

Mid Semester Test: August-2017

Alternative Dispute Resolution

**GUJARAT NATIONAL LAW UNIVERSITY  
GANDHINAGAR**

Course: Alternative Dispute Resolution  
Semester-V (Batch: 2015-20)

Mid Semester Test: August-2017

Date: 22<sup>nd</sup> August, 2017

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 anything 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.

- |   | <b>Marks</b> |
|---|--------------|
| <p>Q.1 In the case, both the parties have been companies incorporated under the Indian Companies Act, 1956. Vas Infra Ltd. ("VIL"), a construction and contracting-real estate company has been awarded a contract for 'rehabilitation and upgrading' by the National Highways Authority of India, a portion of which it has been sub-contracted to the Larsen &amp; Toubro Infrastructure Private Limited ("L&amp;T").</p> <p>The shareholders and directors of 'VIL' have been residents of the state Malaysia. All the board meetings and the day to day management of the company have been also managed from Malaysia. The contracts between the parties contained an arbitration clause which stated that the 'disputes between the parties would be referred to arbitration as per the provisions of the Arbitration and Conciliation Act, 1996 ("the Act"). The seat of the arbitration was to be New Delhi.'</p> <p>Disputes have been arisen between the parties with regard to the appointment of an arbitrator. 'VIL' approached the Supreme Court for the appointment of an arbitrator in terms of Section 11(5) and Section 11(9) of the Act which <i>inter alia</i> authorises 'the Chief Justice of India or any other person or institution designated by him to appoint an arbitrator in case of an international commercial arbitration. In all other matters, the arbitrator was to be appointed by Chief Justices of the High Courts.'</p> <p>Thus, the issues that came up before the Supreme Court is</p> <ol style="list-style-type: none"> <li>1 Whether the present case is a case of international commercial arbitration and</li> <li>2 Whether the Chief Justice can appoint an arbitrator.</li> </ol> <p>Decide by citing case law(s) of Supreme Court of India with critical inputs and your opinion on the above mentioned situation and questions.</p> <p>For your reference the contentions of the counsel from both sides and provisions of the Arbitration and Conciliation Act, 1996 are as under:</p> <p>A- <i>On other side the contentions of learned counsel appearing on behalf of the petitioner submits that in view of the provisions contained in Section 2(1) (f) read with Section 11(6) of the 1996 Act, this Court alone has the jurisdiction to appoint an arbitrator as the central management and control of the petitioner company is exercised in Malaysia in as much as the term "central management" would mean that its day to day management does not take place in India.</i></p> <p>B- <i>One of the contentions raised by the learned counsel appearing on behalf of respondent is that the petitioner - company being registered in India, this Court has no jurisdiction to pass an order for</i></p> | (10)         |

*control of the petitioner company is exercised in Malaysia in as much as the term "central management" would mean that its day to day management does not take place in India.*

B- *One of the contentions raised by the learned counsel appearing on behalf of respondent is that the petitioner - company being registered in India, this Court has no jurisdiction to pass an order for appointing an arbitrator. It was urged that the Company in law must be held to be situate in*

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*India notwithstanding that the directors are foreign nationals as for all intent and purport, the Company incorporated in India would always be controlled in India.*

Provisions of the Act, 1996.

S. (2) (1) (f) *"international commercial arbitration" means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is—*

*(i) an individual who is a national of, or habitually resident in, any country other than India; or*

*(ii) a body corporate which is incorporated in any country other than India; or*

*(iii) a company or an association or a body of individuals whose central management and control is exercised in any country other than India; or*

*(iv) the Government of a foreign country;*

Kindly note the amendment in the Arbitration and Conciliation (amendment) Act, 2015 (3 of 2016) is as follows.

*(B) in clause (f), in sub-clause (iii), the words "a company or" shall be omitted.*

S. 11 (5) *Failing any agreement referred to in sub-section (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other party to so agree the appointment shall be made, upon request of a party, by the Chief Justice or any person or institution designated by him.*

S. 11 (9) *In the case of appointment of sole or third arbitrator in an international commercial arbitration, the Chief Justice of India or the person or institution designated by him may appoint an arbitrator of a nationality other than the nationalities of the parties where the parties belong to different nationalities.*

- Q.2 Once there is an agreement between the parties to refer the disputes or differences arising out of the agreement to arbitration, and in case either party, ignoring the terms of the agreement, approaches the civil court and the other party, in terms of the Section 8 of the Arbitration Act, moves the court for referring the parties to arbitration before the first statement on the substance of the dispute is filed, in view of the preemptory language of Section 8 of the Arbitration Act, it is obligatory for the court to refer the parties to arbitration in terms of the agreement. (10)  
Discuss and give opinion with decided case law(s) of Supreme Court of India.
- Q.3 Write note on following. (any two) (2x5=10)  
(a) Term Arbitration and Alternative Dispute Resolution  
(b) Main Objectives and purpose observed by Law Commission of India in its 246<sup>th</sup> report  
(c) Application of *Res judicata* and *Estoppel* in arbitration

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