



IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DEEPAK KHOT

ON THE 9th OF JULY, 2026

ARBITRATION CASE No. 53 of 2024

MSP INFRASTRUCTURES LIMITED

Versus

MADHYA PRADESH ROAD DEVELOPMENT CORPORATION LTD

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Appearance:

Shri Naman Nagrath - Senior Advocate with Shri Prabhanshu Chaturvedi - Advocate for the petitioner.

Shri Manoj Munshi - Senior Advocate with Shri Akshay Jha - Advocate for the respondent.

Shri Naveen Ahuja G.A. for the respondent/State.
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ORDER

Heard on I.A.No.8804/2024, which is an application for exemption from filing original agreement.

For the reasons mentioned in the application, the same is allowed.

Applicant is exempted from filing the original agreement.

The present application has been filed by the applicant under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act of 1996' for the sake of brevity) for appointment of an arbitrator to resolve the dispute arose pursuant to the concession agreement dated 4.4.2002 (Annexure A/1).

2. It is the case of the applicant that a concession agreement was entered into between Applicant, the Special Purpose Vehicle, MSP Infrastructures Ltd. (MSP) and the non-applicant, M.P. Road Development Corporation Ltd. (MPRDCL) for Strengthening, Widening, Upgradation,



Operation and Maintenance of Raisen-Rahatgarh Road on 04.04.2002 (annexure A/1). The duration of contract was 5440 days (approx. 14.9 years) and intended date of completion of construction was 18 months from the date of handing over hindrance free site. The work could not progress satisfactorily owing to the failure of the non-applicant MPRDCL in providing hindrance free site. Despite all the constraints, breaches of Contract terms & conditions by the non-applicant, the Applicant arranged sanction of Debt and entered into an Agreement with SREI International Finance Limited for Rs.17 Crores. The Applicant had intimated the non-applicant about the financial closure by letter dated 31.12.2002. The non-applicant accepted the financial closure and escrow account agreement was signed 30.01.2003 between non-applicant, applicant and Punjab National Bank, Habibganj Branch, Bhopal. Ignoring the defaults committed by it of its obligations under the concession agreement, the non-applicant, MPRDCL arbitrarily terminated the Concession Agreement on 22.03.2003. The MPDRCL invited fresh bids. The financial bid was to be opened on 12.03.2003. After the aforesaid incident but before 11.03.2003 the applicant had deposed on affidavit before Kolkata High Court that the non-applicant would award the contract to the company of Mr. Khurana M/s. MSK Projects Ltd. M/s. MSK Projects Ltd. was awarded the contract on 11.3.2003, i.e. even prior to the scheduled date of opening of the financial bid i.e. 12.03.2003. A Civil Case No.63 of 2003 was filed by the applicant before High Court at Calcutta under section 9 of the Arbitration & Conciliation Act, 1996. The said case was disposed of by order dated 22.05.2003 (annexure



A/3) in terms of Settlement Agreement dated 19.05.2003 entered into between the Applicant and the non-applicant. On 06.06.2003, the dispute between the parties was referred to the Indian Council of Arbitration (ICA) under the Arbitration & Conciliation Act, 1996 as per the Concession Agreement and as per terms of Settlement Agreement dated 19.05.2003 entered into between the parties. Three member Arbitral Tribunal was constituted by Indian Council of Arbitration vide letter dated 07.05.2004 (annexure A/5). The Arbitral Tribunal partly allowed the claims put forth by the applicant and awarded a sum of Rs.690.30 lacs plus future interest @ 18% p.a. and directed the non-applicant to release the Fixed Deposit amounting to Rs.115 lacs made by the applicant in terms of the settlement agreement before High Court of Calcutta vide annexure A/6. Aggrieved by the award, the non-applicant, MPRDCL filed an application before District Judge, District Court, Bhopal u/s.34 of the Arbitration & Conciliation Act, 1996 seeking setting aside of the award passed by the Arbitral Tribunal. The Commercial court, Bhopal passed the order rejecting the application of the non-applicant for setting aside the Arbitral Award by order dated 05.12.2016 and upheld the Arbitration award dated 13.11.2006. The non-applicant's application regarding the Arbitration under Madhya Pradesh Madhyastham Adhiniyam instead of Arbitration & Conciliation Act, 1996 was rejected by the High Court of Madhya Pradesh, Principal seat at Jabalpur. The High Court by order dated 24.10.2018 (annexure A/8) passed in A.A.No.8/2017 held that the Hon'ble Supreme court judgement in the case of *MSP Infrastructures Ltd vs MP Road Development Corporation Ltd [(2015) 13*



SCC 713] was binding on the parties. Non-applicant MPRDCL preferred Special Leave Petition No.695/2019 titled M.P. Road Development Corporation Ltd vs MSP Infrastructures Ltd, against the order dated 24.10.2018, which was dismissed by the Hon'ble Supreme Court by order dated 25.01.2019 (annexure A/9). However, vide order dated 24.11.2022 (annexure A/10) the learned Commercial Court Bhopal passed the order setting aside the award dated 13.11.2006 extending liberty to applicant to initiate arbitration afresh. The Applicant in furtherance of the order passed by the Commercial Court Bhopal dated 24.11.2022 had first made a request to the Indian Council of Arbitration to constitute an arbitral tribunal vide its letter dated 25.01.2023 (annexure A/11). The Indian Council of Arbitration having registered the case required the parties to deposit the fees for arbitration vide its letter dated 19.04.2023. The non-applicant MPRDCL through its counsel raised its objection dated 1.5.2023 (annexure A/14) to the jurisdiction of the Indian Council of Arbitration. The Commercial Court, Bhopal by order dated 02.05.2023 (annexure A/16) allowed the application seeking review and clarified that the arbitration will be conducted as per Rules of Indian Council of Arbitration, New Delhi. Non-applicant MPRDCL filed an application (annexure P/20) in the Arbitration Appeal seeking amendment to the memo of appeal by way of making challenge to the order dated 02.05.2023 passed by the Commercial Court, Bhopal. The Arbitration Appeal A.A. No. 26 /2023 filed by the non-applicant MPRDCL against the order passed by the Commercial Court was decided on 02.01.2024 (annexure A/21) and this Court refused to interfere with the



order passed by the Commercial Court by observing that the liberty extended to the Applicant to initiate arbitration afresh shall be in accordance with law. The applicant vide its letter dated 07.03.2024 (annexure A/25) requested the Indian Council of Arbitration to constitute the arbitral tribunal failing which the applicant would be constrained to approach this Court invoking its powers under Section 11 of the Act of 1996. Hence, the present case.

3. It is contended by learned counsel for the applicant that it is not disputed by the parties that the agreement is a work contract defined under section 2(i) of the M.P. Madhyastham Adhikaran Adhiniyam, 1983 (hereinafter referred to as the Adhiniyam of 1983'). However, it is submitted that it is being a special case has been adjudicated under the provisions of the Act of 1996, as the parties have agreed to settle their dispute in accordance with the said Act in the agreement. It is further submitted that earlier also the non applicant had taken objection in regard to non maintainability of the proceedings under the Act of 1996 in the light of dictum of Hon'ble Apex Court in the case of *M.P. Rural Road Development Authority v. L.G. Chaudhary Engineers and Contractors*, (2018) 10 SCC 826. It is submitted that the learned Commercial Court vide order dated 24.11.2022 (annexure A/10) has rejected the application under section 34 of the Act of 1996 finding it to be in conflict with the public policy of India and quashed the award dated 13.11.2006 passed in Arbitration Case No.1380/2004 in favour of the applicant with liberty to the parties that in case, parties are aggrieved with the action/ inaction of the corresponding parties pursuant to agreement,



they are free to initiate proceedings of the arbitration. It is further submitted that in the earlier round of arbitration, the arbitrator was appointed by the Indian Council of Arbitration under the Act of 1996. On application M.J.C.No.25/2023 being filed to review the said order for modifying the liberty granted to parties to initiate arbitration proceedings, the Civil Court/Commercial Court vide order dated 2.5.2023 (annexure A/16) has allowed the application and replaced the word 'Arbitration Tribunal' with 'Indian Council of Arbitration New Delhi', with further observation that observations made in the order would not influence the decision of the Arbitration Tribunal.

4. It is the case of the applicant that once the objection raised by the non applicant in respect of maintainability on the ground of Adhikaran having the jurisdiction under the Act of 1983 has been rejected by this Court in earlier round of litigation, which has been affirmed by the Hon'ble Apex Court in the case of *MSP Infrastructures Ltd vs MP Road Development Corporation Ltd [(2015) 13 SCC 713]*, though has been diluted in the subsequent judgment passed by Hon'ble Apex court in the case of *Lion Engg. Consultants v. State of M.P., (2018) 16 SCC 758* having the binding effect *interse* between the parties. Once the Court has found that the arbitration proceeding between the parties under the Act of 1996 is maintainable then it is binding on all the parties. The said observation was made by the High Court vide order dated 24.10.2018 passed in Arbitration Appeal No.8/2017 (annexure A/8). It is submitted that the said order was challenged before the Hon. Apex Court, but it was confirmed by dismissing



the SLP *in limine*. Therefore, it is prayed on the basis of the facts that as the applicant has approached the Indian Council of Arbitration for appointment of Arbitrator, the same has been objected by the non applicant vide objection dated 1.5.2023 (annexure A/14) on the ground of jurisdiction, this court under section 11(6) of the Act of 1996 issue mandate for appointment of Arbitrator.

5. Per Contra, learned senior counsel for the non-applicant has vehemently opposed the contention made by the applicant and submitted that order dated 24.10.2018 earlier passed in Arbitration Appeal No.8/2017 is not having the binding effect to the fresh proceedings as it was passed considering the stage of the earlier proceeding when the objection in regard to maintainability has been raised at the stage of section 34 of the Act of 1996. It is further submitted that non applicant had filed an appeal against the order dated 24.11.2022 passed in MJC No.9/2007 and an order passed under section 34 of the Act of 1996 against the liberty granted by the civil/ Commercial Court to proceed if occasion so arises, this court has disposed of the appeal with direction that the liberty which has been granted by the court shall be subject to rider that the said liberty can be invoked only in accordance with law (statutory and case law) but not otherwise. Therefore, now, at this stage, when the applicant is again seeking appointment of an Arbitrator under the Act of 1996, the non applicant has got the backing of the order to raise such objection on maintainability in accordance with law (statutory and case law). Therefore, as the Hon'ble Apex Court in the case of *L.G. Chaudhary* (supra) and thereafter in *M/s Gayatri Project*



Limited (supra) has categorically held that for adjudication of the dispute arisen between the parties, pursuant to work contract to be adjudicated by Madhyastham Adhikaran, can be raised at the stage of appointment of an Arbitrator and, therefore, prayed for dismissal of the application. To bolster his submission, counsel for the non-applicant has relied upon the judgment of the Hon'ble Apex court in the case of *M.P. Rural Road Development Authority v. L.G. Chaudhary Engineers and Contractors, (2018) 10 SCC 826* and *M/s Gayatri Project Limited Vs. MPRDC, Civil Appeal No.6856/2025* and *Umri Pooph Pratappur (UPP) Tollways Pvt. Ltd. Vs. M.P. Road Development Corporation and another, in Civil Appeal No.9920/2025*.

6. Heard learned counsel for the parties and perused the record.

7. It is not in dispute that the agreement which contains a dispute redressal mechanism (Annexure A/1) is a concession agreement which falls within the definition of work contract as defined under section 2(i) of the Act of 1983. The Hon'ble Apex Court in the case of *L.G. Chaudhary* (supra) and in several other matters, lastly in *M/s Gayatri Project Limited* (supra) has held that the dispute arising out of a work contract is amenable to the jurisdiction of Madhyastham Adhikaran under the Act of 1983. Either of the party to a contract shall irrespective of the fact whether the agreement contains agreement clause or not, refers in writing a dispute to the Tribunal. Therefore, it is also not disputed that the agreement in question being a work contract, any dispute arising out of such agreement would be referred to the Tribunal. However, a distinguishable feature in the present case is that the parties have agreed to resolve their dispute as per the provisions of the Act



of 1996, therefore, the applicant had earlier preferred an application to the Indian Council of Arbitration for appointment of an arbitrator. It is also not in dispute that the Arbitrator had passed an award vide award dated 13.11.2006. Being aggrieved by the said award, the non-applicant had submitted an application under section 34 of the Act for setting aside the award before the Commercial Court, Bhopal. The said application MJC AV.No.9/2007 was allowed vide order dated 24.11.2022 by setting aside the award finding it to be inconsistent with the public policy of India and holding that it suffers from patent illegality, granted liberty that in case the dispute persists between the parties then parties are free to take recourse of arbitration. As the said order did not observe any forum of arbitration, therefore, an application for review was filed, which came to be allowed vide order dated 2.5.2023 in MJC AV No.25/2023 by commercial court Bhopal (annexure A/16) by modifying the award and by substituting words 'Arbitration Tribunal' to 'Indian Council of Arbitration New Delhi'. The original order dated 24.11.2022 was subject to challenge in Arbitration Appeal No.26/2023 before this court which was disposed of vide order dated 2.1.2024 by observing that the liberty granted by the court should be construed as in accordance with law (statutory and case law), but not otherwise. Pursuant to said order, the applicant had filed an application for appointment of an Arbitrator before Indian Council of Arbitration, New Delhi vide its letter dated 25.1.2023 with further several communications and deposited fees on 4.1.2024, however, no steps were taken for appointment of Arbitrator. Thereafter, the applicant had filed the present application.



8. The non-applicant have filed objection on the maintainability of the application on the ground that concession agreement falls within the definition of work contract and any dispute arising out of said agreement is amenable to jurisdiction of M.P. Madhyastham Adhikaran.

9. It is not in dispute that non-applicant earlier also had taken similar objection before the commercial court in the proceedings filed for setting aside of award under section 34 of the Act of 1996 by way of amendment, which was rejected and then challenged before the High Court. The High Court vide order dated 18.2.2010 has permitted the amendment to be incorporated in the application under section 34, which was again challenged before the Hon'ble Apex Court, which was decided by judgment and order dated 5.12.2014 and also reported in (2015) 13 SCC 713, holding that objection at the stage of section 34 cannot be taken. Thereafter, same objection has been raised on the ground that the order passed by Hon'ble Apex court in (2015) 13 SCC 713 has subsequently held not to be a good law in C.A.No.8984-8985/2017 vide judgment dated 20.3.2018, therefore, the proceedings were not maintainable under the Act of 1996. On appeal viz. Arbitration Appeal No.8/2017 being filed, this court vide order dated 24.10.2018 has disposed of the said appeal by holding as under :-

"7. We find that the findings recorded by the Supreme Court in M/s MSP Infrastructure Ltd. (supra) is binding inter-parties and cannot be permitted to be disputed by the appellant in an appeal against an order passed by the Commercial Court in a proceedings under Section 34 of the Central Act. The judgment inter-parties is binding between the parties, though it ceases to be a binding precedent".

10. The said order was again put to challenge by filing an S.L.P. which



came to be dismissed *in limine* vide order dated 25.1.2019. As such, the order passed by this court in Arbitration Appeal No.8/2017 has attained finality. The matter before the Commercial Court proceeded and ultimately culminated into setting aside of the award with liberty to the parties to arbitrate if dispute persists.

11. Now, only question is that once this court has decided that the question of maintainability for prosecuting the arbitration proceeding under the Act of 1996 is maintainable, then whether at this stage of appointment of an Arbitrator under the Act of 1996, said objection can be raised by the non applicant and, if yes, then what would be its effect on the present application.

12. It is not in dispute that earlier proceedings initiated under the Act of 1996 was arising out of same agreement for which the present application has been filed to resolve the dispute. It happened due to mistake of the parties in ignorance of law that they have agreed to resolve the dispute under the Act of 1996 under the agreement, but as the nature of the agreement falls within the definition of works contract, dispute arising out of it is amenable to jurisdiction of Madhyastham Adhikaran in the light of judgment passed by Hon'ble Apex court in the case of *L.G. Chaudhary* (supra) and thereafter in *M/s Gayatri Project Limited* (supra). But, as, in the present case in hand, the arbitrability of the dispute under the Act of 1996 has been maintained by this court on the objection raised by the non applicant in the earlier round of litigation, then for the same agreement raising the same objection is barred by the principles of constructive resjudicata as well as estoppel. The contention of the non-applicant that as it is a proceeding afresh, the non-



applicant can raise this objection in regard to maintainability is not tenable in the present facts and circumstances of the case because in the light of order passed by this court vide order dated 24.10.2018 in Arbitration Appeal No.8/2017, the decision of the Hon'ble Apex Court is binding on the parties. Even if subsequent law has diluted the principle of law laid down earlier by the Hon'ble Apex Court which has settled the question of law, rights and mode of litigation between the parties, cannot be reagitated.

13. The Hon'ble Apex court in the case of *Makardhwaj Ram v. Jagdish Rai*, 2026 SCC OnLine SC 1112, has held as under :-

8. From a considered perusal of the above judgments, the following aspect of constructive *res judicata* can be highlighted:

8.1 Constructive *res judicata* mandates that all grounds that might and ought to have been employed in the proceedings, should be employed to avoid multiplicity of proceedings.

8.2 It is a deeming fiction of law, but its application is not uniform and instead is dependent on the facts and circumstances of a particular case with '*due regard to ambit of the earlier proceedings*' and '*the nexus which the matter bears to the nature of the controversy*'.

8.3 This principle is founded on public policy. It is a generally acceptable rule that one person should not be "vexed twice over" for the same kind of litigation. As such, it also applies to the proceedings under Article 226/32 of the Constitution of India.

8.4 In respect of '*ought*' referred above, the said word implies the threshold to be above mere possibility.

8.5 The parties while conducting litigation are expected to apply '*reasonable diligence*', '*legitimate purview*'. It is from this lens that it shall be adjudicated whether all issues that were properly arising to the litigation; which ought to have been raised; were raised or not?

8.6 The principle applies with equal force in cases where the ground that might and ought to have been raised was not done, on account of negligence, inadvertence or accident. In other words, might and ought to apply cumulatively with full force, without exception. The party therefore commits these errors at their own peril.

14. The Hon'ble Apex court in the case of *B.L. Sreedhar v. K.M. Munireddy*, (2003) 2 SCC 355, has held as under :-



13. Estoppel is a rule of evidence and the general rule is enacted in Section 115 of the Indian Evidence Act, 1872 (in short “the Evidence Act”) which lays down that when one person has by his declaration, act or omission caused or permitted another person to believe a thing to be true and to act upon that belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing. (See *Sunderabai v. Devaji Shankar Deshpande* [(1952) 2 SCC 92 : AIR 1954 SC 82] .)

14. “Estoppel is when one is concluded and forbidden in law to speak against his own act or deed, yea, though it be to say the truth” — Co Litt 352(a), cited in *Ashpitel v. Bryan* [(1863) 3 B & S 474 : 122 ER 179 : 32 LJQB 91] B & S at p. 489; *Simm v. Anglo American Telegraph Co.* [(1879) 5 QBD 188 : 49 LJQB 392 : 42 LT 37 (CA)] , per Bramwell, L.J. at p. 202; *Halsbury*, Vol. 13, para 488. So there is said to be an estoppel where a party is not allowed to say that a certain statement of fact is untrue, whether in reality it be true or not. Estoppel, or conclusion, as it is frequently called by the older authorities, may therefore be defined as a disability whereby a party is precluded from alleging or proving in legal proceedings that a fact is otherwise than it has been made to appear by the matter giving rise to that disability. (*Halsbury*, Vol. 13, para 448) The rule on the subject is thus laid down by Lord Denman, in *Pickard v. Sears* [(1837) 6 Ad & El 469 : 112 ER 179] Ad & E at p. 474 : ER p. 181

“But the rule of law is clear, that, where one by his words or conduct wilfully causes another to believe the existence of a certain state of things, and induces him to act on that belief, so as to alter his own previous position, the former is concluded from averring against the latter a different state of things as existing at the same time;”

“The whole doctrine of estoppel of this kind, which is a fictitious statement treated as true, might have been founded in reason, but I am not sure that it was. There is another kind of estoppel — estoppel by representation — which is founded upon reason and it is founded upon decision also.” Per Jessel, M.R. in *General Finance & Co. v. Liberator* [(1878) 10 Ch D 15 : (1874-80) All ER Rep Ext 1597 : 39 LT 600] , Ch D at p. 20.

See also in *Simm v. Anglo American Telegraph Co.* [(1879) 5 QBD 188 : 49 LJQB 392 : 42 LT 37 (CA)] , QBD at p. 202 where Bramwell, L.J. said “An estoppel is said to exist where a person is compelled to admit that to be true which is not true, and to act upon a theory which is contrary to the truth.”

15. On the whole, an estoppel seems to be when, in consequences of some previous act or statement to which he is either party or privy, a person is precluded from showing the existence of a



particular state of facts. Estoppel is based on the maxim *allegans contraria non est audiendus* (a party is not to be heard to allege the contrary) and is that species of presumption *juries et de jure* (absolute or conclusive or irrebuttable presumption), where the fact presumed is taken to be true, not as against all the world, but against a particular party, and that only by reason of some act done, it is in truth a kind of *argumentum ad hominem*.

15. The Hon'ble Apex court in the case of *Pratima Chowdhury v. Kalpana Mukherjee*, (2014) 4 SCC 196, has held as under :-

37. Insofar as the instant aspect of the matter is concerned, the legal position declared by this Court fully supports the conclusion drawn by us hereinabove. In this behalf, reference may be made, firstly, to the judgment rendered by this Court in *Kasinka Trading v. Union of India* [(1995) 1 SCC 274], wherein this Court noticed as under: (SCC p. 283, para 11)

“11. The doctrine of promissory estoppel or equitable estoppel is well established in the administrative law of the country. To put it simply, the doctrine represents a principle evolved by equity to avoid injustice. *The basis of the doctrine is that where any party has by his word or conduct made to the other party an unequivocal promise or representation by word or conduct, which is intended to create legal relations or effect a legal relationship to arise in the future, knowing as well as intending that the representation, assurance or the promise would be acted upon by the other party to whom it has been made and has in fact been so acted upon by the other party, the promise, assurance or representation should be binding on the party making it and that party should not be permitted to go back upon it, if it would be inequitable to allow him to do so, having regard to the dealings, which have taken place or are intended to take place between the parties.*”

(emphasis supplied)

38. The above sentiment recorded in respect of the principle of estoppel was noticed again by this Court in *Monnet Ispat & Energy Ltd. v. Union of India* [(2012) 11 SCC 1], wherein this Court expressed its views in respect of the principle of estoppel as under: (SCC p. 153, para 289)



“289. As we have seen earlier, for invoking the principle of promissory estoppel there has to be a promise, and on that basis the party concerned must have acted to its prejudice.”

(emphasis supplied)

39. The ingredients of the doctrine of estoppel in the manner expressed above were also projected in *H.R. Basavaraj v. Canara Bank* [(2010) 12 SCC 458 : (2010) 4 SCC (Civ) 659] , as under: (SCC p. 469, para 30)

“30. In general words, estoppel is a principle applicable when one person induces another or intentionally causes the other person to believe something to be true and to act upon such belief as to change his/her position. In such a case, the former shall be estopped from going back on the word given. The principle of estoppel is, however, only applicable in cases where the other party has changed his position relying upon the representation thereby made.”

(emphasis supplied)

16. From the above enunciation of law, it is clear that if any controversy in issue between the same parties has already been decided in the earlier round of litigation, then all parties are bound by it and cannot reopen it in the subsequent proceedings. Once the non applicant has prosecuted section 34 application under the Act of 1996, wherein liberty has been granted to the applicant to further arbitrate if dispute persists between the parties, then, in such case, the non applicant cannot reopen the issue of maintainability at the stage of appointment of an Arbitrator under the Act of 1996. It is true that this Court on challenge being made to the order granting liberty to the applicant to further arbitrate has observed that the liberty has to be construed in accordance with law (statutory as well as case law). It is not



in dispute that any dispute arising out of agreement in question is amenable to the jurisdiction of Adhikaran, but as the court has observed that liberty is to be construed in accordance with law as well as case law, the decision rendered by the higher court at the earlier point of time and observed by this court to be binding precedent cannot be overlooked, as that is also a case law for the present case in hand.

17. The Hon'ble Apex court in the case of **Aslam Ismail Khan Deshmukh v. ASAP Fluids (P) Ltd.**, (2025) 1 SCC 502 has held as under :-

50. As evident from the aforesaid discussion and especially in light of the observations made in *Krish Spg. [SBI General Insurance Co. Ltd. v. Krish Spg.]*, (2024) 12 SCC 1 : 2024 SCC OnLine SC 1754] , this Court cannot conduct an intricate evidentiary enquiry into the question of when the cause of action can be said to have arisen between the parties and whether the claim raised by the petitioner is time-barred. This has to be strictly left for the determination by the Arbitral Tribunal. All other submissions made by the parties regarding the entitlement of the petitioner to 4,00,000 and 2,00,010 equity shares in Respondent 1 company are concerned with the merits of the dispute which squarely falls within the domain of the Arbitral Tribunal.

51. It is now well-settled law that, at the stage of Section 11 application, the referral Courts need only to examine whether the arbitration agreement exists — nothing more, nothing less. This approach upholds the intention of the parties, at the time of entering into the agreement, to refer all disputes arising between themselves to arbitration. However, some parties might take undue advantage of such a limited scope of judicial interference of the referral Courts and force other parties to the agreement into participating in a time-consuming and costly arbitration process.....

52. In order to balance such a limited scope of judicial interference with the interests of the parties who might be constrained to participate in the arbitration proceedings, the Arbitral Tribunal may direct that the costs of the arbitration shall be borne by the party which the Tribunal ultimately finds to have abused the process of law and caused unnecessary harassment to



the other party to the arbitration.

18. The Hon. Apex Court in the case of **Uttarakhand Purv Sainik Kalyan Nigam Ltd. (supra)**, while over-ruling the order of this Court in the case of **Uttarakhand Purv Sainik Kalyan Nigam Limited Vs. Northern Coalfield Limited**, 2018 (4) MPLJ 45, has held that after the amendment in the Act of 1996, section 6A has been inserted which provides that all the questions in regard to jurisdiction, limitation or which goes to the root shall be decided by the Arbitrator and those are not to be decided by this Court at the referral stage. For ready reference the principle laid down in Para 7 is reproduced here and below :-

"7. We have heard the learned counsel for the parties and perused the pleadings.

7.1. Section 21 of the 1996 Act provides that arbitral proceedings commence on the date on which a request for disputes to be referred to arbitration is received by the respondent.

7.2. In the present case, the notice of arbitration was issued by the petitioner Contractor to the respondent Company on 9-3-2016. The invocation took place after Section 11 was amended by the 2015 Amendment Act, which came into force on 23-10-2015, the amended provision would be applicable to the present case.

7.3. The 2015 Amendment Act brought about a significant change in the appointment process under Section 11: first, the default power of appointment shifted from the Chief Justice of the High Court in arbitrations governed by Part I of the Act, to the High Court; second, the scope of jurisdiction under sub-section (6-A) of Section 11 was confined to the examination of the existence of the arbitration agreement at the pre-reference stage.

7.4. Prior to the coming into force of the 2015 Amendment Act, much controversy had surrounded the nature of the power of appointment by the Chief Justice, or his designate under Section 11. A seven-Judge Constitution Bench of this Court in **SBP & Co. v. Patel Engg. Ltd.** [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618] defined the scope of power of the Chief Justice under Section 11. The Court held that the scope of power exercised under Section 11 was to first decide:

- (i) whether there was a valid arbitration agreement; and
- (ii) whether the person who has made the request under Section 11, was a party to the arbitration agreement; and
- (iii) whether the party making the motion had approached the appropriate High Court.

7.5. Further, the Chief Justice was required to decide all threshold



issues with respect to jurisdiction, the existence of the agreement, whether the claim was a dead one; or a time-barred claim sought to be resurrected; or whether the parties had concluded the transaction by recording satisfaction of their mutual rights and obligations, and received the final payment without objection, under Section 11, at the pre-reference stage. The decision in *Patel Engg. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618]* was followed by this Court in *Boghara Polyfab [National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd., (2009) 1 SCC 267 : (2009) 1 SCC (Civ) 117]*, *Master Construction [Union of India v. Master Construction Co., (2011) 12 SCC 349 : (2012) 2 SCC (Civ) 582]*, and other decisions.

7.6. The Law Commission in the 246th Report [Amendments to the Arbitration and Conciliation Act, 1996, Report No. 246, Law Commission of India (August 2014), p. 20.] recommended that:

“33. ... the Commission has recommended amendments to Sections 8 and 11 of the Arbitration and Conciliation Act, 1996. The scope of the judicial intervention is only restricted to situations where the court/judicial authority finds that the arbitration agreement does not exist or is null and void. Insofar as the [Ed.: The matter between two asterisks has been emphasised in original.] nature [Ed.: The matter between two asterisks has been emphasised in original.] of intervention is concerned, it is recommended that in the event the court/judicial authority is prima facie satisfied against the argument challenging the arbitration agreement, it shall appoint the arbitrator and/or refer the parties to arbitration, as the case may be. The amendment envisages that the judicial authority shall not refer the parties to arbitration only if it finds that there does not exist an arbitration agreement or that it is null and void. If the judicial authority is of the opinion that prima facie the arbitration agreement exists, then it shall refer the dispute to arbitration, and leave the existence of the arbitration agreement to be finally determined by the Arbitral Tribunal.”

(emphasis supplied)

7.7. Based on the recommendations of the Law Commission, Section 11 was substantially amended by the 2015 Amendment Act, to overcome the effect of all previous judgments rendered on the scope of power by a non obstante clause, and to reinforce the kompetenz-kompetenz principle enshrined in Section 16 of the 1996 Act. The 2015 Amendment Act inserted sub-section (6-A) to Section 11 which provides that:

“(6-A) The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any court, confine to the examination of the existence of an arbitration agreement.”

(emphasis supplied)

7.8. By virtue of the non obstante clause incorporated in Section 11(6-A), previous judgments rendered in *Patel Engg. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618]* and *Boghara Polyfab [National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd., (2009) 1*



SCC 267 : (2009) 1 SCC (Civ) 117] , were legislatively overruled. The scope of examination is now confined only to the existence of the arbitration agreement at the Section 11 stage, and nothing more.

7.9. Reliance is placed on the judgment in *Duro Felguera S.A. v. Gangavaram Port Ltd.* [Duro Felguera S.A. v. Gangavaram Port Ltd., (2017) 9 SCC 729 : (2017) 4 SCC (Civ) 764. Refer to *TRF Ltd. v. Energo Engg. Projects Ltd.*, (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72] , wherein this Court held that: (SCC p. 759, para 48)

“48. ... From a reading of Section 11(6-A), the intention of the legislature is crystal clear i.e. the court should and need only look into one aspect—the existence of an arbitration agreement. What are the factors for deciding as to whether there is an arbitration agreement is the next question. The resolution to that is simple — it needs to be seen if the agreement contains a clause which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement.”

(emphasis supplied)

7.10. In view of the legislative mandate contained in Section 11(6-A), the Court is now required only to examine the existence of the arbitration agreement. All other preliminary or threshold issues are left to be decided by the arbitrator under Section 16, which enshrines the kompetenz-kompetenz principle.

7.11. The doctrine of “kompetenz-kompetenz”, also referred to as “compétence-compétence”, or “compétence de la reconnue”, implies that the Arbitral Tribunal is empowered and has the competence to rule on its own jurisdiction, including determining all jurisdictional issues, and the existence or validity of the arbitration agreement. This doctrine is intended to minimise judicial intervention, so that the arbitral process is not thwarted at the threshold, when a preliminary objection is raised by one of the parties. The doctrine of kompetenz-kompetenz is, however, subject to the exception i.e. when the arbitration agreement itself is impeached as being procured by fraud or deception. This exception would also apply to cases where the parties in the process of negotiation, may have entered into a draft agreement as an antecedent step prior to executing the final contract. The draft agreement would be a mere proposal to arbitrate, and not an unequivocal acceptance of the terms of the agreement. Section 7 of the Contract Act, 1872 requires the acceptance of a contract to be absolute and unqualified [*Dresser Rand S.A. v. Bindal Agro Chem Ltd.*, (2006) 1 SCC 751. See also *BSNL v. Telephone Cables Ltd.*, (2010) 5 SCC 213 : (2010) 2 SCC (Civ) 352. Refer to *PSA Mumbai Investments Pte. Ltd. v. Jawaharlal Nehru Port Trust*, (2018) 10 SCC 525 : (2019) 1 SCC (Civ) 1] . If an arbitration agreement is not valid or non-existent, the Arbitral Tribunal cannot assume jurisdiction to adjudicate upon the disputes. Appointment of an arbitrator may be refused if the arbitration agreement is not in writing, or the disputes are beyond the scope of the arbitration agreement. Article V(1)(a) of the New



York Convention states that recognition and enforcement of an award may be refused if the arbitration agreement “is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made”.

7.12. The legislative intent underlying the 1996 Act is party autonomy and minimal judicial intervention in the arbitral process. Under this regime, once the arbitrator is appointed, or the tribunal is constituted, all issues and objections are to be decided by the Arbitral Tribunal.

7.13. In view of the provisions of Section 16, and the legislative policy to restrict judicial intervention at the pre-reference stage, the issue of limitation would require to be decided by the arbitrator. Sub-section (1) of Section 16 provides that the Arbitral Tribunal may rule on its own jurisdiction, “*including any objections*” with respect to the existence or validity of the arbitration agreement. Section 16 is as an inclusive provision, which would comprehend all preliminary issues touching upon the jurisdiction of the Arbitral Tribunal. The issue of limitation is a jurisdictional issue, which would be required to be decided by the arbitrator under Section 16, and not the High Court at the pre-reference stage under Section 11 of the Act. Once the existence of the arbitration agreement is not disputed, all issues, including jurisdictional objections are to be decided by the arbitrator.

7.14. In the present case, the issue of limitation was raised by the respondent Company to oppose the appointment of the arbitrator under Section 11 before the High Court. Limitation is a mixed question of fact and law. In *ITW Signode (India) Ltd. v. CCE* [*ITW Signode (India) Ltd. v. CCE*, (2004) 3 SCC 48] a three-Judge Bench of this Court held that the question of limitation involves a question of jurisdiction. The findings on the issue of limitation would be a jurisdictional issue. Such a jurisdictional issue is to be determined having regard to the facts and the law. Reliance is also placed on the judgment of this Court in *NTPC Ltd. v. Siemens Atkeingesellschaft* [*NTPC Ltd. v. Siemens Atkeingesellschaft*, (2007) 4 SCC 451], wherein it was held that the Arbitral Tribunal would deal with limitation under Section 16 of the 1996 Act. If the tribunal finds that the claim is a dead one, or that the claim was barred by limitation, the adjudication of these issues would be on the merits of the claim. Under sub-section (5) of Section 16, the tribunal has the obligation to decide the plea; and if it rejects the plea, the arbitral proceedings would continue, and the tribunal would make the award. Under sub-section (6) a party aggrieved by such an arbitral award may challenge the award under Section 34. In *Iffco Ltd. v. Bhadra Products* [*Iffco Ltd. v. Bhadra Products*, (2018) 2 SCC 534 : (2018) 2 SCC (Civ) 208] this Court held that the issue of limitation being a jurisdictional issue, the same has to be decided by the tribunal under Section 16, which is based on Article 16 of the Uncitral Model Law which enshrines the kompetenz principle.



19. This view has also been taken by the Larger Bench of the Hon'ble Apex Court in the case of **Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV)**, (2025) 4 SCC 641, wherein it is held that at the stage of deciding an application for appointment of an Arbitrator, the Court must not conduct an intricate enquiry into the matter, where the claim raised by the applicant is time barred and should be left open for determination by the Arbitrator. Such an approach gives true meaning to the view taken in the case of **Interplay Between Arbitration Agreements under Arbitration, 1996 & Stamp Act, 1899, In re**, (2024) 6 SCC 1.

20. It is not in dispute that the dispute arising out of an agreement which falls within the definition which is termed as work contract under the Act of 1983 shall be amenable to the jurisdiction of the Tribunal, but, as discussed hereinabove, in the present case in hand as it is settled between the parties that the arbitration shall be done between the parties as per the provisions of the Act of 1996, which has been affirmed by this Court in A.A.No.8/2017 and SLP filed against the said order has been dismissed. Therefore, the case laws which have been relied by the non-applicant in the case of *L.G. Chaudhary (supra)*, *M/s Gayatri Project Limited (supra)* and *Umri Pooph Pratappur (supra)* are not having any application in the present case.

21. In view of the above enunciation of law as well as analysis of the facts, to entertain the application for appointment of arbitrator this Court prima facie finds that the present application is maintainable in the light of the earlier decisions of this Court and the Hon'ble Apex Court coupled with a



fact that such objection as per the dictum of Hon'ble Apex Court in the case of Altaf can be raised before the Arbitrator also. The parties are always free to agitate the same question before the Arbitrator.

22. Accordingly, the present application is allowed.

23. Considering the list of empanelled Arbitrators issued by the M.P. Arbitration Centre, Jabalpur, following order is passed:

(i) Shri Ved Prakash Sharma, Former Judge, High Court of M.P., Address - 9-D, Orchard Residency, B-Block, Palace Orchard, Kolar Road, Bhopal (M.P.), Contact No.94251-15150, Email - vsharp156@gmail.com, who has consented in terms of Section 11(8) of the Act of 1996, is appointed as sole Arbitrator to resolve the dispute between the parties in the case.

(ii) Arbitrator shall issue the notices and fix the date and suitable venue for arbitration. Said arbitration will take place at Bhopal.

(iii) Parties are directed to deposit necessary charges and fees as per M.P. Arbitration Center (Domestic and International) Rule, 2019.

(iv) Director of Madhya Pradesh Arbitration Centre, Domestic and International, Jabalpur (M.P.D.I.A.C.) shall communicate the decision of this Court to the Sole Arbitrator.

(v) Other provisions of Section 15(3)(4) of the Arbitration and Conciliation Act, 1996 will apply to substitute Arbitrator.

21. With aforesaid directions, the Arbitration Case is disposed of.

(DEEPAK KHOT)
JUDGE



HS

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