

# Role of Lawyers in **Construction Mediation**

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# Gladiator



# Counsellor



# A LAYWER CAN

MAKE IT  
-OR-  
~~BREAK IT~~

# Dispute Resolution in Construction Disputes

Litigation

Adjudication

Dispute Resolution Board

Mediation

Arbitration





**Stage # 1**  
**Pre-Mediation**  
**Stage**

**Stage # 2**  
**Mediation Stage**

**Stage # 3**  
**Post Mediation**  
**Stage**

# Pre Mediation Stage



## 5 Tips for preparing the Client for Mediation

- 1. The Mediator Should Not Pick Sides**
- 2. Be Open Minded and Listen To Opposing Counsel's Presentation**
- 3. Mediations Are Typically Long, Intense and Emotionally Taxing**
- 4. Mediators Are Not Arbitrators or Judges**
- 5. Mediation Often Is the Best Time to Settle**



# OTHER PREPARATIONS

- ▶ Calculating the Client's BATNA
- ▶ Analysis of the Technical Data
- ▶ Dealing with figures

# B

Best

# A

Alternative

# T

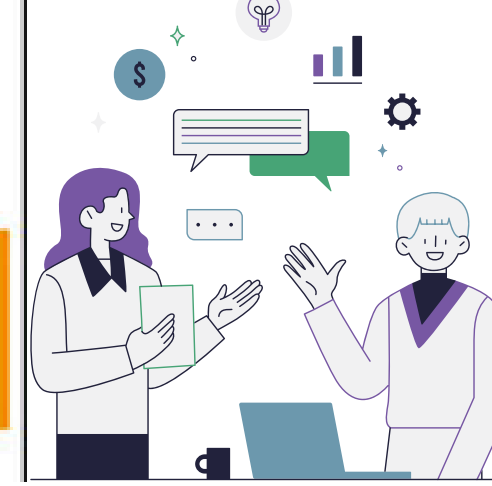
To A

# N

Negotiated

# A

Agreement



## Features of 'BATNA'

- Aid in determining the importance of negotiation
- Analyse the best alternative
- Help to reduce the unavoidable cost and management time
- Determine the Strategies for Negotiation





# As a Negotiator



Communication

Understanding the culture of the opposite party & the Business

Drive the Parties





# Post mediation Stage

- The mediator is not expected to give legal advice
- Therefore the obligation for preparing the legally enforceable Mediation Agreement rest with the Lawyer.



# Importance of understanding Construction Law

- Familiarity with the FIDIC standard form contracts
  - different types of books
- Delay and Disruption Protocol - f
- Formulated by the Society of Construction Law
  - The object of the Protocol is to provide useful guidance on some of the common delay and disruption issues that arise on construction projects, where one party wishes to recover from the other an Extension Of Time (EOT) and/or compensation for the additional time spent and the resources used to complete the project.



**THANK  
YOU**

**JOHNSON GOMEZ**  
**PRESIDENT, SOCIETY OF CONSTRUCTION LAW**  
**(KERALA CHAPTER)**