

(2024) 02 CHH CK 0012
In the Chhattisgarh High Court
Case No : ARBA No. 22 Of 2011

State Of Chhattisgarh

APPELLANT

Vs

M/S Ram Avatar Agrawal Road Construction Private Limited,

RESPONDENT

Date of Decision : 05-02-2024

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 2(4), 11, 20(1), 20(2), 34, 34(2), 37, 43
Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 — Section 2(a), 2(e), 2(h), 2(l), 3, 7, 7B, 20, 20(2)
Limitation Act, 1963 — Section 14, 14(2), 29(2)
Insolvency and Bankruptcy Code, 2016 — Section 7

Citation : (2024) 02 CHH CK 0012

Hon'ble Judges : Narendra Kumar Vyas, J

Bench : Single Bench

Advocate : Kashif Shakeel, Manoj Paranjpe

Final Decision : Allowed

Judgement

1. The appellant/State of Chhattisgarh has filed the instant Arbitration Appeal under Section 37 of the Arbitration & Conciliation Act, 1996 (For short, "the Act, 1996") against the order dated 25-11-2010 passed by the learned District Judge, Sarguja, Ambikapur in Civil Suit No.8-A/2008 by which learned District Judge, Sarguja, Ambikapur has rejected the application filed under Section 34 of the Act, 1996 against the award passed by the sole Arbitrator on 21-3-2008.

2. Brief facts, as reflected from the record, are that the State of Chhattisgarh, Panchayat and Rural Development issued notice inviting tender (NIT) on 20-12-2001 for construction and upgradation of rural roads under Pradhan Mantri Gram Sadak Yojna known as package No. 101, 1201 for District Koriya, Sarguja. The probable amount of contract is Rs.692.19 lakhs. The NIT also provides arbitration clause. Clause 29 of NIT is extracted as under:-

"Clause 29- Except as otherwise provided in this contract all questions and disputes relating to be meaning of the specifications, designs drawings and instructions herein before mentioned as to the thing whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimate, concerning the works, or the execution or failure to execute the same, whether arising during the progress of the work, or after the completion or abandonment thereof shall be referred to the Superintending Engineer in writing for his decision, within a period of 30 days of such occurrence. There upon the Superintending Engineer shall give his written instructions and/or decisions within a period of 60 days of such request. This period can be extended by mutual consent of parties.

Upon receipt of written instructions or decisions, the parties shall promptly proceed without delay to comply such instructions or decisions. If the Superintending Engineer fails to give his instructions or decisions in writing within a period of 60 days or mutually agreed time after being requested and if the parties are aggrieved against the decision of the Superintending Engineer the parties may within 30 days prefer an appeal to the Chief Engineer who shall afford an opportunity to the parties of being heard and to offer evidence in support of his appeal. The Chief Engineer will give his decision within 90 days. If any party is not satisfied with the decision of the Chief Engineer he can refer such disputes for arbitration to an Arbitration Tribunal to be constituted by the State Government. In case such an Arbitration Tribunal is not constituted by the Sate Government, then the aggrieved party shall invoke Arbitration and Conciliation Act, 1996 – as amended till the date of such reference."

3. A dispute arose between the parties with regard to final bill for the total amount of Rs. 78,27,936/- calculated on the basis of measurement conducted by the consultants' representative and claimants. The respondent sent reminder on 07.09.2004 for release of the amount, but the appellant has not released the payment despite submission of application to the Development Commissioner, PMGSY, Raipur on 30.04.2005 and prays for resolving the dispute. Thereafter, the claimant/respondent moved an application for appointment of arbitrator which was not considered, therefore, an application was filed before this court under Section 11 of the Act, 1996. The appellant raised objection that the Arbitration Tribunal has already been constituted on 1-3-2005, as such application under Section 11 of the Act, 1996 was not maintainable and prayed for transfer of the matter to the Arbitration Tribunal. This Court vide its order dated 16.09.2005 has appointed Hon'ble Justice Shri S.K. Tiwari, Retired Judge, High Court of Kolkata as Sole Arbitrator in the matter. The relevant paragraph reads as under:-

"Mr. VVS Murthy, Dy. Advocate General, on the other hand, submitted that now the Arbitration Tribunal has been constituted under the Chhattisgarh Madhyastham Adkhikaran Adiniyam, 1983 and had started functioning with effect from 02/09/2005, the applicants should, move the said Tribu9nal for settlement of their disputes with the State Government.

It will be clear from the provisions of Sub-section (1) of Section 20 that as from the date of the constitution of the Tribunal no civil court has jurisdiction to entertain or decide any dispute of which cognizance can be taken by the Tribunal under the Act. It will be further clear from Sub-section (2) of Section 20 that the provisions of Sub-section (1) of Section 20 will not apply to any arbitration proceeding pending before any arbitrator or umpire or before any court or authority under the provisions of the Arbitration Act or any other law relating to arbitration. The Arbitration Tribunal constituted under the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 and started functioning with effect from 02/09/2005 but by the said date each of the applicants before this Court had made a request to the Chief Justice to appoint an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996. Assuming that the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 was the arbitration agreement between the parties as provided in Sub-section (4) of Section 2 of the Arbitration and Conciliation Act, 1996, the provisions of Part-I of the said Act of 1996 including Section 11 (6) apply also to arbitration under the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 and the proceedings pending before the Chief Justice stood saved under Sub-section (2) of Section 20 of the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 I am, therefore, of the prima facie view that the constitution and functioning of the Arbitration Tribunal under the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 with effect from 02-09-2005 would not be a bar for the Chief Justice to pass an order appointing an arbitrator in these proceedings.

(6) Accordingly, I appoint Shri Justice B.C. Verma as arbitrator in M.C.C. No 69 of 2003, M.C.C.No.70 of 2003 & M.C.C.No.71 of 2003, Shri Justice K.L. Shrivastava as arbitrator in M.C.C.No 153 of 2003 and Shri Justice S.K. Tiwari in M.C.C. No. 143 of 2005 & M.C.C.No 144 of 2005, subject to their consent."

4. Accordingly, the retired Judge of Hon'ble High Court of Kolkata, Shri S.K. Tiwari was appointed as Sole Arbitrator by this court. The said order of appointment of Sole Arbitrator was assailed by the State of Chhattisgarh by filing of SLP (Civil) No 3942 of 2006 wherein the Hon'ble Supreme Court has passed the following order on 22.01.2008:-

"Having heard learned counsel for the respective parties, we see no reason to differ with the order passed by the High Court since in our view the respondent had fulfilled all the conditions even under Clause 29 of the Agreement before moving the application under Section 11 of the Arbitration and Conciliation Act, 1996. It is pertinent to note that when the applications were made, the Arbitration Tribunal was not available so that the respondent could move the said Tribunal.

What is equally significant is the fact that out of the six applications the State of Chhattisgarh chose to prefer this Special Leave Petition in respect of only one of six applications and appear to have accepted the order of the High Court as far as the other five matters are concerned. In our view, the present appeal is also

not maintainable on that score as well.

We, accordingly, see no reason to interfere with the judgment of the High Court and the appeal is, therefore, dismissed, but without any order as to costs.

The interim order passed in the Special Leave Petition is vacated”.

5. Thereafter, the Sole Arbitrator has decided the arbitration application by passing the award on 21-3-2008. Operative part of the said order reads as under:-

“I, therefore hold that the claimant is entitled to Rs.59,75,490/-on account of balance of work done.

Rs.13,12,448/- on account of the amount withheld from 9th running bill. The claim of loss for overhead and loss of turn over are hereby disallowed for the reasons stated above. Claimant has not included the earthwork claim in his final bill (C/13). Hence the same is also disallowed.

Since the 5 years period after completion of work has expired in January, 2008, the claimant has become entitled to refund of entire security deposit deducted from his running bills. I, therefore, direct that the entire amount of security deposit be refunded to the claimant. I, further order that the respondent No. 2 and 3 shall pay interest on the awarded sum Rs.72,87,938/- at the rate of 9% per annum from 22-12-2003 till the realization of the amount. (ie one month after presentation of final bill). The parties shall bear their own cost of the litigation”.

6. This award was assailed before the Learned District Judge, Sarguja, Ambikapur by filing an application under Section 34 of the Act, 1996, mainly contending that the learned Sole Arbitrator has committed illegality in recording a finding that no agreement was executed with respondent’s company. It has been stated that when the agreement was executed on 17-1-2002 and on that date, the respondent’s company was not in existence, therefore, no arbitration can be initiated and in fact no document with regard to status of partnership firm of Ramavtar Agrawal has been produced in record. It has also been contended that the agreement was executed between the firm Ramavtar Agrawal and the appellant, is the work contract as defined under Section 2 (e) of the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 (for short “the Adhiniyam, 1983”) as such, the award passed by the learned Arbitration Tribunal is without jurisdiction, non-est and deserves to be set aside. It has been further contended that by notification dated 18-3-2005 with effect from 1-3-2005, the Madhya Pradesh Madhyastham Adhikaran has been constituted and as per Section 20 of the Adhiniyam, 1983, no dispute pertains to work contract as defined in Section 2(e) of the Adhiniyam, 1983 can be adjudicated by the Civil Court, as such the award is without jurisdiction, therefore, the same deserves to be set aside. It has also been contended that the learned Sole Arbitrator without waiting for the report of Commissioner C.M. Malhotra, retired Superintending Engineer, Water Resources

Department, who was appointed as Commissioner by the learned Arbitrator has passed the award. The award is without reason and finding with regard to evaluation of actual work performed by the contractor, has not been proved still the learned Arbitrator has passed the award. It has also been contended that the learned Arbitrator without considering the evidence and written submissions has passed the impugned award. Thus, it was prayed for quashing of the award.

7. The respondent has filed reply to the application mainly contending that the award passed by the learned Tribunal is legal and justified which does not deserve to be vitiated as no permissible ground under Section 34 of the Act, 1996 is made out. It has also been contended that it is well settled position of law that the award is not open to challenge on the count that the Arbitrator has reached to wrong conclusion or failed to appreciate the facts and the Hon'ble Supreme Court has time and again held that the arbitration award should reach to its finality as Arbitrator is judge of questions of fact and law referred to him and it should be binding upon the parties. It has also been contended that the learned Sole Arbitrator has already examined the issue and decided on merit, as such it is not open to re-appreciate entire factual matrix by the learned District Judge while deciding the application under Section 34 of the Act, 1996 and would pray for dismissal of the application.

8. The learned District Judge while rejecting the application filed by the applicant under Section 34 of the Act, 1996, has recorded its finding in its order dated 25.11.2010 that the learned Sole Arbitrator cannot proceed with the matter, is not acceptable as Hon'ble Supreme Court vide its order dated 22-1-2008 has already rejected the objection regarding appointment of the Arbitrator, as such, appellant cannot take this plea. It has also been observed by the learned District Judge that the Hon'ble Supreme Court in case of R.S. Bajwa and Company vs. State of Chhattisgarh and three others decided on 27-10-2010 has dismissed SLP No 3942 of 2006 wherein the appointment of the Arbitrator under the Act, 1996 has been held to be legal and justified. Learned District Judge after appreciating the facts and material on record has affirmed the award. Learned District Judge has also recorded its finding that the learned Tribunal has appointed Commissioner but the Commissioner has not submitted his report, as such, it cannot be said that the learned Tribunal has passed the award on perverse finding or without appreciating the evidence and material on record. It has also been recorded that no permissible ground is available to the appellant to seek quashment of the award under Section 34 of the Act, 1996 and accordingly, it has rejected the application on 25.11.2010. This order is being assailed by the appellant by filing the instant appeal.

9. Learned counsel for the State/appellant would submit that though in the present case, the Hon'ble Supreme Court has affirmed the order passed by this Court appointing the Arbitrator as per Clause 29 of the Arbitration clause in the NIT yet subsequently, Hon'ble the Supreme Court in case of Madhya Pradesh Rural Road Development Authority and another vs. L.G. Chaudhary Engineers

and Contractors, reported in 2018 (10) SCC 826 has held that the Arbitrator under Section 11 of the Act, 1996, cannot be appointed where the work contract as defined in Section 2(e) of the Adhinyam, 1983, is involved and pray for quashing of the award on this count alone.

10. On the other hand, learned counsel for the respondent would submit that the appointment of the Arbitrator has been assailed before the Hon'ble Supreme Court by the same parties and the Hon'ble Supreme Court has upheld the order, therefore, the contention raised by the learned counsel for the appellant that the award is non-est and without jurisdiction, is incorrect submission of fact. He would further submit that Hon'ble Supreme Court in case of Madhya Pradesh Rural Road Development Authority and another (supra), has held that in case no objection has been taken at the relevant time, then the award passed by the Arbitrator appointment as per Section 11 of the Act, 1996, cannot be set aside on this count alone. He would further submit that the Hon'ble Supreme Court in case of Neelima Shrivastava vs. State of Uttar Pradesh and others in Civil Appeal No. 4840 of 2021 arising out of SLP (C) No. 18198 of 2018, reported in 2021 SCC Online SC 610 has considered the issue that once the judgment attained finality inter se between the parties, then the State cannot put the same to challenge before any higher forum. He would further submit that in the present case since the issue has already been attained finality, as such the State's submission that the arbitration award is without jurisdiction deserves to be rejected and would pray for dismissal of the appeal. To substantiate his submission he has referred to the paras 27 and 30 of the judgment of Hon'ble Supreme Court in Neelima Shrivastava vs. State of Uttar Pradesh and others, reported in 2021 SCC Online SC 610 which read as under.

"27. This judgment attained finality inter-se between the parties as admittedly the State-respondent did not put the same to challenge before any higher forum. The aforesaid judgment which attained finality crystallized the right of the appellant for regularisation. When the same was refused by the Joint Director of Education, it was again challenged by filing Writ Petition No 8597 of 2010. A learned Single Judge vide order dated 15-5-2014 allowed the writ petition with the finding that in the earlier round of litigation, the High Court had held that she was entitled to hold the post and since the said judgment become final, and unchallenged, the Regularisation Rules 2001 were applicable and refusal to apply the said Rules was unlawful.

30. It becomes absolutely clear from the above clarification that earlier decisions running counter to the principles settled in the decision of Umadevi (3) will not be treated as precedents. It cannot mean that the judgment of a competent court delivered prior to the decision in Umadevi (3) and which has attained finality and is binding inter se between the parties need not be implemented. Mere over-ruling of the principles, on which the earlier judgment was passed, by a subsequent judgment of higher forum will not have the effect of uprooting the final adjudication between the parties and set it at naught. There is a distinction

between over ruling a principle and reversal of the judgment. The judgment in question itself has to be assailed and got rid of a manner known to or recognised by law. Mere over-ruling of the principles by a subsequent judgment will not dilute the binding effect of the decision on inter-parties”.

11. I have heard learned counsel for the parties and perused the record with utmost satisfaction.

12. On rival submission made by the parties, this Court has to examine whether the arbitration proceeding before the Arbitrator is without jurisdiction in view of Madhya Pradesh Madhyastham Adhnikaran Adhiniyam, 1993.

13. For appreciation the issue raised in this appeal, it is expedient for this court to go through the relevant provisions of the Act, 1983 The Adhiniyam, 1983 has been enacted by the State Legislature with object to establish of a Tribunal to arbitrate in disputes to which the State Government or public undertaking wholly or substantially owned or controlled by the State Government, is a party and for matters incidental thereto or connected therewith.

14. Relevant Sections, 2 (a), 2(h) and 2 (I), 3, 7, 7-B and 20 of the Adhiniyam, 1993 are extracted as under:-

“2(a) “Arbitration Act” means the Arbitration Act, 1940 (No.10 of 1940).

2(h) “Tribunal” means an Arbitral Tribunal constituted under Section 3 and includes a Bench thereof constituted under Section 9.

Section 2(i) “works-contract” means an agreement in writing or a letter of intent or work order issued 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, transformer or such other works of the State Government or Public Undertakings or of the Corporations of the State 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 by Public Undertakings or Corporation or by any official of the State Government for and on behalf of such Corporation or Public Undertakings and includes an agreement for supply of goods or material and all other matters relating to the execution of any of the said works and also includes the services so hired for

carrying out the aforesaid works and shall also include all concession agreement, so entered into by the State Government or public undertakings or Corporation, wherein a State support is involved or not.”

“3. Constitution of Tribunal”- The State Government shall by notification constitute an Arbitration Tribunal for resolving all such disputes or differences pertaining to works contract or arising out of or connected with execution, discharge or satisfaction of, any such works contract.

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".

7-B. Limitation.— 3[(1) The Tribunal shall not admit a reference petition unless—

(a) the dispute is first referred for the decision of the final authority under the terms of the works contract; and

(b) the petition to the Tribunal is made within one year from the date of communication of the decision of the final authority :

Provided that if the final authority fails to decide the disputes within a period of six months from the date of reference to it, the petition to the Tribunal shall be made within one year of the expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where no proceeding has been commenced at all before any Court preceding the date of commencement of this Act or after such commencement but before the commencement of the Madhya Pradesh Madhyastham Adhikaran (Sanshodhan) Adhiniyam, 1990, a reference petition shall be entertained within one year of the date of commencement of Madhya Pradesh Madhyastham Adhikaran (Sanshodhan) Adhiniyam, 1990 irrespective of the fact whether a decision has or has not been made by the final authority under the agreement.

[(2-A) Notwithstanding anything contained in sub-section (1), the Tribunal shall not admit a reference petition unless it is made within three years from the date on which the works contract is terminated, foreclosed, abandoned or comes to an end in any other manner or when a dispute arises during the pendency of the works contract:

Provided that if a reference petition is filed by the State Government, such period shall be thirty years.

CHHATTISGARH AMENDMENT

Amendment of Section 7-B- After sub section 2 of Section 7-B of the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 (No.29 of 1983)

(hereinafter referred to as the Principal Act), the following sub-section shall be added namely:-

(2-A) Notwithstanding anything contained in subsection (1), the Tribunal shall not admit a reference petition unless it is made within three years from the date on which the works contract is terminated, foreclosed, abandoned or comes to an end in any other manner or when a dispute arises during the pendency of the works contract:

Provided that if a reference is filed by the State Government, such period shall be thirty years.)

20. Bar of jurisdiction of Civil Court. — (1) As from the date of the constitution of the Tribunal and notwithstanding anything contained in Arbitration Act, 1940 (No.10 of 1940) or any other law, for the time being in force, or in any agreement or usage to the contrary, no Civil Court shall have jurisdiction to entertain or decide any dispute of which cognizance can be taken by the Tribunal under this Act.

1[(1- A) Notwithstanding anything contained in sub-section (1), a Civil Court may entertain and decide any dispute of the nature specified in the said sub-section referred to it by a person in the capacity of indigent person.

Explanation.— For the purpose of this sub- section “indigent person” shall have the meaning assigned to it in the Code of Civil Procedure, 1908 (No.5 of 1908).

(2) Nothing in sub-section (1) shall apply to any arbitration proceeding either pending before any arbitrator or umpire or before any Court or authority under the provisions of Arbitration Act, or any other law relating to arbitration, and such proceedings may be continued, heard and decided in accordance with agreement or usage or provisions of Arbitration Act or any other law relating to arbitration in all their stages, as it this Act had not come into force”.

15. The State Government in exercise of power has constituted the Tribunal on 18-3-2005 with effect from 1-3-2005. The issue whether the Arbitration Tribunal or Madhya Pradesh Madhyastham Adhikaran has jurisdiction or the dispute can be resolved through Arbitration and Conciliation Act, 1996 is the subject to challenge before the Hon’ble Supreme Court in catena of cases, therefore, the Hon’ble Division Bench of Supreme Court has placed the matter to be placed before the larger Bench of the Hon’ble Supreme Court wherein the Hon’ble Supreme Court has considered this issue and over-ruled almost all the judgments which run contrary to this judgment. Hon’ble Supreme Court in case of M.P. Rural Road Development Authority (supra) has considered the issue and held in paragraphs 10 to 17 which read as under.

“10. Proceedings under the M.P Madhyastham Adhikaran Adhiniyam, 1983 (the State Act) were pending before the M.P. Arbitration Tribunal at Bhopal. The respondent raised an objection that in view of VA Tech Escher Wyass Flovel Lid. v. M.P SEB³, the Arbitration and Conciliation Act, 1996 will apply and the State

Act will not apply This objection was rejected. The respondent preferred a writ petition. The High Court has upheld the objection and quashed the proceedings under the State Act.

11. The learned counsel for the State has drawn our attention to Section 2(4) of the Central Act, which is as follows:

2. (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 insofar as the provisions of this Part are inconsistent with that other enactment or with any rules made thereunder."

12. It was pointed out that the above provision was in pari materia with d Section 46 of the Arbitration Act, 1940 which was interpreted by this Court in Dhanrajamal Gobindram v Shamji Kalidas & Co. This Court held: (AIR p. 1293, para "24....Section 46 makes the provisions of any other enactment or any rules made thereunder to prevail over the Arbitration Act, if inconsistent with the latter In view of these several provisions, it is clear that the Arbitration Act applies to all arbitrations and Chapter II makes it applicable also to arbitrations, in which the arbitration agreement is asked to be filed in Court under Section 20 subject, however, to this that the provisions of any other enactment or rules made thereunder, if inconsistent with the Arbitration Act, are to prevail."

13. The same view was taken in Punjab SEB v Guru Nanak Cold Storage & Ice Factory in para 12, which is as follows: (SCC pp. 416-17)

"12. Sections 6(1), 7, 12, 36 and 37 have expressly excluded from the operation of statutory arbitration. The rest of the provisions per force would get attracted. But the provisions of the appropriate statute or rules should necessarily be consistent with the provisions of the Arbitration Act. In that event, despite absence of an arbitration agreement, rest of the provisions of the Arbitration Act would apply (as if there was an arbitration agreement between the parties) and the dispute becomes arbitrable under the Arbitration Act, as if there was an arbitration agreement between the parties. If there is any inconsistency, then the provisions of the Arbitration Act do not get attracted. Section 33 expressly gives power to the civil court to decide the existence or validity of the arbitration agreement or the award as such. If this question was to arise, necessarily the civil court would be devoid of jurisdiction to decide the dispute on merits but only in the forum of arbitration. The existence and validity of the arbitration agreement should be decided by the civil court. The arbitrator cannot clothe himself with jurisdiction to conclusively decide it by himself as a jurisdictional issue. It is for the court to decide it. The dispute on merits should be resolved by the arbitrator and the legality of the award would be subject to decision by the court under Section 33."

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 and restore the proceedings before the Tribunal. The appeal is, accordingly, allowed in above terms.

15. Leave granted. In view of order 10 passed in Civil Appeal No. 2615 of 2018 (arising out of SLP (C) No. 16889 of 2012], the impugned order 11. 12. 13 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. However, since it is stated that proceedings are pending before the arbitrator in pursuance of the impugned order, the 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."

16. Hon'ble the Supreme Court has held that the application filed under Section 11 of the Act, 1996 is not maintainable and accordingly they have set aside the award on certain conditions and dismissed the application filed under Section 11 of the Act, 1996. Hon'ble the Supreme Court while considering the issue has held in para 17 that if any 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.

17. Record of the case would clearly show that the appellant from the very beginning at the time of appointment of arbitrator in MCC filed by the respondent, has taken specific plea, which was negative and this order was assailed before the Hon'ble Supreme Court and thereafter once the award was passed. The appellant while filing an application under Section 34 of the Act, 1996, has taken this objection which was rejected in view of the judgment earlier passed. The State in this appeal has also taken the same objection regarding jurisdiction of the arbitrator. Therefore, it is quite vivid that the objection was taken from the very beginning even upto the Hon'ble Supreme Court also. Thus, the objections are very much on record and in the light of judgement rendered by the Hon'ble Supreme Court in Madhya Pradesh Rural Road Development Authority and another (supra), the impugned award is passed by the learned Sole Arbitrator, the order under Section 34 of the Act, 1996 deserves to be set aside. It is also law of precedent that the judgment of larger Bench is binding of this Court. As such submission made by learned counsel for the respondent that

since the Division Bench of the Hon'ble Supreme Court has already decided the issue, therefore, the subsequent judgment passed by the Hon'ble larger Bench of the Supreme Court has no consequence to decide the issue and the issue which has been concluded, cannot be reopened, is incorrect submission.

18. The binding effect of larger Bench's decision has come up for consideration before Hon'ble Constitutional Bench in case of Trimurthi Fragrances (P) Ltd., through its Director Shri Pradeep Kumar Agrawal vs. Government of N.C.T of Delhi through its Principal Secretary (Finance) and others, reported in 2022 SCC Online SC 1247 wherein Hon'ble Constitutional Bench has considered this issue and held in paras 11, 27 and 28 as under:-

"11. In Reliance Trading Company, Kerala vs. State of Kerala, this court took the view that cotton based tarpaulin was exempted from Sales Tax under the Kerala General Sales Tax Act, 1963, since it was exigible to Additional Excise Duty under the First Schedule of the ADE Act.

27. It may be mentioned that a Constitution Bench of this Court in a judgment reported as Central Board of Dawoodi Bohra Community v quoted from the earlier Constitution Bench judgment in Union of India v. Raghbir Singh (Dead) By Lrs. and held as under:

"10. Reference was also made to the doctrine of stare decisis. His Lordship observed by referring to Sher Singh v. State of Punjab ((1983) 2 SCC 344 1983 SCC (Cri) 461] that although the Court sits in divisions of two and three Judges for the sake of convenience but it would be inappropriate if a Division Bench of two Judges starts overruling the decisions of Division Benches of three To do so would be detrimental not only to the rule of discipline and the doctrine of binding precedents but it will also lead to inconsistency in decisions on points of law; consistency and certainty in the development of law and its contemporary status - both would be immediate casualty

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12. Having carefully considered the submissions made by the learned Senior Counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms:

(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength.

(2) A Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of

coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

(3)..

28. The conclusion (1) is that a decision delivered by a Bench of largest strength is binding on any subsequent Bench of lesser or coequal strength It is the strength of the Bench and not number of Judges who have taken a particular view which is said to be relevant. However, conclusion (2) makes it absolutely clear that a Bench of lesser quorum cannot disagree or dissent from the view of law taken by a Bench of large quorum. Quorum means the bench strength which was hearing the matter.”.

19. As such, the award passed by the learned Arbitrator on 21.03.2008 and order dated 25.11.2010 passed by the learned District Judge, Surguja in Civil Suit No. 8A/2008 deserve to be set aside.

20. The record of the case would demonstrate that the respondent has raised dispute in the year 2004 and has filed an application on 20.05.2005 before this Court for appointment of Arbitration, thereafter Arbitrator has been appointed who has passed the award on 21.03.2008 and challenge to the award has been rejected by the District Judge on 25.11.2010 and thereafter appeal was filed before this Court on 24.02.2011 and since then the matter was pending before this Court, therefore, the respondent is entitled to get benefit of Section 14 of the Limitation Act, 1963. Section 14 of the Limitation Act, 1963 reads as under:-

“Section 14- Exclusion of time of proceeding bona fide in court without jurisdiction. — (1)In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2)In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3)Notwithstanding anything contained in rule 2 of Order XXXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order where such permission is granted on the ground that the first suit

must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation.—For the purposes of this section,—

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.”

21. Since the respondent is prosecuting his remedy before the forum which subsequently has held to be without jurisdiction, as such, he is entitled to get protection of Section 14 of the Limitation Act, 1963 as held by Hon’ble the Supreme Court in case of Seshnath Singh and another vs. Baidyabati Sheoraphuli Co-operative Bank Ltd. and another, reported in (2021) 7 SCC 313 and the relevant paragraphs thereof are reproduced as under.

“68. Section 14 (2) of the Limitation Act provides that in computing the period of limitation for any application, the time during which the petitioner had been prosecuting, with due diligence, another civil proceeding, whether in a court of first instance, or of appeal or revision, against the same party, for the same relief, shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of like nature, is unable to entertain it. The conditions for exclusion are that the earlier proceedings should have been for the same relief, the proceedings should have been prosecuted diligently and in good faith and the proceedings should have been prosecuted in a forum which, from defect of jurisdiction or other cause of a like nature, was unable to entertain it.

69. In *State of Goa v. Western Builders*¹⁴, this Court held that Section 14 of the Limitation Act would apply to an application for setting aside of an arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996 by virtue of Section 43 of the said Act, which made the Limitation Act applicable to arbitrations as it applies to proceedings in Court. This Court found that in the absence of any provision in the Arbitration and Conciliation Act, 1996 excluding the applicability of Section 14, a party was legitimately entitled to exclusion of the time spent in bona fide prosecution of proceedings with due diligence in a wrong forum. Distinguishing the earlier judgment of this Court in *Union of India v. Popular Construction Co.*¹⁵, the Court held that exclusion of time under Section 14 of the Limitation Act in computation of limitation was different from condonation of delay under Section 5 of the said Act.

70. In *Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department and Ors.*¹⁶, a three-Judge Bench of this Court unanimously held

that in the absence of any provision in the Arbitration and Conciliation Act, 1996 which excluded the applicability of Section 14 of the Limitation Act, there was no reason why Section 14 of the Limitation Act should not apply to an application for setting aside an arbitral award. This Court held:

“19. A bare reading of sub-section (3) of Section 34 read with the proviso makes it abundantly clear that the application for setting aside the award on the grounds mentioned in sub-section (2) of Section 34 will have to be made within three months. The period can further be extended, on sufficient cause being shown, by another period of 30 days but not thereafter. It means that as far as application for setting aside the award is concerned, the period of limitation prescribed is three months which can be extended by another period of 30 days, on sufficient cause being shown to the satisfaction of the court.

20. Section 29(2) of the Limitation Act inter alia provides that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period of limitation prescribed by the Schedule, the provisions of Section 3 shall apply as if such period was the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 shall apply only insofar as, and to the extent, they are not expressly excluded by such special or local law. When any special statute prescribes certain period of limitation as well as provision for extension up to specified time-limit, on sufficient cause being shown, then the period of limitation prescribed under the special law shall prevail and to that extent the provisions of the Limitation Act shall stand excluded. As the intention of the legislature in enacting sub-section (3) of Section 34 of the Act is that the application for setting aside the award should be made within three months and the period can be further extended on sufficient cause being shown by another period of 30 days but not thereafter, this Court is of the opinion that the provisions of Section 5 of the Limitation Act would not be applicable because the applicability of Section 5 of the Limitation Act stands excluded because of the provisions of Section 29(2) of the Limitation Act. However, merely because it is held that Section 5 of the Limitation Act is not applicable to an application filed under Section 34 of the Act for setting aside an award, one need not conclude that provisions of Section 14 of the Limitation Act would also not be applicable to an application submitted under Section 34 of the Act of 1996.

21. Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court without jurisdiction. On analysis of the said section, it becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service:

- (1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;
- (2) The prior proceeding had been prosecuted with due diligence and in good

faith;

(3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;

(4) The earlier proceeding and the latter proceeding must relate to the same matter in issue and;

(5) Both the proceedings are in a court.

22. The policy of the section is to afford protection to a litigant against the bar of limitation when he institutes a proceeding which by reason of some technical defect cannot be decided on merits and is dismissed. While considering the provisions of Section 14 of the Limitation Act, proper approach will have to be adopted and the provisions will have to be interpreted so as to advance the cause of justice rather than abort the proceedings. It will be well to bear in mind that an element of mistake is inherent in the invocation of Section 14. In fact, the section is intended to provide relief against the bar of limitation in cases of mistaken remedy or selection of a wrong forum. On reading Section 14 of the Act it becomes clear that the legislature has enacted the said section to exempt a certain period covered by a bona fide litigious activity. Upon the words used in the section, it is not possible to sustain the interpretation that the principle underlying the said section, namely, that the bar of limitation should not affect a person honestly doing his best to get his case tried on merits but failing because the court is unable to give him such a trial, would not be applicable to an application filed under Section 34 of the Act of 1996. The principle is clearly applicable not only to a case in which a litigant brings his application in the court, that is, a court having no jurisdiction to entertain it but also where he brings the suit or the application in the wrong court in consequence of bona fide mistake or (sic of) law or defect of procedure. Having regard to the intention of the legislature this Court is of the firm opinion that the equity underlying Section 14 should be applied to its fullest extent and time taken diligently pursuing a remedy, in a wrong court, should be excluded."

71. In his separate concurring judgment Raveendran, J. said:-"52. Section 14 of the Limitation Act relates to exclusion of time of proceeding bona fide in court without jurisdiction.

.....

53. Sub-section (3) of Section 34 of the AC Act prescribes the period of limitation for filing an application for setting aside an award as three months from the date on which the applicant has received the arbitral award. The proviso thereto vests in the court discretion to extend the period of limitation by a further period not exceeding thirty days if the court is satisfied that the applicant was prevented by sufficient cause for not making the application within three months. The use of the words "but not thereafter" in the proviso makes it clear that even if a sufficient cause is made out for a longer extension, the extension cannot be

beyond thirty days. The purpose of proviso to Section 34(3) of the AC Act is similar to that of Section 5 of the Limitation Act which also relates to extension of the period of limitation prescribed for any application or appeal. It vests a discretion in a court to extend the prescribed period of limitation if the applicant satisfies the court that he had sufficient cause for not making the application within the prescribed period. Section 5 of the Limitation Act does not place any outer limit in regard to the period of extension, whereas the proviso to sub-section (3) of Section 34 of the AC Act places a limit on the period of extension of the period of limitation. Thus the proviso to Section 34(3) of the AC Act is also a provision relating to extension of period of limitation, but differs from Section 5 of the Limitation Act, in regard to period of extension, and has the effect of excluding Section 5 alone of the Limitation Act”.

72. As held by this Court in *Commissioner, M.P. Housing Board and Ors. v. Mohanlal & Co.*, reported in (2016) 14 SCC 199, Section 14 of the Limitation Act has to be interpreted liberally to advance the cause of justice. Section 14 would be applicable in cases of mistaken remedy or selection of a wrong forum.

73. There can be little doubt that Section 14 applies to an application under Section 7 of the IBC. At the cost of repetition, it is reiterated that the IBC does not exclude the operation of Section 14 of the IBC. The question is whether prior proceedings under the SARFAESI Act do not qualify for the exclusion of time under Section 14, inasmuch as they are not civil proceedings in a Court, as argued by Mr. Dave”.

22. In the light of the aforesaid legal position, it is quite vivid that the judgment rendered by the larger Bench of the Hon'ble Supreme Court in case of *Madhya Pradesh Rural Road Development Authority (supra)*, is binding wherein the Hon'ble Supreme Court has held that the *Madhya Pradesh Madhyastham Adhikaran* constituted under the *Adhiniyam, 1983* has only jurisdiction to decide the arbitration dispute relates to work contract where the State or its instrument are party. In view of the above legal and factual position, it is quite vivid that the award passed by the learned Arbitrator and affirmed by the learned District Judge under Section 34 of the Act, 1996 is bad-in-law and without jurisdiction which deserves to be set aside and it is accordingly set aside. It is made clear that this Court has not considered the merits of the contentions raised by the parties regarding award passed by the Sole Arbitrator and affirmed by the learned District Judge while deciding the application under Section 34 of the Act, 1996.

23. Considering the above factual matrix, it is directed that the respondent is entitled to claim the benefit of Section 14 of the Limitation Act and if files duly constituted reference petition before the *Chhattisgarh Madhyastham Adhikaran*, the same shall decide the case on its own merit without being influenced by any of the observations made by this court, strictly in accordance with law.

24. With the aforesaid observation and direction, the instant arbitration appeal is

allowed. No order as to costs.