

551

Roll No.

OPEN BOOK EXAMINATION

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

Total number of printed pages : 15

NOTE : Answer ALL Questions.

PART-I

1. In January 2024, Aarohan Pharma Private Ltd ('Aarohan'), a reputed pharmaceutical manufacturer, entered into a contract with Pentagon Lifesciences Ltd ('Pentagon') for the development and supply of a new line of oncology drugs. The contract, valued at ₹ 150 crore, contained detailed provisions on regulatory approvals, manufacturing timelines, quality control standards, penalties for delay, variation in technical specifications and dispute resolution. Clause 21 of the agreement stipulated that disputes would be resolved through arbitration under the Arbitration and Conciliation Act, 1996, with Hyderabad as the seat and proceedings governed by CIAC Rules. By April 2024, disagreements surfaced as Aarohan alleged that Pentagon delayed release of milestone-based payments and failed to provide timely approvals for raw material sourcing protocols, leading to cost overruns. Pentagon countered that Aarohan had missed regulatory submission deadlines, used substandard excipients in certain trial batches, and ignored directions from the joint project monitoring committee. Quality inspections conducted by Pentagon revealed compliance defects in two pilot production runs, which Pentagon relied on to withhold further payments. Tensions escalated and after weeks of negotiation, the parties signed a Settlement Agreement on July 15, 2024. Pentagon agreed to pay Aarohan ₹ 30 crore in full and final settlement of all claims, while Aarohan agreed to transfer all partially developed product dossiers and trial data to another manufacturer appointed by Pentagon. However, the settlement did not expressly reaffirm or exclude the arbitration clause.

551

: 2 :

In October 2024, Aarohan, aggrieved that the compensation did not cover its actual R&D and manufacturing expenses, issued a Notice of Arbitration invoking Clause 21 of the original contract. Pentagon objected, contending that the settlement agreement had superseded the original contract and extinguished the arbitration clause. Further, Pentagon challenged Aarohan's nominated arbitrator, citing the arbitrator's past professional ties with Aarohan's counsel. Aarohan then approached the Court seeking constitution of an arbitral tribunal, supporting its application with correspondence, invoices and the disputed settlement terms.

Based on the above facts, answer the following questions :

- (a) Discuss the general conditions typically included in pharmaceutical R&D and supply contracts.
- (b) Explain the essential contents which Aarohan's notice must include under the Arbitration and Conciliation Act, 1996 and institutional rules.
- (c) Elucidate the legal grounds on which Pentagon can challenge the appointment of Aarohan's nominated arbitrator.
- (d) Draft an agreement to submit the dispute to an arbitral tribunal, assuming necessary facts.
- (e) Outline the essential components in drafting an affidavit in support of Aarohan's application before the court for appointment of an arbitrator.

(5 marks each)

: 3 :

2. (a) The dispute arose from an **International Exclusive Distributor Agreement** signed in May 2016 between Disortho S.A.S., a Colombian company, and Meril Life Sciences Private Limited, an Indian company, for distributing medical products in Colombia. The agreement contained two seemingly contradictory clauses that created jurisdictional confusion :

Clause 16.5 stated that the agreement “shall be governed by and construed in accordance with the laws of India and all matter pertaining to this agreement....will be subject to the jurisdiction of courts in Gujarat, India”.

Clause 18 provided for disputes to be resolved through “Arbitration by either party for final settlement in accordance with the Arbitration and Conciliation Center of the Chamber of Bogota DC” with arbitration taking place in Bogota and awards governed by Colombian law.

With reference to a decided case law, how will you determine jurisdiction in international commercial arbitration when contractual clauses conflict.

(5 marks)

(b) The genesis of the dispute lies in a notification dated 28.07.2006 issued by the Central Government under Section 3A(1) of the National Highways Act, 1956 (“NH Act”), acquiring land in Baghpat, Uttar Pradesh. While some land was acquired through due notification, possession of an additional portion was taken without formal acquisition, as per notification dated 08.02.2007. Aggrieved by the lack of compensation for such acquisition, the Petitioners filed a Writ Petition before the Delhi High Court seeking quashing of the acquisition and payment of compensation.

551

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Pursuant to the Court's directions, compensation was awarded in 2019. Dissatisfied with the quantum, the Petitioners approached the District Collector, Division Meerut under Sections 3G(5) and 3G(7) of the NH Act, seeking enhanced compensation. The claim was rejected on 16.10.2020, leading to the filing of a Section 34 petition under the A&C Act before the Delhi High Court.

The Respondents raised a preliminary objection to the maintainability of the petition on the ground of lack of territorial jurisdiction, arguing that the arbitration proceedings, land, and prior actions all occurred within Baghpat, U.P., and hence, only the local court there would have jurisdiction.

With reference to a decided case law, comment :

- (1) Can a writ petition be considered as an “earlier application” under Section 42 of the Arbitration and Conciliation Act, 1996, to confer exclusive jurisdiction on a particular court ?
- (2) What is the scope of Section 42 in determining jurisdiction where arbitration arises under a special statute like the National Highways Act ?

(5 marks)

(c) The dispute arose between Bentwood Seating System (P) Ltd. (the Appellant) and the Airport Authority of India (AAI) (the Respondents) over a contract for the supply and maintenance of baggage trolleys at various airports. The Respondents alleged that the Appellant had obtained the contract using forged documents.

: 5 :

Initially, an arbitral tribunal was set up to resolve the matter. The tribunal ruled in favor of the Appellant, setting aside AAI's termination order. However, AAI challenged this decision under section 34 of the Arbitration and Conciliation Act, alleging that the fraud committed by the Appellant had not been adequately adjudicated.

AAI also filed a criminal complaint, claiming that the Appellant had submitted forged performance certificates from foreign airports to qualify for the tender. The matter eventually reached the Delhi High Court, which ruled that such serious allegations of fraud required examination by civil courts.

Based on a decided case law, examine how the fraud allegation can nullify the effect of the Arbitration Agreement ?

(5 marks)

3. (a) A petition was instituted under the Arbitration and Conciliation Act, 1996 for appointment of a sole arbitrator in a dispute between AMP Group (petitioner) and JRS Group (respondent). The arbitration clause formed part of a written agreement executed between the parties. During proceedings, an attempt was made to bring SRG Group, a non-signatory, within the ambit of the arbitration clause on the basis that it had been actively involved in the negotiation, execution and performance of the contract.

Based on a case law, assess whether SRG Group can legitimately be bound by the arbitration agreement.

(5 marks)

551

: 6 :

(b) Gayatri Balasamy and M/s ISG Novasoft Technologies Limited had entered into a contractual relationship that led to the arbitration of disputes between them. Following disagreements regarding the execution of the contract, disputes arose, prompting the invocation of the arbitration process as per the Arbitration and Conciliation Act, 1996. The arbitral tribunal made its award based on the submissions and evidence presented by both parties. However, the award was challenged by the Appellant, which resulted in a protracted legal battle, necessitating judicial intervention to address the limitations and scope of modification powers under Section 34 of the Act. The complexities intensified as conflicting judgments emerged from various courts regarding whether judiciary powers could extend to modifying arbitral awards, thus leading to the Supreme Court's involvement to seek clarity on this critical issue.

The legal action commenced when Gayatri Balasamy sought to set aside the arbitral award through a petition under Section 34 of the Arbitration and Conciliation Act, citing various grounds that questioned the validity and reasoning of the award. The central legal issue that arose was whether the courts possessed the authority to modify an arbitral award or if their powers were strictly limited to setting aside the award based on the specified grounds. This led to differing judicial interpretations over the years and generated substantial debate surrounding the appropriate judicial oversight in arbitration matters, ultimately resulting in the Supreme Court's referral for a larger Bench to resolve these pivotal questions of law.

: 7 :

Based on a decided case law, examine :

- (1) Whether courts have power under Sections 34 and 37 of the Arbitration Act to modify arbitral awards.
- (2) Whether the power to set aside an award includes an inherent power to modify the award.

(5 marks)

(c) Nexa Engineering Private Ltd (“Nexa”), a company specializing in the manufacture of prefabricated steel structures and heavy engineering components, and Harbor Constructions Ltd (“Harbor”), a major infrastructure developer, had entered into a contract in 2020 for the supply of customized steel beams, girders, and modular engineering goods required for the construction of elevated tracks in a metro rail project.

The contract contained an arbitration clause governed by the Arbitration and Conciliation Act, 1996. Nexa supplied several consignments under the contract and raised invoices, but Harbor withheld payment, alleging that some components were not in conformity with project specifications. Nexa, disputing this allegation, invoked arbitration and filed its statement of claim for recovery of the outstanding dues with interest. Harbor filed its statement of defence, maintaining that Nexa’s supplies were defective and caused project delays. After filing its statement of claim, Nexa failed to attend subsequent hearings. The arbitral tribunal, invoking Section 32(2)(c), terminated the proceedings on the ground that continuation had become unnecessary. Nexa challenged this order, contending that mere absence from hearings cannot be treated as abandonment of claims.

With reference to a case law, discuss whether the arbitral tribunal is justified in terminating the proceedings.

(5 marks)

551

: 8 :

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

4. (a) “Section 29B of the Arbitration and Conciliation Act, 1996, introduces a “fast track procedure” for resolving disputes through arbitration. This procedure allows parties to opt for a quicker, more streamlined process, typically involving a sole arbitrator and primarily relying on written submissions rather than oral hearings.” What are the key features of section 29B ?

(5 marks)

(b) Indus Biotech Private Limited issued Optionally Convertible Redeemable Preference Shares (OCRPS) to Kotak India Venture (Offshore) Fund through share subscription and shareholders agreements. When Indus opted for a Qualified Initial Public Offering (QIPO), Kotak chose to convert its preference shares into equity shares in accordance with regulation 5(2) of SEBI (ICDR) Regulations, 2018. However, a dispute emerged over the calculation and conversion formula for this transformation. Kotak claimed a 30% stake in the paid-up share capital of the equity shares upon conversion, while Indus argued for only a 10% stake.

The central issue in this dispute revolved around whether Kotak’s exercise of redemption options constituted a ‘default’ under the Insolvency and Bankruptcy Code (IBC), allowing them to initiate insolvency proceedings against Indus using a Section 7 petition as a financial creditor. Indus contended that discussions regarding the conversion of shares, rather than redemption, had taken place, and until a resolution was reached on the disagreement about the percentage of equity shares to be allocated, there was no obligation to repay, thus implying no ‘debt’ or ‘default’ under the IBC.

In response to Kotak's Section 7 petition, Indus filed an Arbitration Application under Section 8 of the Arbitration and Conciliation Act, 1996, with the aim of resolving the dispute through arbitration. The National Company Law Tribunal (NCLT) granted this Arbitration Application, directing the parties to engage in arbitration and subsequently dismissing the Section 7 petition. Kotak, dissatisfied with the NCLT's ruling, sought redress from the Supreme Court.

Whether it is permissible to file an application for arbitration under Section 8 of the Arbitration and Conciliation Act after an insolvency resolution petition under Section 7 of the IBC has been admitted ?

(5 marks)

(c) A dispute arose between InfoTeck Global Services Ltd. ("InfoTeck") and NextGen Power Solutions Private Ltd ("NextGen") concerning enforcement of an arbitration clause in an IT implementation and service contract executed in 2020. Under the contract, InfoTeck was engaged to design and implement a customized Enterprise Resource Planning (ERP) system and provide integrated IT support services for NextGen's energy distribution business. The agreement included milestones for delivery, penalties for delay and contained a detailed arbitration clause governed by the Arbitration and Conciliation Act, 1996. When disputes arose over alleged breaches and non-payment of invoices, InfoTeck invoked arbitration and filed a petition under Section 11(6) for appointment of a sole arbitrator. NextGen objected at the threshold, contending that the contract was inadmissible in evidence, as it had not been duly stamped under the Indian Stamp Act, 1899 and therefore, no arbitral proceedings could validly commence. Is NextGen's contention valid ? Discuss with reference to a case-law.

(5 marks)

OR (Alternate Question to Q. No. 4)

4A. (i) A matter has come up for arbitration wherein the IGRP Investor Grievances Redressal Panel) has rejected the claim of the applicant for losses suffered for about ₹ 3,75,000/- due to mishandling of trading in derivatives by the representative of respondent, the trading member. The applicant is a Doctor by profession. He is having trading account with respondent which is a stock broking company since the year 2019. In the month of October-November 2022 an employee of respondent, who was assigned as Applicant's Relationship Manager (RM) advised to trade in derivatives. The Applicant informed that he was not an expert in the field but RM assured that she would deal on his behalf.

The applicant suffered a loss of approximately ₹ 80,000/- in the beginning, he directed her to stop trading and further directed her to revive the losses. She assured that she will recover losses and thereafter will stop trading in derivatives. Despite recovery of said loss, she continued to deal and further purchased 30 lots, no stop loss was demarcated and applicant suffered a loss of ₹ 1,50,000/-. The applicant directed the employee not to deal any further, but she assured that she will recover losses incurred and purchased 250 shares of Adani Green which started losing due to the Hindenburg report. She did not sell these shares despite request by the applicant resulting in huge losses. The respondent trading member has opposed the claim. The account opening form of the applicant—claimant has been filed to show that he became registered constituent since June 2020.

: 11 :

Is there any opportunity of winning the matter of the applicant before arbitrator ? Explain.

(5 marks)

(ii) X, an eminent arbitration practitioner having substantial knowledge and experience in institutional arbitration, both domestic and international, has been nominated as a member of the Arbitration Council of India by the Central Government. Subsequently, it was found that X has acquired such financial interest as is likely to affect prejudicially his functions as a Member and hence the Central Government removed X and Y was appointed in his place. Advice X, when a member of the council can be removed.

(5 marks)

(iii) “Section 57 of the Arbitration and Conciliation Act, 1996, plays a pivotal role in ensuring the enforcement of foreign arbitral awards governed by the Geneva Convention. By establishing clear conditions for enforcement, it protects the interests of both parties and upholds India’s commitment to international arbitration. While challenges remain, continued reforms and judicial clarity can further enhance the section’s effectiveness, fostering greater confidence in India’s arbitration regime.” Mention conditions for enforcement of foreign awards as provided under section 57(1). Can the enforcement of an award be refused by the Court even if all the conditions under section 57(1) are fulfilled ?

(5 marks)

PART-II

5. Luminex Technologies Private Ltd ('Luminex'), a Bengaluru-based software company, entered into a five-year service contract with Helios Infrastructure Ltd ('Helios'), a Noida-based construction firm, for the supply of customized project management software. Within two years, disputes arose when Helios alleged that the software failed to integrate with its existing systems, causing delays and financial losses. Luminex denied liability, asserting that Helios had repeatedly altered specifications, leading to additional costs and project overruns. Being a listed company, Helios lodged a formal complaint with the stock exchange. Before escalation, both parties were advised to attempt e-mediation through the newly established Online Dispute Resolution (ODR) portal. Recognizing the advantages, both parties consented to proceed with this process and a mediator was appointed.

At the outset, the mediator directed the parties to execute a mediation agreement, setting out the framework of the process. Luminex readily agreed, but Helios expressed hesitation, fearing that signing such an agreement might prejudice its rights in any subsequent arbitration or litigation. Further differences arose over the mode of mediation. Luminex preferred ad-hoc mediation, citing flexibility and lower costs, while Helios insisted on institutional mediation under a SEBI-accredited centre, emphasizing structured procedures and enforceability. With no consensus reached, the parties were left to balance efficiency, cost and legal certainty before proceeding.

Based on the above facts, answer the following questions :

(a) Draft a mediation agreement for resolution of dispute between Luminex and Helios, assuming necessary facts.

(7 marks)

(b) Explain the concept of e-mediation, highlighting its benefits and challenges.

(4 marks)

(c) Outline the distinction between ad-hoc mediation and institutional mediation.

(4 marks)

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

6. (a) “When parties are involved in serious conflict and want to avoid a costly court battle, understanding the different types of mediation can help them choose the best resolution path. Each mediation approach, from traditional negotiation-based formats to more structured hybrids like mediation vs. arbitration, follows unique principles based on the nature of the dispute. Before selecting a mediator, it’s essential to understand how various mediation styles work”.

Explain the Med-Arb and Arb-Med types of mediation.

(5 marks)

(b) “Even though mediation is speedier, more cost-effective and offers greater possibility of preserving the relationship between disputing parties, the existing mediation framework in India has not allowed for reaping its full potential. The Supreme Court highlighted some glaring drafting errors in Section 89 in its landmark judgement in the Afcons Infrastructure Ltd. case.” What are the difficulties confronted by the Mediator while implementing the process of mediation ?

(5 marks)

551

: 14 :

(c) Plinto Ltd is facing a complex workplace dispute involving cultural differences and gender-related concerns among employees. To ensure a fair and effective resolution, the management has decided to adopt a co-mediation approach by engaging experts from diverse fields.

As a corporate advisor, explain how co-mediation can enhance the dispute resolution process in such scenarios.

(5 marks)

Or (Alternate Question to Q. No. 6)

6A. (i) Appellant M.R. Krishna Murthi was only 18 years of age when he suffered a severe accident on the 26th of May in the year 1988 while traveling with his mother from Delhi to Mussoorie. A crash had occurred where the other vehicle was negligent in driving it crushed his left leg. After three major surgeries, he still has metal plates and screws in the femur. The District Government Hospital of Muzaffarnagar certified him as permanently disabled at 40 percent.

He filed a compensation claim at the Motor Accident Claims Tribunal (MACT) which was transferred to Patiala House Courts at New Delhi. The case spent its last day on 23rd of May in the year 2007, after this MACT came up with a judgment awarding ₹ 8,48,000 including interest at 7% for 10 years, noting the procedural delays and dismissals in default. The report concluded the liability with respect to the insurer, driver, and vehicle owner. Notably, the Tribunal considered delays caused due to the petition being dismissed in default on two separate occasions.

Based upon judicial pronouncements, explain the significant considerations in the realm of motor accident compensation.

(5 marks)

: 15 :

(ii) Artificial intelligence (AI) for helping mediate disputes has begun to gain traction. Although it might not yet be commonplace, it is on its way to playing a pivotal role in conflict resolution, providing mediators with tools and functionalities that streamline the mediation process, offer data-driven insights, and help manage communications and negotiations. The use of AI in mediation looks both promising and transformative and presents opportunities and challenges for mediators.

Explain the benefits and limitations of AI-Powered Tools and Functions in Mediation.

(5 marks)

(iii) Giga Ltd, a mid-sized manufacturing company, is facing a dispute with one of its key suppliers over delayed payments and revised contract terms. To resolve the matter amicably, the Board of Directors has appointed Zoya, a Company Secretary, to lead the negotiation process with the supplier. As she prepares for the negotiation, Zoya understands that a well-structured approach is crucial to achieving a mutually beneficial outcome.

Outline the key steps which Zoya should follow for preparation and conducting negotiation effectively.

(5 marks)