



IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DEEPAK KHOT

ON THE 3rd OF SEPTEMBER, 2026

ARBITRATION CASE No. 66 of 2026

SUSAJJA JV ANAND LLP

Versus

BHOPAL MUNICIPAL CORPORATION

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Appearance:

Shri Anshuman Singh with Shri Shri Anuj Shrivastava - Advocate for
the applicant.

Shri S.M. Guru - Advocate for the respondent.
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ORDER

The applicant has filed the present application 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 between the parties in terms of Agreement/Contract - Annexure A/2.

2. It is the case of the applicant that in 2024, the non-applicant issued an RFP for “Old Waste Remediation through Bioremediation, Biomining and Disposal of Residual Waste with Processing and Disposal of Fresh Waste” at Adampur Chawni, Bhopal (“Project Site”), along with subsequent addenda. The Applicant was declared as a successful bidder for both legacy and fresh waste vide Letter of Intimation dated 03.10.2024 (“LOI”) pursuant to which the applicant and the non-applicant executed the contract , copies



whereof are collectively filed as Annexure A/2.

3. Pursuant to award of the contract and handing over of the Project Site, the applicant faced persistent infrastructural deficiencies attributable to non-applicant. Despite repeated representations, the deficiencies, including damaged tipping floor, absence of windrow platform, inadequate sheds, drainage and internal roads, damaged boundary walls and landfill-related issues, remained unresolved, causing disruption of operations and daily financial losses to the applicant.

4. It is submitted that a dispute also arose regarding the quantity of legacy waste. Although the RFP estimated 2,50,000 MT, the quantity was to be determined through a contour survey. The non-applicant appointed MANIT vide letter dated 21.10.2024. The applicant informed non-applicant on 13.11.2024 that the survey had assessed the quantity at approximately 10,63,000 MT and that the Applicant had paid Rs. 2,95,000 towards survey charges. However, without communicating the final quantity, the non-applicant cancelled MANIT's appointment on 17.12.2024 without assigning any reason.

5. It is submitted that meanwhile, the non-applicant failed to rectify the infrastructural deficiencies or to resolve the dispute regarding the quantity of legacy waste. The applicant was consequently incurring continuous losses and additional expenditure to maintain operations. Further, substantial amounts towards processing of fresh waste remained unpaid.

6. It is submitted in these circumstances, the applicant issued an Intent to Terminate Letter dated 07.07.2025, calling upon non-applicant to cure the



contractual breaches within 15 days. As on that date, Rs.4,34,68,776/- remained outstanding towards invoices for processing of fresh waste.

7. It is submitted that despite expiry of the stipulated 15-day period and continued inaction on the part of non-applicant, the applicant was constrained to terminate the Contract vide Termination Notice dated 22.07.2025

8. Pursuant to the Termination Notice, the applicant informed non-applicant that the Project Site would be handed over and its machinery, equipment and manpower would be removed. Accordingly, vide letter dated 24.07.2025, the Applicant formally handed over the Project Site along with the materials lying therein.

9. It is submitted that non-applicant vide letter dated 21.07.2025 received by the applicant on 29.07.2025 denied the breaches alleged by the applicant. The Applicant duly replied vide letter dated 08.08.2025, rebutting the allegations and reiterating its case. Thereafter, non-applicant issued a termination letter dated 11.08.2025 (Annexure A/17), received by the Applicant on 13.08.2025, whereby non-applicant disputed the applicant's lawful termination, alleged breaches on the part of the applicant and sought to impose penalties and deductions which were arbitrary, illegal and contrary to the Contract.

10. It is submitted that thereafter, non-applicant threatened to invoke the applicant's bank guarantee, compelling applicant to approach this Hon'ble Court in W.P. No. 32149/2025. Vide order dated 14.08.2025 (Annexure A/18), this Hon'ble Court stayed the invocation/encashment of



the bank guarantee.

11. Thereafter, the applicant invoked Clauses 15 and 24 of Volume II of the Contract and submitted its quantified claims before the Competent Authority vide Claim Notice dated 20.08.2025 (Annexure A/19). The Competent Authority was required to decide the claims within 45 days; however, despite repeated follow-ups and meetings, no decision was rendered within the stipulated period.

12. It is submitted upon failing of the competent authority to provide any decision within 45 days from the date of submission of claim notice, the applicant preferred an appeal, however, the appellant authority refused to decide the appeal of the applicant on the ground that it lacked jurisdiction to adjudicate matters relating to the Swachh Bharat Mission (Urban).

13. It is submitted that Clause 15 of Volume II of the Contract provides a multi-tier dispute resolution mechanism, requiring disputes to be first raised before the Competent Authority, followed by an appeal to the Appellate Authority and, thereafter, arbitration before the M.P. Arbitration Tribunal under the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 (For short 'Act of 1983'). The Applicant duly approached both authorities; however, as stated hereinabove, the dispute remained unresolved.

14. It is submitted that the Act of 1983 is inapplicable to the present Contract. Section 3 of the Act of 1983 confers jurisdiction upon the M.P. Arbitration Tribunal only in respect of disputes arising out of or connected with a “works contract”. The term “works contract”, as defined under Section 2(i) of the Act of 1983, is confined to agreements relating to



construction, repair or maintenance of specified works, including buildings, roads, bridges, dams, canals, etc., and also includes specified services, supply of goods/materials and concession agreements involving State support. The present Contract, being for waste remediation, processing and disposal does not fall within the statutory definition of “works contract”. Accordingly, the Act of 1983 and the jurisdiction of the M.P. Arbitration Tribunal are not attracted.

15. However, the parties expressly agreed to refer disputes to the Madhya Pradesh Arbitration Tribunal, clearly evidencing their intention to arbitrate. Although the Tribunal lacks jurisdiction under the Act of 1983, the arbitration agreement remains valid and enforceable. Accordingly, the disputes ought to be referred to arbitration in accordance with the Act of 1996.

16. It is submitted that in compliance with Section 21 of the Act of 1996, the applicant issued a notice dated 12.02.2026 (Annexure A/1) invoking arbitration in respect of disputes arising out of the Contract. However, the Non-Applicant failed to respond within the stipulated period and no arbitrator was mutually appointed between the Parties. Accordingly, the present application under Section 11(6) of the Act of 1996 has been filed.

17. The respondents have filed reply contending therein that the the contract is a work contract because the contract involves excavation and remediation of municipal waste, dewatering, reclamation, construction of sheds, platforms and other site facilities, landfill and drainage works, and operation and maintenance of existing facilities. The Applicant itself has



claimed costs for construction of a windrow platform and temporary road. Thus, the Contract falls within the definition of “works contract” under the Act of 1983. Further, Clause 15 specifically provides for resolution of disputes by the Madhya Pradesh Arbitration Tribunal under the Madhyasthan Act and contains no provision for arbitration under the Act of 1996. Hence, the present application under Section 11(6) of the A&C Act as also the Applicant’s notice dated 12.02.2026 nominating an arbitrator thereunder, is misconceived and not maintainable.

18. It is submitted that the present claim involves disputed questions of fact concerning site infrastructure, quantity of legacy waste, rival termination, payments, penalties and recoveries and therefore, cannot be adjudicated under Section 11 of the Act of 1996.

19. The sole objection which has been raised by the respondent is that, the contract in question is a works contract, therefore, in the light of the principle laid down by the Hon'ble Apex Court in the case of **Madhya Pradesh Rural Road Development Authority and another vs. L.G. Chaudhary Engineers and Contractors, (2018) 10 SCC 826**, the arbitration is necessary to be referred to the Tribunal constituted under the Act of 1983.

20. It is submitted that the Scope of Contract, which is provided under Clause 6, which refers to Appendix 1—Project Information Memorandum of the RFP document, according to which there are certain works, which are provided in regard to construction for the purpose of management of solid waste, which includes digging of pit and some civil construction. Therefore, it would be necessarily referred to "works contract" in terms of Section 2(i)



of the Act of 1983.

21. It is also submitted that as the parties have agreed to resolve their dispute through the mechanism which is provided under the Act of 1983, therefore, the application is not maintainable.

22. Per contra, learned counsel for the applicant has placed reliance on an order passed by the Hon'ble Apex Court in the case of **Ecogreen Energy Gwalior Pvt. Ltd. vs. Municipal Corporation Gwalior** passed in Civil Appeal No. 4646/2026 decided on 21.04.2026.

23. It is submitted by the learned counsel for the applicant that in the similar set of facts where the question of management of solid waste was involved and a contract was issued by the Municipal Corporation, Gwalior containing the same stipulation in regard to referring the matter, in case a dispute arises between the parties, to the Tribunal under the Act of 1983, has been dealt with and the Hon'ble Apex Court has come to the conclusion that as the solid waste management is the dominant purpose for which the agreement was executed and all the other ancillary purposes in regard to construction thereof is in connection with the main purpose of the contract, therefore, the contract is not a work contract and any dispute arising out of the contract can be referred to the Arbitrator appointed under the Act of 1996 and that does not oust the jurisdiction of the Court to appoint an Arbitrator under the Act of 1996.

24. Learned counsel for the applicant has further placed reliance upon the order passed by this Court in the case of **M/s PKH M.P. Convention Center Pvt. Ltd. Vs. Madhya Pradesh State Tourism Development**



Corporation Limited- AC No.119 of 2024 decided vide order dated 10.02.2026 to state that even if the parties have agreed to have their resolution of dispute by referring the matter under the Act of 1983, but if the Court finds that the contract is not a work contract and essentially parties have intended to resolve their dispute by arbitration, can refer the matter to the Arbitrator under the Act of 1996.

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

26. The Honorable Apex Court in the case of **Ecogreen Energy (supra)** has held as under:

"4. The appellant entered into a concession agreement with the Municipal Corporation, Gwalior on 19.05.2017 for "design, engineering, construction, financing, procurement, operation & maintenance for door-to-door and secondary collection, transportation, segregation/ material recovery, treatment through Waste to energy process in a facility and final disposal of the Inerts in a scientifically developed landfill and closure of old landfill within the administrative limits of the Participating ULBs (the Project) on Design, Build, Finance. Operate and Transfer (DBFOT) basis.

14. We have already extracted the scope and ambit of the concession agreement between the appellant with the Municipal Corporation which inter alia relates to design, engineering, construction, financing, procurement, operation and maintenance for door to door and secondary transportation, segregation, material recovery, etc. of municipal solid waste. The agreement may necessarily require certain civil structures to be set up but that will be incidental and ancillary to the substantive part of the contract. There is no doubt about the fact that the dominant purpose for which the agreement has been executed is for setting up the system to deal with municipal solid waste. For the present purpose, it is sufficient if we come to the conclusion that the concession agreement between the parties does not fall within the four corners of a "works contract" as defined under Section 2(i) of the Adhiniyam. It is for this very reason that the concession agreement itself incorporates dispute resolution through the institutional arbitration of International Centre for Alternative Dispute Resolution, New Delhi, the relevant clause has already extracted hereinabove."

27. From a reading of the aforesaid principle laid down by the



Honorable Apex Court, it is demystified that the Court has to consider the nature and scope of the work which is agreed between the parties under the agreement and on consideration of nature of work, which is under the scope of the agreement, if the Court comes to the conclusion that it is not a work contract, the dispute can be referred by appointment of an Arbitrator under the Act of 1996.

28. Now, as regards the question as to if the parties have agreed to resolve their dispute by statutory arbitration under the Act of 1983, when the order passed by this Court in the case of **M/s PKH M.P. Convention Center (supra)** has been pondered, it is found that this Court has taken a view that even if the parties have agreed to resolve their dispute through statutory arbitration under the Act of 1983, but if the contract is not a works contract then it is not amenable to the jurisdiction of the Tribunal under the Act of 1983. In such case, if the intention of the parties is to resolve the dispute through arbitration then it can be referred to the Arbitrator under the Act of 1996.

29. Therefore, following the view taken by the Hon'ble Apex Court in the case of **Ecogreen Energy (supra)** as well as by this Court in the case of **M/s PKH M.P. Convention Center (supra)**, this Court is also of the considered opinion that the contract in question is not a work contract, as it deals dominantly for the purpose of waste management and the civil work which is incidental to the said management cannot be said to be a works contract. Therefore, the present application is allowed.

30. With the consent of the learned counsel for the parties and



considering the list of empanelled arbitrators issued by the M.P. Arbitration

Centre, Jabalpur, following order is passed:-

- (i) **Shri Sujoy Paul, Former Chief Justice of Calcutta High Court, Address - 278A/B Narmada Road Opposite Rampur Police Chowki, Jabalpur (M.P.) 482004, Mob.62890-12247, Email. justice.sujoypaul@gmail.com,** who has given consent under 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 notices and fix the date and suitable venue for arbitration. Said arbitration will take place at Jabalpur.
- (iii) Parties are directed to deposit necessary charges and fees as per M.P. Arbitration Center (Domestic and International) Rules, 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.

31. Accordingly, the arbitration case is disposed of.

(DEEPAK KHOT)
JUDGE

RAGHVENDRA