

# **HIGH COURT OF UTTARKHAND, AT NAINITAL**

## **NOTIFICATION**

No. 224/UHC/Admin.B/2024, Dated- 17<sup>th</sup> May, .2024

In pursuance of directions of Hon'ble Court, following Standard Operating Procedure for conducting Pre-Institution Mediation and Settlement in Commercial Disputes is being issued, which will come into force with immediate effect:

**Standard Operating Procedure for Conducting Pre-Institution Mediations And Settlement In Commercial Disputes In the State of Uttarakhand.**

(hereinafter referred to as the "SOP")

### **A. Background:**

1. Chapter – III of the Commercial Courts Act, 2015 as amended vide Act No. 28/2018 has introduced the concept of Pre-Institution Mediation and Settlement in Commercial Disputes. Section 12A of said act provides that a suit which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.

The relevant provision is as under: -

### **12A. Pre-Institution Mediation and Settlement:**

- 1) A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation in accordance with such manner and procedure as may be prescribed by rules made by the

Central Government.

- 2) The Central Government may, by notification, authorize the Authorities constituted under the Legal Services Authorities Act, 1987 (39 of 1987), for the purposes of pre-institution mediation.
- 3) Notwithstanding anything contained in the Legal Services Authorities Act, 1987, the Authority authorised by the Central Government under sub-section(2) shall complete the process of mediation within a period of three months from the date of application made by the plaintiff under sub-section(1):

Provided that the period of mediation may be extended for a further period of two months with the consent of the parties:

Provided further that, the period during which the parties remained occupied with the pre-institution mediation, such period shall not be computed for the purpose of limitation under the Limitation Act, 1963 (36 of 1963).

- 4) If the parties to the commercial dispute arrive at a settlement, the same shall be reduced into writing and shall be signed by the parties in dispute and the mediator.
- 5) The settlement arrived at under this section, shall have the same status and effect, as if it is an arbitral award on agreed terms under sub-section (4) of section 30 of the Arbitration and Conciliation Act, 1996 (26 of 1996).

**2.** In the State of Uttarakhand, vide G.O. No.

328/XXXVI(1)/2017-04-मु०स०/2015, dated 31.10.2017 and G.O. No. 310/XXXVI-A-1/2021-04-मु०स०/2015, dated 19.08.2021, Commercial Courts have been established in Dehradun for Garhwal division and Haldwani for Kumaon division respectively for settlement of commercial disputes in Uttarakhand. It is informed to all District Legal Service Authority (DLSAs) that in the existing mediation centre at all the districts, a separate cell is to be demarcated for the purpose of handling Pre-Institution Mediation cases. At present in all DLSAs the said Pre-institution Mediation Cell is functional.

3. Accordingly, this Standard Operating Procedure is being developed to facilitate Pre-Institution Mediations and Settlement in commercial disputes in the State of Uttarakhand.

**B. The Modalities for carrying out Pre-Institution Mediation and Settlement in Commercial Court would be as under:**

- (1) **Words and Expressions used but not defined:** The words and expressions used but not defined herein shall have the same meaning as assigned to them in the Commercial Courts Act, 2015 (herein after referred as 'the Act') and in Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018 (herein after referred as 'PIMS Rules 2018').
- (2) **Conduct of Pre-Institution Mediation and Settlement:** Subject to the details and clarification provided hereinafter, the procedure for the Pre-Institution Mediation and Settlement shall be the same as prescribed in the PIMS Rules 2018.

- (3) **Nodal Officers:** In the Districts Headquarters, Secretary, DLSA shall be a Nodal Officer for implementation of Act and PIMS Rules 2018 and shall function under the monitoring by Chairperson of their respective DLSA. It shall be the duty of all the Nodal officers to verify the Filing Register, Cash Register, Assignment Register and Disposal Register which are attached herewith as **Annexures-C to F** herewith.
- (4) **Panel of Mediators:** At the Districts, the Chairperson and Secretary of DLSA shall prepare a separate list of expert Mediators, from the existing panel of Mediators in the DLSA, for handling Pre-Institution Mediation and Settlement in respect of commercial disputes. The said list along with the documents depicting their expertise, year of service as mediators, percentage of success in the cases mediated by them in the recent past etc., shall be submitted to Uttarakhand State Legal Service Authority (UKSLSA) for getting approval of the Hon'ble Executive Chairman, UKSLSA. Thereafter UKSLSA under due enquiry would finalize and notify the panel of mediators for the purpose of Pre-Institution Mediation and Settlement of commercial disputes. The said panel may be revamped once in 3 years or as per requirement from time to time.
- (5) **Venue for conducting mediation:** Mediation Centre established in each district shall be used for conducting mediation in Pre-Institution Mediation and Settlement of commercial disputes. In case of online mediation, the link shall be generated from the said venue.

(6) **Conduct of mediation process:**

- (i) The application in respect of mediation in commercial disputes shall be entertained by the DLSAs concerned having with regard to territorial, pecuniary jurisdiction and the nature of commercial dispute in terms of the Rules.
- (ii) Along-with the application Form-I (**Annexure-B**), specified in Schedule-I of PIMS Rules-2018 for initiation of mediation process, the party must deposit application fee of Rs. 1,000/- payable to the authority either by way of demand draft or through online payment.
- (iii) The party initiating mediation process must compulsorily furnish the true and correct postal address and E-mail address of the opponent under an affidavit.
- (iv) After scrutiny of application, the Secretary of concerned DLSAs shall issue a notice, as per Form-2 specified in Schedule-I of PIMS Rules-2018 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.
- (v) Where no response is received from the opposite party either by post or by e-mail, concerned DLSAs shall issue a final notice to it in the manner as specified in above sub-rule (iv)

- (vi) Where the notice issued under sub-rule (v) remains un-acknowledged and where the opposite party refuses to participate in the mediation process, the concerned DLSA shall treat the mediation process to be a non-starter, then Form No. 3 report (Non Starter Report as per Schedule-I of the PIMS Rules-2018) shall be issued by the concerned DLSA to the applicant and the opposite party.
- (vii) Upon the appearance of the opposite party, if there is consent to participate in the mediation process, the concerned Secretary, DLSA shall assign an empanelled mediator in consultation with the In-charge of the mediation centre of the respective jurisdiction and fix a date for appearance of the parties before the mediator. Provided one time mediation fee as prescribed under Schedule-II attached to the PIMS Rules-2018 is deposited by both the parties in equal proportion within 10 days.
- (viii) If, the mediation fee as provided under Schedule-II of PIMS Rules-2018 is not deposited, the concerned DLSA shall process it as non-starter. If any one party to the proceeding has deposited mediation fee, the concerned DLSA shall refund it without interest within 3 days of determining it, to be a non-starter.
- (ix) The assigned mediator shall conduct the process of mediation by adhering to the procedure and ethics as contemplated under Act and PIMS Rules-2018.
- (x) Once the process of mediation is over, the record

thereof shall be made over by the mediator to the Secretary of the concerned DLSA along with his report.

(7) **Financial Details:**

- (a) The application fee of Rs. 1,000/-and mediation fee as provided under Schedule-II of the PIMS Rules-2018 shall be deposited by parties in the Separate Account opened by concerned DLSA. The bank account details maintained by DLSAs shall be furnished to UKSLSA. The amount of fee under PIMS Rules-2018 shall be deposited by parties only through online channels or Demand Draft. The said account shall be operated by the Secretary, DLSA under the guidance of Chairperson, DLSA. Also, for payment of fees in Pre-Institution Mediation in commercial matters, all DLSAs have to upload the said bank account details on their official website.
- (b) The DLSAs shall utilize said funds for issuance of process and other activities related to Pre-Institution Mediation and Settlement. Primarily expenses towards the honorarium of the Advocate Mediators and the expenses as contemplated in the PIMS Rules-2018 shall be made out of the said account. The deficit amount in the account shall be utilized for other purpose only with the prior approval or direction of UKSLSA.
- (c) Separate record of the fees received and the expenses incurred out shall be maintained by the Nodal Officers (Secretary, DLSAs). The DLSAs shall submit quarterly report on the financial aspects to

UKSLSA in the format enclosed as **Annexure–F** herewith.

- (d) **Honorarium to the advocate mediators:** The Advocate Mediators shall be paid honorarium as per the following schedule:

S. N.	Quantum of Claim in Commercial Dispute/ Nature of case	Honorarium for settled cases	Honorarium for unsettled Cases
1.	From Rs.3,00,000/- to Rs.10,00,000/	Rs. 7,500/-	Rs. 2,500/-
2.	From Rs.10,00,001/- to Rs.50,00,000/	Rs. 15,000/-	Rs. 2,500/-
3.	From Rs. 50,00,001/- to Rs.1,00,00,000/-	Rs. 20,000/-	Rs. 2,500/-
4.	From Rs.1,00,00,001/- to Rs.3,00,00,000/-	Rs. 25,000/-	Rs. 5,000/-
5.	Above Rs. 3,00,00,000/-	Rs. 37,500/-	Rs. 5,000/-

- (8) **Ethics to be followed by Mediator:** The Mediator shall follow the ethics as provided under Rule 12 of the PIMS Rules-2018. However, to avoid any justifiable doubt as to his independence or impartiality, the Mediator shall follow the principles as laid down in the Fifth Schedule to the Arbitration and Conciliation Act, 1996. It is clarified that the word 'Arbitrator' in the above-said Schedule shall be read as 'Mediator' for the purposes of this Protocol.
- (9) **Complaint against the Mediator:** In case, any party has a complaint with the Mediator or is not satisfied with the working of Mediator, the complaint shall be made to concerned Secretary, DLSA who shall examine the same and take appropriate steps in consultation with concerned Chairperson, DLSA.
- (10) **Administrative Support:** UKSLSA would also work



towards establishment of administrative support for the Mediators empanelled by it in due course.

(11) **Review of work of Mediators and all arrangements for Pre-Institution Mediation and Settlement:**

UKSLSA in consultation with the concerned Mediation Centre shall review working of the Mediators empanelled by it from time to time, also the arrangements for conduction of Pre-Institution Mediation and Settlement and make necessary changes in the same. For the smooth functioning of Pre-Institution Mediation and Settlements, Member Secretary, UKSLSA may issue Office Orders/Circulars from time to time.

(12) **Training to Mediators:** For conduction of successful Pre-Institution Mediation Settlement in Commercial Disputes, if need arises, training/refresher Course for Advocate Mediator shall be arranged by UKSLSA/DLSA concerned in coordination with Main/State Mediation Centre, Hon'ble High Court Compound, Nainital.

(13) **Online Platform:** The parties are at liberty to seek permission to conduct mediation on the online platform. In such cases the concerned mediation Centres of Districts shall generate a link in the designated software for video conferencing and create tripartite video conferencing between the applicant, the opposite party and learned mediator. The procedure prescribed for conducting online Pre-Institution Mediation Settlement shall be followed.

(14) **Binding Effect of Online Mediation:** The settlement, if any arrived at, shall have the same status and effect as if it is an arbitral award on agreed terms under sub-section(4) of section 30 of the Arbitration and Conciliation

Act, 1996.

- (15) **Limitation:** After receipt of one time fees of Rs.1,000/- the process of affecting service shall be completed within 10 days. After appearance and upon consent of both parties, the mediation fee as per Schedule-II of PIMS Rules-2018 must be deposited within 10 days thereafter. The time frame of mediation shall be 3 months from the date of application made by the plaintiff/applicant and extending of time only at the instance of both the parties.
- (16) **Non-refundable fees:** No party can claim to refund the one time application fee of Rs. 1,000/-, once the process has been issued to the opposite party. Only in Non-starter cases the party is entitled for refund, who has deposited the mediation fees as per Schedule-II of PIMS Rules-2018. No party can claim refund of mediation fee, once the Mediator is assigned by the Secretary of the concerned DLSA.

**Designated E-mail I.Ds of all District Legal Service Authorities (DLSAs) in the State of Uttarakhand for Pre-Institution Mediation And Settlement in Commercial Disputes**

S.No.	District Legal Service Authority	E-mail I.D.
1.	Almora, DLSA	<a href="mailto:dlsa-alm-uk@gov.in">dlsa-alm-uk@gov.in</a> <a href="mailto:dlsaalmora@rediffmail.com">dlsaalmora@rediffmail.com</a>
2.	Bageshwar, DLSA	<a href="mailto:dlsa-bag-uk@gov.in">dlsa-bag-uk@gov.in</a> <a href="mailto:dlsabgr1@gmail.com">dlsabgr1@gmail.com</a>
3.	Chamoli, DLSA	<a href="mailto:dlsa.chamoli@gmail.com">dlsa.chamoli@gmail.com</a>
4.	Champawat, DLSA	<a href="mailto:dlsachp5@gmail.com">dlsachp5@gmail.com</a>
5.	Dehradun, DLSA	<a href="mailto:dlsa-deh-uk@nic.in">dlsa-deh-uk@nic.in</a> <a href="mailto:dehradundlsa13@gmail.com">dehradundlsa13@gmail.com</a>
6.	Hardwar, DLSA	<a href="mailto:dlsaharidwar@gmail.com">dlsaharidwar@gmail.com</a>
7.	Nainital, DLSA	<a href="mailto:dlsa-nai-uk@gov.in">dlsa-nai-uk@gov.in</a> <a href="mailto:dlsanainital@yahoo.co.in">dlsanainital@yahoo.co.in</a>
8.	Pauri Garhwal, DLSA	<a href="mailto:dlsapauri@gmail.com">dlsapauri@gmail.com</a>
9.	Pithoragarh, DLSA	<a href="mailto:chairmandlsap@gmail.com">chairmandlsap@gmail.com</a>
10.	Rudraprayag, DLSA	<a href="mailto:dlsa.rud.ua@gmail.com">dlsa.rud.ua@gmail.com</a>
11.	Tehri Garhwal, DLSA	<a href="mailto:dlsanewtehri@gmail.com">dlsanewtehri@gmail.com</a>
12.	Udham Singh Nagar, DLSA	<a href="mailto:dlsausnagar@gmail.com">dlsausnagar@gmail.com</a>
13.	Uttarkashi, DLSA	<a href="mailto:uttarkashi.dlsa@gmail.com">uttarkashi.dlsa@gmail.com</a>

**Mediation Application Form**

Name of the Authority and address: -

**DETAILS OF PARTIES:**

- 1. Name of applicant:
- 2. Address and contact details of applicant:  
Address .....  
Telephone No. .... Mobile No. ....  
E-mail ID .....
- 3. Name of opposite party:
- 4. Address and contact details of opposite party:  
Address .....  
Telephone No. .... Mobile No. ....  
E-mail ID .....

**DETAILS OF DISPUTE:**

- 1. Nature of dispute as per section 2(1)(c) of the Commercial Court Act 2015 (4 of 2016):
- 2. Quantum of Claim:
- 3. Territorial Jurisdiction of the competent Court:
- 4. Brief synopsis of commercial dispute (not to exceed 5000 words):
- 5. Additional points of relevance:

**DETAILS OF FEE PAID:**

Fee paid by DD No. .... dated ..... Name of Bank and Branch .....

Transaction No. .... dated .....

Date: \_\_\_\_\_ 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 report/Assignment of Commercial dispute to Mediator:**

**FILING REGISTER**

## Pre-Institution Mediation and Settlement

Name of the District : .....

S. N.	Applicat ion No.	Date of Application	Name of the parties, Address, Mobile no. and Email ID		Mediation Fee				Nam e of the Bank
			Applicant	Opposite Party	Initial Fee u/R 3(1) of the Rules		Mediation Fee u/R 11 of the Rules		
					DD	Online	DD	Online	
1.	PIMS – 1/2024								

**ASSIGNMENT REGISTER**

Pre-Institution Mediation and Settlement

Name of the District .....

S N	Application No.	Names of the parties, Address, Mobile Nos. and Email IDs		Date of Application received	Date of Notice/ Final Notice issued	Name of the Mediator	Dates of Mediation	Status of the cases settled/ non starters /Failure	Amount paid to Mediator	Signature of the Mediator
		Applicant	Opposite Party							
1	PIMS-1/2024									

**DISPOSAL REGISTER**

Pre-Institution Mediation and Settlement

Name of the District .....

S.N.	Application No.	Date of Application	Date of Disposal	Type of Settlement		
				Settled	Not-settled	Non-Starters



**ANNEXURE-F**

**QUARTERLY REPORT**

Financial aspects of Pre-Institution Mediation and Settlement Cases in Commercial Disputes for the quarter ending.....

Name of the District  
.....

<b>S N</b>	<b>Number of PIMS cases instituted</b>	<b>Total Amount received as Initial fee u/R 3 (1) of the Rules</b>	<b>Number of cases referred to Mediation</b>	<b>Total Amount paid by The parties as Mediation fee u/R 11 of the Rules</b>	<b>Honorarium paid to the Mediators</b>	<b>Amount refund to parties in non- starter cases</b>	<b>Other Expenses incurred while conducting mediation</b>	<b>Balance Amount in the Account</b>

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