2026 INSC 590

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10877 OF 2018

MADHYA PRADESH ROAD DEVELOPMENT CORPORATION LTD. THROUGH ITS MANAGING DIRECTOR ...APPELLANT

VERSUS

M/S JABALPUR CORRIDOR PVT. LTD. THROUGH ITS MANAGING DIRECTOR ...RESPONDENT

J U D G M E N T

J.K. MAHESHWARI, J.

1. Arbitration in India has not failed, however Courts sometimes have failed arbitration in India. Even the Government's role cannot be ignored. A single doubtful precedent in the arbitration field has the potential to cast a shadow on its viability in India and its impact on the ease of doing business in India. There is no gainsaying that judicial interference in alternative dispute resolution has often been a cure without a disease in India. In this context, it is high time that judges realize that certainty, uniformity and finality are also cherished values.

2. This appeal has been filed against the impugned judgment and final order dated 21.12.2016 passed by the High Court of Madhya Pradesh, bench at Jabalpur (hereinafter referred to as "**High Court**") in Arbitration Appeal No. 23 of 2016, wherein the High Court did not find any ground to interfere in the matter while exercising its appellate jurisdiction under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as **"1996 Act"**). As such, the High Court affirmed the order of the 10th Additional District Judge, Bhopal (hereinafter referred to as "**District Court**") dated 22.02.2016 in Arbitration Case No. 02/2015 dismissing the application under Section 34 of the 1996 Act filed by the Appellant seeking setting aside of the majority award of the Arbitral Tribunal dated 22.08.2014 (hereinafter referred to as "**Arbitral Award**"). The High Court while dismissing the appeal filed under Section 37 of the 1996 Act held as under:

> *"**68.** Accordingly, in the facts and circumstances of the case, we find that no ground is made out for interference into the matter exercising our limited jurisdiction in a proceeding under section 37.*
>
> ***69**. It may also be taken note of that in pursuance to the interim order passed on 7.10.2016, passed in Civil Appeal Nos. 10152-10153/2016, the Hon'ble Supreme Court has directed that the amount awarded be deposited with the Registry of this Court. In view of the fact that the appeal is being dismissed, the amount deposited before this Court by the appellant and deposited in the Nationalized Bank by the*

Registry, be now paid to the respondent M/s Jabalpur Corridor (India) private Limited.

***70**. The Appeal is devoid of substance and is accordingly dismissed, with no order as to costs."*

I. BRIEF FACTS

3. At the outset, it is necessary to briefly discuss the facts which give rise to the present civil appeal. The Appellant, Madhya Pradesh Road Development Corporation Ltd. (hereinafter referred to as **"MPRDC"**) (*previously known as M/s. Madhya Pradesh Rajya Setu Nirman Nigam Ltd.*) is a wholly owned undertaking of the Government of Madhya Pradesh incorporated under the provisions of the Companies Act, 1956 for development and maintenance of roads and other infrastructure projects in the State of Madhya Pradesh.

4. In the year 2002, the Appellant invited proposals *vide* tender Advertisement No. Madhyam/22511/2002 dated 26.11.2002 for detailed design, engineering, financing, procurement, construction, operation, and maintenance of the Jabalpur Sagar Damoh Road Project on SH37 and SH 14 on 'Build Operate and Transfer (BOT) basis' (hereinafter referred to as **"Project"**).

5. Tiara Dhaya Maju Constructions (M) SDN BHD (hereinafter referred to as "**TDM Constructions**"), a Malaysian company, was

the successful bidder for the Project. To implement the Project, the Respondent, M/s. Jabalpur Corridor Pvt. Ltd. (hereinafter referred to as **"JCPL"**), a Special Purpose Vehicle (hereinafter referred to as **"SPV"**), was incorporated by TDM Constructions under the relevant provisions of the Companies Act, 1956.

6. Further, MPRDC/Appellant, TDM Constructions, and JCPL/Respondent entered into a Concession Agreement on 11.04.2003 to implement and operate the Project of construction, maintenance, and collection of toll of the Sagar-Damoh-Jabalpur Road of a length of 176 kms (hereinafter referred to as **"Project Road"**) for the Concession Period of 5440 days, inclusive of a period of construction of 18 months on 'Build Operate and Transfer (BOT) basis' (hereinafter referred to as **"Concession Agreement"**).

7. At this juncture, we find it apposite to reproduce certain relevant clauses of the Concession Agreement:

> ***CLAUSE 1.1.29****:*
>
> *"'**Debt due**' means the aggregate of the following sums expressed in Indian Rupees, outstanding and payable to the Lenders under the Financing Documents:*
>
> *i. the principle amount of the debt provided by the Lenders under the Financing Documents for financing the Project (the 'principal') which is outstanding as on the Termination Date; and,*
>
> *ii. all accrued interest, financing fees and charges payable on or in respect of the debt referred to in sub-clause (i)*

above, up to the date preceding the Termination Date but excluding any penal interest or charges, payable under the Financing Documents to any Lender."

CLAUSE 1.1.111:

*"'**Termination Payment**' means the amounts payable by MPRSNN to the Concessionaire and/or Lenders under this Agreement upon the Termination of this Agreement and shall consist of payments relating to Debt Due, Subordinated Debt and Equity, as the case may be, and such other amounts as are expressly provided for under this Agreement. Provided, however, that for purposes of determining Termination Payments to be made by MPRSNN under this Agreement, shall at all times be reckoned as an amount not exceeding the Total Project Cost."*

CLAUSE 1.1.113:

*"'**Total Project Cost**' for this agreement means the lowest of the following:*

(a) a sum of Rs.89.78 Crores as on Toll date;

(b) actual capital cost of the Project upon completion of the Project Highway as certified by the Auditors; or

(c) total project cost as set forth in Financing Documents.

Provided further, that if part of the Total Project Cost is funded in foreign currency, in accordance with the Financing Package, then the rate of exchange shall be determined as on the date of Bid, and the Total Project Cost shall, be computed as if such foreign currency were converted with reference to such exchange rate."

CLAUSE 13.5

The Site shall be made available to the Concessionaire pursuant hereto by MPRSNN free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to MPRSNN on account of any costs, expenses and charges for the use of such Site for the duration of the Concession Period save and except as otherwise expressly provided in this Agreement. MPRSNN shall procure for the Concessionaire access to the Site, free of Encumbrances, not later than 90 (Ninety) days from the date of this Agreement. Provided, however, that if MPRSNN does not enable such access to any part or parts of the Site

for any reason other than a Force Majeure Event or breach of this Agreement by the Concessionaire. MPRSNN shall pay appropriate compensation not exceeding at the rate of Rs. 1000/- (Rupees One Thousand Only) per month per 1000 (one thousand) sq. meters or part thereof, if such area is required by the Concessionaire for Construction Works and if such area is critical and severely hampers the construction and operation of the Project Highway. Provided further that the Completion Certificate or the Provisional Certificate, as the case may be, for the Project Highway shall not be affected or delayed as a consequence of such parts of the Site remaining under construction even after the Scheduled Project Completion Date.

CLAUSE 32.2:

"Notwithstanding anything to the contrary contained in this Agreement, in the event of the Concessionaire being in default under any of the provisions hereof expressly providing for Termination under or in accordance with the Clause 32.1.3. MPRSNN shall be entitled to terminate this Agreement forthwith by issuing a Termination Notice to the Concessionaire and upon issue of such Termination Notice by MPRSNN this Agreement shall stand terminated forthwith."

CLAUSE 32.3:

'Concessionaire Event of Default' (EOD): Upon Termination by MPRSNN on account of occurrence of Concessionaire Event of Default, the MPRSNN shall if it deems fit, subject to the rights of the lenders under the Substitution Agreement, substitute another Concessionaire to take over the Debts and subordinate Debts of the Project and maintain the facilities for the balance Concession Period. In such event MPRSNN reserves the right to substitute itself as Concessionaire. However, in the event of non-substitution of the Concessionaire as referred above, MPRSNN shall pay to the Lenders subject to the provisions in the Escrow Account (Project Construction Escrow Account and Toll Escrow Account), by way of Termination Payment an amount equal to 90% (Ninety Percent) of the Debt Due less pending insurance claims, if any. Provided that in the event some insurance claims are not admitted, then 80% of the amount

of such claims shall qualify for being included in the computation of Debt Due."

CLAUSE 32.4.2:

*"**Termination of MPRSNN Event of Default:** Upon Termination by the Concessionaire on account of an MPRSNN Event of Default, the termination payments shall be made by MPRSNN, a sum equal to:*

(i) Debt due less pending insurance claims, if any. Provided that in the event some insurance claims are not admitted, then 80% of the amount of such claims shall qualify for being included in the computation of Debt Due and;

(ii) The entire Subordinated Debt (including interest accrued but not paid upto the date of termination and excluding debt forming part of Equity) less pending insurance claims, if any. Provided that in the event some insurance claims are not admitted, then 80% of the amount of such claims shall qualify for being included in the computation of Debt Due and;

(iii) 100% (One Hundred Per Cent) of the Equity (subscribed in cash and actually spent on the Project but excluding the Grant/ Subsidy referred to in Clause 23) if such Termination occurs at any time during two years commencing from the Commencement Date and for each successive years thereafter, such amount shall be adjusted every year to fully reflect the change in WPI during such year, and the adjusted amount so arrived at shall be determined.

MPRSNN shall make the payments as specified under (i) and (ii) above directly to the respective lenders. All the payments made by MPRSNN in this connection shall constitute valid discharge of the obligation to pay by MPRSNN.

It is clarified that the deduction of pending insurance claims referred in Clause 32.4 shall exclude any prior Insurance Claims during the Concession Period, for which, the Concessionaire has already incurred the cost of rectification thereof, for which, the Insurance Claims are pending prior to the MPRSNN event of default leading to termination of the agreement."

CLAUSE 32.6

"Termination Payments': The Termination Payment pursuant to this Agreement shall become due and payable to the concessionaire by MPRSNN within 180 (One Hundred and Eighty Only) days of acceptance of demand made by the Concessionaire with the necessary particulars duly certified by the Statutory Auditors and Independent Consultant. If MPRSNN fails to disburse the full Termination Payment within 180 (One Hundred and Eighty Only) days, the amount remaining unpaid shall be disbursed along with interest @ SBI PLR plus two per cent for the period of delay on such amount."

CLAUSE 39.3.1

"Any Dispute, which is not resolved amicably as provided in Clause 39.1 and clause 39.2 shall be finally decided by reference to Arbitration by a Board of Arbitrators appointed as per the provisions of the Arbitration & Conciliation Act, 1996 and any subsequent amendments thereto. Such arbitration shall be held in accordance with the Rules of Arbitration of the Indian Council of Arbitration and shall be subject to the provisions of the Arbitration & Conciliation Act, 1996 and as amended from time to time thereafter"

CLAUSE 54

*"'**Grant**' means cash support by way of outright grant of a sum by MPRSNN paid to the Concessionaire towards meeting the Project Cost and shall have the meaning described thereto in Clause 23.1."*

8. Pursuant to the Concession Agreement, the JCPL/Respondent entered into a loan agreement dated 23.07.2004 with EXIM Bank Malaysia for ₹80.85 Crores (about US$ 13 Million).

9. However, during the implementation of the Project, several differences arose between the Appellant and the Respondent in relation to the completion of the Project. The JCPL/Respondent, in

March, 2007 filed Writ Petition No. 4450 of 2007 before the High Court seeking, *inter alia*, for handover of vacant possession of land for construction of roads and bridges since the Project had stalled due to delay in grant of such vacant possession.

10. On 12.07.2007, the Appellant issued a termination letter to the Respondent under Clause 32.2 of the Concession Agreement, thereby terminating the Concession Agreement (hereinafter referred to as "**Termination Letter**"). Thereafter, the JCPL/Respondent amended the Writ Petition No. 4450/2007 and also laid challenge to the Termination Letter in the same writ petition. In the meanwhile, out of the total loan amount of ₹80.85 Crores taken from EXIM Bank, Malaysia, an amount of ₹49.47 Crores had been expended by the Respondent, by that time. As such, the Respondent sought 'Termination Payment' under Clause 32.6 of the Concession Agreement *vide* its letter dated 18.07.2008, it also sought return of seized machinery along with hire charges.

11. The JCPL/Respondent herein contested the said termination of Concession Agreement as unlawful and initiated the arbitration proceedings against the MPRDC/Appellant herein in 2011. Accordingly, the Arbitral Tribunal consisting of three Arbitrators

was constituted. The Claims and Counter Claims raised by the parties before the Arbitral Tribunal were as under-

CLAIMS:

S.No.	Particulars	Amount
1.	Declaration that the Termination by MPRDC of the Concession Agreement dated 11.04.2003 is unlawful, invalid, and arbitrary.	NIL
2.	Reimbursement of Value of work done.	INR 48,48,11,310/-
3.	Release of unwarranted withholding of money: a. Damage for Financial closure. b. Damage for delay in completion. c. Miscellaneous recoveries.	 INR 17,35,000/- INR 77,80,000/- INR 43,77,640/-
4.	Hire charges for 200 TPH crusher in illegal custody of MPRDC.	INR 12,86,32,861/-
5.	Interest on loan obtained from EXIM Bank for the project.	INR 42,55,57,298/-
6.	Reimbursement of Bank Guarantee charges after scheduled completion date.	INR 42,50,377/-
7.	Reimbursement of Insurance Policy Charges after scheduled completion date.	INR 48,07,994/-
8.	Exemplary damages for unjustified termination.	INR 10,00,00,000/-
9.	Reimbursement of overhead and Establishment expenses after scheduled completion date.	INR 6,98,28,151/-
10.	Loss of profit due to abrupt wrong termination.	INR 53,17,96,901/-
11.	Reimbursement of legal expenses due to unwarranted court cases.	INR 6,27,895/-
Total claims		**INR 1,76,42,05,427/-**
12.	a. Interest @14.75% on claims Nos. 2,3, 6 & 7 from 12.7.2007 to 30.6.2011. b. Interest on all claims from 30.6.2011 till date of payment at 14.75%.	INR 29,73,22,661/-

COUNTER CLAIMS:

S.No.	Particulars	Amount
1.	Refund of grant paid to the claimant.	INR 23,85,00,000/-
2.	Expenditure incurred by the respondent in maintaining the project road after termination of agreement and up to handing over of the road to the new concessionaire.	INR 8,86,40,000/-
3.	Cost incurred in preparation of DPR after termination.	INR 40,00,000/-
4.	Extra cost of the project i.e. revised cost of the project minus the original cost of the project.	INR 238,85,00,000/-
5.	Expenditure incurred in defending cases filed by the claimant.	INR 1,24,000/-
6.	Expenditure damages caused due to failure to complete the work @ 20,000/- per day per clause 15.4.	INR 5,14,60,000/-
Total Claim		**INR 2,77,12,24,000/-**
7.	Interest	14.75% of claim

12. During pendency of the arbitration proceedings, the Appellants herein had moved an application under Section 16 of the 1996 Act challenging the jurisdiction of the Arbitral Tribunal, which was rejected by the order dated 28.04.2012, stating therein that the detailed reasons will form a part of the final award. Further, the Appellant herein filed an application before the District Court in Arbitration Case No. 45 of 2012, seeking termination of mandate of the arbitrators under Section 14 of the 1996 Act. The Appellant contended mainly that the State of Madhya Pradesh had a special local law namely Madhya Pradesh

Madhyastham Adhikaran Adhiniyam, 1983 (hereinafter referred to as "**Adhiniyam**") and since the Concession Agreement was a 'works contract', the 1996 Act did not apply in this case.

13. The District Court *vide* the order dated 19.02.2013, accepted the aforesaid contention raised by the Appellant in its application filed under Section 14 of the 1996 Act and held that the dispute could not be heard by private arbitrators and had to be heard by the Tribunal constituted under the Adhiniyam in terms of the local law. As such, the Respondent was directed to file its claim before the Madhya Pradesh Arbitration Tribunal.

14. Aggrieved, the Respondent filed Writ Petition No. 6557 of 2013 before the High Court under Article 227 of the Constitution of India challenging the order dated 19.02.2013 of the District Court, which by a detailed order dated 04.12.2013, set aside the order dated 19.02.2013 and held that dispute between the parties had to be resolved under the provisions of the 1996 Act itself. The aforesaid order attained finality when this Court upheld the same by an order dated 12.10.2015 in SLP (C) No. 3811 of 2014. It is in this context that the Arbitral Tribunal under 1996 Act was constituted and allowed to function. Moreover, a Review Petition filed before

this Court in Review Petition (C) No. 1580 of 2016 was also dismissed *vide* order dated 29.03.2016.

15. At the conclusion of the arbitral proceedings, the Arbitral Tribunal, *vide* majority award dated 22.08.2014 while allowing the claims of the Respondent herein (*Claimant before the Arbitral Tribunal*) and dismissing the Counter-claim of the Appellant herein (*Respondent before the Arbitral Tribunal*) held as under:

> "*A. Costs in favour of claimant, being the winning party Rs. 47,00,000/-*
>
> *Note: The Principal Award amount to be paid to the Claimant will be recovered by the amount which it might have received or is expected to receive from the Insurance Company. The amount of interest awarded shall also reduce as a consequence. Necessarily information about receipts in this regard shall be given by the Claimant to the respondent.*
>
> *2. Post-lite interest: The Majority AT decides that the Principal amount of Award plus amount payable towards costs shall carry interest at 18% p.a. from the date of Award till realization.*
>
> *3.The observations, views given herein above comprise the majority views of Shri K.K. Sethi, Presiding Arbitrator and Shri R.C. Chugh. Cc Arbitrator The Ld. Co-Arbitrator Shri K. Shankar Narayan has expressed his different views given his separate Award, which is annexed to this Award.*"

However, one of the learned Arbitrators passed the dissenting award, thereby dismissing the claim of the Respondent herein as well as the counter-claim of the Appellant, and held as under:

"***7. CONCLUSION***

In consequence the Claim and Counter Claim are dismissed. I award an amount of Rs. 5,00,000/- as costs to the Respondent."

16. Aggrieved by the said Arbitral Award, the Appellant filed an application under Section 34 of the 1996 Act before the District Court bearing Arbitration Case No. 2 of 2015. The said application was dismissed by the District Court vide its order dated 22.02.2016 and it was held:

*"**222.** In the light of the aforesaid entire investigation, it is proved undoubtedly that the learned Arbitration Tribunal has passed on lawful award with majority. It is also clearly proved from the documents and evidence placed on record by the parties that one member of the learned Arbitration Tribunal Shri R.C. Chugh was not biased in any way the applicant and he has neither participated in the arbitration procedure having bias with the applicant nor has he passed the award. There is no evidence in the case that which. proves even a little that the non-applicant Jabalpur Corridor not following the amicable settlement procedure had referred the case directly for the arbitration. It is also not proved even a little that the learned Arbitration Tribunal has declared the award in favor of the non-applicant without adducing the evidence by the non-applicant. It is not proved in the case that the award passed by the learned Arbitration Tribunal being against the contract executed between the parties is unlawful. It is also not proved in the case that the learned Arbitration Tribunal going outside the claim has admitted the claims of the non-applicant during the arbitration procedure. It is not proved by evidence in the case that the learned Arbitration Tribunal has committed the legal misconduct in declaring the award with majority.*

***223.** It is not proved on the basis of the documents, evidence and material placed on record particularly in the light of the judgments of the Hon'ble Supreme Court as well*

the Hon'ble High Court considered above that the impugned award passed by the learned Arbitration Tribunal has been passed going beyond the subjects referred by the non-applicant. It has not been proved also in the case that the award passed by the learned Arbitration Tribunal is against the public policy of Indi or it has been passed in violation of any law of India. It is also not proved in the case that the learned Arbitration Tribunal has passed the award by fraud and forgery and corruption with majority. It is also not proved that the learned Arbitration Tribunal has committed any legal misconduct in the case.

224. *It is also proved in the light of the aforesaid investigation carried out in the case and in the light of the records and documents placed on record that the applicant itself has created obstacles in following the contract by the non-applicant, it has hindered the trial regularly by moving unnecessary and baseless applications in the arbitration trial during the arbitration procedure.*

225. *In the light of the facts, documents, materials and evidence placed on record and the aforesaid respected judgments of the Courts, it is not proved even a little that the application of the applicant comes under any provision of subsection of Section 34 of Arbitration and Conciliation Act, 1996 or it proves any ground for setting aside the impugned award under provisions of subsection 2 of Section 34 of Arbitration and Conciliation.*

226. *Resultantly, I am of the opinion on the basis of the all the facts, materials, evidence placed on record and provisions of the established law in this regard that there is no force law in the application moved by the applicant under Section 34 of Arbitration and Conciliation Act, 1996 and the aforesaid application to have been filed on untrue and baseless grounds is proved. Resultantly, I am of the opinion that the application of the applicant under Section 34 of Arbitration and Conciliation Act is liable to be dismissed with costs in the light of the aforesaid entire investigation.*

227. *Therefore, the aforesaid application filed by the applicant Madhya Pradesh Road Development Corporation Limited under Section 34 Arbitration and Conciliation Act, 1996 is dismissed with cost. The entire costs of the aforesaid case, which includes all expenses incurred by the*

applicant and the non-applicant, would be given by the applicant in person. The entire counsel fees incurred by the parties in the case would be the part of the suit costs."

17. The Appellant, aggrieved by the said order dated 22.02.2016 in Arbitration Case No. 2 of 2015, filed an appeal under Section 37 of the 1996 Act before the High Court. It was the case of the Appellant before the High Court that the order dated 22.02.2016, upholding the award, is contrary to Section 34(2)(a)(iv) and Section 34(2)(b)(ii) of the Act. The said appeal was dismissed by the High Court vide the Impugned Order. Hence this appeal.

II. SUBMISSIONS

18. Before us, the learned Attorney General of India, Mr. R. Venkataramani, appearing for the Appellant submitted that:

18.1. At the outset, the Appellant is limiting its challenge to 'Dispute 2' as per the Arbitral Award which relates to the claim against value of work done.

18.2. The Arbitral Award is liable to be set aside under Section 34(2)(a)(iv) of the 1996 Act, as the Arbitral Tribunal have passed the Arbitral Award beyond the claims of the JCPL/Respondent herein. It was submitted by learned Attorney General that while deciding 'Dispute No. 2', wherein Respondent had sought

reimbursement of ₹48,48,11,310 towards value of work done, the Arbitral Tribunal travelled beyond the scope of reference and awarded the amount of ₹49,47,77,236 towards 'termination payment' under Clause 32.4.2 of the Concession Agreement which was not permissible. It is the case of the Appellant that the award was made in respect of something which was not even claimed and the awarded amount was even more than what was claimed. Further, the Arbitral Tribunal has also awarded a sum of ₹4,92,61,477/- for share capital equity actually spent on the Project.

18.3. That in any case Clause 32.4.2 is applicable when the Respondent herein terminates the agreement and is inapplicable when the termination is done by the Appellant. Admittedly, the termination has been done by the Appellant, thus the said clause is inapplicable in the present dispute.

18.4. The Arbitral Tribunal has wrongly relied on Clause 32.6 of the Concession Agreement while awarding the 'termination payments'. Under the said clause, only 100% equity is payable directly to the Respondent, while other termination payments, including payment of 'debt due' and 'subordinate debt' are to be paid directly to the lender and not to the Respondent.

18.5. The learned Attorney General, in the alternative, submitted that even if the termination payment could have been awarded by the Tribunal, the same had to be calculated as per the procedure prescribed in Clause 1.1.111 of the Agreement.

18.6. To sum up, it is the case of the Appellant that a conjoint reading of Clauses 1.1.29, 1.1.111, 32.4.2, and 32.6 makes it evident that the 'termination payment', if at all payable, is payable only when the Concession Agreement was terminated by the Respondent, and that too only to the extent of 100% of the equity already spent, directly to the Respondent and debt, if any, was to be paid to the lender. In the present case, termination was admittedly effected by the Appellant, rendering Clause 32.4.2 inapplicable. The Arbitral Tribunal, therefore, not only travelled beyond the scope of reference in awarding 'termination payment' under Clause 32.6 but also misapplied the contractual provisions, resulting in an award contrary to law and the express terms of the Agreement.

18.7. The Arbitral Award is liable to be set aside under Section 34(2)(b)(i) and 34(2)(b)(ii) of the 1996 Act as the same is in contravention of provisions of the Adhiniyam, which provides that

all disputes relating to "works contract" shall be exclusively decided by the Tribunal constituted under the said Adhiniyam.

18.8. The learned Attorney General of India relies on the judgment of this court in ***Booz Allen & Hamilton Inc. vs. SBI Home Finance Ltd.***,[1] and ***A. Ayyasamy vs. A. Paramasivam***,[2] to submit that an arbitral award is liable to be set aside if the subject matter of the dispute is not capable of settlement by arbitration under the law in force.

18.9. It is the case of the Appellant that "concession agreements" are "work contracts". In this context the Appellant has relied on the judgment of full bench of the Madhya Pradesh High Court in ***Viva Highways Ltd. vs. Madhya Pradesh Road Development Corporation Ltd.***[3].

18.10. The Learned Attorney General of India, relying on the three-judge bench judgment of this Court in ***Madhya Pradesh Rural Road Development Authority & Anr. vs. M/s. LG Chaudhary Engineers and Contractors,***[4] (hereinafter referred to as '**LG Chaudhary II**') and a division bench judgment of this court

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[1] (2011) 5 SCC 532.
[2] (2016) 10 SCC 386.
[3] 2017 SCC Online MP 1448.
[4] (2018) 10 SCC 826.

in ***State of Chhattisgarh vs. M/s. KMC Construction, Civil Appeal No. 4257 of 2018***, further submitted that the Adhiniyam is the local law in force and under Adhiniyam, adjudication of disputes arising out of "works contracts" is exclusively vested in the tribunal constituted thereunder. By virtue of Section 7 of the Adhiniyam, such disputes are expressly excluded from the jurisdiction of arbitral tribunals constituted under the 1996 Act, as well as from the jurisdiction of civil courts. Thus, the law in force bars any forum other that the tribunal established under the Adhiniyam from entertaining or deciding disputes relating to works contracts.

18.11. The non-filing of an application under Section 16(2) of the Act, challenging the jurisdiction of the Arbitral Tribunal would not affect the challenge to the jurisdiction under Section 34 of the Act. To support this submission, learned Attorney General placed reliance on the decision of this court in ***Lion Engg. Consultants v. State of M.P.***[5].

18.12. The procedural law of waiver or estoppel have no application when the decree of award was passed by the authority

[5] (2018) 16 SCC 758.

suffering from inherent lack of jurisdiction. The Arbitral Award is itself a nullity and the Arbitral Tribunal has been rendered *coram non judice*, therefore, the challenge on the grounds of jurisdiction can be raised at any stage. In order to buttress this submission, Ld. Attorney General placed relied on the judgement of the Constitutional bench of this Court in ***Chief Justice of A.P. vs. L.V.A. Dixitulu***,[6]. He further relied on judgments of this court in ***Jagmittar Sain Bhagat v. Health Services, Haryana***,[7] and ***Karnal Improvement Trust v. Parkash Wanti***,[8].

18.13. Further, the learned Attorney General, relying on the judgment of this court in ***Fiza Developers & Inter-Trade (P) Ltd. v. Amci (India) (P) Ltd.***,[9] submitted that if the Court finds that the subject matter of the dispute was incapable of being settled by arbitration due to operation of law, the Court is duty bound to set aside the Arbitral Award under Section 34(2)(b)(i) of the 1996 Act, even if no such ground has been raised by the Applicant in its application filed under Section 34 of the 1996 Act. It is the submission of the Appellant that even if the ground is taken for the

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[6] (1979) 2 SCC 34.
[7] (2013) 10 SCC 136.
[8] (1995) 5 SCC 159.
[9] (2009) 17 SCC 796.

first time in rejoinder before this Court in the present Civil Appeal, this Court should give effect to the intention of the legislature and set aside the Arbitral Award. To this effect also, he relies on the judgment in ***Lion Engg.*** (supra).

18.14. Lastly, the learned Attorney General also submitted before us that the interest levied on the Arbitral Award at the rate of 14.75% and post award interest of 18% is exorbitant. In this context various judgments of this court were submitted before us and it was urged that this Court should take a lenient view and reduce the rate of interest.

19. The learned senior counsel, Dr. Abhishek Manu Singhvi and Mr. Vivek Tankha appearing for the Respondent submitted that:

19.1. The scope of interference under Section 34 of the 1996 Act is very narrow and limited. In the present case, the Arbitral Award, the order passed under section 34 of the 1996 Act, and the order passed under Section 37 of the 1996 Act are all well detailed and reasoned orders. All the grounds raised by the Appellant have been considered and rejected by such reasoned orders by the forums below. Thus, there are three concurrent findings in favour of the Respondent herein. In support of his submission concerning the scope of interference under Section 34 of the 1996 Act the

learned Senior Counsel relied on the judgment of this Court in ***Municipal Corp. of Greater Mumbai vs. R.V. Anderson Associates Ltd.***[10].

19.2. That there has been no cogent challenge to any finding on any major issues by the Appellant. The Appellant has itself admitted that the Respondent had spent an amount of ₹4.92 Crores as their own equity in the Project and the other amount approximately to the tune of Rs. 49 Crores spent by the Respondent was the debt so received by them from the lender, EXIM Bank of Malaysia.

19.3. Further, the interest awarded is at the contractual rate as provided under Clause 32.6 of the Concession Agreement. In fact, the Appellant itself has claimed the same rate of 14.75% in its counter claim before the Arbitral Tribunal. The learned Senior Counsel relied on the decision of this court in ***Sri Lakshmi Hotel (P) Ltd. vs. Sriram City Union Finance Ltd.***,[11] to submit that the issue of interest awarded by the Arbitral Tribunal does not meet the threshold of challenge under Section 34 of the Act unless so

[10] 2026 SCC OnLine SC 354.
[11] (2026) 3 SCC 600.

perverse or unreasonable so as to shock the conscience of the Court.

19.4. The amount awarded by the Arbitral Tribunal has been awarded in accordance with the material on record and is in line with Section 70 and 73 of the Indian Contract Act, 1872. The same was also confirmed by the District Court and the High Court under Section 34 and Section 37 of the 1996 Act respectively.

19.5. The conduct of the Appellant, which is a Public Sector Undertaking, has been *mala fide* throughout the dispute. The Appellant has been engaging in various dilatory tactics to avoid paying the amount owed by it. In this regard, the learned senior counsel drew our attention to the findings of learned District Court in Arbitration Case No. 2 of 2015. Furthermore, the learned senior counsel has also drawn our attention to the anti-expropriation clause in the Bilateral Investment Treaty between India and Malaysia (hereinafter referred as **"BIT"**) to submit that the Respondent has been kept in waiting for past 19 years, i.e., from the date of termination of Agreement by the Appellant for the amount spent by the Respondent in implementation of the Project, and such delay is akin to an expropriation under the said BIT.

19.6. The issue of 'Termination Payment' being payable to Respondent was considered and contested before the Arbitral Tribunal. It is only after considering all the aspects, including the submissions of both the parties on the 'termination payment', the Arbitral Tribunal has awarded the said amount. The District Court and the High Court have held that the termination payment was covered under the claims raised by the Respondent herein and such claims were duly contested before the Arbitral Tribunal. Therefore, such submission on the claim being beyond the scope of reference to arbitration warrants outright rejection.

19.7. The learned senior counsel has submitted that Clause 32.6 of the Concession Agreement is not a 'notwithstanding' clause rather an independent clause under which the 'termination payment', expressly becomes due and payable to the Concessionaire/Respondent. There are concurrent findings in favour of the Respondent by the forum below, and such findings have been arrived at after due examination of the material on record and are well-reasoned. Thus, there is no error in awarding the 'termination payment' to the Respondent.

19.8. Finally, it is the case of the Respondent that once the issue with respect to referral under the Adhiniyam, 1983 has been

decided by this Court, such issue becomes final *inter-se* the parties, even if the judgment of the High Court was overruled subsequently in ***Viva Highways*** (supra). In support of his contention, learned senior counsel for the Respondent places reliance on the judgment of the Constitutional bench of this Court in ***Natural Resources Allocation, In re, Special Reference No. 1 of 2012***[12].

19.9. The learned senior counsel for the Respondent further submitted that the issue of jurisdiction based on the Adhiniyam was neither raised in the application under Section 34 of the 1996 Act nor before the High Court in appeal under Section 37 of the 1996 Act. In fact, even in SLP, the said ground was not raised. It was raised for the first time in rejoinder affidavit filed in the instant appeal, which is completely impermissible. In this regard, reliance was placed on the judgments of this Court in ***LG Chaudhary II*** (supra) and ***Gayatri Project Ltd. vs. M.P. Road Development Corpn. Ltd.***[13].

III. ANALYSIS

20. Having heard the learned senior counsels appearing for the parties, and upon perusal of the records, the question which this

[12] (2012) 10 SCC 1.
[13] (2025) 10 SCC 750.

Court has been called upon to answer in the present appeal is '*Whether the impugned order of the High Court dismissing the appeal under Section 37 of the 1996 Act and affirming the order of the District Court dismissing the setting aside application filed under Section 34 of the 1996 Act, warrants interference by this Court?'*

21. At the outset, learned senior counsel for Respondent has brought to our attention that Respondent herein is a SPV with investment from M/s. Tiara Dhaya Maju Construction (TDM), a company incorporated under the laws of Malaysia. The Respondent SPV is a protected indirect investment under Article 2 of the India-Malaysia Bilateral Investment Treaty, 1995 (Agreement between the Government of the Republic of India and the Government of Malaysia for the promotion and protection of investments) (hereinafter referred to as "**1995 BIT**"). Consequently, the SPV has sufficient *ius standi* to seek compensation under the broadly worded 1995 BIT. In spite of the termination of the said 1995 BIT in 2017, such indirect investments were explicitly protected for a period of 10 years from the date of termination as per Article 14 (4) of the said 1995 BIT. Certainly, we are not deciding a claim under the 1995 BIT, but it is necessary to state that such submissions are not a mere red herring, rather an unfortunate reality check of

our judicial system in respect of arbitration, which has resulted in delayed justice and prevented the swift realization of dues against foreign investment.

22. Is this regard, we may allude to the case of ***SAIPEM S.P.A v. Peoples's Republic of Bangladesh***, ICSID Case No. ARB/05/7, wherein an International Centre for Settlement of Investment Disputes (ICSID) tribunal awarded compensation for expropriation on the ground of denial of justice by the judiciary in Bangladesh which had set aside an arbitral award by a tribunal constituted through institutional arbitration under the aegis of the International Chamber of Commerce (ICC). It was held that misapplying New York Convention, 1958, for setting aside awards on domestic standards itself constituted a breach of the Bilateral Investment Treaty in that case.

23. That being said, this Court ought to be careful in interpreting the 1996 Act, which needs to be applied in a non-discriminatory manner, upholding principles of fairness, equality and equity, particularly when international investments are involved. Recently, in ***State of U.P. v. Reliance Industries Ltd.***,[14], a judgment

[14] 2026 SCC OnLine SC 864.

authored by one of us (J.K. Maheshwari, J), this Court while discussing treaty obligations of India under investment treaties had held that transactions involving foreign investments and international element, come with an inherent expectation of stability in rule of law. Stability and uniformity in application of our domestic laws, especially those pertaining to dispute resolution, bring about reliability which is an important metric for ease of doing business and it is this reliability which attracts foreign investment.

24. Before we analyse the facts and the Arbitral Award, it would be apposite to discuss, in brief, the structure of the 1996 Act.

25. The 1996 Act is divided into five parts, wherein, Part I, I-A, and II relates to Arbitration, Part III deals with Conciliation, and Part IV deals with supplementary provisions. Within the arbitration mechanism, the Act classifies Arbitrations into two categories, i.e., Domestic Arbitration and International Commercial Arbitration. This categorisation is necessary as consequences of categorization would entail different powers of judicial interference.

26. In any arbitration, the process can be divided into three stages: (i) pre-arbitration, (ii) during the course of arbitration, and (iii) post-award/execution. Part I of the Act, which mostly applies

to domestic arbitration deals with all the three stages. Part II concerns itself with enforcement of foreign awards under New York Convention or Geneva Convention respectively.

27. Part I is divided into ten chapters, wherein Chapters I and X are general and miscellaneous provisions. Chapters II and III concern pre-arbitral procedure, Chapters IV, V, and VI concern procedure and process for the conduct of arbitration, and Chapters VII, VIII, and IX concern post-award and enforcement mechanism. The general scheme of the 1996 Act provides that it is a complete code in itself and the process is continuous with 'unbroken timelines'.

28. The above structure strengthens the objective of the 1996 Act, particularly the object of providing for a speedy resolution of the disputes with minimum court intervention. Section 5 of the 1996 Act expressly limits the extent of the judicial intervention, which is reproduced as under-

> *"**5. Extent of judicial intervention.**—Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part."*

The seven-judge bench of this Court in ***Interplay Between Arbitration Agreements under Arbitration Act, 1996 & Stamp***

Act, 1899, In re,[15] while examining the principle of minimum judicial interference under the 1996 Act held:

> ***"76.*** *The principle of judicial non-interference in arbitral proceedings is fundamental to both domestic as well as international commercial arbitration. The principle entails that the arbitral proceedings are carried out pursuant to the agreement of the parties or under the direction of the tribunal without unnecessary interference by the national courts. This principle serves to proscribe judicial interference in arbitral proceedings, which would undermine the objective of the parties in agreeing to arbitrate their disputes, their desire for less formal and more flexible procedures, and their desire for neutral and expert arbitral procedures. The principle of judicial non-interference in arbitral proceedings respects the autonomy of the parties to determine the arbitral procedures. This principle has also been incorporated in international instruments, including the New York Convention and the Model Law.*
>
> ...
>
> ***80.*** *Section 5 of the Arbitration Act is based on Article 5 of the Model Law. However, Section 5 also incorporates a non obstante clause setting out the scope of judicial intervention. It reads as follows:*
>
> *...*
>
> *Two aspects become clear from a comparison of Section 5 of the Arbitration Act with Article 5 of the Model Law : first, Section 5 begins with a non obstante clause unlike Article 5; and second, it limits the scope of judicial intervention to the extent "so provided" in Part I.*
>
> ***81.*** *One of the main objectives of the Arbitration Act is to minimise the supervisory role of Courts in the arbitral process. ... Parliament enacted Section 5 to minimise the supervisory role of Courts in the arbitral process to the bare minimum, and only to the extent "so provided" under the Part I of the Arbitration Act. In doing so, the legislature did not altogether exclude the role of Courts or judicial*

[15] (2024) 6 SCC 1.

authorities in arbitral proceedings, but limited it to circumstances where the support of judicial authorities is required for the successful implementation and enforcement of the arbitral process. The Arbitration Act envisages the role of Courts to "support arbitration process" by providing necessary aid and assistance when required by law in certain situations.

82. *Section 5 begins with the expression "notwithstanding anything contained in any other law for the time being in force." The non obstante clause is Parliament's addition to Article 5 of the Model Law. It is of a wide amplitude and sets forth the legislative intent of limiting judicial intervention during the arbitral process. In the context of Section 5, this means that the provisions contained in Part I of the Arbitration Act ought to be given full effect and operation irrespective of any other law for the time being in force…*

…

89. *Section 5 is of aid in interpreting the extent of judicial interference under Sections 8 and 11 of the Arbitration Act. Section 5 contains a general rule of judicial non-interference. Therefore, every provision of the Arbitration Act ought to be construed in view of Section 5 to give true effect to the legislative intention of minimal judicial intervention."*

29. The above pronouncement of this Court, although made in the context of an application for appointment of arbitrator under Section 11 of the 1996 Act, when read with the express language of Section 5 of the 1996 Act reaffirms the position of law with respect to the limited role of Courts in arbitration. Section 5, beginning with a non obstante clause, manifests the legislative intent to restrict the role of Courts to only those instances which are expressly contemplated under Part I of the 1996 Act. Accordingly, while exercising any power under any provision of the

1996 Act, it is the duty of the Court to ensure that the object of the 1996 Act, i.e., speedy resolution of disputes with minimal judicial interference is effectuated, and that intervention remains confined to circumstances where such support is indispensable for the arbitral process or where there is perversity so manifest that it shocks the conscience of the Court. The judicial interference with the arbitral award, if any, is provided for only under Sections 34 and 37 of the 1996 Act.

30. In light of the above, it is pertinent to discuss the scope of Section 34 of the 1996 Act, which is reproduced as under-

> ***"34. Application for setting aside arbitral award.—****(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).*
>
> *(2) An arbitral award may be set aside by the Court only if—*
>
> *(a) the party making the application furnishes proof that—*
>
> *(i) a party was under some incapacity; or*
>
> *(ii) The arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or*
>
> *(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or*
>
> *(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of*

the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation.—Without prejudice to the generality of sub-clause (ii), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under Section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award."

31. Sub - section (1) of Section 34 envisages the recourse against an arbitral award. It expressly limits such recourse to only those applications which are made in accordance with sub-section (2) and (3) of Section 34 of the 1996 Act. Therefore, Section 34 of the 1996 Act, at the outset, clarifies that when a party takes recourse against the arbitral award, the scope for intervention by the Court is limited to grounds provided under sub-section (2) and (2A) of the said section, and can be exercised only if such recourse is taken by the party within the time limit provided under sub-section (3) to Section 34 of the 1996 Act. Sub-section (2) provides for the circumstances/grounds on which the Court can set aside the arbitral award. Further, it is pertinent to observe that Section 34 of the 1996 Act does not provide for an appeal against the award of the arbitral tribunal, but only provides for an application to seek 'setting aside' of the award.

32. There are a plethora of decisions of this Court, crystalizing the scope of interference under Section 34 of the 1996 Act. This

Court has consistently held that the jurisdiction of the Court under Section 34 of the 1996 Act is narrowly circumscribed and confined to the specific grounds enumerated therein. The Court cannot assume the role of an appellate forum while deciding an application for setting aside of the award under Section 34 of the 1996 Act to correct the errors of facts, reconsider costs, or engage in review of merits of the arbitral award. The Arbitral Tribunal alone is the master of evidence and of interpretation of contractual terms between the parties.

33. It is also well settled that once the arbitral tribunal has applied its mind, appreciated the evidence on record, and interpreted the terms of the contract to take a certain view, such view of the arbitral tribunal would ordinarily be accepted and ought not to be interfered with by the Court unless it is palpably erroneous, falling within the limited grounds as mentioned in Section 34 of the 1996 Act. Even if two views are possible, it is beyond the scope of Section 34 for the Court to reappraise the evidence to take a view different from the one taken by the arbitral tribunal. Thus, as long as the conclusion arrived at by the arbitral tribunal is a plausible one that a reasonable person could arrive

at, the Court should be circumspect in intervening with such view of the Arbitral Tribunal.

34. In this regard, reference may be made to the decision of the three-judge bench of this Court in ***Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd***,[16] wherein it was held -

> *"**24.** There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.*
>
> ***25.** Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act."*

[16] (2019) 20 SCC 1.

35. The decision of this Court in ***Consolidated Construction Consortium Ltd. v. Software Technology Parks of India***,[17] recently reiterated the scope of Section 34 of the 1996 Act and held-

> *"23. Scope of Section 34 of the 1996 Act is now well crystallized by a plethora of judgments of this Court. Section 34 is not in the nature of an appellate provision. It provides for setting aside an arbitral award that too only on very limited grounds i.e. as those contained in sub-sections (2) and (2A) of Section 34. It is the only remedy for setting aside an arbitral award. An arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law which would require re-appraisal of the evidence adduced before the arbitral tribunal. If two views are possible, there is no scope for the court to re-appraise the evidence and to take the view other than the one taken by the arbitrator. The view taken by the arbitral tribunal is ordinarily to be accepted and allowed to prevail. Thus, the scope of interference in arbitral matters is only confined to the extent envisaged under Section 34 of the Act. The court exercising powers under Section 34 has perforce to limit its jurisdiction within the four corners of Section 34. It cannot travel beyond Section 34. Thus, proceedings under Section 34 are summary in nature and not like a full-fledged civil suit or a civil appeal. The award as such cannot be touched unless it is contrary to the substantive provisions of law or Section 34 of the 1996 Act or the terms of the agreement.*
>
> *24. Therefore, the role of the court under Section 34 of the 1996 Act is clearly demarcated. It is a restrictive jurisdiction and has to be invoked in a conservative manner. The reason is that arbitral autonomy must be respected and judicial interference should remain minimal otherwise it will defeat the very object of the 1996 Act."*

[17] (2025) 7 SCC 757.

36. In ***Municipal Corpn. of Greater Mumbai v. R.V. Anderson Associates Ltd.***,[18] a judgment which one of us (J.K. Maheshwari, J) authored, this Court held-

> *"**36.** Of course, while saying so we are cognizant of the sacrosanct principle of party autonomy and the fact that Courts cannot substitute the commercial wisdom of parties as is borne out from the plain meaning of the words used in the contract. However, Clause 8.3(b) has been rightly interpreted by the learned Arbitral Tribunal in the Section 16 order and the matter has been dealt with in the right perspective by the learned Single Judge in Section 34 and the learned Division Bench in the Section 37 appeal. The law in respect of the scope of interference permissible in proceedings arising out of a challenge to the arbitral award under Section 34 of the 1996 Act, is well settled. Generally, the scope of interference is quite narrow. The arbitrator is the master of evidence and so also of interpretation of the terms of contract. If the arbitrator has reached at a certain view with respect to interpretation which is plausible, interference is not warranted merely because some other view may also be possible. This is a settled principle of law which has been recently reiterated in the decisions of this Court in Consolidated Construction Consortium Limited v. Software Technology Parks of India and SEPCO Electric Power Construction Corporation v. GMR Kamalanga Energy Ltd. The role of the Court, in the proceedings arising out of Section 34 of the 1996 Act, is clearly demarcated. The approach of the Court must be to respect arbitral autonomy and ensure minimum judicial interference."*

37. Having examined the scope of Section 34 of the 1996 Act, it is relevant to also refer to Section 37 of the 1996 Act which is reproduced as under –

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[18] 2026 SCC OnLine SC 354.

> *"**37**. Appealable orders.—(1) 2[Notwithstanding anything contained in any other law for the time being in force, an appeal] shall lie from the following orders (and from no others) to the court authorised by law to hear appeals from original decrees of the Court passing the order, namely:—*
>
> *(a) refusing to refer the parties to arbitration under Section 8;*
>
> *(b) granting or refusing to grant any measure under Section 9;*
>
> *(c) setting aside or refusing to set aside an arbitral award under Section 34.]*
>
> *(2) An appeal shall also lie to a court from an order of the arbitral tribunal—*
>
> *(a) accepting the plea referred to in sub-section (2) or sub-section (3) of Section 16; or*
>
> *(b) granting or refusing to grant an interim measure under Section 17.*
>
> *(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court."*

There is no gainsaying that the structure of appeal under Section 37 of the 1996 Act is restrictive. The jurisdiction of the Courts to upset an award can be imagined as a narrowing pyramid. Higher the Court, lesser is the propensity to interfere. Also, higher the Court, the higher threshold that a party must meet to convince that Court to interfere. With each subsequent layer of appeal, the Court's approach must become increasingly hands-off in order to protect the finality of the arbitral process. As a corollary to the above principle of narrowing pyramid, this Court, subject to

exceptions, has very limited scope of interference, more so since the present appeal is carried out of the discretionary jurisdiction under Article 136 of the Constitution of India. This interpretation is in line with the scheme of the 1996 Act, intentions of the lawmakers and the purpose of the United Nations Commission on International Trade Law (UNCITRAL) Model Law itself.

38. In the above lines, this Court in ***Bombay Slum Redevelopment Corpn. (P) Ltd. v. Samir Narain Bhojwani***,[19] held –

> *"**26.** The jurisdiction of the appellate court dealing with an appeal under Section 37 against the judgment in a petition under Section 34 is more constrained than the jurisdiction of the Court dealing with a petition under Section 34. It is the duty of the appellate court to consider whether Section 34 Court has remained confined to the grounds of challenge that are available in a petition under Section 34. The ultimate function of the appellate court under Section 37 is to decide whether the jurisdiction under Section 34 has been exercised rightly or wrongly. While doing so, the appellate court can exercise the same power and jurisdiction that Section 34 Court possesses with the same constraints."*

39. This Court in ***Punjab State Civil Supplies Corpn. Ltd. v. Sanman Rice Mills***,[20] held as follows:

> *"**14.** It is equally well settled that the appellate power under Section 37 of the Act is not akin to the normal appellate jurisdiction vested in the civil courts for the reason that the*

[19] (2024) 7 SCC 218.
[20] 2024 SCC OnLine SC 2632.

scope of interference of the courts with arbitral proceedings or award is very limited, confined to the ambit of Section 34 of the Act only and even that power cannot be exercised in a casual and a cavalier manner.

...

16. *It is seen that the scope of interference in an appeal under Section 37 of the Act is restricted and subject to the same grounds on which an award can be challenged under Section 34 of the Act. In other words, the powers under Section 37 vested in the court of appeal are not beyond the scope of interference provided under Section 34 of the Act.*

...

20. *In view of the above position in law on the subject, the scope of the intervention of the court in arbitral matters is virtually prohibited, if not absolutely barred and that the interference is confined only to the extent envisaged under Section 34 of the Act. The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act. It is exercisable only to find out if the court, exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The Appellate Court has no authority of law to consider the matter in dispute before the arbitral tribunal on merits so as to find out as to whether the decision of the arbitral tribunal is right or wrong upon reappraisal of evidence as if it is sitting in an ordinary court of appeal. It is only where the court exercising power under Section 34 has failed to exercise its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction that the appellate court can step in and set aside the order passed under Section 34 of the Act. Its power is more akin to that superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not liable to be interfered unless a case for interference as set out in the earlier part of the decision, is made out. It cannot be disturbed only for the reason that instead of the view taken by the arbitral tribunal, the other view which is also a possible view is a better view according to the appellate court.*

21. *It must also be remembered that proceedings under Section 34 of the Act are summary in nature and are not like*

a full-fledged regular civil suit. Therefore, the scope of Section 37 of the Act is much more summary in nature and not like an ordinary civil appeal. The award as such cannot be touched unless it is contrary to the substantive provision of law; any provision of the Act or the terms of the agreement."

40. From the consistent pronouncements of this Court, it is evident that the jurisdiction under Sections 34 and 37 of the 1996 Act is narrowly circumscribed and cannot be equated with ordinary appellate jurisdiction. The appellate Court under Section 37 does not sit as a court of appeal on the merits of the arbitral award; its role is confined to examining whether the Court under Section 34 has acted within the limits prescribed by law. Interference is permissible only where the Section 34 Court has exceeded its jurisdiction or failed to exercise it within the confines of Section 34, and not merely because another view of the facts or interpretation of the contract may appear preferable. Courts ordinarily must give requisite deference to finality of arbitral awards unless it is palpably clear that the award is perverse and unreasonable. The arbitral tribunal remains the final authority on appreciation of evidence, and concurrent findings under Sections 34 and 37 are entitled to great deference. The statutory scheme thus reinforces the principle of minimal judicial intervention, ensuring that

arbitral awards are not disturbed save in circumstances expressly contemplated by the Act.

IV. JURISDICTIONAL CHALLENGE

41. At the outset, it needs to be stated that the Appellant herein has sought to take the plea before this Court under Section 34(2)(b)(i) and Section 34(2)(b)(ii), only in the rejoinder affidavit to this appeal filed on 21.06.2017 in light of the judgment dated 05.05.2017, passed by the High Court in AA No. 24/2017, AC No. 79 of 2016 and AC No. 27/2013 – ***Viva Highways Ltd.*** (supra). In this context, it would have been sufficient to only state that such plea taken at the fag end of the appeal ought not be allowed. However, this Court shall examine the jurisdictional claim on merits and also highlight the conduct of the Appellant in trying to rake up settled issues again and again.

42. The Appellant submitted that the Arbitral Award passed by the majority of the learned Arbitral Tribunal under the 1996 Act is without jurisdiction and the Arbitral Tribunal has been rendered *coram non judice* as the Tribunal under the Adhiniyam has exclusive jurisdiction over 'works contracts'. Therefore, it has been pleaded that the Arbitral Award deserves to be set aside.

43. It was further contended that the Adhiniyam provides that all disputes relating to "works contract" shall be exclusively decided by the Tribunal constituted under the said Adhiniyam. Notwithstanding the presence of a written arbitration agreement between the parties, the disputes which relate to a "works contract" could be raised before the said Tribunal alone. Furthermore, Section 20 of the Adhiniyam bars the jurisdiction of civil courts as well. The Adhiniyam, therefore, mandates exclusive jurisdiction to Tribunal. To further strengthen their arguments, the Appellant relied upon decision in ***VA Tech Escher Wyass Flovel Ltd. v. M.P. SEB***,[21]; ***LG Chaudhary II*** (supra), to submit that the law mandatorily provides for adjudication of disputes relating to "works contract" by the Tribunal constituted under the Adhiniyam alone and the jurisdiction of a tribunal constituted under the 1996 Act as well as jurisdiction of civil courts is barred by operation of law.

44. The Appellant also relied upon the decision in ***Booz Allen & Hamilton Inc.*** (supra) and submitted that as per the mandate under Section 34(2)(b) of the 1996 Act, an arbitral award could be set aside if the Court finds that the subject-matter of the dispute

[21] (2011) 13 SCC 261.

is not capable of settlement by arbitration under the law for the time being in force.

45. However, the Appellant has admitted during the course of arguments, that on account of dismissal of earlier Special Leave Petition arising out of the order of the High Court deciding the question with respect to applicability of the Adhiniyam, the Appellant in its application filed under Section 34 of the 1996 Act had not taken a specific ground under Section 34(2)(b)(i) of the 1996 Act. This was because of the decision of the High Court in Writ Petition No.6557 of 2013 arising out of the Section 14 application filed by the Appellant herein before the District Court. The Appellant further admitted that the SLP challenging the aforesaid decision of the High Court was dismissed *in limine vide* order dated 12.10.2015, is SLP (C) No.3811 of 2014.

46. The substance of the argument being raised by the Appellant is that the main reasoning of the High Court in its judgment dated 04.12.2013 in Writ Petition No. 6557 of 2013 (arising out of the Section 14 application filed by the Appellant) was that the Concession Agreement does not fall within the meaning of 'works contract' and therefore the Adhiniyam would not apply to it. However, it is contended that subsequently, the Full Court of the

High Court *vide* judgment dated 05.05.2017 in ***Viva Highways*** (supra) has overruled the judgment dated 04.12.2013 and also the Adhiniyam has been amended subsequently to make it so that such concession agreements fall within the meaning of 'works contract'.

47. On the contrary, the Respondent submitted that entire jurisdictional challenge now sought to be resurrected by the Appellant is *prima-facie* barred by principles of finality and constitutes a belated and impermissible attempt to reopen issues which already stand conclusively determined *inter-se* parties up to this Court.

48. The Respondent stated that the plea regarding the alleged applicability of the Adhiniyam as against proceedings under the 1996 Act had earlier been specifically raised by Appellant, MPRDC under Sections 14 and 16 of the 1996 Act and travelled through multiple judicial forums culminating in dismissal of the special leave petition as well as review petition before this Court.

49. At the outset, it is pertinent to note that, pursuant to Clause 39 of the Concession Agreement, the Arbitral Tribunal under the 1996 Act was constituted, with the Respondent-Claimant appointing one Arbitrator on 14-02-2011, followed by the Appellant

appointing one Arbitrator on 09-03-2011. The two learned Arbitrators thereafter appointed the third (Presiding) Arbitrator on 05-04-2011. It ought to be noted that the Statement of Defence was filed on 12.02.2012. A Section 16 application was filed by the Appellant raising the ground of referral under the Adhiniyam. The Arbitral Tribunal rejected the objection raised by the Appellant but informed the parties that the detailed reasons for such rejection shall form part of the award as mentioned in paragraph 59 of the Arbitral Award.

50. The Appellant herein raised the issue of non-arbitrability under Section 14 of the 1996 Act, in parallel proceedings before the District Court. The District Court initially accepted the Appellant's contention and terminated the arbitration proceedings, directing the Respondent to take recourse before the Tribunal constituted under the Adhiniyam. However, the order was expressly reversed by the Hon'ble High Court of Madhya Pradesh in WP No. 6557 of 2013 through a detailed judgment dated 04.12.2013. It is pertinent to note the categorical finding of the writ court, wherein it was held as under-

> *"13. It is well settled in law that commercial documents must be construed in a manner as understood in commercial parlance. [See:* ***Administrator of the Specified***

Undertaking of the Unit Trust of India and another vs. Garware Polyester Limited*, (2005) 10 SCC 682) It is pertinent to mention here that admittedly respondent No.1 has entered into as many as seventeen concession agreements between the period from 7.8.2009 till 8.8.2012 and in each of the concession agreements, the clause provides that the dispute shall be resolved under the 1996 Act. The respondent No.1 between the period of February, 2009 till October, 2012 has entered into six agreements which are works contracts. The same clearly provide that the dispute between the parties shall be resolved as per the provisions of the 1983 Act. The aforesaid fact goes a long way to show that the respondents have clearly understood the distinction between the works contract and the concession agreement and have consciously chosen the forum provided under the 1996 Act.*

14. In paragraph 11 (c) of the statement of claim filed before the arbitral tribunal, the petitioner stated that the contract value of the concession agreement is Rs.89.78 Cr. whereas the contract value of EPC contract is Rs.120 Cr. In this context, the respondent No.1 in paragraph 11 (c) of the statement of defence has stated as follows:

...

15. Thus, both the parties have clearly understood the agreement to be a concession agreement and had consciously taken a decision that the dispute between the parties shall be resolved under the 1996 Act. The respondent No.1 in view of its admission made in paragraph 11 (c) of the statement of defence filed before the arbitral tribunal cannot be permitted now to contend that the agreement in question is a works contract, as admission in the pleading stands on a higher footing than evidentiary admission and is fully binding on the party making such an admission. [See: Nagindas Ramdas vs. ***Dalpatram Iccharam alias Brijram and others****, AIR 1974 SC 471]*

16. Even assuming that the agreement in question is not a works contract, yet for another reason the dispute between the parties has to be resolved under the provisions of 1996 Act. In ***V.A.Tech Escher Wyass Flovel Ltd. (supra)*** *a two-Judge Bench of Supreme Court held that 1996 Act would apply when there is an arbitration clause, whereas 1983*

Act would apply where there is no arbitration clause. In Ravikant Bansal (supra) a two-Judge Bench of the Supreme Court held that where an arbitration clause mentions that arbitration would be governed by M.P. Arbitration Tribunal, in such cases, 1983 Act would apply.

17. Again a two-Judge Bench of Supreme Court by judgment dated 17.2.2011 in ***A.P.S.Kushwaha (SSI Unit) vs. Municipal Corporation, Gwalior and others*** *[Civil Appeal No.1888-889 of 2011] while dealing with a dispute arising out of an agreement with regard to maintenance of water supply and electric works in different parts of Gwalior Municipal Corporation area which is also a works contract, while taking note of the judgment of Supreme Court in* ***V.A. Tech Escher Wyass Flovel Ltd. (supra)*** *held that if the contract between the parties contains an arbitration clause, the provisions of 1996 Act would apply. However, it is pertinent to mention here that another two-Judge Bench of the Supreme Court in case of* ***L.G. Choudhary*** *(supra), inter alia, held that all disputes pertaining to works contract have to be statutorily referred to the Tribunal set up under the 1983 Act. However, there was divergence of opinion with regard to issue whether the dispute regarding cancellation/ determination of such works contract can be referred to arbitration under the 1983 Act. In view of the aforesaid divergence of opinion, the matter has been referred for consideration by a Larger Bench and the view taken by in* ***V.A.Tech Escher Wyass Flovel Ltd. (supra)*** *has been held to be per incuriam.*

18. It is pertinent to mention here that in the case of L.G. Choudhary (supra) the Supreme Court has not taken note of earlier decision rendered by a two-Judge Bench in the case of ***A.P.S. Kushwaha (SSI Unit) (supra)****. A Special Bench of this Court in the case of* ***Jabalpur Bus Operators Association vs. State of M.P. and others,*** *2003 (1) MPLJ 513 has held that in case of a conflict between decisions of Supreme Court comprising equal number of Judges, decision of earlier Bench is binding. Therefore, the ratio laid down by a two-Judge Bench of Supreme Court in A.P.S. Kushwaha (SSI Unit) (supra), which is prior in point of time is binding on this Court. For this reason also the dispute between the parties has to be referred to the arbitral tribunal under the 1996 Act.*

> *19. In view of the preceding analysis, it is evident that the order passed by the trial Court suffers from an error apparent on the face of record and, therefore, the same cannot be sustained in the eye of law. The dispute between the parties has to be resolved under the provisions of the 1996 Act. In the result, the impugned order dated 19.2.2013 passed by the trial Court is hereby quashed and the writ petition is allowed. However, there shall be no order as to costs."*

51. The High Court had categorically held that the Concession Agreement in question was not a "works contract" within the meaning of the Adhiniyam and consequently upheld the continuance of arbitration under the 1996 Act. Aggrieved, the Appellant approached this Court by way of SLP (C) No. 3811/2014, however, the same came to be dismissed vide order dated 13.05.2016. Thereafter, even the review petition filed before this Court stood dismissed vide order dated 29.03.2016. Thus, the jurisdictional issue, as between the parties, attained finality and stood settled. We do not see a reason why the subsequent amendment in the law or the subsequent overruling of the judgment dated 04.12.2013 of the High Court would permit re-opening of the settled question of jurisdiction insofar as the challenge which was raised under Section 14 of the 1996 Act is concerned.

52. In the final impugned award, this jurisdictional issue raised under Section 16 of the 1996 Act was extensively dealt with as under-

> *"72. The AT observed that the second paragraph of the "Statements of Objects and reasons in the M.P. act 29 of 1983- Principle Act states public funds should not get unnecessarily blocked in laws delays" implying clearly that the said Works under the works contract definition were to be executed with Government funds alone.*
>
> *...*
>
> *74. The AT also observed that in a BOT Project (build operate transfer project) a Concession gives an operator the long term right to use all utility assets conferred on the operator, including responsibility for all operation and investment. Asset ownership remains with the authority. Assets revert to the authority at the end of the concession period, including assets purchased by the operator. In a Concession the operator typically obtains its revenues directly from the consumer and so it has a direct relationship with the consumer. A Concession covers an entire infrastructure system (so may include the operator taking over existing assets as well as building and operating new assets).*
>
> *75. The AT also observed that BOT projects are clearly distinct from the works contracts, as defined in the Adhiniyam, 1983 & executed from Public Funds. These BOT projects are meant to encourage private investment in the infrastructure sector, avoid / reduce public direct spending so that Public budget could be used in other priority areas, such as education and social programs, besides, passing on the risks to the private party, which is best suited to handle it, introduce innovation and increased efficiency from the private sector, Involvement of experienced and credit worthy sponsors and commercial lenders, guaranteeing project viability, tapping of advanced -technologies and expertise with possible capacity building of contractors and consultancy firms, development of local capital market and lastly; better services to users and early delivery.*

76. The AT also observed that a works contract is for pecuniary interest concluded in writing between a contracting agency and an economic operator, which has as its object the execution of works or the supply of products, whereas the CA differs as here the source of revenue for the economic operator consists either solely in the right of exploitation or in this right together with payment.

77. The AT also observed that a Concession in the strict sense provides for; the private company to be completely responsible for operating the system, and making the necessary investments in the infrastructure, and take responsibility for financing them at its own risk. Under the Build-operate-transfer (BOT), Concessionaire, private company, has to operate the business and carry out maintenance at its own risk, depending on revenue from users a but the Government remains the owner of the infrastructure.

78. The AT also observed that though, it is settled that the parties cannot confer jurisdiction yet it is reasonable to presume that the Respondents were very well aware of the existence of the Adhiniyam, 1983 at the time of drafting the terms & conditions of the Concession Agreement in the year, 2003. The Respondent, realizing that investors and lenders will come forward only through a Concession agreement, which is quite distinct from the 'works contract' defined and covered by the Adhiniyam, 1983 thought it appropriate to provide arbitration under Act, 1996. It might have obtained concurrence of its Finance & legal counterparts, too. It appears strange that an Public Undertaking a 'State' which is expected to act reasonably, first provides a Arbitration Clause in the year, 2003 for arbitration under Act, 1996, to invite investors but now when confronted with Claims resulting from disputes, raises the question of Jurisdiction of The AT under the Act, 1996.

79. The AT further observed that subsequent to the Supreme Court Decision of 14th January 2010 in the CIVIL APPEAL NO(s). 3746 OF VA TECH ESCHER WYASS FLOVEL LTD. M.P.S.E.BOARD & ANR, holding that the Madhya Pradesh Madhyastham Adhiniyam, 1983 stood repealed because of the Act 1996, except for such contracts which do not include an Arbitration clause, another co-ordinate bench of the SC gave a decision dated 17-02-2011, in A.P.S. Kushwaha (SSI

Unit) vs. Municipal Corporation Gwalior and others; This (Civil Appeal No. 1888-889 of 2011) took note of the earlier judgment and decided accordingly. The split Judgment of the Supreme Court of India in (Civil Appeal no. 974 of 2012- MPRRDA v. M/S L.G. Choudhary Engineers & Contractor declaring the Judgment dated 14th Jan, 2010 as 'in curiam' is also a Judgment by a Co-ordinate Bench of the SC.

80. A 5 judge bench of the M.P High Court, in the case of conflicting judgments of equal number of judges has ruled that the earlier judgment would prevail- Jabalpur Bus Operators Association vs. State of M.P and others. 2003 (1) MPJL 516. Hence, on that point also the Supreme Court Decision of 14th January 2010 in the CIVIL APPEAL NO(S) 3746 OF VA TECH ESCHER WYASS FLOVEL LTD. V. M.P.S.E. BOARD & ANR and decision dated 17-02-2011, in A.P.S. Kushwaha (SSI Unit) vs. Municipal Corporation Gwalior and others (Civil) Appeal No. 1888-889 of 2011), would prevail.

81. Decision in the light of the above discussions & observations, the AT took a considered view that the Arguments of Shri K. Manoj Menon Counsel for the Claimant have merit & agreeing with him decided on 28-04-2012 to reject this application /preliminary objection of the Respondent (RD-3).

82. During the proceedings on 23-06-2012, yet another application dated 23-06-2012 was filed by the Respondent seeking deferment of the arbitration proceeding of the AT as it earlier application under Section 16 of the Act, 1996 (RD-3). This application was taken on record and marked as RD-6. This application was opposed by the Claimant's Counsel on the ground that the challenge to any adverse decision on the Respondent application under Section 16 was available to the Respondent only under section 34 of the Act, 1996, which can be done only after the publishing of the Award. After hearing both sides and after due consideration, the said Application was rejected in the meeting itself, by the AT and it decided to continue the arbitration proceedings.

83. Thereafter, meetings were suspended following an Ex-parte stay orders passed by the Addl. District Judge Bhopal in Arb. Case no. 45/2012. After vacation/ suspension of the said stay orders further meetings of the AT were held from

23rd to 25th June 2013, wherein the Counsel for the Claimant commenced its arguments, which remained inconclusive.

84. The Ld Counsel of the Claimant concluded his arguments in the meetings of the AT, held on the 12th & 13th August, 2012.

85.Once again, the Arbitration proceedings were suspended following a fresh stay order by the 10th Addl. Dist. Judge Bhopal, who latter by orders dated 19-02-2013 ruled that this AT has no jurisdiction to adjudicate on the dispute before it. The Claimant went in appeal to the High Court. The M.P. High Court decided on 04-12 2013 in WP no. 6557/2013 that the Arbitration in the present dispute shall be done only under the Arbitration & Conciliation Act. 1996.

86. The proceedings of the AT were recommenced and finally concluded in the 13th meeting held on 22nd March, 2014 and now only the award was to be pronounced. The Ld. Counsel for Respondent had chosen to submit written arguments. Suddenly, on 17-6-2014 the Respondent Managing Director, MPRDC submitted an application, seeking reopening of the closed hearings as it wanted to present some more documents and evidence etc. He personally came (without any notice from the AT) just before the 3rd internal meeting on 18-06-2014 and pressed for allowing the said application. He was told that the Arbitrators would discuss the matter amongst themselves and he would be apprised of the decision. Majority of the arbitrators (Shri K.K. Sethi and Shri R.C.Chugh) decided to reject the application and he was informed by way of minutes, of the 15th & 16th internal meetings held on 18-6-2014 and 19-6-2014-for recorded reasons. By another application. dated 03-07-2014, the MD MPRDC prayed for allowing him to present oral arguments. It is noted that this has been done when it was already notified that award would be ready for delivery in the afternoon on 9th July. To reopen the case and hear oral arguments at this stage especially when no new facts have been cited to support the suggestion for the oral arguments is not fair. Had this prayer been made in reasonable time after the closure of case for award (March 22), with proper reasons, it would be worth considering But at so late a stage this application is considered as without any merit as the Ld. Counsel for

Respondent had chosen to submit written arguments in the 13th meeting and therefore it cannot be considered admissible by the majority of the Arbitrators."

From the above paragraphs of the Arbitral Award it is unmistakably demonstrated that the jurisdictional issue concerning the interplay between the 1996 Act and the Adhiniyam was consciously considered by the Arbitral Tribunal in the final award while giving reasons for rejection of the application under Section 16 of the 1996 Act filed by the Appellant.

53. At the outset, it is significant that the Tribunal did not assume jurisdiction mechanically or by omission. The jurisdictional objection was expressly raised by the Appellant itself under Section 16 and later under Section 14 of the 1996 Act. The Arbitral Tribunal adjudicated the objection by a detailed and reasoned determination after considering the nature of the Concession Agreement, the prevailing legal position, and the conduct of the parties. The Tribunal therefore exercised the statutory *Kompetenz-Kompetenz* jurisdiction vested under Section 16 of the 1996 Act and rendered a considered finding that the arbitral proceedings under the 1996 Act were maintainable, applying the law as it stood at the time.

54. Moreover, the finding by the Writ Court in WP No. 6557 of 2013, has a binding effect *inter se* the parties. The legal effect of such finality cannot be understated. The doctrine of issue estoppel and finality of litigation squarely applies. Once a jurisdictional issue has been specifically raised, adjudicated through the hierarchy of Courts, and permitted to attain conclusiveness even after dismissal of review petition by this Court, the same issue cannot thereafter be repeatedly resurrected in collateral proceedings under the guise of "public policy" or subsequent legal developments.

55. The Constitution Bench of this Court, in ***Natural Resources Allocation, In re, Special Reference No.1 of 2012***,[22] has clearly held that once the appellate remedies and review jurisdiction stand exhausted, the dispute *inter-se* the parties is considered "*settled for eternity in the eye of law*". Even if a precedent is subsequently overruled, such overruling does not reopen decrees or adjudications which have attained finality between parties.

56. In background of long protracted litigation over the aforesaid issue of jurisdiction, the present attempt of the Appellant to once

[22] (2012) 10 SCC 1.

again reopen the same question at the stage of Special Leave Petition, especially by raising it for the first time in rejoinder affidavit constitutes a clear abuse of process and an impermissible attempt to indefinitely defer the finality of the arbitral award.

57. Furthermore, the conduct of the Appellant itself demonstrates complete acquiescence to the arbitral process under the 1996 Act. The Statement of Defence was filed as early as 12.02.2012. The Section 16 application was filed only subsequently on 28.04.2012, and thereafter a Section 14 application was preferred on 25.06.2012. The Section 14 application was decided by the District Court on 19.02.2013. W.P. No. 6557 of 2013 was allowed on 04.12.2013. The award along with reasons for dismissal of the Section 16 application was rendered on 22.08.2014. The earlier Special Leave Petition arising out of the High Court's order dated 04.12.2013 was dismissed on 13.05.2015, and Review Petition arising out of it was dismissed on 29.03.2016. In the meantime, the Section 34 was filled, and decided on 22.02.2016. Thereafter, Section 37 was filed on 12.04.2016 and was dismissed on 21.12.2016. Thereafter, the present SLP was preferred on 11.01.2017. The judgment of the Full Bench of the High Court in ***Viva Highways*** (supra) which overruled the judgment dated

04.12.2013 of the High Court in Writ Petition No. 6557 of 2013, was only pronounced subsequently on 05.05.2017.

58. Significantly, despite now attempting to characterize the issue as one going to the root of jurisdiction, the Appellant never raised the present plea as a substantive ground under Section 34 which is the appropriate stage to challenge a finding rendered against the Appellant in an application under Section 16 of the 1996 Act, as provided under Section 16(6). Equally, no jurisdictional challenge was urged by the Appellant in its appeal under Section 37. It ought to be noted that, the Appellant claims to have been purportedly strengthened by the judgment of the Full Bench of the High Court in ***Viva Highways*** (supra) which was pronounced after the filing of the instant special leave petition, at which point, they raised the objection with respect to jurisdiction again by means of a rejoinder affidavit.

59. There is another aspect of the matter, that the jurisdictional objection raised by the Appellant under Section 16 of the Act was filed after the filing of the statement of defence, contrary to the provisions of Section 16(2) of the 1996 Act. In this respect, the Appellant has placed much reliance on the judgment of this Court in ***Lion Engg.*** (supra) where it was held that the objection

regarding lack of jurisdiction of the tribunal, being a question of law, can be raised in Section 34 proceedings, even if no such objections had been raised during the arbitral proceedings.

60. Subsequent to the three-judge bench judgment in ***Lion Engg.*** (supra), another three-judge bench of this Court in ***LG Chaudhary II*** (supra) dealt with the very same objection that is being raised in the instant appeal, i.e., that in light of the Adhiniyam, the arbitration could not have been carried out by the Arbitral Tribunal under the 1996 Act. This Court held that the Adhiniyam will prevail in terms of Section 2(4) of the Central Act, but in para 17 of the said judgment, held as under:

> *"17. We do not express any opinion on the applicability of the State Act where the award has already been made. In such cases if no objection to the jurisdiction of the arbitration was taken at relevant stage, the award may not be annulled only on that ground."*

61. There was an apparent conflict between the judgments of ***Lion Engg.*** (supra) and ***LG Chaudhary II*** (supra) which was noticed by this Court in ***Gayatri Project Ltd.*** (supra), wherein this Court dealt with an identical issue and a similar objection was raised by the Appellant (which was Respondent in that case) with respect to applicability of the Adhiniyam. In the facts of the said case, a works contract was entered into by the Appellant therein

with the Corporation. Some disputes arose between the parties which were referred to arbitration under the 1996 Act as opposed to the Adhiniyam. The tribunal in that case ruled in favour of the Appellant therein. During the arbitration proceedings, the Corporation did not raise any objection to the jurisdiction of the Tribunal and the challenge was raised for the first time before the High Court by way of an amendment in the application for setting aside of the award under Section 34 of the Act. The High Court set aside the award of the tribunal on the ground of lack of jurisdiction, holding that arbitral proceedings should have been initiated before the Tribunal constituted under the Adhiniyam. Upon an appeal being filed by the Appellant therein, this Court examined the entire line of judgments which govern the interplay between the Adhiniyam and the Act. Referring to the decision in ***LG Chaudhary II*** (supra), this Court held that if a party files a statement of defence without raising a plea of lack of jurisdiction at the relevant stage, such a plea cannot be raised in light of Section 16(2) of the Act. The Court held that since a plea of lack of jurisdiction is a legal objection, it can be raised even at the Section 34 stage, but if a plea about lack of jurisdiction of the arbitral tribunal on the grounds of applicability of the Adhiniyam has not been raised at the

appropriate stage, the arbitral award cannot be set aside on that ground alone. Relevant portion of the judgment in ***Gayatri Project Ltd.*** (supra) is quoted herein for reference:

> ***"66.*** *In view of the above exposition of law, what has been conveyed by this Court in L.G. Chaudhary (2) [M.P. Rural Road Development Authority v. L.G. Chaudhary Engineers & Contractors, (2018) 10 SCC 826 : (2019) 1 SCC (Civ) 97] in so many words is that:*
>
> ***66.1.*** *Where the arbitration proceedings are still underway, but no statement of defence has been filed, there it would be open for the parties to raise an objection of lack of jurisdiction in view of the applicability of the M.P. Act, 1983. The parties will also be at liberty to approach the High Court by way of a petition under Article 227 of the Constitution for seeking a transfer of the arbitration proceedings to the M.P. State Arbitration Tribunal under the M.P. Act, 1983.*
>
> ***66.2. Where the arbitration proceedings are still underway, but statement of defence has already been filed i.e. the relevant stage for raising an issue of jurisdiction is already crossed, there it would not be open for the parties to raise an objection of lack of jurisdiction in view of the applicability of the M.P. Act, 1983. Furthermore, in such scenarios since the arbitration proceedings have already commenced and made substantial progress, it would not be appropriate to transfer such proceedings to the M.P. State Arbitration Tribunal under the M.P. Act, 1983, and the better course of action would be to let the arbitration proceedings conclude.***
>
> ***66.3. As per L.G. Chaudhary (2) [M.P. Rural Road Development Authority v. L.G. Chaudhary Engineers & Contractors, (2018) 10 SCC 826 : (2019) 1 SCC (Civ) 97] where the arbitration proceedings have concluded and an award has been passed, and if no objection to the jurisdiction in view of the applicability of the M.P. Act, 1983 was taken at the relevant stage then such an award cannot be annulled only on the ground of lack of jurisdiction.***

> ***66.4.*** *Any award passed by an Arbitral Tribunal under the 1996 Act, where otherwise the M.P. Act, 1983 was applicable, such an award may be challenged or assailed in terms of Section 34 and thereafter Section 37 of the 1996 Act and other relevant provisions thereunder.*
>
> ***66.5.*** *Any award passed by an Arbitral Tribunal under the 1996 Act, where otherwise the M.P. Act, 1983 was applicable, such an award must be executed in terms of the M.P. Act, 1983 and the relevant provisions thereunder.*
>
> ***66.6. Where the objection based on applicability of the M.P. Act, 1983 had been raised in the written statement or statement of defence, but the parties never took steps towards challenging the jurisdiction of the Arbitral Tribunal under Section 16 of the 1996 Act or where such plea of jurisdiction was turned down in view of the position of law that was prevailing prior to L.G. Chaudhary (2) [M.P. Rural Road Development Authority v. L.G. Chaudhary Engineers & Contractors, (2018) 10 SCC 826 : (2019) 1 SCC (Civ) 97] i.e. such challenge to the jurisdiction was decided prior to the date of pronouncement of L.G. Chaudhary (2) [M.P. Rural Road Development Authority v. L.G. Chaudhary Engineers & Contractors, (2018) 10 SCC 826 : (2019) 1 SCC (Civ) 97] , then even in such cases, as per the decision of this Court in Modern Builders [Modern Builders v. State of M.P., (2024) 10 SCC 637 : (2024) 4 SCC (Civ) 639] , the award should not be disturbed or set aside only on the ground of lack of jurisdiction.”***

62. A sharp parallel may be drawn between the facts of this case and that of ***Gayatri Project Ltd.*** (supra). In that case, the plea of lack of jurisdiction was not raised by filing a Section 16 application, nor was such a plea taken in the original application under Section 34. It was taken for the first time by way of an amendment in the application under Section 34 at a belated stage. In the present

case, the application under Section 16 raising the issue of non-arbitrability in view of the Adhiniyam was raised by the Appellant after filing of the statement of defence, which is beyond the statutory time limit prescribed under Section 16(2) of the 1996 Act. Further, no such challenge was made, not only at the Section 34 stage, but also at the Section 37 stage or even in the special leave petition. It is only in the rejoinder affidavit that this plea has been taken by the Appellant. There is no reason therefore to take a different view in this matter than what this Court held in ***Gayatri Project*** (supra).

63. Further, this Court in ***Gayatri Project*** (supra) clarified the apparent conflict with the judgment in ***Lion Engg.*** (supra) and held as follows:

> *"**47.** What can be discerned from the aforesaid is that L.G. Chaudhary (2) [M.P. Rural Road Development Authority v. L.G. Chaudhary Engineers & Contractors, (2018) 10 SCC 826 : (2019) 1 SCC (Civ) 97] carved out an exception to the general rule that was laid in Lion Engg. [Lion Engg. Consultants v. State of M.P., (2018) 16 SCC 758 : (2019) 1 SCC (Civ) 699] , that although a plea of lack of jurisdiction being a question of law can be raised for the first time in the proceedings under Section 34 of the 1996 Act, yet insofar as the M.P. Act, 1983 is concerned, particularly the state of flux in which the position of law regarding its applicability stood, in cases where either the award has already been passed or where the statement of defence has already been filed, and no plea of lack of jurisdiction or applicability of the M.P. Act, 1983, has been raised before the Arbitral Tribunal, then such a plea of*

jurisdiction will no longer be available, and the award cannot be annulled solely on such ground."

64. The conclusion reached by this Court in paragraph 66.6 of ***Gayatri Project*** (supra) squarely applies to the instant case. Certainly, an objection to jurisdiction of the Arbitral Tribunal constituted under the 1996 Act, in light of the Adhiniyam, was made by the Appellant, but it was belated and beyond the statutory time limit under Section 16(2) of the 1996 Act, which would attract statutory waiver under Section 4 of the 1996 Act.[23] It has not been urged before us that the delay in filing the Section 16 application was condoned by the Arbitral Tribunal under Section 16(4) of the 1996 Act even though the Respondent has raised a contention about delayed filing of the Section 16 application. Even otherwise, the jurisdictional challenge raised under Section 14 of the 1996 Act was negatived, up till this Court and the objection under Section 16 was rejected by the Arbitral Tribunal; both objections stood decided by the Arbitral Tribunal and the Courts based on the law which was prevalent at the time. The Arbitral Award was dated 22.08.2014, which was much prior to the judgment of this Court

[23] See: ***Narayan Prasad Lohia v. Nikunj Kumar Lohia***, (2002) 3 SCC 572; ***Quippo Construction Equipment Ltd. v. Janardan Nirman (P) Ltd.***, (2020) 18 SCC 277.

in ***LG Chaudhary II*** (supra) which was pronounced on 22.03.2018. As per the principles of law laid down in ***LG Chaudhary II*** (supra) and ***Gayatri Project*** (supra), the Arbitral Award in the instant appeal pre-dates the judgment in ***LG Chaudhary II*** (supra) and the objection raised under Section 16 of the 1996 Act was filed after filing of the statement of defence, which is barred by Section 16(2) of the 1996 Act. As such, the award cannot be annulled only on the ground of lack of jurisdiction in terms of paragraph 66.3 of the judgment in ***Gayatri Project*** (supra). Even if it is assumed that the objection under Section 16 of the 1996 Act was validly made, the said objection was decided as per the law prevailing prior to ***LG Chaudhary II*** (supra) and in terms of paragraph 66.6 of the judgment in ***Gayatri Project*** (supra), the award should not be disturbed or set aside on the ground of lack of jurisdiction. The intent behind this Court's pronouncement in ***Gayatri Project*** (supra) which appears to have expanded the scope of the exception carved out in ***LG Chaudhary II*** (supra), particularly in paragraph 66.6 thereof, appears to be that since there was uncertainty in law with respect to applicability of the Adhiniyam *vis-à-vis* the 1996 Act up until the time when the judgment in ***LG Chaudhary II*** (supra) was pronounced, if the

jurisdictional objections had been decided as per the law as it stood prior to the judgment in ***LG Chaudhary II*** (supra), there would be no reason to upset the applecart and nullify the entire arbitral process on the ground of jurisdiction alone.

65. The Appellant's approach also fundamentally undermines the core objectives of the 1996 Act, namely certainty, expediency, and finality of adjudication. The award-holder Respondent has already endured over a decade of litigation despite having succeeded before the Arbitral Tribunal and through multiple judicial stages. To permit the Appellant now to reopen a jurisdictional issue which already stood concluded up to review proceedings before the Hon'ble Supreme Court would amount to sanctioning perpetual litigation and defeating the very sanctity of arbitral finality, especially when as per the judgment of ***Gayatri Project*** (supra) the award cannot be set aside on the ground of lack of jurisdiction alone. Accordingly, the present jurisdictional challenge under Section 34(2)(b)(i) and Section 34(2)(b)(ii) deserves to be rejected outright being contrary to the settled principles of finality and procedural fairness and also in light of the law laid down by this Court in ***Gayatri Project*** (supra).

V. CHALLENGE ON MERITS

66. The first challenge raised by the Appellant herein relates to one under section 34(2)(a)(iv) of the Act. The Appellant contents that the impugned award of the Arbitral Tribunal was on a claim which was beyond the scope of reference. It is the case of the Appellant that the Respondent claimed for refund of value of work done, however, the Arbitral Tribunal awarded the 'termination payment' which was not even claimed. This aspect of the Arbitral Award is accordingly a perversity and patently erroneous.

67. We need to observe that such arguments must necessarily be dispelled on a harmonious construction of various clauses under the Concession Agreement. From the records, it is clear that there was an clear delay in the execution of the work, which was occasioned by the non-handover of the vacant land. This issue was agitated before the High Court in Writ Petition No. 4450 of 2007. During the currency of the above writ, the contract was terminated on 12.07.2007. It is in this context that the Respondent challenged the termination notice before the Arbitral Tribunal and claimed INR 69,67,60,270/- under clause 32.6 of the Agreement relatable to 'termination payment'.

68. There is no doubt that under contract law, a claim for damages under Section 73 of the Contract Act has to be *in lieu* of a breach of contract. A party gets a right to terminate the contract only when there is an breach of a condition under the contract. In this case at hand, the termination by the Appellant was held to be *non-est* as there was no justification for the same. We have considered the elaborate reasoning of the Tribunal on the claim under Dispute 1 from paragraph 256 to 286, wherein the Arbitral Tribunal has by extensive examination of evidence on record returned a finding that the Respondent was not at fault and the termination of the contract by the Appellant herein was completely unjustified. Pertinently, 'Dispute 1' out of the claims filed before the Arbitral Tribunal entailed '*For a declaration that the termination by MPRDC of the Concession Agreement dated 11.04.2003 is unlawful, invalid and arbitrary*'. The said claim has been found against the Appellant and the termination of the Concession Agreement has been found to be arbitrary, unlawful and void. The learned Attorney General appearing on behalf of the Appellant has categorically stated to us across the Bar that they are challenging only the findings of the Tribunal on merits in respect of 'Dispute 2' with respect to grant of termination payment, therefore they do not

have any dispute regarding the finding of the Tribunal about the termination of the Concession Agreement being illegal. It is in this context that the Respondent could invoke its rights under clause 32.4.2 of the Agreement as the Appellant itself failed to provide land for construction. This was no doubt a material breach which justified invocation of clause 32.4.2 of the Concession Agreement. Consequently, the Respondents became entitled to remedies provided under Clause 32.6 of the Concession Agreement.

69. The interpretation placed by the Appellant herein on the invocation of clause 32.4.2 of the Agreement as the same being not applicable is to be rejected in toto. The understanding of the Concession Agreement by the Appellant is completely disjointed and the interpretation of the contractual terms by the Arbitral Tribunal is a plausible view which cannot be doubted herein.

70. The view taken by the District Court and the High Court under Section 34 and 37 of the 1996 Act is concurrent and categorically finds that the Respondents herein had claimed Termination Payment which was clubbed to include damages for financial closure, damages for delay in completion, miscellaneous recoveries, reimbursement of Bank Guarantee charges, reimbursement of insurance policy and reimbursement for

overheads. Clause 1.1.111 of the Concession Agreement which defines the word 'Termination Payment' is quite all-encompassing and it consists of debt due, subordinated debt and equity. Even though the Appellant would argue that 'debt due' and 'cost of machinery seized' were never specifically claimed by the Respondent, the view taken by the Arbitral Tribunal, District Court and the High Court that a specific demand had been made for 'Termination Payment' under Clause 32.6 with requisite documentation, requires no interference. The Arbitral Tribunal has found that the claim for compensation under Clause 32.6 is independent of Clause 32.4.2 and even Clause 32.3. While the two latter clauses relate to payment of dues in respect of termination on account of default by either party, Clause 32.6 makes the payment of 'Termination Payment' mandatory if due as per the contractual terms. We see no illegality in the approach of the Arbitral Tribunal which is in terms of the contractual understanding and in our opinion, it is not only a plausible view, but the only possible view, and as such, must be given due deference and regard. Therefore, the challenge on this ground has to be rejected.

71. The second challenge raised by the Appellant is that Clause 1.1.29 and 1.1.111 of the Concession Agreement had to be read in an manner wherein the 'debt due' is to be paid only to the lender and not to the Respondent. They contend that the amount in respect of 'debt due' was obtained as a loan from the lender, i.e., EXIM Bank of Malaysia and as such, while directing payment of 'termination payment' inclusive of 'debt due', the contractual terms dictate that such payment must be made to the lender. The Appellant had made a submission before us that the lender of the Respondent has not made any claim for 'termination payment' from the Appellant as of yet. The said contention must meet rejection, since the interpretation made by the Arbitral Tribunal is based on evidence and the privity of contract. Once 'termination payment' under Clause 32.6 becomes due and payable and Clause 1.1.111 includes 'debt due' within the fold of such 'termination payment', there is no occasion for the lender of the Respondent to seek payments from the Appellant directly. The lender of the Respondent has no privity with respect to the Concession Agreement and even though Clause 1.1.111 mentions that termination payment includes amounts which are payable to Concessionaire (the Appellant) and/or Lenders under the

Concession Agreement, the Arbitral Tribunal has found that as per Clause 32.6, the termination payment is payable to the Concessionaire, i.e., the Appellant. Therefore, while the definition of 'termination payment' includes the amount payable to the Appellant and / or to the Lenders, the payment itself is to be made to the Appellant as per Clause 32.6. We do not find any reason to override the reasoned interpretation made by the Arbitral Tribunal, keeping in view that the arbitral disputes have to be kept between the parties and privity of contract has to be maintained. Pertinently, Clause 1.1.111 is definitional, while the amount itself is due under Clause 32.6. At best, the interpretation of reading 'and/or' in the definition of 'termination payment' (under Clause 1.1.111) may help determine what constitutes termination payment, but the amount is payable as per Clause 32.6 itself to the Appellant. The argument of the Appellant is at best a different interpretation suggested by it, which in our opinion is not at all a correct reading of the contract, but in any case such a challenge does not come within the ambit of challenge under section 34(2)(a)(iv) of the 1996 Act since merely the existence of a different possible view is not sufficient for an award to be set aside.

72. Lastly, the challenge is laid to the quantum of interest which is canvassed to be exorbitant. This plea has to be rejected at the threshold on the ground that the aforesaid interest was contractually agreed and is based on the bargain between the parties. Pre-award interest rate of 14.75% is nothing but SBI PLR + 2% which came to 12.75% + 14.75% which is ordained as per Clause 32.6 of the Concession Agreement itself. The post-award interest rate of 18% is the statutory interest as per the unamended Section 31 of the 1996 Act (as it stood prior to the 2016 Amendment, w.e.f. 23.10.2015). Interestingly, even the Appellant has sought for the same rate of interest in their counter claim filed before the Arbitral Tribunal. When the parties have, in exercise of their party autonomy, laid down in the terms of the contract itself, the contractual rate of interest, we see no reason to go behind the agreement reached between them at a time when there was no dispute. Party autonomy is one of the most sacrosanct principles relating to arbitration law and in fact it is the backbone of alternative dispute resolution mechanism. This Court is only to uphold the bargain between the parties and their agreement in true sense and not go into the thicket of reasonability behind such bargain, unless the interest rate is so perverse and so

unreasonable as to shock the conscience of this Court. There may be various reasons for the Appellant to have contractually accepted a higher rate of interest as the parties were seeking international finance and technology in executing the contract, we are not required to go into this question and attempt to perceive the reason behind such acceptance, but only to acknowledge that the contractual rate is set.

73. Appellant has cited the Constitution bench judgment of this Court in ***Gayatri Balasamy v. ISG Novasoft Technologies Ltd.***,[24] to state that this Court has power to reduce the interest rate. Our attention is drawn to the reasoning of the Constitution Bench wherein it has been held that post-award interest are future oriented and depends on facts and circumstances of each case. In this case at hand, the conduct of Appellant has been deplorable, it has fought tooth and nail in pursuit to delay payment of contractual dues. It has taken nineteen years since the Project was terminated for the award to fructify. The pace of the dispute resolution mechanism in the present case is a star witness for the statement 'justice delayed is justice denied'. It is even more shocking that an interim application filed by the Respondent

[24] (2025) 7 SCC 1.

herein in I.A. No. 187532 of 2019 has pointed out that there exists various diplomatic exchanges between Malaysian High Commission and Ministry of External Affairs, Government of India regarding the delayed adjudication of this issue. It is in the holistic consideration of facts and circumstances that we do not see any reason to interfere with the saddling of the contractual and statutory interest rate on the Appellant, which is completely just and fair. Reliance in this regard may be placed on the recent judgment of this Court in ***Sri Lakshmi Hotel (P) Ltd. v. Sriram City Union Finance Ltd***.[25]

74. Before we part, we need to note that arbitral awards and processes have to be treated with open judicial mind. There remains a hesitancy still for some Courts to accept alternative dispute resolution mechanisms. This hesitance is rooted in suspicion of the process which often leads to re-examination of evidence and re-interpretation of contractual terms at the stage of Section 34 and Section 37. This Court has to ensure that arbitration is accepted as a norm, and its true essence, which is party autonomy and equality is realized. Finality and uniformity in judicial processes associated with or arising out of arbitration,

[25] (2026) 3 SCC 600.

therefore, are ideals which are to be progressively realized by the judiciary as a whole.

75. Consequently, this appeal is dismissed. Accordingly, all the Interim Applications also stand disposed of. Further, the Registry of the High Court is directed to release the deposited amount along with accrued interest to the Respondent within two weeks from the date of this judgment. So also, the Appellant is directed to pay the remaining amount along with the accrued interest within a period of three months to the Respondent herein.

.....J.
(J. K. MAHESHWARI)

.....J.
(ATUL S. CHANDURKAR)

NEW DELHI;
MAY 29, 2026.