IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE ALPESH Y. KOGJE,

CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE DEEPAK KHOT

ON THE 9th OF OCTOBER, 2026

WRIT PETITION No. 38779 of 2026

CNR No.: MPHC010688252026

MADHYA PRADESH ROAD DEVELOPMENT CORPORATION LIMITED

Versus

VIVA HIGHWAYS LIMITED AND OTHERS

Appearance:

Shri Prashant Singh - Advocate General with Shri Nilesh Yadav - Additional Advocate General, Shri Kushagra Singh - Deputy Government Advocate, Shri Hitesh Gupta, Shri Sahil Sharma and Shri Aman Singh - Advocates for the petitioner.

Shri Paresh Joshi - Advocate, through video conferencing, for the respondent/Caveator.

Shri Sandeep Bajaj, Shri Ayush Gupta and Shri Mayank Biyani - Advocates for the respondents.

Heard on : 01.10.2026.

Pronounced on : 09.10.2026.

ORDER

Per. Justice Deepak Khot

The present petition under Article 226 of the Constitution India has been filed assailing the legality and validity of the order dated 14.8.2026 passed by the Commercial Court (District Judge Level) Bhopal in

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M.J.C.A.V.No.30/2026, whereby the application of the respondent no.1 under section 29A of the Arbitration and Conciliation Act, 1996 has been allowed and the mandate of the learned sole Arbitrator has been extended by a further period of six months from the date of that order. However, during the course of arguments, challenge was made to the order dated 14.8.2026 passed in M.J.C.A.V.No.56/2025 (Annexure P/1).

2. It is the case of the petitioner that M.P.Rajya Setu Nirman Nigam Limited, predecessor of the petitioner, a public undertaking of the State of Madhya Pradesh, executed a Concession Agreement dated 22.09.2001 (annexure P/2) with respondent No.1 for widening, strengthening and rehabilitation of a section of State Highway No. 27 together with its operation and maintenance on a Build, Operate and Transfer basis.

3. A dispute arose between the parties pursuant to which the respondent no.1 invoked the arbitration clause vide its letter dated 20.1.2017. In response thereto, the petitioner MPRDC vide its letter dated 9.2.2017 declined to accept the appointment of a private Arbitrator and called upon respondent no.1 to refer the dispute to the Arbitration Tribunal constituted under the M.P. Madhyastham Adhikaran Adhiniyam, 1983 (hereinafter referred to as 'the Act of 1983'). However, the respondent no.1 moved an application under section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act of 1996') before this Court for appointment of an Arbitrator.

4. The question whether a concession agreement of the present description is a "works contract" or not was referred to a Full Bench. The

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Full Bench vide its judgment dated 5.5.2017 parties being Viva Highways Limited Vs. M.P.R.D.C. AIR 2017 MP 103 rendered between the present parties, held that an agreement, by whatever name called, which falls within the definition of 'works contract' and in respect of which difference between the parties answers the definition of 'dispute', must be referred to the Tribunal constituted under section 3 of the Act of 1983 for adjudication. By order dated 18.4.2018 passed by the Hon'ble Apex Court in S.L.P. (C) No. 17070 of 2017 the decision rendered by the Full Bench was affirmed.

5. Despite the aforesaid judgment, this Court vide order dated 28.1.2022 (annexure P/6) allowed the application under section 11 of the Act of 1996 and appointed Arbitrator expressly confining its examination to the existence of an arbitration agreement and expressly granting liberty to MPRDC to raise all its legal contentions before the Arbitrator. The S.L.P. (C) No.11146/2022 filed by the petitioner MPRDC was disposed of vide order dated 21.7.2022 without interference and the liberty granted on 28.1.2022 remained intact. Availing the liberty, the MPRDC filed an application dated 7.10.2022 (annexure P/8) under section 16 of the Act of 1996 raising an objection that the claims raised in the Statement of Claim lie within the exclusive jurisdiction of the Tribunal constituted under the Act of 1983. The respondent no.1 filed its reply on 11.1.2023 (anneuxre P/9) to the application stating that the issue can be decided only after leading evidence at the time of passing of the award. Vide order dated 28.1.2023 (annexure P/10), the Sole Arbitrator dismissed the application with the remark that respondents may raise the points taken in their application in their statement

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of defence.

6. It it submitted that mandate of Sole Arbitrator expired on 26.3.2024. Upon the application of respondent no.1, the learned Commercial Court, Bhopal vide order dated 26.10.2024 passed in MJC AV No.42/2024 (annexure P/12) extended the mandate upto 26.2.2025. On 27.11.2024 (annexure P/13) the MPRDC filed an application for urgent hearing upon its objection under section 16 on the proposition that jurisdictional objection must be determined as a preliminary ground. By procedural Order dated 15.12.2024 (annexure P/15), the Sole Arbitrator dismissed the application upon the ground that no application under section 16 was then pending and that there is no power of review. The MPRDC preferred W.P.No.40364/2024 before this court wherein an interim stay was granted on 16.12.2024. However, vide order dated 21.1.2025 (annexure P/16) the interim stay was vacated with a direction to the learned Arbitral Tribunal to decide the preliminary issue as to jurisdiction first within a time frame. The Sole Arbitrator vide order dated 25.2.2025 (annexure P/17) decided issue no.1 against MPRDC and held that Sole Arbitrator has jurisdiction to settle the dispute and the statutory Tribunal under the Adhiniyam, 1983 has no jurisdiction to entertain the instant dispute in the light of provisions of the Act of 1983. The petitioner preferred an application before the Commercial Court under section 34 of the Act of 1996 assailing the order dated 25.2.2025 being MJC AV No.56/2025 (annexure P/19), in which the learned Commercial court has held that no challenge lies until the arbitral award is made. The respondent no.1 filed MJC AV

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No.30/2025 under section 29A of the Act on 28.2.2025 seeking a further extension. That application was dismissed on 14.7.2025. Assailing the said order, the respondent no.1 preferred M.C.C.No.2699/2025 before this court in which an interim order dated 2.12.2025 was passed directing substitution of learned Arbitrator. However, vide order dated 6.2.2026 (annexure P/20) passed in S.L.P.(C) No.38327/2025 the Hon'ble Apex court revived MJC AV No.30/2025 and directed the Commercial court to decided it expeditiously.

On 3.8.3036 (annexure P/21), the respondent no.1 filed a preliminary objection contending that MPRDC's application under section 34 of the Act is not maintainable. Vide impugned order dated 14.8.2026 (annexure P/1) the learned Commercial Court allowed the application under section 29A and extended the mandate of the Sole Arbitrator by a further period of six months.

7. It is contended by learned Advocate General that the present writ petition is maintainable as per the law laid down by Hon'ble Apex court in the case of ***Umri Pooph Pratappur (UPP) Tollways Pvt. Ltd. Vs. MPRDC, Civil Appeal No.9920/2025 dated 30.07.2025, 2025 LiveLaw (SC) 752*** upholding the order dated 9.9.2024 passed by this Court in W.P. No.14569/2022, as dispute involves public law element and exclusive statutory forum. Disputes arising out of Concession Agreement fall within exclusive jurisdiction of Tribunal under the Act of 1983 as per Section 2(1)(i) as amended, Section 7 mandating reference even with arbitration clause and Section 20 barring civil courts and Section 2(4) of Act of 1996 saving special law. Special law prevails over general law as held by the Hon'ble

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Apex court in the case of M.P. Rural Road Development Authority Vs. L.G. Chaudhary, (2018) 10 SCC 826 and K.M.C. Construction, (2018) 10 SCC 839 and by Full Bench of this court in Gouri Ganesh Shri Balaji Constructions Vs. Executive Engineer, PWD, 2018 (3) MPLJ 163. Contractual clause cannot override statute and is void ab initio. Issue concluded inter-parties by the Full Bench in Viva Highways Vs. MPRDC, AIR 2017 MP 103, affirmed by the Hon'ble Apex court and noticed in UPP Tollways.

8. It is contended that ground in order dated 25.02.2025 that claim is not of 'ascertained money' is closed by the judgment of Hon'ble Apex court in the case of ***Gangotri Enterprises Vs. MPRDC, (2018) 16 SCC 296*** holding ascertained includes amount ascertainable during proceedings, and by the judgment in the case of ***UPP Tollways (supra)*** paras 10.1, 11.2, 11.3 holding concession agreement is works contract regardless of financial support and quantified claim falls within dispute. Respondent itself quantified alternate relief as average toll collection into number of days. Argument of ascertainable vs. ascertained already rejected by Division Bench in W.P. No.14569/2022 which was affirmed by the Hon'ble Apex court in the case of ***UPP Tollways (supra).*** It is contended that the order dated 25.02.2025 is perverse as it misquotes para 75 of the Full Bench omitting "no" and decides on ascertained money test though on its own finding that test was not in definition when dispute arose in 2017. It is further contended that plea of jurisdiction under Section 16 is not lost as per the judgment of the Hon'ble Apex Court in the case of ***Lion Engineering Consultants Vs. State of M.P.,***

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Civil Appeal No.8984 and 8985 of 2017 want of inherent jurisdiction cannot be conferred by consent, petitioner consistent since 09.02.2017 and raised objection at first opportunity on 07.10.2022. Impugned order is internally contradictory, takes benefit of both propositions that challenge lies only with award and that it is kept open in Section 34, and treats Section 29A extension power as source of jurisdiction. Section 29A cannot cure want of inherent jurisdiction. Petitioner also contends that respondent has taken mutually destructive stands - pleading on 11.01.2023 and 12.12.2024 that Section 16 cannot be decided as preliminary issue and can be decided only with award, yet after direction dated 21.01.2025 arguing it as preliminary issue and obtaining favourable order, and in preliminary objection dated 03.08.2026 calling order dated 25.02.2025 as interim order but not interim award and also amenable to Section 34, and quantifying alternate money claim while asserting claim not ascertainable, and accepting Full Bench on works contract while repudiating it on dispute. Such conduct amounts to abuse of process and moving from forum to forum before this court in MCC 1074/2024, learned Commercial Court in MJC AV 42/2024 and MJC AV 30/2025, and this Court in MCC 2699/2025 and Hon'ble Apex Court in SLP 38327/2025. It is contended that appropriate relief is transfer of reference to Tribunal under the Act of 1983 as held in SLP(C) No.10676/2018 ARSS Damoh Hirapur Tolls and in W.P. Nos.7194/2018, 16194/2018 and 14569/2022 affirmed in UPP Tollways (supra), which preserves pleadings and evidence and saves public exchequer. To bolster his submissions, counsel for the petitioner has relied upon the judgments of the Hon'ble Apex

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Court in the case of ***Embassy Property Developments (P) Ltd. v. State of Karnataka, (2020) 13 SCC 308, M/s Tarini Prasad Mohanty Vs. M/s Sunflag Iron and Steel Compnay Ltd. S.L.P.No.27534/2025, M/s MCM Worldwide Private Limited Vs. M/s Construction Industry Development Council, S.L.P. (C) No.33075/2025, M.P. Rural Road Development Authority v. L.G. Chaudhary Engineers and Contractors, (2018) 10 SCC 826, Gayatri Project Ltd. v. M.P. Road Development Corpn. Ltd., (2025) 10 SCC 750 M/s ARSS Damoh Hirapur Tolls Pvt. Ltd. Vs. MPRDC, SLP No.10676/2018, Umri Pooph Pratappur Tollways Vs. M.P.R.D.C. Civil Appeal No.13415/2025, IFFCO Ltd. v. Bhadra Products, (2018) 2 SCC 534, Full Bench of this court in the case of Viva Highways Vs. M.P.R.D.C., AIR 2017 MP 103 (FB).***

9. Learned Counsel for respondents has raised a preliminary objection in respect of maintainability of the present petition either under Article 226 or 227 of the Constitution of India. It is submitted by learned counsel for the respondents that as the impugned order having been passed under Section 34 of the Act of 1996, declining interference in the order passed by the Arbitrator deciding the issue of jurisdiction finally, application under Section 34 of the Act of 1996 was not maintainable. It is further submitted that the question raised before the Arbitrator in regard to jurisdiction relates back to application under Section 16 of the Act of 1996. It is further submitted that whenever a question in regard to maintainability on the ground of jurisdiction is raised in an arbitration proceeding before a tribunal or an arbitrator, that is to be decided in terms of Section 16 of the Act of 1996. It is

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further submitted that though the issue has been decided by the Arbitrator, but in the light of provision of Section 16(5), the petitioner cannot raise such an issue under proceedings of Section 34 of the Act of 1996 because it provides that such a decision is subject to final award, and then only any application against the final award is maintainable. Therefore, such an application at this stage, when the proceedings before the arbitrator are still pending and only an issue has been decided, cannot be said to be an interim award which may be challenged under Section 34 of the Act of 1996.

10. It is further submitted that even for the sake of argument it is assumed that the order under challenge is passed under Section 34, then also the writ petition is not maintainable in the light of having the statutory alternative efficacious remedy under Section 37 of the Act of 1996. To bolster his submission, he has relied upon the judgments of the Hon'ble Apex court in the case of ***Manash Kamal Bezboruah v. Bokahola Tea Co. (P) Ltd., 2026 SCC OnLine SC 1330, Tarini Prasad Mohanty Vs. Sunflag Iron & Steel Co. Ltd., (2026) Comp Cas 209, MCM Worldwide (P) Ltd. v. Construction Industry Development Council, 2026 SCC OnLine SC 717, Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd., (2022) 1 SCC 75, Deep Industries Ltd. v. ONGC, (2020) 15 SCC 706, IFFCO Ltd. v. Bhadra Products, (2018) 2 SCC 534, SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618, Municipal Corpn. of Greater Mumbai v. R.V. Anderson Associates Ltd., 2026 SCC OnLine SC 354, State of M.P. v. National Construction Co., 2022 SCC OnLine MP 3237, Axis Power Movers Limited v. Srei International Finance Ltd., 2009 SCC OnLine Cal 2522, Radhey***

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Shyam v. Chhabi Nath, (2015) 5 SCC 423, Shalini Shyam Shetty v. Rajendra Shankar Patil, (2010) 8 SCC 329, Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675, Mohd. Ali v. V. Jaya, (2022) 10 SCC 477, Mohd. Ali v. V. Jaya, (2022) 10 SCC 477.

11. Heard learned counsel for the parties and perused the record.

12. As the respondents have taken a preliminary objection in regard to maintainability of the present petition under Article 226 of the Constitution of India, this Court is inclined to decide the said question at the very first instance.

13. From perusal of the impugned order, it is found that the learned Commercial Court, has found that the application under Section 34 is not maintainable by observing that under Section 16(5) and Section 16(6) of the Act of 1996, an order having been passed by the Tribunal or Arbitrator does not constitute an interim award within the meaning of Section 31(6) of the Act of 1996 and is not independently amenable to challenge under Section 34 of the Act of 1996. It is further observed that the petitioner/applicant has to wait till the conclusion of the arbitration proceedings and making of the final award; then only the objection in regard to jurisdiction may be raised in the application under Section 34 and held that the application being premature is not maintainable.

14. For testing the validity, propriety and legality of the impugned order, we safely refer to the provision of Section 34 of the Act of 1996, which reads as under :-

> ***34. Application for setting aside arbitral award.***
> *(1)Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and*

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sub-section (3).

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

(a)the party making the application [establishes on the basis of the record of the arbitral tribunal that:] [Substituted 'furnishes proof that' by Act No. 33 of 2019, dated 9.8.2019.]

(i)a party was under some incapacity; or

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

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

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

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

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

(b)the Court finds that

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

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

[Explanation 1. [Substituted by Act No. 3 of 2016 dated 31.12.2015.] - For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,-

(i)the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii)it is in contravention with the fundamental policy of Indian law; or

(iii)it is in conflict with the most basic notions of morality or justice.

Explanation 2. - For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

(2A)[An arbitral award arising out of arbitration's other than international commercial arbitration's, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award: Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.] [Inserted by Act No. 3 of 2016 dated 31.12.2015.]

(3)An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

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> *(4)On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.*
> *(5)[An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.*
> *(6)An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.] [Inserted by Act No. 3 of 2016 dated 31.12.2015.]*

15. From bare perusal of the provision of Section 34, it is amply clear that the application is provided for setting aside an arbitral award before the Civil/Commercial Court on the grounds provided under Section 34(2) of the Act of 1996.

16. The question emerges from the above preliminary objection and on bare reading of the statute ; whether an application submitted by the petitioner State under Section 34 of the Act of 1996 was maintainable and when such application has been rejected on the ground of non-maintainability, whether a writ petition under Article 226 or 227 of the Constitution of India is maintainable or the petitioner has to avail the remedy under Section 37 of the Act of 1996.

17. The learned court below has decided the application under Section 34 on the premise that as the decision on the preliminary issue of jurisdiction does not constitute an award within the meaning of Section 31, therefore, it could not be assailed under Section 34 of the Act of 1996.

18. Section 2(1)(c) provides a definition of an arbitral award : "'arbitral

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award' includes an interim award".

19. Section 31 of the Act of 1996 provides the form and contents of an arbitral award, which provides that an arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal. The arbitral award shall state the reasons upon which it is based unless it is otherwise agreed by the parties. The arbitral tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award.

20. The Hon Apex Court in the case of ***Gayatri Projects*** Supra has held as under :-

> ***66.*** *In view of the above exposition of law, what has been conveyed by this Court in L.G. Chaudhary (2) [M.P. Rural Road Development Authority v. L.G. Chaudhary Engineers & Contractors, (2018) 10 SCC 826 : (2019) 1 SCC (Civ) 97] in so many words is that:*
>
> ***66.1.*** *Where the arbitration proceedings are still underway, but no statement of defence has been filed, there it would be open for the parties to raise an objection of lack of jurisdiction in view of the applicability of the M.P. Act, 1983. The parties will also be at liberty to approach the High Court by way of a petition under Article 227 of the Constitution for seeking a transfer of the arbitration proceedings to the M.P. State Arbitration Tribunal under the M.P. Act, 1983.*
>
> ***66.2.*** *Where the arbitration proceedings are still underway, but statement of defence has already been filed i.e. the relevant stage for raising an issue of jurisdiction is already crossed, there it would not be open for the parties to raise an objection of lack of jurisdiction in view of the applicability of the M.P. Act, 1983. Furthermore, in such scenarios since the arbitration proceedings have already commenced and made substantial progress, it would not be appropriate to transfer such proceedings to the M.P. State*

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Arbitration Tribunal under the M.P. Act, 1983, and the better course of action would be to let the arbitration proceedings conclude.

66.3. *As per L.G. Chaudhary (2) [M.P. Rural Road Development Authority v. L.G. Chaudhary Engineers & Contractors, (2018) 10 SCC 826 : (2019) 1 SCC (Civ) 97] where the arbitration proceedings have concluded and an award has been passed, and if no objection to the jurisdiction in view of the applicability of the M.P. Act, 1983 was taken at the relevant stage then such an award cannot be annulled only on the ground of lack of jurisdiction.*

66.4. *Any award passed by an Arbitral Tribunal under the 1996 Act, where otherwise the M.P. Act, 1983 was applicable, such an award may be challenged or assailed in terms of Section 34 and thereafter Section 37 of the 1996 Act and other relevant provisions thereunder.*

66.5. *Any award passed by an Arbitral Tribunal under the 1996 Act, where otherwise the M.P. Act, 1983 was applicable, such an award must be executed in terms of the M.P. Act, 1983 and the relevant provisions thereunder.*

66.6. *Where the objection based on applicability of the M.P. Act, 1983 had been raised in the written statement or statement of defence, but the parties never took steps towards challenging the jurisdiction of the Arbitral Tribunal under Section 16 of the 1996 Act or where such plea of jurisdiction was turned down in view of the position of law that was prevailing prior to L.G. Chaudhary (2) [M.P. Rural Road Development Authority v. L.G. Chaudhary Engineers & Contractors, (2018) 10 SCC 826 : (2019) 1 SCC (Civ) 97] i.e. such challenge to the jurisdiction was decided prior to the date of pronouncement of L.G. Chaudhary (2) [M.P. Rural Road Development Authority v. L.G. Chaudhary Engineers & Contractors, (2018) 10 SCC 826 : (2019) 1 SCC (Civ) 97] , then even in such cases, as per the decision of this Court in Modern Builders [Modern Builders v. State of M.P., (2024) 10 SCC 637 : (2024) 4 SCC (Civ) 639] , the award should not be disturbed or set aside only on the ground of lack of jurisdiction.*

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

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67.1. It is an admitted fact that at the time of constitution of the Arbitral Tribunal, the respondent never objected to the invocation of arbitration under the 1996 Act and both the parties proceeded to nominate their respective co-arbitrators.

67.2. On the date of invocation of the 1996 Act, and commencement of arbitration proceedings, as well as of the date when the arbitration proceeding concluded and the award in question passed, the erstwhile decision of this Court in VA Tech [VA Tech Escher Wyass Flovel Ltd. v. M.P. SEB, (2011) 13 SCC 261 : (2012) 3 SCC (Civ) 468] held the field.

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

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

67.5. The ground of lack of jurisdiction was introduced by the respondents herein only after the decision of L.G. Chaudhary (2) [M.P. Rural Road Development Authority v. L.G. Chaudhary Engineers & Contractors, (2018) 10 SCC 826 : (2019) 1 SCC (Civ) 97] by way of an application for amending the grounds of its petition under Section 34 of the 1996 Act i.e. after the award had been passed.

21. From the guidelines laid down by the Hon. Apex Court, it is deciphered that an objection has been raised before the Arbitrator in compliance of the direction issued by this court in W.P.No.40364/2024 vide order dated 21-01-2025, wherein the Arbitrator was directed to decide the preliminary issue with regard to the jurisdiction first, by a reasoned and speaking order. The Arbitrator by order dated 15-12-2024 has fixed a date for hearing the issue no.1 on 16-12-2024 which reads as under :-

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Issue no. 1 : whether this arbitration tribunal has no jurisdiction to settle this dispute in light of prevailing M.P. Madhyastham Adhikaran Adhiniyam 1983.

22. The Arbitrator in compliance of the order dated 21-01-2025 passed in W.P.No.40364/2024 has decided the aforesaid issue of jurisdiction in negative by holding that the provisions of the Act of 1983 does not bar the Tribunal from hearing the arbitration matter. The petitioner had challenged the aforesaid order by filing an application under section 34 which came to be dismissed by impugned order dated 14-08-2026 on the ground that decision on a issue holding that the arbitration tribunal is having the jurisdiction to decide the dispute would be treated to be decision on the competence of the Arbitrator under section 16 of the Act of 1996. Section 16(2) of the Act of 1996 provides that the question of jurisdiction shall be raised not later than submission of the statement or defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator. Section 16(5) provides that arbitral tribunal shall decide a plea referred to in subsection (2) or subsection (3) and where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award. Section 16(6) provides that a party agreed by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34 of the Act of 1996.

23. As the petitioner has opted to challenge the said order making decision over a jurisdiction of the Arbitrator under section 34 before the commercial

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court, the commercial court on the foundation that such an application is not maintainable under section 16 has found the application is non-maintainable and rejected the same. Now, the question whether the order passed under section 34 is amenable to the writ jurisdiction under Article 226 of the Constitution of India, is to be tested on the basis of guiding principle laid down by the Hon'ble Apex Court.

24. It is admitted by the parties that the arbitration proceedings has reached to the stage of final hearing. Both the parties have already filed their statements of claim and defence and thereafter affidavits and evidence in support of their claim and counterclaim. The Arbitrator vide order dated 28.1.2023 had decided I.A.No.1 and 2 filed under section 16 of the Act of 1996 and rejected the same by giving liberty to the parties to raise the objection in regard to jurisdiction in their statement of defence which can be decided while passing the award. As the petitioner had filed a writ petition under Article 226/227 of the Constitution of India challenging the order passed on an application under section 16 of the Act of 1996 ,wherein the Hon'ble Court has directed the Arbitrator to decide the issue of jurisdiction as a preliminary issue before the final award hence the Arbitrator vide order dated 25.2.2025 has finally decided the issue of jurisdiction in negative holding that the Arbitrator is having the jurisdiction to proceed in the matter.

25. Having regard to the principle laid down by Hon'ble Apex court in the case of ***Gayatri Projects (supra)***, we are of the opinion that once the objection has been taken at the first instance, which was dismissed by the Arbitrator and which was again challenged in a writ petition under Article

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226/227 of the Constitution of India and the coordinate Bench of this Court having relegated the matter again to the Arbitrator to decide the issue of jurisdiction at first, then it was incumbent upon the Arbitrator to decide the issue of jurisdiction first. Accordingly, the Arbitrator vide order dated 25.2.2025 has first decided the issue of jurisdiction. If the Arbitrator has already decided the issue of jurisdiction finally then there cannot be any further adjudication of the issue in the final hearing before the Arbitrator.

The final hearing stage has been reached, as stated by the parties. The Arbitrator shall now dwell upon the other issues which are contesting or substantially involved on the basis of the pleadings of the parties. Meaning thereby, now the issue in regard to jurisdiction has become final and it cannot be tested again by the Arbitrator, otherwise it would amount to *resjudicata* and also would be against judicial precedent. Once the Arbitrator has taken a view on a issue and decided it in negative then subsequently it cannot be entertained or adjudicated. Therefore, the issue has become final.

26. Converse of it would be that if the jurisdiction had been decided in affirmative, the arbitration proceedings would have been thrown out on the ground of jurisdiction. Therefore, once the issue of jurisdiction has already been decided and the application under section 16 having been challenged in a prior stage in which the direction was issued to the Arbitrator to decide the issue of jurisdiction first, in all fairness, it will be treated to be an award for the purpose of deciding the jurisdiction.

27. In the case of ***MCM Worldwide (supra)***, the Hon'ble Apex court has held as under :-

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12. We may note that this Court specifically held that a decision of the arbitrator on limitation, taken up as a preliminary issue, would amount to an interim award which would be amenable to challenge under Section 34 of the Arbitration Act. This is logical as that issue, once it stands decided, would no longer figure for consideration before the arbitrator and would, therefore, not be dealt with again in the final award that would be passed by the arbitrator. Unless such decision is treated as an interim award, there would be no scope for the party aggrieved thereby to challenge the correctness thereof.

13. However, if an arbitrator deals with the very same issue of limitation on an application filed under Section 16 of the Arbitration Act, on the ground that the arbitrator lacks jurisdiction on that count, it would be traceable to Section 16(2) of the Arbitration Act and if the arbitrator rejects that plea, Sections 16(5) and Section 16(6) would apply. In that situation, there is no option for the party aggrieved by the decision of the arbitrator upon the application filed under Section 16 except to wait till the conclusion of the arbitral proceedings and then raise that issue by way of an application under Section 34 against the final award.

14. Though the final award, even in this situation, would not focus upon the issue of limitation as it already stood decided by the rejection of the application filed under Section 16(2) of the Arbitration Act, the scheme of Section 16 and, more particularly, Sections 16(5) and 16(6), would keep the issue alive and enable the party aggrieved to challenge the validity of the rejection order under Section 16 at the final stage, even after the passing of the final award.

15. However, the scheme of Sections 16(5) and 16(6) would not apply if the arbitrator deals with limitation as a preliminary issue and makes a decision thereon in favour of the claimant. That is the reason why this Court observed that, in such a situation, the drill of Sections 16(5) and 16(6) would not have to be followed. This Court went on to observe that even such interim awards should be made amenable to challenge under Section 34 of the Arbitration Act after the passing of the final award, instead of going in for 'piecemeal' challenges.

16. The exclusion of an order passed by an arbitrator under Section 16(2), rejecting the plea of lack of jurisdiction is,

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> *therefore, manifest from the aforestated observations of this Court, but this decision has now been misunderstood to imply that, even the rejection of a plea under Section 16(2) of the Arbitration Act must be treated as an interim award and the same can be subjected to challenge under Section 34 of the Arbitration Act. This understanding on the part of the learned District Judge, which seems to have found favour with the Division Bench of the Delhi High Court, is erroneous and unsustainable. Accepting such a construction would do violence to the very scheme of the Arbitration Act and render Section 37(2) thereof superfluous, as it is only an order accepting the plea of lack of jurisdiction under Section 16(2) or (3) that is amenable to appeal directly, without going through the process under Section 34 thereof. This crucial aspect of the matter was entirely lost sight of.*

28. From the above enunciation of law, it is abundantly clear that once the issue of jurisdiction is finally decided by the Arbitrator then it will amount to an interim award which is challengable under section 34 of the Act of 1996.

29. As discussed hereinabove, the application filed by the petitioner under section 16 of the Act of 1996 was dismissed at an earlier stage; but, the coordinate Bench of this court in a Writ Petition had directed the Arbitrator to decide the issue of jurisdiction as a preliminary issue, it will be termed to be adjudication of the substantial issue having been found in negative as an interim award in the light of the principle laid down by the Hon'ble Apex Court in the case of ***MCM Worldwide (supra)***, therefore, the learned court below has egregiously committed error of law in rejecting the application under section 34 of the Act as not maintainable .

30. The Hon'ble Apex court in the case of ***IFFCO Ltd. (supra)*** has held as under :-

> ***24.*** *Interestingly, in a separate concurring judgment, P.K.*

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Balasubramanyan, J., held: (NTPC case [NTPC Ltd. v. Siemens Atkeingesellschaft, (2007) 4 SCC 451] , SCC pp. 463-64, paras 17-19)

> *"17. In the larger sense, any refusal to go into the merits of a claim may be in the realm of jurisdiction. Even the dismissal of the claim as barred by limitation may in a sense touch on the jurisdiction of the court or tribunal. When a claim is dismissed on the ground of it being barred by limitation, it will be, in a sense, a case of the court or tribunal refusing to exercise jurisdiction to go into the merits of the claim. In Pandurang Dhondi Chougule v. Maruti Hari Jadhav [Pandurang Dhondi Chougule v. Maruti Hari Jadhav, (1966) 1 SCR 102 : AIR 1966 SC 153] this Court observed that: (SCR p. 107 : AIR p. 155, para 10)*
>
> *'10. … It is well settled that a plea of limitation or a plea of res judicata is a plea of law which concerns the jurisdiction of the court which tries the proceedings. A finding on these pleas in favour of the party raising them would oust the jurisdiction of the court, and so, an erroneous decision on these pleas can be said to be concerned with questions of jurisdiction which fall within the purview of Section 115 of the Code.'*
>
> *In a particular sense, therefore, any declining to go into the merits of a claim could be said to be a case of refusal to exercise jurisdiction.*
>
> *18. The expression "jurisdiction" is a word of many hues. Its colour is to be discerned from the setting in which it is used. When we look at Section 16 of the Act, we find that the said provision is one, which deals with the competence of the Arbitral Tribunal to rule on its own jurisdiction. SBP & Co. v. Patel Engg. Ltd. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618] in a sense confined the operation of Section 16 to cases where the Arbitral Tribunal was constituted at the instance of the parties to the contract without reference to the Chief Justice under Section 11(6) of the Act. In a case where the parties had thus constituted the Arbitral Tribunal without recourse to Section 11(6) of the Act, they still*

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have the right to question the jurisdiction of the Arbitral Tribunal including the right to invite a ruling on any objection with respect to the existence or validity of the arbitration agreement. It could therefore rule that there existed no arbitration agreement, that the arbitration agreement was not valid, or that the arbitration agreement did not confer jurisdiction on the Tribunal to adjudicate upon the particular claim that is put forward before it. Under sub-section (5), it has the obligation to decide the plea and where it rejects the plea, it could continue with the arbitral proceedings and make the award. Under sub-section (6), a party aggrieved by such an arbitral award may make an application for setting aside such arbitral award in accordance with Section 34. In other words, in the challenge to the award, the party aggrieved could raise the contention that the Tribunal had no jurisdiction to pass it or that it had exceeded its authority, in passing it. This happens when the Tribunal proceeds to pass an award. It is in the context of the various sub-sections of Section 16 that one has to understand the content of the expression "jurisdiction" and the scope of the appeal provision. In a case where the Arbitral Tribunal proceeds to pass an award after overruling the objection relating to jurisdiction, it is clear from sub-section (6) of Section 16 that the parties have to resort to Section 34 of the Act to get rid of that award, if possible. But, if the Tribunal declines jurisdiction or declines to pass an award and dismisses the arbitral proceedings, the party aggrieved is not without a remedy. Section 37(2) deals with such a situation. Where the plea of absence of jurisdiction or a claim being in excess of jurisdiction is accepted by the Arbitral Tribunal and it refuses to go into the merits of the claim by declining jurisdiction, a direct appeal is provided. In the context of Section 16 and the specific wording of Section 37(2)(a) of the Act, it would be appropriate to hold that what is made directly appealable by Section 37(2)(a) of the Act is only an acceptance of a plea of absence of jurisdiction, or of excessive exercise of jurisdiction and the refusal to proceed further either wholly or partly.

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19. In a case where a counterclaim is referred to and dealt with and a plea that the counterclaim does not survive in view of the settlement of disputes between the parties earlier arrived at is accepted, it could not be held to be a case of refusal to exercise jurisdiction by the Arbitral Tribunal. Same is the position when an Arbitral Tribunal finds that a claim was dead and was not available to be made at the relevant time or that the claim was not maintainable for other valid reasons or that the claim was barred by limitation. They are all adjudications by the Tribunal on the merits of the claim and in such a case the aggrieved party can have recourse only to Section 34 of the Act and will have to succeed on establishing any of the grounds available under that provision. It would not be open to that party to take up the position that by refusing to go into the merits of his claim, the Arbitral Tribunal had upheld a plea that it does not have jurisdiction to entertain the claim and hence the award or order made by it, comes within the purview of Section 16(2) of the Act and consequently is appealable under Section 37(2)(a) of the Act."

30. *In our view, therefore, it is clear that the award dated 23-7-2015 is an interim award, which being an arbitral award, can be challenged separately and independently under Section 34 of the Act. We are of the view that such an award, which does not relate to the Arbitral Tribunal's own jurisdiction under Section 16, does not have to follow the drill of Sections 16(5) and (6) of the Act. Having said this, we are of the view that Parliament may consider amending Section 34 of the Act so as to consolidate all interim awards together with the final arbitral award, so that one challenge under Section 34 can be made after delivery of the final arbitral award. Piecemeal challenges like piecemeal awards lead to unnecessary delay and additional expense.*

31. *The appeal is, accordingly, allowed and the impugned judgment [Iffco Ltd. v. Bhadra Products, 2017 SCC OnLine Ori 898] is set aside. The Section 34 proceedings before the District Judge, Jagatsinghpur may now be decided. There shall, however, be no order as to costs.*

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31. The Hon'ble Apex court in the case of ***Manash Kamal Bezboruah*** (supra) has held as under :-

> *29. Recently, this Court in Tarini Prasad Mohanty (supra), has emphasized that while exercising writ jurisdiction under Articles 226 and 227 of the Constitution of India, courts must strictly keep in mind the statutory scheme of the Arbitration Act. Specifically, since the Act already provides for a final statutory remedy under Section 34 and clearly mandates minimal judicial interference while arbitral proceedings are still ongoing, courts must respect this legislative intent and limit their intervention accordingly.*
>
> > *"22. Besides the well settled parameters to be borne in mind while exercising jurisdiction under Articles 226 and 227 of the Constitution, it is also necessary to be mindful of the statutory scheme of the concerned enactment from which the impugned order arises. If the enactment besides providing for a statutory remedy [herein, Section 34] also expects minimal judicial interference prior to the culmination of the arbitral proceedings [herein, Section 5], the said factor would be of relevance while considering the exercise of jurisdiction. In other words the threshold to be satisfied before exercising discretion under Articles 226 and 227 of the Constitution in the light of such legislative intent would be higher. As held in Re: Interplay (supra), the non-obstante clause in Section 5 of the A and C Act must take precedence over any other law for the time being in force. It would have to be demonstrated that notwithstanding the availability of an alternate remedy at the conclusion of the proceedings, such challenge cannot await the final adjudication of the proceedings and despite the Civil Appeal arising out of SLP (C) No. 27534 of 2025 Page 33 of 39 statutory expectation of minimal interference, intervention in exercise of writ jurisdiction at an interim stage is imperative. We may clarify that our observations are as regards the 'entertainability' of a writ petition under Articles 226 and 227 of the Constitution and not with regard to its 'maintainability'. This Court in Godrej*

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Sara Lee Ltd. v. The Excise and Taxation Officer-cum-Assessing Authority has succinctly explained these concepts as under:—

"4 …In a long line of decisions, this Court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of discretion of the high courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a high court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest….""

30. *Therefore, this is a settled position of law that the High Court must exercise extreme circumspection while invoking its supervisory jurisdiction under Article 227 of the Constitution of India in matters challenging an Arbitral Tribunal's rejection of an application under Section 16 of the Act. In the absence of such a manifest jurisdictional defect, judicial interference at the interlocutory stage would be unwarranted and contrary to the legislative policy of minimal court intervention in arbitral proceedings. Orders passed by the Tribunal on an application under Section 16 of the Act are ordinarily amenable to challenge only under Section 34 of the Act upon the conclusion of the arbitral proceedings and the passing of the final award. It is always safe for the High Courts that, before entertaining revision petitions under Article 227 of the Constitution of India against the Orders passed by the Arbitral Tribunal, while exercising powers under*

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Section 16 of the Act, it should record a prima facie finding regarding the patent lack of inherent jurisdiction and that too after providing an opportunity of hearing to the rival party/parties.

33. In view of the detailed analysis above, we hold that the High Court was not justified in entertaining the challenge under Article 227 of the Constitution and staying the arbitral proceedings. The remedy against the rejection of a Section 16 of the Act application strictly lies under Section 34 of the Act after the pronouncement of the final award. Hence, we deem it appropriate to set aside both the impugned orders of the High Court and dismiss the revision petition before the High Court.

32. From the above enunciation of law, it is discerned that as the application under section 16 of the Act of 1996 having been dismissed by the Arbitrator, the petitioner had invoked the jurisdiction of this Court under Article 226/227 of the Constitution of India by filing a writ petition W.P.No.40364/2024. However, the coordinate Bench had relegated the matter to the Arbitrator to decide the issue of jurisdiction as a preliminary issue, therefore, the stage of section 16 has already been passed and the issue has been finally decided in the light of the judgment passed by the Hon'ble Apex court in the case of ***MCM Worldwide (supra),*** it would be termed to be an interim award, which is amenable to jurisdiction under section 34 of the Act of 1996.

33. Second question in regard to whether an order passed under section 34 though observing that it is not maintainable, whether it is amenable to the jurisdiction under Article 226/227 of the Constitution of India. The Hon'ble Apex Court in the case of ***Manash Kamal Bezboruah (supra)*** has dealt with the issue by revisiting its earlier judgment passed in the case of Tarini Prasad Mohanty and held as under :-

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25. Ordinarily, the power of the High Courts under Article 227 of the Constitution of India to exercise supervisory jurisdiction over all courts and tribunals within their territorial jurisdiction forms part of the basic structure of the Constitution and cannot be abrogated or excluded by legislation. Consequently, although Section 5 of the Act restricts judicial intervention, except as expressly provided under the Act, such restriction cannot curtail or oust the constitutional jurisdiction of the High Courts under Article 227 of the Constitution of India. At the same time, it is imperative to note that the Act was enacted with the objective of ensuring the expeditious resolution of disputes through arbitration, with minimal judicial interference and without the supervisory involvement of traditional courts, except to the limited extent expressly contemplated under the Act.

26. The Constitution Bench in SBP & Co. v. Patel Engineering Ltd., (2005) 8 SCC 618 : (2005) 128 Comp Cas 465, stating that the Act mandates minimal judicial intervention, has explicitly disapproved the approach of High Courts correcting orders of an Arbitral Tribunal under Article 226 or 227 of the Constitution of India during the pendency of arbitral proceedings. The relevant portion of the said judgment is extracted hereinbelow:

> *45. It is seen that some High Courts have proceeded on the basis that any order passed by an Arbitral Tribunal during arbitration, would be capable of being challenged under Article 226 or 227 of the Constitution. We see no warrant for such an approach. Section 37 makes certain orders of the Arbitral Tribunal appealable. Under Section 34, the aggrieved party has an avenue for ventilating its grievances against the award including any in-between orders that might have been passed by the Arbitral Tribunal acting under Section 16 of the Act. The party aggrieved by any order of the Arbitral Tribunal, unless has a right of appeal under Section 37 of the Act, has to wait until the award is passed by the Tribunal. This appears to be the scheme of the Act. The Arbitral Tribunal is, after all, a creature of a contract between the parties, the arbitration agreement, even though, if the occasion arises, the Chief Justice may constitute it based on the contract between the parties. But that would not alter the status*

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of the Arbitral Tribunal. It will still be a forum chosen by the parties by agreement. We, therefore, disapprove of the stand adopted by some of the High Courts that any order passed by the Arbitral Tribunal is capable of being corrected by the High Court under Article 226 or 227 of the Constitution. Such an intervention by the High Courts is not permissible.

46. *The object of minimising judicial intervention while the matter is in the process of being arbitrated upon, will certainly be defeated if the High Court could be approached under Article 227 or under Article 226 of the Constitution against every order made by the Arbitral Tribunal. Therefore, it is necessary to indicate that once the arbitration has commenced in the Arbitral Tribunal, parties have to wait until the award is pronounced unless, of course, a right of appeal is available to them under Section 37 of the Act even at an earlier stage.*

27. Furthermore, this Court in the case of Deep Industries (supra), has held that the High Court under article 227 can only deal with orders of the Tribunal wherein there is patent lack of inherent jurisdiction. The relevant portion of the said judgment is extracted hereinbelow:

"17. This being the case, there is no doubt whatsoever that if petitions were to be filed under Articles 226/227 of the Constitution against orders passed in appeals under Section 37, the entire arbitral process would be derailed and would not come to fruition for many years. At the same time, we cannot forget that Article 227 is a constitutional provision which remains untouched by the non obstante clause of Section 5 of the Act. In these circumstances, what is important to note is that though petitions can be filed under Article 227 against judgments allowing or dismissing first appeals under Section 37 of the Act, yet the High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy as adumbrated by us hereinabove so that interference is restricted to orders that are passed

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which are patently lacking in inherent jurisdiction."

28. Subsequently, a three Judge Bench of this Court in the case of Punjab State Power Corpn. Ltd. (supra) clarified as to what would be categorised as 'Patent lack in inherent jurisdiction'. The primary parameter is that the Order passed should be so perverse that the only possible conclusion is that there is a patent lack in inherent jurisdiction. A patent lack requires no argument whatsoever, it must be the perversity of the Order that must stare one in the face. Further, while addressing the misuse of Article 227 of the Constitution of India petitions in arbitral proceedings, this Court directed that High Courts, upon considering the objections raised, should promptly dismiss petitions under Article 227 wherever no patent lack of inherent jurisdiction is made out. The relevant portion of the said judgment is extracted hereinbelow:

> *"4. We are of the view that a foray to the writ court from a Section 16 application being dismissed by the arbitrator can only be if the order passed is so perverse that the only possible conclusion is that there is a patent lack in inherent jurisdiction. A patent lack of inherent jurisdiction requires no argument whatsoever — it must be the perversity of the order that must stare one in the face.*
>
> *5. Unfortunately, the parties are using this expression which is in our judgment in Deep Industries Ltd. [Deep Industries Ltd. v. ONGC, (2020) 15 SCC 706], to go to the Article 227 Court in matters which do not suffer from a patent lack of inherent jurisdiction. This is one of them. Instead of dismissing the writ petition on the ground stated, the High Court would have done well to have referred to our judgment in Deep Industries Ltd. [Deep Industries Ltd. v. ONGC, (2020) 15 SCC 706] and dismiss the Article 227 petition on the ground that there is no such perversity in the order which leads to a patent lack of inherent jurisdiction. The High Court ought to have discouraged similar litigation by imposing heavy costs. The High Court did not choose to do either of these two things."*

29. Recently, this Court in Tarini Prasad Mohanty (supra), has

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emphasized that while exercising writ jurisdiction under Articles 226 and 227 of the Constitution of India, courts must strictly keep in mind the statutory scheme of the Arbitration Act. Specifically, since the Act already provides for a final statutory remedy under Section 34 and clearly mandates minimal judicial interference while arbitral proceedings are still ongoing, courts must respect this legislative intent and limit their intervention accordingly.

> *"22. Besides the well settled parameters to be borne in mind while exercising jurisdiction under Articles 226 and 227 of the Constitution, it is also necessary to be mindful of the statutory scheme of the concerned enactment from which the impugned order arises. If the enactment besides providing for a statutory remedy [herein, Section 34] also expects minimal judicial interference prior to the culmination of the arbitral proceedings [herein, Section 5], the said factor would be of relevance while considering the exercise of jurisdiction. In other words the threshold to be satisfied before exercising discretion under Articles 226 and 227 of the Constitution in the light of such legislative intent would be higher. As held in Re: Interplay (supra), the non-obstante clause in Section 5 of the A and C Act must take precedence over any other law for the time being in force. It would have to be demonstrated that notwithstanding the availability of an alternate remedy at the conclusion of the proceedings, such challenge cannot await the final adjudication of the proceedings and despite the Civil Appeal arising out of SLP (C) No. 27534 of 2025 Page 33 of 39 statutory expectation of minimal interference, intervention in exercise of writ jurisdiction at an interim stage is imperative. We may clarify that our observations are as regards the 'entertainability' of a writ petition under Articles 226 and 227 of the Constitution and not with regard to its 'maintainability'. This Court in Godrej Sara Lee Ltd. v. The Excise and Taxation Officer-cum-Assessing Authority has succinctly explained these concepts as under:—*
>
> *"4 …In a long line of decisions, this Court has made it*

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clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of discretion of the high courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a high court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest….""

***30.** Therefore, this is a settled position of law that the High Court must exercise extreme circumspection while invoking its supervisory jurisdiction under Article 227 of the Constitution of India in matters challenging an Arbitral Tribunal's rejection of an application under Section 16 of the Act. In the absence of such a manifest jurisdictional defect, judicial interference at the interlocutory stage would be unwarranted and contrary to the legislative policy of minimal court intervention in arbitral proceedings. Orders passed by the Tribunal on an application under Section 16 of the Act are ordinarily amenable to challenge only under Section 34 of the Act upon the conclusion of the arbitral proceedings and the passing of the final award. It is always safe for the High Courts that, before entertaining revision petitions under Article 227 of the Constitution of India against the Orders passed by the Arbitral Tribunal, while exercising powers under Section 16 of the Act, it should record a prima facie finding regarding the patent lack of inherent jurisdiction and that too after providing an opportunity of hearing to the rival party/parties.*

34. Therefore, from the above exposition of law by the Apex Court, this

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court is of the considered opinion that as the application under section 16 of the Act of 1996 filed by the petitioner having been dismissed by the Arbitrator, which was subjected to challenge in a writ petition, which was finally decided by relegating the matter to the Arbitrator to decide the issue of jurisdiction as a preliminary issue, the Arbitrator has decided the said issue finally, hence such a decision shall be inferred as an interim award and is amenable to the challenge under section 34 of the Act of 1996.

35. Section 37 of the Act of 1996 provides as under :-

> *37. Appealable orders.*
>
> *(1)[Notwithstanding anything contained in any other law for the time being in force, an appeal] [Substituted 'An appeal' by Act No. 33 of 2019, dated 9.8.2019.] shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:*
>
> *(a)[refusing to refer the parties to arbitration under section 8; [Substituted by Act No. 3 of 2016 dated 31.12.2015.]*
>
> *(b)granting or refusing to grant any measure under section 9;*
>
> *(c)setting aside or refusing to set aside an arbitral award under section 34.]*
>
> *(2)An appeal shall also lie to a Court from an order of the arbitral tribunal*
>
> *(a)accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or*
>
> *(b)granting or refusing to grant an interim measure under section 17.*
>
> *(3)No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.*

36. Section 37(1)(c) provides that an appeal shall lie from the order setting aside or refusing to set aside an award under section 34. Section 37(2) provides an appeal shall also lie to a court from an award of the arbitral tribunal accepting the plea referred to sub-section (2) or sub-section (3) of

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section 16. As the Arbitrator has finally decided an issue of jurisdiction in negative holding that the Arbitrator has got jurisdiction, therefore, it is not amenable to be challenged under section 37(2). However, as the issue of jurisdiction has conclusively been decided in the light of ***MGM Worldwide supra***, it would be termed to be interim award and, therefore, application under section 34 is maintainable and as against section 34 the remedy of the appeal lies under section 37 to challenge the award passed under section 34 refusing to set aside an award on whatsoever the ground, therefore, in the considered opinion of this court, the present petition is not maintainable. The petitioner has to avail statutory remedy under section 37 of the Act of 1996 in furtherance of the statutory object of the Act of 1996 of minimal interference.

37. Accordingly, the petition sans merit and is hereby dismissed with no order as to cost.

(ALPESH Y. KOGJE)
CHIEF JUSTICE

(DEEPAK KHOT)
JUDGE

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