

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: **Advanced Contracts (Evolving Jurisprudence in Contract Law)**
Semester-VII (Batch: 2013-18)

End Semester Examination: October-2016

Date: 28th October, 2016

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.**

Answer all the questions

Marks

- Q.1 (a) On 05th August 2016, the Central Coalfields Limited ('CCL') issued a Notification Inviting Tenders (NIT) for 'Outsourcing Work' for a period of 5 years. The notification mentioned that for details of the NIT and online submissions, an interested party could visit <https://eps.buyjunction.in>. On a visit to the aforesaid website, the details of the e-tender were made available including further details of the work. It was stated that tenders could be submitted by experienced contractors having a Digital Signature Certificate issued from any agency authorised by the Controller of Certifying Authority, Government of India. (6+4 =10)

Clause 8 of the e-tender carried the heading "Deposit of EMD" and the relevant portion of this reads as follows:

Earnest Money can be deposited in the form of Demand Draft (DD)/Banker's Cheque (BC)/Banker's Pay Order (BPO) from any Scheduled Bank drawn in favour of "Central Coalfields Limited" payable at "Ranchi".

EMD can also be deposited in the form of irrevocable Bank Guarantee (BG) from any Scheduled Bank in the format given in the bid document ... The validity of such BG should be minimum 90 days beyond the validity of the bid.'

Clause 9 of the e-tender mentioned that for any clarification regarding the bid, a bidder may seek clarification online from the Service Provider, whose address, contact person and e-mails were given in the document.

The General Terms and Conditions ('GTC') for the NIT were also made available to prospective bidders on the website. In Paragraph 11 of the GTC, it was specifically mentioned that the bid security/earnest money was required to be deposited in the appropriate form; and in Paragraph 12 thereof, it was specifically stated that any bid not accompanied by an acceptable bid security/earnest money deposit shall be rejected as non-responsive.

According to the CCL, it received 10 bids in response to the said e-tender including that of a Joint Venture Consortium ('JVC'). Nine of the bidders submitted the bank guarantee (BG) strictly in accordance with the pro-forma provided in the GTC. However, the BG provided by the JVC was not in the prescribed pro-forma, but was

in another format. Under these circumstances, an e-mail was sent by the CCL on 11 October 2016 to the JVC rejecting its bid on the ground that the BG submitted by it was not in the format given in the NIT read with the GTC, and it (JVC) was accordingly informed that it would not be allowed to participate in the price bid opening.

In response, the JVC sent an e-mail on 15 October 2016 to the CCL contending that all documents, as prescribed under the NIT, had been submitted by it. Therefore, it was unable to understand the reason for rejection of its bid. It contended that the BG pro-forma for earnest money deposit/bid security in the GTC was almost similar to the BG actually furnished by it, and therefore, its bid was wrongly rejected. The BG submitted by it substantially fulfilled the conditions set out in Clause 8 of the e-tender (i.e. it should be irrevocable, should be from any scheduled bank, should be payable at Ranchi and the minimum validity period should be 90 days beyond the validity of the bid). It was further contended that in any event furnishing a BG strictly in the prescribed format was a non-essential condition of the contract, and therefore, the rejection of its bid only on the ground that the BG was not in the prescribed format was arbitrary and unreasonable.

Feeling aggrieved by the rejection of its bid, the JVC preferred a writ petition in the Jharkhand High Court.

On the basis of the afore-stated factual matrix, decide:

- (i) Whether furnishing a bank guarantee (BG) in the format prescribed in the bid documents was an essential requirement in the bidding process of the CCL? Who is to decide the issue of essentiality of a term in the NIT—employer (CCL) or the bidder? (Marks:3)
 - (ii) Whether the decision taken by the CCL to reject the bid of the JVC treating it as non-responsive in view of Paragraph 12 of the GTC, so as to adhere to the requirements of the NIT and the GTC, was arbitrary and unreasonable? (Marks:3)
- (b) Explain the difference between 'traditional auction' and 'electronic auction'. (Marks:4)
- Q.2 (a) Explaining the occasions that warrant the adoption of the 'sole source negotiation' route in awarding infrastructure projects, explicate the features (merits and demerits) of this route with the help of relevant case laws. (5+5 =10)
- (b) Recently in *Uttar Haryana Bijli Vitran Nigam Ltd, Dakshin Haryana Bijli Vitran Nigam Ltd v Central Electricity Regulatory Commission, Adani Power Limited, & Gujarat Urja Vikas Nigam Ltd* (decided on 7 April 2016), the Appellate Tribunal for Electricity held that the increase in price of coal on account of the intervention by the Indonesian Regulation as also the non-availability/short supply of domestic coal in case of Adani Power constituted a *force majeure* event in terms of the Power Purchase Agreement (PPA). Do you agree with this part of the judgment? Critically analyse the reasoning given by the Appellate Tribunal for Electricity (APTEL) for this issue.
- Note: Examinees are supposed to discuss this particular issue only.**
- Q.3 (a) Can damages for breach of contract (due to doctors' failure to produce the agreed result) be claimed despite the absence of provable negligence on the part of doctors? Answer with the help of relevant cases. (5+5 =10)

- (b) With the aim of regulating surrogacy effectively, the Union Cabinet has recently cleared the Surrogacy (Regulation) Bill, 2016. Analyse the Bill from the Contract Law perspective.

Q.4 (a) Explain the significance of 'force majeure clause' and distinguish it from 'frustration of contract'. (5+5 =10)

- (b) Consider the following clause on 'Commencement of Work' in a contract:

'The Contractor shall, after paying the requisite security deposit, commence the work within 15 days from the date of receipt of the Intimation of Intent from the Owner informing that the contract is being awarded. The date of intimation shall be the date/day for counting the starting date/day, and the ending date/day will be accordingly calculated. Penalty, if any, for the delay in execution shall be calculated accordingly. Contractor should prepare detailed fortnightly construction programme for approval by the Engineer-in-Charge within one month of the receipt of the Letter of Intent. The work shall be executed strictly as per such time schedule. The period of Contract includes the time required for testing, rectifications, if any, re-testing and completion of work in all respects to the entire satisfaction of the Engineer-in-Charge.'

A Letter of Intent is an acceptance of offer by the Owner and it need not be accepted by the Contractor. But the Contractor should acknowledge the receipt of the purchase order within 15 days of mailing of Purchase Order and any delay in acknowledging the receipt will be a breach of contract and compensation for the loss caused by such breach will be recovered by the Owner by forfeiting earnest money deposit/bid bond.'

Do you find any flaw in the given clause? If yes, specify the flaw(s).

Q.5 Write short notes on **any two** of the following: (5+5 =10)

- (a) Remedies and defences in case of breach of sports contracts.
- (b) Joint venture agreement.
- (c) 'Traditionally, the Indian film industry has been social relationship centric, under which the arrangements/agreements were either oral or scantily documented. This, however, meant the absence of a proper chain of title documentation leading to uncertainty in the flow of rights. Only in the past few years, the Indian film industry has woken up to the need for written contracts and protection of intellectual property rights'. Discuss.
