

**GUJARAT NATIONAL LAW UNIVERSITY  
GANDHINAGAR**

**Course: Advanced Contracts (Evolving Jurisprudence in Contract Law)  
Semester-VII (Batch: 2015-20)**

**End Semester Examination: Oct-Nov. 2018**

**Date: 30<sup>th</sup> October, 2018**

**Duration: 3 hours**

**Max. Marks: 50**

**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.
- **Bare Act is not allowed.**

- Q.1 (a) 'VS' undertook the construction of a building at Surat by an agreement entered into with the Government, dated 20.6.1992. Certain disputes arose between the parties to the agreement and in terms of Clause 25 of the Agreement, they were referred to a sole arbitrator. The contractor-petitioner (VS) submitted a claim, while the respondent (Government) also submitted a counter-claim. By an award dated 20.3.1994, the arbitrator awarded an amount of Rs. 20 lakh to the contractor and a sum of Rs. 10 lakh to the respondent. The contractor challenged the award in the court.

**Marks**  
(6+4=  
10)

The respondent's claim (which was allowed by the arbitrator) before the arbitrator was that it was entitled to receive compensation from the contractor on account of payment of 10 per cent on the tendered amount for not executing the work in accordance with the terms and conditions of the Agreement. The contractor argued that having regard to Clause 2 (pertaining to the claim by the respondent) read with Clause 25 of the Agreement, it was clear that any compensation under Clause 2 could be adjudicated upon only by the Superintending Engineer, and that it was not open to the arbitrator to have entered upon a reference in regard to this claim at all. Thus, according to the contractor, the arbitrator had travelled outside his jurisdiction in awarding a sum of Rs. 10 lakh as compensation to the Government against the contractor for the delay in executing the work. Clauses 2 and 25 of the Agreement are as follows:

*'Clause 2: Compensation for Delay:* The time allowed for carrying out the work as entered in the tender shall be strictly observed by the Contractor and shall be deemed to be the essence of the contract on the part of the Contractor and shall be reckoned from the fifteenth day after the date on which the order to commence the work is issued to the Contractor. The work shall throughout the stipulated period of the Contract be proceeded with all due diligence and the Contractor shall pay as compensation an amount equal to one per cent, or such smaller amount as the Superintending Engineer (whose decision in writing shall be final) may decide on the amount of the estimated cost of the whole work as shown in the tender for every month that the work remains uncommenced, or unfinished. And further, to ensure good progress during the execution of the

work, the Contractor shall be bound in all cases in which the time allowed for any work exceeds, one month (save for special jobs) to complete one-eighth of the whole of the work, before one-fourth of the whole time allowed under the contract has elapsed; three-eighth of the work, before one-half of such time has elapsed; and three fourth of the work, before three-fourth of such time has elapsed. However, for special jobs if a time-schedule has been submitted by the Contractor and the same has been accepted by the Engineer-in-charge, the Contractor shall comply with the said time-schedule. In the event of the Contractor failing to comply with this condition, he shall be liable to pay as compensation an amount equal to one per cent or such smaller amount as the Superintending Engineer (whose decision in writing shall be final) may decide on the said estimated cost of the whole work for every month that the due quantity of work remains incomplete; provided always that the entire amount of compensation to be paid under the provisions of this clause shall not exceed ten per cent, on the estimated cost of the work as shown in the tender....

*Clause 25: Settlement of Disputes by Arbitration:* Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, designs, drawings and instructions hereinbefore mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, matter or thing whatsoever, in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instruction, order, or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the completion or abandonment thereof shall be referred to the sole arbitration of the person appointed by the Chief Engineer...?

The Government argued that the determination of this dispute (amount of compensation determined under Clause 2) could not be excluded from the scope of Clause 25. It was contended that inasmuch as a *bona fide* dispute could be raised by the Contractor in regard to his liability to compensation under Clause 2 and that no machinery was provided in Clause 2 for the resolution of that dispute, there was ample justification for holding that resort could be had to arbitration under Clause 25.

On the basis of the afore-stated factual matrix, decide the following issues which the Court is required to answer by interpreting Clauses 2 and 25 of the Agreement: (Marks: 3+3)

- (i) Is Clause 2 in the nature of an automatic levy, independent of any default or negligence on the part of the contractor, to be made by the Engineer-in charge/Superintending Engineer based on the number of days/months of delay and the estimated amount of work?
  - (ii) Whether the amount of compensation determined under Clause 2 is excluded from the scope of arbitration under Clause 25?
- (b) Assume that in a contract, before the vessel is delivered, the Contractor has to take several actions, such as, preparation of the docks, ordering of spares, etc. In the said contract, the clause on effective date of contract is drafted as follows:

*Effective Date and Operation of Contract: Effective Date of Contract is the date of signing the Contract or the date of handing over the vessel/asset, as the case may be. The contract commences from the Effective Date of Contract.*

Elucidate the merits and flaws, if any, in the afore-stated clause.

- Q.2 (a) Critically analyse the recent Supreme Court judgment in *Energy Watchdog v Central Electricity Regulatory Commission* (2017 SCC Online SC 378). Do you agree with the reasoning given by the Supreme Court on the application of 'frustration of contract', 'force majeure' and 'change of law' to the facts of the case? Substantiate your answer. (6+4=10)
- (b) Elaborate the features and suitability of Build Operate and Transfer (BOT) — as a concession framework for the development of an infrastructure project.
- Q.3 (a) Analyse the suitability of the remedy of specific performance to breach of a "sports' contract" with the help of relevant case laws. (6+4=10)
- (b) A dental surgeon agreed 'to extract four teeth and each and every part thereof from within P's body'. While the dental surgeon was extracting the teeth for P, a gold inlay was detached from one tooth and became lodged in P's throat. P sued, alleging a contract by the dentist 'to extract four teeth and each and every part thereof from within P's body', assigning as the breach the failure to extract the gold filling from his body, and demanding damages for the alleged breach of contract for medical attention and cost of medicines.
- Based on the above-stated facts, decide whether or not the dental surgeon be held liable for the breach of contract.
- Q.4 (a) What is a shareholders' agreement? With the help of leading judgments and relevant statutory provisions, critically discuss the enforcement of a shareholders' agreement. (6+4=10)
- (b) Discuss the significance of 'termination' and 'survival' clauses in a contract.
- Q.5 Answer **any two** of the following: (5+5=10)
- (a) Letter of intent (LoI) versus letter of acceptance (LoA).
- (b) Write a short note on equity joint venture agreements.
- (c) Although the majority of the Indian film industry used to operate on the basis of verbal contracts until a few years ago, yet the trend of entering into comprehensive written agreements has increasingly started permeating the film industry. Elucidate.

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