

Name:	 UPES UNIVERSITY WITH A PURPOSE
Enrolment No:	

UNIVERSITY OF PETROLEUM AND ENERGY STUDIES
End Semester Examination, December 2019

Course: B.B.A, LL.B. (Hons.) Corporate Law 2015

Semester: IX

Program: International Commercial Arbitration

Time: 03 hrs.

Course Code: LLBL 152

Max. Marks: 100

Instructions:

- 1) Mention Enrolment No at the appropriate place in the question paper.
- 2) No student will leave the room until one hour from the commencement of examination.
- 3) All sections are compulsory.

S. No.		Marks	CO
Q 1	What is the standard of proof admissible in arbitral proceedings?	2	CO1
Q 2	What is the meaning of partial and interim awards?	2	CO1
Q 3	Explain <i>res judicata</i> effect of the award?	2	CO1
Q 4	Enumerate two important features of New York Convention 1958.	2	CO1
Q 5	What is the meaning of <i>depechage</i> ?	2	CO1
SECTION B			
Q 6	Discuss the meaning of expedited procedures in the context of international arbitration.	5	CO2
Q 7	Elucidate the meaning of trade usages.	5	CO2
Q 8	Explain competence-competence doctrine?	5	CO2
Q 9	Discuss the measures of compensation under bilateral investment treaties.	5	CO2
SECTION-C			
Q 10	Sundaram Finance Ltd, the appellant, granted the first respondent, Abdul Samad, a loan in accordance with the terms and conditions provided in the loan agreement dated 18 August 2005. The second respondent executed a separate guarantee letter on the same day and stood as the guarantor for repayment of the loan amount. The loan was repayable in installments by 3 January 2009. Due to a default in the payment of installments, arbitration proceedings were initiated by the appellant, as	10	CO3

	<p>per the arbitration clause in the Loan Agreement. Due to the non-participation of the respondents in the arbitration proceedings, an ex parte arbitral award was granted on 22 October 2011. The appellant initiated execution proceedings under s 47 read with s 151 and Order XXI Rule 21 of the Code of Civil Procedure (CPC) before the courts at Morena, Madhya Pradesh (where assets of the respondent were located) as the ex parte award was enforceable as a decree under Section 36 of the Arbitration and Conciliation Act 1996 (ACA 1996) (the Act). The District Courts at Morena refused to entertain the application due to lack of jurisdiction and directed the claimant to file before the court of a competent jurisdiction. The District Court following the approach adopted by Madhya Pradesh and Karnataka High Courts directed the claimant to file an execution application before the court of a competent jurisdiction (having jurisdiction over the arbitral proceedings) and then seek a transfer of the decree. Being aggrieved by the District Court order and the differing views of various High Courts and the position taken by the Madhya Pradesh High Court on this issue, the claimant directly approached the Supreme Court of India.</p> <p>What was the ratio laid down by the Supreme Court of India in this case?</p>		
Q 11.	Discuss the concept of <i>lex mercatoria</i> and its applicability in modern International arbitration.	10	CO4
SECTION-D			
Q12	<p>The case involved a highly convoluted set of facts where the parties had entered into multiple agreements and disputes had arisen between the Indian promoter and the foreign collaborator in relation to a joint venture which had been undertaken by the two.</p> <p>Among the agreements (seven Transaction Documents), which were entered into between the parties and around which the dispute primarily revolved was the main agreement named Shareholders Agreement.</p> <p>The allegations inter alia were that Respondent No. 1 and 2 were to undertake distribution activities in India solely through Respondent No. 5 i.e. the entity formed</p>		

due to the joint venture between the Appellant and the Respondent No.1 and 2 and not through any of their group entities. However, Severn Trent (Delaware) Inc. i.e. the ultimate parent company of Respondent No. 1 and 2 was distributing the products in India also through Respondent No. 4 which through a set of subsidiaries and joint ventures was also alleged to be a group entity of Respondent No. 1 and 2. Thus, the Appellant filed a suit before the Bombay High Court inter alia praying for declaration that the Transaction Documents entered into are valid, subsisting and binding and sought injunction against the Respondents from committing breach of contract by directly or indirectly dealing with any person other than the Respondent No.5 in relation to the products. An application under section 45 of the Act was filed by certain Respondents requesting for the matter to be referred to arbitration in light of the arbitration clause under the SHA. The application was firstly dismissed by the Single Judge and thereafter on appeal, the Division Bench of the High Court allowed the application ("**Impugned Order**"). Thus, the Appellant filed an appeal challenging the impugned order.

Contentions of the Appellant : The Appellant inter alia contended that Respondent No. 3 and 4 were necessary and proper parties as substantive reliefs had been claimed against them and as they were not a party to any of the agreements, the dispute is not covered by the arbitration clause. Further, it was stated the expression 'parties' as used under Section 45 of the Act means all the parties and not some or any of them and refers to the parties to the agreement. In furtherance to this, it was argued that under the Act, it was not possible to refer some parties/or some matters to arbitration while leaving the balance to be decided by another forum and that bifurcation of cause of action is not permissible. Lastly, it was contended that the IDA, MDA, TMA and Collaboration Agreement did not contain any arbitration clause and further IDA provided for courts at Pennsylvania to have exclusive jurisdiction and thus due to the uncertainty and indefiniteness the arbitration clause is not enforceable.

Contentions of Respondent: The Respondents primarily contended that the entire dispute revolved around the SHA and that Respondent No. 3 and 4 had been added merely to defeat the arbitration clause. The Transaction Documents executed were in

	<p>furtherance to the SHA and together formed a composite transaction and that their performance was dependent on the performance of the SHA. Further, it was argued that the Act did not provide for any limitation on reference to arbitration and thus the court, in light of the facts of the case, has the power to refer parties to the arbitration with the aid of the inherent powers of the court as provided under Section 151 of the Code of Civil Procedure, 1908. Lastly, equating between section 3 of the Foreign Awards (Recognition and enforcement) Act, 1961 (now repealed) and section 45 of the Act, it was contended that under section 45, the applicant seeking reference can either be a party to the arbitration agreement aor a person claiming through or under such party.</p> <ol style="list-style-type: none"> 1. Discuss the ratio laid down in the case of Chloro Controls India Pvt. Ltd. v Severn Trent Purification Inc. 2. Discuss the obiter laid down in this case. 	<p>15 10</p>	<p>CO4</p>
--	---	------------------	------------

<p>Q 13.</p>	<p>The Appellant named Fox entered into a contract with the 1st Respondent named Mandal on 9th May, 1997. This contract contained an arbitration clause, which provided that arbitration was to be as per the rules of the International Chamber of Commerce (for short ICC). On 23rd October, 1997 the Mandal filed a request for arbitration with ICC. Parties agreed that the arbitration be held in Paris, France. ICC has appointed a sole arbitrator</p> <p>Mr. Mandal Respondent filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter called the said Act) before the IIIrd Additional District Judge, Indore, M.P. against the Appellant and the 2nd Respondent Mulla. One of the interim reliefs sought was an order of injunction restraining these parties from alienating, transferring and/or creating third party right, disposing of, dealing with and/or selling their business assets and properties. The Appellant Fox raised the plea of maintainability of such an application. The Appellant contended that Part I of the said Act would not apply to arbitrations where the place of arbitration is not in India. The III Additional District Judge dismissed this application on 1 February 2000. It was held that the Court at Indore had jurisdiction and the application was maintainable. The Appellant filed a Writ Petition before the High Court of Madhya Pradesh, Indore Bench. The said Writ Petition has been dismissed by the impugned Judgment dated 10th October, 2000. The Appellant moved Supreme Court for relief.</p> <ol style="list-style-type: none"> 1. Discuss the ratio decided by the Supreme Court of India in the case of Bhatia International v Bulk Trading SA. 2. Discuss the case law in brief in which the ratio of Bhatia International was modified. 	<p>15</p> <p>10</p>	<p>CO4</p>
--------------	--	---------------------	------------

