

RELEASE OF CLARIFICATIONS

1. Swedish Motorisk Vagn Group (“SMV”) is registered as a company under which laws of Sweden?

Swedish Companies Act, 2005.

2. Ess Kay Industries is which type of company under Companies Act, 1956 (public limited company, private limited company, company limited by share, company limited by guarantee)?

Ess Kay Industries may be presumed to be a public limited company.

3. Which type of agreement did Ess Kay and SMV entered into on 15.06.2015?

Dealership Agreement, the excerpts of which are laid out in the problem.

4. Does Ess Kay Industries limited incorporated under the Companies Act, 1956 as a joint venture or Wholly-owned subsidiary?

Ess Kay Industries Ltd. may be presumed to be a public limited company.

5. Does Ess Kay Industries limited incorporated under the Companies Act, 1956 follows the FEMA Regulation, 2000?

Yes, the laws governing India shall be applicable to the problem.

6. What are the Supplier's guidelines as mentioned in Article 18 (mentioned on page 4 of Competition Problem) of Agreement entered between Ess Kay and SMV?

These are industry standard guidelines (not law). You are free to research on the guidelines and the prevailing industry standards.

7. Which courts are included in Courts of New Delhi?

Kindly research law on the same. The arbitration clause is clear and requires no clarification on this point.

8. MM Finance Private Limited is incorporated under which law of India?

Companies Act, 1956.

9. What is PART ONE (mentioned in page 7 of Competition Problem) of the Finance Contract entered between MM Finance and Ess Kay?

Not relevant to the problem, only the relevant excerpts have been picked from the agreement.

10. What is Serial number 3 of the Schedule 1 (mentioned in page 7 of Competition Problem) of the Finance Contract entered between MM Finance and Ess Kay?

Already mentioned in the agreement. It refers to the definition mentioned at roman numeral (iii).

11. What is serial number [4] of Schedule 1 (mentioned in page 7 of Competition Problem) of the Finance Contract entered between MM Finance and Ess Kay?

Not relevant to the problem.

12. What is serial number [4] of Schedule 1 hereto (mentioned in page 9 of Competition Problem) of the Definitions of the Finance Contract entered between MM Finance and Ess Kay?

Not relevant to the problem.

13. What is Schedule III hereto (mentioned in page 10 of Competition Problem) of the Terms of Contract?

Not relevant to the problem.

14. What is Clause [26] (mentioned in page 13 of Competition Problem) of the governing Law and Jurisdiction?

That is a typographical error, please read it as clause 6.

15. The National Company Law Tribunal vide order dated 15.10.2017 allowed the merger and SMV took over MM under which laws and their applicable sections?

Kindly research on the same.

16. Finance Agreement

- a) Under "Governing law and Jurisdiction", there is a mention of clause [26] but its language is not provided anywhere in the problem.

Typographical, please read it as 6.

- b) Agreement mentions Entry [iv] of Sch 1 at couple of places. What are the entries under Entry [iv]?

Not relevant to the problem.

- c) Under Sch 1 Entry (iii) Esa Kay is mentioned as "Lender" however the facts denote that it is acting in the capacity of "borrower" under the said agreement.

Please read it as "borrower".

17. What is the **word limit** of the Award (Section Wise or in totality)? If not, then what is the **recommended** word or page limit?

There is no prescribed or recommended word/page limit of the award.

18. What name should we put in the "**Name of Institution**" as mentioned in the Draft Award? Should it be hypothetical or real?

The Draft Award is just a template to assist the author. It is not necessary to base your arbitral award on the Draft Award.

19. Since the decisions on the Issues can only be reached on the basis of **legal principals and case laws**, in **which section** should they be placed (**ARGUMENTS / DECISION / CONCLUSION**)?

The Draft Award is just a template to assist the author. It is not necessary to base your arbitral award on the Draft Award.

20. Since the Problem in para no. 9, pg no. 14 states that the Statements of Claim and Defense "**highlights**" the "**following points**", in the ARGUMENTS Section, are we allowed to **EXPAND the arguments on each side** with case laws and legal provisions or should we simply copy the arguments as cited in the problem?

Yes, you can expand the arguments.

21. In light of **conflicting contents** of **para no. 2 and 3**, who is the parties to the Agreement - SMV or SMV India?

SMV India as stated in the agreement.

22. With reference to above agreement in pg. no. 2, the manufacturer is given as "Swedish **Motoren** Group" whereas in para no. 1, the full form of SMV is "Swedish **Motorisk Vagn Group**". Kindly clarify.

Swedish Motorisk Vagn Group also goes by Swedish Motoren Group.

23. In Schedule 1 of the FINANCE CONTRACT in pg no. 7, Ess Kay is stated to be '**Lender**', whereas, as per Preamble of the Contract, Schedule 1 should contain name of '**Borrower**'? Kindly clarify.

Refer Q. 16(c).

24. Clause 5 of the Compromise Agreement in pg no. 14, mentions arbitration by a **SINGLE arbitrator**. Para no. 9 of the Problem further states that the instant arbitration has been initiated by SMV India. However, the Draft Award mentions arbitration by **THREE arbitrators**. Would you please clarify error, if any.

The Draft Award is just a template to assist the author. It is not necessary to base your arbitral award on the Draft Award.

25. Could you kindly clarify the use of the term "Audi" in Preamble of the Agreement in pg. no. 2 of the Problem?

Kindly ignore the same.

26. Does M M Finance provide facilities to dealers other than MM's dealers?

No.

27. Kindly clarify: In para no. 7 in page no. 14, is it a "merger" or a "take over" since both the terms are used in the same paragraph.

Takeover by way of merger.

28. What is the status of the contract between SMV India and Ess Kay mentioned in para no. 2? Is it still subsisting?

Please refer to para 9 of the problem. The agreement expired.

29. Why SMV India has claimed for Rs. 100,00,00,000 when in the compromise agreement the liability of Ess Kay was totalled to be Rs. 30,00,00,000?

Included damages and loss of reputation etc. along with litigation and arbitration expenses.

30. What is the status quo in regard to the arbitration proceedings initiated by Ess Kay Motors against MM Finance?

Arbitration notice was sent; however the arbitrator has not yet been appointed.

31. Were SMV India and MM Ltd. the only suppliers to Ess Kay Motors?

Yes, exclusive dealership.