

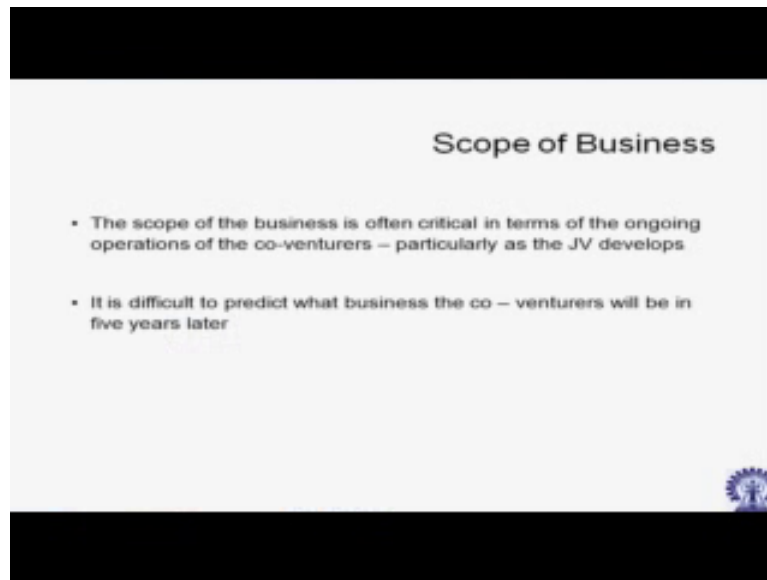
Technology Transfer through Joint Venture
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Lecture – 13
Business Plan in Joint Venture

I welcome you in 13th lecture relating to Technology Transfer through Strategic Alliance and Joint Venture. I am in the module of joint venture agreement and now I will specifically concentrate on business plan in joint venture agreement. In my last lectures I have talked with you relating to the formation of joint venture agreement and then I have talked about the governance issues.

Today I will take you through this business issue related to the business plan. Now, please do remember whatever I am talking with you in bits and pieces all of them are part of the joint venture agreement. So, as I told you before let me repeat - you can have a single joint venture agreement wherein you put all the things which I am talking with you or you may have number of small agreements which is a part of an umbrella agreement and I will suggest you to go for the second option because this gives you a more opportunity to do the amendment if the situation arises. In case of the joint venture it is always seen that whatever you have conceived, at the beginning of the joint venture it possibly not continue in the similar manner. So, you need to have a kind of flexibility inbuilt within the joint venture agreement itself which will help for dilution of existing venturer's stake at the same time, it will facilitate the new venturer to join the joint venture.

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Now, let me take you through the business issue or business plan in case of the joint venture. As I was opening with you that see it is always very difficult to have a very consistent plan of business throughout the subsistence or throughout the life of the joint venture. So, it is often very difficult or for that matter very critical to define the scope of the business in joint venture. Please do remember, this particular thing that one of the venturer companies might be between the similar kind of a business which the joint venture organization is going to do, and which I have told you in my last lecture in that circumstances you need to make the adjustments with the existing business of the venturer.

So, defining the scope of the joint venture business is very very important because there are several issues which I have discussed or referred with you other day or in my previous lecture was relating to the extent of the business or type of the business it may be relating to export ride so on so forth. So, defining the scope is very very important thing in case of joint venture business.

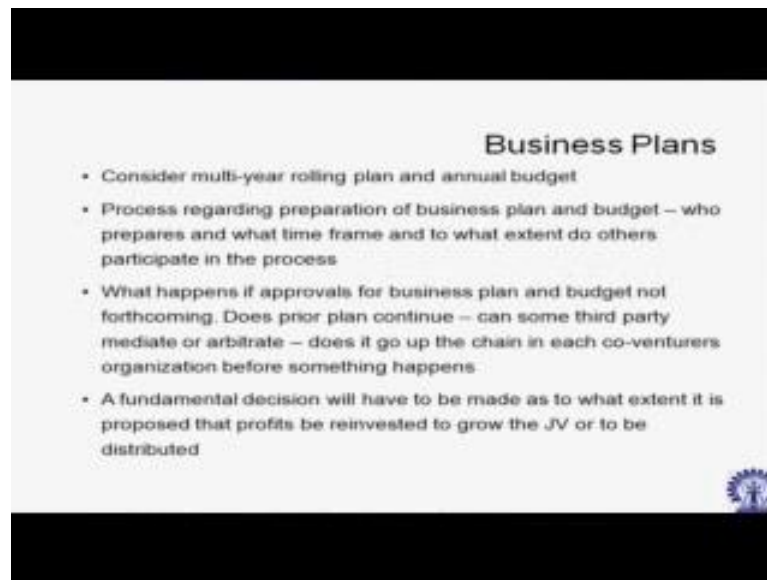
Now, while you are defining the scope of the joint venture business please do keep in the mind of the business plan or objectives of both the venturers or parent organization. At the same time you also need to define the territory in which this particular joint venture business will continue because the venturers might have a same kind of a business in a different territory. And at the same time you might also define the market segment as

well with the territory because maybe your venturer company or the parent company are car making company, but when they are doing this particular joint venture they are not interested to make all types of car. They might be interested to develop a car with battery technology or they might be interested to develop car which is auto navigable; that means, a driverless car something, something.

So, it might so happen that it is not only the territory, but the segment which they wanted to enter that is not within their core business domain. Or there might be another example like until now there is a true company which is a publisher company or rather book publisher company they were doing the business in different-different segment. Like, one was doing publishing the fictions or the story books and another was in business of publication of the management and law books. Now, they have decided to have a joint venture because they wanted to treat online resources of whatever the channels or the books, whatever they have and they further wanted to acquire the new business in future. So, herein you can find that though they are in application, but they have chosen a separate segment and wherever they are going to publish this online material it might not be same business place where they are doing the business at present.

So, I should also advise you to build up some kind of flexibility within your joint venture plan because it might so happen that there is a change of a different parameter in the market, change of parameter in regulations, change in parameter relating to customer choice so on and so forth. So, you might need to change you business plan in the future.

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Now, let me take you through detailing of the business plan because many of the time these create a lot of tension between the venturer in the joint venture. So, if you are having you know business plan it should always; always you should try to have a multi-year rolling plan with the annual budget. That means, it is always difficult to do, I mean if you do a short plan or short term plan sometimes it creates a lot of trouble for the business itself. So, it is advisable that you should have a broad plan in place for a substantial period of time and you carry out the business according to that.

Now, what is the important here in the agreement you should provide the mechanism for that. You possibly cannot work out what should be your future plan, but you can provide the mechanism how to develop that particular future plan and how to budget that particular future plan whatever you wanted to do. It might be your growth plan, it might include your expansion plan it might include even entering into a new market or the market in a different jurisdictions.

Now, the next important issue is relating to who will have authority or who will have a responsibility relating to preparation of this particular business plan. Like you know what I was telling you just a few minutes back that you should have a process developed because the process is very important for this particular purpose. There might be a potential conflict because if your partner is bringing the technology and if your partner is

aggressive into know the market or enter into the market then in that case your partner might be interested to take the charge of the planning.

And then in that circumstance this you should also see that in what extent the you are allowed your partner to do that particular thing, or for that matter you are going to leave everything relating to the planning not with the venturers or not with the promoters or the partners, but solely with the joint venture company. Then you can approve whatever has been you know forwarded by the joint venture company relating to preparation of the plan. So, whatever you do you should create a provision into your joint venture agreement

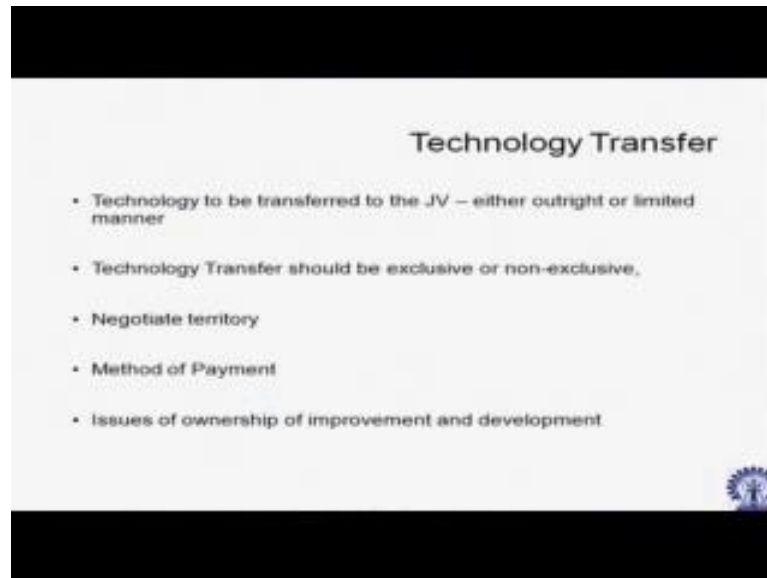
Now, there might be a possibility that there is some kind of a deadlock situation arises, and there is a no approval of the business plan and budget for forthcoming years. So, in that circumstances, how you are going to handle the situation? Will you continue with the old plan or you are going to send it to the arbitrator to sort out this particular problem or maybe the third person who is independent to the entire issues will take a call on that particular issue. So, whatever you do there is some kind of a mechanism you should going to build within your system.

Relating to these issues further I am going to discuss in the under the heading of the dispute in this particular lecture itself, because there might be a possibility that you are totally in a deadlock scenario and nothing is moving. So, in those circumstances you should know how to manage or handle the scenario.

Now, the next important thing is that a fundamental decision to what extent the profit should be reinvested and profit should be distributed need to be taken by the partner themselves. But instead of keeping it open for the partner to decide every time afresh, it is advisable to have some plan into the agreement itself and wherein you should say that how much percent of the profit should be reinvested to address the growth of that particular venture, and how much should be distributed. Even some time you might decide that for some years you are not going to take any kind of a profit from this venture, from the venture itself. So, whatever the profit the venture makes that particular profit we are going to invest into venture itself for the purpose of the growth. So, instead of creating a liability or borrowing the additional fund from the outside whatever the

profit you are making you are using that particular profit for the growth of this particular venture.

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Now, let me take you through technology transfer. If you remember our course is revolved around this technology transfer only. We wanted to understand the technology transfer through the joint venture because I have told you in my previous lecture that some times to absorb the technology, technology licensing is not enough you need to go little more than licensing the technology. So, the joint venture is one of the good options for technology transfer and if the technology is the core of the joint venture business then you need to be more careful about the issues of the technology transfer. You need to see that what you are getting out of that particular transfer or whatever the venture organization is getting out of that particular transfer. You need to detail out further what will happen in case of the further development of the technology, you need to detail out that how you are going to use that technology transfer for the benefit of the new venture itself and in that particular process how both the partner and the venture get benefited.

So, the first thing which I wanted to discuss with you is relating to relating to the matter of transfer of technology that means, do your partner is transferring the technology outrightly or there is a kind of a limitation which is being defined by this technology has been transferred, because there might be a several reason for doing that. It might be relating to the regulatory issue the technology partner who is transferring the technology,

there might be some kind of a restriction from the country from where they are transferring the technology.

Let me give you some example. Like if it is a defense technology then you will find that the host country or the country of the origin of your partner might put some kind of restriction relating to the transfer of the technology to the new or competitive country. So, there might be some kind of a regulatory restriction. There might be some kind of a restriction from the business organization itself, because they are possibly the person who are having this particular know how or the partner only the people who are having the know how about that particular technology, and they wanted to keep that particular technology quite close to their heart and they do not want to have a completed in the market. So, they want to have a total control over the technology and that is the reason whatever they are transferring they are very limited manner or they are very controlled within a very controlled structure. So, in that circumstance you might not get outright transfer of technology.

There might be a lot of conditionalities or the limitations will be imposed where they are transferring the technology or they might transfer the technology, but they might even keep the no how close to their heart, while transferring the technology or whatever the kind of technology which you are getting that is an important issue which you need to understand while you are negotiating or for that matter developing the conditionality in the joint venture agreement.

Now, if the technology is a short lived, if the technology is already you know lose the market from the country of the origin, if the technology is not very complex but a simple technology - in that circumstances maybe your partner like to transfer the technology outrightly. Or if your partner feels that well after transferring the technology outrightly, there is every possibility that the venture company is going to build further on the technology and they can get a rent on that in the future years. In that circumstance also your partner might transfer the technology outrightly.

Now, there is a few standard terms which we generally use in case of the technology transfer which is called exclusive or non exclusive. That means, the transfer agreement clearly specifies there whatever the technology has been transferred to you is only to that particular person only. It cannot be transferred to another person. But many of the time

when the parent company; that means, the company which is holding the technology having a ambition to entering into the different market and creating a joint venture or going for a strategic alliance they might not be interested to give you a exclusive license.

Because the ambition of the parent company is to enter into the different market through the local venturers or through the local partners and if necessary that particular technology may be customized for the purpose of that local market. So, in that circumstance you might not get exclusive license. So, whatever the venture organization which is incorporating out of this particular joint venture agreement they might simply get a non exclusive, right. So, whatever the kind of right you are getting? Either exclusive or non exclusive - over the technology ventures may transfer to you. Either with the boundary condition or with not the boundary condition you should clearly understand that.

I generally advise the people that before you sign a joint venture agreement you should do a clear technology to diligence, to understand the depth, the life, the value, the extent, the liability which is attached with the technology. Now while they are transferring the technology, you need to also for the some kind of a process which gives kind of protections to the organization who is seeking the technology and you might have heard about the technology escrow account. Wherein, the person who is transferring the technology he sent all the information of the technology as well as the no how and the person who is acquiring the technology he gives a consideration what he would have been agreed upon. So, my advice will be while you are getting the technology you should be clear about what you are getting and in what process you are getting.

Next important thing in case of the technology transfer is negotiating the territory, and I believe I have touched upon this particular issue several time in my previous lecture. When I talked with you related to the (Refer Time: 23:03), when I talked about the same company producing the product in a different market. So, to avoid the future conflict or to avoid the restriction in restrictions on the development or growth of that particular technology it is advisable that you should define the territory of the technological operations. Then it is possibly requires to decide about the method of payment, and I have also touched upon this particular issue before, but let me remind you once again. That, if you want to value the technology in what basis you are going to value the technology.

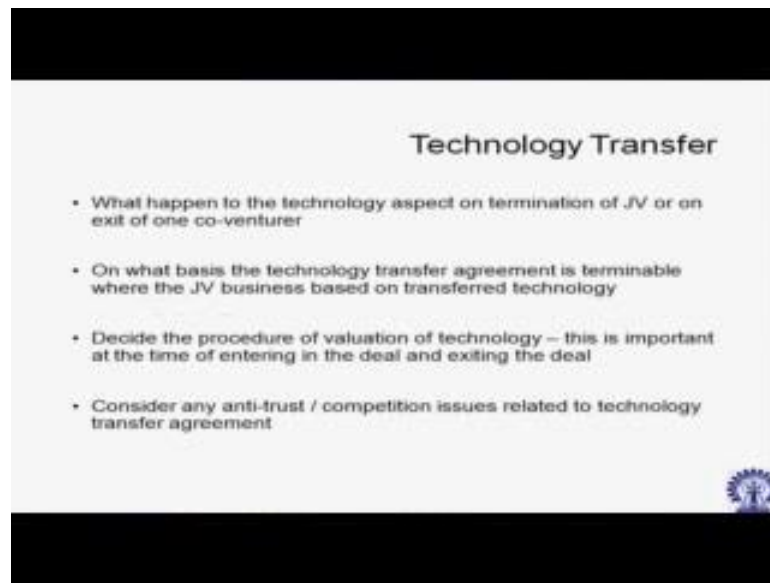
If you are valuing that particular technology or based on certain standard methods then in that case how you are going to compensate that valuation, are you going to make this valuation in terms of the royalty, are you going to make this particular valuation in terms of royalty plus profit sharing are you going to issue some kind of credit instrument like bonds or debenture against the value of the technology which has been transferred, are you going to give a particular class of equity.

Now, again the payment method is not as simple as we are discussion, it might be regulated by the FDI policy of a particular country. It might be regulated by foreign investment policy of a particular country. So, you need to be careful about this particular method of the payment and also you need to discuss about that the procedure and the duration of the payment. Now you might decide that well we are not going to make any upfront payment, but we are going to make the payment as the organization goes. So, in that case if you are thinking that well you are going to pay extra dividend or you are going to issue fully paid up shares or fully paid up debenture. So, whatever you decide you need to decide and need to you know create a provision in your joint venture agreement.

Now, next important issue is that who is going to own if you make a development on the technology which has been transferred or the improvement on the technology which has been transferred. If the technology, when it has been transferring they have provided the (Refer Time: 27:01) cry then, maybe you need to continue giving the rent to the parent company or the partner who has brought the technology. But again some of the issues relating like this might hit the regulation of the fare market regulator. They might not allow you or the competition commission of India might not allow you to have grand backlogs in your agreement itself.

Now, this ownership issues are very important if somebody some of your partner who has bought the technology want to dilute the stake or they want to exit that particular company. Then there should be a procedure in place to understand to value and to see how this particular ownership can be adjusted against the new scenario.

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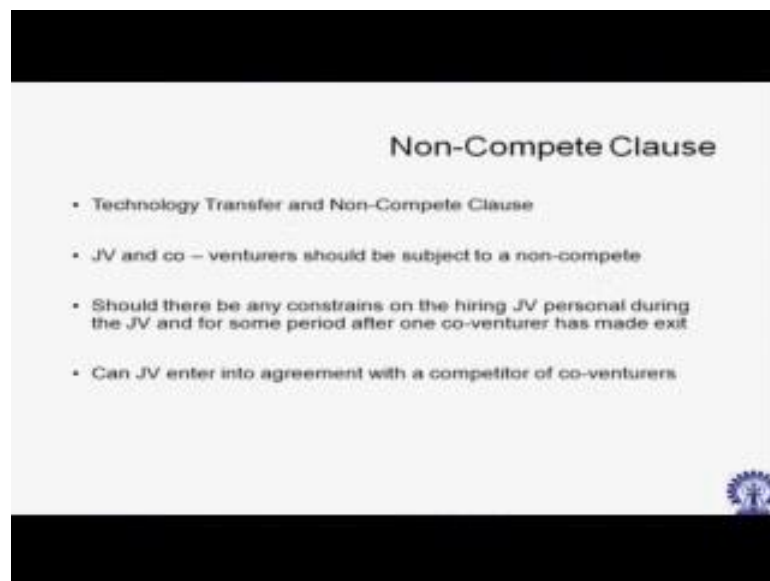
Now, next issue relating to the technology is if there is a exit by one co-venturers other continue, which I was just discussion before in case of the dilution of stake. You need to have a procedure in place, you can compensate in monetary term, you can give kind of a non exclusive light or even you can have a position or you can have a provision to purchase that particular technology from this particular venturer.

Now, if your business is based on a technology itself and in certain point of time you find the situation as arises where there is no other option, but to terminate the agreement between the venturers. So, at that time you should have a policy in place. Now termination might not be by any of the venturers action, but termination might be totally external to this particular venture and some external condition which is forcing this particular venture to come an end. For example, there might be some kind of a regulatory sanction. So, then in that circumstances you should understand that how you are going to protect the know how you are going to determine about the ownership as I have talked before, who is going to continue this with this particular technology.

Now, I have touched upon this particular issue and I do not want to further elaborate there is a lot of stagnate practices relating to the valuation of the technology. Like it can be market value issue, but there is a possibility or the situation might arise that you are dealing with the technology which do not have any market, do not have a known market or technology itself is so new that market is yet to develop and in that particular

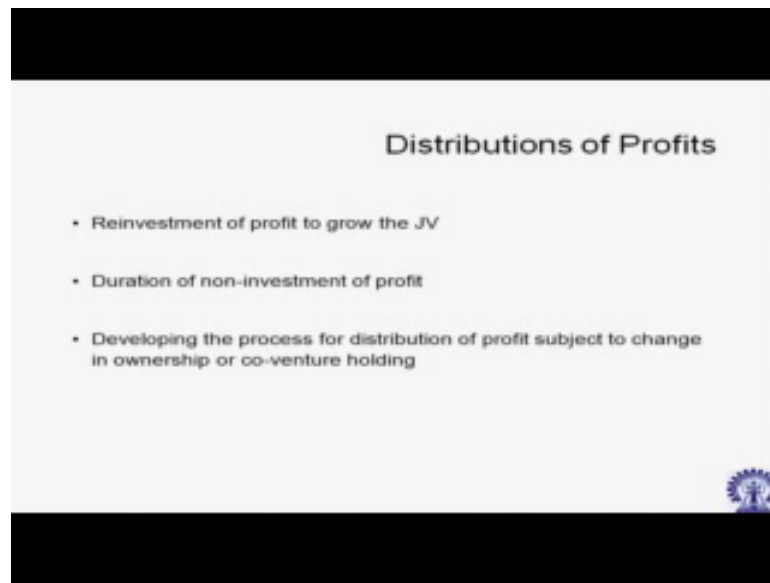
circumstances even the valuation is very difficult to do. Please remember in most of the cases whenever there is a negotiation relating to technology many of the information are not disclosed to during the negotiation stage. Because it might have accounted impact on the business or the person who is transferring the technology, and as I refer to you that there might be a trust issue or may be the competition issue you should be careful relating to technology transfer.

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Now, there is another important thing in case of the technology transfer which is known as non-compete clause. Now in case of technology transfer generally people say that type of the product which you are making through the joint venture you should not either import or export in the same market where venturers or the joint venture are in operation. Now, if that is shown then in that case you should have duration, until what duration this particular arrangement will continue even after the completion of the venture. You should have a permission relating to the hiring of the manpower, because it might so happen that you might be restrained from hiring the same manpower which was working in the venture, because tomorrow once the venture is over both the partner in the venture may be the competitor in the same market. So, you need to sort out this particular issue in your agreement.

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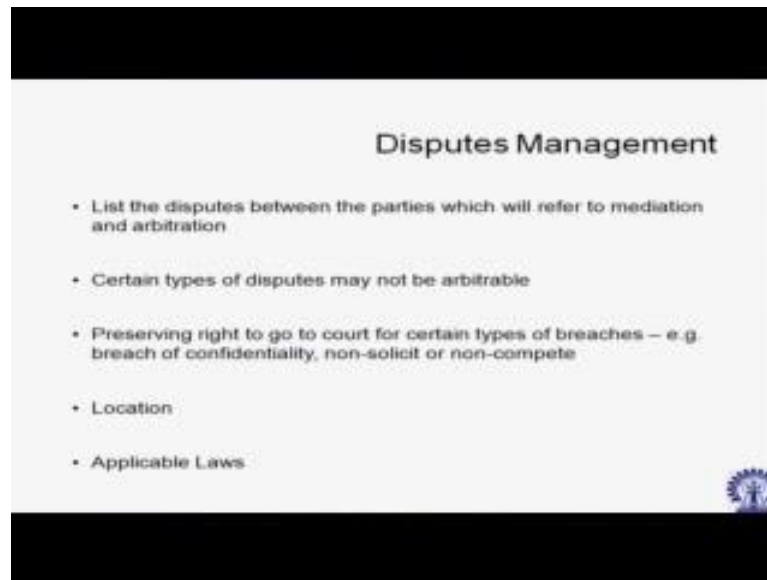


Now, next important issue is relating to the distribution of the profit I have talked about how to reinvest for the growth of JV. Then there is issue relating to duration of investment, there might be issue relating to the process which you need to develop for distribution of the profit, like I have talked you through the payment method before. Now if the company, there is a agreement because a agreement relating to a particular way of distribution and what we found over the years for reason known or unknown a particular partner is started diluting their stake. So, what will happen in these particular conditions when the partner has diluted their stake into that JV, into joint venture organization? So, again within the business plan you have this particular matter in place and clearly identify so that you can avoid the future dispute relating to this particular issue.

Now, let me take you to the next issue relating to the dispute management and this is the very very important aspect from the perspective of the business plan. For that matter let me tell you this dispute management is not only for the business plan, it can be for all other thing which I have discussed with you. But I thought to discuss here because most of the time you will find the dispute arises because of the operational issues or the issues which I have discussed with you. So, in generally in case of the JV we found there is a two kind of arrangement people generally with - one arrangement is that it should be solved through arbitral mediation, mediational arbitration. And I will advise to you, you should specify what are the issues you should be going to decide through

mediational arbitration. At the same time I will advise to you that you should also create a list which will say that in what circumstances the parties need to settle the dispute in the courts only.

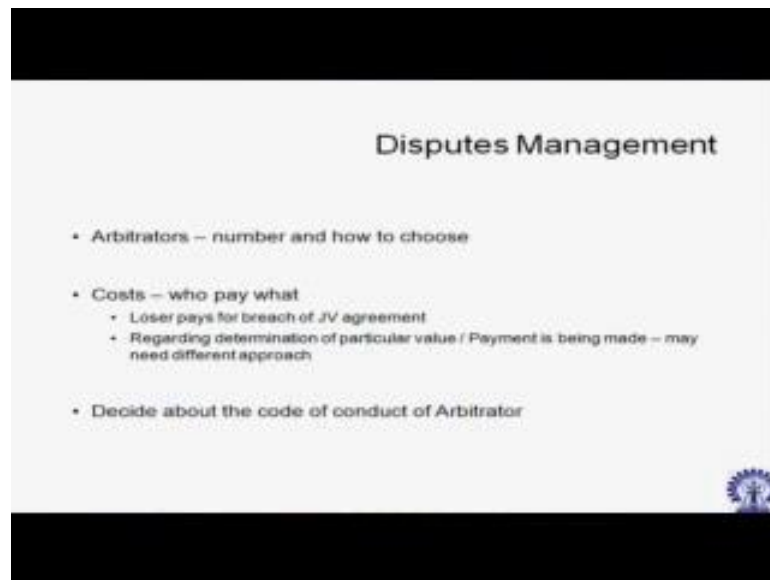
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Like, in this particular case I have given some pointers wherein I said that if there is a breach of confidentiality if there is a matter relating to solicit or non-compete then you should not solve this particular dispute to through the arbitration, rather it is advisable that you should go to the court. Now, in that particular circumstance there might be issue relating to the choice of law and I have elaborately dealt with this particular thing in my previous lecture relating to choice of the law and I will request you to refer impact of that particular lecture.

And the lastly you need to talk about the location where you want to go for arbitration or conciliation or even if there is a dispute that in which law you are going to subject it to. Now, if there is arbitration you are also required to you know decide about the number of arbitrator and how you are going to choose the arbitrator.

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You should also require to talk about the cost of this particular dispute resolution who is going to pay, like if there is a breach then in that case it is advisable that it should be paid by the loser, but where the dispute is relating to the valuation or the payment being made then you should have a different method. You also talk about if there is a particular conduct the arbitrators need to follow. So, the dispute management is one of the very important aspects of the business plan and I should suggest you that you have adequate in place relating to the dispute management.

Thank you.