

# **Conciliation Proceedings under the Arbitration & Conciliation Act**

An Overview

## INTRODUCTION

The Arbitration and Conciliation Act, 1996 (“A&C Act”), as its name suggests, deals with both Arbitration and Conciliation proceedings as methods of dispute resolution. However, the practical use of arbitration has been far higher than Conciliation.

Conciliation can however be a powerful tool for dispute resolution. Conciliation proceedings are designed to be non-adversarial. It involves the parties attempting to reach an amicable solution in the presence of one or more “conciliators”. The role of a conciliator is to facilitate dispute resolution in a non-adversarial setting.

This article aims to give an overview of the salient features of the conciliation proceedings under the A&C Act, as well as the procedure, nature and enforceability of the settlement agreement which is the outcome of a successful conciliation.

## SALIENT FEATURES OF CONCILIATION PROCEEDINGS

The procedure for undertaking conciliation between the parties has been provided under Chapter III (Section 61 - 81) of the A&C Act. The salient features of the conciliation proceedings as provided under the A&C Act are as follows:

- i. ***No formal agreement required to commence conciliation:*** There is no need for any prior agreement for conciliation of future disputes. Either party to a dispute can initiate conciliation proceedings by sending a written invitation to conciliate to the other party by briefly identifying the subject of dispute. The Conciliation commences when the other party accepts the invitation in writing.<sup>1</sup>
- ii. ***Number of conciliators:*** The Parties are at liberty to agree to a single conciliator or two or three conciliators.<sup>2</sup> Thus, unlike in arbitrations, there can be even number of conciliators.
- iii. ***Submission of written statement to conciliator:*** The conciliator may request each party to submit brief written statement describing nature of the dispute, the points at issue, as well as facts and grounds in support thereof, supplemented by any documents and other evidence that the party deems appropriate. At any stage of the proceedings, the conciliator may request for additional information.<sup>3</sup>
- iv. ***Communication between conciliator and parties:*** The conciliator may invite the parties to meet him/her or may communicate with them orally or in writing, and may meet or communicate with the parties together or with each of them separately.<sup>4</sup>
- v. ***Place of meetings with the conciliator:*** Unless otherwise agreed upon by the parties, the place for meetings with the conciliator shall be determined by the conciliator, after consultation with the parties, having regard to the circumstances of such proceedings.<sup>5</sup>

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\* Authored by Parminder Kaur, Associate, Clarus Law Associates

<sup>1</sup> Section 62 (1) and (2) of the A&C Act

<sup>2</sup> Section 63 (1) of the A&C Act

<sup>3</sup> Section 65 of the A&C Act

<sup>4</sup> Section 69 (1) of the A&C Act

<sup>5</sup> Section 69 (2) of the A&C Act

- vi. ***Role of conciliator:*** The primary role of the conciliator is to assist the parties in an independent and impartial manner and enable them to reach an amicable settlement of disputes, unlike an arbitrator who has an adjudicatory function.<sup>6</sup> In achieving this role, the A&C Act provides for the following duties of the Conciliator:
- a. To be guided by principles of objectivity, fairness and justice, giving consideration to the rights and obligations of the parties, the usages of the trade concerned, circumstances surrounding the dispute, including any previous business practices between the parties.<sup>7</sup>
  - b. To conduct the proceedings in the manner it considers appropriate, and take into account the circumstances of the case, wishes of the parties, including any request by a party to hear oral statements, and the need for a speedy settlement of the dispute.<sup>8</sup>
  - c. To make proposals for a settlement of the dispute at any stage of proceedings.<sup>9</sup>
- vii. ***Not bound by CPC or Evidence Act:*** The conciliator is not bound by Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872.<sup>10</sup>
- viii. ***Disclosure of information and confidentiality:*** The conciliator shall disclose the substance of any factual information concerning the dispute received from a party to other party. However, if any information is given subject to a specific condition that it be kept confidential, then the conciliator cannot disclose it to the other party.<sup>11</sup> Conciliator and the parties have to keep all the matters relating to the conciliation proceedings confidential, and the confidentiality extends to the settlement agreement except for the purpose of its implementation and enforcement.<sup>12</sup>
- ix. ***Restriction to resort to arbitral or judicial proceedings during conciliation:*** During conciliation proceedings, the parties cannot initiate any arbitral or judicial proceedings in respect of a dispute that is the subject matter of such proceedings except if in the opinion of that party such proceedings are necessary for preserving its rights.<sup>13</sup>
- x. ***Restriction on introduction of evidence in other proceedings:*** The parties to a conciliation proceeding cannot rely on or introduce as evidence in arbitral or judicial proceedings, irrespective of the fact as to whether such proceedings relate to the dispute that is the subject of the conciliation proceedings, the following: (a) views expressed or suggestions made by a party in respect of a possible settlement of the dispute; (b) admissions made by a party in the course of the conciliation proceedings; (c) proposals made by the conciliator; and (d) the fact that the other party had indicated its willingness to accept a proposal for settlement made by the conciliator.<sup>14</sup>

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<sup>6</sup> Section 67 (1) of the A&C Act. This principle has been explained by the Supreme Court in *Mysore Cements Ltd. v. Svedala Barmac Ltd.*, (2003) 10 SCC 375 (para 15).

<sup>7</sup> Section 67 (2) of the A&C Act

<sup>8</sup> Section 67 (3) of the A&C Act

<sup>9</sup> Section 67 (4) of the A&C Act

<sup>10</sup> Section 66 of the A&C Act

<sup>11</sup> Section 70 of the A&C Act

<sup>12</sup> Section 75 of the A&C Act

<sup>13</sup> Section 77 of the A&C Act

<sup>14</sup> Section 81 of the A&C Act

- xi. **Termination of conciliation proceedings:** Conciliation proceedings can be terminated by either signing of the settlement agreement or written declaration of the conciliator after consultation with the parties to the effect that further efforts at conciliation are no longer justified or written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated or written declaration of a party to the other party and the conciliator, if appointed to the effect that the conciliation proceedings are terminated. It terminates on the date of entering into such settlement agreement or the date of declaration, as the case may be.<sup>15</sup>
- xii. **Authentication of settlement agreement:** A successful conciliation proceeding culminates in a settlement agreement signed by the parties.<sup>16</sup> The conciliator authenticates the settlement agreement and furnishes a copy to each party.<sup>17</sup> It is only the agreement that has been arrived at in conformity with the manner stipulated, form envisaged and duly authenticated in accordance with the Section 73 of the A&C Act, that can be assigned the status of a “settlement agreement”.<sup>18</sup>
- xiii. **Costs and deposits:** The costs of conciliation includes fee and expenses of the conciliator and the witnesses, any expert advice requested by the conciliator with consent of the parties, any assistance provided in accordance with the A&C Act and any other expenses in relation to the proceedings.<sup>19</sup> The costs of conciliation proceedings are borne equally by the parties unless the settlement agreement provides otherwise, and all other expenses incurred by a party are borne by that party.<sup>20</sup> The conciliator fixes the conciliation costs and gives written notice to the parties on termination of the proceedings.<sup>21</sup> The conciliator may also direct each party to deposit an equal amount as an advance for the costs which it expects will be incurred.<sup>22</sup>

#### NATURE AND ENFORCEABILITY OF THE SETTLEMENT AGREEMENT

The settlement agreement signed by the parties is final and binding on the parties and persons claiming under it respectively.<sup>23</sup> Key legal issues in this regard are summarized below:

- (i) The Settlement Agreement has the same status and effect as if it is an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal under section 30 of the A&C Act.<sup>24</sup> It is enforceable as if it is a decree of the court having regard to Section 74 r.w. Section 30 of the A&C Act. It does not require the seal of approval of the court for its enforcement when it is made in a direct reference by parties without the intervention of court.<sup>25</sup>

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<sup>15</sup> Section 76 of the A&C Act

<sup>16</sup> See *Hareesh Dayaram Thakur v. State of Maharashtra*, (2000) 6 SCC 179 (para 19)

<sup>17</sup> Section 73(4) of the A&C Act

<sup>18</sup> See *Mysore Cements Ltd. v. Svedala Barmac Ltd.*, (2003) 10 SCC 375 (para 16)

<sup>19</sup> Section 78 (2) of the A&C Act

<sup>20</sup> Section 78 (3) of the A&C Act

<sup>21</sup> Section 78 (1) of the A&C Act

<sup>22</sup> Section 79 (1) of the A&C Act

<sup>23</sup> Section 73(3) of the A&C Act

<sup>24</sup> Section 74 of the A&C Act

<sup>25</sup> *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, (2010) 8 SCC 24

- (ii) Settlement agreements, like any agreement, are required to be stamped. Courts in India however have expressed divergent views as to how a settlement agreement is to be stamped. For instance, the Delhi High Court has held that even though the settlement agreement has the status and effect of an arbitral award under the A&C Act, it continues to be an “agreement” and would therefore require to be stamped as an “agreement”. The Karnataka High Court, on the other hand, has held that since settlement agreement is treated as if it is an award, it would require to be stamped as an award and not as an “agreement”.<sup>26</sup> Under the law relating to stamp duty applicable in Delhi, an agreement needs to be stamped at Rupees Fifty only; whereas the stamp duty for an award is determined on the basis of the amount or value of the property to which the award relates.<sup>27</sup> In Karnataka, the stamp duty for an agreement is Rupees Two Hundred, and for an award, the stamp duty is determined on the basis as to whether the subject matter of the award is a movable or immovable property.<sup>28</sup>

#### ADVANTAGES OF CONCILIATION

Conciliation has the following advantages when compared to arbitration:

- i. It is more flexible, informal, expeditious and cost-effective. It is not even necessary to enter into a formal agreement to initiate conciliation proceedings.
- ii. Parties are assured of confidentiality, and even if amicable settlement cannot be reached then the admissions made by the parties, or proposal made by the conciliator during the conciliation proceedings or a party's willingness to accept the proposal, cannot be disclosed in any other proceedings including arbitration.
- iii. It is a non-binding procedure in which the conciliator acts a facilitator to assists the parties to reach an amicable settlement of dispute rather than a judge who pronounces the judgment after hearing the parties in arbitration.
- iv. It gives the parties an opportunity to put across their grievances and solve the issues amicably and in a congenial manner without any hostility towards the other.
- v. Despite the conciliation proceedings being voluntary and non-binding, its outcome, i.e. the settlement agreement is final and binding on the parties and persons claiming under them. It has the effect as if it is an arbitral award on agreed terms has been passed by the arbitral tribunal, and enforceable as if a decree of the court without the seal of approval of the court.
- vi. The chances of any further litigation pursuant to finalization of settlement agreement are relatively less as mutual settlement is arrived at between the parties.

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<sup>26</sup> *Anuradha SA Investments LLC v. Parsvnath Developers Limited*, 2017 SCC Online Del 7970 and Para 4 of *Smt. N.S. Geetha v. Sri B. Rashuveer*, ILR 2008 KAR 3850

<sup>27</sup> Entry 5 (c) and Entry 12 of Schedule 1A of Indian Stamp Act, 1899

<sup>28</sup> Entry 5 (j) and Entry 11 of Schedule of Karnataka Stamp Act, 1957