Impasse in Mediation

Impasse has been defined by Oxford dictionary as a “situation in which no progress is possible, especially because of disagreement, a deadlock”.

Mediation is a voluntary process where the parties decide to participate and explore options for resolution of their disputes. The parties do however encounter impasse in mediations because they are not willing to go any further in the settlement of their issues and there is a deadlock. It is not necessary that impasse is only at the early stage, it can happen at any stage. At times impasse occurs at the fag end when the agreement has been drafted and is ready to be signed.

In a mediation between some home owners and a small builder, disputes had cropped about delay in the project. The home owners had filed a case which came for mediation. The parties worked out an agreement after a lot of deliberation and negotiation. They finally drafted the settlement too. However, when the parties were about to sign the agreement, the builder backed out. He backed out because he developed cold feet and was scared that if he failed to keep up with his commitment, then he would be hauled up for contempt of court.

1. Why is there an impasse in mediation, being a voluntary process?

Some of the reasons are as follows:

- The parties have been in a long bitter fight and are just angry and tired. There’s too much of bad blood between the parties.
- The issues are quite complex and hence quite difficult to settle.
- The parties have not had a chance to vent out their feelings and emotions completely.
- The parties are not able to identify their interests and hold on to their positions.

2. How do mediators, who are neutral, overcome this impasse?

Given below are some of the techniques used by mediators to help parties overcome such deadlock in their negotiations:

- **Taking a break** – when there is deadlock between the parties and none of the parties move any further with their offers, the mediators do sometimes recommend that the parties take a short break from mediation. After the break when the parties re-assemble, they are relatively calm, and it helps them look at the issues afresh.
- **Summarising** – Mediators summarise whatever has been said by the parties. During this process the parties identify the issue that they are stuck with clearly. This helps because the parties realise that the issue that they are stuck with, may not really be that important.

- **Positive reinforcement** – It helps to communicate to the parties the progress they have made with some of the issues. The parties then realise the ground that has been covered and understand the implication of throwing it all away.

- **Meet the parties separately** – To understand what’s holding them back from going forward. The parties are then in a position to introspect and understand what is blocking the process.

- **BATNA and WATNA** – The parties are asked to consider the Best Alternative to a Negotiated Agreement (BATNA) and the Worst Alternative to a Negotiated Agreement (WATNA). This gives them a chance to assess or compare the benefits of settling in mediation vis-a-vis alternative of not settling. This gives them an idea of the amount of time that may take in the court, the costs of litigation, the relationship between the parties especially if it is a matrimonial or family matter and effects on the other members of the family.

- **Bringing the right parties** – Many a time the person with the right authority is not present in mediation. This results in delay and decisions not being taken. In such a situation the mediator requests the parties to bring in the person with authority who can take a decision.

The techniques illustrated above are some of the techniques used by an experienced mediator to break an Impasse. These are not in any sequential order. What is suitable for x situation may not be appropriate for y mediation, even if they seem very similar. Mediation, like any other profession is also about experience. Only with experience can a mediator decide which of the techniques or a combination thereof is appropriate to overcome Impasse in mediation.

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The above article is the 13th part of a series of knowledge sharing initiative on Mediation contributed by Ms. Saradha Kumar, Advocate on behalf of CAMP (http://campmediation.in). She is currently attached with CAMP ARBITRATION AND MEDIATION PRACTICE Pvt. Ltd. in practising and propagating mediation as an effective mechanism for dispute resolution.

CAMP is a pioneering institution providing private mediation services so that disputing parties can settle their disputes amicably. Envisioned by Laila T Ollapally, it is run by a group of legal professionals including retired judges, senior mediators from the Bangalore Mediation Centre and senior partners of law firms who are committed to resolving disputes efficiently and successfully.

CAMP is recognized by the Union Ministry of Law and Justice as a qualified mediation service provider for government disputes as well as by the International Mediation Institute (IMI) as a Qualifying Assessment Program (QAP). IMI is the leading international institution for setting professional standards for mediators and collaborative dispute resolution processes.