



AIRPORTS AUTHORITY OF INDIA

MEDIATION POLICY

2022



संजीव कुमार, भा. प्र. से.

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आज़ादी का
अमृत महोत्सव



भारतीय विमानपत्तन प्राधिकरण
AIRPORTS AUTHORITY OF INDIA

राजीव गांधी भवन,

Rajiv Gandhi Bhawan,

सफ़दरजंग हवाई अड्डा, नई दिल्ली-110 003

Safdarjung Airport, New Delhi-110 003

PREFACE

Joseph Grynbaum, a renowned Mediator has rightly observed that *"An ounce of mediation is worth a pound of arbitration and a ton of litigation"*.

Mediation, as the word suggests, is a process where a neutral person/ group of persons use specialized communication and negotiation techniques in order to facilitate the parties in resolving their disputes. Mediation can also be understood as a settlement process whereby disputing parties arrive at a mutually acceptable agreement.

And since the agreement is mutually accepted, the element of consent acts as the wind beneath the wings of resolution of the dispute, thereby, granting the much needed enforceability.

Mediation, as an Alternate Dispute Resolution (ADR) mechanism offers various benefits to the parties involved, ranging from having more control over the outcome of the proceedings, saving of time and money, avoidance of unnecessary litigation to preservation of relationships. Mediation facilitates a win-win situation between the parties and serves as the most appropriate remedy for neutral, private and speedy resolution of disputes.

COVID-19 pandemic has led to the realisation that agreements can go unperformed without any fault of either party, making it vital for an organization like AAI to adapt to new methods of dispute resolution. With the basic purpose of resolving disputes amicably, AAI has decided to frame its own Mediation Policy.

Government of India is moving towards introducing the Mediation Bill making mediation as a compulsory method of dispute resolution. AAI synchronising itself with the thought process of the Government has introduced the present policy of Mediation.

AAI aims to encourage its stake holders to take recourse through mediation for resolving disputes instead of resorting to the traditional, time consuming and expensive litigation procedures so that mutually agreeable solutions can be arrived in a timely and cost-effective manner.

It is my pleasure to introduce the AAI Mediation Policy with the expectation that it would set new precedents in the field of Alternative Dispute Resolution and improve 'ease of doing business' with AAI.

Thank you. Jai Hind!

Sanjeev Kumar
(Sanjeev Kumar)

AIRPORTS AUTHORITY OF INDIA MEDIATION POLICY

Airports Authority of India (AAI) has framed this policy to promote and facilitate mediation for resolution of disputes, on a fast track mode, arising out of its various agreements executed with its concessionaires/contractors and other stake holders.

By framing this policy, AAI has emphasised for a cost effective and speedy resolution of the disputes which arose or may arise in future while performing contractual obligations of AAI and its other stake holders, concessionaires and contractors. The nomenclature of the entities/parties is illustrative but not exhaustive.

Through this policy, efforts have been made to get the disputes resolved through the independent Mediators while maintaining the impartiality and faith of the parties and to encourage to adopt the recourse of this policy instead of approaching various courts which is not only economical but also time saving.

[A] APPLICABILITY

This policy is applicable to all dispute(s)/difference(s)/issue(s) between/amongst the Parties arising under/out of/in connection with AAI agreements with its concessionaires/contractor and other stakeholders, unless, specifically excluded.

This policy shall come into effect from 15th August, 2022.

[B] REFERENCE TO MEDIATION

All disputes, at the first instance, as and when raised by any of the parties shall be referred to mediation to be conducted by Mediation Committee of Independent Experts (MCIE) in accordance with this policy before resorting to arbitration or any proceeding before court or tribunal. Either party not inclined to mediate may choose to submit their withdrawal from Mediation in the first sitting of MCIE.

For agreements having no mediation clause, parties can consent to mediate instead of resorting to Dispute Resolution Committee/Board by giving their consent as per Annexure-I. The consent of parties to refer the disputes to MCIE shall form part of the agreement already signed with AAI from the date of consent of such party(ies).

Reference of Dispute shall be made through Online Dispute Resolution Portal of AAI.

[C] DEFINITIONS:

- (a) **Contract Management Committee:** Committee constituted at Corporate Headquarters, Regional Headquarter level and at airports consisting of officer from User department, Finance department and Law department.
- (b) **Failure Report:** Report prepared and signed after failure of mediation.
- (c) **MCIE:** means Mediation Committee of Independent Experts constituted under Clause-2.
- (d) **Mediation:** Mediation shall be a process, whether referred to by the expression mediation, pre-litigation mediation, online mediation or an expression of similar import,

whereby party or parties, request a third person referred to as mediator(s) / Mediation Committee of Independent Experts (MCIE) to assist them in their attempt to reach an amicable settlement of a dispute.

(e) **Nodal officer:** Official responsible for management, monitoring and upgradation of Online Dispute Resolution Portal of AAI.

(f) **Partial Success of Mediation:** When one or more than one but not all disputes are settled between the parties upon reference to MCIE.

(g) **Reference** means transfer of request for mediation received through Online Dispute Resolution Portal for mediation to MCIE or individual Mediator.

(h) **Settlement Agreement:** Agreement reached between the parties after completion of mediation. It includes agreement signed on partial success of mediation. Model format is attached as Annexure- 5.

[D] STANDARD OPERATING PROCEDURE (SOP)

- 1.1 Upon receipt of request through Online Portal for reference of dispute to MCIE by either party, whether AAI or Concessionaire/Contractor/ Stakeholder, as the case may be, Nodal Officer shall within 03 working days send the request to the concerned Contract Management Committee (CMC).
- 1.2 CMC shall obtain and examine the correspondence/ documents of the parties relating to the disputes, preferably within 30 days, hold discussion with the parties and crystalize the issues; prepare the agenda containing the gist on each dispute; schedule the Mediation Seating of MCIE by circulating the meeting notice and the agenda after obtaining the necessary approvals of the appropriate authorities. All appropriate authorities shall accord priority to such approvals which are expected to be accorded within 05 working days along with deputing an authorized representative on behalf of AAI. Similarly, the opposite party shall also provide details of their authorized representative who would be presenting the issue before the MCIE duly supported by their resolution or authorization as the case may be.
- 1.3 Both parties & MCIE shall meet on the date fixed, discuss the agenda and explore the possibilities of settlement. MCIE is expected to meet in short intervals to complete the mediation within the period of 120 days.
- 1.4 The mediation may be successful or partially successful or may fail, whatever be the outcome, the MCIE with the assistance of CMC will issue the Minutes after each meeting, clearly indicating the outcome/conclusions of each meeting and along with the reasons of the final/concluding meeting.
- 1.5 In the event of mediation being successful, the Contract Management Committee shall prepare the Settlement Agreement for approval of the competent authority as per DoP (Delegation of Power).
- 1.6 Mediation fee and other expenses as per Annexure-2 to be shared equally by both the parties
- 1.7 Parties and participants in the mediation shall keep confidential the following matters relating to the mediation proceedings, namely:

- (i) acknowledgements, opinions, suggestions, promises, proposals, apologies and admissions made during the mediation;
- (ii) acceptance of, or willingness to, accept proposals made or exchanged in the mediation;
- (iii) documents prepared solely for the conduct of mediation or in relation thereto.

This clause shall not be applicable to execution, implementation and enforcement of the Settlement Agreement.

- 1.7.1 No audio or video recording of the mediation proceedings shall be made or maintained by the parties or the participants including the mediator, whether conducted in person or online to ensure confidentiality of the conduct of mediation proceedings.
- 1.7.2 No party to the mediation or any third party shall in any proceeding before a court or tribunal including arbitral tribunal, rely on or introduce as evidence any information or communication set forth in Clause 1.7 (i) to (iii) above, including any information in electronic form, or verbal communication in any court or tribunal including any quasi-judicial authority.
- 1.7.3 The Mediator may disclose general information concerning the matters that have been subject of mediation without disclosing the specific details as mentioned in Clause 1.7.
- 1.8 All the submissions made by the party recorded in the minutes of mediation proceeding shall be duly signed by MCIE and the parties. Formal pleadings to be avoided to the extent possible except acknowledgments of notices, opinion and expert advices issued and obtained by the MCIE and /or Contract Management Committee.
- 1.8.1 As far as possible, mediation be attended by the Authorized representative of the parties who are capable of giving and accepting offers and acceptance.
- 1.8.2. The arguing counsels shall not be permitted to present the matter before the MCIE unless so specifically permitted by MCIE.
- 1.8.3. Authorized representatives, presenting on behalf of AAI shall be guided by the internal guidelines issued in this regard from time to time.

2. PANEL OF MEDIATORS FOR CONSTITUTING THE MEDIATION COMMITTEE OF INDEPENDENT EXPERTS:

Panel of Independent Experts shall comprise of the following:

- a. Retired, High Court & Supreme Court Judges;
- b. Retired, Secretary & Additional Secretary to Government of India, Chief Secretary & Additional Chief Secretary of State Government;
- c. Retired, Chairman, AAI, and Board Member, AAI;
- d. Retired, Director General & Additional Director General of CPWD, PWD MES;

- e. Retired, Chairman & Members of Railway Board;
- f. Independent External Monitors deputed by CVC for AAI for the cases where they were/are IEM.
- g. Law Officers retired from PSUs/ Government Department to the level of General Manager & above.

Depending upon the response to this mechanism, the work load and requirements for speedy settlement of disputes, the panel may be expanded further with the approval of the Chairman, AAI.

- 2.1 Mediation Committee of Independent Experts, generally, shall comprise of the following:

- (i) A member from concerned field of the dispute
- (ii) A member from administrative background
- (iii) A member from the legal background

In case the dispute involved is of such a nature that can be resolved by an individual mediator, such dispute shall be referred to an individual mediator from the panel.

- 2.2 A reference for mediation shall be referred to the MCIE or an individual Mediator on 'rotational basis' depending upon the nature of dispute and stake involved at the sole discretion of concerned member or Chairman, AAI.

- 2.2.1 An individual mediator to be appointed in cases where the total disputed amount (claim & counter claim) is below Rs. 10 crores.

- 2.3 Broad Terms and Conditions and the Terms of Reference of the Mediation Committees are enclosed as **Annexure-2**.

- 2.4 CMC shall be headed by the committee member of the concerned Directorate who would be provided all requisite assistance by the other committee members. The CMC shall be responsible to arrange for the required infrastructure, secretarial assistance and logistic support to the Mediation Committee and also timely payment of fee to the Mediators.

- 2.5. In the event of non-availability of any one of the members of MCIE, after obtaining consent of both parties, remaining two members shall continue to proceed with the mediation which would constitute the quorum for the committee. In case, MCIE consists of a single member, the provision of quorum shall not be applicable.

- 2.6 Upon arriving at a settlement, duly signed by the parties if a settlement agreement cannot be authenticated by all three MCIE members due to non-availability of a member, in such a case, settlement agreement authenticated by two mediators shall be valid and binding upon parties.

- 2.7. The following matters shall not be referred to mediation:

- (i) Tax matters;
- (ii) Involving fraud and forgery;
- (iii) Involving right of third party;
- (iv) Relating to acquisition of land and payment of compensation or

(v) Any dispute which is not permissible to be referred to mediation under law or has some other recognized mechanism, e.g. conciliatory authority for labour disputes, ongoing matters capable of being referred to Mediation Centre of respective Courts / High Courts.

3. Recommendations of the Mediation Committee:

Parties are expected to participate in the proceedings before the MCIE with an aim to settle the issue. Similarly, necessary approvals of the competent authority as per DOP would be obtained by presenter/ concerned officer from AAI in coordination with CMC wherever so required as per **Annexure-4**, including drafting of Settlement Agreement and implementation of the same.

- 3.1 After receiving requisite approvals, CMC will take all necessary steps for signing the settlement agreement, including withdrawal of the case(s) pending before the Arbitration Tribunals/ Courts, preferably within a period of 30 days.
- 3.2 The payments due from one party to the other party as per the settlement shall be made by such party within a period of 30 days of completion of the obligations by the parties which amongst others also includes withdrawal of the cases pending before Arbitration Tribunals/ Courts etc.

4. Procedure in cases already pending before the Arbitral Tribunals/ Courts:

- 4.1 In cases of disputes pending before the Arbitration Tribunals or the Courts, either of the party may come forward and explore the possibilities of Mediation through the Mediation Committee of Independent Experts by submitting as per template enclosed at **Annexure-3**. Wherever the parties to the dispute(s) agree to invoke the good offices of the Mediation Committee, CMC shall make an appropriate reference to the Mediation Committee, upon which the Committee shall proceed to examine such reference(s). However, wherever the parties agree to reach out to the Mediation Committee, they shall be required to keep the proceedings pending before the Arbitral Tribunals/ Courts in abeyance.
 - 4.2 It may be noted that this is an alternate dispute resolution mechanism being put in place by the AAI and if the Concessionaire/ Contractor/ Consultant is not willing to take recourse to this process or has any reluctance, whatsoever, in this behalf, there is no compulsion and they are free to follow the provisions as per the law.
5. The provisions of this Policy shall stand replaced by law on Mediation as and when so enacted by the Government of India to the extent of their repugnancy with the provisions of such law.

Annexure-1

CONSENT LETTER (To be part of Online Form for Mediation)

To

(Tender accepting authority)

.....
.....

SUB: Consent regarding Mediation

Madam/Sir,

I/We have entered into _____ agreement for _____ with
_____ related to _____ Airport.

I/We hereby request to initiate mediation proceedings instead of Dispute Resolution Committee/ Board. We agree to be governed by AAI Mediation Policy, 2022. This shall form part of agreement dated ____.

Thanking You,

Yours faithfully

भारतीय विमानपत्तन प्राधिकरण
AIRPORTS AUTHORITY OF INDIA

(_____)

Authorized Representative

Date:

**Mediation Committee of Independent Experts
Broad Terms and Conditions and Terms of Reference**

1. The Panel of Independent Experts approved under this Policy shall remain valid for a period of three years from the date of empanelment. Depending upon the response from the contesting parties and the workload, the panel may be suitably expanded from time to time with the approval of the Chairman, AAI.
2. **Fee of Mediators:**
 - a. **Sitting Fee:** Each member of the MCIE shall be paid a fee of Rs. 1,00,000/- per sitting. This fee shall be inclusive of hotel accommodation. Meeting venue for mediation proceedings shall be provided by AAI. In case such venue is arranged outside AAI premises, cost of booking the venue shall be borne by both the parties equally.
 - b. **Local Transportation charges & other expenses:** Each member shall be paid Rs. 5000/- for local transport charges for each day of proceedings. An outstation member shall be reimbursed the air-fare (business class) in addition to transport charges. Applicable taxes, if any, shall also be reimbursed as per actuals.
 - c. **Withdrawal from Mediation:** In case, either of the party withdraws from mediation in the first sitting itself, a member of the MCIE would be entitled only for one fourth of the actual fee in addition to other charges.
 - d. **Cancellation/Postponement of proceedings:** Cancellation or postponement of the proceeding shall be intimated in advance. In the event when mediation proceeding has not taken place due to any reason(s), no fee shall be payable to the members of the MCIE.
 - e. **Full day proceedings:** A full day proceeding which may commence pre-lunch and continues post-lunch shall be treated as one proceeding.

Individual Mediator shall be paid the same fee as that payable to a Member of MCIE and no additional fee/charges shall be payable.
3. It is expected that the mediation proceedings shall be completed in each case through 05 sittings in a period of not more than 120 days from the date of reference to MCIE. Number of sittings may be further extended up to 05 sittings to be concluded in another 120 days after obtaining specific approval from the concerned Member/Chairman, AAI.
4. The MCIE may hold as many sittings every month as it deems appropriate keeping in view the volume of work at its disposal.
5. In the event, if MCIE is not able to complete mediation up to 10 sittings and it is recommended by MCIE a further extension of 05 sittings may be permitted by the concerned Member/Chairman without any sitting fee. Other expenses i.e. local transport charges and air fare borne by MCIE members shall be payable.
6. The Mediation Committee shall meet in the first instance and evolve its own procedures and methodologies for mediation.

7. MCIE shall preferably hold its sittings at a suitable place as per convenience of all concerned or through video conference.
8. The person appointed as a mediator shall, prior to the conduct of mediation, disclose in writing to the parties regarding any circumstance or potential circumstance, personal, professional, financial, or otherwise, that may constitute any conflict of interest or that is likely to give rise to justifiable doubts as to his independence or impartiality as a mediator.
9. Any disqualification of any sitting member on any account if found after initiation of Mediation proceedings, the affected party may request for change of the Member concerned and such disqualification shall not vitiate the proceedings. In case such disqualification is found after conclusion of mediation, the settlement arrived between the parties shall not stand negated.



From:

To

No. _____ Date: _____

Reference: Agreement No. _____ for the work of _____
Court Case Number/ Arbitration between _____ & _____

Subject: Request to refer the existing dispute for mediation through Medication Committee of Independent Experts.

Sir,

Please refer the subject cited above. Vide agreement dated _____ for _____, disputes arose with regard to _____ and the matter is pending for/yet to be referred for resolution/adjudication by Dispute Resolution Committee/ Dispute Resolution Board/Arbitrator/ _____ court.

I / we _____, do hereby request the Airports Authority of India to refer our ongoing dispute to MCIE as per AAI Mediation Policy dated _____.

We undertake to abide by the terms and conditions of the said policy of AAI and would not question any settlement, if arrived, through Mediation.

It is consented that by referring the matter to mediation, dispute resolution through DRC/DRB under clause _____ of the agreement, is dispensed with.

Yours faithfully,
(_____)
Requesting Party

Accepting Party

Annexure-4

Sr. No.	Brief of the Dispute by the Party	Claim Amount	Counter Claim	Settlement Amount and details thereof	Approving Authority of Settlement

भारतीय विमानपत्तन प्राधिकरण
AIRPORTS AUTHORITY OF INDIA

**SETTLEMENT AGREEMENT
(Model Format)**

THIS SETTLEMENT AGREEMENT (the "Agreement") is made and entered into by and between _____ (First party) (name of the party) which includes their legal heirs, successors, assigns, and their subcontractors (at any tier) and _____ (Second party) which also includes their legal heirs, successors, assigns, and their subcontractors (at any tier) .

I. BACKGROUND

- Details of the awarded work _____
- Details of dispute(s) referred by _____ (details of the part(ies) _____)

II. DETAILS OF MEDIATOR(S)

- a. _____
- b. _____
- c. _____

III. MEETINGS OF MEDIATION COMMITTEE OF INDEPENDENT EXPERTS (MCIE)

WHEREAS, in terms of clause _____ of agreement, Chairman/ Member/ Executive Director/ Regional Executive Director _____ (name of Region) (as the case may be) of the Airports Authority of India, on invocation/ request from M/s _____ (name of the party(ies)) _____ referred the above mentioned dispute to Mediation Committee of Independent Experts on _____.

WHEREAS, MCIE held _____ no. of meetings which were held on _____, _____ at _____.

AND WHEREAS, the parties after due deliberation in the meetings of MCIE, at their own free will and without any coercion or undue influence have arrived at a settlement on their disputes and do hereby voluntarily enter into this Settlement Agreement;

NOW, THEREFORE, in consideration of the mutual promises, contained below to resolve the dispute, it is agreed as follows:

IV. TERMS OF SETTLEMENT

1. The "Effective Date" of this Agreement will be the date when the parties sign this Agreement.
2. It has been agreed between the parties that _____ (details of complete proposal and

acceptance thereof)_____ .

3. It is further agreed that the above settled payment of Rs. _____ shall be paid by _____ with in a period of _____ of signing of the agreement failing which an interest @ _____% p.a. will be levied on the said amount.
4. It is agreed that the expenses incurred towards the MCIE proceedings including the fee paid to the mediators shall be borne by both the parties equally. The parties shall clear their share of payment within 10 days of signing of this agreement.

V. MUTUAL RELEASE OF ALL CLAIMS

In consideration for their faithful performance of the terms of this Settlement Agreement, the parties, for themselves, their legal heirs, successors, assigns, and (in the case of the Contractor) subcontractors (at any tier), do hereby relinquish, waive, release each other of and from any and all claims, disputes, complaints, damages of whatever nature, known or unknown, which they have now or may have in the future against one another, based on any actions or events which occurred prior to the date of this Settlement Agreement.

Since the _____ (First party/ Contractor)_____ has participated in the Mediation not only for himself/themselves but also for their legal heirs, successors, assigns, and (in the case of the Contractor) subcontractors (at any tier), therefore, the Second party shall not be responsible for any claim whatsoever in nature if raised by any of their legal heirs, successors, assigns, and (in the case of the Contractor) subcontractors (at any tier). And in the event, if any claims on _____ (Second party/AAI, as the case may be) the same shall be made good by the First party/ Contractor.

The parties do hereby have also agreed to withdraw all the pending matters in this regard being adjudicated upon by any _____ (details of the cases/ Arbitration, etc. including details of the courts).

VI. NON-ASSIGNMENT

A party's rights under this Settlement Agreement may not be assigned without the express written consent of the other party, which consent shall be obtained in advance and in accordance with prevailing applicable law and regulation.

VII. ADDITIONAL DOCUMENTS

The parties agree to execute whatever modification(s) of the Contract, invoices, and any and all other additional documents as may be reasonably necessary to carry out the terms, conditions and obligations of this Settlement Agreement.

VIII. SEVERABILITY

If any portions of this Settlement Agreement are held invalid and unenforceable, all remaining portions shall nevertheless remain valid and enforceable, to the extent they can be given effect without the invalid portions.

IX. NEGOTIATED TRANSACTION

Each of the parties has participated in the drafting and negotiation of this Settlement Agreement. Accordingly, for all purposes, this Settlement Agreement shall be deemed to have been drafted jointly by the parties.

X. COUNTERPARTS

This Settlement Agreement shall be executed in two copies, each of which shall be deemed to be a counterpart original.

XI. REPRESENTATION OF AUTHORITY

Each person signing this Settlement Agreement hereby represents and warrants that he or she has the authority to bind the entity on behalf of which he or she has signed.

XII. CONFIDENTIALITY

- a. Parties shall keep confidential the following matters relating to the mediation proceedings, namely:
 - i. acknowledgements, opinions, suggestions, promises, proposals, apologies and admissions made during the mediation;
 - ii. acceptance of, or willingness to, accept proposals made or exchanged in the mediation;
 - iii. documents prepared solely for the conduct of mediation or in relation thereto.
- b. Parties also agree to not disclose the existence or contents of this Agreement to any third party without the prior consent of the other Party except:
 - i. to its advisors, attorneys or auditors who have a need to know such information.
 - ii. as required by law or court order.
 - iii. as may be required in connection with the enforcement of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed and signed this Settlement Agreement on this day and date written above.

Signed for and on behalf of
First party

Signed for and on behalf of
Second party

MEDIATOR/ MCIE MEMBERS:

Mediator

Presiding Mediator

Mediator

