

Advanced Diploma in Alternative Dispute Resolution (Batch 2021 – 2022)

Take Home – Annual Examination (June, 2022)

Paper III – 1.3. Law of Arbitration and Conciliation in India

TOTAL MARKS: 100

INSTRUCTIONS TO CANDIDATES

- a) Read the instructions for Take Home Examination carefully and adhere to the same.
 - b) *Please mention your name, ID No., subject name and total number of pages on the Answer Sheet.*
 - c) *Clearly indicate the question numbers while answering them.*
 - d) *Answer all the four questions and each question carries 25 marks.*
 - e) *The approximate word limit for a 25 marks question is 800-1000, for a 15 marks question, 600-700, for a 10 marks question 400-500 and for a 5 marks question 200-250.*
 - f) *All the candidates are required to submit only word / Pdf files containing the typed answers.*
 - g) *All papers will be uploaded on Turn-it-in for plagiarism check. Any paper with more than 15% similarity will be considered to be plagiarized and shall not be evaluated.*
 - h) *Since this is a take home exam, we expect your answers to be analytical rather than straight answers.*
 - i) Copying from any source including from other students is strictly prohibited. Plagiarism is considered as a serious academic mis-conduct and the University will take action as it deems fit.
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Q. 1. How should one define the principles of competence and competence and separability? Why are those principles often analysed and considered in conjunction with each other? Critically examine the application of both the principles in relation to India? **(25 marks)**

Q. 2. Discuss and analyse the powers and duties of an arbitrator under the Indian Arbitration and Conciliation Act, 1996. **(25 marks)**

Q.3. In August 2019, Cielo, a car manufacturer in New Delhi entered into an exclusive Distribution Agreement with MT Motors in Hyderabad. MT Motors was appointed as the sole distributor of Cielo cars in Telangana. The agreement was governed by Indian law and contained an arbitration clause providing for arbitration by a sole arbitrator in New Delhi. There was a dramatic drop in the purchase of new cars due to the coronavirus pandemic and MT Motors failed to reach the agreed minimum purchase targets in the following months. The parties commenced negotiations in April 2021 in an attempt to alter the terms of the agreement. MT Motors alleged that a number of defects were found in the cars and negotiations broke down.

(i) In August 2021, MT Motors commenced court proceedings for breach of contract in Hyderabad. What are the options available to Cielo to enforce the provisions of the arbitration agreement ?

(ii) Despite the court proceedings, in October 2021, Cielo commences arbitration proceedings in New Delhi. MT Motors decides not to participate. Can the arbitration proceedings continue and will this decision prevent MT Motors from challenging the award?

(iii) In the course of the arbitration proceedings, Cielo's lawyers suggest obtaining an injunction to freeze some of the assets of MT Motors. Would it be possible to request such an order from a court? **(25 marks)**

Q.4. Critically examine the application of the public policy defence by the Indian Courts so as to refuse the enforcement of arbitral awards with the aid of relevant cases and provisions of law. **(25 marks)**