

INFORMATION BOCHURE

6th KIIT NATIONAL MOOT COURT COMETITION, 2018

jsa

advocates & solicitors



Organized by:
School of Law
KIIT
(Deemed To be) University

ABOUT KIIT



KIIT (Deemed to be University) is situated in Bhubaneswar, capital of Odisha, and is one of the premier self-financing Universities of the country. It caters to more than 25,000 students from all across the nation and 22 other countries through more than 100 academic programmes like MBA, Engineering, Law, Bio-Technology, Rural Management etc., in more than 28 constituent campuses involving more than 1800 academic and research staff. The University has been accorded 'Category A status' by the Ministry of HRD, Govt. of India, and is accredited as 'A' Grade by NAAC and Tier 1 accreditation as per Washington Accord for Engineering streams by NBA of AICTE. The University has alliance with over 105 globally reputed foreign institutions, and had achieved the 16th position among all national level universities, and 5th position among all national level Self-financing Universities, more details of which are available at www.kiit.ac.in.

ABOUT SCHOOL OF LAW

The School of Law, an integral part of KIIT (Deemed to be University), was established in the year 2007, and since then, we have consistently grown in stature and strength, and today we cater to a talent pool of 1100 students from all across the country. We are one of the few law schools in India to provide conjoint degrees in the form of BA,L.L.B / B.B.A,L.L.B / B.Sc,L.L.B, and one of the very few Law schools providing for separate honours specializations involving eight separate papers each in Business Law, Intellectual Property Law, Taxation Law, Constitutional Law, Crime and Criminology and International Law, more details of which are available at www.kls.ac.in



DIRECTOR'S MESSAGE



Dear Students,

Greetings from School of Law, KIIT (Deemed to be University), Bhubaneswar.

It gives us immense pleasure to announce the 6th edition of The KIIT National Moot Court Competition, hosted and organized by the School of Law, KIIT (Deemed to be University).

As one of the upcoming law schools in India, we have constantly undertaken measures to provide holistic and meaningful legal education to bright young talent from across the country. In course of such endeavours, we have observed that strong advocacy skills, ability to think logically and rationally, combined with acumen for drafting, are some key characteristics that are very necessary for a lawyer in the present scenario.

Keeping in mind these requirements, we have tried to nurture these attributes in our budding talent pool of students and likewise, we have always encouraged students to participate actively in national and international co-curricular and extra-curricular events like moot court competitions, wherein we believe they can correctly assess, evaluate and nurture their potential to best serve the interests of the profession and the fraternity in the times to come.

In 2011, the School of Law was proud to be the host of the 52nd Phillip C. Jessup International Moot Court Competition (North India Rounds) and also the 1st Bar Council of India International Moot Court Competition. In 2013, we undertook the initiative to host our own national moot court competition, the 1st KIIT University National Moot Court Competition, and buoyed by this success, we continued with the second edition of the event in 2014, wherein Nishith Desai Associates, one of the country's leading law firms, was kind to draft the problems for the event. In the third, fourth and fifth edition of the event held in 2015, 2016 & 2017, Jyoti Sagar Associates, Mumbai, an exceedingly reputed law firm of the country was kind to draft the problem for that edition.

Encouraged by the overwhelming response of the past competitions, we are proud to declare that we will be hosting the 6th KIIT National Moot Court Competition, 2018, in continuation of the overwhelming response received in terms of participation during the 5th Edition (hosted from 8th to 10th of September, 2017), at KIIT (Deemed to be University) campus. J Sagar Associates, an exceedingly reputed law firm of the country, has again been very gracious to draft the problem for this competition, and we expect this to be a great learning opportunity for the upcoming legal talent of the nation. We hereby extend a warm and cordial invitation to participate in this event, and we look forward to your enthusiastic participation.

Wishing you the very best



Prof. (Dr.) N.K. Chakrabarti
Director,
School of Law,
KIIT (Deemed to be University)

6th KIIT NATIONAL MOOT COURT COMPETITION, 2018

ABOUT 1st KIIT UNIVERSITY NATIONAL MOOT COURT COMPETITION, 2013

The 1st KIIT University National Moot Court Competition, 2013, was our first initiative, organizing a national level moot court competition and it turned out to be very successful and encouraging, for which we thank the twenty four participating teams for their enthusiasm and participation. The competition's objective was to nurture academic excellence amongst the students, and it was to our pleasure and honour to have a seven-panel bench for judging the final round of the competition. The competition was weaved around two moot problems, one for the preliminary and quarterfinal rounds and another problem for the semi-final and final rounds, and the active participation of the teams were of great motivation to us in our decision to organize this moot competition in a slightly different format.



The final round of the event witnessed a stiff competition between National Law Institute University, Bhopal, and Christ University, Bengaluru, and the success of the event encouraged us to host and organize the next edition of the moot in 2014.



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ABOUT 2nd KIIT UNIVERSITY NATIONAL MOOT COURT COMPETITION, 2014

The 2nd edition of the competition upheld the essentials of the first moot which were challenging mootings, erudite judging, high stake prizes and great hospitality and at the same time, there were significant improvements based on our learning experience from the past edition. One of India's best known law firms, Nishith Desai Associates, drafted the problems for the competition, while SCC Online and Lawoctopus also partnered with us in different capacities. Like the earlier edition, the competition had two problems – one for the preliminary and quarter final rounds, and another problem for the semi-final and final rounds. Participation by teams from across the country had increased substantially for this event and by the conclusion of the moot, KIIT University National Moot Court Competition had made a name for itself and had become a much-



awaited mootings event.

Before a panel of eminent judges like Justice Altamas Kabir, Former Chief Justice of India, Justice Pinaki Chandra Ghose, Judge, Supreme Court of India and other Justices of the Orissa and Calcutta High Court, the grand finale witnessed some intense advocacy by Hidayatullah National Law University, Raipur and Rajiv Gandhi National University of Law, Patiala, pleading on behalf of petitioner and respondent respectively and the success of that event encouraged us to conduct the 3rd Edition.



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ABOUT 3rd KIIT UNIVERSITY NATIONAL MOOT COURT COMPETITION, 2015



The 3rd National Moot Court Competition was privy to an unprecedented 46 teams from across India who came here to argue before the erudite judges, at a shot to earn prizes worth over 2 Lacs. The teams' experienced great hospitality by the young, dynamic and dedicated Organising Committee which received praises from everyone. The event took place from 18th September - 20th September, 2015 and marked the beginning of our association with J Sagar Associates. Mr. Zerick Dastur, partner at JSA, gave the inaugural address by stressing upon the importance of mooting skills for law students. The Preliminary Rounds witnessed excellent speaking skills and an overall prowess of court room etiquette. The rounds were judged by many eminent personalities of the legal field. The knock-out rounds witnessed the advocacy skills of the budding lawyers with utmost perfection which also involved the best adjudicating panels comprising of sitting High Court and Lower Court Judges, Senior Advocates, Legal Counsels and Academicians. The teams were assertive yet concrete in their approach with their persuasive contentions and convincing arguments and at the end of the Semis, the two best teams namely- CMR Law College, Bengaluru and Campus Law Centre, Delhi University entered the finals.

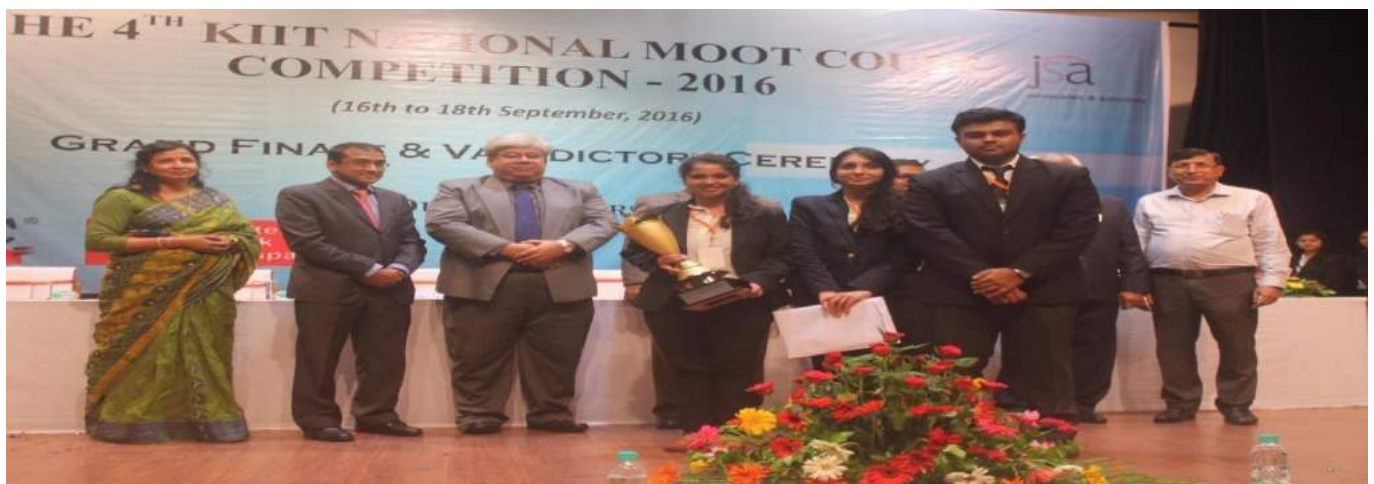
The Final was chaired by Justice Altamas Kabir, former Chief Justice of India along with a panel consisting of Justice Ruma Pal, former Judge of Supreme Court; Justice. Indira Banerjee, Judge, Calcutta High Court; Mr. U.K. Chowdhary, Sr. Advocate, Supreme Court and Mr. Somasekhar Sundaresan, Partner at J Sagar Associates.



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ABOUT 4th KIIT UNIVERSITY NATIONAL MOOT COURT COMPETITION, 2016

In continuation of our collaboration with J Sagar Associates, the 4th edition of the national moot court competition saw a participation of 56 teams from all across the country. Various national law schools as well as top private university battled it out for the ultimate prize money of 2 lakhs rupees. This edition registered itself as the biggest corporate law moot in the eastern India. The event was organised from 16th to 18th September, 2016. The inaugural address was given by Hon'ble Justice (Retd) A. S. Naidu enlightening the people about the core values of a lawyer and professional perseverance. The preliminary rounds witnessed impeccable mooting skills along with high standards of court room etiquettes. After intense two rounds 8 teams proceeded to the quarter-finals and then 4 teams to the semi-finals, where they were put in front of a panel consisting of sitting High Court Judges, Senior Counsels, Company Secretaries, Senior Partners & Associates from leading law firms of the country. Their approach was subtle yet assertive of the highest order.



The finals saw the teams of School of Law, Christ University & School of Excellence in Law, Chennai pitted against each other. The Final was chaired by a panel consisting of Hon'ble Justice Pinaki Chandra Ghosh, (Judge, Supreme Court of India), Hon'ble Justice Sanjib Banerjee, (Judge, Calcutta High Court), Justice (Retd.) S.J. Mukhopyadhyay (Chairman, National Company Law Appellate Tribunal) and Mr. Somasekhar Sundaresan, Senior Partner at J Sagar Associates.



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ABOUT 5TH KIIT UNIVERSITY NATIONAL MOOT COURT COMPETITION, 2017

After the unprecedented success of the previous edition, the 5th edition was a much anticipated event among the mooting fraternity and it did not disappoint. The problem, drafted by J Sagar Associates, was based on competition law, which was well received by participants and the judges. The preliminary rounds saw teams putting up a tough fight against each other. However, only 8 teams could proceed into the quarter final rounds. During the Quarter-final Rounds, the teams argued in the presence of Senior Advocates and academicians, who tested the erudite participants to the limit. However, the only the unfathomable 4



could

proceed to the Semi-Final Rounds where sitting High Court Judges tested their resolve. Ultimately Amity Law School Delhi and Christ University were pitted against each other for the Finals.

The Bench for the Final Round consisted of Justice P.C. Ghose, Retired Judge, Supreme Court of India, Justice S.J Mukhopadhyaya, Retired Judge, Supreme Court of India, Justice A.S Naidu, Retired Judge, High Court of Odisha, Mr. Pramod Kumar Singh, Advisor, Competition Commission of India, Mr. Ashish Ahuja, Partner, Wadia Ghandy & amp Co., Mumbai, Mr. Sujit Ghosh, Partner, Advaita Legal, Mumbai and Mrs. Shabnum Kajiji, Senior Advocate, Wadia Ghandy & Co., Mumbai



OFFICIAL RULES FOR THE COMPETITION

1. COMPETITION FORMAT

The Competition is structured as per the following format:

- a) Preliminary Rounds
- b) Quarter Finals
- c) Semi finals
- d) Grand Finale

2. ELIGIBILITY

Students of three year and five year integrated law degree courses from any University / Law School / College / Department are eligible to apply for registration of their team. However, a maximum of one team shall be allowed to participate from any one University / Law School/College/Department.

3. TEAM COMPOSITION

3.1 Each team shall consist only of three members, comprising of two speakers and one researcher.

3.2 Any alteration of the names of the team members shall be informed in writing to that effect, addressed to the Director, School of Law, KIIT (Deemed to be University), by the Vice Chancellor / Dean / Director / Head of the Department of the University / School / Department / College of Law, of the team requesting such alteration. However any such alteration shall be permitted only once.

3.3 Once the Competition commences, the team composition cannot be altered under any circumstances whatsoever. Inability of any team member to participate in accordance with the rules of

this Competition shall lead to immediate disqualification of the team from the Competition.

4. PARTICIPATION AND REGISTRATION PROCEDURE

4.1 The teams interested to participate are required to confirm their participation by sending an e-mail attaching the scanned copy of Annexure-A (Registration form), duly filled, to **kiitmoot2018@kls.ac.in** by **31ST July 2018**. Please note that such e-mail has to be sent only through the University / School / College / Department official e-mail address. E-mails sent through personal / non-official e-mail addresses and e-mails sent to any other address other than the above mentioned will be ignored. Annexure-A is available at **www.kls.ac.in** and also attached herewith this brochure.

4.2 The teams shall then send (a) the printed copy of Annexure-A and (b) a non-refundable participation fee of Rs. 4000/- (Rupees Four Thousand only) in the form of a Demand Draft drawn in favour of **KIIT, and payable at Bhubaneswar** (clearly stating the name of the participating institution at the reverse side of the demand draft), addressed to:

Dr. Sthita Prajna Mohanty

Joint-Faculty Convenor

6th KIIT National Moot Court Competition, 2018

School of Law, KIIT, Patia Bhubaneswar,

Odisha. PIN-751024

such to be received by the **6th of August, 2018**.

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4.3 On receipt of the printed copy of Annexure-A and the Demand Draft, the team shall be formally registered as a participant for the event, and a team code shall be generated and a confirmatory e-mail, together with the team code, shall be sent to such team on the 10th of August, 2018 Thereafter, for all further correspondence with the organizers of the Competition and otherwise, all the registered teams shall identify and refer themselves using the allotted team code only.

4.4 The teams shall also send a soft copy of Annexure-B (Travel details), duly filled, to kiitmoot2018@kls.ac.in by **20th September, 2018**. Annexure –B is available at www.kls.ac.in and is also attached here with this Brochure.

5. MEMORIALS

5.1 All memorials submitted for all purposes of the Competition shall strictly adhere to the rules as stated below.

5.2 Teams have to prepare memorials for both the sides, i.e. Petitioners and Respondents.

5.3 The registered teams shall submit the pdf copy of their memorial for both sides by e-mail to kiitmoot2018@kls.ac.in by **23:59 hours of 15th of September, 2018 and shall send twelve printed copies (for each side) of such memorials by 20th of September, 2018**, addressed to:

Dr. Sthita Prajna Mohanty
Joint-Faculty Convenor
6th KIIT National Moot Court Competition, 2018
School of Law, KIIT, Patia Bhubaneswar, Odisha.
PIN-751024

5.4 When sending the memorials by e-mail in pdf format, please name the file pertaining to the memorial

for the respondent as R accompanied by the team code and the file pertaining to the memorial for the petitioner as P accompanied by the team code. For example, for a team assigned a code of 100, the pdf file for the respondent should be named as 'R100' and the pdf file for the petitioner should be named as 'P100'.

5.5 The cover page of the memorials sent, for both the soft and printed copies, shall clearly mention the word “P” for memorials on behalf of the Petitioner, and the word “R” for memorials on behalf of the Respondent, followed by the team code for both the instances, such being clearly inscribed on the top right hand corner of the cover page of the memorial for the Petitioners and Respondents. For example, if a team had been assigned a code of 100, the memorials sent by such team shall have “P100” and “R100” clearly marked on the top right hand corner of the cover page of the respective memorials. The teams should not disclose the identity of their institution anywhere on the memorial. Violation of this rule will result in immediate disqualification

5.6 The memorials have to be submitted on A4 size paper and must contain the following sections in the Order as stated below-

- Cover Page;
- Table of Contents;
- Index of Authorities;
- Statement of Jurisdiction;
- Statement of Facts;
- Statement of Issues;
- Summary of Arguments;
- Arguments Advanced;
- Prayer.

Non-compliance with above criteria shall result in penalty of two marks per missing section.

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5.7 The memorials must be printed in Times New Roman font with 12 font size and with 1.5 line spacing. The footnotes must be in Times New Roman font with 10 font size and with 1.0 line spacing. The memorials should have a margin measuring one inch on all sides of each page. To conserve paper, teams may print their memorials on both sides of the A4 sheet and submit accordingly.

5.8 The 'Arguments Advanced' section should not exceed 15 pages.

5.9 The memorials as a whole should not exceed 30 pages including the cover page.

5.10 The numbering should be on the bottom-centre of each page.

5.11 The cover page of the petitioner's memorial shall be printed on Blue colour A4 size paper, and the cover page of the respondent's memorial shall be printed on Red colour A4 size paper.

5.12 The teams have to use the citation method as stated in the 20th edition of the Harvard Blue Book, for citation throughout the memorial, with strict adherence.

5.13 There shall be no speaking footnotes in the memorial.

5.14 The maximum scores for the memorials shall be 100 marks. The memorials shall be evaluated on the following criteria:

Knowledge of Law and Facts : 30 Marks

Proper and Articulate Analysis : 30 Marks

Extent and Use of Research : 20Marks

Clarity and Organization : 10 Marks

Grammar and Style : 10Marks

6. PRELIMINARY ROUND

6.1 To determine the order of participation in the preliminary rounds of the event, all the registered and present teams shall participate in a draw of lots to be conducted for that purpose. Such draw of lots shall take place on the **28th of September, 2018** immediately after the inaugural function. The exchange of memorials and orientation of the teams shall be conducted immediately after the draw of lots.

6.2 For the preliminary rounds, every team shall argue twice: once for petitioner and once for respondent (Prelims-I and Prelims-II round).

6.3 No two teams shall face each other more than once in the preliminary rounds.

6.4 In determining the scores in the preliminary rounds, memorial scores will be added to the oral scores.

7. QUARTER-FINALS, SEMI-FINALS AND FINALS

7.1 The top eight teams of the preliminary rounds shall qualify for the Quarter-final rounds.

7.2 From the Quarter final rounds, winning teams from each round shall proceed to the subsequent stages of the Competition on a knock-out basis, with the memorial scores of the teams taken into consideration at all stages, as per the formula stated below-

(I) Quarter Finals = Preliminary Round Oral Scores + Memorial Scores

(ii) Semi-Finals = Quarter Final Round Oral Scores + Memorial Scores

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(iii) Finals = Semi-Final Round Oral Scores + Memorial Scores

In case of a tie between two teams in any of the rounds, memorial scores will be taken into consideration to break the tie. In case the tie still subsists, the oral score of the best speaker of each team will be considered to break the tie. If the tie continues, the oral score of the other speaker of the team will be considered to break the tie. In case the tie further subsists, the result shall be decided by toss of coin.

8. RESULTS

8.1 The results shall be announced shortly after each round.

8.2 The results of the final round shall be announced at the valedictory and award ceremony, to be held on the **30th September, 2018**.

9. ORAL ROUNDS

9.1 Each team will get a total of 30 minutes during the preliminary round to present their case. For the Quarter final rounds, each team will be permitted a total time of 45 minutes, while for the Semi-final and Final rounds, each team will be permitted a total time of 60 minutes. The time stated above includes the time required for rebuttal and sur-rebuttal.

9.2 Any team exceeding the time limit stated above shall be penalised with a deduction of one mark for every two minutes exceeded.

9.3 The division of time per speaker is left to the Discretion of the team subject to a minimum of 10 minutes per speaker.

9.4 The oral arguments should be confined to the issues presented in the memorial.

9.5 The researcher shall be present with the speakers during the oral rounds.

9.6 Passing of notes to the speaker by the researcher is allowed.

9.7 Maximum scores for the oral rounds shall be 100 points per speaker, and which shall be judged on the following criteria:

Knowledge of Law : 20Points

Application of Law to Facts : 20Points

Ingenuity and Ability to Answer : 20Points

Style, Poise, Courtesy and Demeanour : 20Points

Time Management : 10Points

Organization : 10Points

10. SCOUTING

10.1 For the preliminary rounds, apart from the participant teams for such round, the members of the other teams are not allowed to observe such round. Scouting is strictly prohibited and scouting by any team shall entail **instant disqualification**.

11. AWARDS

11.1 Winning Team Award – The winning team will receive a trophy and a prize worth **Rs. 1,00,000/- (Rupees One Lac Only)**.

11.2. First Runners-Up Team Award –The first runners up team will receive a trophy and a prize worth **Rs. 50,000/- (Rupees Fifty Thousand Only)**.

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11.3. Second Runners up Team Award -The Second runners up team will receive a trophy and a prize worth **Rs.25,000/-(Rupees Twenty Five Thousand Only).**

11.4. Best Student Advocate/Counsel – The Best Student Advocate/Counsel will receive a trophy and a prize worth **Rs.10,000/-(Rupees Ten Thousand Only).**

11.5. Best Memorial -The team submitting the best Memorial will receive a trophy and a prize worth **Rs. 10,000/-(Rupees Ten Thousand Only).**

11.6. SCC Online and Eastern Book Company, as the exclusive knowledge partners for the Competition, have declared the following awards amounting to more than Rupees Two Lacs in equivalent value, in the form of- SCC Online Web Edition-Special Student Access Card for each of the individual members of the winning team; SCC Online Web Edition- Special Student Access Card for each of the individual members of the first runners up team; SCC Online Web Edition – Special Student Access Card for the Best Student Advocate and the Best Memorial.

12. ANONYMITY

The student counsels shall not state their names during the oral rounds and must use the assigned team code for all correspondence. All team members must refrain from disclosing the identity of their institutions at any time and in any manner during the

entire Competition. Non-compliance with this Rule will result in immediate disqualification of the team.

13. FINALITY OF DECISIONS

The decision of the judges with regard to the outcome of the rounds shall be final. For all purposes and in any dispute, the decision of the Chairman of the Organizing Committee of the Competition shall be final and binding.

14. ACCOMMODATION, FOOD AND TRANSPORT

All the participating teams shall be provided with the transport facilities during arrival from the Airport/ Railway Station/ Bus Terminal. Teams shall also be provided with accommodation and food by the University from the afternoon of **27th of September, 2018 till the forenoon of 1st October, 2018.**

*** Accommodation and food shall be taken care of as per university rules**

15. CLARIFICATIONS.

Any query pertaining to the Moot Problem should be sent to **kiitmoot2018@kls.ac.in** by 1st of August, 2018. Questions submitted / clarification sought through any other means other than by e-mail shall not be entertained. A consolidated response for all questions and clarifications shall be mailed to all the participating teams on 13th of August, 2018.

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TIMELINE FOR THE COMPETITION

<u>SL.NO</u>	<u>PARTICULAR/EVENTS</u>	<u>DATE/TIME</u>
1.	Last date of registration (soft copy) along with scanned copy of the demand draft (Rs. 4000)	July 31st ,2018
2.	Last date of registration (hard copy) along with the original demand draft.	August 6th ,2018
3.	Confirmation of registration / participation, together with allotment of team- codes.	August 10th ,2018
4.	Receipt of Clarification for Moot Problem (Last Date)	August 1st ,2018
5.	Release of Clarification	August 13th ,2018
6.	Memorial Submission (Soft Copy)	September 8th ,2018
7.	Memorial Submission (Hard Copy) (For Competition) & Travel Plan (Hard Copy of Annexure-“B”)	September 20th ,2018
8.	Inaugural function/draw of lots/exchange of memorials, etc. (09:30 AM TO 12:30 PM)	September 28th ,2018
	Preliminary (Round-1) (03:00 PM TO 06:30 PM)	
9.	Preliminary (Round-2) (09:00 AM TO 12:30 PM)	September 29th ,2018
	Quarter-Final Rounds (03:00 PM to 05:30 PM)	
10.	Semi-Finals (09:00 AM TO 01:00 PM)	September 30th ,2018
	Final Round (02:30 PM TO 04:30 PM)	
11.	Prize Distribution/Valedictory Functions (04:30 PM TO 06:30 PM)	September 30th ,2018

MOOT PROBLEM

1. The Airport Authority of Malgudi (hereinafter known as “Airport Authority”) issued a tender on January 01 2017, for a contract of managing public parking space for vehicles commuting passengers the airport. A public notice was issued inviting parties to bid for the tender. It was stipulated that the project would be awarded to the highest bidder on the basis of the bid made for the license fee which was to be paid on a monthly basis by the successful bidder to the Airport Authority.

2. It was indicated in the tender documents that the size of the portion of land to be allotted to the successful bidder was 5000 sq. meters. The terms of the tender further stated that the successful bidder would derive revenue by collecting parking charges at the land allotted from the various vehicles using the parking facility. The successful bidder would pay a monthly license fee to the Airport Authority on the basis of the bid made.

3. M/s. Mercury Parking Inc. (“Mercury”), is a company registered under Companies Act, 1956, It is engaged in the business of operating parking lots for various airports across the country. Mercury was among the 3 (three) companies that submitted the bid for the tender. Mercury was found to be the highest bidder having quoted the license fee of 25 lakhs to be paid by Mercury to the Airport Authority on a monthly basis. The tender was awarded to Mercury and a license agreement for a period of 3 (three) years was entered into between the parties in May 2017.

4. In January 2018, it came to the notice of Mercury that certain construction work had started by the National Highway Authority (“NHA”) on a portion of the land allotted to Mercury by the Airport Authority. Mercury filed a Right to Information (“RTI”) query through one of its authorised representatives in order to obtain the details of the construction activity.

5. Pursuant to the RTI Query, Mercury was shocked to receive a response from the concerned authorities stating that 2000 sq. meters out of a total 5000 sq. metes allotted to the Mercury under the License Agreement was being acquired by the NHA. It was also mentioned in the RTI response that a No Objection Certificate in connection with the said acquisition had been granted by the Airport Authority to NHA in 2016 for the purpose of the aforesaid acquisition. This No objection certificate was granted prior to the issuance of the tender by the Airport Authority.

6. Immediately after receiving the above response, Mercury on March 05 2018, wrote a letter to the Airport Authority asking for a proportionate reduction in the license fee of 25 lakhs/ month since the area of land allotted to it had been substantially reduced. According to Mercury, the license fee was quoted on the basis of the representations made by the Airport Authority in the tender document and on the assumption that the revenue flow of Mercury would be out of the parking charges collected out of the use of the entire 5000 sq. meters of the land allotted to it.

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7. Since no reply was received from the Airport Authority, Mercury had stopped making payments towards license fee from the month of March 2018. The Authority issued letters to Mercury, demanding payments for the months of March and April 2018 with respect to the license fee payable under the license agreement.

8. The license agreement contained an arbitration clause which states that *“In case of any dispute between the parties, the dispute will be referred to an arbitrator to be solely appointed by the Airport Authority. As a condition precedent to the appointment of an arbitrator, the licensee will deposit any amount due to the licensor under the license agreement”*.

9. On May 12, 2018, Mercury invoked the arbitration agreement for resolution of the dispute and requested the Airport Authority to appoint an arbitrator. The Airport Authority replied stating that as per the terms of the arbitration agreement, all dues of the licensee under the license agreement had to be deposited as a condition precedent to the appointment of the arbitrator.

10. Subsequently, Mercury after consulting certain lawyers issued a letter to the Airport Authority stating that there was a material misrepresentation in the tender documents in connection with the size of the project land to be allotted and that the license fee bid was made on the basis that 5000 square meters of land would be utilised by the licensee. However the fact that 2000 square meters of the said land were to be acquired by NHA was suppressed. It further reiterated its demand for revising the license fee payable proportionately failing which it was stated that appropriate steps will be taken by Mercury.

11. During this period, Mercury was disqualified in another tender issued by the Airport Authority in the state of Arkham. The disqualification was due to the tender terms of the project in Arkham, which stated that the tender participant would be disqualified if there are any pending dues in any other project of the Airport Authority. It was decided that Mercury had pending dues in connection with the project awarded by the Airport Authority in 2017 and hence Mercury was disqualified for this subsequent tender.

12. On July 26, 2018, Mercury filed a civil suit before the High Court of Malgudi which had Original Jurisdiction. The basis of the suit was that the entire contract was vitiated by fraud. It was submitted that the license bid was made on the understanding that the entire 5000 sq. meters of land will be allotted to the successful bidder who would derive revenue from the entire land.

13. It was submitted by Mercury that the No Objection Certificate was granted to NHA by the Airport Authority in 2016, which was prior to the invitation of tender bids for the land parcel of 5000 sq. meters. It was stated that Mercury was entitled to damages as a result of the fraud committed by the Airport Authority.

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14. The Airport Authority stated in its defence that there was an arbitration clause in the license agreement and therefore the matter should be referred to arbitration. They further stated that as per the terms of the arbitration clause, as a condition precedent, the amount of license fee, namely the dues under the license agreement had to be deposited prior to the appointment of an arbitrator. Additionally, it was stated by the Airport Authority that any reduction in the license fee could only take place by a way of a public tender and the Authority would have to invite a fresh tender and conduct a fresh bidding process in case any change in the license fee could be agreed upon.

15. It was also indicated by the Airport Authority that Mercury had attempted to first invoke the arbitration clause and only thereafter filed the civil suit. The Airport Authority further stated that in any case only a non-objection certificate was given in 2016 and it did not mean that the portion of land was acquired by the NHA at that time.

16. Mercury on the other hand contended that the arbitration clause in the license agreement violates the basic principles of arbitration and is contrary to the spirit of arbitration as an alternate dispute resolution mechanism itself as the clause is framed in such a manner so as to deter any party to initiate arbitration. Mercury further claimed damages for the loss of opportunity in the tender issued in the state of Arkham, where Mercury was disqualified in wake of the purported pending dues under the present contract. It was finally argued that as the entire project was vitiated by fraud, this matter need not be relegated to arbitration and should be decided by the Civil Court itself.

Order

The following issues arrive for consideration in the present matter:

- 1) *Whether the present dispute is arbitrable or whether it should be tried by the Civil Court in a Civil Suit?*
- 2) *Whether the arbitration clause is onerous, and the condition precedent amounted to an unfair and unreasonable condition for initiating arbitration?*
- 3) *Whether Mercury is entitled to damages for loss of opportunity in the second project as a result of the purported dues?*
- 4) *Whether any proportionate reduction in the license fee could take place only by the way of re-bid or the Authority could itself suo-moto grant the revision in rates of the tender?*

List for hearing during 28th to 30th September 2018

Parties to file their Written Submissions / Memorandums by 8th September 2018

The laws of the Republic of India shall be applicable to the present proceedings, including the Companies Act 1956, Companies Act 2013, and the Code of Civil Procedure 1908.

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ABOUT KISS

Started with just 125 students way back in 1993 by eminent educational and social entrepreneur Achyuta Samanta, Kalinga Institute of Social Sciences (KISS), Bhubaneswar has today grown into the largest free Residential Tribal Institute of the world. KISS provides food, accommodation, health care and all other basic necessities of life to more than 25,000 tribal children of the poorest of the poor background absolutely free to pursue education from Kindergarten to Post Graduation (K.G. to P.G.). Students are enrolled from 62 tribes of Odisha, including 13 Primitive Tribes.

The course curriculum designed for KISS is unique, for it incorporates vocational training with formal education, thus making a child educated and self-sufficient. Achievements of KISS students in examinations and other academic events speak volumes about high quality of education at the institute. KISS students have been achieving cent percent pass record in annual examination for Class 7th, Class 10th and +2 Arts, Science and Commerce for consecutive ten years. Students of KISS have been representing State in the prestigious National Children's Science Congress every year since 2005. They have not only been qualifying in reputed institutions like NITs and IITs on the basis of their own merit, but have also been selected by top corporate names like Accenture, TCS and Wipro in campus placement. Students of KISS have proved their mettle not only in academics, but also in sports and cultural activities. Highpoints of these achievements have been their becoming Champion in Under 13 International Rugby Tournament held in Manchester, U.K. (19th June 2011) and participation of KISS students in Asian Games at Guangzhou (China) and Commonwealth Games (New Delhi). More details are available at www.kiss.ac.in.

KISS is the finest expression of KIIT's social commitment. It plans to educate 2,00,000 tribal children during the next decade.





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