

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR  
BEFORE  
HON'BLE SHRI JUSTICE VIVEK RUSIA  
&  
HON'BLE SHRI JUSTICE AVANINDRA KUMAR SINGH  
ARBITRATION APPEAL No. 23 of 2020  
*M/S LION ENGINEERING CONSULTANTS PVT. LTD.*  
*Versus*  
*THE STATE OF MADHYA PRADESH AND OTHERS***

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**Appearance:**

*Shri Naman Nagrath, learned Senior Advocate alongwith Shri Jubin Prasad, Advocate for the appellent.*

*Shri Anshuman Singh Advocate with Shri Anuj Shrivastava, Advocate for the respondent No.3.*

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**Heard and reserved on : 11.09.2024**

**Pronounced on : 03.10.2024**

**ORDER**

***Per: Justice Vivek Rusia***

This is an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “Act, 1996”) challenging the order dated 20.12.2019 passed by Commercial Court (District Level Bhopal) in MJC Arbitration No.17/2011, whereby application filed under Section 34 of Act, 1996 by respondents has been allowed and the award dated 10.07.2010 has been set aside for want of jurisdiction.

**The facts of the case in short are as under:**

2. Respondent No.2 invited tenders for the execution of the consultancy's work, evaluation, and quality control/assurance of the construction of its buildings. The appellent which is a firm engaged in the construction work known as M/s Lion Engineering Consultants Pvt. Ltd. submitted its bid which was found to be the lowest. An agreement was entered between the appellent

and the respondents for providing consultancy services valued at Rs.19.67 crores. After the issuance of the work order, the appellant commenced the work. During the progress of the work, the first stage of the bill as per clause 10 of the agreement was released in favour of the appellant on 27.02.2007 thereafter, the second bill was also paid on 02.06.2007.

3. According to the appellant, the work up to Rs.232.09 was verified by the District Assistant Engineer and bills were submitted to the Manager Civil however, some dispute arose between the parties and further bills were withheld. The appellant was served with the show-cause notice dated 27.08.2007 by the respondent to explain why the contract was not terminated due to non-performance of the obligation under the contract. The appellant submitted the objection but the contract was terminated by the respondents. Thereafter, the appellant approached this Court for the appointment of an arbitrator by way of an application under Section 11(6) of the Arbitration & Conciliation Act 1996 which was registered as Arbitration Case No.15 of 2008. Vide order dated 04.09.2008, this Court appointed a sole Arbitrator for the resolution of the dispute between the parties under the Arbitration & Conciliation Act 1996.

4. Before the sole arbitrator, the appellant submitted its claim of Rs.832.56 crores. The respondent submitted a written statement along with the counterclaim. After recording the findings the learned Arbitrator passed an award dated 10.07.2010 in favour of the appellant by partly allowing certain claims submitted before the Arbitrator.

5. Being aggrieved by the award dated 10.07.2010, respondents approached the District Court Bhopal by way of an application under Section 34 of the Act, 1996 which was registered as MJC Arbitration No.17/2011. During the pendency of the aforesaid proceeding, the respondent filed an

application seeking amendment in the application under Section 34 of the Act, 1996 raising the ground of lack of jurisdiction of the learned Arbitrator for entertaining a dispute under the provisions of the Arbitration and Conciliation Act, 1996. According to the respondents, the appellant was awarded a Works Contract, therefore, a dispute ought to have been raised before the M.P. Arbitration Tribunal, Bhopal. The District Court vide order dated 14.02.2014 rejected the application, the respondents approached this Court by way of Writ Petition No.4559 of 2014, vide order dated 25.11.2014 the writ petition was allowed meaning thereby the amendment sought by the respondent was allowed to be incorporated in the application under Section 34 of Act, 1996.

6. Being aggrieved by the order dated 25.11.2014, the appellant approached the Apex Court by way of SLP (C) No.8089 of 2015. Initially, vide order dated 08.05.2015, the stay was granted in the SLP and after notice to the respondent the aforesaid SLP was disposed of vide order dated 22.03.2018 by observing that it will be open for the respondent to argue that the act stands excluded by the M.P. Madhyastham Adhikaran Adhiniyam, 1983 (hereinafter referred as “Adhiniyam, 1983”) could be raised even without formal pleading being purely a legal plea meaning thereby it was left open to the respondent to argue its objection that the Act of 1996 stands excluded by the Adhiniyam, 1983. In compliance with the order passed by the Apex Court, the District Judge permitted the respondent to raise such a plea. The learned Commercial Court by placing reliance on the order dated 24.10.2018 passed in Arbitration Appeal No.10/2013 (M/s JMC Project V/s M.P. Road Development Corporation) has set aside the award dated 10.07.2010 to be without jurisdiction vide order dated 20.12.2019 hence, this appeal before this Court.

7. Shri Naman Nagrath, learned senior counsel appearing for the appellant submits that the respondents did not raise any objection before this High

Court in a proceeding under Section 11(6) of the Arbitration & Conciliation Act 1996, hence this Court appointed a sole arbitrator for adjudication of the dispute under the provisions of the Arbitration & Conciliation Act 1996, which had attained finality as same was not challenged by the respondents. It is further submitted by the learned senior counsel that when such a plea of jurisdiction was raised by the respondents in the proceedings under Section 34 of the Arbitration & Conciliation Act 1996 such a plea/ objection was not liable to be raised by way of amendment which was time-barred, however the matter travelled upto the Apex Court in the name of *Lion Engineering Consultants Pvt. Ltd. V/s State of Madhya Pradesh, (2018) 16 SCC 758* in which the Apex Court has dismissed the SLP as rendered infructuous because the respondent did not press the application for amendment.

8. Shri Nagrath, learned senior counsel further argued that in the matter of *MPRRDA V/s L.G. Choudhary, (2018) 10 SCC 826* in para 17 the Apex Court has declined to express any opinion on the applicability of the State Act i.e. Adhinyam, 1983 where the award has already been made because no such objection to the jurisdiction of the arbitration was taken at the relevant stage hence, the award may not be annulled on that ground. It was made clear that this order will not debar the proceeding under Section 34 of the Arbitration & Conciliation Act 1996, therefore, in the present case, the District Judge ought to have entertained the application under Section 34 of the Arbitration & Conciliation Act 1996 on merit also instead of dismissing as not maintainable. Shri Nagrath, learned senior counsel further submitted that the learned Commercial Court has placed reliance on a judgment passed by the Division Bench of this Court in the case of *M/s JMC Projects Ltd. V/s MPRRDA in Arbitration Appeal No.10/2013*, [Civil Appeal No.204/2020] the aforesaid appeal was challenged before the Apex Court in which the Apex Court has held that the plea of jurisdiction if not raised as per Section 16(2) of

the Arbitration & Conciliation Act 1996 cannot be subsequently raised by the parties.

9. Finally, Shri Nagrath, learned senior counsel has also placed reliance on the latest judgment passed by the Apex Court in the matter of ***Shweta Construction V/s Chhattisgarh State Power Generation Company Ltd., (2024) 4 SCC 722***, in which the Apex Court by placing reliance on a judgment passed in case of ***L.G. Choudhary (supra)*** held that the judgment passed in the case of ***Lion Engineering Consultants (supra)*** is an order and not a judgment. If at all there were any right of the respondent to have claimed arbitration under the Adhinyam, 1983, that right was never exercised or waived. The respondent cannot be permitted to approbate or reprobate and that too in an arbitration proceeding and finally relegated the matter to the Commercial Court to decide the matter under Section 34 of the Arbitration & Conciliation Act 1996 on merit *dehors* the issue of jurisdiction and submits that the impugned order be set aside and the matter be remitted back to the Commercial Court for deciding the application under Section 34 of the Arbitration & Conciliation Act 1996 on its merit.

10. *Per contra*, Shri Anshuman Singh, learned counsel appearing for the respondent submits that the issue between the parties here before this Court has been settled in the case of Lion Engineering (supra) by the Apex Court where the respondent was permitted to raise the plea of jurisdiction, an application under Section 34 and in view of the law laid down by the Apex Court in the case of L.G. Choudhary (supra), the jurisdiction lies with the State Arbitration Tribunal and not before the Arbitrator. He has placed reliance on a judgment passed by the Apex Court in the case of ***Dr Subrabanyam Swami V/s State of Tamil Nadu, 2014 (5) SCC 75***, in which the Apex Court has held that the decision of the Court on the question of law which attained finality would operate as *res judicata* even if the same is

erroneous, therefore, the *Lion Engineering (supra)* judgment given by Three Judges Bench will prevail over all the judgments given by the Two Judges Bench of the High Court, the present matter is a works contract and for which the M.P. Arbitration Tribunal is having an exclusive jurisdiction to decide the issue hence, this Appeal be dismissed with a liberty to the appellant to approach the M.P. Arbitration Tribunal, Bhopal.

***We have heard learned counsel for the parties and perused the record.***

11. The facts of the case are not in dispute, as initially, the respondents did not raise any objection about the jurisdiction before the learned Arbitrator and thereafter the award was passed and the respondents filed an application under Section Application 34 of the Arbitration & Conciliation Act 1996 before the District Court. In the said application, a plea of jurisdiction was sought to be raised by way of the amendment which was rejected but this Court has allowed the said amendment application in a petition filed under art. 227 of the Constitution of India. Thereafter, the appellant approached the Apex Court by way of SLP, although the Apex Court has held that since the amendment application was not pressed, the appeal was rendered infructuous but set aside the impugned order and directed the District Court to take up the matter for consideration of the objection under Section 34 of the Central Act. It was made open to respondents to argue that its objection that the Arbitration & Conciliation Act 1996 stand excluded by Adhinyam, 1983 and could be raised even without formal pleading. Hence, the respondents were permitted to plea about the jurisdiction without formal amendment in the application under Section 34.

12. In view of the aforesaid, the learned District Judge (Commercial Court) has entertained the said objection and upheld in favour of the respondents, therefore, the *lis* between the parties have been settled after

disposal of the SLP in the matter of Lion Engineering (supra). Facts remain that it was argued in Lion Engineering (supra) by the State that the amendment sought is formal, and the legal plea arising out of the undisputed fact is not precluded by Section 34, even if such objection is not raised under Section 16 of the Arbitration & Conciliation Act 1996 and that submission was accepted by the Apex Court. There is no bar to take the plea of jurisdiction by way of an objection under Section 34, even if no such objection was raised under Section 16 of the Arbitration & Conciliation Act 1996 and the issue came to an end between the parties. In the case of L.G. Choudhary ( supra) decided by a three Judges Bench the Apex Court has held that in such cases if no objection to the jurisdiction of the arbitration was taken at the relevant stage, the award may not be annulled only on that ground.

13. The Lion Engineering ( supra ) says that the objection in the case where the award has been passed without raising any objection and it was further made clear in para 20 that this order will not debar proceedings under Section 34 of the Arbitration and Conciliation Act, 1996. This Lion Engineering came up for consideration recently in the matter of ***Shweta Construction (supra)***, in which the Apex Court has held that the issue of jurisdiction can be raised in objection under Section 34 in the law laid down in the case of ***M.P. Rural Road Development Authority Vs. L.G. Chaudhary Engineers and Contractors***. The Lion Engineering has also been taken into consideration, para 15, 16 and 17 are reproduced below;-

*'15. However, as pointed out by learned counsel for the respondent, there appears to be some lack of clarity on the issue raised in the present petition on account of the same three Judge Bench having opined in another order passed in Lion Engineering Consultants v. State of Madhya Pradesh<sup>3</sup> on 22.03.2018 i.e., about three weeks after that. The issue however, raised was whether there was any bar to the plea of jurisdiction being raised by way of an objection under Section 34 of the 1996 Act even if no objection was*

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

*16. If we appreciate the aforesaid observation and that too emerging from identical Bench in the two matters, we would have to construe as what is meant by this sentence extracted aforesaid. We take note of the fact that this is an order and not a judgment. The controversy before the court was something different as noticed by us aforesaid. In that context, this sentence has been inserted, but that does not take away the law laid down in the substantive judgment dealing with the issue at hand in respect of awards already made where petitions were pending before the competent Court under Section 34 of the said Act. This Court in the context of the 1996 Act and the Adhinyam, keeping in mind the cleavage of judicial view earlier and expounding on the law in that judgment has in succinct terms set out that the objections under Section 34 of the said Act, where no such plea of jurisdiction was raised in proceedings before the Arbitrator, should not be dealt with “alone” on the plea of jurisdiction i.e., it should be considered on merits. One can say that possibly this part of the order can also be read as one made under Article 142 of the Constitution of India to do substantive justice inter se the parties, more so, when arbitration as an alternative dispute resolution mechanism presupposes an expeditious disposal of commercial disputes and that objective would stand nullified if a contrary view was taken.*

*17. We are also of the view that in particular facts of the present case, the position is even more gross because when the appellant claimed arbitration, the respondent accepted invocation of arbitration, suggested a panel of Arbitrators, the appellant chose one of the Arbitrators out of the two suggested and the Arbitrator was so appointed as the sole Arbitrator. Thus, the arbitration proceedings commenced in pursuance to the acts of the respondent and it cannot be permitted to get away to say that the whole process was gone through because of some misconception or inappropriate legal advice. Arbitration by consent is always possible. The mode and manner of conduct of arbitration is possible and how those arbitration proceedings would be governed is also a matter of consent. If at all there were any rights of the respondent to have claimed arbitration under the Adhinyam, that right was never exercised or waived. The respondent cannot be permitted to approbate and reprobate and that too in arbitration proceedings and*



*that too in dispute or resolution through the method of arbitration defeating the very purpose of an alternative dispute resolution to arbitration as an expeditious remedy.’’*

14. Finally the Apex Court remitted back the matter to the Commercial Court for deciding the application under Section 34 also, therefore, in view of the above, the impugned order is set aside. In Loin Engineering, (supra) the apex court has not directed the District court to decide the application filed in Section 34 of the Arbitration and Conciliation Act, 1996 only on the issue of maintainability as a preliminary issue without touching the merit of the case. Hence the application filed u/s 34 of the Arbitration & Conciliation Act 1996, has wrongly been rejected only on the ground of the jurisdiction, without touching the merit of the case. The MJC 17/2011 is restored and the learned Commercial Court is directed to decide the application under Section 34 on merit as well as issue on jurisdiction.

**(VIVEK RUSIA)**  
**JUDGE**

Praveen

**(AVANINDRA KUMAR SINGH)**  
**JUDGE**