

NATIONAL LAW UNIVERSITY, JODHPUR

End Term Examination – November 2023
Semester: UG IX (Compulsory)
Alternate Dispute Resolution

1300012023

Time: Three Hours

Marks: 100

Instructions:

1. This question paper contains six questions. You are required to answer any FIVE.
2. Students must start each answer by clearly identifying to which question they are responding.
3. You must strictly adhere to the examination protocol.

Q.1). You are the mediator of a dispute between a representative of a trade union and the representative of the company with the authority to mediate.

Eighty-one trade union workers were dismissed after they went on strike when a fellow worker was arrested for larceny following a search of her person at the work place. This was only one of the grievances of the workers. The union said that what triggered the strike was an assault by a security guard on one of the workers. Some of the workers on strike have 13-18 years of service with the company.

A representative of the union who wants the employees with long service to go back to work, but only after some of the many grievances are addressed. The union and its members feel that their grievances have been continually disregarded. Lots of promises have been made, but there has been no follow-through. The workers are really fed up and the strike has explosive potential. Some workers have little savings and do not want a prolonged strike or closure of the company, whilst others are willing to risk the company. The union has no funds to give to the workers in the interim, so fears another union may come in.

The company does not want to lose 81 workers, but also does not want to give the appearance that they will tolerate workers going on strike. The company has had trouble with the union before and feels that the union is getting too much power. In fact, the management of the company feels that the union is getting a little 'trigger-happy'. The company stands to lose Rs. 1 Crore per day over the next 10 days and then Rs. 50 lakhs per day thereafter if production does not resume. They would welcome another union.

Develop a comprehensive and coherent framework for mediation and discuss various possible solutions that can resolve the dispute between the parties.

(Marks 20)

Q.2). An Agreement of Representation was entered between X Ltd, a foreign entity, and Y Ltd, a company registered in India. The Managing Director of Y Ltd and the Director of X Ltd signed the Agreement. Under the Agreement it was agreed that X Ltd will assist Y Ltd to sell its goods and services to prospective customers, and X Ltd will receive a commission as consideration thereof. Later on, the Chairman of Y Ltd and the Director of X Ltd signed the first amendment to the Agreement. This agreement was subject to the laws of the State of Delaware, U.S.A. and under the



arbitration clause: any dispute between the parties was to be referred to a single arbitrator in Kansas City, Missouri, USA

Disputes arose between the parties, and X Ltd sent a notice invoking arbitration proceeding to the Chairman of Y Ltd. Subsequently, X filed a statement of claim before a learned single arbitrator, naming the Chairman, Y Ltd (India), Y Global (a company registered in Mauritius), Z Co, and Zy Private Ltd. It was alleged that Y Ltd and other respondent entities were owned and/or controlled and dominated by the Chairman and were used to divert funds away from X Ltd and thereby depriving X Ltd of commission from the gross revenues earned by Y Ltd.

Subsequently, the sole arbitrator passed the arbitral award, and held Y Ltd (India), Y Global, the Chairman, Z Co, and Zy Private Ltd jointly and severally liable for the damages. The sole arbitrator relied on the 'alter ego' doctrine as an appropriate justification for lifting the corporate veil. The Agreement was not challenged by either party and was, therefore, a valid and enforceable Agreement.

The X Ltd sought enforcement of the arbitral award before the appropriate High Court in India. The High Court relied on section 48(1)(c) to (e) of the Arbitration and Conciliation Act, 1996 and held that the arbitral award would not be enforced against the Chairman and Zy Pvt Ltd as they were non-signatories to the arbitration agreement. It held the award to be enforceable only against Y Ltd (India) as it was party to the Agreement. On appeal, the Division Bench of the High Court reversed the impugned judgment. The Division Bench ruled that the foreign award was not challenged in the USA, and hence it could only be challenged under section 48 of the Act if the Delaware law has not been followed on the alter ego principle. Now the Chairman, Z Co, and Zy Pvt Ltd want to approach the Supreme Court for resisting enforcement of the award.

Discuss whether the award can be enforced against non-signatories to the arbitration agreement? Analyze the grounds for resistance of enforcement of foreign arbitral award in the light of arbitral jurisprudence in India.

(Marks 20)

Q.3). Whether arbitral awards rendered by unilaterally appointed arbitrators are enforceable under the Arbitration Act? Discuss in the light of recent judicial trends on the unilateral appointment of arbitrators.

(Marks 20)

Q.4). The parties entered into a Leave and License Agreement for the use and occupation of office premises for a period of five years. On the same day, an Amenities agreement was contemporaneously executed with the Leave and Licence Agreement.

Clause (1) of the Amenities Agreement between the parties indicates that

- (i) The provisions of the Amenities Agreement shall be deemed to be and shall constitute an integral part of the Leave and Licence Agreement in respect of the license granted by the petitioner to the respondent; and
- (ii) All the provisions of the Leave and Licence Agreement shall *mutatis mutandis*

apply to the Amenities Agreement.

Clause 17 of the Amenities Agreement contains an agreement to refer disputes to arbitration.

Discuss whether a reference to arbitration would be necessitated or not in the light of the above cited contract terms between the parties. Cite relevant case laws.

(Marks 20)

Q.5). Discuss the scope and significance of S.34 and S. 37 of the Arbitration and Conciliation Act. Cite relevant cases.

(Marks 20)

Q.6). Discuss the court's power to grant interim measures in the light of recent amendments and judicial pronouncements.

(Marks 20)