

Roll No.

OPEN BOOK EXAMINATION

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

Total number of printed pages : 19

NOTE : *Answer ALL Questions.*

PART-I

1. Protech Engineers Limited (Referred as 'Protech'), a Bangalore-based company engaged in manufacturing high-tech equipment, as part of its long-term business strategy, decided to expand into renewable energy sector. In January 2024, it entered into a commercial agreement with Zong Energy Pte. Limited, (Referred as 'Zong Energy') a Singapore-based company known for executing large-scale solar power projects across Asia.

The agreement relates to supply, installation and commissioning of a 100 MW solar power plant in Rajasthan. Under the contract, Zong Energy was responsible for supplying solar photovoltaic equipment, providing technical installation support and offering specialized engineering services required for setting up the project. The project involved strict timelines because the electricity generated from the plant was to be supplied to industrial consumers under long-term supply arrangements.

: 2 :

The contract contained detailed provisions relating to performance obligations, payment terms, dispute resolution and risk allocation. As per the agreed financial structure, Protech was required to pay :

- 30% of the contract value as advance payment.
- 50% upon delivery of equipment and
- The remaining 20% after successful commissioning of the solar plant.

The agreement also provided for a Force Majeure clause, by which either party would be excused from performance if unforeseen circumstances beyond their control occurred. Such events included natural disasters, pandemics, and government restrictions affecting the import or export of equipment.

A dispute resolution mechanism was also contemplated between the parties. It provided that any dispute arising out of or in connection with the contract would be referred to arbitration in Singapore under UNCITRAL Rules, with Singapore designated as the seat of arbitration. The governing law of the contract was stated to be the Indian Contract Act, 1872.

However, it later came to light that the arbitration clause was not incorporated in the main contract document signed by both parties. Instead, the clause was included through a Supplementary Letter dated 12th January 2024, which was signed on behalf of Zong Energy by its Chief Executive Officer (CEO). The main agreement made reference to certain supplementary documents forming part of the overall contractual understanding between the parties.

: 3 :

Initially, the project progressed without any major issues. Zong Energy supplied certain components required for the solar plant and installation work commenced at the project site in Rajasthan. However, after partial delivery and commencement of installation, Protech began to face operational difficulties.

Protech alleged that some of the components supplied by Zong Energy were sub-standard and not in accordance with the agreed technical specifications. According to Protech, these defects were likely to affect the efficiency and output of the solar power plant and could result in financial losses estimated at approximately ₹ 8 Crore.

The parties attempted to resolve the dispute through discussions and mutual negotiations. Senior representatives from both sides held several meetings to explore possible solutions, including replacement of defective equipment and revision of project timelines. Despite these efforts, the dispute could not be resolved amicably.

Consequently, on 1st October 2024, Protech issued a Notice of Arbitration, seeking to invoke the arbitration mechanism.

At this stage, Zong Energy raised an objection to the arbitration proceedings. It contended that the arbitration clause was not valid and binding, as it was introduced through the supplementary letter signed by the CEO, who allegedly did not have proper board authorization to include such a clause. Therefore, Zong Energy argued that there was no valid arbitration agreement between the parties.

Despite this objection, Protech proceeded to file an application before an Indian Court under Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of an arbitrator.

Zong Energy opposed the application on the ground that Indian Courts lacked jurisdiction, as the contract clearly specified Singapore as the seat of arbitration. According to Zong Energy, Courts at the seat of arbitration alone would have supervisory jurisdiction over the arbitral process.

The dispute further escalated when Zong Energy withheld 15% of the contract payment, citing foreign exchange fluctuations and invoking the Force Majeure clause. Zong Energy also raised counter-claims amounting to ₹ 4 Crore, alleging that delays in the project were caused due to defective components supplied or mishandled by Protech.

Protech disputed these allegations and contended that some of the claims raised by Zong Energy were not covered within the scope of the arbitration arrangement between the parties.

Meanwhile, Protech became concerned about the advance payment already made to Zong Energy. Since a portion of the advance remained unutilized and was held in Indian bank accounts, Protech approached an Indian Court under Section 9 of the Arbitration and Conciliation Act, 1996, seeking interim relief for protection and attachment of such funds.

In these circumstances, multiple issues have arisen between the parties relating to the existence and validity of the arbitration arrangement, the jurisdiction of Courts in view of the foreign seat, the scope of disputes that may be referred to arbitration and the availability of remedies to safeguard financial interests pending resolution of the dispute. The parties are also considering whether the dispute can be resolved through an expedited procedure, if permissible under the applicable legal framework.

: 5 :

In the light of the above scenario, answer the following questions :

- (a) Examine whether the arbitration clause included through the Supplementary Letter dated 12th January 2024 is valid and enforceable under Indian law in the context of the authority of the CEO, the requirement of a written agreement and the relevance of pre-contractual negotiations.

(5 marks)

- (b) (i) State whether Indian Courts can entertain Protech's application under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator.

(2 marks)

- (ii) Explain the limitations and conditions governing the jurisdiction of Indian Courts in cases of foreign-seated arbitrations, with reference to relevant legal provisions and judicial precedents.

(3 marks)

- (c) Advise whether Protech can seek interim relief from Indian Courts under Section 9 of the Arbitration and Conciliation Act, 1996 for attachment or protection of unspent advance payments held in Indian bank accounts of Zong Energy in view of the foreign seat of arbitration and the Force Majeure claim raised by Zong Energy.

(5 marks)

: 6 :

- (d) Analyse whether the counter-claims raised by Zong Energy fall within the scope of the arbitration agreement contained in the contract, based on the relevant provisions of the Arbitration and Conciliation Act, 1996 (as amended) and judicial precedents.

(5 marks)

- (e) Discuss whether Protech can invoke Fast Track Arbitration under Section 29B of the Arbitration and Conciliation Act, 1996 in the given situation. Also explain the procedure, key features and limitations of Fast Track Arbitration, with reference to statutory provisions and judicial precedents.

(5 marks)

2. (a) Glen International AG (Referred as 'Glen'), a Swiss company handling the business of mining and commodity trading, entered into a series of contracts with SG Metals (Referred as 'SG') for the supply of zinc metals. All contracts contained identical arbitration clauses with London as the seat of arbitration. A fresh contract was proposed to purchase 6,000 metric tons of zinc metal from Glen. SG only negotiated the provisional price and exchanged some email correspondence with Glen. On 11th March 2016, Glen sent the duly signed version of the contract to SG after incorporating the negotiated terms and modalities of the transaction (Referred as 'Contract').

Interestingly, the Contract remained unsigned by SG, but it continued to discharge its obligations, including the acceptance of 2,000 metric tons of zinc metal supplied by Glen. Subsequently, another series of correspondence revealed that SG understood its payment obligations under the unsigned Contract.

: 7 :

Disputes arose when SG failed to furnish the Letter of Credit (Referred as 'LC') for September 2016, and Glen encashed the previous LCs. SG proceeded to file a civil suit before the High Court of Delhi (Referred as 'High Court'), *inter alia*, claiming recovery of US\$ 1,200,000 and a permanent injunction against encashment of further LCs by Glen. In response, Glen filed an application under Section 45 of the Arbitration and Conciliation Act, 1996 seeking a referral to arbitration owing to the existence of an arbitration clause in the unsigned Contract. This request for referral was refused by the High Court and later affirmed in appeal on the premise that there was no record to show that SG had, either expressly or impliedly, agreed to the terms and conditions set out in the unsigned Contract.

The Supreme Court was concerned with a singular issue of determining whether there is a binding arbitration agreement between Glen and SG in view of the unsigned Contract. On this background stating the key elements of Section 45 of the Arbitration and Conciliation Act, 1996, state whether Glen will succeed in this case.

(5 marks)

- (b) In a case, the learned Arbitrator reserved his Arbitral Award on 28th July 2012 but pronounced it only on 16th March 2016, i.e., nearly three years and eight months later, with no definite resolution of the matter. Significantly, no explanation worth the name was offered by him for the delay. Two questions arise for consideration in the appeal :
- (i) What is the effect of undue and unexplained delay in the pronouncement of an Arbitral Award upon its validity ?

: 8 :

- (ii) Is an Arbitral Award that is unworkable, in terms of not settling the disputes between the parties finally while altering their positions irrevocably thereby leaving them no choice but to initiate further litigation, liable to be set aside on grounds of perversity, patent illegality and being opposed to the public policy of India ? If so, would it be a fit case for exercise of jurisdiction under Article 142 of the Constitution ?

Examine the matter on the basis of a judicial pronouncement.

(5 marks)

- (c) Rim Industries Limited (Referred as 'Rim Limited'), a supplier of industrial equipment entered into a contract with Sanju Products Private Limited (Referred as 'SPPL'), for supply and installation of machinery. The agreement contained an arbitration clause providing that dispute would be resolved through arbitration by a sole Arbitrator. A dispute later arose regarding non-payment of the balance contract amount by SPPL, despite completion of supply and installation by Rim Limited. The matter was referred to arbitration. After considering the pleadings, documents and hearing both parties, the sole arbitrator concluded that SPPL was liable to pay the outstanding amount along with reasonable interest and costs of arbitration.

Draft the operative portion of an Arbitral Award that the Arbitrator may issue in the above case in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

(5 marks)

: 9 :

3. (a) OG (Appellant) entered into a contract with GT Private Limited (Respondent). Disputes arose regarding payment of outstanding amounts under various invoices. The matter was referred to a three-member Arbitral Tribunal. Arbitral Award dated 21st November 2004. The Arbitral Tribunal :

- Allowed claims totalling USD 6,56,272.34 in favour of the respondent
- Rejected claims for interest on individual invoices
- However, awarded interest at 12% per annum on the total sum from 12th December, 1998 (the date when the statement of claim was affirmed) till recovery.
- Awarded costs of ₹ 5 lakhs.

Subsequent Proceedings :

- OG filed a Special Leave Petition before the Supreme Court, which was limited to the issue of whether interest on the total awarded amount at the rate of 12% could be awarded or not;

OG's Argument before Supreme Court was :

Section 31(7) of the Arbitration and Conciliation Act, 1996, clearly provides that the power of the Arbitral Tribunal to award interest for the period between the dates the cause of action arose up to the date of the Award is subject to the agreement between the parties. Therefore, in view of specific Clause in the Agreement (Clause 18.1 of the Agreement executed between the Parties), no interest could have been awarded. The Arbitral Award is liable to be set aside to the extent it awards interest.

: 10 :

GT Private Limited's Argument before the Apex Court was :

Clause 18.1, if read as a whole, indicates that payment is not to be withheld if the amount is not in dispute. Interest is not payable only when there is a dispute. The Arbitral Tribunal did not award interest on the pre-reference period but awarded interest from the date the claim was affirmed before the tribunal. Once it was found that the balance amount on the invoices was unjustifiably withheld, payment of interest is lawful.

Referring to the judicial pronouncement, decide on the matter.

(5 marks)

- (b) Mohabat Limited issued a notice on 4th April 2021 to Construct Coy (The other Party to the Agreement executed between them) requesting appointment of an Arbitrator as per their agreement. Construct Coy did not respond. After several communications between the parties, Mohabat Limited filed an application before the Court on 20th June, 2025 under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator.

Construct Coy opposed the application stating that it is time-barred under Article 137 of the Limitation Act, 1963. Mohabat Limited argued that the delay should be excused due to ongoing discussions and disruptions caused by COVID-19.

Examine whether :

- (i) The application filed by Mohabat Limited under Section 11(6) is barred by limitation.
- (ii) The underlying dispute is *ex facie* time-barred.
- (iii) How the Limitation Act, 1963 applies to such applications.
- (iv) Under what circumstances a Court can refuse to appoint an Arbitrator on the ground of limitation ?

(5 marks)

- (c) Sara Limited (Referred as 'Sara') entered into a contract with Yaso Infra Limited (Referred as 'Yaso Infra') for installation of pipeline equipment. The contract contained an arbitration clause for resolving disputes. During execution, disputes arose regarding delay in payment for completed work. Yaso Infra invoked arbitration and claimed the outstanding amount along with interest for the period during which the arbitration proceedings were pending. The Arbitral Tribunal passed an award directing Sara to pay the principal amount and also *pendente lite* interest from the date of commencement of arbitration till the date of award. Sara challenged the Award contending that the tribunal had no power to grant such interest.

Whether an Arbitral Tribunal has the power to grant *pendente lite* interest during arbitration proceedings under the Arbitration and Conciliation Act, 1996 ? Discuss with reference to legal provisions and judicial precedent.

(5 marks)

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

4. (a) Akaash, aged 34, a Company Secretary in practice for last six years, wishes to empanel as a conciliator or arbitrator by the Online Dispute Resolution Institutions. Advise Akaash, mentioning the 'suggested norms for empanelment of Conciliators and Arbitrators', in respect of age, experience as well as professional experiences, qualifications, with reference to Master Circular for Online Resolution of Disputes in the Indian Securities Market updated as on 20th December, 2023.

(5 marks)

(b) “When parties to a contract have an arbitration agreement but have not agreed on the procedure for appointing Arbitrators, the appointment is guided by statutory default provisions (such as Section 11 of the Indian Arbitration and Conciliation Act, 1996 (Referred as ‘the Act’) or institutional rules.” Answer the following on the basis of the provisions of Section 11 of the Act :

(i) Company A and Company B have a dispute. The contract is silent on the method of appointment. Company A sends a notice to Company B proposing an arbitrator. If Company B does not agree on the person within 30 days, what is the option available to Company A ?

(ii) A joint venture agreement stipulates a three-arbitrator tribunal. Party X appoints an arbitrator. Party Y fails to appoint an arbitrator within 30 days of a request. What is the option available to Party X ?

(5 marks)

(c) Green Field Agro Private Limited (Referred as ‘Green Field Agro’), a food-processing company, entered into a long-term supply agreement with Sunrise Farmers’ Cooperative Society for procurement of organic vegetables. Due to fluctuations in market prices, disputed arose regarding revision of supply rates and delayed payments. To preserve their commercial relationship, both parties mutually agreed to initiate conciliation

: 13 :

proceedings under the Arbitration and Conciliation Act, 1996. A Conciliator was appointed who conducted meetings with both parties and proposed a mutually acceptable settlement. After negotiations, both parties signed a written Settlement Agreement prepared by the Conciliator resolving the pricing and payment issues. However, later Green Field Agro refused to honour the Settlement stating it was merely a negotiated understanding. On this background, state whether a Settlement Agreement reached through conciliation proceedings is binding and enforceable on the parties under the Arbitration and Conciliation Act, 1996 ? Explain with reference to the relevant provisions and judicial precedents.

(5 marks)

OR (Alternate Question to Q. No. 4)

- 4A. (i) Mars Limited, a manufacturing company, entered into a technology supply contract with Neptune private Limited. The agreement contained an arbitration clause providing that dispute would be resolved through institutional arbitration. After a dispute arose regarding delay in supply, Neptune Private Limited initiated arbitration proceedings. During the proceedings, Mars Limited raised an objection that the Arbitration Agreement was invalid and that the Arbitral Tribunal had no jurisdiction to decide the dispute. The Arbitral Tribunal decided to first examine whether it had jurisdiction to hear the dispute before proceeding with the merits of the case. Mars Limited challenged the authority of the tribunal to decide such jurisdictional issues.

Whether an Arbitral Tribunal has the power to rule on its own jurisdiction, including the validity of the arbitration agreement ? Explain with reference to the relevant principles and provisions of the Arbitration and Conciliation Act, 1996.

(5 marks)

- (ii) Explain the recent amendments to the Arbitration and Conciliation Act, 1996 that have an impact and effect on the drafting of arbitration clauses and enforcement of Arbitral Awards. How do these amendments help in reducing procedural and administrative delays and improving efficiency in arbitration ?

(5 marks)

- (iii) An individual investor entered into an online trading arrangement with a registered stock broker through a digital platform. The terms and conditions, accepted electronically, contained an arbitration clause for resolution of disputes. Subsequently, the investor alleged that certain trades were executed without proper authorization, resulting in financial losses. The investor approached a civil Court seeking relief, contending that the online agreement lacked informed consent and that the arbitration clause was not binding. The broker objected to the maintainability of the suit and sought reference of the dispute to arbitration based on the agreed terms.

Examine whether disputes arising out of online trading transactions can be referred to arbitration. Discuss the validity and enforceability of the arbitration clause in such electronic agreements.

(5 marks)

PART-II

5. (a) The Iceberg Model is a concept from psychology that is used to understand human behaviour and the underlying processes. It illustrates how only a small part of our thoughts, feelings and motivations are visible, while the largest part - similar to the hidden part of an iceberg under water - remains invisible. This metaphor is particularly useful in psychology and communication to explore the often-unrecognized depths of human interactions and personal decision-making processes. In corporate communications, the model is used to better understand the complexity of organizational dynamics and employee behaviour.

: 15 :

The iceberg model is a metaphor used to illustrate how most of the human psyche - our unconscious thoughts, motives and feelings - is hidden beneath the surface, much like most of a real iceberg remains hidden beneath the water. The visible part above the surface represents what we show publicly : our behaviour, speech and actions. These visible aspects are only a small part of what is actually going on within an individual. The model helps us to realize that the true causes and motivations of human behaviour are often deeply hidden and can only be accessed through deeper psychological understanding. On background of this discuss how the Iceberg Concept applies to Conflict Resolution ?

(5 marks)

(b) Genome Limited (Referred as 'G Ltd. '), a pharmaceutical company, had a contractual dispute with Hitro Traders Private Limited (Referred as 'Hitro Traders') regarding supply quality. The parties agreed to resolve the dispute through mediation at a recognized Mediation Centre. During mediation, Hitro Traders admitted that some goods supplied were defective but requested time to compensate the loss. However, the mediation failed and the matter later proceeded to Court litigation. During the Court proceedings, G Ltd. attempted to produce statements made by Hitro Traders during mediation as evidence of liability. Hitro Traders objected and argued that discussions made during mediation are confidential and cannot be disclosed before the Court. At this backdrop :

(i) Whether statements made during mediation can be used as evidence in subsequent Court proceedings ? Explain with reference to relevant provisions and judicial precedents.

(2 marks)

(ii) Prepare a stagewise checklist for an effective mediation process.

(3 marks)

- (c) Identify with justification the most appropriate mediation method/technique for each of the following scenarios :
- (i) Two multinational companies are in dispute. Though physical meetings are possible, they prefer a process that allows flexible scheduling across time zones and reduces travel costs.
 - (ii) A dispute involves technical contractual issues along with strained personal relations between senior executives. More than one Neutral is involved to manage different aspects of the conflict.
 - (iii) Parties are already in litigation. The Court directs them to attempt settlement through Alternate Dispute Resolution before proceeding further.
 - (iv) Residents of a locality are facing disputes regarding common resource usage. A Neutral from within the community facilitates discussions informally to resolve the issue amicably.
 - (v) Parties voluntarily approach a recognized Mediation Centre to resolve a commercial dispute under structured rules, without approaching the Court.

(5×1=5 marks)

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

6. (a) Country A and Country B are in dispute over a cross-border trade restriction affecting pharmaceutical exports. To avoid escalation, both countries agree to appoint a neutral Mediator through an international organisation. During mediation, political sensitivities

: 17 :

arise and public statements by Country A create mistrust. Country B threatens to withdraw, alleging lack of good faith and confidentiality breach. In this scenario, identify the role of mediation in international diplomacy and suggest how such issues should be handled.

(5 marks)

- (b) Mediation Council of India, has been established in pursuant to section 31(1) of the Mediation Act, 2023, is planning to purchase immovable properties in Mumbai and London to establish another office, in addition to its Delhi Office.

One of its members, a person having knowledge and experience in law related to mediation or alternative dispute resolution mechanisms, appointed by the Central Government, objected that the Council cannot have power to acquire an immovable property.

Another member, an eminent person having experience in research or teaching in the field of mediation and alternative dispute resolution laws, appointed by the Central Government, objected that the Council cannot establish an office abroad.

Mentioning the relevant provision(s) of the applicable law, comment on the validity of these objections.

(5 marks)

- (c) The Chief Executive Officer of the Mediation Council of India, approaches a renowned Professional firm Anup Das LLP, in practice of audit and accounts for last fifty years, for annual statutory audit of the Council and to submit report to the Chairperson.

: 18 :

But the Secretary to the Government of India in the Department of Legal Affairs, Ministry of Law, who is a member of the Council, objected that such an appointment is invalid, as private firm cannot be appointed as statutory auditor of the Council.

Referring relevant provisions of the Mediation Act, 2023, state whether the contention of Department of Legal Affairs is correct.

(5 marks)

Or (Alternate Question to Q. No. 6)

6A. (i) Analyse the validity of the following with reference to the Companies (Mediation and Conciliation) Rules, 2016 :

(a) Nirma, a practicing Company Secretary for last eleven years and before starting Practice, she was in employment as Company Secretary for five years, now she wishes to empanel as a mediator or conciliator;

(b) Sumu, a legal practitioner for last nine years. She has successfully undergone training in mediation and practises for expert Mediator for last 2 years, now she wishes to empanel as a mediator or conciliator.

(5 marks)

(ii) In Zoya Soft Limited, a mid-sized organization, conflicts have arisen between two project teams leading to frequent delays, poor coordination and disputes over task allocation. The management initially attributed the issues to operational inefficiencies. However, informal discussions revealed deeper concerns such as lack of trust between

: 19 :

team leaders, feelings of inadequate recognition, and unresolved past misunderstandings. Despite repeated instructions to improve performance, the conflicts persist, affecting overall productivity and workplace harmony.

As the Company Secretary and HR Head, how would you identify the real causes of the conflict and suggest measures for a sustainable resolution.

(5 marks)

- (iii) Buddhi Mediation Associates is a firm consisting of 80 mediators. Out of these, 25 Mediators have more than 15 years of experience, 35 Mediators have experience between 1 - 3 years, and the remaining are trainees. The firm has recently noticed that junior Mediators lack confidence in handling real disputes, while trainees depend heavily on theoretical knowledge. Senior Mediators suggest introducing a structured system where Mediators regularly evaluate their own performance, participate in guided discussions and learn from practical experiences.

Identify the most suitable practice and explain its relevance and applicability for each category of Mediators.

(5 marks)

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