

NATIONAL LAW UNIVERSITY, DELHI
B.A, LLB. (Hons.): III-YEAR, V-SEMESTER
End-Semester Examinations, June-2015
Paper 6.3: Clinic-I

Time: 3 Hours

Total Marks: 50

Instructions:

1. Read the questions carefully and answer. All questions are compulsory.
 2. No clarification shall be sought on the question paper.
 3. Do not write anything on the question paper except your Roll No.
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Q.1 Write Short Notes on:

- a) Four stories about mediation according to Prof. Hazel Genn
- b) Susan Oberman's five models of mediation in the context of theory of conflict, empowerment of parties and definition of success
- c) Concept of 'failed negotiation' in the context of strategic and cognitive barriers
(3X4=12 Marks)

Q.2 Critically analyze the provisions of Chapter-VI A of the Legal Services Authorities Act, 1987 in the light of the decision of the Supreme Court of India in *Bar Council of India v. Union of India*, against the backdrop of fundamental principles/philosophy of ADR mechanisms.
(7 Marks)

Q.3 The Supreme Court of India in *Salem Case II* and *Afcon Infrastructure* cases tried to make Section 89 CPC workable. Discuss the various guidelines/directions which are given for the effective implementation of the spirit behind the text of Section 89 and Order X Rule 1 A-C, CPC by the trial courts.
(8 Marks)

Q.4 Analyze the concept of Mandatory ADR mechanisms in the light of the views of Prof. Frank Sander, Prof. Hazel Genn, Marc Galanter and Lord Woolf (Report) and the requirement of 'good faith' participation and the consequences thereof. Also analyze the Indian Jurisprudence on mandatory ADR programs.
(8 Marks)

Q.5 Answer the following question in light of the facts provided. In the event you consider that responding without making further assumption(s) is not possible, state the assumption(s) clearly noting the reason(s) why you believe it to be necessary, and proceed to respond to the question.

Under an agreement entered into on 01.12.2014, Bharat Sanchar Nigam Limited (BSNL, New Delhi), appointed ACME Corporation (Head Office in Gauhati), as a wholesale dealer for providing various BSNL Services including mobile phone connections for Eastern UP, Bihar, Jharkhand, West Bengal, Orissa, and North East telecom circles. The negotiations leading to the agreement were undertaken by CGM (NWP-CFA, IT & Reg), BSNL and Mr. Sujoy Ghosh, CEO, ACME (Dealer) respectively. Relevant clauses from the agreement (main agreement) are extracted below:

“Clause 45.1: Dealer shall be entitled to appoint and grant license to Direct Selling Agents (DSA) to market and sell BSNL Services in specified telecom circles. DSAs shall be appointed after due verification by ACME, subject to final approval by BSNL.

Clause 45.2: Dealer shall at all points of time closely monitor and supervise working of DSAs so appointed, and shall be liable for any loss caused to BSNL from activities of such DSA.

Clause 81.1: Any dispute or a difference of any nature whatsoever regarding any right, liability, act, omission on account of any of the parties hereto arising out of or in relation to this Agreement shall first be attempted to be resolved amicably.

Clause 81.2: Any dispute which has not been amicably resolved, shall be referred to a committee of two members, comprising of CGM (NWP-CFA, IT & Reg), BSNL and a BSNL officer nominated by her. Dealer will not be entitled to raise any objection against any nomination so made. It is also a term of this agreement that no person other than those mentioned aforesaid shall act as members hereunder. The committee shall accept representations from parties and render a reasoned decision. The decision of the members so appointed shall be final, conclusive and binding on all parties to the Agreement.

Clause 110. In the event the Dealer fails to perform any obligations under this agreement, BSNL shall be entitled to terminate this agreement. Termination of this agreement would lead to automatic cancellation of any DSA license granted in pursuance hereof.”

On 01.03.2015 ACME entered into non-exclusive DSA license agreements with RRE Ltd. for Eastern UP, Bihar and Jharkhand telecom circles; IPL Ltd. for West Bengal and Orissa telecom circles; and NHB Ltd. for North East telecom circles. RRE had its registered office in Bhopal; IPL in Kolkata; and NHB in Gauhati. Clearances were sought from and provided by BSNL. All three DSA agreements though independently entered into were substantially similar in form and content, and contained the following relevant clauses: (DSA agreement)

“24. The DSA shall verify authenticity of applicants (individual or bulk) and information provided by them, before supplying any of the BSNL services. Verification would be carried out in accordance with GOI rules and procedures mandated by BSNL. No services would be provided without the DSA first authenticating the applicant. All information collected would be transmitted to Dealer, to be further transmitted to BSNL.

58. No escalation shall be payable on the agreed contracted price. This agreement shall be interpreted, understood and given effect to in light of the main agreement unless otherwise specifically mentioned in this agreement.”

In April 2015 Express newspaper (a leading national daily) reported that RRE and NHB were providing bulk mobile connections to unverified retailers/dealers, leading to a potential threat to national security. The matter had been taken up for investigation by the Intelligence Bureau (IB) and Enforcement Directorate (ED), with the latter raiding offices of NHB. In view of these reports BSNL, vide a letter dated 03.05.2015, terminated dealership of ACME, rumored to be on the recommendations of IB, for failing to adequately monitor activities of RRE and NHB. As a direct consequence of this action RRE, IPL and NHB were rendered legally unable to further transact in BSNL Services. The three wrote to ACME protesting the cancellation, which in turn wrote to BSNL on 05.05.2015 demanding that its letter be recalled, and that the parties try and settle the matter amicably. No response was received from BSNL.

On 10.05.2015 RRE filed a writ petition before the Madhya Pradesh High Court (MPHC) alleging wrongful termination of the DSA license, and for issuance of writ in the nature of *Certiorari* for quashing the order of termination of dealership dated 03.05.2015. It arrayed BSNL, ACME, IPL and NHB as respondents. Further relief in the nature of *Mandamus* was prayed for directing BSNL to not interfere in the working of the petitioner. RRE further requested the matter be referred to arbitration, which was resisted by BSNL on the ground of lack of valid arbitration agreement. The MPHC however quashed the order dated 03.05.2015, and directed BSNL to maintain supply to RRE. It further referred all parties to arbitration, with directions to BSNL and ACME, to act in accordance with the main agreement.

On 13.05.2015 ACME issued a notice to BSNL alleging that it did not expect fair treatment if an employee of BSNL were to act as an arbitrator, and any such appointment would be prejudicial to its interest. It called upon BSNL by the said notice, to fix a meeting at Gauhati between the officers of BSNL and ACME within seven days so as to mutually agree upon an independent arbitrator. BSNL did not agree to the said request noting that such request was contrary to the main agreement.

On failure to get a positive response from BSNL, ACME filed an application on 22.05.2015 before the Chief Justice of the Gauhati High Court (GuHC), for appointment of an arbitrator. BSNL challenged the jurisdiction of the CJ on the ground that if at all an arbitrator could be appointed, it could only be done so in terms of Clause 81 of the main agreement. The Chief Justice overruled the objection, and since the matter had already been referred to arbitration by MPHC, appointed Dr. Smita Ray. J (ret'd) as the sole arbitrator. It reasoned that the CGM, being an employee of BSNL could not be presumed to conduct herself impartially or independently.

BSNL appealed against both the orders i.e. orders dated 10.05.2015 (MPHC), and 22.05.2015 (GuHC) before the SC, which decided to hear the petitions together. The matter is listed for 20.06.2015. You are attached as court clerk with one of the judge, who is part of the bench hearing the matter. She has asked you to prepare a legal note on the matter clearly identifying all issues involved, whether or not they had been raised before the courts below. Prepare a note bearing in mind applicable statutory and case laws. (Note: All orders were made by the respective high courts on the same date as of filing of writ petition. You may adopt any format for the legal note).

(15 marks)