

12 MAY 2023

NATIONAL LAW UNIVERSITY JODHPUR

End Term Examination May- 2023

Semester – VIII. (Business Law Hons.)

Subject: Investment Law

Time: 3 hours

Mark: 100 marks

Instructions:

- i. *All the questions carry equal marks.*
- ii. *The students are required to attempt five questions.*
- iii. *It is mandatory to attempt Question No. 6.*
- iv. *The question paper comprises 4 pages.*

Q.1) Write Notes on:

- a. Hull Doctrine and Calvo Doctrine
- b. Foreign venture capital

(Marks 10*2=20)

Q.2) Following the Concession Agreement reached with the Minister of Transport Road & Highway of India, The DMA LLP was established in December 2021 as a limited liability (LLP) that develops, maintains and manages highways and different road works. DMA published an international invitation to tender for the building of a roadway in August 2021 as part of this Agreement. DUB, a construction company registered in the UAE, submitted a tender for the construction of a national highway, which will be about 50 kilometres long. UAE is a nation that has consented to arbitrate disputes at ICSID, an autonomous international institution that provides facilities for and administers conciliation and arbitration of international investment disputes. The construction was awarded to the DUB companies. As a result, a provisional taking over of the work took place on July 31, 2021. The works were completed on October 30, 2022. However, the works were completed 4 months longer than stipulated in the contract. The final taking-over took place on November 10, 2022. A draft of the final account was sent to the DUB companies by DMA LLP on November 26, 2022, which excluded payment for the extended four months. On December 9, 2022, DUB sent the DMA head Engineer a memorandum objecting to the denial of payment for the extra four months setting out the reasons for the impeded construction inter alia that includes:- technical reservations, exceptionally bad weather, project upheaval, and modifications concerning the dimensions of the work. The DUB companies sent a memo relating to the final account to the Minister of Transport Road & Highway of India on December 20, 2022, after the Head Engineer of DMA had rejected all of their claims. However, neither the Ministry nor DMA LLP responded, and the DUB companies were never given any consideration. As a result, a request for Arbitration against the Government of India was submitted to ICSID by the DUB company on March 1, 2023. The Request was filed on March 13, 2023, by the Secretary-General. On April 17, 2023, the Indian government wrote to ICSID objecting to jurisdiction as not being a member country of ICSID.

[1]



Based on the above factual matrix, decides the fate of the matter, referring to the following investment deal, which was signed in 2018 between India and the UAE, that come into force on 1st January 2019.

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE UNITED ARAB EMIRATES ON THE PROMOTION AND PROTECTION OF INVESTMENTS

ARTICLE-1 DEFINITIONS For the purposes of this Agreement: 1. The term 'investment' means every kind of asset invested by the investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws, and regulations of the Contracting Party in whose territory the investment is made and in particular, though not exclusively, includes: (i) movable and immovable property as well as any other property rights in rem such as mortgages, liens, pledges, or usufruct; (ii) shares, stocks, bonds, debentures and any other similar forms of participation in a company and other debts and loans and securities issued by an Investor of a Contracting Party and returns retained for the purpose of reinvestment; (iii) rights or claims to money or to any performance under contract having financial or economic value; (iv) intellectual property rights, goodwill, technical processes, know-how, copyrights, trademarks, trade names and patents in accordance with the relevant laws of the respective Contracting Parties; (v) any right conferred by law or by vi(ue of any licenses or permits granted pursuant to law, excluding any right conferred in respect of hydrocarbons. Any change of the form in which assets are invested or reinvested does not affect the character of an investment.

2 "Investor" means any national, company or government of a Contracting Party.

ARTICLE-2 SCOPE OF THE AGREEMENT This Agreement shall apply to all investments made by investors of one Contracting Party in the territory of the other Contracting Party' whether made before or after the coming into force of this Agreement but shall not apply to any dispute arising out of any Measure applied to an investment before the entry into force of this Agreement.

ARTICLE 4 PROTECTION OF INVESTMENTS. investments by investors of either Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party in a manner consistent with the provisions of domestic laws of the host Contracting Party, this Agreement and applicable rules of international law. Neither Contracting Party shall in any way impair by arbitrary or discriminatory Measures, the management, maintenance, use, enjoyment, or disposal of investments.

ARTICLE 5 TREATMENT OF INVESTMENTS: Each Contracting Party shall, at all times, ensure investments made in its territory by investors of the other Contracting party, fair and equitable treatment. such treatment shall not be less favourable than that which it accords to investments of its investors or investors of any third party, whichever is the most favourable.

ARTICLE 6 SETTLEMENT OF DISPUTES BETWEEN CONTRACTING PARTY AND THE INVESTOR: Disputes arising between a Contracting party and an investor of the

other Contracting Party in respect of an investment under this Agreement shall be governed by this Article. Any dispute arising between a Contracting Party and an investor of the other Contracting Party in respect of an investment under this Agreement shall, as far as possible, be settled amicably through negotiations between the parties to the dispute if such dispute cannot be settled amicably within a period of six months from the date of receipt of Notice of Dispute, the dispute may be submitted to one of the following dispute settlement mechanisms: a) the international Centel for Settlement of investment Disputes ("the Center"), established pursuant to the Convention on the Settlement of investment Disputes between States and Nationals of other States opened for signature at Washington, 18 March 1965 (the 'Washington Convention'), if both Conkacting Parties are parties to the Washington Convention; b) an arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), in force at the time of the commencement of the dispute; or c) the competent court of the Contracting Party in the territory of which the investment is made. If the investor concerned chooses to submit the dispute to international arbitration" at least ninety (90) days advance written notice shall be served to the Contracting party of its intention to submit the dispute to arbitration.

(Marks 20)

Q.3) There are certain exceptions to the rule that transactions involving dealing in securities by a foreign portfolio investor shall be through stock brokers registered with the Board (SEBI). Cite the pertinent provisions while describing the exceptions. Also, state the eligibility criteria for the grant of a certificate of registration as a foreign portfolio investor.

(Marks 10+10=20)

Q.4) Can a person resident outside India invest in an Indian company through the following avenues:

- 1) Rights issues or bonus issue;
- 2) sweat equity or Right to issue

If "yes" or "no" justify your answer by citing pertinent sections.

(Marks 10+10=20)

Q.5) Explain in light of the transition from FERA to FEMA how the overhaul of FEMA has improved the country's balance of payments.

(Marks 20)

Q.6) Located on the continent of Fie, the Republic of Ira is a growing nation. After its independence from its colonial overlords in 1947, it aimed to develop a self-sufficient economy. Since the early 2000s, the government of Ira has made a concerted effort to encourage young people to become entrepreneurs. As a result, it created a scheme for start-up businesses that provided various concessions to start-ups operating businesses that were important to the nation's economic and strategic development.

The Aps Services LLP ('Aps') was established in 2008 as per Ira LLP Act 2008 following the government scheme by Ms. Lesly, an aerospace engineering graduate from the Ira Institute of Technology, Mr. Gary Al, and Mr. Nash Dell. Aps enters the automotive industry, specifically the production of electric automobiles. Soon after Aps's size was increased, it eventually converted its legal status to a private limited company.

A venture capital fund called Rev Pvt. Ltd. (Rev) was established in accordance with the Alternative Investment Fund Regulation 2012 of the Ira. Mr. Alon is its director. Rev specialised in making investments in mid-tier businesses that put a strong emphasis on research and development of innovative technologies. Gogo Inc., a U.S.-based company that expressed interest in the Rev investment venture, decided to invest 60% of its equity shares in the venture, but the deal could not be completed for undisclosed reasons. Instead, Gogo Inc. was only able to invest 8% of its equity shares in Rev through a foreign portfolio investment avenue. Additionally, Aps was seeking a potential investor prepared to purchase 50% of its equity shares to boost its deliverable and export it to the global market. As a result, Aps approached Rev, who gladly accepted it. [The laws of Ira being *pari materia* with India].

Based on the abovementioned factual matrix, answer the following:

1. Discuss whether the investment made by Rev amount to downstream investment with the applicable relevant laws
2. Describe the legal validity of downstream investment.

(Marks 10+10=20)