

FACULTY OF LAW
UNIVERSITY OF DELHI
COURSE: LB-602, ALTERNATIVE DISPUTE RESOLUTION
ASSIGNMENT FOR INTERNAL ASSESSMENT
For Jan-April Semester, 2021

IMPORTANT INSTRUCTIONS

- 1. Maximum Marks: 50 (20-Negotiation; 20-Mediation; 10- Arbitration Clause)**
- 2. Number of Questions: 01**
- 3. You are required to write the following clearly on the top of the first page of your assignment:**
 - Full Name**
 - Section**
 - Name of the Centre**
 - Class roll number**
 - Exam roll number**

PLEASE START WRITING FROM THE SAME PAGE, NO NEED FOR ANY SEPARATE FRONT PAGE.

- 4. You will have to submit the assignment by uploading it on the Google Classroom of your teacher (handwritten or typed) on or before 19th April 2021 12 noon. KINDLY NAME THE FILE AS: Your full name_Exam Roll Number, before uploading.**
- 5. No late submissions shall be accepted.**
- 6. Submission of the Internal Assessment Assignment through Google Classroom shall be done with institutional ID ('du.ac.in') made available by DUCC.**
- 7. THIS IS AN EXAM. COPYING OF ANY SORT WOULD BE CONSIDERED AS USE OF 'UNFAIR MEANS'.**
- 8. In the light of the facts stated in the below-mentioned problem, you are required to answer the questions attached with each TASK**

KINDLY ANSWER STRICTLY AS PER THE QUESTIONS ASKED AND BE MINDFUL OF THE WORD-LIMIT.

PROBLEM SCENARIO

**This is a dispute between SHAKTI AUTOMOTIVE LIMITED and .
SHANGHAI ENGINE COMPONENTS INDIA PVT. LTD.**

BACKGROUND FACTS

- **SHANGHAI ENGINE COMPONENTS PVT. LTD. (SHANGHAI)** is a company duly organised and existing under the laws of England with its principal offices in the UK. It is a young and aggressive company that is engaged and specialises in manufacturing engine components for automotive and off-road vehicles. It is owned by FRANK (Chairman).
- **SHAKTI AUTOMOTIVE LIMITED (SHAKTI)** the appellant is a corporation duly existing under the Indian laws and engaged in the sale of automotive parts with its head office in Mumbai. It is owned by YASHVIR (Chairman).
- In 2008, SHAKTI was appointed (by SHANGHAI) as the exclusive distributor for motorcycle pistons for the territories of India, Sri Lanka, Nepal and Bangladesh under the brand name 'SHANGHAI Original'. For this, initially, an agreement dated 01-01-2008 had been entered into between both parties. That agreement was valid for a period of five years from January 2008 to December 2012.
- On 01.01.2013 SHAKTI and SHANGHAI deliberated and commonly consented to renew the contract for another year on the agreed terms and conditions. It was agreed that:
 1. SHAKTI AUTOMOTIVE LIMITED will continue to be an exclusive distributor of SHANGHAI for motorcycle pistons for the territories of India, Sri Lanka, Nepal and Bangladesh.
 2. SHANGHAI was not to appoint or seek to appoint, during this period, any other retailer or dealer for these territories.
 3. SHAKTI AUTOMOTIVE LIMITED was required not to undertake any other competing companies' exclusive dealerships for these products (motorcycle pistons) during this duration, for the mentioned territories.
 4. SHAKTI also agreed not to publicly disclose any confidential information or data relating to the operation of the company during and even after the termination of the business association.
 5. Both agreed to not make any published derogatory comments during and even after the termination of the business association that could harm each other's reputation in the market.
 6. Clause 6.2 of that agreement provided for an automatic renewal of the agreement for an additional period of one year and thereafter, unless, either party gave a notice of six months before the expiry of the said term, indicating its intention not to renew.

7. Also, in case of flouting of the condition mentioned in the agreement, the liquidated damages clause stated that any proven breach of these provisions would automatically entitle the opposite party to liquidated damages of Rs. 50 crores.

- As per Clause 6.2, after a year, the agreement was again renewed on 01.01.2014 but this time on March 20, 2014 SHANGHAI, through a notice, informed SHAKTI AUTOMOTIVE LIMITED about its intention to *not* renew the agreement on its expiration on 31.12.2014. SHANGHAI stated that there was an urgent need to make changes to the distribution agreement in tune with the changed business practices.
- Thus, both the parties started exploring the possibility of continuing the business association under different terms and a different business model. For the same, parties held discussions and exchanged a series of e-mails. Several versions of the proposed draft distribution agreement were exchanged. The seventh such draft was sent by SHANGHAI on 16.04.2014 in soft-copy form as an attachment to an e-mail of that date. The said agreement was printed on a stamp paper and two copies were sent to SHAKTI by SHANGHAI for signatures. As per SHAKTI, the said agreement was duly signed by them and forwarded to SHANGHAI on 21.04.2014. However, SHANGHAI ENGINE COMPONENTS INDIA PVT. LTD did not sign the agreement.
- On 21.05.2014, SHANGHAI sent an e-mail stating that although the parties had spent considerable time in understanding each other's business requirements, significant progress had not been made in that context and, therefore, SHANGHAI was withdrawing from the exercise.
- Unhappy with this development, SHAKTI contended that it has given its unqualified and unequivocal acceptance and thus the contract was already concluded between the parties because they had accepted the offer given by SHANGHAI. Whereas, SHANGHAI took the stand that no binding contract had resulted and that the alleged distribution agreement only remained a draft. This led to a bitter conflict between the parties.
- In the meanwhile, respecting the past cordial relationship shared by SHANGHAI with SHAKTI, it started rounds of internal discussions so that a midway approach can be adopted, and the deal can be re-worked among the parties. But on 28.09.2014 (while the current contract was still subsisting) SHAKTI grabbed an opportunity of entering into a similar kind of exclusive distributorship (for the next year, that is 2015) for motorcycle pistons with another competitor company **NEUTRON ENTERPRISES PVT. LTD. (NEUTRON)**.
- To make it official, SHAKTI hosted a grand ceremony that marked the finalisation of this dealership. The event was attended by reporters from almost every leading media houses in India and foreign countries. During the media session, one of the reporters from a widely read and renowned business magazine asked the Chairman (YASHVIR) of SHAKTI about what went wrong with the deal with SHANGHAI, and if the company was thinking about taking legal action against the SHANGHAI to which, in the live streaming, YASHVIR replied as follows: *'No. I will not sue SHANGHAI and would rather wish to start a new relationship with NEUTRON, as I no longer wish to deal in substandard products.'*
 - This comment by Chairman (YASHVIR) sparked a media stir for the next few days as it was broadcast and analysed by local magazines. It created an embarrassing situation for SHANGHAI and its Chairman (FRANK) who now wants to take a legal action against the Chairman and SHAKTI AUTOMOTIVE LIMITED for reputation

harm. SHANGHAI is demanding either Rs 50 Crores as damages or an unconditional public apology. Both these demands have been refused by SHAKTI.

- SHAKTI even made a counterclaim of Rs. 60 Crores calculated on account of breach of trust by not honouring the revised business agreement (which was drafted by SHANGHAI themselves), and notional business loss due to compromised business deal signed by SHAKTI in haste with NEUTRON.
- Denying this, SHANGHAI claimed that as per Clause 9 '*Neither party will have any other obligations in the event of termination.*' So, SHANGHAI is not liable for any speculative, arbitrary and unverifiable amounts.

TASK-I [Total 20 Marks]

It is clear that based on the facts stated above, SHANGHAI and SHAKTI are insisting on different things/claims. Assume that you are Mr FRANK of SHANGHAI and are negotiating with Mr YASHVIR of SHAKTI directly. Write a detailed note/answer CLEARLY covering the following points:

1. As FRANK, you do not want to burn the bridges. Somewhere deep inside your heart you know that SHAKTI **AUTOMOTIVE LIMITED** is not entirely wrong in its claims. However, you are deeply upset about the remark of 'sub-standard' products made by YASHVIR. Also, you are unsettled about SHAKTI's new business ally NEUTRON. Ideally, you would want to regain the trust of SHAKTI and significantly reduce the amount claimed. But you do not want to come across as a soft negotiator either.

What Negotiation Techniques /Strategies would you use to achieve the above. Write about any four of your preferred strategies giving reasons for the same.

10 Marks/Not more than 800 words

2. As FRANK of SHANGHAI ENGINE COMPONENTS INDIA PVT. LTD, give a clear insight into your BATNA, WATNA and BOTTOMLINE, alongwith reasons for the same.

10 Marks/Not more than 600 words

(Note: Leave the negotiation task aside. Irrespective of whatever transpired between both the parties during direct negotiation, you have to complete Task-II by looking at it afresh)

TASK-II [Total 20 Marks]

You are an established Mediator known for your knack for mediating Commercial disputes between parties. Mr FRANK and Mr YASHVIR have appointed you to mediate their dispute. Assuming yourself as the Mediator for the parties, answer the following points.

- 1) FRANK is way too aggressive and talkative from the beginning itself. He has too much to say. How would you open the mediation session? Write a detailed Opening statement, highlighting ground rules etc that will help set the tone of the process.

5 Marks/Not more than 500 words

2) Give at least 3 questions *each* that you would like to ask FRANK and YASHVIR in the private session in order to uncover more facts and identify their positions and underlying interests.

6 Marks

3) Give at least 2 crucial points that you would keep in mind at each stage of the mediation process—during Joint Session, Caucus/Private Session and Closure. Give reasons why you consider those as important.

6 Marks/Not more than 600 words

4) Give at least 2 settlement points that you foresee –that parties would keep in the final MSA (Mediation Settlement Agreement)?

3 Marks/Not more than 100 words

*(Note: Assuming that both negotiation and mediation has not yielded any result, go back to the initial phase and read the red portion **above** in order to complete TASK III)*

TASK-III [Total 10 Marks]

You are a very well known advocate who has a vision for the certainty and clarity to the arbitration clauses, depending upon the specifications and needs of parties. Both the parties have approached you for the drafting of ad-hoc arbitration clause. You have agreed to supply the *draft* of the arbitration clause to the parties on or before 19th April, 2021 by 12 noon.

Make a Draft Arbitration Clause (assuming that it would be finalised later) based on the BACKGROUND FACTS, stated above in RED colour.

10 Marks/Not more than 500 words