Pakistan Courts approach towards out of Court settlement through the Alternate Dispute Resolution (the "ADR")

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Introduction

Pakistan's justice system is buckling under the immense strain of a backlog exceeding two million cases, with some legal disputes dragging on for decades. For the average citizen, seeking justice often means enduring years of frustration, financial hardship, and emotional distress. The traditional courtroom model, designed for a vastly different era, is struggling to keep pace with a rapidly expanding population and increasingly complex legal conflicts. In this challenging landscape, Alternative Dispute Resolution (ADR) is not merely a supplementary option but an essential solution for ensuring timely justice in Pakistan.

ADR encompasses mediation, arbitration, and conciliation, offering a more efficient and cost-effective alternative to conventional litigation. Unlike the rigid formal court process, ADR prioritizes consensus-building and swift dispute resolution, making it particularly well-suited to Pakistan's socio-economic realities. Its potential to transform access to justice is immense, yet it remains underutilized and widely misunderstood. Cases that would take years to resolve in court can often be settled within weeks through ADR—a level of efficiency that Pakistan's overburdened legal system urgently requires.

Cost is another critical concern. For many Pakistanis, justice remains an unaffordable luxury. Legal fees, court expenses, and endless delays create insurmountable barriers, especially for marginalized communities. ADR offers a viable alternative by providing a faster, less costly means of resolving disputes, thereby making justice accessible to those who need it most. Imagine a small business owner resolving a contractual disagreement without depleting their financial resources or a family settling a property dispute without getting entangled in years of litigation. ADR makes these scenarios possible.

The concept of alternative dispute resolution is not new to Pakistan. For centuries, rural communities have relied on jirgas and panchayats to settle disputes. While these traditional mechanisms are often criticized for their patriarchal and sometimes unjust nature, they reflect a deep-rooted cultural inclination toward resolving conflicts outside formal courts. Modern ADR builds upon this tradition but introduces fairness, transparency, and equality into the process. It serves as a bridge between Pakistan's historical dispute-resolution practices and the demands of a modern justice system.

The concept of alternative dispute resolution (ADR) is not unfamiliar to Pakistan. For centuries, rural communities have relied on jirgas and panchayats to resolve conflicts. While these traditional mechanisms are often criticized for their patriarchal and sometimes unjust nature, they highlight a deeply rooted cultural preference for settling disputes outside formal courtrooms. Modern ADR builds upon this legacy but enhances it by incorporating principles of fairness,

transparency, and equality. It serves as a bridge between Pakistan's cultural heritage and the evolving needs of a contemporary justice system.

Should Mediation or ADR be Mandatory?

A key question arises: Should the existing preference for mediation extend to making Alternative Dispute Resolution (ADR) a prerequisite for initiating certain or all commercial disputes in court? In practical terms, this would mean that the law mandates parties in commercial disputes to first attempt mediation or another ADR mechanism before seeking judicial intervention. If this requirement is not met, courts would be obligated to refer the dispute to ADR, except in cases involving purely legal questions. Notably, this statutory obligation would apply irrespective of the parties' prior consent or agreement to use ADR.

The Case for Mandatory ADR in Pakistan

Pakistan's judicial system faces immense pressure due to a heavy caseload, particularly in the High Courts and subordinate courts, where cases often take years to reach a final decision. In commercial disputes, where timely resolution is crucial for business stability and profitability, prolonged litigation proves highly counterproductive. Lengthy proceedings drain corporate resources, discourage entrepreneurial initiatives, and undermine investor confidence. The ripple effects of delayed dispute resolution include stalled projects, lost business and employment opportunities, and increased financial burdens—all of which negatively impact not only businesses but also the broader economy and society.

Additionally, commercial disputes frequently involve complex financial, technical, and operational matters requiring specialized expertise. Industries such as oil and gas, power, technology, and telecommunications deal with intricate issues that trial courts may lack the capacity to handle effectively. As a result, inadequate decisions at the trial level often lead to prolonged litigation through appeals, reviews, and revisions. Procedural complexities, long waiting periods, and frequent adjournments further fail to meet the time-sensitive needs of businesses.

A statutory requirement for mediation or another ADR mechanism in commercial disputes could create a more business-friendly legal framework, ensuring faster and more effective dispute resolution. Such a system would provide businesses with a streamlined process, fostering a conducive environment for economic growth and investment. By resolving commercial disputes more efficiently, judicial resources could be reallocated to address other pressing civil and criminal matters, ultimately benefiting society as a whole.

Global Trends in Mandatory ADR

Countries worldwide are increasingly adopting ADR mechanisms, including mediation and arbitration, to reduce court congestion and enhance the business climate.

United Kingdom: The Civil Procedure Rules (CPR) encourage the integration of ADR within the civil justice system. Recent amendments empower courts to order parties to engage in ADR

or stay proceedings pending ADR if deemed appropriate and proportionate. In *Churchill v. Merthyr Tydfil Borough Council* (2023), the UK Court of Appeal affirmed that courts have the authority to mandate ADR, provided it does not infringe on the essence of a party's right to a judicial hearing under Article 6 of the European Convention on Human Rights. While the court ultimately encouraged voluntary mediation in this case, it acknowledged the legitimacy of mandatory ADR under appropriate conditions.

Australia: Several Australian courts have statutory powers to refer cases to mediation, either with or without party consent. Certain laws, such as the Civil Procedure Act 2010 (Victoria) and the Civil Dispute Resolution Act 2011 (Commonwealth), impose mandatory mediation requirements before a claim can be filed. The Uniform Civil Procedure Rules (New South Wales) further empower courts to direct parties to mediation during pre-trial proceedings, promoting efficiency and preserving judicial resources while fostering a culture of ADR.

India: The Commercial Courts Act 2015 mandates mediation for commercial disputes unless urgent interim relief is sought. This requirement applies to disputes concerning contracts, construction projects, insurance, and intellectual property. Mediation is conducted by accredited ADR centers and must be completed within three months, with a possible two-month extension upon mutual agreement. If mediation results in a settlement, the agreement is enforceable as a court decree. If unsuccessful, litigation proceeds.

Establishing Thresholds for Mandatory ADR

To ensure effective implementation, specific thresholds and categories of commercial disputes should be identified for mandatory mediation or ADR. Some key qualifying criteria may include:

- **Monetary Threshold:** Commercial disputes exceeding a specified financial value should be subject to mandatory ADR, ensuring that high-stakes cases are resolved swiftly.
- **Technical Disputes:** Cases involving financial, technical, or operational complexities—such as contractual claims, construction, energy projects, intellectual property, IT, and telecommunications—should be directed to ADR.
- **Cross-Border Transactions:** International trade disputes should automatically undergo ADR, aligning with global best practices and ensuring consistency in resolution mechanisms.
- **Mediation-Linked Arbitration:** If court-mandated mediation fails to resolve a dispute, particularly in technical matters, arbitration should immediately follow to prevent unnecessary delays and maintain resolution momentum.

By implementing a structured, mandatory ADR framework, Pakistan can significantly enhance its commercial dispute resolution system, fostering economic stability, reducing judicial backlogs, and improving access to timely justice.

Should there be Mandatory Mediation or ADR?

A question arises whether the pro-mediation bias may be extended to make ADR a pre-condition for bringing all or select types of commercial disputes to a Court. In practical terms, this would

mean that the law requires the parties to a commercial dispute to first use mediation or any other ADR mechanism before approaching the Courts. If the parties do not fulfil this pre-condition, the Courts would refer the dispute to ADR on a mandatory basis except where pure questions of law are involved. The statutory pre-condition of mediation or ADR would not be dependent upon the consent or prior agreement of the parties for ADR.

The judicial system of Pakistan operates under immense pressure due to an overwhelming caseload. The High Courts and subordinate Courts grapple with an ever-growing docket of cases, often taking years to reach final decision. In commercial disputes, where swift dispute resolution is critical to maintaining business viability and profitability, lengthy proceedings are just counterproductive. Prolonged litigation drains corporate resources, discourages entrepreneurial activity and erodes investor confidence. Delays in resolving commercial disputes can have cascading effects, including stalled projects, loss of business and employment opportunities, and increased financial costs and liabilities. These outcomes not only harm the business but the economy and people as a whole.

Moreover, commercial disputes often involve complex financial, technical and operational issues that require specialised knowledge. Consider the business activities of oil and gas industry, power sector, technology, telecommunication and trade. Capacity to handle intricate commercial matters in these sectors is limited. In particular, capacity constraints at the trial level can lead to decisions that may not reflect the commercial realities and interests of the parties, resulting into multiplicity of litigation including appeals, reviews and revisions. Additionally, procedural complexities, waiting periods and frequent adjournments fail to meet the time-sensitive needs of businesses.

The legal pre-condition of mediation or another ADR mechanism to resolve commercial disputes can create a system tailored to the nuances of business and trade, enhancing both the expediency and quality of dispute resolution. It would provide businesses with the opportunity of dispute resolution within a short time, fostering a business-friendly environment and stimulating growth and investment. This pre-condition is likely to resolve commercial disputes in an expedited manner, freeing up judicial resources for other pressing matters. Additionally, it would reduce caseloads leading to enhanced efficiency in addressing criminal and civil cases, benefiting society at large.

Comparative Developments

Globally, the trend towards using ADR tools, including arbitration and mediation, is gaining momentum. Several countries have embraced mandatory and incentivized ADR mechanisms to reduce court congestion and improve the business climate. In the United Kingdom, the Civil Procedure Rules (CPR) emphasize the integration and promotion of ADR, including mediation, within the civil justice system. Recent amendments in the CPR enable courts to order parties to participate in ADR or stay proceedings pending ADR when it is appropriate and proportionate. UK courts can now order participation in ADR processes like mediation. The focus is on

settlement that is fair, quick and cost-effective. The courts may even impose cost sanctions, if a party unreasonably refuses to engage in ADR or fails to comply with ADR-related court orders. In the leading case of Churchill vs. Merthyr Tydfil Borough Council (2023), the UK Court of Appeal ruled that courts have the authority to stay proceedings and mandate ADR. The Court of Appeal clarified that mandatory ADR, if implemented proportionately and without impairing the "essence" of a party's right to a judicial hearing, does not violate Article 6 of the European Convention on Human Rights. The Court of Appeal refrained from ordering a stay for ADR and encouraged the parties to explore mediation voluntarily.

In Australia, several courts have statutory power to refer cases to mediation and other forms of ADR. In some instances, with the consent of the parties and in others without their consent. Some laws require mediation to be undertaken or offered before a claim is filed. For example, the Civil Procedure Act, 2010 (Victoria) and the Civil Dispute Resolution Act 2011 (Commonwealth) incorporate mandatory mediation provisions. These laws allow courts to direct parties to mediation during pre-trial proceedings. Similarly, the Uniform Civil Procedure Rules (New South Wales) grant courts discretion to order mediation for cases before them. Such systems are designed to promote efficiency and preserve judicial resources while fostering a culture of dispute resolution outside the adversarial courtroom setting.

India enacted its Commercial Courts Act, 2015 which mandates the parties to a commercial dispute to attempt mediation unless the plaintiff seeks urgent interim relief. This pre-condition applies to disputes of contracts, construction projects, insurance and intellectual property. Mediations are conducted by established ADR centers, using accredited practitioners. The process must conclude within three months, with an option of two-month extension, if the parties mutually agree. If mediation results in a settlement, it becomes binding and enforceable as a court decree. In case of failure, the plaintiff can proceed with litigation.

Thresholds for Mandatory Arbitration

To ensure the efficient implementation of mandatory mediation, clear thresholds and categories of commercial disputes should be specified to meet the proposed statutory pre-condition of mediation or another ADR. Consider, for instance, the following qualifying criteria:

Monetary Threshold: All commercial disputes involving claims exceeding a certain amount should qualify to meet the ADR pre-condition. This ensures that significant disputes, often involving substantial financial stakes, are resolved expeditiously.

Technical Disputes: Cases involving financial, technical or operational issues, such as disputes over contractual claims, construction, energy projects, intellectual property, IT services, technology and telecommunication should fulfil the prior condition of ADR.

Cross-Border Transactions: Any dispute arising from international trade or cross-border agreements should automatically be referred to ADR, aligning with global business practices and ensuring consistency in dispute resolution.

Mediation-Linked Arbitration: Disputes that fail to resolve during Court-mandated mediation should immediately proceed to arbitration to avoid delays and preserve the momentum of resolution efforts, if they are technical disputes.

Pakistan Courts approach towards out of Court settlement through the Alternate Dispute Resolution (the “ADR”)

The courts in Pakistan have adopted the approach of mediation/out of Court settlement through the Alternate Dispute Resolution (the “ADR”) in the light of the jurisprudence already developed by High Courts Court as well as the Supreme Court of Pakistan. Recently, whilst dilating upon fostering a pro-settlement bias, Hon’ble Mr. Justice Syed Mansoor Ali Shah of the Supreme Court of Pakistan has observed and held in the judgment dated 06.11.2024, passed in the case of Messrs. Mughals Pakistan (Pvt.) Limited V/s Employees Old Age Benefits Institution through Director Law, Lahore and others (PLD 2025 SC 1) that:

> *“… Mediation must be increasingly seen as a right of the parties within the litigation process. Access to justice includes the right to have disputes resolved in a timely and efficient manner. Mediation, as a faster and cost-effective alternative, satisfies this fundamental aspect of justice. Mediation respects the autonomy of the parties by giving them control over the process and outcome, unlike litigation, where outcomes are imposed by judges. Litigants have the right to avoid the adversarial consequences of litigation, such as financial strain, emotional distress, and reputational harm. Mediation provides a non-confrontational environment that mitigates these risks. Procedural justice emphasizes the fairness of the process, and mediation upholds this by ensuring participation, neutrality, and respect – core elements of a fair process. In contexts where economic inequalities limit access to legal representation, mediation ensures that the justice system remains accessible to the underprivileged. Many societies have strong traditions of community-led dispute resolution. Mediation builds on these traditions, ensuring justice remains culturally relevant. “Mediation is at the heart of access to justice. Courts must embrace it as an essential tool for efficient and humane dispute resolution.”4 In conclusion, mediation is not merely an alternative to litigation but a complementary and necessary component of the justice system.*
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> *… The reasons which make mediation a compelling choice for an appropriate avenue to resolve disputes efficiently and effectively, inter alia, include: (i) Cost- effectiveness; mediation incurs lower legal fees and expenses due to shorter and less formal processes; (ii) Time efficiency; resolutions can often be reached much faster through mediation than through court Director Law, Lahore and others (PLD 2025 SC 1) that:*
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(iv) Confidentiality; unlike trials in courts which are generally public, mediation processes are private. This confidentiality can be crucial for preserving personal relationships, protecting trade secrets or avoiding negative publicity, (v) Preservation of relationships; mediation encourages cooperation and communication, which can help maintain or even improve relationships between parties, a key consideration in business context or family disputes, (vi) Control over the outcome; parties have more control over the resolution as they are directly involved in negotiating the settlement, (vii) Expertise; parties have choose an expert in the filed relevant to their dispute to act as the mediator, which can lead to more informed decisions and (viii) Reduced hostility; mediation tends to be less adversarial than court litigation, which can reduce tensions and hostility between parties… It needs to be reiterated that "an ounce of mediation is worth a pound of arbitration and a ton of litigation." Our courts, more recently, have encouraged ADR. The courts should not only encourage "mediating more and litigating less" but also exhibit a pr mediation bias which connotes a pre- disposition within the legal system for resolution of disputes through mediation rather than through litigation or other forms of dispute resolution. Such bias does not favor one party over another but rather prioritizes mediation as the preferred method of dispute resolution. It is grounded in the belief that

settlements are generally more efficient and satisfactory for all parties involved compared to outcomes determined by a court. Mediation offers the best chance of a solution where both parties leave with dignity and satisfaction, as opposed to the all-or-nothing results of litigation."

A truly remarkable judgement authored by Honorable Justice Syed Mansoor Ali Shah, Honorable Justice Ayesha A. Malik and Honorable Justice Aqeel A. Abbasi, which has strengthened the ADR/Mediation eco-system in Pakistan. This judgement has given an overview of the marvelous evolution of ADR in Pakistan, re-emphasized the need for a pro-settlement approach and has set the tone for a future where the shift from litigation to ADR is inevitable. The judgement has recapped the judicial efforts to bring ADR/mediation to the forefront by referencing these landmark judgments over the years:

The Supreme Court ruled that the courts should adopt a resolute stance of non-interference, encouraging arbitration and other forms of alternative dispute resolution (ADR), such as mediation, as the preferred modes of resolving disputes.

The judgment authored by Justice Syed Mansoor Ali Shah said:

"This judicial mindset is particularly vital for our country, where an overburdened judicial system and burgeoning case backlogs impose immense economic costs on both the judiciary and society. By respecting arbitration agreements and fostering an environment conducive to swift dispute resolution, courts can play a pivotal role in alleviating this crisis."

"Courts in Pakistan must therefore embrace this ethos, recognizing that promoting arbitration is not merely a legal necessity but also an economic and commercial imperative for ensuring the country's progress and prosperity. It is with this pro-arbitration approach that we proceed to address and decide the questions raised in the instant case."

The facts of the case are that Qatar Lubricants Company W.L.L. (QALCO) and Fawad Naeem Rana (respondents) filed a petition before the Lahore High Court, invoking its jurisdiction as a Company Bench under the Companies Act 2017 (Companies Act). Through the said petition, they sought, inter alia, rectification of the register of sharers under Section 126 of the Companies Act and action against Atif Naeem Rana and Sameen Naeem Rana (petitioners) under Section 127 of the Companies Act. The respondents alleged that the petitioners had fraudulently secured the transfer of the respondents' shares in Kausar Rana Resources (Pvt.) Ltd. (KRR) in the register of sharers, relying on an illegal and void agreement dated 12.04.2020 (agreement).

The petitioners appeared before the Company Bench in the said petition and filed an application under Section 34 of the Arbitration Act 1940 (Arbitration Act), seeking a stay of the proceedings on the respondents' petition and for referring the matter to arbitration by any retired Judge of a High Court or the Supreme Court, in accordance with clause (13) of the agreement. The

respondents opposed the application by filing a written reply. Through a judgment dated 24.06.2024, the Company Bench dismissed the petitioners' application. Consequently, the petitioners have filed the present petition for leave to appeal.

The apex court set aside the judgment of Company Bench, and accepted the petitioners' application under Section 34 of the Arbitration Act.

The dispute concerning the alleged fraudulent transfer of shares is referred to arbitration and meanwhile, the proceedings on the respondents' petition under Sections 126 and 127, etc., of the Companies Act before the Company Bench shall remain stayed.

The Court proposed the name of Justice (retired) Maqbool Baqar as the arbitrator. It expected that the arbitrator will conduct the arbitral proceedings as expeditiously as possible and endeavour to decide the matter preferably within a period of four months from the date of the submission of claims by the parties before him.

The judgment said in case the said Arbitrator declines to accept the assignment, then the parties are free to approach the Company Bench through a proper application for the appointment of a new Arbitrator.

The court directed that the award made by the arbitrator be filed before the Company Bench for further proceedings in accordance with the Arbitration Act.

Justice Mansoor wrote that arbitration alleviates the burden on national courts, enhances business productivity and provides a faster resolution process, thereby, minimising disruptions to businesses. Furthermore, the ability to enforce international arbitration awards strengthens trade and commerce; while arbitration's stable and predictable dispute resolution mechanism promotes investor confidence, making the country an attractive destination for foreign investment.

The court was informed that a draft bill for a new Arbitration Act, prepared by the Law and Justice Commission of Pakistan, was submitted to the federal government through the Ministry of Law and Justice on 2 May 2024.

It expected that the federal government will priorities the larger economic interest of the nation and ensure the swift enactment of fresh arbitral legislation to provide an effective and contemporary dispute resolution mechanism for the people. The SC office directed to dispatch a copy of this judgment to the attorney general of Pakistan for onward correspondence and as a reminder to the concerned ministry.

"Taisei Corporation v. A.M. Construction, 2024 SCMR 640; Commissioner Inland Revenue v. RYK Mills, 2023 SCMR 1856; National Highway Authority v. Sambu Construction, 2023 SCMR 1103; Orient Power Company v. Sui Northern Gas, 2021 SCMR 1728; Federation of Pakistan v. Attock Petroleum, 2007 SCMR 1095; Waqas Yaqub v. Adeel Yaqub, 2024 CLD 990; Faisal Zafar v. Siraj-ud-Din, 2024 CLD 1; Fiaz Hussain Minhas v. SECP, C.O. No. 75025/2022 (unreported); Netherlands Financiering v. Morgah Valley, 2024 CLD 685; Strategic Plans v.

Punjab Revenue Authority, PLD 2024 Lahore 545; Sohail Nisar v. Nadeem Nisar, 2024 LHC 1435; Messrs. Alstom Power v. Pakistan Water, PLD 2007 Lahore 581; Shehzad Arshad v. Pervez Arshad, 2024 CLD 1121; Focus Entertainment v. Television Media, 2021 CLD 885; Asif S. Sajan v. Rehan Associates, PLD 2012 Sindh 388; Messrs. U.I.G v. Muhammad Imran Qureshi, 2011 CLC 758; Miss Memoona Zainab Kazmi v. Additional District Judge, 2023 CLC 207; Imperial Electric Company v. Zhongzing Telecom Pakistan, 2019 CLD 609"

In the earlier judgment reported as Province of Punjab through Secretary C&W, Lahore, etc. Vs. M/s Haroon Company, Government Contractor, etc. (2024 SCMR 947) the Supreme Court of Pakistan has held as under:

> *"Mediation, as a form of alternative dispute resolution (ADR), has garnered widespread acclaim for its efficiency, cost-effectiveness, and ability to facilitate amicable settlements. In contrast to the adversarial nature of litigation, mediation embodies a collaborative approach, encouraging parties to find mutually beneficial solutions. The courts should not only encourage mediation but also exhibit a pro-settlement bias and a pro-mediation bias. By Pro- mediation bias or pro-settlement, we mean a predisposition or preference within the legal system for resolving disputes through mediation rather than through litigation or other forms of dispute resolution. This bias is not about favoring one party over another but rather about favoring the process of mediation itself as a preferred method of dispute resolution. This bias is grounded in the belief that settlements are generally more efficient and satisfactory for all parties involved compared to outcomes determined by a court. ... By fostering a pro-settlement bias, courts can contribute to a more harmonious and efficient dispute resolution landscape, where parties are empowered to resolve conflicts collaboratively and constructively. Encouraging mediation aligns with the broader goals of justice systems worldwide: to resolve disputes in a manner that is fair, efficient, and conducive to the long-term well-being of all involved parties."*

In another case cited as Commissioner Inland Revenue Vs. Messrs. RYK Mills (2023 SCMR 1856), a four members Bench of the Supreme Court of Pakistan, while hearing an issue pertaining excise tax, has held that:

> *"A show cause notice can also be viewed as being akin to alternative dispute resolution ("ADR") as it provides a pre- litigation opportunity for the recipient to present their position and show cause. By doing so, the matter can potentially be resolved before it escalates and requires any adjudication. This not only saves time and resources but also encourages the efficient resolution of disputes, acting as an effective mode of resolving disputes outside of the traditional legal framework. Thus, while acting as a means to ensure due process and fair trial by allowing the recipient to explain their position and respond to the allegations before any legal action is taken, the issuance of a show cause*

notice also acts as a tool to resolve the issue in the pre- litigation stage, similar to the objective of ADR."

Earlier the Supreme Court of Pakistan in the case relating to the Sales tax issue, reported as Federation of Pakistan and others Vs. Attock Petroleum Ltd. Islamabad (2007 SCMR 1095), in which the following observation has been made:

> *"The centuries old traditional method of settlement of private dispute through negotiation is not only familiar in the modern world, but this voluntary scheme for settlement of tax dispute through mediation and negotiation is an effective method to be followed. ... There are various forms of ADR such as mediation, arbitration, conciliation and compromise with or without intervention of court and provisions of the ADR in the above statutes clearly demonstrate that scheme of ADR is not applicable to the casein which in addition to the tax liability an aggrieved person is also facing criminal charge."*

Whilst deriving guidance formulated by the Supreme Court of Pakistan in the aforementioned judgments, this High Court in case relating to the Companies Act, 2017 (the "Companies Act") reported as Faisal Zafar and another V/s Siraj-ud- Din and 4 others (2024 CLD 1) held that

> *"a corporate dispute or petition under sections 286 and 287 of the "Act" alleging the mismanagement of members of a company may be resolved through mediation and compromise before passing any determination by the Court with the consent of the parties involved in such dispute, since the law permits it."*

Again, in a Lis under the Companies Act, this Court held in the case of Netherlands Financiering Maatschappij Voor Ontwik kelings landen N.V. (F.M.O.) (PLD 2024 Lahore 315 = 2024 CLD 685) that

> *"Section 276 and 277 of the "Act" can be invoked in order to protect the interest of the Company and the Court can initiate process of the "ENE" and then mediation. Parties are encouraged throughout the litigation process to attempt to settle disputes, for good reason, and this decision may encourage more litigants to explore settlement possibilities before being ordered to do so by the court. Mediation' outcomes not only save time and money of parties, but it also reduces load of work in the courts as well as it is a most updated way on resolutions based on the "divine culture of Peace."*

The Court further elaborated the concept of mediation in the judgment reported as Strategic Plans Division and another V/s Punjab Revenue Authority and others (PLD 2024 Lahore 545). The afore-mentioned judgments of this Court had then been followed in the judgment cited as Sohail Nisar V/s Nadeem Nisar & others (2024 LHC 1435) (LHC Citation), wherein it was held by my learned bother Shahid Karim, J. that

> *"As the statutory wording makes clear, a court is obliged to refer a case for mediation. This is a mandatory requirement enjoined by law now and equally applies to proceedings*

under the Companies Act, 2017 to the extent as this Court may determine in its discretion. Reference may be made to section 6(15) of the 2017 Act … Mediation, in the first instance, should be the preferred mode of resolution and applies, a fortiori, to cases which involve wrangling between close family members. This method has many obvious benefits least of all to save cost, businesses and personal relations. If taken under the scrupulous attention of this Court and by a respectable Mediator, the process will likely succeed in its purpose."

In a judgment passed by the Sindh High Court the principles/guidelines settled by the Court in the cases of Faisal Zafar and Netherlands Financiering supra have been in the courts as well as it is a most updated way on resolutions based on the *"divine culture of Peace."* This Court further elaborated the concept of mediation in the judgment reported as Strategic Plans Division and another V/s Punjab Revenue Authority and others (PLD 2024 Lahore 545). The afore-mentioned judgments of the Court had then been followed in the judgment cited as Sohail Nisar V/s Nadeem Nisar & others (2024 LHC 1435) (LHC Citation), wherein it was held by my learned bother Shahid Karim, J. that

"As the statutory wording makes clear, a court is obliged to refer a case for mediation. This is a mandatory requirement enjoined by law now and equally applies to proceedings under the Companies Act, 2017 to the extent as this Court may determine in its discretion. Reference may be made to section 6(15) of the 2017 Act … Mediation, in the first instance, should be the preferred mode of resolution and applies, a fortiori, to cases which involve wrangling between close family members. This method has many obvious benefits least of all to save cost, businesses and personal relations. If taken under the scrupulous attention of this Court and by a respectable Mediator, the process will likely succeed in its purpose."

The judgment passed by the Sindh High Court followed principles/guidelines settled by Lahore High Court in the cases of Faisal Zafar and Netherlands Financiering supra have been reiterated by the Sindh High Court in the case reported as Shehzad Arshad V/s Pervez Arshad and 2 others (PLD 2024 Sindh 408) while holding that

"pro- mediation bias is heightened by the overwhelming and ever-increasing pendency of cases before this Court on the Original Side due to the systemic bottleneck created by the Sindh Civil Courts Ordinance, 1962, as observed by a Division Bench of this Court in the case reported as Ghulam Asghar Pathan and others v. Federation of Pakistan and others PLD 2023 Sindh 187, making it all the more imperative to embrace alternate means of dispute resolution such as mediation. … The parties have already expressed their desire for mediation through Clause 7.1, as reproduced above, and on query posed to learned counsel during the course of proceedings as to whether they had any preference as between the two aforementioned centers, they have jointly expressed familiarity with the workings of MICADR and concurred that a referral be made to that center".

Even earlier, in the case of Messrs. Focus Entertainment (2021 CLD 885), a settlement agreement voluntarily executed amongst parties with intervention of the mediator aiming at resolving wholesome disputes of parties, was acknowledged to be in line with requirements of Section 89- A(1) and Rule 1-B of Order X of The Civil Procedure Code, 1908 as well as the relevant suit was decreed in accordance thereof on request of the parties. Learned Division Bench of the Singh High Court has further taken the same view by adopting the same approach in the judgment reported as Civil Aviation Authority of Pakistan V/s Federation of Pakistan and others (2024 PTD 1507 = 2024 CLD 1518), wherein it has been held that

> *"Fostering a pro-mediation drive initiated by the Courts, the learned Lahore High Court in the case of Faisal Zafar and Netherlands Financiering has eloquently deliberated upon the role of Courts in promoting mediation in Company matters pursuant to Sections 276 and 277 of the Companies Act, 2017. Similarly, in the case of Shehzad Arshad, a learned Judge of this Court has also dilated upon the importance and requirements of settlement of a dispute pertaining to a family company. ... Lastly before parting, we find it apt to refer to the learnings from the Global Pound Conference Series 2016-2017, wherein members concluded, inter alia, that dispute resolution may not simply be just about "ADR = alternative dispute resolution". There are certain disputes which may not be appropriate for mediation or conciliation or arbitration or litigation and may well require a combination of approaches. Therefore, the proper nomenclature for "ADR" is "ADR = appropriate dispute resolution", which accepts the proposition that litigation, arbitration, conciliation and mediation, are all tools to deepen and widen access to justice to the public. This approach puts the onus on lawyers and their clients to know their case and what options are best suited to settle the dispute. The best solution to any problem is one that the parties themselves create. This is the cornerstone of effective dispute resolution. Therefore, lawyers must understand all available options for dispute resolution, including the costs and consequences of ill-advised litigation to burden the Courts when the dispute is better suited for an alternative approach. Lawyers must be Appropriate Dispute Resolution advisers and not just litigation advisers. To this end, it is vital for the bench also to understand its role (i.e. the role of Judges) in the development and facilitation of Appropriate Dispute Resolution."*

Moreover, it was previously held in the case of Asif S. Sajan and another V/s Rehan Associates through Partner and 4 others (PLD 2012 Sindh 388) that

> *"The purpose of alternate dispute resolution by way of mediation is to bring the parties together at a neutral forum to which they have agreed, and to make an attempt to resolve the pending issues or disputes between them as a result of a mediation exercise to be carried out under the guidance and with the assistance of a neutral mediator. It is entirely incorrect to suggest or to believe that a mediation exercise is limited by any formal requirement ... In my view, any such fetters if imposed on the mediation exercise would in fact be against the spirit of such an exercise and may well reduce it to futility by making it*

subject to those very formalities the avoidance of which is one of the primary purposes and goals of alternate dispute resolution by way of mediation." It was also held in the case of Messrs. U.I.G. (Pvt.) Limited through Director and 3 others V/s Muhammad Imran Qureshi (2011 CLC 758) that "the Court to bring an end to the controversy and for expeditious disposal of case by consent of the parties may adopt any alternate method of dispute resolution including mediation, conciliation or any other means."

The judgments passed by Islamabad High Court on mediation in the cases of Miss Memoona Zainab Kazmi V/s Additional District Judge (MCAC) Islamabad West, Islamabad and 2 others (2023 CLC 207) and The Imperial Electric Company (Pvt.) Limited V/s ZHONGXING Telecom Pakistan (Pvt.) Limited and others" (2019 CLD 609) also support ADR.

Main Takeaways from the above Judgments on ADR are:

Promotion of Mediation: Mediation is emphasized as a key aspect of access to justice, promoting cost-effective, timely, and efficient dispute resolution. Mediation provides a non-confrontational environment, preserving relationships, protecting confidentiality, and empowering parties with control over outcomes.

Judicial Endorsements: Supreme Court and High Courts cases endorse mediation.

Legal Framework: There are several legislations and rules existing which support ADR.

- Amended S.89-A of the Civil Procedure Code, 1908 (as amended in 2002) read with Order X Rule 1-A (deals with alternative dispute resolution methods).
- Rules of Mediation & Conciliation for Court Annexed ADR under Section 89-A Civil Procedure Code.
- Punjab Amendments in the First Schedule to Civil Procedure Code 2017,
- The Code of Civil Procedure (Punjab Amendment) Act 2018,
- The Code of Civil Procedure (Punjab Amendment) Ordinance The Code of Civil Procedure (Punjab Amendment) Ordinance 2020

(These legislations support the case management and use of ADR for expeditious resolution to disputes), including new draft of Section 89A C.P.C. and a full-fledged law on ADR.

- Rules of Business 2005 for Musalihat Anjuman under the Local Government Ordinance.

under the Gender Justice Through Musalihat Anjuman Project (GJTMAP) of the Government of Pakistan & UNDP for "Constitution and Mobilization of the Musalihat Anjumans in all Union Councils in the pilot districts in Khaybar Pakhtunkhwa.

- ADR Act, 2017
- Punjab ADR Act, 2019
- Punjab ADR Rules 2020,

Judicial Precedents: Some Court Cases such underline court directives for mediation in company disputes and family disputes to preserve relationships and reduce court workload.

Cost-Effectiveness and Efficiency: Mediation is lauded for reducing financial and emotional burdens compared to litigation. Encourages early resolution, saving time for both litigants and the judiciary.

Role of Judges and Lawyers: Judges are urged to foster pro-mediation policies actively. Lawyers are advised to act as "Appropriate Dispute Resolution (ADR)" advisers, guiding clients on the best methods to resolve disputes.

Global Influence: The judgments reflects modern trends in ADR globally, advocating that mediation should not be seen merely as "alternative dispute resolution" but as "appropriate dispute resolution."

Judgments Impact: Stress that ADR is essential for reducing judicial backlog and ensuring justice is accessible to all, aligning with cultural and economic realities.

These judgment set a strong precedents for integrating mediation into Pakistan's legal system, urging the judiciary, legal practitioners, and litigants to adopt ADR for sustainable dispute resolution.

Recently the Federal Cabinet has officially approved Pakistan’s decision to sign the United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention). This landmark step will facilitate the recognition and enforcement of international mediated settlement agreements (IMSAs), strengthening Pakistan’s legal framework for cross-border trade and investment. This is a historic moment for Pakistan-a step towards becoming a reliable and competitive player in the global economy.

Adopted in 2018 and in force since 2020, the Singapore Convention eliminates the need for prolonged court proceedings to enforce mediated agreements, offering a streamlined, cost-effective solution for international dispute resolution. With 57 signatories and growing global acceptance, this Convention marks a pivotal shift toward modernizing dispute resolution mechanisms and fostering investor confidence.

Conclusion:

Mandatory mediation or ADR neither means exclusion of Court remedies nor amounts to pre-defined outcomes. Incorporating a “mediation first” approach into Pakistan’s legal framework could provide the most-needed efficiency in resolving commercial disputes. By mandating mediation as an initial step, parties will have the opportunity to resolve commercial disputes amicably while reserving arbitration for technical issues, and even litigation where ADR fails. This layered approach can ensure optimal use of resources while promoting a culture of compromise and cooperation. Importantly, the pre-condition of ADR in commercial disputes will reduce the burden on Courts, ensuring timely decisions for businesses and enabling specialized resolution. Mandatory mediation is likely to foster a business-friendly environment, boost investor confidence and benefit the collective economic interests of the people.

Recent rulings by Pakistan's superior courts have consistently underscored the importance of ADR, particularly in commercial disputes (e.g., 2024 SCMR 640, 2023 SCMR 1856, 2023 SCMR 1103, 2024 CLD 1, and 2024 CLD 990). In a recent case (CA 256/2024), the Supreme Court of Pakistan emphasized:

"The courts should not only encourage mediating more and litigating less but also exhibit a pro-mediation bias, which connotes a predisposition within the legal system for resolving disputes through mediation rather than litigation or other forms of dispute resolution."

These judgments reflect the judiciary's growing inclination toward mediation as the preferred method for dispute resolution. At the same time, they reinforce the significance and effectiveness of ADR mechanisms in resolving commercial disputes.

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