कार्यालयः— जिला एवं सेशन न्यायाधीश, अजमेर

क्रमांक/स्था0/2025/26224-26285 दिनांकः— 25/7/25

प्रतिलिपि मय संलग्नक निम्नांकित को सूचनार्थ एवं माननीय उच्चतम न्यायालय द्वारा आदेश में दिये गये निर्देशों के अनुरूप आवश्यक कार्यवाही हेतु प्रेषित है। निर्णय की प्रति जिला न्यायालय अजमेर की वेबसाईट से डाउनलोड की जावेः—

1. समस्त पीठासीन अधिकारीगण अजमेर न्यायक्षेत्र
2. सिस्टम ऑफिसर जिला न्यायालय अजमेर को जिला न्यायालय अजमेर की वेबसाईट पर अपलोड करने हेतु।

जिला एवं सेशन न्यायाधीश
अजमेर

No. Gen/XIX/Misc/790/2025/1249 Dated: 19/07/2025

From : Registrar General,
Rajasthan High Court,
Jodhpur.

To : All the District & Sessions Judges.

Sub. : Circulation of Reportable Judgment dated 15.05.2025 passed by Hon'ble Supreme Court of India, New Delhi in Civil Appeal No. 6856 of 2025.

Sir,

While enclosing herewith a copy of letter dated 22.05.2025 of the Assistant Registrar, Supreme Court of India, New Delhi alongwith Reportable Judgment dated 15.05.2025 passed by Hon'ble Supreme Court of India, New Delhi in Civil Appeal No. 6856 of 2025, M/S Gayatri Projec: Limited Vs. Madhya Pradesh Road Development Corporation Limited, I am under direction to request you to circulate the same amongst all the Courts dealing with such matters in your Judgeship for information and needful action as directed by Hon'ble Supreme Court of India in said order.

Yours sincerely,

19-7-2025
REGISTRAR (ADMN.)

Encl. : As above

2025 INSC 698

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6856 OF 2025

(Arising out of Special Leave Petition (C) No. 9740 of 2022)

M/S GAYATRI PROJECT LIMITED ...APPELLANT(S)

VERSUS

MADHYA PRADESH ROAD DEVELOPMENT CORPORATION LIMITED ...RESPONDENT(S)

J U D G M E N T

Signature Not Verified
Digitally signed by VISHAL ANAND
Date: 2025.05.15 13:26:03 IST
Reason:

J.B. PARDIWALA, J.:

For the convenience of the exposition, this judgment is divided in the following parts: -

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1. Leave Granted.

2. This appeal arises from the judgment and order passed by the High Court of Madhya Pradesh, Principal Seat at Jabalpur dated 07.01.2022 in Arbitration Appeal No. 79 of 2021 by which the appeal filed by the appellant herein under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, the "**Act, 1996**") came to be dismissed thereby affirming the order dated 20.12.2019 passed by the Commercial Court and 19th Additional Sessions Judge, Bhopal (M.P.) allowing application filed by the respondent herein under Section 34 of the Act, 1996.

3. It appears that the respondent herein suffered an award dated 08.07.2011 passed by the Arbitral Tribunal (for short, the "**Tribuna**l"). The said award was challenged by the respondent Corporation under Section 34 of the Act, 1996. The appeal filed by the Corporation under Section 34 of the Act, 1996 came to be allowed on the ground that the Tribunal had no jurisdiction to pass the award in view of the provisions of the M.P. Madhyastham Adhikaran Adhiniyam, 1983 (for short, the "**MP Act, 1983**"). The order passed by the Commercial Court and 19th Additional Sessions Judge, Bhopal (M.P.) came to be challenged by way of appeal before the High Court under Section 37 of the Act, 1996. The appeal came to be dismissed.

A. FACTUAL MATRIX

4. The facts giving rise to this appeal may be summarised as under:-

(i) The appellant executed a "works contract" dated 12.12.2005 with the respondent for "Rehabilitation and Strengthening of Khargone - Barwani Road (SH-26) Project Road No. 19" & "Rehabilitation and Strengthening of Khargone - Bistan Road (SH-31) Project Road No. 20" in the State of Madhya Pradesh. Clause 67.3 of the "General Conditions of Contract" read with Clause 67.4 of the "Conditions of Particular Application" provided for arbitration as the means for resolution of disputes between the Parties.

(ii) The arbitration agreement mandated that the tribunal shall comprise of three members, one to be appointed by each party and the two co-arbitrators had to nominate the presiding arbitrator.

(iii) Clause 67.4 of the Conditions of Particular Application – Part-II reads thus: -

> *"Sub-Clause 67.4 : Arbitration*
>
> *Any dispute in respect of which:*
>
> *a) the decision, if any, of the Board has not become final and binding pursuant to Sub-Clause 67.2, and*
>
> *b) amicable settlement has not been reached:*
>
> *(i) In the case of dispute arising between the Employer and a domestic Contractor or between the Employer and a foreign Contractor who opts for the application of the Indian Arbitration and*

Conciliation Act, 1996 related to any matter arising out of or connected with this Contract, such dispute shall be referred to the award of two Arbitrators (one each to be appointed by each party) and an Umpire to be appointed by the Arbitrators, or if there is no agreement, to be appointed by the Arbitration Committee of the Indian Council of Arbitration. The Indian Arbitration and Conciliation Act, 1996, the rules there under and any statutory modification or re-enactment thereof, shall apply to these arbitration proceedings; or (2) in the case of dispute arising between the Employer and a foreign Contractor, by application of the UNCITRAL Arbitration Rules related to any matter arising out of or connected with this Contract, such dispute shaft be referred to the award of two Arbitrators (one each to be appointed by each party) and an Umpire to be appointed by the Arbitrators, or if there is no agreement, to be appointed by the International Centre for Alternative Dispute Resolution (ICADR). The UNCITRAL Arbitration Rules shall apply to the arbitration proceedings.

(ii) Neither party shall be limited in the proceedings before such arbitrators to the evidence or arguments already put before the Engineer, for the purpose of obtaining his said decision. No such decision shall disqualify the Engineer from being called as a witness and giving evidence before the arbitrators or any matter whatsoever relevant to the dispute.

(iii) The reference to arbitration may proceed notwithstanding that the Works shall not then be or be alleged to be complete, provided always that the obligations of the Employer, the Engineer and the Contractor shall not be altered by the reason of the arbitration being conducted during the progress of the Works. Neither party shall be entitled to suspend the Works, and payment to the Contractor shall be continued to be made as provided by the Contract.

(iv) If one of the parties fail to appoint its arbitrators in pursuance of sub para (i) and (ii) above, within 60 days after receipt of the notice of the appointment of its arbitrators by the other party,

then the Secretary General of the Permanent Court of Arbitration, the Hague, in the case of foreign contractors opting for the application of the UNCITRAL Arbitration Rules, or the Ministry of Road Transport and Highways in the case of Indian contractors, and the foreign contractors who opt for the application of Indian Arbitration and Conciliation Act 1996, as the case may be, shall appoint the arbitrator. A certified copy of the Secretary General's order or Ministry of Road Transport and Highways order, as the case may be, making such an appointment shall be furnished to both the parties.

(v) Arbitration proceedings shall be held at Bhopal, India, and the language of the arbitration proceedings and that of all documents and communications between the parties shall be English.

(vi) The decision of the majority of arbitrators shall be final and binding upon both parties. The expenses of the arbitrators as determined by the arbitrators shall be shared equally by the Employer and the Contractor, However, the expenses incurred by each party in connection with the preparation, presentation, etc., of its case prior to, during and after the arbitration proceeding shall be borne by each party itself.

(vii) All arbitration awards shall be in writing and shall state the reasons for the award."

(iv) This Court vide its judgment dated 14.01.2010 in the matter of ***VA Tech Escher Wyass Flovel Limited v. M.P. State Electricity Board & Anr.*** reported in **(2011) 13 SCC 261**, held that the State Act would apply only to such works contracts which did not have an arbitration clause.

(v) In ***VA Tech*** (supra), this Court held as under: -

"1. Heard the learned counsel for the parties. This appeal has been filed against the impugned judgment of the High

Court of Madhya Pradesh dated 5-3-2003. It appears that the appellant was awarded a work contract by the respondents. There was some dispute between the parties and there is an arbitration clause in the agreement. The appellant filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 (for short "the 1996 Act") which was rejected by the learned Additional District Judge and that order has been upheld by the High Court. Hence, this appeal.

2. Section 7(1) of the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 (for short "the 1983 Act") provides as follows:

> *"7. Reference to Tribunal.—(1) Either party to a works contract shall irrespective of the fact whether the agreement contains an arbitration clause or not, refer in writing the dispute to the Tribunal."*

3. Subsequently, Parliament enacted the 1996 Act. The 1996 Act only applies where there is an arbitration clause but it does not apply where there is none. The 1996 Act covers all kinds of disputes including the dispute relating to work contracts. In our opinion, the 1983 Act and the 1996 Act can be harmonised by holding that the 1983 Act only applies where there is no arbitration clause but it stands impliedly repealed by the 1996 Act where there is an arbitration clause. We hold accordingly. Hence, the impugned judgment cannot be sustained and we hold that the application under Section 9 of the 1996 Act was maintainable.

4. The appeal is allowed accordingly. No costs."

(vi) The disputes arose between the parties from 06.08.2010 onwards in relation to the appellant's right to be reimbursed additional cost incurred by it on account of introduction of subsequent legislation on increase in

entry tax on High-Speed Diesel under Clause 70.8 of the Particular Conditions of Contract.

(vii) The appellant invoked arbitration under Clause 67.4 vide its notice dated 06.08.2010 and the Tribunal stood constituted on 24.09.2010.

(viii) The Tribunal passed a unanimous award dated 08.07.2011 in favour of the appellant for a sum of Rs. 1,03,55,187 (i.e. Rs. 1.04 Crore). The relevant paras 1.19 and 3.1 respectively of the Arbitral Award are as follows: -

> *"1.19 The valuation of the claim as assessed by the Engineer in its letter dt 18.03.2009 (CD - 01 pages 20 & 21) and recommended for reimbursement is Rs 1,03,55,187.00. This amount is agreed to by both the parties as the valuation of the claim.*
>
> *3.1 The Claimant has referred two claims for arbitration before this AT. After careful examination and consideration of the written/ oral submissions and evidence presented by both the parties to the extent relevant, AT awards amounts against each claim as under:*

	Amount Claimed	***Amount Awarded***
Claim No. 1	*Rs. 1,03,55,187.00*	*Rs. 1,03,55,187.00*
Claim No. 2	*Amount not specified*	*Rs. Nil*
	.....	.....
Total Amount	***Rs. 1,03,55,187.00 plus Interest.***	***Rs. 1,03,55,187.00***

(ix) As is evident from Para 1.19 of the Award quoted above, the quantification of this amount was in-fact recommended by the Engineer and had been admitted by the respondent. The Tribunal also awarded

future interest at the rate of 10% p.a. from the date of the award till the date of actual payment as per para 3.1. As of 17.02.2025, the amount payable by the respondent to the appellant stands at Rs. 2,44,63,775.

(x) The respondent challenged the award before the Civil Court under Section 34 of the Arbitration Act vide a petition filed on 30.09.2011. However, the respondent in its petition admittedly did not challenge the jurisdiction of the Tribunal. The respondent has admitted this fact in Para 5 of its counter affidavit filed before this Court. The respondent's grounds for challenge were essentially on matters of appreciation of evidence by the Tribunal which grounds were, in any case, untenable given the limited scope of Section 34 of the Arbitration Act.

(xi) A two Judge Bench of this Court delivered a judgment in the matter titled ***MP Rural Road Development Authority & Anr v. L.G. Chaudhary Engineers & Contractors***, reported in **(2012) 3 SCC 495**, wherein it held ***VA Tech*** (supra) to be *per incuriam*. The relevant para 42 reads as under: -

> *"42. Therefore, the appeal is allowed and the judgment of the High Court which is based on the reasoning of Va Tech [Va Tech Escher Wyass Flovel Ltd. v. M.P. SEB, Misc. Appeal No. 380 of 2003, order dated 5-3-2003 (MP)] is set aside. This Court holds that the decision in Va Tech [(2011) 13 SCC 261] has been rendered per incuriam. In that view of the matter the arbitration proceeding may proceed under the M.P. Act of 1983 and not under the AC Act, 1996."*

(xii) The Division Bench, however, differed on the point of applicability of the State Act to such works contracts which had been terminated, and this difference of opinion caused this matter to be referred to a larger bench in the follow terms: -

> *"Order*
> *60. In view of some divergence of views expressed in the two judgments delivered today by us, the matter may be placed before the Hon'ble the Chief Justice of India for constituting a larger Bench to resolve the divergence."*

(xiii) The appellant filed its reply dated 16.03.2012 before the Civil Court wherein each of the grounds raised by the respondent in its Section 34 petition were duly responded to.

(xiv) Relying on the judgment of this Court in ***L.G. Chaudhary (I)*** (supra), the respondent moved an application dated 26.06.2012 before the Civil Court seeking to introduce the ground of lack of jurisdiction in its Section 34 petition.

(xv) A Full-Bench of the High Court delivered a judgment dated 05.05.2017 in the matter of ***Viva Highways Ltd & Ors v. M.P. Road Development Corporation Limited***, reported in **AIR 2017 MP 103**, which, in-effect, reiterated the ratio of ***L.G. Chaudhary (I)*** (supra) insofar as this Court had held that the State Act would apply to all work contracts in the State of Madhya Pradesh notwithstanding the existing of an arbitration agreement therein.

(xvi) Relying on the Full Bench decision of the High Court, referred to above, the respondent moved yet one another application dated 15.01.2018 before the Civil Court wherein it again sought to introduce additional grounds to its Section 34 petition contending lack of jurisdiction of the Tribunal.

(xvii) A three-Judge Bench of this Court delivered a judgment on 22.03.2018, in the matter of ***Lion Engineering Consultants v. State of Madhya Pradesh*** reported in **(2018) 16 SCC 758,** taking the view that objections regarding lack of jurisdiction of an arbitral 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. Para 4 thereof is to the following effect: -

> *"4. We find merit in the contentions raised on behalf of the State. We proceed on the footing that the amendment being beyond limitation is not to be allowed as the amendment is not pressed. We do not see any bar to plea of jurisdiction being raised by way of an objection under Section 34 of the Act even if no such objection was raised under Section 16."*

(xviii) A three-Judge Bench of this Court passed its judgment in ***M.P. Road Development Authority & Anr v. L.G. Chaudhary Engineers & Contractors*** reported in **(2018) 10 SCC 826**, effectively stating that the State Act would prevail over the Arbitration Act in light of Section 2(4) of the Arbitration Act. The relevant para 14 is quoted below: -

> "*14. In view of the above, we are of the view that the State law will prevail in terms of Section 2(4) of the Central Act. The reference under the State law was valid and could be decided in accordance with the State. Accordingly, we set aside the impugned order [Gammon India Ltd. v. State of M.P., WP No. 8375 of 2010, order dated 29-11-2010 (MP)] and restore the proceedings before the Tribunal. The appeal is, accordingly, allowed in above terms."*

(xix) In para 17 of the aforesaid judgment, however, this Court categorically excluded such cases where awards had already been made. It was held that "in such cases, if no objection to the jurisdiction was taken at relevant stage, the award may not be annulled on that ground". It is necessary to quote para 17 as under: -

> *"17. We do not express any opinion on the applicability of the State Act where 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."*

(xx) In the present case, the respondent had admittedly not raised the issue of jurisdiction either before the Tribunal nor in its initial petition filed under Section 34. Clearly, therefore, the instant case fell within the ambit of Para 17 of LG Choudhary-II referred to above.

(xxi) The Civil Court passed its judgment dated 20.12.2019 allowing the respondent's Section 34 petition on the ground that the Tribunal lacked jurisdiction to adjudicate the disputes. The Court observed, albeit erroneously, that para 17 of ***L.G. Chaudhary (II)*** (supra) did not save

the instant case, inasmuch as the issue of jurisdiction could have been raised in the Section 34 proceeding even though no such objection had been ever raised during the arbitral proceedings. The paras 12 and 13 respectively read as follows: -

> *"12. The relevant part of the Hon'ble Supreme Court's precedent- "M.P. Rural Road Road Development Authority & Ors. Vs. M/s L.G. Chaudhary Engineering and Construction Civil Appeal No. 974/12 dated 13-03-2018" is as follows:*
>
> > *"We do not express any opinion on the applicability of the State Act where 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 that ground."*
>
> *13. It is also observable that as far as the question of non-objection of the Applicants on the point of jurisdiction of the arbitrator is concerned, the provisions under Section 34 (2) (B) confers special jurisdiction to the Courts, where it does not need to rely on the objections or non-objections of either party. Under Section 34 (2) (B) (i) if the Court is aware that the subject matter of the dispute is not arbitrable under the said act, then such an arbitral award can be set aside by the Court. Apart from this, it is also observable that Clause 28 of the Contract also regards such provisions as void, which confers jurisdiction to Courts not having jurisdiction. It has been clarified by the Hon'ble Supreme Court in M/s L.G. Choudhary with regards to the above precedent that wherever award has been passed, even in those cases, the above objection can be raised at the time of application under Section 34 of the Central Act. It is for this reason the argument made by the Non- Applicant in this context is not just."*

(xxii) This Court in ***JMC Projects (India) Ltd v. Madhya Pradesh Road Development Corporation*** reported in **(2020) SCC OnLine SC 1452** took note of the exception carved out in ***L.G. Chaudhary (II)*** (supra). In a case based on similar facts, this Court held that the award should not be set aside on the ground of jurisdiction alone. The order dated 10.01.2020 passed by this Court is as follows: -

> *"Leave granted.*
>
> *Mr. K. V. Vishwanathan, learned senior counsel appearing for the appellant, has shown us our order dated 08.03.2018 in Madhya Pradesh Rural Road Development Authority & Anr. v. M/s. L. G. Chaudhary Engineers and Contractors (Civil Appeal No. 974 of 2012) (being the lead case) and has pointed out paragraph Nos. 22 to 27 thereof which are quoted hereinbelow:*
>
> > *"C.A. No. 2751 of 2018 @ SLP (C)No. 11615/2012, C.A. No. 2753 of 2018 @ SLP (C)No. 11617/2012, C.A. No. 2754 of 2018 @ SLP (C)No. 11618/2012, C.A. No. 2755 of 2018 @ SLP (C)No. 11619/2012, C.A. Nos. 2756-2757 of 2018 @ SLP (C)Nos. 11633-11634/2012, C.A. Nos. 2758-2759 of 2018 @ SLP (C)Nos. 11631-11632/2012 & C.A. Nos. 2760-2761 of 2018 @ SLP (C)No. 11628- 11629/2012:*
> >
> > *22. We do not express any opinion on the applicability of the State Act where 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.*
> >
> > *23. The appeals are, accordingly, disposed of.*
> >
> > *C.A. No. 2616@ SLP (C)No. 35641/2011:*
> > *24. Leave granted.*

25. In view of order passed in C.A. No. 2751 of 2018 @ SLP (C)No. 16615/2012, no objection having been raised by the respondents in terms of Section 16(2) of the Arbitration and Conciliation Act, 1996 at appropriate stage within the time stipulated, the award could not have been annulled.

26. Accordingly, this appeal is allowed, the impugned judgment is set aside and the award is restored.

27. It is, however make it clear that this order will not debar proceedings under Section 34 of the Arbitration and Conciliation Act, 1996."

It is clear that in the present case, an Award has already been passed which is dated 07.01.2011.

This being the case, and following the aforesaid judgment of this Court, the impugned judgment dated 24.10.2018 is set aside. The Section 34 proceedings will continue with all objections that may be raised but excluding the objection as to the applicability of the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983.

The matter stands disposed of accordingly."

(xxiii) The High Court passed the impugned judgment dated 07.01.2022 under Section 37 of the Act of 1996. The High Court held that the Tribunal lacked jurisdiction to adjudicate the disputes between the parties. The High Court, in effect, held that the exception carved out in ***L.G. Chaudhary (II)*** (supra), as reiterated in ***JMC Projects*** (supra), could not be relied upon as ***JMC Projects*** (supra) had not considered the law laid down by this Court in ***Lion Engineering*** (supra). Paras 21, 22 and

23 respectively of the impugned judgment dated 07.01.2022 are as under: -

> *"21. Now, we shall consider the specific objection of the appellant regarding lack of objection on jurisdiction under Section 16(2) of the Act of 1996 before the arbitral tribunal in view of order dated 13.03.2018 in C.A. No. 2616 of 201810 and in M/s. JMC Projects (India) Ltd.*
>
> *22. It is true that the Hon'ble Supreme Court in its order dated 13.03.2018 in C.A.No.2616 of 2018 has held that award cannot be annulled on the ground of lack of jurisdiction if the objection under Section 16(2) was not taken before the arbitral tribunal. This view was based on a decision of two judge bench of the Hon'ble Supreme Court in MSP Infrastructure Ltd. Vs. M.P. Road Development Corp. Ltd.*
>
> *23. However, a bench of three-judges of the Hon'ble Supreme Court in a subsequent decision in Lion Engg. Consultants Vs. State of M.P. partly overruled MSP Infrastructure Ltd and held that the objection regarding lack of jurisdiction can be taken under Section 34 of the Act of 1996, even if no objection under Section 16(2) was taken before the arbitral tribunal. Thus, in view of the subsequent decision of the larger bench, this Court is of the view that the objection regarding lack of jurisdiction could have been taken before the learned trial Court under Section 34 of the Act of 1996, even though no such objection was taken before the arbitral tribunal under Section 16(2) of the Act. The Hon'ble Supreme Court in the matter of M/s. JMC Projects (India) Ltd. has not referred to the decision in the matter of Lion Engineers which was subsequent to the decision of C.A. No. 2616 of 2018. Hence, The learned trial Court acted in accordance with law while entertaining the objection under Section 34 of the 1996 Act and setting aside the arbitral award on the ground of lack of jurisdiction."*

B. ISSUES FOR DETERMINATION

5. Having heard the learned counsels appearing for the parties and having gone through the materials on record, the two pivotal questions that fall for our consideration are as under: -

I. Whether an arbitral award rendered under the Act, 1996 where the arbitration proceedings was to be governed by the MP Act, 1983, can be set-aside or annulled solely on the ground of lack of jurisdiction, even when no such plea was raised before the arbitral tribunal in terms of Section 16 sub-section (2) of the Act, 1996?

II. Whether the decision of this Court in ***LG Choudhary (II)*** (supra) could be said to be *per incuriam* for not having taken into consideration the decision of this Court in ***Lion Engineering*** (supra)? In other words, whether there is any conflict between the decisions of this Court in ***Lion Engineering*** (supra) and ***LG Choudhary (II)*** (supra), insofar as the observations pertaining to the stage at which a plea of lack of jurisdiction may be raised under the Act, 1996, are concerned?

C. ANALYSIS

6. The MP Act, 1983 was first looked into by this Court in the case of State of ***M.P. v. Anshuman Shukla*** reported in **(2008) 7 SCC 487**. This Court speaking through S.B. Sinha J. (as he then was) after going through the various provisions of the MP Act, 1983, observed that the said legislation was a special

Act that was enacted for providing compulsory arbitration on disputes to which the State Government or a public undertaking (wholly or substantially owned or controlled by the State Government), is a party, and for matters incidental thereto or connected therewith. It observed that the MP Act, 1983 postulates creation of a separate forum for the purpose of determination of disputes arising inter alia out of the works contract. The Madhya Pradesh Arbitration Tribunal established thereunder, is not a domestic or an *ad hoc* arbitral tribunal, by virtue of the unique scheme of provisions that govern its framework. The members of the MP Arbitral Tribunal are not nominated by the parties, the Tribunal has the power to reject a reference for arbitration; it has the power to *suo-motu* summon records; take note of evidence; award costs and interests. The Chairperson of the M.P. State Arbitration Tribunal has the power to refer disputes to another bench. It contains provisions, prescribing a special time-limit and procedure for the passing of an award and for its subsequent challenge, respectively. Accordingly, this Court held that the provisions of the Arbitration Act, 1940 (for short, the "**Act, 1940**") and the Act, 1996 would have no application to arbitrations governed by the MP Act, 1983 or any award passed thereunder. The relevant observations read as under:

-

> *"3. Before embarking on the said question we may notice the statutory provisions of the Act for resolution of the legal issue.*
>
> *4. The Act came into force with effect from 1-3-1985. It was enacted to provide for the establishment of a tribunal to*

arbitrate on disputes to which the State Government or a public undertaking (wholly or substantially owned or controlled by the State Government), is a party, and for matters incidental thereto or connected therewith.

5. The Arbitral Tribunal is constituted in terms of Section 3 of the Act for resolving all disputes and differences pertaining to works contract or arising out of or connected with execution, discharge or satisfaction of any such works contract.

6. Section 7 provides for reference to the Tribunal. Such reference may be made irrespective of the fact as to whether the agreement contains an arbitration clause or not. Section 7-A provides for the particulars on the basis whereof the reference petition is to be filed. Section 7-B provides for limitation for filing an application [...]

7. Chapter IV of the Act contains Sections 16 to 18. Section 16 deals with passing of an award by the Tribunal and/or its Benches. Section 17 gives finality to the award made thereunder. Such awards made, in terms of Section 18 would be deemed to be a decree within the meaning of Section 2(2) of the Code of Civil Procedure, 1908. Section 19 confers a power of revision on the High Court [...]

xxx xxx xxx

14. The Act is a special Act. It provided for compulsory arbitration. It provides for a reference. The Tribunal has the power of rejecting the reference at the threshold. It provides for a special limitation. It fixes a time-limit for passing an award. Section 14 of the Act provides that proceeding and the award can be challenged under special circumstances. Section 17, as noticed hereinbefore, provides for finality of the award, notwithstanding anything to the contrary contained in any other law relating to arbitration.

xxx xxx xxx

28. The provisions of the Act referred to hereinbefore clearly postulate that the State of Madhya Pradesh has created a separate forum for the purpose of determination of disputes arising inter alia out of the works contract. The Tribunal is not

> *one which can be said to be a domestic tribunal. The Members of the Tribunal are not nominated by the parties. The disputants do not have any control over their appointment. The Tribunal may reject a reference at the threshold. It has the power to summon records. It has the power to record evidence. Its functions are not limited to one Bench. The Chairman of the Tribunal can refer the disputes to another Bench. Its decision is final. It can award costs. It can award interests. The finality of the decision is fortified by a legal fiction created by making an award a decree of a civil court. It is executable as a decree of a civil court. The award of the Arbitral Tribunal is not subject to the provisions of the Arbitration Act, 1940 and the Arbitration and Conciliation Act, 1996. The provisions of the said Acts have no application.*
>
> *29. We are, therefore, of the opinion that the Tribunal for all intent and purport is a court. The Tribunal has to determine a lis. There are two parties before it. Its proceedings are judicial proceedings subject to the revisional order which may be passed by the High Court.*
>
> (Emphasis supplied)

7. In ***VA Tech*** (supra) the short point that fell for the consideration of this Court was whether, an application under Section 9 of the Act, 1996 could be said to be maintainable, where the arbitration proceedings were governed by the MP Act, 1983. In other words, where the dispute had to be resolved by way of arbitration in terms of the MP Act, 1983, more particularly Section 7(1), thereof, could the Act, 1996 be said to also be applicable simultaneously or alternatively for such disputes. This Court held that since both the MP Act, 1983 and the Act, 1996 respectively were similar in nature inasmuch as both provided frameworks for resolution of dispute by way of arbitration, any potential conflict or overlap in their application ought to be construed

harmoniously. This Court observed that the gravamen of Section 7 of the MP Act, 1983 which provided for reference to arbitral tribunal was only to make arbitration compulsory for resolving disputes arising out of work contracts involving either the State Government or a Public Undertaking of Madhya Pradesh. As per ***VA Tech*** (supra) what has been conveyed in so many words by the plain language of Section 7 of the MP Act, 1983 is only to mandate arbitration in respect of such work contracts, and the said provision by no means in the opinion of this Court was intended to override any legislation enacted by the Parliament, be it the Act, 1996 (sic or the Arbitration Act, 1940). As per ***VA Tech*** (supra), Section 7 of the MP Act, 1983 cannot be construed to oust the application of Act, 1996 to the arbitration clauses which are otherwise governed by the provisions of the said Act. Accordingly, it held that the MP Act, 1983 would apply only to the disputes pertaining to work contracts as aforementioned which do not contain an arbitration clause i.e., where the Act, 1996 is otherwise inapplicable. In all other disputes, where the work contract contains an arbitration clause, the Act, 1996 would be applicable and the MP Act, 1983 inapplicable.

8. Remarkably, the decision of this Court in ***VA Tech*** (supra) inadvertently failed to take into consideration and refer to its earlier decision in ***Anshuman Shukla*** (supra).

9. However, interestingly in the subsequent decision of ***Ravikant Bansal v. M.P. Rural Road Development Authority*** reported in **(2012) 3 SCC 513**, a coordinate bench of this Court comprising of one of the judges (Markandey Katju J.) who had earlier delivered the decision of ***VA Tech*** (supra), held that the ratio of ***VA Tech*** (supra) would not be applicable where the arbitration clause itself expressly stipulates that the arbitration would take place before the Madhya Pradesh Arbitration Tribunal in terms of the MP Act, 1983. In other words, ***Ravikant Bansal*** (supra) held that where the arbitration clause stipulates that the arbitration proceedings have to take place in terms of the MP Act, 1983 or by the arbitral tribunal established thereunder, then the Act, 1996 would have no application. The relevant observations read as under: -

> *"2. This petition has been filed against the judgment and order dated 11-3-2011 passed by the High Court of Madhya Pradesh at Gwalior Bench in Ravikant Bansal v. M.P. Rural Road Development Authority. The learned counsel for the petitioner has relied on a decision of this Court in Va Tech Escher Wyass Flovel Ltd. v. M.P. SEB2 decided on 14-1-2010.*
>
> *3. We are of the opinion that the aforesaid decision is distinguishable because in the present case the arbitration clause itself mentions that the arbitration will be by the Madhya Pradesh Arbitration Tribunal. Hence, in this case arbitration has to be done by the Tribunal."*

10. In view of the conflict between ***Anshuman Shukla*** (supra) and ***VA Tech*** (supra), and that between ***VA Tech*** (supra) and ***Ravikant Bansal*** (supra), the issue as regards the applicability of the MP Act, 1983 viz- à-viz the Act, 1996 once again fell for the consideration of this Court in ***L.G. Chaudhary (I)***

(supra). In ***L.G. Chaudhary (I)*** (supra) the question before this Court was whether the MP Act, 1983 and the arbitral tribunal statutorily established thereunder, would continue to have jurisdiction over disputes pertaining to work contracts as mentioned in Section(s) 2(d) and 2(i) thereunder, in view of the subsequent enactment of the Act, 1996.

11. In ***L.G. Chaudhary (I)*** (supra), A.K. Ganguly J. (as he then was) held that the MP Act, 1983 is a special law providing for statutory arbitration in the State of Madhya Pradesh. The opinion of A.K. Ganguly J. is in two parts: -

(i) **First,** placing reliance on the decision of ***Anshuman Shukla*** (supra), it was held that the MP Arbitral Tribunal established thereunder had distinct features from an ordinary arbitral tribunal constituted in terms of the Act, 1996. It observed that the structure of the M.P. State Arbitration Tribunal, the manner of appointment and term of office of its members was significantly at variance from that under the Act, 1996. Unlike the Act, 1996, the MP Act, 1983 vests the MP Arbitral Tribunal with inherent powers that may be necessary for the ends of justice or to prevent abuse of the process of the Tribunal. Even the procedure for making a reference to arbitration, for passing an award thereunder, thereafter challenging it and the limitation period thereof, was in stark contrast to the Act, 1996. Accordingly, it held that in view of the unique

statutory provisions governing the framework of arbitration under the MP Act, 1983 that are either absent or at variance with the Act, 1996, shows that there is inconsistency between the two legislations, and that the M.P. State Arbitration Tribunal as held in ***Anshuman Shukla*** (supra) is akin to a statutory forum for adjudication of disputes in contrast to an arbitral tribunal under the Act, 1996 whose edifice is party autonomy. Accordingly, it held ***VA Tech*** (supra) to be *per incuriam*. The relevant observations read as under: -

> *"18. If this Court compares the provisions of the M.P. Act with the AC Act, 1996 then the Court finds that the provisions of the M.P. Act are inconsistent with the provisions of the AC Act, 1996. The M.P. Act is a special law providing for statutory arbitration in the State of Madhya Pradesh even in the absence of arbitration agreement. Under the provisions of the AC Act, 1996 in the absence of an arbitration agreement, arbitration is not possible. There is also difference in the formation of the Arbitration Tribunal as is clear from Section 2(1)(d) of the AC Act, 1996. Again, under the AC Act, 1996, "Arbitral Tribunal" is defined under Section 2(1)(d) as a sole arbitrator or a panel of arbitrators. But under the M.P. Act such a Tribunal is created under Sections 3 and 4 of the Act. And under the M.P. Act "dispute" has a special meaning as defined under Section 2(d) of the Act whereas "dispute" has not been defined under the AC Act, 1996.*
>
> *xxx xxx xxx*
>
> *20. The structure of the Tribunal under the M.P. Act is also different from the structure of a Tribunal under the AC Act, 1996. It is clear from Section 4 of the M.P. Act that the composition of the Tribunal and their qualification is statutorily provided [...]*

21. The term of office and salaries and allowances are also statutorily provided under Sections 5 and 6 of the M.P. Act. Section 8 provides for the procedure to be followed by the Tribunal on receipt of reference and Section 9 provides for the constitution of Benches and the Chairman's power of distribution of business. Under Section 16(2) of the M.P. Act there is a time-limit for giving the award which is absent in the AC Act, 1996.

22. Section 17-A of the M.P. Act confers inherent power on the Arbitral Tribunal to make orders as may be necessary for the ends of justice or to prevent abuse of the process of the Tribunal. Section 17-B also provides for power conferred on the Tribunal for correction of clerical or arithmetical mistakes. No such power is given to an Arbitral Tribunal under the AC Act, 1996. Section 19 of the M.P. Act gives the High Court the suo motu power of revision. The High Court has also been given the power of revision to be exercised on an application made by an aggrieved party within three months of the award. While doing so, the High Court is to act like a Revisional Court under Section 115 CPC.

23. It is clear from the aforesaid enumeration of the statutory provisions that under the M.P. Act the parties' autonomy in the choice of Arbitral Tribunal is not there.

24. In State of M.P. v. Anshuman Shukla this Court while referring to the M.P. Act and dealing with the nature of the Arbitral Tribunal constituted under the said Act held that the said Act is a special Act and provides for compulsory arbitration. It provides for a reference and the Tribunal has been given the power of rejecting the reference at the threshold. It also held that the M.P. Act provides for a special limitation and fixes a time-limit for passing an award. It has also been held that Section 14 of the M.P. Act provides that the award can be challenged under special circumstances and Section 17 provides for finality of the award, notwithstanding anything to the contrary contained in any other law relating to arbitration. All these features of the Act were pointed out by this Court in Anshuman

Shukla to show that there is inconsistency between the provisions of the AC Act, 1996 and those of the M.P. Act.

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26. It is clear, therefore, that in view of the aforesaid finding of a coordinate Bench of this Court on the distinct features of an Arbitral Tribunal under the said M.P. Act in Anshuman Shukla case[5] the provisions of the M.P. Act are saved under Section 2(4) of the AC Act, 1996. This Court while rendering the decision in Va Tech has not either noticed the previous decision of the coordinate Bench of this Court in Anshuman Shukla or the provisions of Section 2(4) of the AC Act, 1996. Therefore, we are constrained to hold that the decision of this Court in Va Tech was rendered per incuriam."

(Emphasis supplied)

(ii) **Secondly,** A.K. Ganguly J. negativing the argument of there being a repugnancy between the Act, 1996 and the MP Act, 1983, observed that since the Act, 1996, more particularly Section 2 sub-section (4) clearly stipulates that Part I of the Act, 1996 shall apply insofar as the provisions thereunder are not inconsistent with the other enactment or with any other rule made thereunder, the MP Act, 1983 respectively and its provisions will have precedence and continue to apply over an above the Act, 1996. It further observed that although the Act, 1996 came into force after the MP Act, 1983 yet there is nothing to indicate that the Act, 1996 either expressly or impliedly has repealed the MP Act, 1983. The aforesaid is reinforced from Section 2 sub-section (5) of the Act, 1996 which contains a saving clause for other laws being already in force in

India. On the contrary, Section 85 of the Act, 1996 when read with Section 2 sub-section(s) (4) and (5) shows that the legislature had no such intention to repeal the MP Act, 1983. Even otherwise, the subject-matter of the MP Act, 1983 falls within the concurrent list, and the said Act had received the assent of the President while the erstwhile Arbitration Act, 1940 was in force. Both the Acts operated in view of Section 46 of the 1940 Act. The relevant observations read as under: -

> *"16. If this Court looks at Section 2(4) of the AC Act, 1996, it will appear that Part I of the AC Act, 1996 which is from Section 2 to Section 43, shall, except sub-section (1) of Section 40 and Sections 41 and 43, apply to every arbitration under any other enactment for the time being in force where the arbitration was pursuant to an arbitration agreement except insofar as the provisions of this Part i.e. Part I are inconsistent with the other enactment or with any other rule made thereunder.*
>
> *17. Similar provision relating to statutory arbitration was also there in Section 46 of the Arbitration Act, 1940. [...]*
>
> *xxx xxx xxx*
>
> *36. In reply the learned counsel for the respondent only submitted that the M.P. Act is repugnant to the AC Act, 1996 since the same is a later Act made by Parliament. The learned counsel referred to the provisions of Article 254 of the Constitution. The learned counsel also urged that in view of the provision of Section 85 of the AC Act, 1996, the M.P. Act stands impliedly repealed.*
>
> *37. The said argument cannot be accepted. The provision for repeal under Section 85 of the AC Act, 1996 does not show that there is any express repeal of the M.P. Act. Apart from that, the provision of Section*

2(4) of the AC Act clearly militates against the aforesaid submissions.

38. The argument of repugnancy is also not tenable. Entry 13 of the Concurrent List in the Seventh Schedule of the Constitution runs as follows [...] In view of the aforesaid entry, the State Government is competent to enact laws in relation to arbitration.

39. The M.P. Act of 1983 was made when the previous Arbitration Act of 1940 was in the field. That Act of 1940 was a Central law. Both the Acts operated in view of Section 46 of the 1940 Act. The M.P. Act, 1983 was reserved for the assent of the President and admittedly received the same on 17-10-1983 which was published in the Madhya Pradesh Gazette Extraordinary dated 12-10-1983. Therefore, the requirement of Article 254(2) of the Constitution was satisfied. Thus, the M.P. Act of 1983 prevails in the State of Madhya Pradesh. Thereafter, the AC Act, 1996 was enacted by Parliament repealing the earlier laws of arbitration of 1940. It has also been noted that the AC Act, 1996 saves the provisions of the M.P. Act, 1983 under Sections 2(4) and 2(5) thereof. Therefore, there cannot be any repugnancy. [...]

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41. It is clear from the aforesaid observations that in the instant case the latter Act made by Parliament i.e. the AC Act, 1996 clearly showed an intention to the effect that the State law of arbitration i.e. the M.P. Act should operate in the State of Madhya Pradesh in respect of certain specified types of arbitrations which are under the M.P. Act, 1983. This is clear from Sections 2(4) and 2(5) of the AC Act, 1996. Therefore, there is no substance in the argument of repugnancy and is accordingly rejected."

(Emphasis supplied)

12. However, Gyan Sudha Misra J. in her dissenting opinion in ***L.G. Chaudhary (I)*** (supra) held that where the nature of the dispute does not fall within the definition of work contract under Section 2(i) of the MP Act, 1983, such disputes can be resolved by way of arbitration under the Act, 1996, notwithstanding the fact that such work contract is otherwise governed by the MP Act, 1983. She observed that a reference to arbitration under the MP Act, 1983 postulates two requirements, namely; (i) the existence of a 'works contract' involving either the State Government or a Public Undertaking of Madhya Pradesh and (ii) that such contract pertains to the execution of any of the work enumerated in Section 2(i) thereof. Section 2(i) in turn lays down in explicit terms as to the nature and scope of "works contract" by enumerating the specific nature of disputes that would be covered, i.e., "*work relating to construction, repair or maintenance ... supply of goods or material and all other matters relating to the execution of any of the said works".* However, since Section 2(i) of the MP Act, 1983 only covers specific and well-defined 'works' and is applicable only in respect of disputes pertaining to its execution, and does not include disputes of repudiation, cancellation or termination of such works, the legal and logical consequence of the aforesaid would be that, insofar as the dispute is not of the nature enumerated in Section 2(i) of the MP Act, 1983, such dispute would be outside the jurisdiction of the M.P. State Arbitration Tribunal, and can be decided by an arbitral tribunal in terms of the Act, 1996, irrespective of whether arbitration clause requires the

dispute to be referred to arbitration under the MP Act, 1983. The relevant observations read as under: -

> *"46. On perusal of the aforesaid provision enumerated under Section 7, it is explicitly clear that the matter in the event of existence of a dispute between the parties in certain categories of cases where the State of Madhya Pradesh is a contracting party, the dispute shall be referred in writing to the Tribunal irrespective of the fact whether the agreement contains an arbitration clause or not. From this provision it is clearly apparent that reference of any dispute to the Tribunal postulates an existence of a works contract and in the definition of "works contract" under Section 2(i) of the M.P. Arbitration Tribunal Act, 1983, it has clearly and unequivocally been specified as to what is a "works contract" in relation to which the dispute is required to be referred in writing to the Tribunal.*
>
> *xxx xxx xxx*
>
> *48. Thus, on a perusal of the definition of "works contract", it is manifestly clear that while the "works contract" means an agreement pertaining to matters relating to the execution of any of the work enumerated in the definition of "works contract", the same does not include the dispute pertaining to termination, cancellation or repudiation of works contract and the entire nature of transaction laid down therein relates to disputes which arise out of execution of the nature of work specified in the "works contract". However, the question whether the "works contract" has been legally repudiated and rightly cancelled or not is the question or dispute pertaining to termination of works contract and has not been incorporated even remotely within the definition of "works contract".*
>
> *49. In view of this, the legal and logical consequence which can be reasonably drawn from the definition of "works contract" would be, that if there is a dispute between the contracting parties for any reason relating to works contract which include execution of any work relating to construction, repair or maintenance of any building or superstructure, dam, weir, canal, reservoir, tank, lake, road, well, bridge, culvert, factory, workshop, powerhouse, transformers or such other works of the State Government or public undertaking including*

an agreement for the supply of goods or material and all other matters relating to the execution of any of the said works, the same would fall within the ambit of the definition of "works contract" and hence all disputes pertaining to or arising out of execution of the works contract will have to be referred to the M.P. State Arbitration Tribunal as envisaged under Section 7 of the 1983 Act. Hence, in addition to the reasons assigned in the judgment and order of learned Brother Ganguly, J. disputes arising out of execution of works contract have to be referred to the M.P. State Arbitration Tribunal and not under the Arbitration and Conciliation Act, 1996.

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51. [...] But the same cannot be allowed to be raised under the M.P. Act of 1983 since the definition of "works contract" unambiguously lays down in explicit terms as to what is the nature and scope of "works contract" and further enumerates the specific nature of disputes arising out of the execution of works contract which would come within the definition of a "works contract". However, the same does not even vaguely include the issue or dispute arising out of cancellation and termination of contract due to which this question, in my considered opinion, would not fall within the jurisdiction of the M.P. State Arbitration Tribunal so as to be referred for adjudication arising out of its termination.

52. As already stated, fallout certainly would be otherwise if the matter were to be adjudicated by an arbitrator appointed under the Arbitration and Conciliation Act, 1996 and that would be in view of the ratio of the decisions of the Supreme Court referred to hereinbefore which has held it permissible for the arbitrator to adjudicate even the dispute arising out of cancellation or termination of an agreement or contract. This however, cannot be allowed to broaden or expand the ambit and scope of the M.P. Act of 1983 where the State Legislature has passed a specific legislation in respect of certain specified types of arbitration determining as to what is the nature of disputes to be referred to the M.P. State Arbitration Tribunal and that specifically permits the reference of dispute arising out of execution of contract but clearly leaves out any dispute arising out of termination, cancellation or repudiation of "works contract".

53. In order to clarify the point further, what needs to be emphasised is that if the nature of dispute referred to the arbitrator like the instant matter, related to a dispute pertaining to construction, repair, maintenance of any building or superstructure, dam or for the reasons stated within the definition of "works contract", the matter may be referred to the M.P. Tribunal in view of the fact that if there is a dispute in relation to execution of a works contract, then irrespective of the fact whether the agreement contains an arbitration clause or not, the dispute is required to be referred to the M.P. State Arbitration Tribunal for adjudication. But when the contract itself has been terminated, cancelled or repudiated as it has happened in the instant case, then the nature of dispute does not fall within the definition of "works contract" for the sole reason that it does not include any dispute pertaining to cancellation of a works contract implying that when the works contract itself is not in existence by virtue of its cancellation, the dispute cannot be referred to the M.P. State Arbitration Tribunal but may have to be decided by an arbitrator appointed under the Arbitration and Conciliation Act, 1996.

54. Hence, if the nature of the dispute is such which falls within the definition of "works contract" under Section 2(i) of the M.P. Act, 1983 and one of the contracting parties to the agreement is the State of M.P., then irrespective of an arbitration agreement the dispute will have to be referred to the Tribunal in terms of Section 7 of the Act of 1983. But if the works contract itself has been repudiated and hence not in existence at all by virtue of its cancellation/termination, then in my considered view, the dispute will have to be referred to an independent arbitrator to be appointed under the Arbitration and Conciliation Act, 1996 since the M.P. Act, 1983 envisages reference of a dispute to the State Tribunal only in respect of certain specified types of arbitration enumerated under Section 2(i) of the M.P. Act, 1983.

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57. Thus, the sum and substance of what I wish to emphasise is that the question as to whether the dispute would be referred to the M.P. Tribunal in terms of Section 7 of the M.P. Act of 1983 or to an independent arbitrator under the Arbitration and

Conciliation Act, 1996 will depend upon the factum whether the works contract is existing between the parties or not out of which the dispute has arisen. In case, the works contract itself has been repudiated/cancelled, then, in view of its non-existence, Section 7 of the M.P. Act pertaining to reference of dispute to the Tribunal would not come into play at all by virtue of the fact that the dispute relating to execution of works contract alone can be referred to the Tribunal in view of the specific nature of works contract enumerated within the definition of works contract under the Act of 1983. However, when the works contract itself becomes non-existent as a consequence of its cancellation, the matter will have to be referred to an independent arbitrator under the Arbitration and Conciliation Act, 1996 and not to the M.P. State Arbitration Tribunal.

58. Thus, while holding that the M.P. Act, 1983 should operate in the State of M.P. in respect of certain specified types of arbitration, the appointment of an independent arbitrator by the High Court under the Arbitration and Conciliation Act, 1996 needs to be sustained since the works contract itself is not in existence by virtue of its cancellation and hence this part of the dispute could not have been referred to the M.P. State Tribunal."

(Emphasis supplied)

13. In view of the cleavage of opinion expressed by this Court in ***L.G. Chaudhary (I)*** (supra), the issue of applicability of the MP Act, 1983 viz- à-viz the Act, 1996 came to be referred to a three-Judge Bench of this Court, culminating into the decision of ***L.G. Chaudhary (II)*** (supra). Answering the aforesaid reference, ***L.G. Chaudhary (II)*** (supra) held that the definition of "dispute" under Section 2(d) of the sic Act, 1996 (which due to an inadvertent typographical error in para 5 of ***L.G. Chaudhary (II)*** (supra) was written as the Act, 1996 instead of MP Act, 1983) would cover and include any dispute

that arises after the termination, repudiation or cancellation of the contract or pertains thereto. It observed that the dissenting opinion of Gyan Sudha Misra J. in ***L.G. Chaudhary (I)*** (supra) failed to notice the said provision i.e. Section 2(d) of the MP Act, 1983, and accordingly, it held that the view expressed by A.K. Ganguly J. in ***L.G. Chaudhary (I)*** (supra) that reference to arbitration for disputes covered under the MP Act, 1983 would mandatorily lie before the M.P. State Arbitration Tribunal in terms of the said Act and would not be governed the provisions of the Act, 1996, is the correct interpretation, and the law laid down by ***VA Tech*** (supra) was held to be *per incuriam*. The relevant observations read as under: -

> *"4. When the matter was considered by a Bench of this Court on 24-1-2012 (order in M.P. Rural Road Development Authority v. L.G. Chaudhary Engineers and Contractors), this Court held that the judgment in VA Tech Escher Wyass Flovel Ltd. was per incuriam insofar as it held that the M.P. Act stands impliedly repealed by the Central Act. While Hon'ble Ganguly, J., held that the State Act will cover a dispute even after termination of the "works contract", Hon'ble Gyan Sudha Mishra, J. took a different view [...]*
>
> *5. We find from the definition under Section 2(d) of the Arbitration and Conciliation Act, 1996 that even after a contract is terminated, the subject-matter of dispute is covered by the said definition. The said provision has not been even referred to in the judgment rendered by Hon'ble Gyan Sudha Mishra, J.*
>
> *6. In view of the above, we are of the opinion that the view expressed by Hon'ble Ganguly, J. is the correct interpretation and not the contra view of Hon'ble Gyan Sudha Mishra, J. Reference stands answered accordingly.*

7. Taking up appeal on merits, we find that the High Court proceeded on the basis of the judgment of this Court in VA Tech Escher Wyass Flovel Ltd. which has been held to be per incuriam. The M.P. Act cannot be held to be impliedly repealed.

8. We are, thus, in agreement with the proposed opinion of Hon'ble Ganguly, J. [...]"

(Emphasis supplied)

i. Can an Award passed under the Act, 1996 be annulled on the ground of lack of jurisdiction where no plea of applicability of MP Act, 1993 was raised before the Arbitral Tribunal?

14. It is worthwhile to note, that the decision of ***L.G. Chaudhary (II)*** (supra) did not merely decide the aforesaid reference arising from ***L.G. Chaudhary (I)*** (supra), but also elucidated how, the courts are expected to deal with the various issues that may arise therefrom insofar as the pending proceedings that were inadvertently initiated under the Act, 1996 and any awards already passed thereunder are concerned.

15. In the entire batch of matters that had been referred to this Court in ***L.G. Chaudhary (II)*** (supra), this Court in few of the civil appeals where the reference to arbitration under the Act, 1996 had been challenged, while the matters were still at the pre-award stage, however the statement of defence had already been filed without raising a plea of lack of jurisdiction, held that in such instances, the plea of lack of jurisdiction cannot be allowed to be now

raised in terms of Section 16 sub-section (2) of the Act, 1996 and as such the award cannot be annulled only on such ground. Similarly, in a batch of matters where the award had already been passed but no objection of jurisdiction was raised in terms of Section 16(2) of the Act, 1996, there ***L.G. Chaudhary (II)*** (supra) whilst restoring the award again reiterated that the award could not have been annulled only on the ground of jurisdiction, but clarified that, all other challenges to the award may be made in appropriate proceedings under Section 34 of the Act, 1996. Lastly, in one of the civil appeals, where the execution proceedings for the award passed were pending, this Court in view of the prolonged nature of the litigation, directed that the award be treated to have been rendered under the MP Act, 1983 and transferred the execution proceedings to the High Court of Madhya Pradesh at Jabalpur. The relevant observations read as under: -

> *"CA No. 2751 of 2018 arising out of SLP (C) No. 11615 of 2012, CA No. 2753 of 2018 arising out of SLP (C) No. 11617 of 2012, CA No. 2754 of 2018 arising out of SLP (C) No. 11618 of 2012, CA No. 2755 of 2018 arising out of SLP (C) No. 11619 of 2012, CAs Nos. 2756-57 of 2018 arising out of SLPs (C) Nos. 11633-34 of 2012, CAs Nos. 2758-59 of 2018 arising out of SLPs (C) Nos. 11631-32 of 2012 & CAs Nos. 2760-61 of 2018 arising out of SLPs (C) Nos. 11628-29 of 2012*
>
> *15. Leave granted. In view of order passed in Civil Appeal No. 2615 of 2018 [arising out of SLP (C) No. 16889 of 2012], the impugned order is set aside and the application(s) filed by the respondent(s) under Section 11 of the Arbitration and Conciliation Act, 1996 are dismissed.*
>
> *16. <u>However, since it is stated that proceedings are pending before the arbitrator in pursuance of the impugned order, the</u>*

same will stand transferred to the State Tribunal and the State Tribunal may proceed further taking into account the proceedings which have already been taken. The learned counsel for the respondent(s) pointed out that in view of Section 16(2), the objection to the jurisdiction could not be raised after statement of defence was filed. This contention cannot be accepted in view of the fact that the SLP was filed prior to the filing of statement of defence wherein this objection was raised.

17. We do not express any opinion on the applicability of the State Act where 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.

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CA No. 2616 arising out of SLP (C) No. 35641 of 2011

19. Leave granted. In view of the order passed in CA No. 2751 of 2018 arising out of SLP (C) No. 16615 of 2012, no objection having been raised by the respondents in terms of Section 16(2) of the Arbitration and Conciliation Act, 1996 at appropriate stage within the time stipulated, the award could not have been annulled.

20. Accordingly, this appeal is allowed, the impugned judgment is set aside and the award is restored. It is, however, made clear that this order will not debar proceedings under Section 34 of the Arbitration and Conciliation Act, 1996.

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Civil Appeal No. 4261 of 2018

34. The Division Bench vide order dated 5-7-2012 directed that the enforceability of the decree will depend upon the fate of another appeal which was pending between the parties. The said appeal, FAO (OS) No. 23 of 1998, is still pending but the High Court has deferred the same pending decision of the larger Bench of this Court in pursuance of the judgment of this Court in M.P. Rural Road Development Authority v. L.G.

Chaudhary Engineers and Contractors. It may be noted that the larger Bench has decided the matter on 8-3-2018. In terms of the said decision, the dispute between the parties has to be settled in accordance with the provisions of the M.P. Madhyastham Adhikaran Adhiniyam, 1983 (the M.P. Act). However, since in the present case the award has been rendered long back which was not challenged by the respondents and the matter is pending at the stage of execution, we direct that the award to be treated to have been rendered under the M.P. Act.

35. In view of the above, we transfer pending proceedings before the Delhi High Court being FAO (OS) No. 23 of 1998 and connected matters to the High Court of Madhya Pradesh at Jabalpur to be treated as revision petition under the M.P. Act.

(Emphasis supplied)

a. Is there a conflict between the decisions of *L.G. Chaudhary (II)* and *Lion Engineering*?

16. At this stage, it is apposite to note, that prior to the decision of ***L.G. Chaudhary (II)*** (supra), this Court in one another decision of ***Lion Engineering*** (supra) had looked into the issue as to at what stage a plea of lack of jurisdiction or applicability of any State Act may be raised. The facts of ***Lion Engineering*** (supra) were that the respondent State therein had sought to amend its pleadings in the proceedings under Section 34 of the Act, 1996 to raise the objection of a lack of jurisdiction on the ground of applicability of the MP Act, 1983. The said amendment application was rejected by the trial court as being barred by limitation. The High Court however, in exercise of

its supervisory jurisdiction under Article 227 of the Constitution allowed the said amendment. In appeal, before this Court it was *inter-alia* contended by the appellant therein, that the amendment ought not to have been allowed, since the objection of lack of jurisdiction had never been raised before the arbitral tribunal and hence was barred by Section 16 sub-section (2) of the Act, 1996. This Court held that any legal plea arising on undisputed facts can be raised in the proceedings under Section 34 of the Act, 1996 even if they were never raised under Section 16. It further held that, such plea being a question of law arising from admitted facts, can be raised without seeking any amendment of the pleadings. Accordingly, it held that there is no bar to plea of jurisdiction being raised by way of an objection under Section 34 of the Act even if no such objection was raised under Section 16. The relevant observations read as under: -

> *"3. The learned Advocate General for the State of M.P. submitted that the amendment sought is formal. Legal plea arising on undisputed facts is not precluded by Section 34(2)(b) of the Act. Even if an objection to jurisdiction is not raised under Section 16 of the Act, the same can be raised under Section 34 of the Act. It is not even necessary to consider the application for amendment as it is a legal plea, on admitted facts, which can be raised in any case. He thus submits the amendment being unnecessary is not pressed. The learned Advocate General also submitted that observations in MSP Infrastructure Ltd., particularly in paras 16 and 17 do not lay down correct law.*
>
> *4. We find merit in the contentions raised on behalf of the State. We proceed on the footing that the amendment being beyond limitation is not to be allowed as the amendment is not pressed. We do not see any bar to plea of jurisdiction being*

raised by way of an objection under Section 34 of the Act even if no such objection was raised under Section 16.

(Emphasis supplied)

17.*Lion Engineering* (supra) expressing disagreement with the view taken in ***MSP Infrastructure Ltd.* v. *M.P. Road Development Corpn. Ltd.,*** reported in **(2015) 13 SCC 713**, further held that the ground of 'public policy of India' in Section 34 of the Act, 1996 would include violation of not only a Central law but also a State law, and hence, it would be open for the parties to argue the aspect of applicability of the MP Act, 1983 even without a formal pleading, being purely a legal plea in the proceedings under Section 34 of the Act, 1996. The relevant observations read as under: -

"6. Both stages are independent. Observations in paras 16 and 17 in MSP Infrastructure Ltd. do not, in our view, lay down correct law. We also do not agree with the observation that the public policy of India does not refer to a State law and refers only to an all-India law.

7. In our considered view, the public policy of India refers to law in force in India whether State law or Central law. Accordingly, we overrule the observations to the contrary in paras 16 and 17 of the judgment in MSP Infrastructure Ltd.

9. The matter may now be taken up by the trial court for consideration of objections under Section 34 of the Central Act. It will be open for the respondents to argue that its objection that the Act stands excluded by the M.P. Madhyastham Adhikaran Adhiniyam, 1983 could be raised even without a formal pleading, being purely a legal plea. It will also be open to the appellant to argue to the contrary. We leave the question to be gone into by the court concerned.

(Emphasis supplied)

18. It is in this aforesaid context, that the respondent herein has contended before us that there exists a conflict between the decisions of this Court in ***Lion Engineering*** (supra) and ***L.G. Chaudhary (II)*** (supra), insofar as the issue of when a plea of lack of jurisdiction on the basis of applicability of a State law can be raised. It was submitted that ***Lion Engineering*** (supra) clearly holds that an objection of lack of jurisdiction is a legal plea that may be raised for the first time in the proceedings under Section 34 of the Act, 1996, even if the same was never raised before the arbitral tribunal, and being a question of law, Section 16 sub-section (2) of the Act, 1996 would have no application. It was further canvassed on behalf of the respondents herein that the decision of ***L.G. Chaudhary (II)*** (supra) to the extent that it holds that no plea of lack of jurisdiction can be raised in the proceedings under Section 34, if it was never raised before the arbitral tribunal, could be said to be *per incuriam,* as it failed to refer and advert to the earlier binding decision of ***Lion Engineering*** (supra), which as per the respondents herein, lays down a contradictory view.

19. We are however, not impressed by the aforesaid submission that has been canvassed on behalf of the respondents herein, primarily for the following three reasons: -

(i) **First,** that merely because ***L.G. Chaudhary (II)*** (supra) does not refer to the decision of ***Lion Engineering*** (supra), would not render it *per*

incuriam, if either such omission in referring does not amount to a non-consideration of the *ratio* of an earlier decision or where there is no palpable conflict or contradiction in the *ratio* of both decisions. ***Lion Engineering*** (supra) holds that a plea of lack of jurisdiction being a question of law may be raised for the first time under Section 34 of the Act, 1996 even if it was never raised before the arbitral tribunal. Whereas, ***L.G. Chaudhary (II)*** (supra) holds that where such plea of lack of jurisdiction was not taken before the arbitral tribunal, then an award that has been so passed by the tribunal will not be annulled only on the ground of lack of jurisdiction. If ***L.G. Chaudhary (II)*** (supra) was not conscious of the position of law laid in ***Lion Engineering*** (supra), then there was no need for it to clarify that an award would not be annulled only on the ground of lack of jurisdiction. As even without the aforesaid clarification, such awards would not have been susceptible to annulment, if not for the ratio of ***Lion Engineering*** (supra). Thus, in our opinion, even if ***L.G. Chaudhary (II)*** (supra) does not refer to the decision of ***Lion Engineering*** (supra), it cannot be termed to be *per incuriam*, as the very factum that the aforesaid observations were made by ***L.G. Chaudhary (II)*** (supra) in paras 16, 17 and 19, shows that this Court was well aware of the decision of ***Lion Engineering*** (supra), and accordingly chose to carve out an exception to the ratio of ***Lion***

Engineering (supra) keeping in mind the cleavage of judicial view that was prevailing earlier.

(ii) **Secondly,** the decision of ***Lion Engineering*** (supra) only dealt with the question whether an amendment of pleadings was required or not, to raise a plea of jurisdiction. It was in this aforesaid context, that this Court held that such objection being a question of law can be raised by way of an objection in the proceedings under Section 34 of the Act, 1996 even if no such objection was raised under Section 16 of the Act, 1996. Thus, the aforesaid observations could be said to be confined only to the issue of requirement to amend the pleadings for raising such an objection, and cannot be stretched to apply blanketly in all cases.

(iii) **Thirdly,** even otherwise, the *ratio* of ***Lion Engineering*** (supra) in paras 6 to 9 only goes so far as to hold that where a plea of jurisdiction involves purely a question of law and is based on undisputed facts, then such a plea may be raised for the first time in the proceedings under Section 34 of the Act, 1996, notwithstanding the bar of Section 16 sub-section (2) or whether, such plea was taken before the arbitral tribunal or not. However, ***Lion Engineering*** (supra) does not address the question whether an award may be annulled only on the ground of lack of jurisdiction or not. It does not disturb the settled position of law as regards the scope of Section 34 of the Act, 1996 i.e., an award may be set aside only if such lack of jurisdiction goes to the root of the matter

and results in a patent illegality. On the contrary, ***L.G. Chaudhary (II)*** (supra) specifically addresses this question in the context of the issue of applicability of MP Act, 1983 and explicitly states that any award already passed shall not be annulled only on the ground of lack of jurisdiction where such plea was not raised at the relevant stage. Thus, the aforesaid *ratio* of ***Lion Engineering*** (supra) by no stretch can be construed to mean that such a plea of jurisdiction would automatically result in annulment of an award, *de hors* the fact whether such lack of jurisdiction goes to the root of the award rendered or not. The *ratio* of ***L.G. Chaudhary (II)*** (supra) unlike ***Lion Engineering*** (supra) does not deal with whether it is permissible for such plea of jurisdiction to be raised under Section 34 or not, and only deals with the issue whether an award may be annulled only on the ground of jurisdiction or not, which was never an issue before ***Lion Engineering*** (supra), hence there is no conflict or contradiction between the *ratios* of the aforesaid two decisions.

20. What can be discerned from the aforesaid is that ***L.G. Chaudhary (II)*** (supra) carved out an exception to the general rule that was laid in ***Lion Engineering*** (supra), 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 Act, 1996, yet insofar as the MP 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 is already been filed, and no plea of lack of jurisdiction or applicability of the MP 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.

21. In ***JMC Projects*** (supra) this Court reiterated the aforesaid exception carved out in ***L.G. Chaudhary (II)*** (supra) and held that since the award had already been passed, all objections except the plea of lack of jurisdiction and the applicability of the MP Act, 1983 may be raised in the proceedings under Section 34 of the Act, 1996.

22. In ***Sweta Construction v. Chhattisgarh State Power Generation Company Ltd.*** reported in **(2022) SCC OnLine SC 1447**, while dealing with an issue pertaining to the applicability of the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983, which is *pari materia* to the MP Act, 1983, this Court followed the *ratio* laid down in ***L.G. Chaudhary (II)*** (supra), and reiterated that where awards have already been made and if no objection to the jurisdiction was taken at the relevant stage, then the award may not be annulled "only" on that ground. The relevant observations read as under: -

> *12. [...] Thus what was opined was that where awards have already been made and if no objection to the jurisdiction was*

taken at the relevant stage, the award may not be annulled "only" on that ground and the appeals dealing with those aspects were granted a favourable consideration.

13. [...] It was however, clarified in the very next paragraph that the order would not debar proceedings under Section 34 of the 1996 Act.

23. Furthermore, this Court in ***Sweta Construction*** (supra), taking note of the ostensible conflict between the decisions of ***L.G. Chaudhary (II)*** (supra) and ***Lion Engineering*** (supra), made the following pertinent observations: -

(i) **First,** that, in ***Lion Engineering*** (supra) the controversy before the court was different inasmuch as it was dealing with the issue of an amendment in pleadings being sought beyond the period of limitation. This Court observed that, it was in this context that ***Lion Engineering*** (supra) held that no amendment of pleadings was required to raise a plea of jurisdiction, and such objection being a question of law can be raised by way of an objection in the proceedings under Section 34 of the Act, 1996 even if no such objection was raised under Section 16 of the Act, 1996. The relevant observations read as under: -

"15. <u>However, as pointed by the learned counsel for the respondent, there appears to be some lack of clarity on the issue raised in the present petition on account of the same three-Judge Bench having opined in another order passed in Lion Engg. Consultants v. State of M.P. on 22-3-2018 i.e. about three weeks after that. The issue however, raised was whether there was any bar to the plea of jurisdiction being raised by way of an objection under Section 34 of the 1996 Act even if no objection was raised under Section 16 of that Act</u>. It was opined

> *that public policy of India refers to law enforced in India i.e. both Central law as well as the State law. The respondent State was given liberty to argue before the trial court its objections that the 1996 Act stood excluded by the State Adhiniyam even without formal pleadings being a pure legal plea. This was in the context of an amendment sought being beyond limitation. In that context there is an observation in one sentence, "we do not see any bar to plea of jurisdiction being raised by way of an objection under Section 34 of the Act even if no objection was raised under Section 16 of that Act".*"

(Emphasis supplied)

(ii) **Secondly,** that the decision of ***Lion Engineering*** (supra) was only an order unlike the decision of ***L.G. Chaudhary (II)*** (supra) which was a substantive judgment, and thus, the observations of ***Lion Engineering*** (supra) would by no means detract or take away the law laid down in ***L.G. Chaudhary (II)*** (supra) as regards the maintainability of the plea of jurisdiction where awards have already been passed, and no such objection was raised before the arbitral tribunal at the relevant stage. The relevant observations read as under: -

> *"16. If we appreciate the aforesaid observation in Lion Engg. Consultants and that too emerging from identical Bench in the two matters, we would have to construe as what is meant by this sentence extracted aforesaid. We take note of the fact that this is an order and not a judgment. The controversy before the Court was something different as noticed by us aforesaid. In that context, this sentence has been inserted, but that does not take away the law laid down in the substantive judgment (in M.P. Rural Road Development Authority)*

dealing with the issue at hand in respect of awards already made where petitions were pending before the competent Court under Section 34 of the said Act."

(Emphasis supplied)

(iii) **Thirdly,** that the law expounded in ***L.G. Chaudhary (II)*** (supra) insofar as those awards which have already been passed are concerned, should be read as one made by this Court under Article 142 of the Constitution to do substantive justice *inter se* the parties, keeping in mind the cleavage of judicial view earlier and to ensure that the objective of arbitration as an expeditious and effective alternative dispute resolution mechanism is not defeated. The relevant observations read as under: -

"17. This Court (in M.P. Rural Road Development Authority) in the context of the 1996 Act and the 1983 Adhiniyam, keeping in mind the cleavage of judicial view earlier and expounding on the law in that judgment has in succinct terms set out that the objections under Section 34 of the said Act, where no such plea of jurisdiction was raised in proceedings before the arbitrator, should not be dealt with "alone" on the plea of jurisdiction i.e. it should be considered on merits. One can say that possibly this part of the order can also be read as one made under Article 142 of the Constitution of India to do substantive justice inter se the parties, more so, when arbitration as an alternative dispute resolution mechanism presupposes an expeditious disposal of commercial disputes and that objective would stand nullified if a contrary view was taken."

(Emphasis supplied)

(iv) **Lastly,** it observed that even otherwise, the conduct of the respondent therein of accepting the notice of invocation and commencing arbitration under the Act, 1996 on their own volition amounts to a waiver of their right to claim initiation of arbitration under the State Act. In such circumstances it was held that the respondent therein cannot be now permitted to approbate and reprobate a right it failed to exercise on it own, and that too in a manner which would defeat the entire object of arbitration. The relevant observations read as under: -

> *"18. We are also of the view that in particular facts of the present case, the position is even more gross because when the appellant claimed arbitration, the respondent accepted invocation of arbitration, suggested a panel of arbitrators, the appellant chose one of the arbitrators out of the two suggested and the arbitrator was so appointed as the sole arbitrator. Thus, the arbitration proceedings commenced in pursuance to the acts of the respondent and it cannot be permitted to get away to say that the whole process was gone through because of some misconception or inappropriate legal advice. Arbitration by consent is always possible. The mode and manner of conduct of arbitration is possible and how those arbitration proceedings would be governed is also a matter of consent. If at all there were any rights of the respondent to have claimed arbitration under the 1983 Adhiniyam, that right was never exercised or waived. The respondent cannot be permitted to approbate and reprobate and that too in arbitration proceedings and that too in dispute or resolution through the method of arbitration defeating the very purpose of an alternative dispute resolution to arbitration as an expeditious remedy."*
>
> (Emphasis supplied)

24. In yet another decision of this Court in ***Modern Builders v. State of Madhya Pradesh & Anr.*** reported in **(2024) 10 SCC 637**, the appellant contractor therein had approached the M.P. State Arbitration Tribunal for initiation of arbitration in respect of certain disputes, however the reference was rejected by the State Tribunal in view of the law laid down by ***VA Tech*** (supra) that held field at that time. Accordingly, the appellant therein initiated arbitration under the Act, 1996, and consequently an award was passed. The aforesaid award came to be challenged, wherein the High Court under Section 37 of the Act, 1996 set-aside the award only on the ground that the arbitral tribunal had no jurisdiction in view of the MP Act, 1983. In appeal, this Court setting aside the order of the High Court, held that even though the objection based on applicability of the MP Act, 1983 had been raised by the respondent therein in its written statement filed before the arbitrator, nevertheless, in view of the fact that the respondents therein neither raised this objection when the Section 11 petition was filed by the appellant, nor did it take recourse of Section 16 of the Act, 1996 to challenge the jurisdiction of the arbitral tribunal, it would be unjust to set aside the award only on the ground of the failure of the appellant to take recourse to the MP Act, 1983. Furthermore, in light of the fact that the only reason the appellant took recourse to the Act, 1996 was because its earlier reference to the M.P. State Arbitration Tribunal had been rejected in terms of the decision of ***VA Tech*** (supra), this Court held that it is a fit case to exercise

its jurisdiction under Article 142 of the Constitution and restore the award to ensure complete justice. The relevant observations read as under: -

> *"6. A few factual aspects will have to be noted. After the contract granted to the appellant was rescinded, the appellant invoked Section 7 of the 1983 Act by approaching the Arbitration Tribunal. By the order dated 19-4-2010, the Arbitration Tribunal held that in view of the arbitration clause in the contract, the 1983 Act will have no application and the appellant will have to take recourse to the Arbitration Act. In view of this order, the appellant invoked the jurisdiction of the High Court under Section 11(6) of the Arbitration Act by filing a petition for the appointment of an arbitrator.*
>
> *7. The order dated 22-7-2011 passed by the High Court on the said petition shows that the respondents' opposition was only on the merits of the claim. The objection based on the applicability of the 1983 Act was not raised. The respondents did not challenge the order of appointment of the arbitrator passed by the High Court under Section 11(6) of the Arbitration Act. Even before the learned arbitrator, Section 16(1) of the Arbitration Act was not invoked to raise the jurisdiction issue. However, in the written statement filed before the arbitrator, the contention regarding the applicability of the 1983 Act was raised.*
>
> *9. As noted earlier, in the facts of the case, before taking recourse to the Arbitration Act, the appellant had taken recourse to Section 7 of the 1983 Act. The order of the Arbitration Tribunal, holding that the Arbitration Act will apply, led the appellant to file a petition under Section 11(6) of the Arbitration Act, which was not objected to on the grounds of the applicability of the 1983 Act. The objection of the State Government was confined to the merits of the claim. The award is only in the sum of Rs 6,52,235 with interest. The award was made on 25-4-2014. Therefore, in the facts of the case, it will be unjust to set aside the award only on the ground of the failure of the appellant to take recourse to the 1983 Act. In fact, the appellant had taken recourse to the 1983 Act before seeking the appointment of an arbitrator.*

> *10. In this case, as can be seen from the impugned judgment, the award has been set aside only on the ground that the appellant ought to have invoked the provisions of the 1983 Act. Even assuming that the observations in para 17 of the decision in M.P. Rural Road Development Authority, are not applicable, this is a fit case to exercise jurisdiction under Article 142 of the Constitution of India to ensure that complete justice is done. Therefore, by setting aside the impugned judgment, the appeal under Section 37 of the Arbitration Act will have to be restored with a request to the High Court to decide the same on merits.*
>
> (Emphasis supplied)

25. What can be discerned from the above is that, this Court has consistently held that an exception has been carved out in ***L.G. Chaudhary (II)*** (supra) whereby any awards that have already been made and if no objection to the jurisdiction was taken at the relevant stage, then the award may not be annulled "only" on that ground.

b. Whether a plea of lack of jurisdiction may be raised for the first time under Section 34 of the Act, 1996 if no such objection was taken before the arbitral tribunal?

26. The aforesaid may be looked at from one another angle, with a view to obviate the possibility of any confusion. The respondent herein placed much emphasis on the observations made in ***Lion Engineering*** (supra) to canvass that a plea of lack of jurisdiction being a question of law may be raised at any stage. Even where no such plea was raised at the time of filing of written submissions, the same can be validly raised for the first time in the proceedings under Section

34 of the Act, 1996, and the bar under Section 16 sub-section (2), would not come in the way.

27. Before adverting to the aforesaid submission, it would be apposite to first look into the interplay between Section(s) 16 and 34 of the Act, 1996, respectively. These two provisions, although distinct in form and function, yet are intrinsically linked in the broader scheme of the Act, insofar as the stage at which issues pertaining to the jurisdiction of the arbitral tribunal may be validly raised.

28. In ***Union of India v. Pam Development (P) Ltd.*** reported in **(2014) 11 SCC 366** this Court held that where a party does not raise a plea of jurisdiction before the arbitral tribunal, then such a plea is deemed to have been waived in view of the provisions contained in Section 4 read with Section 16 of the Arbitration Act, 1996, and in consequence cannot be raised for the first time in the proceedings under Section 34. The relevant observations read as under: -

> *"16. As noticed above, the appellant not only filed the statement of defence but also raised a counterclaim against the respondent. Since the appellant has not raised the objection with regard to the competence/jurisdiction of the Arbitral Tribunal before the learned arbitrator, the same is deemed to have been waived in view of the provisions contained in Section 4 read with Section 16 of the Arbitration Act, 1996.*
>
> *17. Section 16 of the Arbitration Act, 1996 provides that the Arbitral Tribunal may rule on its own jurisdiction. Section 16 clearly recognises the principle of kompetenz-kompetenz.*

Section 16(2) mandates that a plea that the Arbitral Tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. Section 4 provides that a party who knows that any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay shall be deemed to have waived his right to so object.

8. In our opinion, the High Court has correctly come to the conclusion that the appellant having failed to raise the plea of jurisdiction before the Arbitral Tribunal cannot be permitted to raise for the first time in the Court. [...]

(Emphasis supplied)

29. In ***Gas Authority of India Ltd. v. Keti Construction (I) Ltd.*** reported in **(2007) 5 SCC 38** this Court held that where a party does not raise a plea of lack of jurisdiction before the arbitral tribunal, he must make out a strong case why he did not do so if he chooses to move a petition for setting aside the award under Section 34 of the Act, 1996 on such ground. The relevant observations read as under: -

"25. Where a party has received notice and he does not raise a plea of lack of jurisdiction before the Arbitral Tribunal, he must make out a strong case why he did not do so if he chooses to move a petition for setting aside the award under Section 34(2)(a)(v) of the Act on the ground that the composition of the Arbitral Tribunal was not in accordance with the agreement of the parties. If plea of jurisdiction is not taken before the arbitrator as provided in Section 16 of the Act, such a plea cannot be permitted to be raised in proceedings under Section 34 of the Act for setting aside the award, unless good reasons are shown."

(Emphasis supplied)

30. A similar view was reiterated in ***AC Chokshi Share Broker (P) Ltd. v. Jatin Pratap Desai*** reported in **(2025) SCC OnLine SC 281** wherein it was held that when the jurisdictional issue has not been raised in accordance with Section 16 of the Act, 1996, it is deemed that the objecting party has waived his right, in terms of Section 4, and the same cannot be raised at a later stage such as under Section 34 or 37 of the Act. The relevant observations read as under: -

> *"20. The High Court in the impugned order relied on this rationale of a "private" transaction to hold that the arbitral tribunal lacked inherent jurisdiction to decide the claim against respondent no. 1, and such a jurisdictional plea could be raised at any stage even if it was not raised before the arbitral tribunal. From the above reasons, it is clear that there is no inherent lack of jurisdiction. Consequently, any issue regarding the scope of Bye-law 248(a) ought to have been raised in accordance with Section 16 of the Act, i.e. during the arbitration, not later than the submission of statement of defence. Neither respondent has, in their statements of defence or Section 34 petitions, raised an objection to the arbitral tribunal's jurisdiction in clear terms beyond stating that there is a misjoinder of parties as they are not jointly and severally liable. A clear jurisdictional issue was only raised at the Section 37 appeal stage, as has also been noted by the High Court in the impugned order.*
>
> *21. This Court has held, in several judgments, that when the jurisdictional issue has not been raised in accordance with Section 16, it is deemed that the objecting party has waived his right, in terms of Section 4 of the Act to raise the same at a later stage. Such objection cannot be raised for the first time when the party is challenging the award under Section 34. Here, respondent no. 1 not only filed his statement of defence and participated in the arbitral proceedings but also filed a counter-claim, thereby submitting to the arbitral tribunal's jurisdiction. Hence, any jurisdictional objection must be rejected on this ground as well."*

(Emphasis supplied)

31. The fallacy of the aforesaid argument of the respondent herein lies in the very fact, that it has misconstrued the observations of this Court in ***Lion Engineering*** (supra) by ignoring the very settled position of law as regards the interplay between Section(s) 16 and 34 of the Act, 1996, respectively.

32. The observations made by this Court in ***Lion Engineering*** (supra) that "*We do not see any bar to plea of jurisdiction being raised by way of an objection under Section 34 of the Act even if no such objection was raised under Section 16*" cannot be singled out and construed devoid of its context. The aforesaid observations have to be construed in light of the settled position of law by a catena of decisions of this Court. The decision of this Court in ***Pam Development*** (supra) has held that where a plea of lack of jurisdiction is not raised before the arbitral tribunal, such a plea cannot be raised later in the proceedings under Section 34. ***Pam Development*** (supra) says this, not because such a plea is barred from being raised only by virtue of Section 16 sub-section (2), but rather says this, because such a plea is deemed to have been waived on account of the failure of the party in raising such a plea. Thus, ***Pam Development*** (supra) in no manner lays down that a plea of lack of jurisdiction cannot be raised in the proceedings under Section 34 due to the bar of Section 16 sub-section (2) of the Act, 1996, and thus to this extent both

the decisions of ***Pam Development*** (supra) and ***Lion Engineering*** (supra) are in tune with each other. The variance between the decisions of ***Pam Development*** (supra) and ***Lion Engineering*** (supra) is only in respect of whether a failure to raise such a plea at the relevant stage in terms of Section 16 sub-section (2) of the Act, 1996 would amount to a 'waiver' or not, and this issue was never examined or looked into by ***Lion Engineering*** (supra).

33. On the contrary ***Lion Engineering*** (supra) specifically observed in para 9 that "*It will be open for the respondents to argue that its objection that the Act stands excluded by the M.P. Madhyastham Adhikaran Adhiniyam, 1983 could be raised even without a formal pleading, being purely a legal plea. It will also be open to the appellant to argue to the contrary. We leave the question to be gone into by the court concerned*." The observations that it will be open for the respondents therein to argue that such an object could be raised even without a formal pleading **AND** that it will be open for the appellants therein to argue the contrary, clearly shows that the very issue of whether such a plea can be allowed to be raised or not i.e., issues such as whether it is a purely legal plea or whether there was any waiver or not etc. were never decided by this Court in ***Lion Engineering*** (supra) and rather was left to be gone into by the court under Section 34 of the Act, 1996. The aforesaid observations clearly show, that although such a plea may be raised for the first time in the proceedings under Section 34 of the Act, 1996, it may still nevertheless be

rejected if it is found that such a plea is not purely a question of law or that the party raising the plea had waived it in terms of ***Pam Development*** (supra). Whereas ***Gas Authority of India*** (supra) goes one step ahead of ***Pam Development*** (supra) and lays down that where a party makes out a strong and good reason for its failure to take a plea of lack of jurisdiction before the arbitral tribunal, then there would be no deemed waiver of such a plea, and the same may then be looked into by the courts under Section 34 of the Act, 1996.

34. Thus, insofar as the manner in which the question of whether a plea of lack of jurisdiction being raised for the first time under Section 34 of the Act, 1996 has to be decided, the decision of this Court in ***Pam Development*** (supra) and ***Gas Authority of India*** (supra) would be applicable, as ***Lion Engineering*** (supra) only decided the limited issue of whether the bar under Section 16 sub-section (2) would preclude raising of such a plea i.e., whether such a plea is maintainable or not, and never decided or laid down when the courts would entertain such a plea. It is in this aforesaid context that the observations of this Court in ***L.G. Chaudhary (II)*** (supra), more particularly at para 17 that "*We do not express any opinion on the applicability of the State Act where 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"* assumes significance. What has been conveyed, in so many words, by this Court in ***L.G. Chaudhary (II)*** (supra) is that any failure to raise

the issue of applicability of the MP Act, 1983 before the arbitral tribunal is not a strong and good reason in terms of ***Gas Authority of India*** (supra) to permit raising such a plea in the proceedings under Section 34 of the Act, 1996.

35. Thus, what can be discerned from the aforesaid is that although a plea of lack of jurisdiction, being a question of law, can be raised even for the first time in the proceedings under Section 34 as held in ***Lion Engineering*** (supra), yet such a plea ought not to be allowed to be raised as it is deemed to have been waived in view of Section 4 of the Act, 1996 as per ***Pam Development*** (supra), unless the party makes out a strong and good reason for its failure to take such a plea before the arbitral tribunal as per ***Gas Authority of India*** (supra), and as per the dictum of ***L.G. Chaudhary (II)*** (supra) any failure to raise the issue of applicability of the MP Act, 1983 before the arbitral tribunal is not a strong and good reason to permit raising such a plea in the proceedings under Section 34 of the Act, 1996.

D. CONCLUSION

36. What emerges from the foregoing is that although ***Lion Engineering*** (supra) affirms that a plea of lack of jurisdiction, being a question of law, may be raised for the first time under Section 34 of the Act, 1996, yet such a plea is nevertheless subject to the waiver as held in ***Pam Development*** (supra).

Furthermore, as per ***Gas Authority of India*** (supra), such a plea may only be entertained if the party demonstrates a strong and sufficient reason for not raising it before the arbitral tribunal. However, ***L.G. Chaudhary (II)*** (supra) makes it clear that a failure to raise the issue of applicability of the MP Act, 1983 at the appropriate stage cannot be regarded as a sufficient reason, and therefore the plea cannot be permitted at the stage of Section 34 proceedings.

37. ***L.G. Chaudhary (II)*** (supra) carved out the aforesaid limited exception to the general rule laid down in ***Lion Engineering*** (supra) that a plea of lack of jurisdiction, being a pure question of law, may be raised for the first time under Section 34 of the Act, 1996. The failure of ***L.G. Chaudhary (II)*** (supra) to take into consideration the decision of this Court in ***Lion Engineering*** (supra) does not render the former *per incuriam*, as there exists no direct conflict between the two. While ***Lion Engineering*** (supra) permits a jurisdictional plea to be raised under Section 34 of the Act, 1996 even if not urged under Section 16, ***L.G. Chaudhary (II)*** (supra) merely clarifies that an arbitral award will not be annulled solely on that ground, particularly where the issue was not raised before the tribunal. On the contrary, the aforesaid observations of ***L.G. Chaudhary (II)*** (supra) had been consciously made by this Court keeping in mind the *ratio* of ***Lion Engineering*** (supra), even though the latter was never explicitly referred to. ***L.G. Chaudhary (II)*** (supra) cannot be termed to be *per incuriam*, as the very factum that the aforesaid observations were made

by ***L.G. Chaudhary (II)*** (supra) in paras 16, 17 and 19 respectively shows that this Court was well aware of the decision of this Court in ***Lion Engineering*** (supra), and accordingly chose to carve out an exception to the ratio of ***Lion Engineering*** (supra) keeping in mind the cleavage of judicial view that was prevailing earlier.

38. In view of the above exposition of law, what has been conveyed by this Court in ***L.G. Chaudhary (II)*** (supra) in so many words is that: -

i. 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 MP 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 MP Act, 1983.

ii. 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 MP 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 MP Act, 1983, and the better course of action would be to let the arbitration proceedings conclude.

iii. As per ***L.G. Chaudhary (II)*** (supra) 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 MP Act, 1983 was taken at the relevant stage then such an award cannot be annulled only on the ground of lack of jurisdiction.

iv. Any award passed by an arbitral tribunal under the Act, 1996, where otherwise the MP Act, 1983 was applicable, such an award may be challenged or assailed in terms of Section 34 and thereafter Section 37 of the Act, 1996 and other relevant provisions thereunder.

v. Any award passed by an arbitral tribunal under the Act, 1996, where otherwise the MP Act, 1983 was applicable, such an award must be executed in terms of the MP Act, 1983 and the relevant provisions thereunder.

vi. Where the objection based on applicability of the MP 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 Act, 1996 or where such plea of jurisdiction was turned down in view of the position of law that was prevailing prior to ***L.G. Chaudhary (II)*** (supra) i.e., such challenge to

the jurisdiction was decided prior to the date of pronouncement of ***L.G. Chaudhary (II)*** (supra), then even in such cases, as per the decision of this Court in ***Modern Builders*** (supra), the award should not be disturbed or set-aside only on the ground of lack of jurisdiction.

39. In the present case at hand, we take note of the following circumstances emerging from the facts on record: -

a. It is an admitted fact that at the time of constitution of the arbitral tribunal, the respondent never objected to the invocation of arbitration under the Act, 1996 and both the parties proceeded to nominated their respective co-arbitrators.

b. On the date of invocation of the Act, 1996, and commencement of arbitration proceedings, as well as of the date when the arbitration proceeding concluded and the award in question passed, the erstwhile decision of this Court in ***VA Tech*** (supra) held the field.

c. The respondent herein never raised any objection to the arbitral tribunal's lack of jurisdiction during the arbitration proceedings either in its statement of defence or by way of an application under Section 16 of the Act, 1996.

d. Even when the award was challenged by the respondents, the initial petition filed by them under Section 34 of the Act, 1996 also did not contain any objection as regards the lack of jurisdiction of the arbitral tribunal.

e. The ground of lack of jurisdiction was introduced by the respondents herein only after the decision of ***L.G. Chaudhary (II)*** (supra) by way of an application for amending the grounds of its petition under Section 34 of the Act, 1996, i.e., after the award had been passed.

40. Thus, the present case is squarely covered by the decision of this Court in ***L.G. Chaudhary (II)*** (supra), more particularly the observations made in paras 6 to 9 thereunder, and as such once the award had been passed and no objection as to the jurisdiction of the arbitral tribunal had been taken at the relevant stage, then the award could not have been annulled by the High Court only on the ground of lack of jurisdiction.

41. For all the foregoing reasons, we have reached the conclusion that the High Court committed an egregious error in passing the impugned judgment. We are left with no other option but to set aside the impugned judgment and order passed by the High Court, and restore the proceedings in Arbitration Case No. 48 of 2011 to the court of Commercial Court and 19th Upper District Judge, Bhopal (M.P.), for deciding all other issues on merit that may have been raised by the respondent in its petition under Section 34 of the Act, 1996. We accordingly pass such order. Thus, the appeal is disposed of in the above terms.

42. Pending application(s) if any, also stand disposed of.

43. We direct the Registry to circulate a copy of this judgment to all High Courts.

..... J.
(J.B. Pardiwala)

..... J.
(R. Mahadevan)

New Delhi;
15th May, 2025.