b) “Regional Director” means the person appointed by the Central Government in the Ministry of Corporate Affairs as a Regional Director ;
- (c) “Annexure” means the annexure attached to these rules ;
- (d) “Form” or “e-Form” means a form set forth in the Annexure which shall be used for the matter to which it relates ;
- (e) “Panel” means the Mediation and Conciliation Panel.

(2) The words and expressions used in these rules but not defined and defined in the Act or in the Companies (Specification of Definitions Details) Rules, 2014 shall have the meanings respectively assigned to them in the Act or the rules.

3. Panel of mediators or conciliators .— (1) Regional Director shall prepare a panel of experts willing and eligible to be appointed as mediators or conciliators in the respective regions and such panel shall be placed on the website of the Ministry of Corporate Affairs or on any other website as may be notified by the Central Government.

(2) The Regional Director may invite applications from persons interested in getting empanelled as mediator or conciliator and possessing the requisite qualifications specified in Rule 4.

(3) A person who intends to get empanelled as mediator or conciliator and possesses the requisite qualifications shall apply to the Regional Director in Form MDC-1.

(4) Application received under sub-rule (3), if rejected by the Regional Director, the Regional Director shall record the reasons in writing for the same.

(5) The Regional Director shall invite applications from persons interested in getting empanelled as mediator or conciliator every year during the month of February and update the Panel which shall be effective from 1st of April of every year:

Provided that for Financial Year 2016-17, the Regional Director may call for applications from the persons interested in getting empanelled as mediator or conciliator, within 60 days from the date of publication of these rules and prepare the panel for the current financial year within a period of 30 days.

4. Qualifications for empanelment.—A person shall not be qualified for being empanelled as mediator or conciliator unless he —

- (a) has been a Judge of the Supreme Court of India ; or
- (b) has been a Judge of a High Court ; or
- (c) has been a District and Sessions Judge ; or
- (d) has been a Member or Registrar of a Tribunal constituted at the National level under any law for the time being in force ; or
- (e) has been an officer in the Indian Corporate Law Service or Indian Legal Service with fifteen years experience ; or
- (f) is a qualified legal practitioner for not less than ten years ; or
- (g) is or has been a professional for at least fifteen years of continuous practice as Chartered Accountant or Cost Accountant or Company Secretary ; or
- (h) has been a Member or President of any State Consumer Forum ; or
- (i) is an expert in mediation or conciliation who has successfully undergone training in mediation or conciliation.

5. Disqualifications for empanelment.—A person shall be disqualified for being empanelled as mediator or conciliator, if he —

- (a) is an undischarged insolvent or has applied to be adjudicated as an insolvent and his application is pending ;
- (b) has been convicted for an offence which, in the opinion of the Central Government, involves moral turpitude ;
- (c) has been removed or dismissed from the service of the Government or the Corporation owned or controlled by the Government ;
- (d) has been punished in any disciplinary proceeding, by the appropriate disciplinary authority ; or
- (e) has, in the opinion of the Central Government, such financial or other interest in the subject matter of dispute or is related to any of the parties, as is likely to affect prejudicially the discharge by him of his functions as a mediator or conciliator.

6. Application for appointment of Mediator or Conciliator and his appointment -

- (1) (a) Parties concern may agree on the name of the sole mediator or conciliator for mediation or conciliation between them;
- (b) Where, there are two or more sets of parties and are unable to agree on a sole mediator or conciliator, the Central Government or the Tribunal or the Appellate Tribunal may ask each party to nominate the mediator or conciliator or the Central Government or the Tribunal or the Appellate Tribunal may appoint the mediator or conciliator, as may be deemed necessary for mediation or conciliation between the parties.

(2) The application to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, for referring the matter pertaining to any proceeding pending before it for mediation or conciliation shall be in Form MDC-2 and shall be accompanied with a fee of one thousand rupees.

(3) On receipt of an application under sub-rule (2), the Central Government or the Tribunal or the Appellate Tribunal shall appoint one or more experts from the panel.

(4) The Central Government or the Tribunal or the Appellate Tribunal, as the case may be, before which any proceeding is pending may, *suo motu*, refer any matter pertaining to such proceeding to such number of experts from the Mediation and Conciliation Panel, if it deems fit in the interest of parties.

7. Deletion from the Panel .— The Regional Director may by recording reasons in writing and after giving him an opportunity of being heard, remove any person from the Panel.

8. Withdrawing name from Panel.—Any person who intends to withdraw his name from the Mediation and Conciliation Panel may make an application to the Regional Director indicating the reasons for such withdrawal and the Regional Director shall take a decision on such application within fifteen days of receipt of such application and update the Panel accordingly.

9. Duty of mediator or conciliator to disclose certain facts.—(1) It shall be the duty of a mediator or conciliator to disclose to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, about any circumstances which may give rise to a reasonable doubt as to his independence or impartiality in carrying out his functions.

(2) Every mediator or conciliator shall from the time of his appointment and throughout continuance of the mediation or conciliation proceedings, without any delay, disclose to the parties about existence of any circumstance referred to in sub-rule (1).

10. Withdrawal of appointment .—The Central Government or the Tribunal or the Appellate Tribunal as the case may be, upon receiving any disclosure furnished by the mediator or conciliator under rule 9, or after receiving any other information from a party or other person in any proceeding which is pending and on being satisfied that such disclosures or information has raised a reasonable doubt as to the independence or impartiality of such mediator or conciliator, may withdraw his appointment and in his place, appoint any other mediator or conciliator in that proceeding :

Provided that the mediator or conciliator may, offer to withdraw himself from such proceeding and request the Central Government or the Tribunal or the Appellate Tribunal as the case may be to appoint any other mediator or conciliator.

11. Procedure for disposal of matters .—(1) For the purposes of mediation and conciliation, the mediator or conciliator shall follow the following procedure, namely :-

(i) he shall fix, in consultation with the parties, the dates and the time of each mediation or conciliation session, where all parties have to be present ;

(ii) he shall hold the mediation or conciliation at the place decided by the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, or such other place where the parties and the mediator or conciliator jointly agree ;

(iii) he may conduct joint or separate meetings with the parties ;

(iv) each party shall, ten days before a session, provide to the mediator or conciliator a brief memorandum setting forth the issues, which need to be resolved, and his position in respect of those issues and all information reasonably required for the mediator or conciliator to understand the issue and a copy of such memorandum shall also be given to the opposite party or parties:

Provided that in suitable or appropriate cases, the above mentioned period may be reduced at the discretion of the mediator or conciliator;

(v) each party shall furnish to the mediator or conciliator such other information as may be required by him in connection with the issues to be resolved.

(2) Where there is more than one mediator or conciliator, the mediator or conciliators may first concur with the party that agreed to nominate him and thereafter interact with the other mediator or conciliator, with a view to resolve the dispute.

12. Mediator or Conciliator not bound by the Indian Evidence Act, 1872 or the Code of Civil Procedure, 1908 .— The mediator or conciliator shall not be bound by the Indian Evidence Act, 1872 or the Code of Civil Procedure, 1908 while disposing the matter, but shall be guided by the principles of fairness and natural justice, having regard to the rights and obligations of the parties, usages of trade, if any, and the circumstances of the dispute.

13. Representation of parties.— The parties shall ordinarily be present personally or through an authorised attorney at the sessions or meetings notified by the mediator or conciliator:

Provided that the parties may be represented by an authorised person or counsel with the permission of the mediator or conciliator in such sessions or meetings and the mediator or conciliator or the Central Government or the Tribunal or the Appellate Tribunal as the case may be, shall be entitled to direct or ensure the presence of any party to appear in person:

Provided further that the party not residing in India may, with the permission of the mediator or conciliator, be represented by his or her authorised representative at the sessions or meetings.

14. Consequences of non-attendance of parties at sessions or meetings on due dates.—If a party fails to attend a session or a meeting fixed by the mediator or conciliator deliberately or wilfully for two consecutive times, the mediation or conciliation shall be deemed to have failed and mediator or conciliator shall report the matter to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.

15. Administrative assistance.— In order to facilitate the conduct of mediation or conciliation proceedings, the mediator or conciliator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

16. Offer of settlement by parties.—(1) Any party to the proceeding may, “without prejudice” offer a settlement to the other party at any stage of the proceedings, with a notice to the mediator or conciliator.

(2) Any party to the proceeding may make a, “with prejudice” offer to the other party at any stage of the proceedings with a notice to the mediator or conciliator.

17. Role of Mediator or Conciliator .— The mediator or conciliator shall attempt to facilitate voluntary resolution of the dispute by the parties, and communicate the view of each party to the other, assist them in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and generating options in an attempt to resolve the dispute, emphasising that it is the responsibility of the parties to take decision which affect them and he shall not impose any terms of settlement on the parties :

Provided that on consent of both the parties, the mediator or conciliator may impose such terms and conditions on the parties for early settlement of the dispute as he may deem fit.

18. Parties alone responsible for taking decision.—The parties shall be made to understand that the mediator or conciliator facilitates in arriving a decision to resolve the dispute and that he shall not and cannot impose any settlement nor the mediator or conciliator give any assurance that the mediation or conciliation shall result in a settlement and the mediator or conciliator shall not impose any decision on the parties.

19. Time limit for completion of mediation or conciliation.— (1) The process for any mediation or conciliation under these rules shall be completed within a period of three months from the date of appointment of expert or experts from the Panel.

(2) On the expiry of three months from the date of appointment of expert from the Panel, the mediation or conciliation process shall stand terminated.

(3) In case of mediation or conciliation in relation to any proceeding before Tribunal or Appellate Tribunal which could not be completed within three months, the Tribunal or as the case may be, the Appellate Tribunal, may on the application of mediator or conciliator or any of the party to the proceedings, extend the period for mediation or conciliation by such period not exceeding three months.

20. Parties to act in good faith.— All the parties shall commit to participate in the proceedings in good faith with the intention to settle the dispute.

21. Confidentiality, disclosure and inadmissibility of information .—(1) When a mediator or conciliator receives factual information concerning the dispute from any party, he shall disclose the substance of that information to the other party, so that the other party may have an opportunity to present such explanation as it may consider appropriate :

Provided that when a party gives information to the mediator or conciliator subject to a specific condition that the information may be kept confidential, the mediator or conciliator shall not disclose that information to the other party.

(2) The receipt or perusal, or preparation of records, reports or other documents by the mediator or conciliator, while serving in that capacity shall be confidential and the mediator or conciliator shall not be compelled to divulge information regarding those documents nor as to what transpired during the mediation or conciliation before the Central Government or the Tribunal or the Appellate Tribunal or as the case may be, or any other authority or any person or group of persons.

(3) The parties shall maintain confidentiality in respect of events that transpired during the mediation and conciliation and shall not rely on or introduce the said information in other proceedings as to —

- (i) views expressed by a party in the course of the mediation or conciliation proceedings ;
- (ii) documents obtained during the mediation or conciliation which were expressly required to be treated as confidential or other notes, drafts or information given by the parties or the mediator or conciliator.
- (iii) proposals made or views expressed by the mediator or conciliator ;
- (iv) admission made by a party in the course of mediation or conciliation proceedings.
- (4) There shall be no audio or video recording of the mediation or conciliation proceedings.
- (5) No statement of parties or the witnesses shall be recorded by the mediator or conciliator.

22. Privacy.— The mediation or conciliation sessions or meetings shall be conducted in privacy where the persons as mentioned in rule 13 shall be entitled to represent parties but other persons may attend only with the permission of the parties and with the consent of the mediator or conciliator.

23. Protection of action taken in good faith .—No mediator or conciliator shall be held liable for anything, which is done or omitted to be done by him, in good faith during the mediation or conciliation proceedings for civil or criminal action nor shall be summoned by any party to the suit or proceeding to appear before the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, to testify regarding information received by him or action taken by him or in respect of drafts or records prepared by him or shown to him during the mediation or conciliation proceedings.

24. Communication between mediator or conciliator and the Central Government or the Tribunal or the Appellate Tribunal.—In order to preserve the confidence of parties in the Central Government or the Tribunal or the Appellate Tribunal as the case may be and the neutrality of the mediator or conciliator, there shall be no communication between the mediator or conciliator and the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, in the subject matter :

Provided that, if any communication between the mediator or conciliator and the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, is necessary, it shall be in writing and copies of the same shall be given to the parties or the authorised representative :

Provided further that communication between the mediator or conciliator and the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, shall be limited to communication by the mediator or conciliator:

- (i) about the failure of the party to attend ;
- (ii) about the consent of the parties ;
- (iii) about his assessment that the case is not suited for settlement through the mediation or conciliation;
- (iv) about settlement of dispute between the parties.

25. Settlement agreement .— (1) Where an agreement is reached between the parties in regard to all the issues or some of the issues in the proceeding, the same shall be reduced to writing and signed by the parties and if any counsel has represented the parties, the conciliator or mediator may also obtain the signature of such counsel on the settlement agreement.

(2) The agreement of the parties so signed shall be submitted to the mediator or conciliator who shall, with a covering letter signed by him, forward the same to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.

(3) Where no agreement is reached at between the parties, before the time limit specified in rule 19, or where the mediator or conciliator is of the view that no settlement is possible, he shall report the same to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, in writing.

26. Fixing date for recording settlement and passing order .—(1) The Central Government or the Tribunal or the Appellate Tribunal as the case may be, shall fix a date of hearing normally within fourteen days from the date of receipt of the report of the mediator or conciliator under rule 25 and on such date of hearing, if the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, is satisfied that the parties have settled their dispute, it shall pass an order in accordance with terms thereof.

(2) If the settlement disposes of only certain issues arising in the proceeding, on the basis of which any order is passed as stated in sub-rule (1), the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, shall proceed further to decide the remaining issues.

27. Expenses of the mediation and conciliation.—(1) At the time of referring the matter to the mediation or conciliation, the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, may fix the fee of the mediator or conciliator and as far as possible, a consolidated sum may be fixed rather than for each session or meeting.

(2) The expense of the mediation or conciliation including the fee of the mediator or conciliator, costs of administrative assistance and other ancillary expenses concerned, shall be borne equally by the various contesting parties or as may be otherwise directed by the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.

(3) Each party shall bear the costs for production of witnesses on his side including experts or for production of documents.

(4) The mediator or conciliator may, before the commencement of the mediation or conciliation, direct the parties to deposit equal share of the probable costs of the mediation or conciliation including the fees to be paid to the mediator or conciliator.

(5) If any party or parties do not pay the amount referred to sub-rule (4), the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, shall on the application of the mediator or conciliator, or any party, issue appropriate directions to the concerned parties.

(6) The mediation or conciliation shall commence only on the deposit of amount referred to in sub-rule (4) and in case amount is not paid before such commencement, the mediation or conciliation shall be deemed to have terminated.

28. Ethics to be followed by Mediator or Conciliator.—The mediator or conciliator shall—

- (a) follow and observe the rules strictly and with due diligence ;
- (b) not carry on any activity or conduct which shall reasonably be considered as conduct unbecoming of a mediator or conciliator ;
- (c) uphold the integrity and fairness of the mediation or conciliation process;
- (d) ensure that the parties involved in the mediation or conciliation are fairly informed and have an adequate understanding of the procedural aspects of the process ;
- (e) satisfy himself or herself that he or she is qualified to undertake and complete the assignment in a professional manner ;
- (f) disclose any interest or relationship likely to affect impartiality or which might seek an appearance of partiality or bias ;
- (g) avoid, while communicating with the parties, any impropriety or appearance of impropriety ;
- (h) be faithful to the relationship of trust and confidentiality imposed in the office of mediator or conciliator ;
- (i) conduct all proceedings related to the resolutions of a dispute, in accordance with the relevant applicable law ;
- (j) recognise that the mediation or conciliation is based on principles of self-determination by the parties and that the mediation or conciliation process relies upon the ability of parties to reach a voluntary, undisclosed agreement ; and
- (k) maintain the reasonable expectations of the parties as to confidentiality and refrain from promises or guarantees of results.

Provided that if any party finds conduct of mediator or conciliator violative of ethics laid down in this rule, the party may immediately bring it to the notice of the Regional Director.

29. Resort to arbitral or judicial proceedings .—The parties shall not initiate, during the mediation or conciliation under these rules, any arbitral or judicial proceedings in respect of a matter that is the subject-matter of the mediation or conciliation, except that a party may initiate arbitral or Judicial proceedings, where, in his, opinion, such proceedings are necessary for protecting his rights.

30. Matters not to be referred to the mediation or conciliation.—The following matters shall not be referred to mediation or conciliation, namely :—

- (a) the matters relating to proceedings in respect of inspection or investigation under Chapter XIV of the Act; or the matters which relate to defaults or offences for which applications for compounding have been made by one or more parties.
- (b) cases involving serious and specific allegations of fraud, fabrication of documents forgery, impersonation, coercion etc.
- (c) cases involving prosecution for criminal and non-compoundable offences.
- (d) cases which involve public interest or interest of numerous persons who are not parties before the Central Government or the Tribunal or the Appellate Tribunal as the case may be.

FORM MDC-1

[See rule 3(3) of the Companies (Mediation and Conciliation) Rules, 2016]

Application for Empanelment of Mediator or Conciliator on the Panel

To

The Regional Director _____

I S/o or D/o or W/o* resident of
 (address) am hereby pleased to offer my services as
 Mediator or Conciliator so as to take up any assignment or matters referred
 by the Central Government at the places furnished hereunder:

1. _____ 2. _____ 3. _____ 4. _____

I possess requisite qualifications and experience in the following fields for the past ____ years. In this regard, my resume or an illustrative memoranda as to my qualifications, experience, notable achievements with relevant proofs and declaration are enclosed hereto in two sets duly attested.

Area of Experience in brief :

I shall abide by the Companies (Mediation and Conciliation) Rules, 2016 and such other relevant rules or Code of Conduct or Guidelines as may be specified from time to time.

I state that upon the receipt of the intimation of offer of empanelment, the necessary documentation shall also be executed.

I request you to consider my application for empanelment in the Panel.

Place :

Dated :

Signature

Encl :

(Seal)

*Strike off whichever is not applicable.

FORM MDC-2

[See rule 6(2) of the Companies (Mediation and Conciliation) Rules, 2016]

Application for referring the matter to the Panel

To

The (Designated Officer)

The Central Government/Tribunal/Appellate Tribunal.

IS/o or D/o or W/o*.....resident of
.....(address) being a party in the proceeding before Central Government/Tribunal/Appellate
Tribunal under sectionof the Act bearing reference number(if any) hereby apply for
referring the matter to the Mediation and Conciliation Panel.

The requisite fee has been paid vide(details of fees paid).

Place :

Dated :

SIGNATURE

* Strike off whichever is not applicable

[F. No.1/36/2013-CL. V]

AMARDEEP S BHATIA, Jt. Secy.