DIRECTORATE OF DISTANCE EDUCATION
NALSAR UNIVERSITY OF LAW, HYDERABAD

Post-Graduate Diploma in Alternative Dispute Resolution (Batch 2019 – 2020)

Take Home – Supplementary Examination (January, 2021)

Paper IV – 1.4. International Commercial Arbitration

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 answer for the 25 marks question should be written in 1200 - 1500 words and for the 10 marks / 15 marks question it should be 800 – 1000 words.***
f) ***Since this is a take home exam, we expect your answers to be analytical rather than straight answers.***
g) **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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1. a. Critically examine the grounds for challenging an award under the Model Law and compare the same with those under Indian Law? **(15 Marks)**

   b. Briefly examine the procedure of recognition and enforcement of foreign arbitral awards referring to different conventions. Can the awards be enforced in another jurisdiction when it has been set aside at the seat? **(10 Marks)**

2. Critically examine the regime governing the power of the arbitral tribunal to grant measures. **(25 Marks)**

3. a. Elaborate the difference between seat and venue with the help of relevant provisions and case laws. **(15 Marks)**

   b. When and to what extent can the national courts interfere with the arbitral proceedings? **(10 Marks)**

4. Please read the following facts and answer the questions that follows:

   An Indian buyer and a seller from Singapore negotiate the prospective sale of a piece of an equipment to be designed according to the buyer's specifications. The negotiations are initiated by the buyer's parent company. After the buyer's parent company and the seller have exchanged information about the commercial terms of the prospective contract, one of the buyer's subsidiaries participates in the negotiations to provide the technical specifications of the equipment.

During one of the zoom conversations with the buyer’s subsidiary, the seller had asked whether the buyer would be willing to accept an arbitration clause in the contract, according to which arbitration is to take place in Singapore. The subsidiary answered that it would ask the parent company, but that in principle it could not see any obstacles to that. However, there was no follow up from either party on this.

The negotiations advance and the seller expects that the contract will soon be formalized. To ensure quick performance, the seller starts purchasing some of the material necessary to produce the equipment.

Due to unexpected developments in the market, the buyer loses interest in the equipment and the contract is never formalised. The seller affirms that the buyer had in fact committed itself to buying the equipment, and requests reimbursement of the damages that it suffered because of the buyer’s breach of its de facto contractual obligations.

The seller initiates arbitration in Singapore against the parent company based on an oral arbitration agreement. The buyer objects to the jurisdiction of the arbitral tribunal because there is no arbitration agreement. Under Singapore Law, an arbitration agreement must be in writing. Even if there was a binding oral arbitration agreement, it would not have entered between the seller and the buyer’s parent company, because the subsidiary did not have the power to bind the parent’s company.

a. Which law governs the form of the arbitration agreement? Which law governs the ability of the subsidiary to bind the parent company? **(10 Marks)**

b. If the arbitration finds that it has jurisdiction, and the seller obtains an award ordering the parent company to pay a certain amount and subsequently, the seller seeks enforcement of the award in India. Explain what all defences does the buyer have against the enforcement of award? **(15 Marks)**