2026:CGHC:6014

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ARBR No. 28 of 2025

M/s Tata Projects Ltd Having Its Registered Office At Corporate Centre, 3rd Floor, Building Block B, 34 Sant Tukaram Road, Carnac Bunder, Mumbai 400009

And Its Corporate Office At 14th - 15th Floor, Cignus, Plot No. 71A, Kailash Nagar, Mayur Nagar, Passpoli Powai, Mumbai 400087 Represented Through Its Power Of Attorney Holder Shri Rahul Jadwani

... Applicant

versus

1- Chhattisgarh Infotech Promotion Society Having Its Registered Office At SDC Building, 2nd Floor, Near Police Control Room, Civil Lines, Raipur, Chhattisgarh 492001 Represented Through Its Chief Executive Officer

2- State Of Chhattisgarh Through Secretary, Department Of Electronics And Information Technology, Mahanadi Bhawan, Mantralaya, Nava Raipur Atal Nagar, District - Raipur, Chhattisgarh

3- Union of India Through The Secretary, Department Of Telecommunications, Ministry of Communications, Sanchar Bhawan, 20 Ashoka Road, New Delhi – 110001

... Respondent(s)

For Petitioner(s)	:	Mr. Tushad Cooper, Senior Advocate assisted by Ms. Shrishti Kumar and Mr. Abhishek Vinod Deshmukh, Advocates.

For Respondent(s)	:	Mr. Abhishek Sinha, Senior Advocate assisted by Mr. Rishabh Garg, Advocate.
For Respondent No. 2	:	Mr. S.S.Baghel, Government Advocate.
For Respondent No. 3	:	Mr. Ramakant Mishra, Deputy Solicitor General alongwith Mr. Tushar Dhar Diwan and Mr. Rishabh Deo Singh, Advocates.
Date of Hearing	:	22.01.2026
Date of Judgment	:	03.02.2026

Hon'ble Mr. Ramesh Sinha, Chief Justice

C A V Order

1. Heard Mr. Tushad Cooper, Senior Advocate assisted by Ms. Shrishti Kumar and Mr. Abhishek Vinod Deshmukh, learned counsel for the Applicant. Also heard Mr. Abhishek Sinha, Senior Advocate assisted by Mr. Rishabh Garg, learned counsel for the Respondent No. 1, Mr. S.S.Baghel, learned Government Advocate for the Respondent No. 2 as well as Mr. Ramakant Mishra, learned Deputy Solicitor General alongwith Mr. Tushar Dhar Diwan and Mr. Rishabh Deo Singh, learned counsel for the Respondent No. 3.

2. By this application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (*for short, the Act of 1996*), the Applicant has prayed for the following relief(s):

> *"a) Appoint an independent and impartial person as the second arbitrator towards constitution of the arbitration tribunal under and in connection with the Master Services Agreement dated 18 July 2018;*
> *b) Pass any such other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."*

3. The facts, as projected by the Applicant are that the Applicant is a Company incorporated under the provisions of Companies Act, 1956. It

is one of India's leading Engineering, Procurement and Construction (EPC) companies with over 45 years of experience in executing large and complex urban and industrial infrastructure projects, and provides turnkey solutions for construction of roads, bridges, rail and metro systems, commercial buildings, airports, power plants, transmission and distribution systems, chemical process plants, water and waste management, and mining systems. The Respondent No. 1, Chhattisgarh Infotech Promotion Society (*for short, the CHiPS*), is a registered Society promoted by the Government of Chhattisgarh. Respondent No. 1 is the nodal agency for propelling Information Technology (IT) growth and implementation of IT plans in the State and acts as the State Designated Agency (*for short, the SDA*) for implementation of the Bharat-Net Project. The Respondent No. 2, State of Chhattisgarh is implementing the Bharat-Net Project through Respondent No. 1 and is the beneficiary of the Project including the works performed under the Master Services Agreement (*for short, the MSA*) and was directly monitoring the execution of the Project. The Respondent No. 3 is Union of India, Department of Telecommunications.

4. Bharat-Net Project is one of the flagship schemes of the Respondent No. 3 launched to provide broadband connectivity to 2.5 lakh Gram Panchayats in the country. Respondent No. 3 supervises the implementation of the Project in Chhattisgarh in co-ordination with Respondent No. 1 and 2. The majority of the funding of the Bharat-Net Project is provided by Respondent No. 3 through Universal Service Obligation Fund (*for short, the* ***USOF***) with the objective to provide affordable broadband connectivity throughout the country. The MSA was for the benefit of respondents No. 2 and 3 who had actively participated

in and monitored the progress of the Project. The Project is entirely funded by Respondent No.3 who also owns all the Project assets.

5. Mr. Tushad Cooper, learned Senior Advocate appearing for the Applicant would submit that the Bharat-Net Project is one of the biggest rural telecom projects in the world, implemented in a phased manner to provide broadband connectivity to approximately 2.5 lakh Gram Panchayats in the country. It is a project of national importance and part of the 'Digital India' initiative. In the State of Chhattisgarh, Phase-II of the Project was being implemented on a State-led model, in collaboration with Respondent No. 2. Respondent No. 1, being the State-designated agency, invited bids for design, supply, installation, integration, testing and commissioning of optical fiber cables (OFC) (underground) IP-MPLS network, radio network and State network operations center (S-NOC) including operations and maintenance for 8 years. The tender evaluation process involved active participation of representatives from Respondent No. 2 and Respondent No. 3 through various committees. Technical and financial evaluation was conducted with oversight from USOF and DOT officials. The selection of successful bidder was approved at multiple levels including state and central government authorities. On 18.04.2018, the Applicant submitted its bid for the Project in consortium with Tata Communications Transformation Services Limited and Dinesh Engineers Private Limited. The Applicant was the lead bidder and was authorized to execute the contract and represent the Consortium under and in relation to the contract. Upon evaluation of bids, the Applicant emerged as the successful bidder and on 18.07.2018, the MSA was executed between the Applicant (referred to as the Master System Integrator or MSI in the MSA) and Respondent No.1, for a total contract value of Rs. 3056,69,43,538/- (inclusive of GST) which included total Capital

Expenditure (CAPEX) of Rs.1975,99,99,180/- to be paid during the implementation phase and Operating Expenditure (OPEX) of Rs.1080,69,44,357/- to be paid during the O&M phase. In terms of the MSA, the Applicant was required to complete the implementation phase within 1 year and then operate and maintain the Project for 7 years. However, while implementing the Project, the Applicant encountered several delays and impediments for reasons not attributable to the Applicant and attributable to the Respondents. Consequently, the implementation phase was substantially delayed, and the Project Go-live finally came into effect from 11.09.2023 (on which date as well, about 4% of the works remained due to Respondent No. 1's failure to provide Right of Way). This led to significant additional costs being incurred by the Applicant. Further, to make the matters worse, the Respondents also failed to make timely payments to the Applicant for completion of the works. The Respondent No. 1 committed multiple material and fundamental breaches of the MSA including, but not limited to: (a) non-payment of contractual dues; (b) unilateral imposition of penalty; (c) encashment of performance bank guarantee; (d) arbitrary and unilateral cancellation of project go-live; (e) interim O&M work orders and failure to make payment; (f) non-issuance of the work order towards the O&M works; (g) abandonment of the MSA; and (h) failure to pay prolongation costs.

6. Mr. Cooper would submit that due to Respondent No. 1's continued defaults and non-cooperation, the Applicant was compelled to invoke the formal dispute resolution mechanism provided under the MSA to protect its legitimate contractual rights. In terms of clause 1.36 of the MSA, on 20.03.2025, the Applicant issued a notice of dispute setting out its claims and seeking amicable resolution of disputes but no response was issued

to the Applicant's notice and the disputes were not amicably settled despite all the efforts of the Applicant. Further, considering the persistent fundamental defaults committed by the Respondent and the repudiation of the MSA, the Applicant terminated the MSA by its notice dated 24.04.2025 and the MSA stood terminated with effect from 02.05.2025. Thereafter, on 08 May 2025, the Applicant issued the Notice of Arbitration, referring the disputes to arbitration and nominating an arbitrator, *viz.* Hon'ble Justice (Retd.) Dilip Babasaheb Bhosale, former Chief Justice of Allahabad High Court, and requesting the Respondents to nominate an Arbitrator towards constitution of the Tribunal, wherein various disputes were referred, as detailed in paragraph 18 of the petition. Subsequently, on 19.05.2025, Respondent No. 1 issued its response to the termination notices dated 24.04.2025 and 02.05.2025 issued by the Applicant. Respondent No. 1's response contained wholly baseless allegations and was a mere counter blast to the termination of the MSA by the Applicant. On 28.05.2025, Respondent No. 1 replied to the Notice of Arbitration refusing to appoint an arbitrator on frivolous grounds. On the same date, Respondent No. 3 also responded to the Notice of Arbitration raising a frivolous ground that it is not a party to the MSA and that the disputes do not pertain to it. The Respondent No. 2 did not reply to the Notice of Arbitration.

7. Mr. Cooper would further submit that prior to filing of the present petition, the Applicant had filed two writ petitions, being WPC 3351/2024 and WPC 2724/2025 before this Hon'ble Court and a petition under Section 9 of the Arbitration Act (being MJC No. 27 of 2025) before the learned Commercial Court, Raipur seeking interim relief relating to the performance bank guarantee issued under the MSA. The Notice of Arbitration was received by Respondent Nos. 1 to 2 on 09.05.2025 and

Respondent No. 3 on 13.05.2025. Despite expiry of 30 days from the receipt of the Notice of Arbitration, the Respondents have failed to appoint an Arbitrator towards constitution of the Arbitral Tribunal. Therefore, the Applicant is filing the present application seeking appointment of an independent and impartial person as the Second Arbitrator so that the tribunal may be constituted at the earliest. The conditions required to be fulfilled under Section 11 of the Arbitration Act, have been satisfied in the present case. As such, an arbitrator must be appointed in terms of Section 11 of the Arbitration Act.

8. On the other hand, Mr. Abhishek Sinha, learned Senior Advocate appearing for the Respondent No. 1 has raised preliminary objection that there is lack of authority of Tata Projects Limited to file Section 11 application on behalf of the consortium. Admittedly, the contract in question was entered into and executed by a Consortium comprising the Applicant, M/s Tata Communications Transformation Services Limited and M/s Dinesh Engineers Limited (DEL). The present Application under Section 11 of the Act has been filed unilaterally by Tata Projects Limited, allegedly on behalf of the Consortium, without any authorisation or consent from the co-members, M/s Tata Communications Transformation Services Limited and DEL. As such, the Applicant lacks the requisite *locus standi* to maintain the instant proceedings, rendering the Application non-maintainable in law. The Applicant lacks any express authorisation from the other members of the Consortium for contesting legal proceedings. It does not have the authority to initiate legal proceedings unilaterally without express authorisation or joinder of the other members of the Consortium. Such unilateral legal proceedings violate the principle of joint and several liability inherent in the Consortium Agreement. Accordingly, the application is defective, misconceived and

liable to be dismissed for the want of proper authorisation and maintainability. Furthermore, this objection was raised by the Respondent No. 1 in the previous round of litigation as well, more particularly in its reply in MJC No. 27 of 2025 before the Hon'ble Commercial Court, Naya Raipur, filed by the Applicant on the direction of this Hon'ble High Court seeking a stay on the encashment of Bank Guarantee which has been disposed of for becoming infructuous. Despite being aware of this objection, the Applicant has failed to cure this defect. It is thus clear that the other Consortium members have not authorised the Applicant to contest the Application on their behalf. Secondly, the dispute pertains to a Works Contract and falls under the Exclusive Jurisdiction of the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 (*for short, the Act of 1983*). The dispute arises out of a works contract, as defined under Section 2(i) of the Act of 1983. The Act of 1983 mandates that all disputes relating to works contracts involving the State Government or its public undertakings, valued at Rs. 50,000 or more, shall be exclusively adjudicated by the Arbitration Tribunal constituted under Section 3 of the Act of 1983. Section 7 of the Act of 1983 provides that party to a works contract, irrespective of an arbitration clause, shall refer the dispute to the Tribunal. Further, Section 20 of the 1983 Act bars jurisdiction of Civil Courts. Admittedly, the Respondent No. 1 - the signatory to the contract in question - is an undertaking of the State of Chhattisgarh. Further, the works under the contract in question relates to supplying and laying of PLB HDPE Duct (Permanent Lubricated High – Density Polyethylene Pipe), which is covered under the definition of works contract under the 1983 Act. The purpose for the contract in question is to create a digital highway by laying Optical Fibre Cable from the Block to the Gram Panchayat, in order to enable the

intended services, such as internet, telephone, e-services, value-added services, among others, to customers. As per the scope of works, the Applicant had to cover a total ring length of 32,466 km in 5964 Gram Panchayats. As per the BOQ, the Petitioner had to supply 32,466 Km of PLB HDPE Duct / Pipe and lay down the same under the contract in question. As such, the work predominantly relates to first supplying and then laying down pipes for further laying down of Optical Fibre Cable from Block to Gram Panchayat. Out of the total contract value of Rs.3056 Crores, Rs.1975 Crores was granted for CAPEX. The work of supplying and laying down the PLB HDPE Duct / Pipe itself amounts to approximately Rs.1410 Crores as per the rates quoted by the Petitioner in its bid, which is approximately 75% of the CAPEX value. Therefore, it is clear that the contract in question is a works contract. Consequently, the present application for the appointment of a Second Arbitrator under Section 11(6) of the Act is not maintainable, as the subject matter of the dispute is statutorily reserved for adjudication by the Tribunal under the Act of 1983.

9. Mr. Sinha would submit that the parties consent or a prior participation in the proceedings under the Act of 1996 or the existence of an arbitration clause in the contract referring to the Act of 1996is immaterial for the reason that statutory mandate overrides contractual agreements. The Act of 1983 is a special statute designed to govern disputes arising from works contracts involving the State Government. The Supreme Court in ***M.P. Rural Road Development Authority & Anr. v. M/s L.G. Chaudhary Engineers and Contractors*** (2018) 10 SCC 826 held that disputes arising from works contracts must be referred to the Tribunal under the Act of 1983, and the Act of 1996 is excluded in such cases. The Court emphasized that the statutory mandate of the Act of 1983

cannot be circumvented by contractual stipulations or conduct of the parties. Further, there is no waiver by conduct or agreement. The respondent's participation in prior proceedings or agreement to an arbitration clause under the Act of 1996 does not amount to a waiver of the statutory jurisdiction of the Act of 1983 Act. In ***Lion Engineering Consultants v. State of M.P. [(2018) 16 SCC 758],*** the Apex Court clarified that objections to the jurisdiction of an Arbitral Tribunal under the Act of 1996, on the ground that the dispute falls under the Act of 1983, can be raised even under Section 34 of the Act of 1996, without formal amendment, and are not barred by prior participation or failure to raise objections under Section 16(2) of the Act of 1996. The Hon'ble Court held that the statutory bar under the Act of 1983 Act pertains to the subject matter being incapable of arbitration under Section 34(2)(b)(i) of the 1996 Act, and such objections cannot be waived. Any proceeding or Award passed under the Act of 1996 in a subject matter reserved under the Act of 1983 Act is a nullity.

10. Mr. Sinha would submit that the contract in question comes under the definition of "works contract". Even though the phrase "all types of pipe supply and pipeline laying work" was expressly inserted by way of amendment in 2019, the said insertion is merely clarificatory in nature, and the scope of the pre-amendment definition was already broad enough to encompass such works. The definition of "works contract" is wide enough. It is necessary to first go through the pre-amendment definition of works contract under the Act of 1983 Act. The same is given below:

> *"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 any 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 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".*

11. Mr. Sinha would submit that a bare perusal of the pre-amendment definition of "works contract" under Section 2(i) of the Act of 1983 clearly reveals that the expression is couched in broad and inclusive language, indicative of the Legislature's intent to confer it with wide amplitude. The definition encompasses *"any work relating to construction, repair or maintenance of any building"* as well as *"such other works of the State Government which may, by notification, be specified at any of its stages"*. The repeated use of the word *"any"*—both in reference to the nature of the work and the type of infrastructure—manifests that the scope of the definition is not confined solely to the enumerated items, but extends to other similar works which contain the essential characteristics of a works contract, irrespective of whether the specific nature of the work is expressly mentioned. The term *"any"*, as explained in *Black's Law Dictionary*, carries a diversity of meanings and may imply *"all," "every," "some,"* or *"one"*, depending on the context. It is frequently synonymous with *"either," "each,"* or *"all."* When interpreted contextually in the present statutory scheme, it affirms the Legislature's intent to encompass a wide spectrum of construction-related activities under the umbrella of "works

contract." This interpretation finds authoritative support in the judgment of the Hon'ble Madhya Pradesh High Court in ***Kamini Malhotra v. State of M.P.*****, (2002) 3 MPJR 389**- a pertinent issue analogous to the present matter came up for consideration before the Hon'ble Madhya Pradesh High Court. The dispute arose from a contract entered into by the petitioner for the installation and construction of Water Treatment Plants. The Petitioner had instituted proceedings under Section 9 of the Arbitration and Conciliation Act, 1996 seeking interim protection. However, a preliminary objection was raised by the Respondent-State, challenging the maintainability of the petition on the ground that the contract in question qualified as a "works contract" as per Section 2(i) of the Act of 1983, and hence, by operation of Sections 7 and 20 of the said Act, the Civil Court's jurisdiction stood ousted. The Petitioner vehemently argued that the statutory definition of "works contract" was exhaustive and rigid, and since the Water Treatment Plant or similar works were not expressly enumerated within the statutory language, the agreement could not be brought within its scope. It was further contended that unless a specific item was listed, the contract should fall outside the jurisdiction of the Arbitration Tribunal constituted under the Adhiniyam. Conversely, the Respondent emphasized the wide amplitude of the statutory language, particularly the repeated use of the term "any", in reference to "any work relating to construction, repairs, or maintenance" of "any building, superstructure, tank, canal, reservoir," etc. It was argued that the use of the term "any", coupled with the inclusive nature of the definition, clearly manifested the legislative intent to bring within its sweep all such contracts that involve essential components of construction, even if not expressly mentioned in the statute. The Hon'ble High Court, after examining the contract and the relevant provisions of the Adhiniyam,

upheld the Respondent's contention and held that "*It is clear that the word 'any' in Section 2(i) of the Adhiniyam appears to have a very wide spectrum, because it relates to the execution of any work relating to construction, repairs or maintenance of 'any' building or superstructure, tank, canal, reservoir, etc. The repetition of the word 'any' in the said definition prior to the word 'work' as well as before the nature of construction, e.g., building, superstructure, etc., clearly indicates the intention of legislature to provide for its wide amplitude and application*." Applying this reasoning to the facts of the case, the Hon'ble Court further observed that "*The basic work constituting the Water Treatment Plant included construction of buildings as well as storage tanks and reservoirs. Ancillary equipment and gadgets for water purification and treatment may also be involved, but such ancillary items would not alter the fundamental nature of the work, which essentially remained the construction of civil structures like buildings and tanks.*" Accordingly, the Hon'ble High Court concluded that the contract was in the nature of a works contract, falling within the exclusive jurisdiction of the Arbitration Tribunal constituted under the Act of 1983, and that the jurisdiction of the Civil Court under Section 9 of the 1996 Act was barred. Similarly, in ***D.D.Sharma v. Madhya Pradesh Rural Roads Development Authority***, the Hon'ble High Court addressed the issue of whether consultancy services rendered for supervision of rural road construction would fall within the ambit of a "works contract." The Court held in the affirmative, reasoning that where the contract involves consultancy services intrinsically linked with the execution and development of public works infrastructure, the same falls within the inclusive limb of the statutory definition, namely *"all other matters relating to execution of the said works i.e., the roads."*

12. Mr. Sinha would further submit that the contract in question, though executed prior to the 2019 amendment to the Act of 1983, nonetheless falls squarely within the ambit of a "works contract" as defined under the unamended Act. The nature of the work involves civil construction activities for laying underground pipelines intended for subsequent laying of optical fibre cables, which inherently involves trenching, duct installation, back-filling, and related infrastructure works activities that are functionally and structurally similar to road construction and utility infrastructure works. This Hon'ble Court may take judicial notice that OFC pipeline work often runs along public roads and highways, involves public right-of-way excavation, and forms part of State-led infrastructure development. Such activities are essentially civil engineering and public utility infrastructure works that fall within the broader scope of "construction and maintenance" activities relating to telecommunication, electricity, or public service infrastructure. It is a well-established principle that the true character and substance of the contract, not its nomenclature or form must guide its classification under any statute. Accordingly, even in the absence of an express reference to "pipelines" in the unamended definition, the contract in question satisfies all the essential indicia of a works contract and was thus, at all relevant times, amenable to the jurisdiction of the Hon'ble Madhyastham Adhikaran. The pre-amendment definition of "works contract" itself grants the State Government the authority to include 'other works' within its broad and inclusive scope. The phrase *"…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…"* explicitly empowers the State Government to expand the definition by issuing a notification at any stage of an ongoing works

contract involving the government, a public undertaking, or corporation of the State. As discussed earlier, the expansive nature of the pre-amendment definition already encompasses the present contract. In line with this, during the ongoing contract, the government, by way of the 2019 notification, lawfully included pipe supply and pipeline laying work within the scope of the definition. Even though the definition was amended during the subsistence of the contract, such a change was well within the State Government's powers and squarely falls within the jurisdiction of Arbitration Tribunal, notwithstanding that it occurred after the parties had entered into the agreement.

13. In the alternative, Mr. Sinha would submit that the 2019 amendment is merely clarificatory in nature and is retrospective in its operation. It is a settled principle of statutory interpretation that clarificatory amendments are retrospective in nature and operate to explain the law as it always stood. Such amendments do not create new rights or obligations but are intended to clarify existing provisions where ambiguity may have existed. In this context, the 2019 amendment to the Act of 1983, whereby the term *"pipelines"* was expressly included within the definition of "works contract", is merely clarificatory in nature and does not amount to a substantive legislative change. The insertion only affirms what was already implicit within the wide and inclusive language of the original definition. This principle has been upheld in ***Viva Highways Ltd. v. Madhya Pradesh Road Development Corporation, (2018) 3 ESC 1675***, wherein a Division Bench of the Madhya Pradesh High Court considered whether the amended definition of "works contract" in the Madhya Pradesh Madhyastham Adhiniyam, 1983—introduced by way of a 2017 amendment—was clarificatory and therefore applicable to pending and future contracts. The Court affirmed that *"Whether a*

concession agreement or any agreement by whatever name is called constitutes a works contract must be determined by assessing whether the essential ingredients of a works contract are satisfied—namely, that the agreement must be in writing and must involve the execution of any work relating to construction, repair, or maintenance of the entities listed in the statute. The nature or label of the contract is immaterial, and any agreement that substantively involves such work would fall within the ambit of a works contract, regardless of additional elements that may not be specifically enumerated." The Court further observed that the words "construction," "repair," and "maintenance" are broad in scope and may be divided into multiple categories or subcategories, but such division does not alter the essential nature of the work. It was also held that the nomenclature of an agreement is irrelevant in determining its legal character, and that procedural provisions, including those that govern jurisdiction or forum, are retrospective in nature unless the statute expressly provides otherwise. Reliance was also placed on the dictum of Lord Denning in ***Blyth v. Blyth*, 1966 (1) All ER 52**4, wherein it was observed that *"The rule that an Act of Parliament is not to be given retrospective effect applies only to statutes which affect vested rights. It does not apply to statutes which merely alter the form of procedure or the admissibility of evidence, or the effect which the court gives to evidence."*

14. In view of the above legal position, the Madhya Pradesh High Court in ***Viva Highways*** (supra) categorically held that the amendment to the definition of works contract was clarificatory, and therefore applicable to pending and future contracts alike. Applying the aforesaid principles to the present case, Mr. Sinha would submit that the contract at hand—pertaining to the laying of underground pipelines for the facilitation of

optical fiber connectivity—is in essence a civil engineering and infrastructure contract. The execution of such work involves trenching, ducting, excavation, backfilling, and surface restoration across public lands and roadways, all of which are construction-related activities that fall squarely within the scope of “construction” under the pre-amendment definition of a “works contract.” The 2019 amendment merely made explicit what was already implicit in the original definition and was introduced to dispel any doubt as to the inclusion of such public utility works. It is, therefore, declaratory in nature. Accordingly, the contract in question is amenable to the jurisdiction of the Madhyastham Adhikaran, irrespective of the date of its execution.

15. Without conceding for the sake of argument that the amendment is not clarificatory**,** Mr. Sinha would submit that it is a well-established principle of law that the law in force on the date of trial or final adjudication of a suit or proceeding is the law to be applied, particularly in matters relating to procedural rights and jurisdiction. In ***Sudhir G. Angur & Ors. v. M. Sanjeev & Ors.*****, (2006) 1 SCC 141**, the Hon’ble Supreme Court categorically held that it is the law prevailing on the date of trial which governs the rights and remedies available to the parties. The Court observed that procedural provisions must be construed as retrospective in nature, unless the statute expressly provides otherwise. Further reliance is placed on the judgment of the Hon’ble Bombay High Court in ***Bhagwan Moti Ram Saraoji v. Onkarmal Ishar Dass***, AIR 1952 Bom 365, wherein it was held that no party has a vested right in the continuation of a particular procedural mechanism or forum, and that it is a settled principle of interpretation that procedural laws are retrospective unless expressly stated to be prospective. The Court also held that the law in force at the time when the matter comes up for trial or final hearing

must be applied, and that the court is duty-bound to take judicial notice of changes in the law and administer justice in accordance with the law as it stands on the date of trial. In view of the said judicial pronouncements, without prejudice to above submissions, that even if the contract was executed prior to the 2019 amendment, the procedural change brought in by such amendment—particularly with regard to jurisdiction under the Madhyastham Adhikaran Adhiniyam—would apply to the present proceedings, as the matter is being adjudicated after the coming into force of the amendment.

16. Mr. Sinha would next submit that change in forum is procedural in nature and does not affect vested rights. Even if the amendment changed the forum, the forum change is procedural. It is a well-settled principle of law that a party has no vested right in a particular forum or procedural mechanism. The right to be prosecuted or defended lies only in accordance with the procedure prescribed by law for the time being in force. As stated in Maxwell on the Interpretation of Statutes *"No person has a vested right in any course of procedure. He has only the right to prosecution or defence in the manner prescribed for the time being by or for the court in which the case is pending, and if, by an Act of Parliament, the mode of prosecution is altered, he has no other right than to proceed according to the altered mode."* The principle that changes in the forum as a part of procedural law apply retrospectively has been upheld by the Hon'ble Supreme Court in ***SEBI v. Classic Credit Ltd.*, (2018) 13 SCC 1**. Further, this position has been analysed and upheld in the case by the Supreme Court in the case of ***Neena Aneja v. Jai Prakash Associates Ltd.,* (2022) 2 SCC 161**.

17. In the present case, no proceedings had been initiated or any remedy availed of prior to the 2019 amendment to the Act of 1983. The dispute arose and the remedy was sought only after the amendment came into force. As such, the parties had no crystallised or vested right in a particular forum, and the change introduced by the amendment is purely procedural in nature, governing the forum of adjudication. It is therefore submitted that the amendment merely substitutes the forum before which disputes arising from “works contracts” are to be resolved, without affecting any substantive or constitutional rights of the petitioner. The same shall apply retrospectively in accordance with the established principles of procedural law.

18. The applicability of the Act is determined by the date on which the dispute arose, not the date of the contract execution. A bare reading of Section 7-B(2-a) of the Act of 1983 clearly demonstrates that a reference petition under the Act is required to be filed within three years from the date on which the contract is terminated, foreclosed, abandoned, or otherwise comes to an end, or from the date on which the dispute arises during the subsistence of the contract. The legislative scheme thus makes it evident that the determinative point for the application of the Act is the occurrence of the dispute, and not the date of execution of the contract**.** Had the legislature intended to limit the applicability of the amended provisions to contracts executed after the amendment, it would have expressly provided so. In the present case, the dispute arose only after the 2019 amendment came into effect. Consequently, at the time of filing of the reference petition, the amended definition of “works contract” which expressly includes “all types of pipe supply and pipeline laying work” stood incorporated in the Act. The jurisdiction of the Arbitration Tribunal must be assessed with reference to the law as it stood on the

date of the dispute and filing of the reference, and not on the date of contract execution. The reference petition is accordingly maintainable under the amended statute. Further, in the absence of a savings and repeal clause in the Amendment Act of 2019, the intent of the legislature can be inferred by referring to the savings and repeal clause under the Act of 1983. The Act of 1983 contains a narrowly tailored savings clause that exempts only those disputes which were *pending before any arbitrator, umpire, or authority under the provisions of the Arbitration Act or any other law relating to arbitration*. In other words, the Act of 1983 created an exemption solely for matters that were already pending before an arbitrator or other competent authority under the relevant arbitration law. In the present case, no proceedings were pending prior to the commencement of the 2019 Amendment. The dispute arose only after the amendment came into force. The absence of any such pending proceedings, coupled with the settled position of law that a change of forum—being procedural in nature—has retrospective application, supports the conclusion that the present dispute falls within the jurisdiction of Madhyastham. Further, the jurisdiction is conferred by law and cannot be conferred or waived merely by consent or agreement of the parties. In any event, and without prejudice to the above contentions, it is a settled principle of law that jurisdiction is conferred by statute and cannot be assumed by mere agreement, acquiescence, or consent of the parties. Even assuming, that the Applicant contests the retrospective applicability of the 2019 amendment to the Act of 1983, and contends that this Hon’ble Court has exclusive jurisdiction, such contention is wholly untenable in law. The jurisdiction of the Madhyastham is clearly reflected in the statement of objects and reasons of the Act of 1983. The intent behind the legislation is to establish a Tribunal for arbitrating

disputes in which the State Government or a public undertaking wholly or substantially owned by the State Government is a party, along with matters incidental or connected thereto. The purpose of the legislation is to provide a forum for resolving such disputes involving the State Government. Therefore, since the present dispute arises from an agreement involving a public undertaking, and keeping in view the intent of the legislation, the contention that the present dispute falls outside the jurisdiction of the Madhyastham Adhikarn is untenable. The jurisdiction of a Court is determined by the law applicable on the date the cause of action arises or when the suit or application is taken up for trial, and not merely by contractual stipulation**.** In this regard, reliance is placed on the judgment of the Apex Court in ***Harshad Chiman Lal Modi v. DLF Universal Ltd.****,* {*(2005) 7 SCC 791}* and a judgment of this High Court in ***State of Chhattisgarh vs. Ram Avatar Agrawal Road Construction Pvt. Ltd.,*** {ARBA No. 22 of 2011}, in which the decision of the Apex Court in ***Madhya Pradesh Rural Road Development Authority and another v. L.G. Chaudhary Engineers and Contractors***, {2018 (10) SCC 826}, was taken note of**.**

19. Mr. Sinha would submit that the parties' contractual agreement, if any, regarding jurisdiction is immaterial where statutory jurisdiction has been expressly conferred on a specific forum. The Arbitration Tribunal under the Act of 1983, alone has jurisdiction in respect of the present works contract. Moreover, it is a well-settled principle that a decree passed without jurisdiction is a nullity and is *non est* in the eyes of law. Whether the defect in jurisdiction is pecuniary, territorial, or subject-matter related, it vitiates the very authority of the court or forum, and such a defect cannot be waived or cured by the conduct or consent of the parties. This application under Section 11(6) for the appointment of an arbitrator is not

maintainable, as the dispute pertains to a “works contract” and falls exclusively under the jurisdiction of the Arbitration Tribunal constituted under the Act of 1983. He would further submit that the Applicant itself, in a proceedings before the learned Micro and Small Enterprises Facilitation Council, Raipur (*for short, the MSEFC*) titled M/s SVS & Co. vs Tata Projects Limited: Application No. CG / 15 / S / CGH / 00509 / 1117-18, in its reply dated 19.12.2023, on affidavit, has itself stated that the Bharat Net Project is a works contract. In view of the said admission by the Applicant itself, it is submitted that the instant application is not maintainable and is liable to be dismissed.

20. Mr. Sinha would further submit that the subject matter of the dispute is not arbitrable since the performance of the work under the agreement is vitiated by serious fraud and ought to be tried in an open Court. Further, the work is of national importance. The Applicant refused to participate in the joint inventory inspection, citing baseless and unfounded grounds of malice on the part of the Respondent No. 1. Despite the multiple directions given by the Respondent No. 1 to secure and protect the interest of the Applicant, the refusal of the Applicant to participate in the joint inventory inspection was a deliberate attempt to evade a confrontation on the fraud, forgery and cheating carried out by the Applicant during the execution of the works under the MSA. The Respondent No. 1, on 20.06.2025 had entered into a contract with Telecommunications Consultant India Ltd. (for short, TCIL) a PSU under the ownership of the Department of Telecommunications, for assessing and evaluating performance, efficiency and operational status of the network infrastructure established under the Bharat Net Phase II project. TCIL has given its initial report dated 04.08.2025 to the Respondent No. 1 a perusal of which would reveal that the Applicant led consortium has

failed to comply with the key requisits for execution of the works under the MSA, and have generated false and fabricated /forged reports in connivance with the then third party auditor, to extract monies from the Respondent No. 1 and as such, the Applicant has caused loss to the public exchequer. The Applicant led consortium generated fake ITPs in order to extract money without actually executing the works as per the terms of the MSA. Apart from the same, the Applicant led consortium engaged on Galaxy Synergy Private Ltd. to implement the project. The Applicant led consortium has committed serious forgery, fraud and cheating in the performance of works under the MSA and has thereby caused a huge loss to the public exchequer at large since not a single household as on date is connected with the internet. The investigation is at a nascent stage and the extent of fraud that the Applicant led consortium has committed is yet to be assessed and evaluated. In such a scenario, where the fraud is grave and is of a nature that impacts the public at large, the disputes between the parties cannot be adjudicated by way of Arbitration since (i) the confidentiality/closed nature of proceedings attached to Arbitration would not let these facts come out in the public, thereby, restricting public participation and further disclosure of crucial facts relating to the case, (ii) several sub-contractors engaged by the Applicant led Consortium, who are a part of the fraud that has been committed, would not be a party to the Arbitration proceedings, (iii) the Arbitrators cannot go beyond the four corners of the MSA, therefore, it would not be possible for the Respondent No. I to rely upon the extra-contractual acts of the Applicant led Consortium, such as, engaging sub-contractors for the purpose of liaising with the Respondent No 1; (iv) disputes involved are not rights in personam anymore and are now rights in rem, which are not arbitrable; (v) disputes now relate to rights and

liabilities which give rise to criminal offences involving public officials, (vi) disputes relate to questions arising in the public law domain, among others. As such, the present dispute is not arbitrable since, inter alia, the performance of the MSA is vitiated by serious fraud and fabrication of documents, which has a severe impact in the public domain.

21. Mr. Sinha would next submit that Applicant is not authorised to contest or initiate legal proceedings on behalf of the other consortium members. Further, a bare perusal of the Power of Attorney makes it evident that the Applicant does not have the authority to unilaterally file the present application. The Applicant lacks the requisite consent from its co-members to file the present Application. Therefore, the Applicant does not have any *locus* to file this application before this Hon'ble Court. The Applicant has failed to complete the project within the originally stipulated timeline of 1 year, and its implementation phase remains incomplete even today, despite several years have passed since the MSA was signed between the parties. It is vehemently denied that the Applicant has encountered delays and impediments for reasons attributable to the Respondent. It is further denied that the implementation phase was delayed on account of the Respondent's fault. The Applicant has not achieved the full project Go Live even in 2023 due to its incompetence and the Respondent No. 1 has no responsibility for these delays caused by the Applicant. The Applicant's default in the completion of the project timeline is self-evident from the inception of the project. The Respondent has made payments to the Applicant despite the continuous delays and non-fulfilment of project milestones without even accounting for the penalties. Therefore, the Respondent No. 1 has made payments over and above the amount that way payable to the Applicant. The Applicant never achieved full project go-live status within the stipulated timeline, as

a result, the Respondent No. 1 was entitled to cancel the Go live as per clause 1.1.14 and clause 1.49 of the MSA. Further, he would submit that they were compelled to withhold the work orders of O&M due to the non-completion of implementation phase by the Applicant. It is vehemently denied that the Respondent No. 1 has abandoned the MSA at any point in time. Lastly, it is denied that the Applicant incurred any prolongation costs, and the Respondent No. 1 failed to pay them. It is further submitted that it was the Applicant who failed to achieve the prescribed milestone timelines under the MSA. Instead of acknowledging its own shortcomings, the Applicant attempts to shift the blame onto the Respondent. Since the contract in question is a “works contract” the Applicant cannot invoke Arbitration under the Act of 1996 as disputes relating to “works contract” fall within the jurisdiction of the tribunal constituted under the Act of 1983.

22. There is no provision under the RFP or MSA that authorises Applicant to terminate the MSA. On the contrary, 1.32 of the MSA, expressly vests the right to terminate solely on the purchaser, i.e. the respondent. It is clear from the contents of the notice of termination dated 24.04.2025 that the Applicant has shown its unreadiness and unwillingness to execute the works under the contract. The contents of the notice of termination dated 24.04.2025 make it clear that the Applicant intended to breach its obligations after admittedly receiving Rs. 1509 Crores as payments. Hence, it is stated that the termination notice dated 24.04.2025 by the Applicant is misconceived and without any contractual backing. Further the 7 day period stipulated therein has no contractual backing. The notice was nothing but an attempt to deflect accountability and fabricate the narrative. Hence, it is

vehemently denied that the MSA stood terminated with effect from 02.05.2025. The letter dated 19.05.2025 of the Respondent No. 1 was a reply to the Applicant's termination notices dated 24.04.2025 and 02.05.2025. It is denied that the Respondent's reply was a counterblast to the termination notice and did not contain any valid grounds. The Applicant did not have any contractual backing or power for issuing a termination notice under the MSA. In fact, it was the Applicant who was deflecting their responsibility of non-performance onto the Respondent. The Applicant was attempting to threaten the Respondent by issuing such baseless termination notice to take unfair advantage of their shortcomings to fulfill the contractual obligations. The Respondent at the very outset of clarified that the present dispute is governed under the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 and hence the mechanism under the 1996 Act of nominating the arbitrators will not apply to the present dispute. Hence, the arbitration notice lacks the jurisdiction and is devoid of any statutory backing and legal precedents. Without prejudice to the aforementioned, the Respondent further clarified in its response that the disputes raised by the Applicant are a consequence of its non-performance of the contract and cannot be simply shifted towards the Respondent by twisting the events and fabricating the narrative. As such, the present application be dismissed.

23. Mr. S.S.Baghel, learned Government Advocate appearing for the State/Respondent No. 2 basically reiterated the submissions advanced by Mr. Sinha, learned Senior Advocate appearing for the Respondent No. 1 and prays for dismissal of this arbitration request application. He would submit that the applicant lacks express authorization from the other members of the consortium for contesting the legal proceedings and that

the dispute arose out of a works contract as defined under Section 2(i) of the Act of 1983. Since the present dispute arises from an agreement involving a public undertaking and keeping in view the intent of the legislation, the present application would not be maintainable.

24. Mr. Ramakant Mishra, learned Deputy Solicitor General, placing reliance on the written statement filed on behalf of the Respondent No. 3/Union of India, would submit that the MSA was executed between the State Implementing Agency (for short, the SIA) which is the CHiPS and the Project Implementing Agency (for short, the PIA) which is the Applicant herein and does not involve the Digital Bharat Nidhi (DBN) or Department of Telecommunications (DoT) as the parties to the contract. The DBN has already vide letter dated 28.05.2025 intimated the Applicant that DBN (erstwhile USOF) is not a party to the MSA and therefore, the dispute does not pertain to DBN and as such, no relief can be sought against DoT/DBN as they are neither the party to the MSA nor responsible for execution of obligations under the State-led Bharat Net implementation in Chhattisgarh.

25. Mr. Cooper, placing reliance on the rejoinder to the return filed by the Respondent No. 1, would submit that the objections raised by Respondent No. 1 are frivolous and vexatious and merely an attempt to avoid constitution of the arbitral tribunal for adjudication of the disputes through arbitration proceedings as agreed between the parties. As such, the objections raised must be rejected at the outset itself. It is settled law that for appointment of an arbitrator under section 11 of the Act, the only relevant issue to be decided is the '*prima facie*' existence of an arbitration clause. All other issues are to be decided by the arbitral tribunal. In this regard, Mr. Cooper places reliance on the decision of the

Apex Court in in ***Vidya Drolia v. Durga Trading Corporation***, (2021) 2 SCC 1, wherein it has been held that the scope of judicial review under Section 11 of the Arbitration Act is extremely limited and restricted and that based on the principle of severability and competence-competence, it is the arbitral tribunal that is the preferred first authority to determine and decide all questions of non-arbitrability. Particularly, when the facts are contested, the Hon'ble Court must leave the issues for the arbitrator to decide since a mini trial is not permissible under Section 11. In the present case, Respondent No. 1 has admitted the existence of the arbitration clause and had in fact prayed for adjudication of the disputes through arbitration (in its Reply dated 16.12.2024 to WPC No. 3351 of 2024). Therefore, the disputes must be referred to arbitration and all objections raised by Respondent No. 1, i.e. the nature of the contract, applicability of Act of 1983 etc., can be decided by the arbitral tribunal. The issues raised by Respondent No. 1 cannot be decided in proceedings under Section 11 of the Arbitration Act as any such decision would require a mini trial. Mr. Cooper further places reliance on the decision of the Apex Court ***Aslam Ismail Khan Deshmukh v. ASAP Fluids Pvt. Ltd.***, (2025) 1 SCC 502, ***SBI General Insurance Co. Ltd. v. Krish Spinning*****,** 2024 SCC OnLine SC 1754. He would further submit that the objection of lack of authority of the Applicant to file application under Section 11(6) of the Arbitration Act on behalf of the Consortium is wholly misconceived and contradicted by Respondent No. 1's own conduct. Throughout the execution of the MSA, Respondent No. 1 exclusively dealt only with the Applicant. Even in other legal proceedings (*viz.* the Writ Petitions filed before this Hon'ble Court, being WPC No. 3351 of 2024 and 2724 of 2025), the Respondent No. 1 did not raise any such objections and accepted the Applicant's authority to institute and

pursue the said proceedings. Therefore, it is wholly frivolous and baseless for Respondent No. 1 to now contend that the Applicant does not have the requisite authority to institute the present proceedings. Having consistently recognised the Applicant's authority throughout the contract execution and in multiple legal proceedings, the said objection is wholly frivolous and is being taken only to delay the adjudication of the present application.

26. So far as the contention of the respondents that the present is a works contract is denied and Mr. Cooper would submit that it does not fall under the jurisdiction of the Act of 1983 as the Union of India is also a party to the arbitration proceedings. The Act of 1983, being a State Act, is applicable only to contracts concerning the State/Public Undertaking. This is expressly set out in the Preamble and Sections 2 and7 of the Act of 1983. However, in the present case, Respondent No. 3, *viz.* the Union of India is also party to the arbitration proceedings initiated by the Applicant. The notice of arbitration was issued to and received by Respondent No. 3 and Respondent No. 3 is also party to the present proceedings. Therefore, the question of applying the Act of 1983 does not arise. It is settled law that only the arbitral tribunal can adjudicate (after reviewing the relevant documents and evidence) whether a non-signatory is a party to the arbitration agreement. In this regard, Mr. Cooper places reliance on the decision of the Apex Court in ***Cox & Kings Ltd. v. SAP India Pvt. Ltd***, 2023 INSC 1051. Further, the Bharat-Net Project was conceived by the Respondent No. 3 and it participated in the negotiations of the MSA. The Respondent No. 3 also actively participated in the performance of the MSA. Even during the actual implementation of the MSA, the Respondent No. 3 actively participated in the meetings, regular updates of the work progress,

participated in State level implementation Committee meetings, release of funds. The Respondent No. 3 has not only been aware of the present dispute but has been actively involved in various discussions relating to the dispute. The Applicant issued various communications to Respondent No. 3 to resolve the present dispute and make payment of the Applicant's contractual outstanding. For example, Respondent No. 3 was part of the review meeting dated 05 July 2024, for resolution of issues and '*Reconciliation of invoices raised by M/s TPL and payments made so far by CHiPS'*. The entire project has been financed solely by the Respondent No. 3. Further, the order dated 30.04.2025 passed by this Court in WPC No. 3351/2025, the Respondent No. 1 gave its no objection to the applicability of the provisions of the Act of 1996. The Respondent No. 1 is estopped from raising any objection relating to applicability of Act of 1983 and has waived of his rights. Mr. Cooper places reliance on the decision of the Apex Court in ***Mumbai International Airport P Ltd. v. Golden Chariot Airport*****,** (2010) 10 SCC 422 and ***Premlata v. Naseeb Bee*****,** (2022) 6 SCC 585, to contend that having agreed and elected to arbitration under the Act of 1996, the Respondent No. 1 is estopped from contending that the dispute between the parties must be resolved under the Act of 1983.

27. Mr. Cooper would further submit that the judgment of ***Lion Engineering*** (supra) was clarified by the Apex Court in ***Sweta Construction v. CSPGC*** (2024) 4 SCC 722; and ***Gayatri Projects Limited v. MPRDCL***: 2025 INSC 698 and in light of what has been laid down in these case, the Respondent No. 1's contention that the parties cannot waive the application of the Act of 1983 is incorrect and even assuming that the Act of 1983 is applicable, by its reply to the first Writ Petition, the Respondent No. 1 waived this objection in terms of Section 4 of the Arbitration Act. So

far as the contention of the respondents that the present is a works contract, the same is vehemently denied as the MSA was executed for execution of the Project in the State of Chhattisgarh, i.e., to set up an Optical Fibre Cable Network from the Block Head Quarters to Gram Panchayats to provide high speed broadband connectivity by connecting 85 Blocks, 5987 Gram Panchayats across the State. Therefore, the contract is not a construction or a works contract, but a telecom contract for providing high speed internet to Gram Panchayats. Firstly, the word "any" is used to state 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 Undertaking as the State Government may, by notification, specify in this behalf. Therefore, "any works" is only in relation to construction, repair, maintenance of the 15 items specified in the definition of the works contract. Any work not relating to construction, repair, maintenance of the 15 items obviously cannot be included in the definition of "works contract". Unless specifically enumerated in section 2 of the Act of 1983 or notified by the Government, a contract cannot be considered a "works contract" irrespective of the nature of the contract. Respondent No. 1's contention that 'similar' contracts are included in definition of works contract under the Act of 1983 is therefore incorrect. Firstly, the MSA is not a contract for pipe supply or pipeline laying work. It is a rural telecom project for providing broadband to rural areas by laying Optical Fibre Cables (OFC). In the process of laying OFC, the Applicant had to lay PLB HDPE Duct but that, by itself, would not change the basic nature of the contract to a pipeline laying contract.

28. According to Mr. Cooper, reliance placed by Mr. Sinha on the decision of the Madhya Pradesh High Court in ***Viva Highways*** (supra) in fact supports the case of the Applicant. In the said judgment, the dispute related to the 2017 Amendment to the definition of works contract under the Act of 1983. The 2017 Amendment stated that since in one judgment, courts had not considered concession agreements to be part of works contract definition was being substituted to include concession agreements. In the ***Viva Highways*** judgment, the court held that since the purpose of the amendment was only clarificatory (no new liability was fastened but for the same construction works, even concession agreements were also clarified to be part of the definition) and since the amendment 'substituted' the earlier definition, it was clarificatory in nature. It is further added here that the 2017 Amendment does not specify any date of applicability of said amendment, i.e., as to when the said amendment was brought with effect from, whereas in the present case, the section 1 (3) of the 2019 Amendment expressly mentions that it shall come into force from the date of publication in Official Gazette. In the present case, by the 2019 Amendment, 11 new categories of contracts were added to the existing 15 categories of contracts contained in the definition of works contracts under the Act of 1983 and there was no substitution but an insertion of these new categories of works. Therefore, the amendment was clearly substantive and therefore prospective. It is also apposite to state here that under Clause 1.36.5 of the MSA, the arbitral proceedings are to be governed by the substantive laws of India. The law at the time of execution of the contract was not the Act of 1983 since it came into force only on 05 July 2019, i.e., after the execution of the MSA on 18 July 2018. The Respondent No. 1's reliance ***Classic Credit Ltd****. (supra)* and ***Neena Aneja*** (supra) for the

proposition that forum change is purely procedural is wholly misplaced. The issue is whether the 2019 Amendment is prospective or retrospective. This does not relate to any change in forum, but it adds new categories of works in the definition of works contract as defined under the Act of 1983.

29. Mr. Cooper would further argue that the Respondent No. 1's contention that the Applicant had itself admitted that Bharat-Net Project is a works contract is fundamentally flawed and misleading. The Respondent No. 1 has made a wholly misconceived averment in para 9 of its reply claiming that in some proceedings before the MSME Council, the Applicant has made an admission that the Bharat Net Project is a works contract. This averment is based on a deliberate misrepresentation and constitutes an attempt to mislead this Hon'ble Court. In the MSME proceedings, *viz.* ***M/s SVS & Co. v. Tata Projects***, the Applicant's reference as a "works contract" was made specifically to establish that the MSMED Act does not apply to such contracts. The legal position under the MSMED Act is that it covers only "goods" and "services" contracts, not "works contracts". The Applicant relied on the constitutional definition under Article 366(29A)(b) to demonstrate that the MSA falls within the genre of works contracts that are specifically excluded from MSMED Act benefits. Multiple High Court judgments have consistently held that MSMED Act benefits are restricted to pure "supply" and "service" contracts and do not extend to composite "works contracts". This distinction is based on the constitutional framework and the specific statutory scheme of the MSMED Act. However, in the context of Act of 1983, Section 2(i) provides a narrow, specific definition of works contract limited to "*construction, repair or maintenance"* of enumerated items for establishing jurisdiction of the state statutory tribunals under the Act of

1983. These definitions serve completely different statutory purposes and cannot be conflated. The meaning of works contract under the Constitution is completely different from the restricted meaning of works contract under the Act of 1983. In the present case, the MSA is a composite contract for supply and services. However, it is not covered under the restricted items of work mentioned in the Act of 1983. Therefore, Respondent No. 1's reliance on the MSME proceedings is wholly misplaced. The Respondent No. 1's attempt to create false equivalence is legally impermissible. The same contract can be classified differently under different statutes serving different purposes. The constitutional definition for excluding MSMED benefits cannot be used to establish the Act of 1983 jurisdiction, as these are entirely different legal frameworks with different objectives and scope. In any event, even the scope of works awarded to the sub-contractor before the MSME was not the entire scope of works under the MSA. For this reason as well, the reliance on the MSME proceedings is misplaced. As such, the assertion of the Respondent No. 1 that the Applicant had itself admitted that the Project is a works contract is wholly misconceived and misleading and liable to be rejected.

30. With respect to allegations of fraud, Mr. Cooper would submit that they are totally misconceived, baseless and without any foundation. The Respondent No. 1 has made such irresponsible allegations merely in an attempt to wriggle out of the binding arbitration clause between the parties and the dispute is not rendered non-aribtrable on the allegation of fraud. Even assuming, without admitting any fraud, the arbitration agreement does not cease to exist on allegation of fraud and continues to bind the parties. The Hon'ble Supreme Court, in ***A. Ayyasamy v. A. Paramasivam***, (2016) 10 SCC 386, has held that arbitral tribunals are

fully competent to adjudicate allegations of fraud, forgery, and criminal conduct and that if an allegation of fraud can be adjudicated upon in the course of a trial before an ordinary civil court, there is no reason or justification to exclude such disputes from arbitration. Further, in ***Swiss Timing Limited v. Commonwealth Games 2010 Organizing Committee***, (2014) 6 SCC 677, the Hon'ble Supreme Court has, *inter-alia*, held that to shut out arbitration at the initial stage would destroy the very purpose for which parties had entered into arbitration. Furthermore, there is no inherent risk of prejudice to any party in permitting arbitration to proceed simultaneously with criminal proceedings since findings recorded by Arbitral Tribunal are not binding in criminal proceedings. In an eventuality where ultimately award is rendered by arbitral tribunal and criminal proceedings result in conviction rendering the underlying contract void as provided for in the contract, necessary plea can be taken on the basis of such conviction to resist execution / enforcement of award. Conversely, if matter is not referred to arbitration and criminal proceedings result in an acquittal and thus leaving little or no ground for claiming that underlying contract is void or voidable, it would result in undesirable delay in arbitration. Therefore, the Court ought to act with caution and circumspection whilst examining the plea that the contract is void/voidable. Further reliance is placed on the judgment of the Apex Court in ***Managing Director Bihar State Food Corporation v. Sanjay Kumar***, 2025 INSC 933.

31. Placing reliance on the rejoinder to the return filed by the Respondent No. 2 and 3, Mr. Cooper would deny the submissions advanced by the Respondent No. 2 and 3, respectively. He would submit that the Applicant has the authority to file application on behalf of the consortium.

He would submit that the objections filed by the respondents are nothing but an attempt to delay the adjudication of the dispute in any manner.

32. Lastly, Mr. Sinha, learned Senior Advocate appearing for the respondent No. 1 would submit that in case this Court appoints any retired High Court Judge as the Sole Aribtrator, he would have no objection. This submission has been objected to by Mr. Cooper, learned Senior Advocate appearing for the Applicant on the ground that the agreement provides for appointment of one Arbitrator from each side and thereafter the third Arbitrator with the consensus of the two Arbitrators and as such, this Court should appoint an Arbitrator for the respondents only and thereafter, both the Arbitrators may appoint the third Arbitrator.

33. I have heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto.

34. Clause 1.36 of the MSA contains the procedure for resolution of the disputes which is quoted hereinbelow:

> *"1.36 Dispute Resolution*
>
> *1.36.1 The Purchaser and the MSI shall make every effort to resolve amicably by direct informal negotiations, any disagreement or disputes, arising between them under or in connection with the MSA.*
>
> *1.36.2 If, after Thirty (30) days from the commencement of such direct informal negotiations, the Purchaser and the MSI have been unable to resolve amicably a MSA dispute, either party may require that the dispute be referred for resolution to the formal mechanism specified in Clause 1.37.3 and Clause 1.37.4.*
>
> *1.36.3 The Arbitration and Conciliation Act 1996, the rules hereunder and any statutory modification or reenactment thereof, shall apply to the arbitration proceedings.*

1.36.4 The Arbitration proceedings shall be held in Raipur, Chhattisgarh, India.

1.36.5 The Arbitration proceeding shall be governed by the substantive laws of India.

1.36.6 The proceedings of Arbitration shall be in English language

1.36.7 If any dispute, difference, question or disagreement arises between the parties hereto or their respective representatives or assignees, at any time in connection with construction, meaning, operation, effect, interpretation or out of the MSA or breach thereof the same shall be decided by an Arbitral Tribunal consisting of three Arbitrators. Each party shall appoint one Arbitrator, and the Arbitrators so appointed shall appoint the third Arbitrator who shall act as Presiding Arbitrator.

1.36.8 In case, a party fails to appoint an arbitrator within 30 days from the receipt of the request to do so by the other party or the two Arbitrators so appointed fail to agree on the appointment of third Arbitrator within 30 days from the date of their appointment upon request of a party, the Chief Justice of High Court or any person or institution designated by him (in case of International commercial Arbitration) shall appoint the Arbitrators/ Presiding Arbitrator.

1.36.9 If any of the Arbitrators so appointed dies, resigns, incapacitated or withdraws for any reason from the proceedings, it shall be lawful for the concerned party/ arbitrator to appoint another person in his place in the same manner as aforesaid. Such person shall proceed with the reference from the stage where his predecessor had left if both parties consent for the same; otherwise, he shall proceed de novo.

1.36.10 It is a term of the MSA that the party invoking arbitration shall specify all disputes to be referred to arbitration at the time of invocation of arbitration and not thereafter.

1.36.11 It is also a term of the MSA that neither party to the MSA shall be entitled for any interest on the amount of the award.

1.36.12 The Arbitral Tribunal shall give reasonable award and the same shall be final, conclusive and binding on the parties.

1.36.13 The fees of the arbitrator shall be borne by the parties nominating them and the fee of the Presiding Arbitrator, costs and other expenses incidental to the arbitration proceedings shall be borne equally by the parties.

1.36.14 Subject to as aforesaid the provisions of the Arbitration and Conciliation Act, 1996 and any statutory modifications or re-enactment in lieu thereof shall apply to the arbitration proceedings under this clause."

35. The first and foremost objection raised by the Respondent No. 1 is that the present being a 'works contract', the works contracts involving the State Government or its public undertakings, valued at Rs.50,000 or more, shall be exclusively adjudicated by the Arbitration Tribunal constituted under Section 3 of the Act of 1983. The second objection is with regard to the competence of the Applicant to file this present application as the Applicant is a consortium and the Applicant has not been authorised by other Consortium members to contest the Application on their behalf. The next contention is that there exists element of fraud, forgery and cheating carried out by the Applicant during the execution of the works under the MSA which cannot be decided in arbitration proceedings.

36. Admittedly, the MSA was executed between the Applicant and the Respondent No. 1 on 18.07.2018 and the said MSA contains the mechanism for resolution of the disputes at clause 1.36 which provides that each party shall appoint one Arbitrator, and the Arbitrators so appointed shall appoint the third Arbitrator who shall act as Presiding Arbitrator. Further, clause 13.6.8 provides that if a party fails to appoint an Arbitrator within 30 days from the receipt of the request to do so by the other party or the two Arbitrators so appointed fail to agree on the appointment of third Arbitrator within 30 days from the date of their

appointment upon request of a party, the Chief Justice of High Court or any person or institution designated by him (in case of International commercial Arbitration) shall appoint the Arbitrators/ Presiding Arbitrator.

37. Whether or not the dispute pertains to 'works contract' is also an issue which can be adjudicated in the arbitration proceedings. Since the respondents have raised an objection with regard to maintainability of this application on the ground that the Applicant has not obtained consent from other consortium members, that is also an issue which can be looked into by the Arbitrator. Even otherwise, the Respondent No. 1 has been dealing with the Applicant only from the very beginning and as such, this objection of the respondents is not of much significance.

38. In ***SBI General Insurance Co. Ltd.*** (supra), the Apex Court held as under:

> *"114. In view of the observations made by this Court in In Re: Interplay (supra), it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement, and nothing else. ……..*
>
> *xxx xxx xxx*
>
> *125. We are also of the view that ex-facie frivolity and dishonesty in litigation is an aspect which the arbitral tribunal is equally, if not more, capable to decide upon the appreciation of the evidence adduced by the parties. We say so because the arbitral tribunal has the benefit of going through all the relevant evidence and pleadings in much more detail than the referral court. If the referral court is able to see the frivolity in the litigation on the basis of bare minimum pleadings, then it would be incorrect to doubt that the arbitral tribunal would not be able to arrive at the same inference, most likely in the first few hearings itself, with the benefit of extensive pleadings and evidentiary material."*

39. In ***Aslam Ismail Khan Deshmukh*** (supra), the Apex Court held that at Section 11 stage, the Courts must refrain from conducting a mini trial or entering into disputed factual questions that fall within the arbitral domain. This approach upholds the intention of the parties at the time of entering into the agreement, to refer all disputes arising between themselves to arbitration. Similarly, in ***Vidya Drolia*** *(supra),* the Apex Court has held that the Arbitral Tribunal is the preferred first authority to determine and decide all questions of non-arbitrability, hence, at this stage, whether the dispute involves works contract or nor can also be decided by the Aribtrator so appointed by this Court.

40. Further, with respect to the allegation of the Respondent No. 1 that the Applicant has committed fraud and cheating, that aspect can also be looked into by the Arbitrator, in view of the observations made by the Apex Court in ***Deccan Paper Mills Co. Ltd. v. Regency Mahavir Properties*** {(2021) 4 SCC 786}. The relevant paragraph reads as under:

> *"6……If the subject matter of an agreement between parties falls within Section 17 of the Indian Contract Act, 1872, or involves fraud in the performance of the contract, as has been held in the aforesaid judgment, which would amount to deceit, being a civil wrong, the subject matter of such agreement would certainly be arbitrable. Further, we have also held that merely because a particular transaction may have criminal overtones as well, does not mean that its subject matter becomes non-arbitrable. …."*

41. Since the Agreement provides for appointment one Arbitrartor from each side and then appointment of third Arbitrator with the consent of both the Arbitrators, this Court is of the view that in the fitness of things, it would be more appropriate that an independent Sole Arbitrator, preferably a retired Judge of the Hon'ble Supreme Court is appointed to resolve the

dispute between the parties, where both the Applicant as well as the respondents would be at liberty to raise all the grounds as has been raised in this petition.

42. In view of above, Hon'ble **Mr. Justice S. Ravindra Bhat,** a retired Judge of the Hon'ble Supreme Court of India, is appointed to act as the Sole Arbitrator to resolve the dispute between the parties. As clause 1.36.4 of the Agreement provides that the Arbitration proceedings shall be held in Raipur, Chhattisgarh, the venue shall be at Raipur.

43. The Registry is directed to communicate this order to Hon'ble Mr. Justice S. Ravindra Bhat, in the proper address.

44. The remuneration of the Arbitrator shall be settled with the mutual consent of the parties.

45. The arbitration application, accordingly, stands **disposed of**. No order as to costs.

Sd/-

(Ramesh Sinha)

CHIEF JUSTICE

Amit

Head Note

The scope of enquiry at the stage of appointment of Arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement, and nothing else. The Courts must refrain from conducting a mini trial or entering into disputed factual questions that fall within the arbitral domain.