

Indicative Model Question Paper
Professional Programme
New Syllabus 2022
Arbitration, Mediation & Conciliation

Time allowed: 3 hours

Maximum marks: 100

NOTE: Answer ALL Questions

Part I

1. (a) An agreement was executed between the XYZ Co Ltd. (Appellant), a company incorporated under the Companies Act, 1956 and ABC S.A. (respondent), a company registered under laws outside India under which the respondent was to supply and install a Data resource center in Punjab. The agreement contained an arbitration clause for resolution of disputes arising out of the contract. The governing law of the agreement was the law of India. However, the seat of Arbitration was in Peru, a Contracting States under the New York Arbitration Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Therefore, the law of the country in which an action is brought for the arbitration is Laws in Peru but the substantive law is Indian Law.

Disputes arose between the parties and claim was made by the appellant for return of its investment, loss, profits and other sums. The respondent made a claim for unclaimed instalments plus interest and damages for breach of intellectual property rights. Negotiations failed to reach the settlement and notice for arbitration was issued. The dispute took place in Peru and the Arbitral Tribunal made 2 Awards. However, the Appellant filed an application under section 34 of the Arbitration and Conciliation Act, 1996. The learned District Judge held that the appeal is not tenable. Aggrieved by the Judgement, the appellant filed appeals before High Court of Punjab and Haryana. A Division Bench of the High Court dismissed the appeal. The appeal was made to Supreme Court.

In an another similar case earlier, an application under Section 9 of the Arbitration and Conciliation Act, 1996 was filed before the Additional District Judge seeking an injunction restraining the parties from alienating, transferring and/or creating third-party rights in an Arbitration Proceedings before the Arbitral Tribunal in Colombo.

Important provisions:

Section 2(2) of the Arbitration and Conciliation Act, 1996 provides that Part I shall apply where the place of arbitration is in India.

Section 9 *inter alia* provides that a party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court (i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or (ii) for an interim measure of protection in respect of matters provided therein.

Keeping in view the above said facts, answer the following:

I. Can the award passed in foreign seated International Commercial Arbitration be challenged under section 34 of Arbitration and Conciliation Act, 1996? Explain quoting the relevant case law(s) and provision.

(5 marks)

II. Does Section 2(2) of the Arbitration and Conciliation Act, 1996 bar the application of Part I to arbitrations where the place is outside India? Answer quoting the relevant case law(s).

(3 marks)

III. What is Public Policy under relevant provision of Part I of the Arbitration and Conciliation Act, 1996?

(2 marks)

IV. Whether the decision of *Bhatia International v. Bulk Trading S.A. and Anr.* with respect to application of Part I of Arbitration and Conciliation Act, 1996 to foreign seated International Commercial Arbitration provides the correct position of Law as on date. Quote relevant case law(s), if required.

(3 marks)

V. In the situation given above relating to application under Section 9 of the Arbitration and Conciliation Act, 1996, can the Additional District Judge decide on application? Answer mentioning the relevant case law(s).

(2 marks)

(5+3+2+3+2=Total 15 marks)

(b) A Foreign Award in International Commercial Arbitration, in a country which was contracting state of New York Convention, was passed by an Arbitrator. The parties to the agreement and award were ABC Pte. and XYZ Limited. ABC Pte. applied to the competent court in India for enforcement of Foreign Award. The following documents were produced before the court:

(i) the original award

(ii) a duly certified copy of the Agreement

The agreement was prepared in French Language.

XYZ Limited contends that the subject-matter is not capable of settlement by arbitration under the law of India. However, ABC Pte. contended that the matter is capable of settlement in France where the Award has been made and therefore Award can be enforced in India. This was found to be correct by the court to whom application for enforcement was made.

I. Explain the provision relating to the documents required to be produced before Indian Court while applying for the enforcement of a foreign award.

(5 marks)

II. Whether the contention of ABC Pte. valid with respect to the validity of enforcement of Award? Explain quoting relevant provision.

(5 marks)

2(a) An arbitral award was passed in the matter of EROI Pvt. Ltd. and Pricocat Limited. The dispute arose out of the franchise agreements, wherein the parties agreed to establish "coaching classes" for school students. The award was passed in favour of EROI Pvt. Ltd. in which he was awarded with the damages for Breach of Contract amounting to Rs. 50 Lakh. Pricocat Limited denied to pay the amount. EROI Pvt. Ltd. filed a suit for execution of award before the commercial court Situated in Dwarka Court of Delhi. Pricocat Limited contends that the execution of an Award, the matter of execution does not come under the jurisdiction of commercial court as per the provisions of Order 21 of the Code of Civil Procedure, 1908.

EROI Pvt. Ltd. has sought your advice in the matter. Advise the company by giving reference to relevant case law.

(5 marks)

(b) You are a practicing company secretary, expert in the area of Arbitration. On 31st December, 2020, a matter was referred to you for advice whether the qualification mentioned in the Eight Schedule to the Arbitration and Conciliation Act, 1996 are mandatory for appointment of Arbitrator. In this regard:

- (i) Prepare a note advising in this matter.
- (ii) What is the law applicable as on 01st March, 2022 for qualification of arbitrator?
- (iii) Explain the amendments that has come with respect to qualification of Arbitrators in the Arbitration and Conciliation Act, 1996.

(6 marks)

2(c) ABAJ Limited a company incorporated under the provisions of Companies Act, 2013 having its registered office at Uttar Pradesh has entered into an Agreement for import of Rice with Jass Holding Private Limited a Company incorporated in Sri Lanka. A dispute arose between the parties. The venue and seat of Arbitration is New Delhi.

- (i) What is the meaning of courts in this situation?
- (ii) Who can appoint sole arbitrator in this situation, upon a request of the party when parties fails to appoint Arbitrator by agreement?

(2 marks each)

3. An arbitration proceedings have been conducted between NAIVAT Private Limited incorporated under the Companies Act, 2013 having its registered office in New Delhi and Rodem Public Limited incorporated under the Companies Act, 1956 having its registered office at Mumbai. Under an Agreement, NAIVAT Private Limited was engaged by Rodem Public Limited to build a premises for 5 star hotel to be inaugurated in the month of December, 2020. On perusal of the agreement, it was found that the agreement had force majeure clause in it. However, there was no clause for Arbitration in the original agreement. Both the parties agreed to resolve the matter by way of Ad hoc Arbitration in accordance with ICADR Arbitration Rules, 1996. Due to COVID-19 outbreak, the Hotel could not be completed till 31st December, 2020. The parties made a separate agreement for resolution of disputes through arbitration. The arbitration proceedings were decided to be conducted by Arbitral Tribunal consisted of 3 arbitrators in which each party should appoint one arbitrator and both the arbitrators to appoint presiding arbitrator. The pleadings were completed within 6 months from the date of appointment of Arbitrator. The tribunal also conducted oral hearings. The Arbitration proceedings could not be completed within time due to two Arbitrators of Arbitral Tribunal out of three contacted COVID-19 at different times. Therefore an extension was given by the parties for the Arbitral proceedings. The cost of Arbitration was decided to be borne by both the parties equally irrespective of result of Arbitration. There was a challenge with regard to interpretation of Force Majeure clause in the agreement. The tribunal also decided on the existence and interpretation of this clause. The Tribunal decided in favour of NAIVAT Private Limited and asked the other company to pay the amount due of Rs. 1,00,00,000/- along with interest at the rate of 10%. On the basis of these facts:

(a) Prepare an Award covering the aspects of decision, introduction, costs, procedural history, schedule of pleadings, hearing details, costs along with other essentials relevant facts from above paragraphs. Assume other necessary facts.

(8 marks)

(b) Draft an Agreement to submit the dispute to an Arbitral Tribunal in accordance with the facts provide in above paragraph. Assume other necessary facts.

(7 marks)

Attempt all parts of either Q. No. 4 or Q. No. 4A

4(a) (i) In order to enhance market integrity and safeguard interest of investors, SEBI and Exchanges have been introducing various enhanced pre-emptive surveillance measures such as reduction in price band, periodic call auction and transfer of securities to Trade for Trade segment from time to time. What are these measures called?

(ii) There is a quasi-judicial process of settlement of disputes between Trading Member, Investor, Clearing Member, Authorised Person, Listed Company etc. by NSE. By what name this portal is operation?

(iii) Who takes actions for the complaints received on its SCORES portal?

(iv) When does the authority which takes actions for the complaints received on its SCORES portal established?

(1 mark each)

(b) XYZ Limited is a company providing agricultural services through its website. Ramesh, along with his brother, initiated a venture, eventually leading to a Share Purchase Agreement for XYZ Limited. The obligation under share purchase agreement could not be discharged due to a dispute between the parties. The arbitrator passed the order in favour of Ramesh. The company filed an appeal before the appellate court which was also decided in favour of Ramesh. XYZ Limited intends to file an appeal before Supreme Court.

Can an appeal be filed to Supreme Court in the above mentioned circumstances? Answer with reason.

(5 marks)

(c) One Municipal Corporation proposed the construction of row houses for Small and Medium Towns. The project received funding from the banks based on the Detailed Project Report (DPR) submitted by the XYZ Limited. Subsequently, the XYZ Limited was blacklisted by the corporation, leading to a series of legal actions. Initially, the XYZ Limited approached the High Court with a Writ Petition, which was withdrawn after the corporation extended the project completion time by six months. However, when this extension was nullified by subsequent resolutions, XYZ Limited's contract was terminated. The Petitioner filed another Writ Petition

challenging this termination. Following these legal actions, the corporation proposed resolving the disputes through arbitration. XYZ Limited agreed to withdraw pending proceedings. Consequently, an arbitrator was appointed by the consent of parties to adjudicate the disputes. The Arbitrator gave award in favour of XYZ Limited awarding a sum of Rs. 50 Crore. The money has not yet been received by the company. The company wants to recover and the corporation intends to challenge the Award. The managing director of the company has asked you to prepare a note for options available for the company for recovery of money and the options available with corporation for opposing the Award under the Arbitration and Conciliation Act, 1996.

Prepare the note for the managing director of XYZ Limited.

(6 marks)

OR (Alternate question to Q. No. 4)

4A(i) NGA Private Limited (NGA) obtained an Inter-Corporate Deposit (ICD) facility of Rs. 50 Crore from AMA LLP(AMA). The facility was granted with the condition that the NGA would provide a surety/pledge of 1 Lakh shares held by the NGA in the borrower company as security for the repayment of the outstanding amount under the ICD.

NGA claimed that ICD has been repaid and consequently automatically discharged and AMA obligated to return the pledged shares. Alleging unlawful retention NGA invoked Arbitration. On perusal of the agreement, it was found that the agreement does not have force majeure clause in it and the agreement has Arbitration clause. The Venue of Arbitration was Mumbai. Both the parties agreed to resolve the matter by way of Ad hoc Arbitration in accordance with rules decided mutually. AMA contended that since courts of Gujarat will have jurisdiction since the registered office of the company is in Ahmedabad as there is no seat of arbitration decided.

Decide the seat of Arbitration in above case. Quote relevant case laws in support of your answer.

(5 marks)

(ii) Nekal Bank, a bank of foreign country availed financial facility from the State Bank of India(SBI). On default, SBI invoked arbitration proceedings and a Notice was issued and unilaterally appointed a sole arbitrator. However, the Borrowers never received the said notice and the Bank failed to produce any proof of delivery. The seat and Venue of Arbitration was agreed to

be that foreign country where Nekal bank is situated. Chapter I of Part II of Arbitration and Conciliation Act, 1996 is applicable to this Proceedings.

With reference to above answer the following with reason:

- (a) Is part I of the Arbitration and Conciliation Act, 1996 applicable to the proceedings under these circumstances?
- (b) Is Complete part II of the Arbitration and Conciliation Act, 1996 applicable to the proceedings under these circumstances?
- (c) Who can appoint arbitrator in this situation, upon a request of the party when parties fails to appoint Arbitrator by agreement?

(6 marks)

(iii) On successful completion of Conciliation proceedings, a conciliated settlement agreement has been entered by ABC Private Limited and XYZ Private Limited. However, ABC Private Limited changed its stand and decided to not fulfil the obligations agreed by the Agreement. In this situation, answer the following with reasons:

- (a) How can the law under Arbitration and Conciliation Act, 1996 deals with this situation?
- (b) Can conciliator pass an Award in this situation for enforcement of the Conciliated Settlement Agreement?

(2 marks each)

Part II

5(a) A dispute arose relating to the terms and condition of Joint Venture Agreement between XYZ LLP and PQR LLP. The commercial court in Ahmedabad was having jurisdiction over the matter. PQR LLP filed the suit before the competent court. The parties and competent officer of the court is of the opinion that the suit does not requires immediate relief.

- (i) What was correct course of action of action in above matter before filing of suit?
- (ii) Does the above course of action relax the provision of Limitation Act, 1963?
- (iii) What is the time period for completion of said required course of action?
- (iv) If the said course of action is successful, how can the outcome of this course of action be enforced?

(2 marks each)

(b) The Tele-Mobi Private Limited(TMPL) conducts business under the brand name “Mera Mobile” and is in the business of manufacture of Mobiles and Telephones. Components Mobi Limited(CML) is a company incorporated under the laws of Hong Kong and is in the business of manufacture and sale of components and accessories of mobile phones. The registered office of TMPL is situated at 120, Raj Nagar, Jaipur. The registered office address of CML is 110, Kowloon, Hongkong. An Agreement dated 4th March, 2020 was entered into between the parties for 3 years under which CML agreed to sell to the petitioner the components of mobile phone for further assembling by TMPL. As per the terms of the agreement, CML will provide 10,000 mother boards of Mobile every month to TMPL. A dispute arose between the parties which was settled by the aid of Mediation Proceedings conducted with 3 Mediators. CML agreed to pay Rs. 50 Crore to TMPL for the loss suffered by TMPL due to the damage to the goodwill of TMPL caused because of faulty mother-boards used in the manufacturing of mobile. CML agreed to establish an internal department for quality control. The duration of the main agreement was extended to 5 more years w.e.f. 4th March, 2023 for supply of components and accessories. Both the parties agree to maintain confidentiality and protection of IPR of the other party. Both the parties agreed that they will not hire the employees resigned or terminated from the other company for a period of 2 years from the date of resignation or termination. The Mediator fees is decided to be borne by both the parties equally.

Draft a Mediated settlement agreement with above facts. Assume other necessary facts.

(7 marks)

Attempt all parts of either Q. No. 6 or Q. No. 6A

6(a) Sharman is a company secretary with 20 experience, employed in various national and multination organisations. At present, he is working in TOPR LOE Private Limited as General Manager – Corporate Secretarial. Apart from his experience in the company, he also possesses the qualification of LL.B and LL.M from University of Delhi passed in 2007 and 2009 respectively. The company has advised him to be empanelled as Mediator under the Companies Act, 2013. Advice Sharman quoting relevant provision applicable in this situation.

(5 marks)

(b) (i) A and B are working for CIBAJA Private Limited as Chief Manager – Finance and Company Secretary respectively. There was an Income accrued outside India but from the source property located in India. They were asked to interpret a legal provision relating to deemed Income under section 9 of Income-tax Act, 1961. Both A and B gave different opinion about the interpretation on this transaction. After this, A started refraining from the meeting in which B is invited. Which approach of dispute can be said to be developed by A against B. Explain other similar approaches in case Non-expressive form of disputes.

(3 marks)

(ii) Disputes arose between the IG TSA Limited and Mobile Manufactures Association of Punjab regarding a non-compete agreement. One clause of non-compete agreement provided that any dispute arising between the parties shall be referred for Arbitration. However, the parties shall try to amicably settle the disputes with the help of person who can mediate the proceedings. If the parties fail to arise at a conclusion, the matter should be decided by the Arbitrators. Explain the type of mediation intended by the parties in this scenario.

(2 marks)

(c) XYZ Limited filed a civil suit against PQR Limited before the Additional Judge of District Court situated in New Delhi. The court is of the opinion that there exist elements of a settlement which may be acceptable to both the companies.

Explain the provision which can be applied by the court in above said situation.

(5 marks)

OR (Alternate question to Q. No. 6)

6A(i) In a firm of Mediators, around 100 number of individuals are employed. 20 Mediators are having an experience ranging between 10-20 years. Around 50 individuals possess experience ranging from 0-2 years. Around 30 apprentices are part of the firm. The senior most mediators are of the view that everyone in the firm should remain aware and engaged in their practice in order to continue improving. Apprentice mediators need to participate in peer groups to enhance the limits of their knowledge and skills. The skills of mediators having experience 0-2 years should also be tested in real-life conflict situations.

Advice the firm a practice suitable for them in above said situation which is gaining attention in recent years.

(5 marks)

(ii) With reference to the International Chamber of Commerce ICC Mediation Rules, answer the following:

- (a) Who can decide the location of physical meetings?
- (b) Who can stay the proceedings if requested deposit has not been paid?
- (c) The Mediated settlement agreement was signed on 1st April, 2023. On 5th April, 2023, the mediators notified the parties through email that the mediation has been completed. When can the center issue confirmation of termination of proceedings which have been commenced pursuant to the Rules?
- (d) What is not confidential with respect to the proceedings?

(1 mark each)

(iii) On 3rd March, 2024, MNJ Limited signed an agreement with PJUA Limited for providing the consultancy services to the later. A dispute arose between the parties. PJUA Limited filed a suit before competent commercial courts without taking recourse of mandatory pre-litigation mediation. MNJ Limited has approached you to advice the correct position of law in this matter with reference to the possible outcome of suit.

Advice MNJ limited in this matter quoting relevant provision or case law.

(6 marks)
