

**GUJARAT NATIONAL LAW UNIVERSITY  
GANDHINAGAR**

Course: Alternative Dispute Resolution  
Semester-V (Batch: 2014-19)

Mid Semester Test: August-2016

Date: 10<sup>th</sup> August, 2016

Duration: 2 hours

Max. Marks: 30

**Instructions:**

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in-line.
- Do not write any thing on the question paper.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.
- **Bare Act is not allowed.**

- |  | Marks |
|--|-------|
| <p>Q.1 Under section 11 of the Arbitration and Conciliation Act, 1996 before the Chief Justice of the Gujarat High Court which was disposed of by an order dated 01/07/2016 by a learned judge of the said High Court, who was the nominee of the Chief Justice under the Act. The order reads as: "Considering that applicant has appointed an arbitrator, Mr. X, retired judge of the High Court, is appointed as presiding arbitrator. As per the agreement of the parties, the tribunal shall constitute and shall decide all disputes including claims and counter claims of the parties arising from the contract". The respondent of the above application (order) is aggrieved and seeking your advise to challenge the said order.</p> <p><i>For your reference:</i></p> <ol style="list-style-type: none"> <li>1) S. 9 Interim measures, etc. by Court. –               <ol style="list-style-type: none"> <li>(d) interim injunction or the appointment of a receiver;</li> <li>(e) such other interim measure of protection as may appear to the court to be just and convenient</li> </ol> </li> <li>2) S. 10 Number of arbitrators.               <ol style="list-style-type: none"> <li>(1) The parties are free to determine the number of arbitrators, provided that such number shall not be an even number.</li> <li>(2) Failing the determination referred to in sub-section (1), the arbitral tribunal shall consist of a sole arbitrator.</li> </ol> </li> <li>3) Article 226 of the Indian Constitution (in exercise of the original jurisdiction of the High Court)</li> <li>4) Section 11 Appointment of arbitrators</li> <li>5) Letter patent appeal</li> <li>6) Special Leave Petition</li> <li>7) Section 34 (2)(V) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this part;</li> </ol> | (10)  |
| <p>Q.2 The appellant and respondent entered into a Partnership agreement as per deed dated 09/07/2016 to carry on the business under the name and style of 'Art Industries'. Clause 7 of the said Deed relates to settlement of disputes. The said clause is stated below:</p>   | (10)  |

" 7) *If during the continuance of the partnership or at any time afterwards any dispute touching the partnership arises between the partners, the same shall be mutually decided by the partners or shall be referred for arbitration if the parties so determine.*"

Relying on the above settlement clause, one of the parties to the said partnership agreement filed the application for appointment of an Arbitrator to decide the disputes in regard to dissolution of the said partnership firm and for rendition of accounts. In the said application the settlement clause was challenged by reading section 7 of the Arbitration and Conciliation Act, 1996. Learned Judge who heard the application, held that *"if the intention of the parties was not to refer their disputes to arbitration, there was no need to incorporate clause 7 making a specific mention of arbitration, and that such a provision should be liberally interpreted so as to encourage arbitration. Further, the learned Judge held that clause 7 of the partnership agreement is an arbitration agreement and appointed an arbitrator."*

By challenging the said order of the court, it is submitted that the power under the provision of the said Act (Arbitration and Conciliation Act, 1996) can be exercised only if there is a valid arbitration agreement between the parties, and that as there is no arbitration agreement between the parties, the Arbitrator could not have been appointed. Discuss the issue with decided case law(s).

Q.3 Give your opinion with case law(s), if any

(2x5=  
10)

- (a) Signatures – Whether necessary to constitute Arbitration Agreement
- (b) S. 8 is preemptory and does not violate the principle of Party Autonomy

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