

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. NexaSoft Private Ltd., an Indian IT services provider, entered into a five-year contract with TechknoTech Inc., a U.S.-based software solutions company, to develop and maintain a cloud-based enterprise resource planning (ERP) system. The contract outlined key provisions, including project milestones, payment schedules, performance benchmarks, data security measures, intellectual property rights, liability limitations, and dispute resolution. The arbitration clause specified that any disputes would be resolved through arbitration.

As the project progressed, disagreements emerged regarding timelines, scope changes, and security requirements. TechknoTech alleged that NexaSoft failed to meet crucial deadlines, and that the software contained performance issues and security vulnerabilities, exposing it to potential regulatory risks. TechknoTech further claimed that NexaSoft's delays led to business losses and customer dissatisfaction, which ultimately compromised its market position. NexaSoft, in contrast, argued that TechknoTech had frequently modified the project requirements without

formal amendments, resulting in delays and additional costs. NexaSoft also claimed that TechknoTech had defaulted on payment obligations, leaving several invoices unpaid for completed work.

Due to these disputes, TechknoTech terminated the contract, refused to clear pending invoices, and sought damages for losses incurred. NexaSoft, contesting the validity of the termination, invoked the arbitration clause to resolve the matter. However, a dispute arose regarding the arbitration mechanism. NexaSoft preferred ad hoc arbitration, emphasizing cost efficiency and procedural flexibility, while TechknoTech insisted on institutional arbitration, arguing that a structured process was necessary for a cross-border technology dispute.

A sole arbitrator was eventually appointed under institutional arbitration rules. During the arbitration proceedings, NexaSoft objected to the admissibility of TechknoTech's damage claims, stating that they were filed beyond the contract's limitation period and that TechknoTech had implicitly waived its right to claim damages by continuing the project despite alleged deficiencies. TechknoTech countered that the damages were a direct result of NexaSoft's breach and that the contract did not restrict compensation for consequential losses. Additionally, TechknoTech raised concerns about NexaSoft's handling of sensitive data, alleging that the security flaws in the software had potentially exposed confidential information to third parties. NexaSoft denied the allegations, asserting that no actual data breach had occurred, making TechknoTech's claim speculative and unsubstantiated.

: 3 :

After several hearings and an assessment of expert reports, the arbitrator ruled partially in favor of TechknoTech, granting compensation for delays and performance deficiencies but rejecting claims related to business losses and data security failures, citing insufficient evidence and speculative calculations. Dissatisfied with the ruling, NexaSoft challenged the arbitral award in an Indian court under Section 34 of the Arbitration and Conciliation Act, 1996, arguing that the arbitrator had exceeded jurisdiction by admitting time-barred claims, misinterpreted key contract provisions, and issued an award contrary to Indian public policy by imposing damages beyond contractual terms. The court was now tasked with balancing the principles of judicial intervention and arbitral finality.

With reference to above facts, answer the following :

- (a) Outline the critical clauses that should be included in a contract, to prevent disputes.
- (b) Explain the difference between ad hoc and institutional arbitration.
- (c) Discuss the grounds for challenging an arbitral award under Indian law and the factors influencing the court's decision to set it aside.
- (d) 'In arbitration, an arbitrator is the presiding officer.' Comment in the background of the norms which an arbitrator should abide by.
- (e) Elucidate the general guidelines which an arbitrator should follow for drafting an Arbitral award.

(5 marks each)

2. (a) Rohan, a contractor, entered into an agreement with Zenith Constructions Ltd to complete a commercial building project within a stipulated period. The contract contained a clause stating that in case of a breach, Rohan would be liable to pay a fixed sum of ₹ 10 lakh as compensation. Due to unforeseen delays, the project was not completed on time, and Zenith Constructions Ltd invoked the penalty clause, demanding the entire amount. Rohan contended that the actual loss suffered must be proved before such compensation could be enforced.

In the light of legal provisions, discuss whether Rohan's contention is valid.

(5 marks)

- (b) Alpha Constructions Ltd and Beta Infra Private Ltd entered into a Joint Venture Agreement (JVA) for the development of a commercial project. The agreement contained a termination clause allowing either party to terminate in case of a material breach if the defaulting party failed to rectify the breach within 30 days of receiving notice. Due to non-compliance with key project deadlines and financial mismanagement, Alpha Constructions Ltd issued a termination notice. Beta Infra, disputing the termination, filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996, seeking an injunction against the termination and restoration of the agreement. Alpha Constructions Ltd argued that since the contract was determinable in nature, the court could not grant such relief.

With reference to a case law, comment whether Alpha Constructions Ltd will succeed.

(5 marks)

: 5 :

- (c) Aeon Technologies Ltd, an Indian company, entered into a contract with Orion Machines Inc., a South Korean firm, for the supply of industrial equipment. The agreement contained an arbitration clause stating that disputes would be resolved through arbitration, but did not explicitly mention the seat of arbitration or the governing law. A dispute arose, and Aeon Technologies argued that Indian law should govern the arbitration, while Orion Machines Inc. claimed that Singaporean law should apply based on the arbitration venue.

Based on a case law, examine how the seat of arbitration and the governing law should be determined.

(5 marks)

3. (a) NTP Ltd. (NTP) and SPM Infra Ltd. (SPM) entered into a contract for certain project works (Agreement). In terms of the Agreement, SPM furnished a performance bank guarantee and advanced bank guarantee for a cumulative amount of INR 14,96,89,136 to secure the NTP. Upon the successful completion of the project, NTP issued a certificate of completion. NTP subsequently communicated to SPM by way of a letter dated 10 April 2019 that the final payment would be released once SPM issued a no-demand certificate.

On 12 April 2019, SPM issued the required no-demand certificate, prompting NTP to release the final payment of INR 1,40,00,000 in April 2019. However, the bank guarantees were not released at that time due to ongoing disputes and outstanding liabilities between the parties relating to other projects at Bongaigon, Barh, and Korba. NTP formally notified SPM of this decision on 14 May 2019. In response, SPM raised objections, claiming a sum of INR 72,01,53,899 as recoverable liabilities from NTP for actions attributable to NTP.

In an effort to address the unresolved disputes arising from the Agreement, SPM wrote to NTP on 12 June 2019, requesting the appointment of an adjudicator as prescribed by the Agreement's dispute resolution mechanism. NTP did not take any action in response to this request from SPM. As NTP took no action, SPM moved to Delhi High Court by filing a writ petition under Article 226 of the Constitution. The Delhi High Court, through an interim order dated 8 July 2019, directed NTP not to invoke the bank guarantees and instructed SPM to maintain the guarantees in force. While the writ petition was still pending, the parties managed to settle their disputes and executed a Settlement Agreement (Settlement Agreement). As per the Settlement Agreement, NTP released the bank guarantees on 30 June 2020, and SPM withdrew the writ petition.

However, three weeks after the bank guarantees were released and two months after the Settlement Agreement was executed, SPM issued a letter of repudiation. SPM claimed that they had been subject to coercion and economic duress during the execution of the Settlement Agreement. Subsequently, SPM repudiated the Settlement Agreement and filed an application under Section 11(6) of the Arbitration and Conciliation Act, 1996, with the Delhi High Court on 10 October 2020. In this application, SPM also asserted that NTP had not appointed an arbitrator despite multiple requests, which necessitated SPM's recourse to the High Court.

In the background of the above matter and in view of judicial pronouncement, discuss primary inquiry about the existence and the validity of an arbitration agreement.

(5 marks)

: 7 :

- (b) Zenda Infrastructure Ltd acquired land for a national highway project, compensating landowners based on government-determined rates. Dissatisfied with the valuation, the landowners initiated arbitration, but the appointed arbitrator upheld the original compensation. Seeking redress, the landowners approached the District Court, which not only set aside the arbitral award but also enhanced the compensation. Zenda Infrastructure Ltd challenged this decision, arguing that courts lack authority to modify arbitral awards under the applicable arbitration law.

In the context of a judicial precedent, evaluate whether Zenda Infrastructure will succeed.

(5 marks)

- (c) Skyline Aviation Private Ltd was engaged in a contractual dispute with AeroFleet Services Ltd and participated in arbitration proceedings. However, its counterclaims were struck off by the Arbitral Tribunal due to a significant delay in filing. After exhausting various legal remedies, Skyline Aviation filed a petition under Section 11 of the Arbitration and Conciliation Act, 1996, seeking to refer its counterclaims to arbitration before the same Tribunal, citing its familiarity with the case. AeroFleet Services opposed this, arguing that the claims were barred due to prior dismissal and the doctrine of *res judicata*.

In the context of arbitration law and legal precedents, examine whether the arguments of AeroFleet Services are justified.

(5 marks)

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

4. (a) Mr. AR, a retail investor wants to lodge a formal complaint with the Stock Exchange against M/s ABC Ltd. Mr. AR alleges that the company M/s ABC Ltd. did not release his unpaid dividends in spite of his repeated request. As a practising Company secretary, prepare a note for your client Mr. AR indicating the framework for handling of complaints available through SEBI.

(5 marks)

- (b) Mr. A, an Investor lodged a Complaint against NSDL, regarding less number of securities shown in his account. But NSDL did not respond. Thereafter, the complaint was filed on SCORES portal. NSDL provided the resolution through SCORES portal but Mr. A is not satisfied with the resolution.

Now, Mr. A wants to initiate resolution through ODR portal. Discuss the benefits available for initiation of the dispute resolution process through ODR.

(5 marks)

- (c) Alpana Tech Private Ltd and Swalpana Solutions Private Ltd, both companies incorporated in India, entered into a contractual agreement that included an arbitration clause. A dispute arose and Alpana Tech sought to classify the arbitration as an International Commercial Arbitration under the Arbitration and Conciliation Act, 1996,

: 9 :

citing foreign investment in its parent company and business operations outside India. Swalpana Solutions, however, argued that since both parties were Indian-registered entities, the arbitration must be treated as domestic arbitration.

Discuss with reference to statutory provisions and judicial precedents whether Alpana Tech will succeed.

(5 marks)

OR (Alternate Question to Q. No. 4)

- 4A.** (i) Sterling Minerals Ltd entered into a contract with Nem Infrastructure Private Ltd for excavation work at a predetermined fixed rate, explicitly excluding any cost escalations. Due to unforeseen market changes, Nem Infrastructure sought additional compensation, which Sterling Minerals refused, citing the strict contractual terms. The dispute was referred to arbitration, where the arbitrator awarded additional payments beyond the agreed rate. Sterling Minerals challenged the award, arguing that the arbitrator had exceeded jurisdiction by disregarding the contractual provisions.

With reference to a judicial precedent, comment whether the contention of Sterling Minerals is justified.

(5 marks)

- (ii) Onko Metals Inc., a foreign supplier, entered into a contract with Premo Copper Ltd., an Indian company, for the supply of raw materials. The contract incorporated a multi-tier dispute resolution clause, stipulating that any disputes would first be arbitrated in India, with a provision for further arbitration in Singapore if necessary. Initially, the business relationship between the parties was smooth, and contractual obligations were being fulfilled without issues. However, disputes arose later regarding alleged breaches of contractual terms, leading to arbitration proceedings. The first arbitration, seated in India, ruled in favor of Premo Copper. Dissatisfied with the outcome, Onko Metals invoked the second arbitration in Singapore, as permitted under the contract, which resulted in an award in its favor. Premo Copper challenged the enforceability of the second arbitral award in India, arguing that the dual arbitration mechanism is legally unsustainable. It contended that allowing multiple arbitration proceedings over the same dispute undermines finality in arbitral awards and creates legal uncertainty. Additionally, Premo Copper asserted that conflicting arbitral awards could lead to enforcement challenges and inconsistencies in international commercial arbitration.
- Analyse the validity and enforceability of multi-tier arbitration clauses in context of a settled case law.

(5 marks)

- (iii) Div Studios Ltd entered into an agreement with Astra Broadcasting, a government-owned media network, to produce a reality show. Despite initial approval, Astra Broadcasting later refused to air the show, leading Div Studios to initiate arbitration. During the arbitration proceedings, Div Studios sought to amend its statement of claims

: 11 :

to include additional financial losses incurred due to pre-production expenses such as research, scripting, and hiring production staff. The arbitrator rejected the application, ruling that the amendments constituted new claims barred by limitation. Div Studios challenged this decision before the High Court, arguing that the amendments were mere clarifications rather than fresh claims.

With reference to judicial precedent, comment whether Div Studios will succeed ?

(5 marks)

PART-II

5. Mr. Salman and Ms. Ria, who met via mutual marriage broker namely Mr. Nikah. Families of both Mr. Salman and Ms. Ria were preparing for their upcoming wedding, the invitation cards were printed, dates were decided, hotels were paid advance money and what not, everything seemed to be going smoothly until disagreements arose over the financial responsibilities for the wedding festivities, specifically for the ring ceremony and the main wedding event. As tensions escalated and a resolution seemed elusive, rumours spread that Ria's family was considering finding another match for their daughter. This threat of breaking off the relationship escalated the conflict, leading both parties towards a costly and emotionally draining breakup. Not only would they have to invest more resources in finding new matches, but all the preparations made for the wedding would go to waste.

Thereupon, Mr. Nikah was being asked by both the parties to find someone new for them since they had a truce with their previous match. At this, Mr. Nikah introduced Mr. X, an expert in mediation and conciliation matters with both the parties to arrive at some settlement. Mr. X acted as a neutral third party; brings both sides together for a facilitated discussion. Initially, ego and unresolved grievances hinder progress, and the impasse remains unchanged. However, Mr. X didn't give up. Recognizing the need for separate conversations to uncover underlying concerns, one day Mr. X meets with Salman's family privately and a day after with Ria's family.

With a deeper understanding of each side's perspective, Mr. X requests both the families to meet again and have a constructive dialogue. After hours of discussion, facilitated by Mr. X insights and interventions, a breakthrough occurs. Both families agree on a compromise : the bride's family will cover the expenses of the ring ceremony, while the groom's family will handle the main wedding function.

In the background of the above, answer the following :

- (a) Discuss the important advantages of mediation in arriving at a compromise between the parties.
- (b) When a court can disqualify a mediator ?
- (c) Before sitting with the parties, Mr. X was required to do his homework. What should be the procedure of mediation of Mr. X ?

(5 marks each)

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

6. Amaze Ltd. announced its acquisition of W. Foods Market Ltd., a high-end grocery chain, for \$13.7 billion, which was one of the largest deals in the retail industry. The negotiation between Amaze Ltd. and W. Foods Market Ltd is a well-known case, which has been analysed by various sources. One of the primary issues in the negotiation was the price at which W. Foods Market Ltd was willing to sell. Initially, Amaze Ltd. offered \$41 per share, but W. Foods Market Ltd rejected the offer as it was considered too low. However, negotiations continued until Amaze Ltd. increased its offer to \$42 per share, which W. Foods Market Ltd ultimately accepted.

Another issue in the negotiation was the integration of Amaze Ltd.'s online retail and distribution platform with W. Foods' brick-and-mortar stores. Amaze Ltd. wanted to use W. Foods' physical locations as distribution centers for its online grocery business. However, W. Foods Market Ltd was concerned about maintaining its unique brand identity and customer experience. To address this issue, Amaze Ltd. agreed to allow W. Foods Market Ltd to continue operating as a separate brand, with its own management team, purchasing practices, and quality standards. There were also concerns about the impact of the acquisition on W. Foods' employees, particularly given Amaze Ltd.'s reputation for prioritizing efficiency and automation over human labour. To address these concerns, Amaze Ltd. committed to maintaining W. Foods' employee benefits and job levels and pledged to continue supporting local suppliers and farmers. Additionally,

Amaze Ltd. announced plans to introduce new technology to improve operational efficiency, which would create new job opportunities for W. Foods Market Ltd employees.

Overall, the negotiation between Amaze Ltd. and W. Foods Market Ltd was complex and multifaceted, involving issues related to price, branding, and employee concerns. By reaching a successful agreement, Amaze Ltd. and W. Foods Market Ltd were able to position themselves as key players in the evolving grocery market, while also addressing the concerns of stakeholders and employees.

In the background of the case, answer the following :

- (a) What are the elements of the negotiation process ?
- (b) What are the steps during the negotiation process ?
- (c) What are the negotiation techniques and styles for negotiation practitioners ?

(5 marks each)

Or (Alternate Question to Q. No. 6)

- 6A.** (i) Plethora Private Ltd and Count Enterprises are embroiled in a contractual dispute and have chosen mediation as their resolution method. If the parties reach a mutual agreement, the mediator will document the terms in a settlement that is confidential, binding, and enforceable. However, if no consensus is achieved, the parties can either accept the mediator's recommendation - which will become binding unless explicitly declined within a predetermined period or opt for a final decision that is immediately enforceable.

: 15 :

As a legal advisor, evaluate these two scenarios and explain the processes by which the mediator ensures that the resolution is enforceable.

(5 marks)

- (ii) “The feature of remaining secret makes the ‘mediation’ different from court litigation procedure as well as different from other modes of alternate dispute resolution mechanism.” Discuss the importance of confidentiality in mediation and examine exceptions, if any.

(5 marks)

- (iii) ‘Cross-cultural mediation can be very difficult for some practitioners and alternately be very beneficial to others.’ Comment in the background of parties to international negotiations.

(5 marks)

————— o —————