

**GUJARAT NATIONAL LAW UNIVERSITY  
GANDHINAGAR**

Course: Alternative Dispute Resolution  
Semester-V (Batch: 2013-18)

End Semester Examination: Oct-Nov. 2015

Date: 26<sup>th</sup> October, 2015

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 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.**

- |  | <b>Marks</b>           |
|--|------------------------|
| <p>Q.1 The plaintiff (an Indian entity), named Gandhinagar Metro Express Ltd. (GMEL) in connection with "Gandhinagar Metro Express line Project" had executed a rolling stock supply contract dated June 30, 2014 (supply contract) with ABC Indiana Pvt. Ltd (defendant one) and maintenance service agreement dated June 20, 2015 (maintenance contract) with a French company, named De Ferocarriles (defendant two).</p> <p>The maintenance contract provided for resolution of disputes through arbitration in London in accordance with the rules of International Chamber of Commerce (ICC), Paris. De Ferocarriles executed an agreement dated May 17, 2015 (assignment agreement) in relation to the maintenance contract whereby the rights and obligations of De Ferocarriles were transferred to the ABC Indiana Pvt. Ltd.</p> <p>Subsequently, due to certain disputes arose between the parties, ABC Indiana Pvt. Ltd and De Ferocarriles commenced arbitration proceedings as per the arbitration clause incorporated in the maintenance contract.</p> <p>The GMEL opposed the commencement of the arbitration proceedings, and filed an anti-arbitration suit before the Honorable High Court of Gujarat on the principal ground that, due to assignment agreement, the contract stood novated (<i>in contract law and business law, "novation" is the act of either: replacing an obligation to perform with another obligation; or adding an obligation to perform; or replacing a party to an agreement with a new party</i>). Thereby the arbitration agreement stood only between the ABC Indiana Pvt. Ltd and GMEL. Accordingly, as both companies were incorporated in India, they could not have chosen foreign seat for the arbitration and thereby derogate from the Indian laws.</p> <p>The De Ferocarriles and ABC Indiana Pvt. Ltd inter alia contended that the arbitration remained a tripartite agreement and De Ferocarriles, a foreign company, continued to remain a party having obligations under the contract and the assignment agreement was only a supplementary agreement.</p> | <p>(3+3+<br/>4=10)</p> |

**Concern notes:**

- (i) From a perusal of the provisions of the maintenance contract and the agreement:
- "Maintenance contract permitted to assign or sub-contract its obligation to wholly owned subsidiary. ie. no consent of the GMEL is required by ABC Indiana Pvt. Ltd."*

- (ii) Assignment agreement indicated that it was for the purpose of implementing the terms and conditions of the maintenance contract which provided that:

*“During the negotiations held between ABC Indiana Pvt. Ltd and GMEL, prior to the maintenance agreement, both parties agreed on convenience of having maintenance service out by local subsidiary of ABC Indiana Pvt. Ltd, in India due to operative and tax-legal reasons.”*

- (iii) The assignment agreement provided:

“However, notwithstanding the assignment of the maintenance agreement to ABC Indiana Pvt. Ltd. India, ABC Indiana Pvt. Ltd. shall continue to be responsible and liable to Project Company for the maintenance company under the maintenance agreement.”

**Based on the above mentioned facts and notes, answer the following questions.**

- (a) Whether the court is authorized to determine a “party” to the arbitration agreement? Discuss with the provision(s) of Arbitration and Conciliation Act, 1996.
- (b) Whether a foreign company can be considered as “party” to the arbitration agreement?
- (c) Whether parties can continue to arbitration proceedings before the arbitral tribunal at London and according to the ICC rules as mentioned in the agreement? Analyse with the provision(s) of the Arbitration and Conciliation Act, 1996.

- Q.2 The contract was awarded in favour of respondent for excavation. The contract contained a valid arbitration clause. Subsequently, dispute arose between the parties and following which the High Court of Calcutta, upon being approached by the respondent in a petition filed under section 9 of the Arbitration and Conciliation Act, 1996 (herein after Act), exercised its jurisdiction under letter patent and passed an ad-interim *ex parte* injunction. (10)

The High court had separately also passed various orders regarding appointment of arbitrator and remuneration of the arbitrator.

Subsequently, the arbitrator passed an award, which was challenged by the petitioner in an application filed under section 34 of the Act before the Principal Civil Court.

The respondent challenged the jurisdiction of the Principal Civil Court (district judge) by way of an application under article 226 of the constitution of India before a single judge of the Gujarat High Court, which was allowed.

The order passed by a single judge of High Court of Gujarat was then challenged before the Supreme Court of India.

The core issue before the Supreme Court was to determine as to which court would have jurisdiction to entertain and also to decide the application for setting aside the award under section 34 read with S. 2 (1) (e) of the Act and other provisions including section 42 of the Act. **Comment.**

**For your reference:**

- S 2 (1) (e): Definition of the Court
- S. 42: Jurisdiction
- S. 34: Application for setting aside arbitral award
- S. 9: Interim measures, etc. by court

- Q.3 Answer **any three** of the following: (3x5=15)
- (a) Whether a valid arbitration clause in the contract bars the jurisdiction of the court? Justify.
  - (b) Not following an order passed by a court under section 8 of the Arbitration and Conciliation Act, 1996 amounts to contempt of the court. Give reasoning.
  - (c) Explain the Conditions for enforcement of foreign awards under section 48 of the Arbitration and Conciliation Act, 1996.
  - (d) Distinguish among the terms used by the court: "Patently illegal", "Public Policy", "Fundamental Policy".
  - (e) List the evidence(s) required to submit before the court of law at the time of enforcement of foreign arbitral award.

- Q.4 Write note on following: (2x5=10)
- A. Court abstention Policy in Investment Arbitration
  - B. Most Favoured Nations clause (MFN) interpretation and implementation by ICSID

- Q.5 Discuss the stages of Mediation in Mediation Process. (05)

Or

Discuss the objectives, powers and duties of 'Lok-Adalat' under the Legal Services Authorities Act, 1987.

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