

## MEDIATION ACT 2023



The Bill which was introduced in the year 2021 to promote and facilitate mediation for resolution of disputes and to enforce mediated settlement agreements was passed by the Rajya Sabha on 01.08.2023.

The Mediation Act envisages a mechanism for the settlement of civil and commercial disputes by providing an opportunity for the litigants to adjudicate their disputes through a mediator before they approach the Court of Law which is expensive and time-consuming. The key provision of the Act which would enable the litigants to effectively participate in mediation proceedings before approaching the Court of Law for adjudication of their disputes are as under:

- While the Mediation Act provides an opportunity for the parties to by-pass the mediation process by filing an application seeking urgent interim relief along with the appropriate proceedings, however, at the same time, the courts or tribunals may refer the parties to mediation to resolve their dispute after granting or rejecting the urgent interim relief sought by the party.
- The Mediation Act has empowered the Court or Tribunal to pass a suitable interim order in favour of the party before referring the parties to undertake mediation.
- The courts or tribunals may examine the conduct of the parties during mediation and to impose such cost upon them if it comes to a conclusion that any of the party has failed to attend the first two mediation sessions without any reasonable cause and which has resulted in failure of the mediation.
- Restrictions imposed upon Mediator and participants in the mediation from disclosing to any courts or tribunals by whatever description or to state the contents or conditions of any documents or nature or conduct of parties during mediation.
- Interest of the parties have been protected by excluding the period spend towards mediation towards computing the limitation for approaching the courts or tribunals for adjudication of the disputes.
- The chapter on Online Mediation will play an important role for parties to make an attempt to adjudicate their dispute through mediation as it would enable overseas litigants to continue to participate in mediation even if they are not able to physically participate on account of their personal commitments.

The above provisions in the Mediation Act will surely promote and facilitate mediation and would ensure wider participation of litigants, however, the following exclusion and timelines prescribed under the Mediation Act would be a step back to the objective which the Mediation Act proposed to achieve:

- The provisions of the Mediation Act are not being made applicable to Central Government or State Government or agencies, public bodies, corporations and local bodies. Whereas, it has been observed by the Supreme Court of India that Government entities are engaged in initiating frivolous proceedings with the sole attempt to withhold the legitimate dues of private companies. Therefore, in order to avoid frivolous litigations, Government entities should also be compelled to engage in mediation proceedings.
- The schedule-1 of the Mediation Act has excluded the proceedings initiated before appropriate commissions and Appellate Tribunal for Electricity under the Electricity Act, 2003. Under the Electricity Sector, maximum litigations are capable of being settled through mediation, therefore, applying the provisions of the Mediation Act would have enabled minimizing the litigations by state government/private parties before the Commissions and Tribunals.
- The time limit of 180 days as provided for completion of mediation proceedings could have been reduced to 90 days considering the position that litigants can also take the benefit of prolonging the mediation proceedings with the sole objective to ensure that the claim of the other party becomes infructuous.

### SKV Comment

*The Mediation Act is the right step to ensure that the litigant before approaching the Court or Tribunal would make an attempt to resolve their disputes through mediation which would reduce the workload of Courts and save the legal cost of the litigants. However, at the same time by excluding the disputes pertaining to the electricity sector and government bodies, the Mediation Act has failed to put a hold upon the frivolous litigations which are initiated by the Government bodies with the sole objective to delay the release of the legitimate claims of the private companies.*