

# MEDIATION FAQS

## TiE Bangalore MEDIATION DESK – Powered by CAMP



### What is Mediation?

Mediation is a legally enforceable, confidential process, facilitated by a trained neutral third party who works with parties in dispute, to arrive at a mutually acceptable solution.

### Who is a Mediator?

A Mediator is a neutral, professional third party who is trained and certified in the Mediation process. He/she is highly skilled and competent in facilitating constructive negotiating. A Mediator is also someone who is well versed in communication techniques and competent to sensitively and effectively handle emotionally charged situations and parties .

### Has Mediation got legal sanctity?

- ❑ Mediation has legal backing in the Civil Procedure Code, and in legislations such as – Companies Act, Commercial Courts Act, Consumer Protection Act and others.
- ❑ In court referred mediation the court passes a final, non-appealable decree, based on the terms of the mediated settlement.
- ❑ In Institutional Mediation, the current practice is for the settlement to be brought under The Arbitration and Conciliation Act as a Conciliator's settlement agreement and be made enforceable as an Arbitrator's award. Alternatively, a settlement agreement is signed by the parties and their counsels and is a binding contract between the parties.
- ❑ As per the draft Mediation Bill introduced in the Indian Parliament, a mediated settlement signed by the parties and the Mediator is equivalent to the decree of the court.
- ❑ Enforcement of a mediated settlement agreement is not an issue in a vast majority of cases. In mediation as parties design their own settlement terms and do so voluntarily, need for compliance through enforcement is globally at about 1%.

# *"Out beyond ideas of wrongdoing and rightdoing there is a field" ~Rumi*

## What is Bangalore TiE-CAMP Mediation Desk?

The Mediation Desk is a mediation service designed to enhance the objectives of TiE and CAMP to provide accessible, efficient and affordable dispute resolution options to the members and stakeholders of TiE so as to empower entrepreneurs to focus better on their core mission. This mediation desk will be a pioneering service that will provide professionally trained, cost and time effective, institutional mediation services for diverse types of disputes as noted above. The key elements of the desk are-

- ✓ Virtual mediation services.
- ✓ Services provided anywhere and anytime as agreed between the parties, counsels and mediator.
- ✓ Can provide cross border dispute resolution service under CAMP-SIMC (Singapore International Mediation Center) protocol that can bring in internal Mediators of a specific country along with Indian Mediators under CAMP to provide culturally nuanced mediation facilitation.
- ✓ A specialized fee structure for the members of TiE.
- ✓ A choice of skilled, experienced and internationally certified mediators.

## Process of Mediation at the TiE-CAMP Mediation Desk

The mediation process at the TiE-CAMP Mediation desk would be as follows: -

- ✓ Receipt of a call/email from one/multiple parties about a dispute.
- ✓ Preliminary information gathering for basics details of case and dispute with the Parties in Dispute.
- ✓ Mediation Orientation sessions to Parties jointly and/ or individually to explain fundamentals of Mediation, elicit voluntary participation and explain the process, governing tenets and fee structure.
- ✓ Pre-mediation preparations by CAMP and Parties including completion of fee payment formalities.
- ✓ Assignment of Mediator by CAMP and introduction of parties to Mediator.
- ✓ Commencement of mediation.
- ✓ Mediation proceeds till closure. Closure may be by termination if party/ties are found to be unready or unwilling to productively participate or it could be a settlement or a failure to settle.

## For Further information on Mediation - CONTACT US

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**Visit us** at CAMP Arbitration and Mediation Practice Pvt. Ltd #46, 36th Main, BTM Dollar Scheme, Bangalore 560068, India

You will hear from us within 24 working hours of reaching out to us . Saturdays and Sundays are non-working days and so are public and national holidays .

## MEDIATION FEES

The fees are a small percentage of the dispute value and will be transparently discussed with you by CAMP case Manager . Fees are in general paid by both the disputing parties equally , although there are cases where one party may bear the costs fully or bear in different proportions. Your Case Manager in CAMP will help you understand the fee structure transparently.

## What is the Difference between Litigation/Arbitration and Mediation?

## What are the cases best suited for Mediation?

### LITIGATION & ARBITRATION

- ❖ Arbitration and Litigation are adversarial processes in which a third-party Judge/Arbitrator decides the outcome of the case.
- ❖ The focus of Arbitration and Litigation is the determination of who is right and who is wrong based on the law and does not allow for creative solutions.
- ❖ Litigation and Arbitration are expensive processes.
- ❖ The average time taken by a matter at court is 8-12 years and that is arbitration is 6-8years.
- ❖ Litigation is a public process and privacy is not ensured.

### MEDIATION

- ❖ Mediation is a non-adversarial process, where a neutral third party neutral facilitates/assists a negotiation between the parties.
- ❖ The focus of mediation is to find a solution after understanding parties' needs, goals and priorities.
- ❖ Mediation is 90% less expensive than Arbitration.
- ❖ The Average time taken for Mediations at CAMP is 3 months.
- ❖ Mediation is a completely private process and ensures confidentiality

- All civil and commercial cases are suited for mediation except those outside the purview as noted in the Draft Mediation Bill 2021.
- From a commercial perspective CAMP has undertaken globally the following types of cases to seek and find effective solutions in mediation:
  - ✓ All contractual matters including investor-investee disputes, founder disputes,
  - ✓ Board level disputes amongst others
  - ✓ All contractual issues - breach of contract, damages, pending payments, revenue sharing, damages and such like All other commercial matters - Debt recovery, compensation related, loan settlement
  - ✓ Consumer Grievances, Negligence related damages and compensation.
  - ✓ All real estate, property and tenancy related disputes
  - ✓ Land matters except land acquisition under government laws
  - ✓ Work place disputes, discrimination and sexual harassment
  - ✓ Intellectual Property related disputes.
  - ✓ All company matters
  - ✓ Highly Confidential and sensitive cases including cases under POSH (Prevention of Sexual Harassment in the Workplace) Act in India

### **Does Mediation have a role before a difference or a latent grievance becomes a dispute?**

Absolutely. Mediation in fact is best suited to not just resolve intractable disputes but also to prevent and mitigate disputes. In fact, many companies like GE, Monsanto, Motorola and GlaxoSmithKline have adopted Planned Early Dispute Resolution Systems (PEDR) in which Mediation plays a central part in addressing

potential dispute sources and to address them before they become full blown litigation.

The motivation for such early dispute resolution planning comes from businesses wanting to focus on business, safeguard the management's time for productive efforts, cut down internal and external costs and preserving confidentiality.

CAMP helps companies to design their Early Dispute Resolution Systems (EDR) while also building capacity of organizations to incorporate

an EDR as part of their policy and practice.

The CAMP Mediation Desk is a safe, neutral, confidential space for TiE members to bring their dispute at any stage – early stage of disagreement or a full-blown dispute – and find meaningful, sustainable resolution.

## What happens when a party refuses to Mediate?

Mediation is a voluntary process. It is not possible to force any party to mediation.

Having said the above, in our experience many times, parties' reluctance to mediate may be borne out of the fact that parties may not have adequate exposure to mediation as a mode of dispute resolution.

An induction/initiation session often helps in clearing doubts on the process of mediation and bringing in the parties to the mediation, highlighting Mediators neutrality.

CAMP works closely with both parties in bringing them to the table and in allaying doubts on objectivity, neutrality, impartiality or any perceived or real conflicts of interest on the part of the Mediator.

## What happens when ego and emotions are high between parties and may come in the way of resolution?

Most mediation arise from misunderstandings between parties. A skilled Mediator will be able to deal with the highly charged emotions and can help parties see beyond their egos, hurt and charged emotions. The Mediator can help parties see each other's perspectives and reach a mutual solution that is a win-win outcome for both parties.

## What happens if a Mediation fails to comes to an agreement/settlement?

Parties can continue with other legal recourse such as Litigation or Arbitration at any stage of the dispute. However, there is no condition that stops the parties from attempting mediation again at a later stage. It has been our experience at CAMP that many times, the timing of mediation becomes critical. Sometimes one or all parties are not ready for Mediation but after exploring other recourse, they tend to come back to mediate with a greater understanding of the benefits of mediation.

## How to identify a good mediator?

Mediators are mediation process experts skilled in designing a mediation that is customized to the needs of parties and the dispute. Mediators are skilled in addressing communication challenges, specialized in facilitating problem-solving, in facilitating interest-based negotiation between the parties, and in dealing with highly charged emotions.

Mediation process expertise is paramount in mediation irrespective of the domain or nature of the case. However, if a Mediator finds a need for a subject matter expert, he/she would advise the parties to bring in an expert, which would be at additional costs.

