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## UNIVERSITY OF PETROLEUM AND ENERGY STUDIES

END Semester Examination, May 2018

Program: B.Tech ET LLB IPR, B.Tech CS LLB CL

Semester – X

Subject (Course): Arbitration and Conciliation & ADR Mechanism

Max. Marks: 100

Course Code : LLBL461

Duration : 3 Hrs.

No. of page/s: 3

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### SECTION A

(5 x2) =10

**Attempt all**

- 1) Whether an arbitration agreement providing for arbitration by two arbitrators is valid?
- 2) How is conciliation different from arbitration? When does the conciliation proceedings commence?
- 3) Explain the distinction between an interim and final award.
- 4) Write short note on Arbitration Amendment Act 2015
- 5) Discuss the law laid down by the constitutional Bench of the supreme court in BHARAT ALUMINIUM COMPANY V KAISER ALUMINIUM TECHNICAL SERVICES SLT (2012) 71 Vol VII.

### SECTION B

(1x10+2x5) =20

**Attempt all**

- 6) X and Y entered into a contract. Dispute arose. As per the arbitration agreement clause both appointed their arbitrator. The two arbitrators thus appointed started the proceedings in which both the parties participated till end. The award was made and pronounced. After the announcement of award, X challenges the composition /appointment of arbitral tribunal as against the provisions of sec 10/11 of Arbitration Act 1996. Discuss.  
**(10)**
- 7) Arbitral tribunal can decide whether a matter referred to it comes within the scope and ambit of arbitration but it cannot decide about the validity of the contract, which embodies the

arbitration clause. Comment and discuss.  
(5)

8) An arbitrator must not receive information from one side, which is not disclosed to the other, whether the information is given orally or in the shape of documents “Comment (5)

**SECTION C**

**(1x10+2x5) =20**

**Attempt All**

9) What are the rules for the appointment of conciliators? Can there be more than one conciliator. When a conciliator can formulate a settlement agreement and what is the authenticity of such a settlement. Critically analyze.

OR

Enumerate the grounds for setting Aside the arbitral award under sec 34 of arbitration and conciliation Act,1996,by the court .Discuss any two of the grounds in detail.  
(10)

10) Define “Foreign Award”. What is a foreign Award as per New York Convention on foreign Awards? What are the essential conditions for enforcement of ‘foreign Award’ under sec 48 of the arbitration and conciliation Act, 1996.Discuss  
(5)

11) Draft an Arbitration clause. (5)

**SECTION D**

**(2X25)=50**

12) X Gas and Oil commission had placed an order on Saw Pipes for supply of equipment for off shore exploration, to be procured from approved European manufacturers. The delivery was delayed due to general strike of steel mill workers in Europe. Timely delivery was the essence of the contract. X granted extension of time, but it invoked the clause for recovery of Liquidated Damages by withholding the amount from the payment to the supplier. X deducted from the payment \$3, 04,970.20 and Rs 15, 75,557 towards customs duty, sales tax and freight charges. Saw pipes disputed the deduction and matter was referred to arbitration. While the arbitral tribunal rejected Saw Pipe’s defence of force majeure, it required X to lead evidence to establish the loss suffered by breach and proceed to hold, in absence of evidence of financial losses, that the deduction of Liquidated damages was wrongful. The award was challenged by X; inter alia as being opposed to public policy X’s case was that the arbitral tribunal failed to decide the dispute by not applying the prevailing substantive law, ignoring the terms of the contract and customary practices of usage of trade in such transactions. X challenged the award as being patently illegal.

Q1) Whether X had the right to Liquidated Damages. **(10)**

Q2) Whether Patent illegality could be used as a ground to assail the award under section 34. **(15)**

13) AB Power Plant Ltd. had entered into a contract with XY Electric Co., a company incorporated under the laws of State of New York in USA under which it had to supply equipment and power services for setting up a thermal power plant. The Government of India approved the said contract. The total price of the contract was US\$13,195,000. All the items were to be delivered in 15 months from the effective date and the completion of the plant was to be done within 30 months. The contract provided for payment in installments and required execution .of unconditional negotiable promissory notes for all the installments. The contract contained an arbitration clause, which provides that any disagreement arising out of or related to the contract, which the parties are unable to resolve by sincere negotiation, shall be finally settled in accordance with the Arbitration Rules of the International Chamber of Commerce.

It seems there was some delay on the part of XY Electric in adhering to the time schedule for supply of equipment and consequently AB rescheduled the payment installments and certain

installments were unpaid under due dates. XY Electric initiated arbitration proceedings before the Arbitration Court of ICC. .Both the sides filed civil suits in Bombay and Calcutta High Courts. Finally, arbitral award was given in favor of XY Electric Ltd with compensatory amount along with interest.

1) Can the award be set aside? Give reasons. **(15)**

2) Is judicial intervention justified? Give reasons for the same. **(5)**

3) Whether it is a case of international commercial arbitration. Define international commercial arbitration as given under the Act. **(5)**

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### SECTION A

(5 x2)=10

- Q1) Write short note on Arbitration Amendment Act 2015.
- Q2) What is meant by termination of conciliation proceedings? Explain
- Q3) Comment on International Arbitration Bill 2018.
- Q4) Explain the distinction between an interim and final award.
- Q5) Define public policy in the context of sec 34.

### SECTION B

(1x10+2x5) =20

**Attempt all**

- Q6) Discuss the law laid down by the constitutional Bench of the supreme court in BHARAT ALUMINIUM COMPANY V KAISER ALUMINIUM TECHNICAL SERVICES SLT (2012) 71 Vol VII. (10)
- Q7) Explain whether the power of appointment of arbitrator under sec 11 of the Arbitration and Conciliation Act, 1996 is judicial or administrative in nature with help of case laws. (5)
- Q8) Discuss the procedure outlined for appointment of arbitrators. (5)

## SECTION C

(1x10+2x5) =20

### Attempt All

Q9) X and Y entered into a contract. Dispute arose. As per the arbitration agreement clause both appointed their arbitrator. The two arbitrators thus appointed started the proceedings in which both the parties participated till end. The award was made and pronounced. After the announcement of award, X challenges the composition /appointment of arbitral tribunal as against the provisions of sec 10/11 of Arbitration Act 1996. Discuss (10)

Q10) Discuss the power of arbitrator to rule on its own jurisdiction. (5)

Q11) Define “Foreign Award”. What is a foreign Award as per New York Convention on foreign Awards? What are the essential conditions for enforcement of ‘foreign Award’ under sec 48 of the arbitration and conciliation Act, 1996? (5)

## SECTION D

(2X25) =50

**Q12)** Venture Global Engineering (VGE) incorporated in the USA and Satyam Computer Services Ltd (SCSL) of Hyderabad, India, entered into a joint venture agreement in 1999 to constitute a company named Satyam Venture Engineering Services Ltd. (SVES) in which both VGE and SCSL have 50 per cent equity shareholding. A Shareholders Agreement (SHA) was also executed between the parties on the same day, which provides that disputes have to be resolved amicably between the parties and failing such resolution, the disputes are to be referred to arbitration. In February 2005, disputes arose between the parties SCSL alleged that the appellant had committed an event of default under the SHA owing to several venture companies becoming insolvent and they had exercised its option to purchase the VGE shares in SVES at its book value. On a request from SCSL, the London Court of International Arbitration appointed an arbitrator and he passed an award directing VGE to transfer the shares to SCSL. SCSL filed a suit for enforcement and recognition of the award before the US District Court of Michigan under the New York Convention, which was allowed to SCSL. Aggrieved, VGE filed a suit in the City Civil Court, Secunderabad, to set aside the award and the court passed an interim order of injunction. restraining SCSL from seeking or effecting the transfer of shares under the terms of award. otherwise.

- 1) Define international commercial Arbitration. Is this a case of International Commercial Arbitration? Give reasons. (10)
- 2) Can parties approach Indian court for setting aside the award under PART I. (5)
- 3) Has this judgment has totally turned over the original intention of the legislators while enacting the Act, thereby infusing a strong feeling of insecurity in dealings of foreign

companies with their Indian counterparts. Comment.  
(10)

**Q13)** Renusagar Power Plant Ltd. had entered into a contract with General Electric Co., a company incorporated under the laws of State of New York in USA under which it had to supply equipment and power services for setting up a thermal power plant. The said contract was approved by the Government .of India. The total price of the contract was US\$13,195,000. All the items were to be delivered in 15 months from the effective date and the completion of the plant was to be done within 30 months. The contract provided for payment in installments and required execution of unconditional negotiable promissory notes for all the installments. The contract contained an arbitration clause, which provides that any disagreement arising out of or related to the contract, which the parties are unable to resolve by sincere negotiation, shall be finally settled in accordance with the Arbitration Rules of the International Chamber of Commerce. It seems there was some delay on the part of General Electric in adhering to the time schedule for supply of equipment and consequently Renusagar rescheduled the payment installments and certain installments were unpaid under due dates.

1) Critically analyse the judgement given in the above case while discussing the main issues raised in this case.  
(25)

