

**DIRECTORATE OF DISTANCE EDUCATION
NALSAR UNIVERSITY OF LAW, HYDERABAD**

Advanced Diploma in Alternative Dispute Resolution

P.G. Diploma in Alternative Dispute Resolution

Academic Year: 2022-2023

Annual Examination (June, 2023)

Paper IV – 1.4. International Commercial Arbitration

Duration of the Examination : 3 hours

TOTAL MARKS: 100

INSTRUCTIONS TO CANDIDATES

- a) Read the instructions carefully and adhere to the same.
 - b) Please mention your DDE ID No., date of the exam, name of the programme & subject on the Answer Sheet and the Additional Answer Sheets, if any.
 - c) The questions to be interpreted as given and no clarification can be sought from the Invigilator.
 - d) Clearly indicate the question numbers while answering them. Answers without question numbers / wrong question numbers will not be evaluated.
 - e) Write the answers clearly and neatly. Answers in illegible handwriting will not be taken into consideration.
 - f) Candidates are prohibited to carry phones or any other electronic devices, books, material etc. in the Examination Hall.
 - g) Copying is strictly prohibited and is considered as a serious academic mis-conduct and the University will take action as it deems fit.
-

Answer all the four questions and each question carries 25 marks.

- I. Critically examine the advantages and disadvantages of international commercial arbitration over other alternative methods of dispute resolution. **(25 Marks)**

- II. Critically evaluate the seat theory of arbitration. **(25 Marks)**

- III. An English start-up 'SkyFly' enters into a sales agreement with an Indian construction company 'T&L Construction' for the sale of 100 high technology drones for monitoring construction sites. The major advantage of these drones as advertised by SkyFly is that they adapt to any pre-existing software. The agreement contains the following arbitration clause:

"Any dispute arising out of or in connection with the present agreement shall be settled by an arbitral tribunal comprising three members, having expertise in computer sciences and new technologies. The seat of such arbitration shall be Mumbai".

The first batch of drones is delivered to T&L, and they function well, however, cannot be connected to the software used by T&L. An attempt by the parties to arrive at a solution fails, and T&L thus terminates the agreement, tries to return the drones and asks for a refund, which is refused by SkyFly. Thereafter, T&L initiates arbitration proceedings at Mumbai.

T&L appoints Dr Kumar, a professor of science and technology law at Mumbai University, as arbitrator. He had delivered a lecture at an international conference on the topic of arbitration for start-ups, in which he had opined that arbitrators should be sensitive about the difficulties faced by young businesses, especially in the area of new technologies. However, this lecture was not mentioned in the disclosure forwarded to the parties, but the text of the speech was freely accessible on his website.

SkyFly designated Mr Andrews, a renowned consultant specializing in the use of camera technology for project management.

Both arbitrators face difficulty in agreeing upon the chair of the tribunal, but eventually appoint Mr Frank, a German lawyer with extensive experience in arbitration.

After a few months, during the course of the first hearing, Mr. Frank remarks that he does not know much about new technologies but is looking forward to learning new things in this arbitration. T&L, at the same hearing, incidentally learns that Mr Andrews happens to have a 20% stake in SkyFly.

Discuss the grounds, if any, on which the parties may challenge each one of the arbitrators. Also, discuss the chances of success of such challenge. **(25 Marks)**

- IV.** Why is India not preferred as a seat of arbitration by an international party? What suggestions would you give to improve this situation? **(25 Marks)**