



2025:CGHC:30607

AFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**WP227 No. 691 of 2024**

- Eci-Keystone (Jv) Represented By Its Managing Director, Shri Pratap Potluri House No. 8-2-338/6, Road No. 3, Panchavati Colony, Banjara Hills, Hyderabad-500034

**... Petitioner(s)**

**versus**

- The Superintending Engineer National Highway Circle, P W D, Government Of Chhattisgarh, At Pension Bada, Raipur Chhattisgarh.

**... Respondent(s)**

**Date of Hearing: 07.05.2025**  
**Date of Pronouncement: 04.07.2025**

For Petitioner	:	Mr. Rajiv Shakdher, Senior Advocate along with Mr. Shishir Bhandarkar, Advocate, Mr. Puresh Bhutton, Advocate and Mr. Shobhit Mishra Advocate
For Respondent	:	Mr. R.S. Marhas, Additional Advocate General

**Hon'ble Shri Justice Rakesh Mohan Pandey**

**CAV Order**

1. By way of this petition, the petitioner has sought the following relief(s):-

*(i) That this Hon'ble Court may kindly be pleased to allow this writ petition and consequently, issue an appropriate*

*writ/order/direction thereby quashing/setting aside the impugned order dated 23.07.2024 passed by Learned Commercial Court (District Level) Naya Raipur, District – Raipur (C.G.)*

*(ii) That any other order/relief which this Hon'ble Court may deem fit, proper and just in the facts and circumstances of the present case may also kindly be awarded to the petitioner in the ends of justice & equity.*

*(iii) That the cost of the petition may kindly also be awarded to the petitioner.*

**2. Facts of the present case are as under:-**

**(a)** The petitioner, a joint venture of ECI and Keystone Infra Pvt. Ltd., and the Respondent entered into a contract on 01.12.2012 in respect of the execution of work of the construction on a two-lane road viz. from KM 287 to 292, KM 322 to 342 and 352 to 400 of NH–63 (Old NH–16) i.e. Bhopalapatnam–Jagdalpur Road.

**(b)** The petitioner participated in a bid and being the highest bidder, its bid was accepted and a letter of acceptance was issued by the respondent. A contract agreement was signed for the contract price of Rs. 184,54,47,686.69/- on 01.12.2012. The contract was an item rate re-measurable bill of quantity. The construction of the road could not be completed for various reasons within the intended completion period and later it was completed on 30.06.2019. The petitioner raised several claims stating that the delay was not attributable to it.

(c) The petitioner invoked arbitration under Clause 25.3(a) of Special Conditions of Contract vide its letter dated 13.07.2020. The relevant Clause 25.3(a) reads as under:-

*“ 25.3(a) In case of Dispute of difference arising between the Employer and a domestic Contractor relating to any matter arising out of or connected with this agreement, such disputes or difference shall be settled in accordance with the Arbitration and Conciliation Act 1996. The parties shall make efforts to agree on a sole arbitrator and only if such an attempt does not succeed and the Arbitral Tribunal consisting of 3 arbitrators one each to be appointed by the Employer and the Contractor and the third Arbitrator to be chosen by the two Arbitrators so appointed by the Parties to act as Presiding Arbitrator shall be considered. In case of failure of the two arbitrators appointed by the parties to reach upon a consensus within a period of 30 days from the appointment of the arbitrator appointed subsequently. the Presiding Arbitrator shall be appointed by the Council, Indian Roads Congress. ”*

(d) The petitioner made an effort to refer the dispute to a sole arbitrator as per the provisions of Clause 25.3(a) and suggested four names. The respondent in its letter dated 10.08.2020 addressed to Shri L.V. Sreerangaraju, requested to act as the Sole-Arbitrator and Shri L.V.

Sreerangaraju was appointed as the Sole-Arbitrator recording the mutual consent of both parties. The extract of this letter is reproduced herein below:-

*“The above-mentioned Contract Agreement was entered into between the Superintending Engineer, NH Circle, P.W.D, Raipur, Chhattisgarh and M/s. ECI-KEYSTONE (JV), Hyderabad, Telangana.*

*Certain disputes have arose between the Parties under the Contract, which were not settled amicably, and as such the Contractor vide its letter No. ECI-KEYSTONE/NH-63/2019/4 dated 30.03.2020 (copy attached for reference) has invoked arbitration as per clause 25.3 of Special Conditions of Contract for adjudication of the disputes through arbitration.*

*Both the parties have mutually agreed to refer the disputes to Sole Arbitrator as per clause 25.3 of Special Conditions of Contract. Now, with the consent of the Contractor, I hereby appoint your-good-self as a Sole Arbitrator to adjudicate upon the disputes referred by the Contractor.”*

(e) The Tribunal entered into reference on 18.08.2020. The first meeting of the Arbitral Tribunal [hereinafter to be referred to as ‘AT’] was held on 08.09.2020 wherein both parties were present and confirmed that they have no objection against the appointment of the Sole-

Arbitrator. Further, the schedule of pleadings and hearings, procedural directions and all other matters were discussed and agreed on in the said meeting. Both parties also agreed that they would depend only on the documentary evidence and would not lead any oral evidence.

**(f)** The petitioner submitted its Statement of Claim (SOC) on 19.10.2020 but the respondent failed to submit its Statement of Defence (SOD) on 20.12.2020. The respondent took adjournments on 05.01.2021, 24.02.2021, 17.03.2021, 03.07.2021 and 22.07.2021. During the second meeting of the AT, a further extension of one month i.e. up to 21.08.2021 was granted to the respondent for the submission of its SOD and it was also made clear that the submission of SOD on or before 21.08.2021 would be mandatory.

**(g)** On 21.08.2021, points for determination based on the claims of the claimant/petitioner were framed. The AT extended two-months' time from 02.10.2021 to 02.12.2021 for the respondent to submit the SOD and one month's time was granted to the petitioner to file a rejoinder. The respondent failed to submit SOD by 02.12.2021 and pursuant to the order of the Hon'ble Supreme Court dated 10.01.2022 in Suo-Moto Writ Petition (C) No. 3 of 2020, the AT granted time to the

respondent till 15.03.2022 for filing SOD. The AT also directed the respondent to submit the SOD on or before 15.03.2022 and granted 15 days' to the petitioner to file a rejoinder on or before 31.03.2022.

(h) After passing of the order by the AT dated 25.01.2022, the respondent wrote a letter on 11.02.2022 referring to its earlier letter dated 16.08.2021 which reads as under:-

*“Please refer this office above cited letter, vide which the appointment of Sole-Arbitrator has already been cancelled until further instructions from the Ministry. Accordingly, as per the directions given by the competent authority of Ministry vide letter No: RO/NH/CG/LWE-CHH-2009-10-177/820 dated 16.12.2021 (photocopy enclosed), the subjected matter has been discussed in the review meeting held on 09.12.2021 at New Delhi under the Chairmanship of DG (RD) & SS, MORTH with CE(Zone-IV), MORTH, RO, MORTH, Raipur and CE(NH) Raipur. In the meeting DG(RD) & SS mentioned that the dispute resolution through conciliation shall be preferred and in case of unwillingness of Contractor, the appointment of Arbitration Tribunal shall be carried out instead of referring the dispute to Sole Arbitrator and the appointment of Arbitrator is to be done as per the panel of IRC and with approval of the Ministry. Further, the competent authority of Ministry has not yet*

appointed the Legal Consultant and Officer-in-charge for defending the case on behalf of Ministry. Under such circumstances, it will not be possible for the Respondent to submit the SOD on or before 15.03.2022” .

(i) The AT framed a primary question - ‘as to whether annulling the appointment of the Sole Arbitrator by mutual consent of the parties as per Clause- 25.3 of the Contract can be unilaterally annulled only by the Respondent on the advice of the Ministry, that too, after the Respondent also having attended two meeting the Arbitral Proceedings and the Arbitral Proceedings are in advance stage is a question that should be addressed by the AT in the instant arbitration ?’

(j) The AT vide its order dated 16.02.2022 rejected the prayer made by the respondent with regard to annulling the appointment of the Sole Arbitrator. The AT discussed Section 12(1)(b) of the Arbitration and Conciliation (Amendment-2019) Act, 1996 [hereinafter to be referred to as the ‘Act, 1996’]; provisions of Clause 25.3 (a) of the agreement and the fact that the respondent participated in two previous meetings. The AT further held that the letter dated 11.02.2022 was not sustainable and instead was a mockery of the arbitration.

(k) The third meeting of the AT was held on 20.04.2022 through video-conferencing and the respondent was not

present; the matter was fixed for 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> June, 2022 at Raipur (C.G.). Thereafter, on 20.05.2022, the AT issued certain directions to the respondent. The respondent after receiving the order dated 20.05.2022 issued a letter on 03.06.2022 through e-mail referring to: (i) the order of the AT dated 05.05.2022 and (ii) the letter of the petitioner dated 28.05.2022, in which the petitioner had made arrangements for the meeting at Raipur and had notified the venue of arbitration.

(I) Upon receipt of the above letter, the AT gave its order on 04.06.2022 and reiterated Clause 23.5 of the agreement and also placed reliance on the judgment passed by the Hon'ble Supreme Court in **Civil Appeal Nos. 2935-2938 of 2022** dated 05.05.2022, parties being **Swadesh Kumar Agrawal Versus Dinesh Kumar Agrawal & Ors<sup>1</sup>**, wherein it was observed that - *'the parties themselves agreed on a procedure for appointment of the arbitrator and appointed and nominated an arbitrator by mutual consent. Therefore, the application under Section 11(6) of the Act, 1996 was not maintainable at all.'* The AT also recorded a finding that the AT was communicated by the respondent and it was stated that SOD was already prepared on 23.02.2021 and had sought an extension of time up to

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1. (2022) 10 SCC 235



31.03.2021. Therefore, the subsequent letter for annulment of the appointment of the Sole-Arbitrator was in conflict with its earlier letter.

**(m)** The AT discussed points for determination and passed the award on 02.09.2022 in favor of the petitioner and directed the respondent to pay an amount of Rs. 128,76,30,204/- excluding the interest awarded and further amount of Rs. 71,17,177/- towards cost and expenses of Arbitration and interest on the same @ 10% from the date of the award till its realization.

**(n)** The petitioner moved an application under Section 36 of the Act, 1996 before the learned Commercial Court (District Level), Nava Raipur (C.G.) for the execution of the award on 28.01.2023 and it was registered as Execution Case No. 06/2023. Learned Commercial Court issued notice to the respondent and it was served on 10.02.2023. The respondent filed an objection application on 06.05.2023 under Section 47 r/w 151 of CPC challenging the enforcement of the award and raised the following questions/objections before the learned Commercial Court:

**(i)** Whether the learned sole Arbitrator had the jurisdiction to adjudicate the disputes between the parties in view of the provisions of Chhattisgarh Madhyasthan Adhikaran Adhiniyam, 1983?

(ii) Whether the issue of jurisdiction of the Arbitrator goes to the root of the matter?

(iii) Whether the Award is vitiated by fraud, and therefore, is non-est?

The petitioner filed a reply to the application wherein a plea was taken that the application moved under Sections 34 and 34(3) of the Act, 1996 dated 07.06.2023 was hopelessly time-barred. The learned Commercial Court dismissed the application on account of inordinate delay vide order dated 01.11.2023.

(o) The respondent preferred an Arbitration Appeal under Section 37 before this Court on 08.12.2023 and the same was dismissed vide order dated 10.06.2024, wherein the issue of jurisdiction was never raised by the respondent.

(p) Thereafter, parties to the present writ petition addressed their arguments on the application of the respondent under Section 47 r/w 151 of CPC and after hearing the arguments, the learned Commercial Court allowed the application and dismissed the execution petition vide order dated 23.07.2024. The petitioner has challenged the order dated 23.07.2024 passed by the learned Commercial Court by filing this petition.

3. Mr. Rajiv Shakdhar, learned Senior counsel appearing on behalf of the petitioner submits that the objection application moved by

the respondent was allowed on two grounds which are, (i) the dispute between the parties could only have been adjudicated as per the provisions of the Chhattisgarh Madhyasthan Adhikaran Adhiniyam, 1983 [hereinafter to be referred as 'Act, 1983'] and (ii) the respondent was not afforded sufficient opportunity to raise the objection with regard to the jurisdiction. He further submits that both grounds are beyond the scope of Section 34 of the Act, 1996 and the respondent failed to raise an objection with regard to the jurisdiction or appointment of the Sole Arbitrator and applicability of the Act, 1983 by filing an application under Section 16(2) of the Act, 1996 at an appropriate stage and therefore, the learned Commercial Court committed an error of law in entertaining the said objection. In this regard, he placed reliance on the judgments rendered by the Hon'ble Supreme Court in the matters of ***Madhya Pradesh Rural Road Development Authority & Anr. Versus L.G. Chaudhary Engineers and Contractors***<sup>2</sup> and other connected matters and ***Sweta Construction Versus Chhattisgarh State Power Generation Company Limited***<sup>3</sup> wherein a reference to the ***L.G. Chaudhary (II)*** (supra) has been made. He also submits that the issue as to whether or not the Act, 1996 would apply even when the contract was terminated, the Apex Court concluded that the Act, 1983 would apply even to such a contract in view of the provisions of Section 2(4) of the Act, 1996. Section 2(4) of the Act, 1996, according to a three-judge

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2. (2018) 10 SCC 826

3. (2024) 4 SCC 722

Bench, enabled the applicability of the arbitration under other enactments which included the Act, 1983. He contends that the larger Bench concluded that with regard to matters where awards had already been passed and an application under Section 16(2) of the Act, 1996 had not been preferred; the award may not be annulled only on that ground. With regard to the judgment rendered in the matter of **Sweta Construction (supra)**, the learned Senior counsel submits that the Apex Court has held that applicability of the Act, 1983, even though the said issue had not been raised by such a party under Section 34 of the Act, 1996, being a jurisdictional issue, it could be raised at any stage notwithstanding the fact that it had been raised at Section 34 stage. He has further placed reliance on the following judgments where the view of the Hon'ble Supreme Court finds resonance:-

**(i) Gas Authority of India Ltd. and Another Versus Ketu Construction (I) Ltd.<sup>4</sup>**

**(ii) AC Chokshi Share Broker Private Limited Versus Jatin Pratap Desai and Another<sup>5</sup>.**

**(iii) Prasun Roy Versus Calcutta Metropolitan Development Authority and Another<sup>6</sup>.**

He further contends that the learned Commercial Court has erroneously distinguished the judgment of the Apex Court in the

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4. (2007) 5 SCC 38

5. 2025 SCC OnLine 281

6. (1987) 4 SCC 217

matter of **L.G. Chaudhary (II) (supra)** by holding that the said judgment would apply only to those cases where the award is rendered prior to the date when it was pronounced i.e. 08.03.2018, even though there is no such observation in the matter of **L.G. Chaudhary (II) (supra)**, much less in the decision which followed i.e. **Sweta Construction (supra)**. He also contends that the judgments of the Hon'ble Supreme Court apply retrospectively i.e. right from the inception, unless a cut-off period is provided or a direction is issued that a judgment would apply prospectively. In this regard, he has placed reliance on the judgment rendered by the Hon'ble Supreme Court in the matter of **Kanishk Sinha and Another Versus State of West Bengal and Another**<sup>7</sup>. He argues that the conclusion arrived at by the learned Commercial Court that the respondent did not have enough opportunity to flag the jurisdictional error is misconceived. After being declared the successful bidder, a letter of acceptance was issued in favor of the petitioner on 01.12.2012; there was a delay in the completion of the construction work and the delay part was attributable to the respondent. The initial value of the contract was approx. Rs. 184.5 crores which was later enhanced to approx. Rs. 235 crores. He further argues that to resolve the dispute, the petitioner sought to adjudicate his claims in terms of Clause 25.3(a) of the agreement and consequently, the matter was referred to the Sole-Arbitrator by the respondent. The respondent

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7. 2025 SCCOnLine SC 443

chose the Sole-Arbitrator out of a panel comprising three-four names; the AT convened its first meeting on 08.09.2020 which was attended by the respondent and the respondent was granted time till 15.03.2022 by the AT to file SOD; for the first time, an objection was made by the respondent on 11.02.2022 making a request to cancel the appointment of the Sole-Arbitrator; the AT rejected the objection vide order dated 16.02.2022 and that order attained finality as it was never challenged by the respondent before the higher forum; the final award was passed by the AT on 02.09.2022 whereby the respondent was directed to pay an amount of Rs. 128,76,30,204/- excluding the interest awarded and further amount of Rs. 71,17,177/- towards cost and expenses of Arbitration and interest on the same @ 10% from the date of the award till its realization. He also argues that despite the service of notice and participation in the arbitration proceeding, the respondent chose not to participate in the further arbitration proceeding and consequently, the award was passed on 02.09.2022; thereafter, the respondent kept mum for a considerable period and moved an application under Section 34 of the Act, 1996 for setting aside the award along with an application for condonation of delay on 06.05.2023; the application for condonation of delay was dismissed by the learned Commercial Court and consequently, the application under Section 34 was also dismissed vide order dated 01.11.2023; the order dated 01.11.2023 was challenged by the respondent by filing Arbitration

Appeal No. 51 of 2023 before this Court and the same was dismissed vide order dated 10.06.2024. He avers that the respondent neither before the AT, nor before the Commercial Court, nor at the appellate stage pressed the issue concerning the jurisdiction and applicability of the Act, 1983 and thus, the respondent could not be permitted to raise this issue at the execution stage; the respondent was afforded sufficient opportunity to defend its case, thus there was no need to raise the issue regarding the appropriate opportunity of hearing not being given to it. He further avers that the Act, 1983 was adopted by the State of Chhattisgarh after its creation and the respondent is well aware of this fact; nevertheless, the respondent entered into the contract with the petitioner on 01.12.2012 which provided for the adjudication via arbitration under the Act, 1996. He prays to set aside the order passed by the learned Commercial Court dated 23.07.2024 and to allow the petition.

4. On the other hand, Mr. R.S. Marhas, Additional Advocate General. appearing on behalf of the respondent-State submits that during the execution of the works contract, a dispute arose between the parties and on 27.01.2020, a claim for an amount of Rs. 190,33,43,011/- was made before the respondent. He further submits that the petitioner invoked the arbitration clause under Clause No. 25.3 and a Sole-Arbitrator was appointed in which the respondent raised an objection that the Ministry intended to constitute a panel of three arbitrators but the objection was

rejected by the AT on the ground that the respondent had given its consent to appoint the Sole-Arbitrator. He also submits that on 16.08.2021, the initial consent for the appointment of the Sole-Arbitrator was withdrawn and the respondent did not participate in the proceedings; an ex-parte award of Rs. 160,30,11,411/- with simple interest of 12 % for the pre-award period and 10 % from the date of the award to the date of actual payment has been passed in favor of the petitioner on 02.09.2022. He contends that the respondent filed an objection application before the learned Commercial Court on the ground that the AT lacks jurisdiction. With regard to the delay caused in filing the objection, he states that the objection was raised at a later stage because of certain instructions issued by the Ministry of Road Transport and Highways, New Delhi (MoRTH) as the fund for the construction of the subject road was provided by the Central Government. He further contends that the contract awarded to the petitioner was a works contract as envisaged under Section 2(1)(i) of the Act, 1983 which defines 'works contract'. He also contends that Section 7 under Chapter III of the Act, 1983 provides for reference to the Tribunal and according to this Section, it is clear that where any dispute arises out of the execution or non-execution of the works contract, either party shall refer such a dispute to the Tribunal constituted under the Act, 1983, irrespective of the fact whether the agreement contains an arbitration clause or not. He placed reliance on the judgment rendered by the Hon'ble Supreme Court



in the matter of **L.G. Chaudhary (II)** (*supra*). He argues that in view of the specific bar under the Act, 1983, the consent for appointment of the Sole-Arbitrator was withdrawn by the respondent. He further argues that this Court while exercising its jurisdiction under Article 227 of the Constitution of India may interfere with the findings only and only when the order passed by the learned Court below suffers with procedural irregularity or there is a grave dereliction of duty or flagrant violation of the law or an error of jurisdiction. He also argues that the jurisdiction of the Commercial Court is barred according to the provisions of Section 11 of the Commercial Courts Act, 2015 [hereinafter to be referred to as Act, 2015] read with Section 7 of the Act, 1983. He avers that the learned Commercial Court rightly allowed the objection application moved under Section 47 r/w 151 of CPC and has placed reliance on the judgment rendered by the Hon'ble Supreme Court in the matter of **Asna Lateef and Another Versus Shabbir Ahmad and Others**<sup>8</sup> wherein a view has been taken that a “*decree can be said to be without jurisdiction, and hence a nullity, if the Court passing the decree has usurped the jurisdiction which it did not have*”. He prays to dismiss this petition.

5. Heard learned counsel appearing for the parties at length, considered their rival submissions made herein above and perused the documents placed on the file with utmost circumspection.

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8. (2024) 4 SCC 696

6. The following provisions of law relevant to the efficacious disposal of this case are reproduced herein below:-

- **Section 2(4) of the Act, 1996 :-**

**2. Definitions. - (4)** *This Part except sub-section (1) of section 40, sections 41 and 43 shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as the provisions of this Part are inconsistent with that other enactment or with any rules made thereunder.*

- **Section 11(6) of the Act, 1996 :-**

**11. Appointment of arbitrators. - (6)** *Where, under an appointment procedure agreed upon by the parties,-*

*(a) a party fails to act as required under that procedure; or*

*(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or*

*(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure,*

*a party may request [the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court] to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.*

*[ 6(A) The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall,*

*notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement. ]*

*[ 6(B) The designation of any person or institution by the Supreme Court or, as the case may be, the High Court, for the purposes of this section shall not be regarded as a delegation of judicial power by the Supreme Court or the High Court. ]*

- **Section 12 (1)(b) of the Act, 1996 :-**

**12. Grounds for challenge.** - (1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances,

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(a) xxxxx

(b) which are likely to affect his ability to devote sufficient time to the arbitration and in particular his ability to complete the entire arbitration within a period of twelve months.

- **Section 16 of the Act, 1996 :-**

**16. Competence of arbitral tribunal to rule on its jurisdiction.** - (1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,-

(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration

clause.

*(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.*

*(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.*

*(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.*

*(5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.*

*(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34.*

• **Section 34 of the Act, 1996 :-**

**34. Application for setting aside arbitral award.-(1)**

*Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).*

*2) An arbitral award may be set aside by the Court only if-*

*(a) the party making the application furnishes proof that-*

*(i) a party was under some incapacity, or*

*(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or*

*(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or*

*(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:*

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

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

*derogate, or, failing such agreement, was not in accordance with this Part; or*

*(b) the Court finds that-*

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

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

*2(A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award: Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappraisal of evidence.]*

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

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

*(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an*

*opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.*

*(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.*

*(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.*

• **Section 2(1)(i) of the Act, 1983 :-**

**2. Definition.** – (1) in this Act, unless the context otherwise requires, -

(a) to (h) - xxxxx

*(i) "works contract" means an agreement in writing for the 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, work-shop, powerhouse, transformers, tube well, drilling work, ramp construction and hand pump installation work, water purification plant construction work, intake well construction work, all types of pipe supply and pipeline laying work, pump house construction work, high level tank/sump well construction work, raw/clear water pumps work, supply and establishment of iron removal plant/fluoride removal plant work, rain water harvesting work, construction of recharge structures related to ground water enrichment work or such other works of the State Government or Public Undertaking as the State*

*Government may by notification, specify in this behalf at any of its stages, entered into by the State Government or by an official of the State Government or Public Undertaking or its official and on such behalf of such Public Undertaking and includes an agreement for the supply of goods or material and all other matters relating to the execution of any of the said works. [As applicable in the State of Chhattisgarh vide C.G. Act No. 4 of 2019, w.e.f. 26-2-2019.]*

- **Section 7 of the Act, 1983 :-**

**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.*

*(2) Such reference shall be drawn up in such form as may be prescribed and shall be supported by an affidavit verifying the averments.*

*(3) The reference shall be accompanied by such fee as may be prescribed.*

*(4) Every reference shall be accompanied by such documents or other evidence and by such other fees for service or execution of processes as may be prescribed.*

*(5) On receipt of the reference under sub-section (1), if the Tribunal is satisfied that the reference is a fit case for adjudication, it may admit the reference but where the Tribunal is not so satisfied it may summarily reject the reference after recording reasons therefor.*

- **Section 11 of the Act, 2015 :-**

**11. Bar of jurisdiction of Commercial Courts and Commercial Divisions.** - *Notwithstanding anything contained in this Act, a Commercial Court or a Commercial Division shall not entertain or decide any suit, application or*



*proceedings relating to any commercial dispute in respect of which the jurisdiction of the civil court is either expressly or impliedly barred under any other law for the time being in force.*

7. In the present case, it is an admitted fact that at the time of the constitution of AT, even after its constitution, no objection was raised by the respondent with regard to the lack of jurisdiction, rather, with the consent of the parties, the Arbitrator was nominated. The respondent participated in the arbitral proceedings; the respondent failed to file its Statement of Defense and finally, the award was passed by the Arbitrator on 02.09.2022. It appears that the respondent moved an application before the AT for the appointment of a panel of Arbitrators but no objection was raised with regard to the lack of jurisdiction of the Arbitrator according to the provisions of the Act, 1983. The respondent moved an application under Section 34 of the Act, 1996 but no objection as regards the lack of jurisdiction of AT was raised and the said application was dismissed vide order dated 01.11.2023. The respondent also preferred an appeal according to Section 37 of the Act, 1996 and again, the issue regarding the lack of jurisdiction was not raised and the appeal was dismissed vide order dated 10.06.2024.
8. For the first time, the respondent raised the ground of lack of jurisdiction in the execution proceeding and the learned Commercial allowed such an objection in para 72 on the following grounds:-

**72.** *Consequently, In view of detailed analysis as undertaken hereinbefore by this court the resultant conclusions are laid out as follows: -*

*(i) The disputes between the parties pertaining to subject contract were arbitrable exclusively before the arbitral tribunal as constituted under the 1983 Act.*

*(ii) In spite of presence of an arbitration clause under the contract those disputes could not have been referred for arbitration to the Sole Arbitrator.*

*(iii) The jurisdiction of the tribunal under the 1983 Act could not have been ousted by having recourse to such arbitration clause.*

*(iv) The vice of inherent lack of jurisdiction in the Sole Arbitrator would remain unaffected/insulated from any measure of consent, waiver or acquiescence on the part of the AD.*

*(v) Such an objection pertaining to inherent lack of jurisdiction could always be raised at any stage of the proceeding including the execution/enforcement proceedings.*

*(vi) The objection under Sec. 34 of the Arbitration Act qua the jurisdictional aspect having not been occasioned to be considered at all due to legal proscription emanating from the bar of limitation, the AD would not be precluded from raising the same in the execution proceedings.*

*(vii) The impugned award passed by the Sole Arbitrator is non-est i.e. nullity on account of having been passed by a forum lacking*

*inherent jurisdiction.*

It was further held by the learned Commercial Court that the arbitral proceedings were commenced in the year 2020 and the impugned award was passed on 02.09.2022 thus, the proceedings had taken place after the crystallization of the legal position as regards the applicability of the Act, 1983 to the works contract entered into between a contractor and the State Government. It was also held that the legal position settled in the matter of **LG Choudhary (II) (supra)** clarifies that the Act, 1983 would prevail over the Act, 1996. It was also held that concepts of consent, waiver or acquiescence can certainly not be fallen back upon in order to purge an arbitration process inflicted with an inherent lack of jurisdiction.

9. In the matter of **MP Rural Road Development Authority & Anr. Versus L.G. Choudhary Engineers & Contractors(I)**<sup>9</sup>, wherein an application was moved before the Civil Court therein seeking to introduce the ground of lack of jurisdiction according to the Act, 1996 and it was 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*. In the matter of **Lion Engineering Consultants Versus State of Madhya Pradesh**<sup>10</sup>, the Hon'ble Supreme Court has held 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*

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9. (2012) 3 SCC 495

10. (2018) 16 SCC 758

*objections had been raised during the arbitral proceeding.*

10. In the matter of **LG Choudhary (II) (supra)**, it was held that *State Act would prevail over the Arbitration Act in light of Section 2(4) of the Arbitration Act*. In para – 17 of the **LG Choudhary (II) (supra)**, the Supreme Court has excluded such cases where awards had already been made and it was further 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*”. The relevant para is reproduced herein below:-

*"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."*

11. In the matter of **M/S Gayatri Project Limited Versus Madhya Pradesh Road Development Corporation Limited**<sup>11</sup>, the Hon'ble Supreme Court framed the following issues for determination:-

- 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*

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11. MANU SC 0700 2025

*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?*

While dealing with issue No. (I), the Hon'ble Supreme Court held that a plea of lack of jurisdiction cannot be allowed to be raised in terms of Section 16 (2) of the Act, 1996 and the award cannot be annulled solely on such a ground. The Hon'ble Supreme Court restored the award and 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 the appropriate proceeding under Section 34 of the Act, 1996. It was also held that where the execution proceedings for awards were pending, it was directed that such awards be treated to have been rendered under the Act, 1983.

The Hon'ble Supreme Court in para-38 summarized the findings recorded in the matter of **LG Choudhary (II)** (supra) and thereafter concluded in para-40. Relevant paras are reproduced hereinbelow:-

**38.***In view of the above exposition of law, what has been conveyed by this Court in **LG. Chaudhary (1)** (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 MF 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., 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 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.*

**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.*

12. The learned Commercial Court in para-72 (i) of the order impugned held that the disputes between the parties pertaining to the subject contract were arbitrable exclusively before the Arbitral Tribunal as constituted under the Act, 1983. The conclusion arrived at by the Commercial Court is legally correct but no objection was raised by the respondent either in the arbitral proceeding or in a proceeding initiated under Section 34 stage or at a belated stage.

In para-72 (ii), the Commercial Court has held that in spite of the presence of the arbitration clause, disputes could have been referred for arbitration to the sole Arbitrator. Although, the respondent was aware of the fact that the dispute could have been referred to the Arbitration Tribunal constituted according to the provisions of Section 7 of the Act, 1983 but no steps were taken and the sole arbitrator was appointed with the consent of the parties and thus the findings record by the Commercial Court in this regard are erroneous.

In para-72 (iii), it is held that the jurisdiction of the tribunal under the Act, 1983 could not have been ousted. The Hon'ble Supreme Court in the matter of **LG Choudhary (II) (supra)** has



categorically held that where the arbitration proceedings have been concluded and the award has been passed and if no objection to the jurisdiction in view of the applicability of the Act, 1983 was taken at the relevant stage, such an award cannot be annulled only on the ground of lack of jurisdiction, therefore, the findings recorded by the Commercial Court in this sub-para are not sustainable.

In para-72 (iv), the Commercial Court has held that the inherent lack of jurisdiction in the sole arbitrator would remain unaffected. As no objection was raised by the respondent before any forum and after passing of the award, such an objection should not have been entertained by the Commercial Court.

In para-72 (v), the Commercial Court has held that the objection pertaining to the inherent lack of jurisdiction can be raised at any stage of the proceeding including execution. The Hon'ble Supreme Court in the matter of **LG Choudhary (II) (supra)** has held that the objection with regard to the lack of jurisdiction can be raised where the arbitration proceedings are still underway but the Statement of Defense has not been filed. It is further held that where the award has already been passed, it cannot be annulled solely on the ground of lack of jurisdiction.

With regard to the findings recorded in para-72 (vi), the Commercial Court committed an error of law in holding that the objection with regard to the lack of jurisdiction could be considered

due to the legal prescription emanating from the bar of limitation, meaning thereby, the petition under Section 34 of the Act, 1996 was filed by the respondent after the period of limitation and in that petition also, the objection with regard to the lack of jurisdiction was taken.

In para-72 (vii), the Commercial Court declared the award as non-est i.e. nullity on account of having been passed by a forum lacking inherent jurisdiction. However, such a finding is contrary to the law laid down by the Hon'ble Supreme Court in the matter of ***LG Choudhary (II) (supra)***.

**13.** Taking into consideration the above-discussed facts, particularly that the objection regarding the lack of jurisdiction of the Sole-Arbitrator was raised by the respondent at the execution stage and further considering the proposition of law laid down by the Apex Court in the matters of ***LG Choudhary (II) (supra)*** and ***M/S Gayatri Project Limited (supra)***, in the considered opinion of this Court, the order passed by the learned Commercial Court dated 23.07.2024 is not sustainable in the eyes of the law and is hereby set-aside and the award is restored.

**14.** Accordingly, the instant writ petition stands **allowed**. No cost(s).

**Sd/-**  
**(Rakesh Mohan Pandey)**  
JUDGE

**WP227 No. 691 of 2024****Head Note**

An objection to the jurisdiction in view of the applicability of the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 cannot be taken where arbitration proceedings have already concluded and the award has been passed.

छत्तीसगढ़ माध्यस्थम् अधिकरण अधिनियम, 1983 के लागू होने के दृष्टिगत उसके क्षेत्राधिकार के संबंध में आपत्ति, माध्यस्थम् कार्यवाही पूर्ण होकर पंचाट पारित हो जाने के बाद नहीं की जा सकती।