



2ND RMLNLU - KOCHHAR & CO. ARBITRATION MOOT COURT COMPETITION, 2024

23RD - 25TH FEBRUARY, 2024



CLARIFICATIONS

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Clarifications

1. I am writing this email to clarify that in SHA agreement 11.3, it is expressly mentioned that the seat will be UK then, saying that parties are not expressed about the governing law is correct?

No clarification required.

2. The prop talks about the valuation of shares of K2 Capital.

In Exhibit 1, fair market value needs to be calculated by a Big Four accounting firm.

But in annexure one, it needs to be calculated by a reputed accounting firm jointly agreed by Vandelay and KramERICA. Kindly clarify.

While Costanza is not a Big Four accounting firm, the parties agreed in writing to the appointment of Costanza as the auditor for determining the Fair Market Value.

3. Page 14, Clause 15.4 mentions "Clause 15 as dispute resolution clause while in SHA it is clause 11."

In Clause 15.4 of the SHA, the text "Clause 15 (Dispute Resolution)" be read as "Clause 11 (Dispute Resolution)".

4. I am writing to seek clarification on a specific point in paragraph 22 of the Moot Proposition. The paragraph mentions that on 12th November 2023, Kremica informed Vandelay about the departure of Sir Alex around the end of February/Mid March 2023. Given that the paragraph discusses a future event, it seems there might be a discrepancy with the provided dates. Typically, in such cases, the dates of future events should be presented as dates in the future rather than the past. Therefore, I kindly request clarification regarding the date of Sir Alex's departure mentioned in the paragraph.

In paragraph 22, please read "February/ mid of March 2023" as "February/ mid of March 2024".

5. I need clarification regarding the governing law and juridical seat of arbitration. In the problem both of these are different but usually both would be same. The seat would usually apply for both. Problems between the place of arbitration and juridical seat is the usual conflict.

No clarification required.

6. Whether the arbitral tribunal was constituted as per the guidelines given in SHA?

The appointment of the Arbitral Tribunal was in accordance with the provisions of Clause 11.5 of the SHA, without prejudice to Kramerica's objections to the jurisdiction of the Arbitral Tribunal.

7. I am writing to seek clarification on certain aspects outlined in paragraph 41 of the Moot Proposition, specifically concerning the appointment of arbitrators for the tribunal. Upon review, I observed that Clause 11.5, detailed under the dispute resolution heading, provides a process for the appointment of arbitrators. To ensure clarity, could you kindly confirm whether the procedures delineated in Clause 11.5 were adhered to in the appointment of arbitrators, as mentioned in paragraph 41?

Please refer to the response to query 6 above.

8. Additionally, I seek clarification on the status of Clause 15.4, addressing Governing Law and Jurisdiction. Could you specify whether this clause is considered a part of the Dispute Resolution process or the arbitration clause (Clause 11)?

Please refer to the response to query 3 above.

9. We would like to know whether the arbitration is being conducted by any specific arbitration centres. For example, the Delhi International Arbitration Centre or others.

This arbitration is an ad-hoc arbitration.

10. Could you please clarify what is the Uniform Citation Method meant to be followed for citations?

From Uniform Method of Citation, as given in the rulebook, it can be construed by the Participants that they can use any citation method in the Written Submission, however it shall be **Singular and Uniform** throughout the document(s) submitted.

11. In the proposition, Constanza is mentioned to be a Big 6 accounting firm. Is it also part of the Big 4 accounting firms?

Costanza is not a Big Four accounting firm. However, the parties agreed in writing to the appointment of Costanza as the auditor for determining the Fair Market Value.

12. While Kramerica argues the law governing the arbitration agreement to be governed by the law of the UK, it argues that none of the grounds cited by Vandelay fulfill the test for the grant of interim relief under Indian law. Are we then expected to only use Indian law for arguments under issue (d) or rely on the law of the UK too for the respondent?
For issues (c) and (d), teams are expected to restrict their arguments to Indian law only.

13. Paragraph 29 of the moot proposition states that Vandelay exercised the put option by way of letter while paragraph 30 mentions Vandelay “following up on its letter”. Does the letter constitute a legal notice?
No clarification required.

14. What was the purchase price paid by Vandelay for purchasing 25% of the shares of K2 Capital?
Vandelay acquired 50,00,000 shares of K2 Capital in 2018 at a purchase price of INR 775.22 per equity share.

15. On Pages 11 and 12 of the propositions, there are references to the “agreement to mediate and arbitrate.” In the Exhibit-1, Clause 11.1, the requirement to consult and discuss is mentioned before arbitration. Is that constituting the agreement to mediate, because there is no other mention of mediation in the Exhibit-1?
The reference to mediation implies discussions and consultations for the purposes of Clause 11.1.

16. What is the reference of the term “written notice” mentioned in Annexure 11.1 in the context of the current problem?
No clarification required.

17. Clarification regarding the dates mentioned in Para 22 of the moot Prop.
Please refer to the response to query 4 above.

18. Is the law governing the shareholders’ agreement and the arbitration clause the same or different?
No clarification required.

19. What constitutes “generally accepted International standards for valuation”?

No clarification required.

20. Does the fair market value as mentioned in the SHA have the same connotation given in one of the agreements via mutual agreement?

No clarification required.

21. Was there any Clause regarding the modification of the agreement mentioned in the SHA?

The SHA can be modified, amended or supplemented only by the mutual written agreement of the parties.

22. Does “informed” mentioned in para 22 signify the notice regarding the change of coaching team?

No clarification required.

23. Can parties by mutual agreement override the provisions of a contract?

Please refer to the response to query 21 above.

24. Will the law applicable to the Seat of arbitration be followed in the substantive proceedings i.e The issues which are asked on merit.

Please refer to the response to query 12 above.

25. Clarification is sought as to the rules governing the process of arbitration under the Shareholders Agreement annexed as Exhibit – 1 to the Moot Proposition. Kindly clarify if the above specified international commercial arbitration process is governed by any rules, and if yes, please specify the rules as well.

Please refer to the response to query 9 above.

26. Clarification is sought in Clause 15.4 (on Page 14 of the Moot Proposition) of the Shareholders Agreement annexed as Exhibit – 1. Relevant portion of the clause states “subject to the provisions of Clause 15 (Dispute Resolution)”. However, it is manifest from the title to Clause 11 of the Shareholders Agreement that Clause 11 is pertaining

to “DISPUTE RESOLUTION”. Kindly clarify which clause is to be referred on dispute resolution, and if it is Clause 15, an excerpt of the same please be provided.

Please refer to the response to query 3 above.

27. Whether the venue for arbitration is India and the seat of the arbitration is the UK?

The parties have agreed that the venue of the arbitration will be Lucknow, India. The juridical seat of the arbitration is already given in Clause 11.3 of the SHA.

28. Does Costanza being part of the Big Six mean its exclusion from the Big Four?

Please refer to the response to query 11 above.

29. Whether Clause 4.1 of Annexure 1 (page 15) which says, ".....shall appoint a reputed auditor (jointly agreed to by Vandaley and Kramerica) to calculate the Fair Market Value." override the mandate of appointing a Big Four as mentioned in the definition of FAIR MARKET VALUE (page 13 Exhibit-1 SHA and page 4 para 17)?

Please refer to the response to query 11 above.

30. According to clause 11.1 of SHA, there is a (consultation period) of 30 days, but Vandelay gave the notice to exercise put option on 10th January, 2023 and Vandelay sent notice to Kramerica again on 12th January 2023 to discuss about the shares and acquisitions, and Vandelay then invoked arbitration on 3rd February 2023. from 10th January to 3rd February, 2023, and if we count, then it is not completing 30 days after the notice has been provided, please clarify regarding dates.

No clarification required.

31. Can we make more issues in addition to the issues given in the problem? please clarify.

It is advisable to stick to the issues already given in the proposition. However, teams are free to frame sub-issues, if required within the issues already given.

32. Is the mention of 'Clause 15 (Dispute Resolution)' in the "15.4 Governing Law and Jurisdiction" clause on pages 2 and 14 a typing error and it was originally supposed to be 'Clause 11(Dispute Resolution)'?

Please refer to the response to query 3 above.

33. Whether the date of appointment of the auditor is to be taken as 29 November 2023 or 10 December 2023?’

The auditor was appointed on 10 December 2023.

34. Whether Vandelay is incorporated in India?

No clarification required.

35. Paragraph 22 mentions “i.e. around the end of February / mid of March 2023”, just to clarify, is it supposed to be “2024”?

Please refer to the response to query 4 above.

36. Paragraph 39(a) mentions “Vandelay’s failure to comply with the mandatory obligation to mediate” however, the dispute resolution clause (clause 11) has no mention of mediation, only “discussions and consultations”. Are we to assume that the discussion and consultations implies mediation?

Please refer to the response to query 15 above.

37. Clause 15.4 refers to the dispute resolution clause as Clause 15, is it supposed to be Clause 11 instead?

Please refer to the response to query 3 above.

38. Paragraph 22 mentions Kramerica informed Vandelay about Alex’s departure on 12th November 2023. However, what was the actual date on which he departed ?

No clarification required.

39. Does fair market value and fair value imply the same in the moot proposition?

Yes, any reference to “fair value” in the moot proposition shall mean the same as Fair Market Value.

40. What was the date of the formation of the arbitral tribunal?

The Arbitral Tribunal was constituted on 17 February 2024.

41. What documents were included in the list of preliminary documents for the audit report?

No clarification required.

42. When K2 submitted the documents for the report was it proofread by any other parties?

No clarification required.