

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

**Course: Law of Mediation and Arbitration
Semester- VII (Batch: 2019-24)**

End Semester Examination: November 2022

Date: 09th Nov, 2022

Duration: 3 hours

Max. Marks: 50

Instructions:

- Read the questions properly and write the answers in the given answer book.
- Do not write anything on the question paper.
- The respective marks for each question are indicated in-line.
- Indicate correct question numbers in front of the answer.
- No questions or clarification can be sought during the exam period, answer as it is, giving reason, if any.
- Word Limit: 10 Marks: 700-725 words, 5 Marks: 400-425 words.

(Answer Any Five)		Marks
Q.1	The controversy surrounding the issue of the legality of two Indian parties opting out of Indian arbitration law for a foreign-seated arbitration has been put to rest by the Supreme Court of India. The key issues before the Apex Court to decide were (i) whether Indian law permits two Indian parties to choose a foreign seat for arbitration and (ii) whether an award made at such a forum outside India can be said to be a “foreign award” and be enforceable as such. Critically examine this issue with decided case laws.	(10)
Q.2	The Delhi High Court enforced the award issued by an <i>emergency arbitrator</i> in accordance with the Arbitration Rules of the Singapore International Arbitration Centre [SIAC], in a Delhi-Seated arbitration under Part I of the Indian Arbitration and Conciliation Act 1996. This is one of the few judgments in India involving the enforcement of an <i>emergency award</i> under the Arbitration and Conciliation Act of 1996. Discuss.	(10)
Q.3	The Supreme Court of India refused to interfere with an award issued by a sole arbitrator in an arbitration Seated in the USA, holding that a foreign award could be enforced against <i>non-signatories</i> to the arbitration agreement under the Arbitration and Conciliation Act 1996 of India. The Supreme Court also narrowed down the scope of resistance under Section 48 of the Act (akin to Article V of the New York Convention) by awarding debtors to the enforcement of a foreign award. Examine the practical implications of Indian Arbitration with decided case laws.	(10)
Q.4	A recent Supreme Court decision stated and demystified a critical finding. It clarified the role of the ‘Seat’ in arbitration and set out the tests for determining the ‘Seat’. The Supreme Court held that the concept of concurrent jurisdiction stipulated in BALCO must be read holistically. When parties have chosen a Seat of arbitration, or if the arbitral tribunal has determined a Seat, such a determination automatically confers jurisdiction on the Courts at the Seat of arbitration for the purposes of interim orders and challenges to an award. Unless there are any contrary indications, the designation of a ‘Venue’ in an	(10)

arbitration clause can indicate the 'Seat' of the arbitration. Discuss the ratio decided in *BGS SGS Soma JV v NHPC Ltd* with other precedents followed in this case.

- Q.5 "The distinction between *jurisdictional* and *admissibility* issues in investment arbitration is becoming more and more relevant. This results from an emerging jurisprudence emphasizing that a tribunal that lacks jurisdiction will have to dismiss a case brought before it, while it has discretion whether to dismiss a claim for reasons of in-admissibility, in particular, because the latter defects may be curable. And conceptually this difference is rooted in the idea that "jurisdiction is an attribute of a tribunal and not of a claim." Discuss with decided award[s]. (10)
- Q.6 Write the note on **any two** the following. (5x2=10)
- a) Mediation Process.
 - b) Existing Status of Section 11[6A] under the Arbitration and Conciliation Act, 1996
 - c) *Original Jurisdiction* and *Ordinary Original Jurisdiction* reading with S. 42 and S. 2[e] of the Arbitration and Conciliation Act, 1996 of India.
 - d) The Various Forms of Third-Party Funding in International Arbitration.
