HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT JABALPUR.

FULL BENCH

HON'BLE SHRI JUSTICE S.K. SETH
HON'BLE SHRI JUSTICE SUJOY PAUL
HON'BLE SHRI JUSTICE J.P. GUPTA

A.A. No.14/2017.

Viva Highways Ltd.
Vs.
Madhya Pradesh Road Development Corporation Ltd.

(Shri Jai Savla, Advocate with Shri Akshay Sapre,
Adv. for appellant.
Shri P.K. Kaurav, Additional Advocate General with
Shri Amit Seth, Government Advocate.)

A.C. No.27/2013

M/s ESSEL Infra Projects Ltd.
Vs.
State of M.P.

(Shri Naman Nagrath, Senior Advocate with
Shri Jubin Prasad, Advocate for the applicant
Shri P.K. Kaurav, Additional Advocate General with
Shri Amit Seth, Government Advocate.)

A.C. No.79/2016

M/s Tapi Prestressed Products Ltd.
Vs.
Madhya Pradesh Road Development Corporation Ltd.

(Shri Shekhar Sharma for the applicant.
Shri P.K. Kaurav, Additional Advocate General with
Shri Amit Seth, Government Advocate.)

J U D G M E N T
(05.05.2017)

Sujoy Paul, J:

The order of reference dated 31.1.2017 which has occasioned the constitution of this Full Bench has been passed by a Division Bench in AC No.27/2013 (***M/s ESSEL Infra Projects Ltd. vs. State of M.P.***).

2. The relevant facts giving rise to the reference are that the aforesaid arbitration case filed under Section 11(6) of Arbitration and Conciliation Act, 1996 (for short '***Act of 1996***') was listed before the learned Single Judge wherein it is prayed that an appropriate Arbitrator may be appointed as per the relevant dispute resolution clause in the agreement. During the course of hearing of the said matter before the learned Single Judge, the respondents have raised an objection as to maintainability of the application under Section 11(6) of the Act of 1996 on the ground that the provisions of the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 (***Adhiniyam of 1983***) are applicable for the dispute between the parties and; therefore, matter has to be referred to the Tribunal constituted under the Adhiniyam of 1983.

3. During the course of hearing before the learned Single Judge, the parties cited single bench decision of this court rendered in the case of ***Jabalpur Corridor (India) Pvt. Ltd. vs. M.P. Road Development Corporation, 2014 (2) MPLJ 276*** and judgment of another Single Bench in the case of ***Mrs. Kamini Malhotra vs. State of M.P., AIR 2003 MP 13***. The learned single judge opined that there is a conflict between the aforesaid two decisions and therefore ordered that the matter be placed before Hon'ble the Chief Justice for constituting a larger bench.

4. In view of aforesaid order of learned Single Judge, the matter was placed before the Division Bench. Before the Division Bench, it was fairly admitted by the parties that earlier decision in the case of ***Mrs. Kamini Malhotra***(Supra) was not brought to the notice of the subsequent bench which decided the case of ***Jabalpur Corridor***(Supra). Before the Division Bench, two Division Bench decisions were placed i.e. in the case of ***Ashok Infraways Ltd. And another vs. State of M.P. and another, 2016 (2) MPLJ 685*** *and* ***State of M.P. and another vs. M/s K.T. Construction (India) Ltd. and another*** (A.A. No.5/2009 decided on 27.4.2016). It was argued before the Division Bench that in aforesaid two Division Bench

decisions, the judgment in the case of ***Jabalpur Corridor***(Supra) has been affirmed and confirmed. Since the Single Bench judgment of Jabalpur Corridor was applied and affirmed in aforesaid two Division Bench judgments, the question of any conflict between ***Jabalpur Corridor and Mrs. Kamini Malhotra*** does not arise.

5. The Division Bench during the course of hearing noticed that between the same parties who were involved in Division Bench decision rendered in the case of ***Ashok Infraways Ltd.***(Supra) previously WP No.1122/2015 was filed wherein challenge was made to the order of District Judge, Dewas passed while deciding an application under Section 9 of the Act of 1996. The said WP was initially dismissed as not maintainable but subsequently taken up in Review Petition No.191/2015. The Division Bench in said RP passed an order dated 31.7.2015 holding that contract between the parties i.e. ***Ashoka Infraways Ltd. and another vs. State of Madhya Pradesh and another*** was in the nature of a "works contract" and; therefore, the provisions of Adhiniyam of 1983 would apply. It was noticed by Division Bench that the aforesaid order passed in writ petition as well as review petition was challenged before the Supreme Court in SLP(Civil) No.22890-22891/2015. The Supreme Court disposed of the aforesaid SLPs by quoting findings recorded by Division Bench of this Court to the effect that the dispute between the parties pertains to a works contract and shall be referred to the Tribunal under the provisions of Adhiniyam, 1983. Thereafter, taking note of the fact that an arbitration appeal under Section 17 of the Act of 1996 was pending before this court, disposed of the SLP by observing that the aforesaid observation regarding the contract being a works contract would not come in the way of petitioner Ashoka Infraways Ltd. in prosecuting the appeal under Section 37 of the Act of 1996 which was pending before the High Court.

6. The Division Bench was apprised that subsequently another IA was filed in the SLP which was again disposed of on 2.9.2015 observing that the learned Single Judge of the High Court shall consider the said

application under Section 11(6) of the Act of 1996 on its own merit without getting influenced by the earlier orders passed by the High Court on 9.7.2015 and 31.7.2015 i.e. the orders passed in the writ petition and the review petition. It was pointed out that subsequent to the aforesaid proceedings before the Supreme Court, the matter has been considered and decided by the Division Bench in the case of ***Ashoka Infraways Ltd. In Ashoka Infraways***(Supra), it was held that the agreement between the parties was a "concession agreement" and not a "works contract" relying on the decision rendered in the case of ***Jabalpur Corridor***(Supra).

7. The Division Bench further recorded that the orders passed by the Division Bench in WP No.1122/2015 and RP No.191/2015 have not been set aside by the Supreme Court though it was observed that the High Court should proceed to decide the matter between the parties. The Division Bench further recorded that this fact assumed importance for the purpose of reference although the Supreme Court has directed the High Court to decide the appeal under Section 37 of Act, 1996 by ignoring the findings recorded in WP No.1122/2015 and RP No.191/2015. This direction is confined to the parties *inter se* and the order passed in WP No.1122/2015 and RP NO.191/2015 may still be relied upon in other cases to contend that the agreement of that nature is actually a "works contract".

8. In the aforesaid factual backdrop, the Division Bench expressed its view that while the Division Bench in WP No.1122/2015 and RP No.191/2015 has held the agreement between the parties to be a "works contract", the Division Bench in the case of ***Ashoka Infraways***(Supra) between the same parties has held that the said agreement is a "concession agreement" and not a "works contract". It was, thus, apparent before the Division Bench that two divergent views have been taken in aforesaid two Division Bench decisions and the effect and impact thereof can only be reconciled by a Larger Bench.

9. In this view of the matter, the Division Bench referred the matter

for constituting a Full Bench. The Division Bench while referring the matter for constitution of Full Bench has taken note of the findings given by the learned Single Judge who decided the case of ***Jabalpur Corridor***(Supra) in a subsequent decision referred in the case of M/s Landlord Infrastructure vs. Engineering-in-Chief (AC No.12/2014 decided on 21.4.2015). It was pointed out to the Division Bench that the findings given in the case of ***Jabalpur Corridor***(Supra) were diluted by the same Hon'ble Judge in the subsequent case i.e. ***M/s Landlord Infrastructure***(Supra). The observations given by the learned Single Judge were reproduced by the Division Bench in the reference order dated 31.1.2017. It is apposite to quote the same which reads as under:

> *"9. ....Alternatively, it was held that even if the contract in question is considered to be a work contract, then also, in view of the decision laid down by the Supreme Court in the case of APS Kushwaha (SSI Unit) vs. The Municipal Corporation, Gwalior and others, 2011 (13) SCC 258, the dispute has to be resolved as per the provisions of 1996 Act. However, in the case of Jabalpur Corridor(Supra), it has not been noticed that the decision in the case of APS Kushwaha (Supra) is based on the view taken in VA Tech Escher Wyass Flowel Ltd. vs. MPSEB, 2011 (13) SCC 261 which was held to be per incurium in L.G. Choudhary's case, and the submission pertaining to works contract has been dealt with by way of alternative submission only. Therefore, the decision in the case of Jabalpur Corridor (Supra) is of no assistance to the petitioner in the facts, as admittedly, in the instant case, the agreement in question is a works contract."*

10. In the light of aforesaid events and the orders of various Benches of this Court, the Division Bench referred the issues to be decided by Full Bench by detailing them in para 14 to 16 of the reference order dated 31.1.2017. This is how this matter has travelled to this Full Bench.

11. The Full Bench broadly framed following questions for consideration :

(i) Whether, any agreement by whatever name called, if it falls within

the meaning and definition of work contract as defined under Section 2(I) of the M.P. Madhyastham Adhikaran Adhiniyam, 1983 has to be referred for adjudication before the M.P. Arbitration Tribunal constituted under Section 3 of the 1983 Adhiniyam?

(ii) Whether, in view of statutory provisions of Section 7 of the Adhiniyam of 1983, the matter has to be referred to the M.P. Arbitration Tribunal constituted under Section 3 of the 1983 Adhiniym, even in cases where the parties have incorporated a clause in agreement regarding resolution of dispute by some other forum or under the Arbitration and Conciliation Act, 1996?

(iii) Which of the views taken by the Division Bench of Ashoka Infraways Ltd. is correct relying on Jabalpur Corridor (India) Pvt. Ltd. ?

(iv) Whether, the substituted definition of work contract in the M.P. Madhyastham Adhikaran Adhiniyam, 1983 by Act No.7 of 2017 is clarifactory and is applicable to the pending or future contracts?

(v) Any other ancillary issues arising out of the reference order.

12. Contention of the applicants/appellants- In A.C. No.27/2013, Shri Naman Nagrath, learned senior counsel for the applicants submits that the “works contract” is defined under Section 2(i) of the Adhiniyam of 1983. The “works contract” is an agreement in writing for execution of three kinds of work namely, (i) construction; (ii) repair; & (iii) maintenance. He submits that any agreement which is confined to these three kinds of activities may fall within the ambit of “works contract”. He urged that the definition of “works contract” is a narrow and restricted definition which does not include the present agreement which is a “concession agreement”.

13. To elaborate, it is stated that the present concession agreement is related to establishment of sports city at Satghari village, Bhopal on Public

Private Partnership (PPP) basis. The Government of M.P. (GOMP) was desirous of promoting the development of sports infrastructure in the State of M.P. with a view to enable the growth of sports in the State. In order to enable more efficient use of public resources, GOMP has taken decision to support the development of sports infrastructure in the State through PPP route. The State Government realized that the development, operation and maintenance of sports infrastructure is not a commercial viably business on its own. The GOMP has accordingly decided to structure projects for development of sports infrastructure by associating them with related real state development.

14. Learned senior counsel pointed out that in furtherance of aforesaid objective, the authority has resolved to develop sports infrastructure on a “build & transfer (BT)” basis for sports infrastructure and build, own operate and transfer (“BOOT”) basis for real state development in accordance with terms and conditions set forth in the said concession agreement. The reference is made to Clause D (e) (g) (h) (j) & (k) of this agreement. The attention of the Bench is drawn on the definition of 'construction' mentioned in Clause 1.2.1 (f) of Article 1 of the agreement. He also relied on Article 3 of the agreement, which deals with “grant of concession”. On the basis of various clauses of this article, it is urged that the petitioner obtained license or lease to construct, develop, operate and maintain the project for a period of 99 years. Emphasis is placed on the words “on lease” mentioned in the Clause 3.1.1. Clause 3.1.2 is relied upon to show that authority is under an obligation to facilitate and assist the concessionaire in obtaining all approvals and applicable permits from various government authorities/bodies. It is further submitted that clause 3.2.1 makes it clear that concessionaire has exclusive right and authority during the concession period to investigate, study, design, engineer, procure, construct, finance the project as specified in schedule 'A'. The concessionaire can enter into further contracts with other contractors/bodies. Shri Nagrath, contends that concessionaire by no stretch of imagination can be treated as a contractor, on the contrary, the

contracts are being given to other contractors by the concessionaire. The agreement contains the provision for grant of lease and sub-lease. The obligations of concessionaire are mentioned in Article 5 of the agreement. The Article 25 deals with “premium and annual rent”. In consideration of grant of concession, as per clause 25.1.1, the concessionaire shall pay to the authority the premium whereas as per Clause 25.2, the concessionaire shall pay to the authority an annual rent of Rs.4,94,000/- at the rate of rupees one per sq.mt. (rounded of) for the area of real state infrastructure. Article 42 defines “agreement” or “concession agreement”. The agreement includes schedules annexed hereto. The Arbitration Act is defined as Arbitration and Conciliation Act, 1996. The 'contractor' is defined, which shows that contractor will be a person with whom the concessionaire has entered into any of the EPC contract, the O & M contract or any other agreement or contract for construction, operation and maintenance of the project or matters incidental thereto. However, as pointed out, it does not include a persons who had entered into an agreement for providing financial assistance to the concessionaire. The dispute which can be resolved as per dispute resolution mechanism mentioned in Article 38 is also defined which shows that any dispute, difference or controversy of whatever nature howsoever arising, under or out of in relation to this contract (including its interpretation) between the parties, and so notified in writing shall be attempted to be resolved amicably in accordance with procedure laid down in this chapter. Clause 38.4 is relied upon to submit that this clause makes it clear that intention of the respondents was to reserve their rights to send the dispute for adjudication/resolution to a statutory regulatory body/commission which may be constituted at a later point of time. Hence, it is urged that the respondents were conscious about the fact that present statutory body namely Tribunal constituted under the Adhiniyam of 1983 is not an appropriate body for resolving the disputes arising out of concession agreement. Any such regulatory authority could be constituted in future which may deal with such disputes which may arise after constitution of said authority/commission.

15. Shri Naman Nagrath, learned senior counsel for the applicant further relied on certain portions of the agreement which deals with "project account agreement", which is a tripartite agreement, substitution agreement etc. He submits that every such agreement in which third party (other than State or its agency) are involved, a separate dispute resolution mechanism under the Act of 1996 is prescribed.

16. The argument of the applicants is that the nature of concession agreement clearly shows that it is out side the scope of "works contract" as defined under the Adhiniyam of 1983. At the cost of repetition, Shri Nagrath, learned senior counsel submits that "works contract" is confined to (i) construction; (ii) repairs; (iii) maintenance activities whereas, as pointed out, the concession agreement is differently worded and is much wider than the definition of "works contract".

17. It is common ground that the judgment passed in ***Kamini Malhotra*** (Supra) was related to construction of a "water tank". On this factual basis, this Court opined that it falls within the definition of "works contract". The concession agreement was not subject matter of adjudication in case of ***Kamini Malhotra***(Supra), whereas the concession agreement was considered in *extenso* in the case of ***Jabalpur Corridor****(Supra)*. Hence there is no conflict of opinion between said two Benches nor non-consideration of judgment of ***Kamini Malhotra***(Supra) will make the order of ***Jabalpur Corridor*** (Supra) as per *in curium*.

18. Shri Nagrath, learned senior counsel relied on **2010 (2) MPLJ 357** (***R.V. Infrastructure Engineers Pvt. Ltd. vs. State of M.P. and others***), and urged that this Court opined that concession agreement is a "lease", whereas the stand of concessionaire was that it is a "license". Learned senior counsel submits that although the judgment passed in ***R.V. Infrastructure Engineers Pvt. Ltd.***(Supra) is presently subject matter of challenge before the Supreme Court, the fact remains that the said agreement will either be treated as "lease" or a "license" and it

cannot fall within the four corners of "works contract".

19. Learned counsel for the parties, during the course of argument, fairly submitted that in the case reported in ***2012 (3) SCC 495 [MPRRDA vs. LG Choudhary],*** there was a cleavage of opinion amongst the judges in relation to a terminated contract. One view was that even in the cases of terminated work contract, the Tribunal constituted under the Adhiniyam, 1983 is competent to decide the dispute whereas the other view is that the said Tribunal would not be competent to deal with the dispute arising out of a terminated contract. The matter, as informed, is referred to a Larger Bench and the decision of Larger Bench is still awaited. It is also admitted between the parties that constitutionality of the Adhiniyam, 1983 is already upheld and it is settled that in case of "works contract" the dispute can be resolved by the Tribunal constituted under the 1983 Adhiniyam.

20. The further contention of learned counsel for the applicant is that the "Concession Agreement" is not merely a use of another terminology in place of "Works Contract" but it has a statutory basis as well. Reliance is placed on Section 80 (IA) of the Income Tax Act wherein the word "Concession Agreement" is differently dealt with in comparison to the "Works Contract". Shri Nagrath, supplied copy of a railway contract to the Bench during the course of hearing wherein the certificate issued by the concessionaire is recognized by the railway administration.

21. It is an admitted fact between the parties that during pendency of these matters, Section 2(i) which defines "works contract" has been amended by notification dated 17.01.2017. It is also not in dispute that constitutionality of the amended definition of "works contract" is not the subject matter of challenge in the present matters.

22. Shri Nagrath and Shri Jai Savla submits that a conjoint reading of "Statement of Object and Reasons" and amended definition of "works contract" makes it clear that it is prospective in nature. The "Statement of

Object and Reasons" shows that in order to overcome the effect of the order passed in the matter of ***Jabalpur Corridor***(Supra)***,*** the amendment was brought into force by issuing the notification dated 17.01.2017.

23. The stand of the applicants is that even this amendment in the definition of "works contract" will not bring the "concession agreement" within its purview. Shri Nagrath submits that mere use of word "substitution" does not mean that it is essentially retrospective in nature. Reliance is placed on ***Bhagat Ram Sharma Vs. Union of India, 1988 SCC (Suppl)-30.*** He placed heavy reliance on (2015) 1 SCC-1 (***Commissioner of Income Tax (Central)-I, New Delhi vs. Vatika Township Pvt. Ltd.***, wherein general principles relating to retrospectively of a statute were laid down by the Supreme Court. The argument is that while deciding the question of retrospectivity, the court has to keep into mind the aspect of fairness and hardship.

24. The case of ***Mahalakshmi Oil Mills Vs. State of Andhra Pradesh- (1989) 1 SCC-164,*** is relied upon to contend that use of the word "means" in the definition of "works contract" makes it exhaustive and subsequent use of word "includes" will not make it further extensive. Reliance is placed on ***P. Kasilingam and others Vs. P.S.G. College of Technology and others, 1995 supp-2 SCC-348*** to contend that in the manner the word "means and includes" are used in the definition of "works contract" under the 1983 Adhiniyam, it has to mean an hard and fast definition which includes only such work which are related to construction, repair and maintenance. The agreement of applicant is having a different feature and, therefore, even this amended application will not bring the concession agreement within the purview of "Works Contract".

25. Shri Nagrath placed reliance on the order of Supreme Court dated 12.10.2015 whereby SLP (C) No.381/2014 was dismissed against the order passed by this Court in the case of ***Jabalpur Corridor***(supra). He

contended that it is not a case of simple dismissal of SLP without assigning any reason. Indeed, the Apex Court opined that the SLP is dismissed on merits also. Hence, the order of Supreme Court aforesaid is differently worded and has a different impact which shows that the correctness of the order passed by this court in the case of ***Jabalpur Corridor***(Supra), cannot be questioned.

26. Shri Jai Savla appearing in AC No.79/16 contended that in his case, there exist State support agreement and substitution agreement etc. Clause-38.1 deals with the right and title which shows that the applicant is a licensee. He submits that section 7 of the Act of 1983 talks about "dispute". The "dispute" is defined in section 2(d) of the Adhiniyam of 1983. He submits that in the present cases, the claim of the applicants is not related to any ascertained money valued at Rs.50,000/- or more and, hence, the dispute existing between the present parties does not fall within the ambit and scope of section 2(d) of the Adhiniyam. It is a common ground that in the present cases, if applicant/ appellant ultimately succeed, they will get some extension of period to operate/ function which shall be in terms of further days and not in terms of any ascertained money. Shri Nagrath, in addition to aforesaid, urged that the definition of "dispute" was earlier wider which included any kind of differences between the parties which definition was amended w.e.f 24.4.1990 and it is now restricted to the claims of "ascertained money". His contention is that this amendment shows that the legislature intended to restrict the meaning of "dispute" and, therefore, no useful purpose would be served in relegating the parties to approach the tribunal constituted under the Adhiniyam of 1983.

27. Shri Shekhar Sharma, learned counsel for the applicant appearing in AC No.79/16 contended that Article 366(29-A) deals with the "works contract". As per the judgment of Supreme Court in ***(2004) 8 SCC-1 (Zile Singh vs. State of Haryana and others),*** the amendment in the definition of "works contract" will not relate back to the date of original definition. During the course of arguments, he contended that the judgment of

Viatech(supra) cannot be treated as over ruled in the light of judgment of Supreme Court in ***State of W.B Vs. Kesoram Industries Ltd and others, (2004) 10 SCC-201.*** Lastly, it is urged that the judgment of Supreme Court in the case of ***M/s APS Kushwaha and Ravikant Bansal*** (supra) will still hold the field.

28. Apart from this, it is common ground that the tribunal constituted under the Adhiniyam of 1983 cannot be treated to be an efficacious alternative forum. As per Section 17-A of the Adhiniyam, the tribunal cannot grant any interim relief. It is also common ground that the agreement talks about the "concession period", escrow account, fee notification, State support agreement, substitution agreement etc. These features are not available in "works contract". Hence, the view taken in ***Jabalpur Corridor*** (supra) is in consonance with law. Reliance is also placed on State support agreement filed along with A.A.No.14/07.

29. Shri Jai Savla relied on ***Union of India Vs. Indusind Bank Ltd., (2016) 9 SCC 720,*** to contend that the amended definition of "works contract" will not have any retrospective effect. He submits that at best the amended definition of "works contract" can be made applicable to those agreements which are signed after 7.12.2016, the date when the bill for amending the definition 'works contract' was introduced.

30. Shri Akshay Sapre appearing for the appellant contended that the full bench can look into the vires/constitutionality of the amended definition of "works contract". He argued that the timing of introducing the amended definition is important. Amendment is being introduced recently and its validity can be gone into in the present case. Reliance is placed on the judgment of Supreme Court in the case of ***Indira Sawhney vs. Union of India, 1992 Suppl. III SCC 217.*** In addition, he placed reliance on the judgments reported in ***2013 (5) SCC 1, State of Punjab v. Salil Sabhlok & Others***, ***1996 (7) SCC 637, Indian Aluminium Co. & Others vs. State of Kerala & others***, and ***2009 (13) SCC 165, State of***

Himachal Pradesh vs. Narain Singh.

31. Contention of respondents- Shri Purushendra Kourav, Amit Seth and Shri Dhurv Verma appeared on behalf of the respondents and opposed the said contentions. Shri Kourav submits that even unamended definition of "works contract" is wide enough to include all matters relating to execution of work. He relied on the dictionary meaning of "work" as given in the Black's Law Dictionary. By placing reliance on "Statement of Object and Reasons" behind insertion of new definition, it is urged that amendment in the definition is clarificatory in nature. It does not create any new burden or liability on the parties. Such clarificatory notification has retrospective operation. Moreso when the legislature has chosen to use the word "substitution" in place of "amendment". He relied on certain portion of the book "Principles of Interpretation of Statute by Justice G.P.Singh".

32. Shri Kourav, learned Additional Advocate General relied on the findings given in the case of ***Kamini Malhotra and D.D.Sharma***(Supra) wherein the respective Single benches have opined that the definition of "works contract" under the Adhiniyam is a wide definition whereas in ***Jabalpur Corridor***(Supra) a contrary finding is given that it is a restrictive definition. It is submitted that the judgment of ***Jabalpur Corridor***(Supra) is passed in ignorance of the earlier view taken by the benches of similar strength and, therefore, the judgment of ***Jabalpur Corridor***(Supra) is a *per incurium* judgment. Moreso, when the earlier judgment in the case of ***D.D.Sharma***(supra) was brought to the notice of the bench hearing the case of ***Jabalpur Corridor***(Supra)**.**

33. Shri Kourav further relied on the Adhiniyam of 1983 to contend that "dispute" is required to be decided by the tribunal within four months. Hence, it cannot be said that the remedy under the Adhiniyam is not an efficacious remedy. He submits that in the case of ***APS Kushwaha***(supra) the Supreme Court simply followed the judgment of ***Viatech***(supra)**.**

However, since the judgment of ***Viatech***(supra) is held to be *per incuriam* in the case of ***L.G.Choudhary***(supra), the judgment of ***APS Kushwaha*** is of no assistance to the applicants. He further submits that the nature of activity of construction, maintenance, repair required to be carried-on by the applicant brings it within the four corners of 'works contract'. If a different nomenclature is used (concession agreement), it will not change the nature of the agreement.

34. By taking this bench to relevant clauses of "Concession agreement", it is urged that ultimately activity of the applicants is in relation to the development, operation and maintenance of supportive infrastructure which is related with Real Estate Development. Hence whether it is called "BT" or "BOOT", in fact, it falls within the ambit of "works contract". Reliance is placed on ***Larsen and Toubro Ltd. Vs. State of Karnataka-(2014) 1 SCC-708*** wherein the Apex Court had an occasion to deal with the words "works contract". It is common stand on the part of the respondents that reliance on taxing statute is totally irrelevant.

35. Learned counsel for the State contended that the applicants do not have any choice of forum. No legal, vested or statutory right of applicant is taken away by amending the definition. As per Section 7 of the Adhiniyam of 1983 coupled with the full bench judgment of this Court reported in ***2007(4) MPHT-444 [Shri Shankarnarayan Construction Co. vs. State of M.P.],*** it is clear that the appropriate remedy for the applicants is before the tribunal constituted under the Adhiniyam of 1983.

36. Respondents relied on ***AIR 1954 SC 340 (Kiran Singh and others vs. Chaman Paswan and others)*** to submit that the question of jurisdiction can be raised at any point of time. This can be raised at the appellate stage or even at the stage of execution proceedings. Lack of jurisdiction nullifies every thing. It is also urged that in view of judgment of Supreme Court in ***AIR 2000 SC 2587 (Kunhayammed & ors. vs. State***

of Kerla), it is clear that when SLP is dismissed in *limine*, the findings given by the Supreme Court does not mean that the order of the High Court got a stamp of approval on merits or it got merged in the order of Apex Court on the basis of doctrine of merger. Such findings on merits can be presumed only when order is passed after grant of leave and SLP is converted into a civil appeal.

37. In rejoinder submission, Shri Nagrath reiterated his earlier stand. In addition to that, he relied on ***2003(2) MPLJ-46 (MP Housing Board vs. Satish Kumar).*** The point raised is that the word "dispute" as defined in section 2(1)(d) of the Adhiniyam does not take within its fold the disputes which are not related with "ascertained money".

38. In support of the oral submissions, written submissions were filed.

39. We have heard the parties at length and perused the record related to the said submissions.

40. Before dealing with rival contentions, it is useful to quote the unamended and amended definition of "works contract" hereinbelow in juxtaposition. Underlined portion of amended definition shows that this portion is inserted by way of amendment w.e.f. 17.1.2017.

Un-amended	**Amended**
"2(i). "Works-contract" means an agreement in writing for the execution of any work relating to construction, repair or maintenance of any building or superstructure, dam, weir, canal, reservoir, tank, lake, road, well, bridge, culvert, factory work-shop, powerhouse, transformers or such other works of the State Government or Public Undertaking as the State Government may by notification,	"2(i) "Work-contract" means an agreement in writing <u>or a letter of intent or work order issued</u> 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 <u>or of the Corporations</u>

specify in this behalf at any of its stages, entered into by the State Government or by an official of the State Government or Public Undertaking or its official for and on behalf of such Public Undertaking and includes an agreement for the supply of goods or material and all other matters relating to the execution of any of the said works.	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 also include all concession agreement, so entered into by the, State Government or public undertakings or Corporation, wherein an State support is involved or not,".

41. In the fitness of things, we deem it apposite to deal with the contentions in the light of questions framed by the Full Bench.

As to question No.(i) & (iii)

42. Since these questions are interrelated, it is apt to deal with these questions simultaneously. In the case of ***Kamini Malhotra*** (Supra), the learned single Judge considered the definition of 'works contract'. In addition, the meaning of word "building" was also considered. It was held that the definition of works contract is in wide spectrum. Its a definition of wide amplitude and application. The relevant portion of this judgment reads as under:

> *"14. Learned counsel for appellant has submitted that the use of word 'means' in clause (i) of section 2 of Adhiniyam, clearly indicates that the defination is a hard and fast definition and therefore except for the works specified in the said clause, no other work could be treated as 'Works Contract'. In other words the said definition excludes all other works, which are not specified in the said definition.*

15. Learned counsel for appellant in the above context referred to P. Kasilingam and others vs. P.S.G. College of Technology and others, AIR 1995 Sc 1395 wherein, it has been observed that the use of word 'means' indicates that the definition is a hard and fast definition and no other meaning can be assigned to the expression than is put down in definition. In Punjab Land Development and Reclamation Corportion Ltd. Chandigarh vs. Presiding Officer, Labour Court Chandigarh and others. (1990) 3 SCC 682 it has been observed by the Apex Court that a definition is an explicit statement of full connotation of a term. It has further been observed that when a statute says that a word or phase shall 'mean' certain things or acts, the definition is a hard and fast definition and no other meaning can be assigned to the expression than is put down in definition.

16. Since, as per section 2(i) of the Adhiniyam 'Work Contract' means an agreement in writing for the execution of any work specified therein; it is clear that a work to constitute and to be construed as 'Works Contract' must be strictly covered by the works specified in the said definition and that no other work should be treated as 'Works Contracts'.

17. Learned counsel for the respondents in the above context submitted that, Water Treatment Plant, essentially consists of building and water tanks. It was therefore submitted that the name "Water Treatment Plant" used in the contract between the parties, by itself would not exclude the said work executed by the appellant, from the category or definition of 'Works Contract'. It has been submitted that the Water Treatment Plant was construction of such buildings and tanks, the details of which are given in (Annexure R-3). It was submitted in the above context that all the components of Water Treatment Plant basically consisted of building or storage tanks. In the above context photographs (Annexure R-4) to (Annexure R-9) are also filed, to indicate the nature of work and construction relating to the Water Treatment Plant executed by the appellant.

18. It has further been submitted by the learned counsel for respondents that section 2(i) of the Adhiniyam provides that a 'Works Contract' means an agreement in writing for the execution of any work relating to construction, repair or maintenance of any building or superstructure, dam, weir, canal, reservoir, tank, etc. Learned counsel for respondents emphasised that thus the definition of 'Works Contract' covers 'any' work relating to construction, repair or maintenance of 'any' building or superstructure, which clearly indicates that all buildings, or superstructures or constructions are to be covered by the said definition of 'Works Contract'. It was therefore submitted that, since the Water Treatment Plant basically includes construction or building and water, storage plant, it was fully covered by the definition of 'Works Contract'.

19. In the above context learned counsel for respondents submitted that, the word "any" has been explained in Black's Law Dictionary and it has been stated therein that the word 'any' has a diversity of meaning and may be employed to indicate 'all' or 'every' as well as 'some' or 'one' and its meaning in a given statute depends upon the context and subject matter of statute. It is often synonymous with 'either', 'every' or 'all'. The Supreme Court in Lucknow Development Authority vs. M.K. Gupta, AIR 1994 SC 787 had considered the meaning and purport of word 'any' in the context of Consumer Protection Act, 1986 and has quoted the above definition of the said word in Black's Law Dictionary and has observed that its meaning in a given statute depends upon the context and subject matter of the statute.

20. In the instant case, 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 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. Therefore, it appears that the definition of 'Works Contracts' as given in section 2(i) of the Act, applies to all works of construction, repairs or maintenance of all types of buildings, superstructures, reservoirs, tanks etc.

21. Therefore, all types of buildings, tanks whatever be its technical nomenclature, would be covered under the said definition of 'Works Contract'. In Ghanshim Das vs. Debi Prasad and another, AIR 1966 SC 1998 the Supreme Court with reference to U.P. Zamindari Abolition and Land Reforms Act, observed:

> *"The word building has not been defined in the Act an is, therefore, to be construed in its ordinary grammatical sense unless there is something in the context or object of the statute to show that it is used in a special sense different from its ordinary grammatical sense. So construed according to the dictionary meaning, the existence of a roof is not always necessary for a structure to be regarded as a building. Residential, buildings ordinarily have roofs but there can be a non-residential building for which a roof is not necessary. A large stadium or an open air swimming pool constructed at a considerable expense would be a building as it is a permanent structure and designed for useful purpose."*

22. As noticed earlier, the use of word 'any' building etc., used in section 2(i) of the Adhiniyam appears to be a very wide connotation and 'any' work relating to building appears to have been intended to be included in the definition of 'Works

> *Contract'. As noticed earlier, in the instant case basic work constituting Water Treatment Plant, included construction of building as well as of storage tanks and reservoirs. Necessary ancillary, gadgets and implements for purification and cleansing of water would also have to be constructed. But such ancillaries would not change the basic nature of work to be executed by the appellant, which essentially was the construction of buildings and storage tanks. Therefore, the work undertaken to be executed by the appellant was covered within the meaning and definition of 'Works Contract'."*
>
> *(Emphasis Supplied)*

As per the view taken in the case of ***Kamini Malhotra***(supra), the nomenclature of agreement is immaterial.

43. In the case of ***D.D. Sharma***(Supra), another Single Judge considered the definition of 'works contract' and opined that it is elaborate, exhaustive and inclusive. While deciding the case of ***D.D. Sharma***(Supra), the learned Single Judge considered earlier judgment delivered in M.C.C. No.850/2005 (***M/s Technogem Consultant Pvt. Ltd. vs. G.M. M.P.R.R.D.A.***). In ***D.D. Sharma*** (Supra), it was held that even if the State has formed a society for execution of a work, that would not make such society, a distinct legal entity from the State thereby loosing all the attributes of the State. It was further held that the words "all other matters relating to execution of any of the said work" mentioned under Section 2(i) of the Adhiniyam are wide enough and brings within its ambit even the consultancy services. The relevant portion of this order in the case of ***D.D. Sharma***(Supra) reads as under:

> *"9. Now the crucial question which has been raised by the applicant in this petition is that the agreement and work assigned to the applicant does not fall within the definition of 'Works Contract', may be examined.*
> *To assess the nature of contract entered into between the parties it would be necessary to refer certain clauses of the agreement which provides the works to be done under the supervision consultancy for the work of construction/upgradation of rural roads in Madhya Pradesh under the Pradhan Mantri Gram Sadak Yojna scheme. Clause 4.2, 4.3, 4.5, 4.6 and 7.1 are relevant, which provides construction, supervision to check quality of materials and works, measurement of works,*

scrutinize the claim raised by the contractor and held the management to clear the payment. The petitioner was to monitor progress of the work with certain services as enumerated in clause 4.6 and to submit various reports as enumerated in Clause 7.1 of the scheme. The aforesaid all the works are related to the works contract. Clause 2 of the terms of reference provides objectives for providing consultancy services, which reads thus:

2. Objectives- The objectives of the proposed Consultancy Services are:

i. Proper management of civil works contract as 'Engineer' in terms of civil works contract including field measurements and quality assurance work.

ii. Comprehensive supervision of project implementation activities carried out by the Contractors to ensure complete compliance with the drawings, technical specifications and various stipulations contained in the Contract Documents.

iii. Efficient construction supervision by personnel who are experienced in the modern methods of construction supervision and contract management.

iv. Ensure high standards of quality assurance in the supervision/execution of work.

v. Completion of the work within the stipulated period of completion. Consultants will specially be responsible for quality and early completion.

10. the definition of Woks Contract under Section 2(i) of the Adhiniyam is elaborate and includes an agreement for supply of goods or material and all other matters relating to the execution of any of the said works. Meaning thereby that all other matters relating to the execution of works contract are included in the definition of works contract. The aforesaid definition is exhaustive and inclusive in nature. The work assigned to the applicant as per the contract were supervision of construction and the applicant had to carry out checking and verification of all the works as per the working drawings and regular inspection of contractors equipment, plant and machinery. Applicant was also entitled to direct the contractor to carry out all such works or to do all things as may be necessary to avoid or reduce the risk affecting the safety of life of workers, or adjoining property etc. the applicant was under an obligation to inspect the works on completion before taking over by the respondents. The applicant was also to report in respect of quality of material and work. The applicant was to inform the progress as per the working plan and was to prepare all reports and documents. In nutshell the applicant was to supervise construction, to report in respect of quality and progress of work and was to measure the work after completion of works. Meaning thereby the applicant was deeply concerned with the work and works contract and in absence of works contract or

> *that of contractor the applicants existence cannot be presumed. The entire work of applicant was related to the works contract and the contract of applicant falls within the purview of matters relating to the 'execution of works contracts'. M/s Technogem Consultants Pvt. Ltd. (supra) the learned Judge considering this aspect held thus:*
> *18. Mere perusal of aforequoted definition of "works contract" in Section 2(i) and in particular the words underlined would go to show that if the State Government or its official enters into a contract with any person for construction, repairs and maintenance of road then it becomes a works contract, as defined in Section 2(i). Similarly, definition of "works contract", also includes an agreement in relation to all other matters relating to execution of any of the said work i.e., road. In other word, if in execution of main work as in this case road, any other agreement is entered into by State Government with any person for accomplishing execution of road work then the said agreement would also be regarded as "works contract" within the meaning of Section 2(i) ibid.*
> *19. In my considered view, therefore, the agreement in question (Annexure P-1) being in the nature of providing all kind of consultancy services by the petitioner to State Government which are necessary for construction and development of road and hence, it becomes a "works contract" as defined under Section 2(1) ibid. In other words, it is a contract which falls in second category of "works contract" in its inclusive definition namely "all other matter relating to execution of any of the said work" i.e., road."*

It is apparent that in this case the learned Single Judge considered the effect of existence of other agreements also which are entered into for accomplishment of work which is related with activities related to a 'works contract'.

44. In the case of ***Jabalpur Corridor***(Supra), the judgment of ***Kamini Malhotra***(Supra) was not considered. However, the judgment passed in the case of ***M/s Technogem Consultant Pvt. Ltd.***(Supra) and ***D.D. Sharma***(Supra) were relied upon by the state. The learned Single Judge did not discuss the aforesaid judgments in the case of ***Jabalpur Corridor***(Supra). It needs no emphasis that an order passed by a previous bench of same strength is binding on the subsequent bench unless the earlier judgments are distinguishable or there exists any other judgment on the same point which is rendered by more number of judges of the High

Court or there exists a judgment of Supreme Court on that point.

45. True it is that in ***Kamini Malhotra*** (Supra), this Court was considering a works contract in relation to construction of a water tank. Concession agreement was not subject matter of adjudication in the case of ***Kamini Malhotra***(Supra). However, in ***Kamini Malhotra***(Supra), this Court opined that the definition of works contract is of wide spectrum/amplitude. Almost similar view was taken in the case of **Technogem** (supra) and ***D.D. Sharma***(Supra). Thus, in our view, to the extent interpretation of definition of 'works contract' is concerned, in ***Kamini Malhotra***, **Technogem** and ***D.D. Sharma***(Supra), it was laid down that the definition is very wide.

46. In ***Jabalpur Corridor***(Supra), the learned Single Judge held that the expression "works contract" as defined in the 1983 Adhiniyam has a "restrictive meaning and has special and limited conotation". It is further held that definition aforesaid does not include detail and design. In our considered view, this finding in ***Jabalpur Corridor***(Supra) is diametrically opposite to the interpretation given by previous Benches in ***Kamini Malhotra*****, Technogem** and ***D.D. Sharma***(Supra). Detail and design etc. are essential part of activity of 'construction'.

47. In ***Jabalpur Corridor*** (Supra), the reasons for holding that concession agreement is not a works contract are – the concession agreement does not include detailed design, financing and operation of the contract, the works contract is a lump sum contract wherein the contractor has to quote the amount for execution of the work based on details furnished by the employer, there is no necessity for creation of any escrow account in works contract, in works contract the payment is made against the running account bills prepared by the contractor and submitted to the employer periodically whereas in concession agreement, the Concessionaire has to utilize and arrange the funds, the concessionaire under the agreement after completion of construction recovers the amount

invested by him for completion of the project by way of toll, no State support agreement is executed in case of a works contract whereas it takes place in a case of concession agreement. The Concessionaire is not liable to pay value added tax, sales tax and other taxes under the concession agreement which are otherwise payable under the works contract. The Bench considered that 17 concession agreement were entered into between the parties in case of ***Jabalpur Corridor***(Supra). A EPC contract was also entered into. On the basis of these "salient features" the Bench came to hold that concession agreement cannot be treated as a works contract. In addition, it was held that parties have clearly understood the agreement to be a concession agreement and decided to resolve their dispute as per the Act of 1996.

48. In the case of ***Ashoka Infraways Ltd. vs. State of M.P., 2016 (2) MPLJ 685***, the Division Bench relied upon and followed the judgment rendered in the case of ***Jabalpur Corridor***(Supra). The view of the Division Bench is mainly based on the dicta of ***Jabalpur Corridor***(Supra). In addition, it was held that the Bench is reinforced in its decision due to the use of the term "concession" used at several places in the agreement itself. The Bench noticed that the words "concession area", "concession period", "concession agreement", etc. are repeatedly used in various paragraphs of the concession agreement. Hence, it was held that the concession agreement is not 'a works contract'.

49. Reverting back to the unamended definition of 'works contract', it is noteworthy that works contract means an agreement which must be in writing for the execution of any work relating to construction, repair or maintenance of any building or super structure or other entities mentioned in the said definition. In the definition, it was made clear that other matters relating to execution of any of the said work are also included. In our considered view, whether a concession agreement or any agreement by whatever name called is a works contract or not will depend whether essential ingredients of works contract are available in the said agreement.

The essential ingredients in the definition of “works contract” are that the agreement must be in writing, it must be for execution of “any work” relating to construction, repair or maintenance of any building, super structure or other entities mentioned in the definition. The words “any work relating to construction, repair or maintenance” are very wide. If activity of construction, repair or maintenance is involved, nature of construction, repair or maintenance is immaterial. If aforesaid essential ingredients of works contract are available in the agreement and in addition thereto certain other elements are added in the agreement which are not included in the definition of “works contract”, it will not take out the agreement outside the purview of works contract. If present agreement is tested on the anvil of aforesaid principle, it will be clear like noon day that the agreement fulfills the said requirement i.e. there exists an agreement in writing for execution of work relating to construction, repair and maintenance of building and other entities. In addition, the Concessionaires can operate the contract. Apart from this, it is noteworthy that the definition of 'works contract' is totally silent about the mode and method of payment. It is also silent as to how the work relating to construction, repair or maintenance should be carried out. The definition of 'works contract' contains the word “construction”, “repair” and “maintenance”. These words can be further divided and bifurcated. The definition of word “construction” in the concession agreement mentioned above is an example of the same. Its a matter of common knowledge that there cannot be any construction activity without undertaking the exercise of investigation, engineering, design, procurement, etc. The aforesaid ancillary activities are essential part of a construction activity. Likewise, the word repair or maintenance can be subdivided in various sub heads. However, such division or elaboration will not change the basic nature of the activity. Thus, we are not able to agree with the view taken in ***Jabalpur Corridor***(Supra) that definition of works contract has a restrictive meaning and has a limited conotation. The design and finance etc. are also essential parts of construction activity.

50. In ***Jabalpur Corridor***(Supra), it was held that there are certain elements which are special to the concession agreement and such "salient features" are absent in works contract. In our view, the requirement of maintaining account of a particular nature (whether it is Escrow Account or any other account), the method of payment, requirement to pay taxes under various Statutes are not relevant for determining whether concession agreement is a 'works contract' or not. If agreement satisfies the requirement of a 'works contract', on the basis of parameters laid down in the definition of 'works contract' it can be safely concluded that said agreement is a 'works contract'. As per the definition of 'works contract', the 'salient features' aforesaid are not decisive. In this regard reference may be made to the judgment of Supreme Court reported in ***2014 (1) SCC 708, Larsen and Toubro Ltd. vs. State of Karnataka***. The Apex Court considered the term "works contract" used in Art. 366 (29A)b of the Constitution. It is laid down that even if in a contract besides the obligations of supply of goods and material and performance of labour and services, some additional obligations are imposed, such contract does not cease to be a 'works contract'. The additional obligations in the contract would not alter the nature of contract so long as the contract provides for a contract of work and satisfied the primary description of works contract. It is apt to mention that this view is subsequently affirmed by the Constitution Bench in ***2014 (7) SCC 1 [Kone Elevator India Pvt. Ltd. vs. State of Tamil Nadu]***

51. As analyzed, the present agreements satisfy the primary descriptions, of the works contract. If in addition to these primary description, applicant are engaged in other activity like operation of project or maintaining a particular type of account etc. or signed other contracts also, this will not take away the agreements outside the scope of 'works contract'. The requirement of payment of tax is a different facet and as per Section 2(i) of the Adhiniyam it will not determine the nature of agreement. Similarly, mode of payment and method of arranging and

utilizing money will not determine the nature of agreement. The definition of 'works contract' alone will determine whether a particular agreement falls within its ambit or not. For this reason, the argument of Shri Naman Nagrath based on relevant provisions of IT Act and railway contract must fail.

52. Similarly, in the case of ***R.V. Infrastructure Engineers Pvt. Ltd.*** (supra), this court had no occasion to test the agreement on the anvil of definition of works contract. In the said case, the question was whether the particular agreement is a lease or licence within the meaning of Transfer of Property Act and Easement Act. The question was relating to payment of stamp duty and registration under the Indian Stamp Act and Registration Act. The aforesaid judgment is of no assistance to the applicants.

53. In the case of ***Kunya Ahmed***(Supra), it was held that while hearing a SLP, the Supreme Court is not exercising its appellate jurisdiction. It is merely exercising its discretionary jurisdiction to grant or not to grant leave to appeal. The petitioner is still outside the gate of entry though aspiring to enter the appellate arena of Supreme Court. Whether he enters or not would depend on the fate of his petition for special leave. It is further held that neither the principle of resjudicata nor the principle of public policy analogous thereto, would bar the trial of identical issues in a separate proceedings before the High Court merely on the basis of an uncertain assumption that the issues must have been decided by the Supreme Court at least by implication. In no uncertain terms, it was made clear that it is not correct or safe to extend the principle of resjudicata or constructive resjudicata to such an extent so as to found it on mere guess work. In view of this judgment, it cannot be held that the order of this court in Jabalpur Corridor (supra) has got a seal of approval from the Supreme Court. The order of Supreme Court shows that leave was not granted and SLP was dismissed before its conversion in to a civil appeal.

54. On the basis of foregoing analysis, it is clear that any agreement by whatever name called, if it falls within the meaning and definition of "works contract" as per Adhiniyam of 1983, it must be treated as a works contract. In that case, the appropriate forum is the Tribunal constituted under Section 3 of Adhiniyam of 1983 if differences between the parties are covered u/s 2(d) of the Adhiniyam of 1983.

55. The aforesaid discussion further shows that nomenclature of agreement is immaterial for determining whether it falls within the ambit of 'works contract'. By applying an artistic linguistic engineering, an agreement can be worded in a unique or a different manner. It may have a different nomenclature but these factors will not determine its real nature. In ***Ashoka Infraways***(Supra), the Division Bench paid much emphasis to the repeated use of word "concession". The Division Bench further relied on the judgment of ***Jabalpur Corridor***(Supra). We are unable to agree within the reasoning given in ***Ashoka Infraways*** (Supra) for the reasons stated above. In addition, it is well settled that question of jurisdiction goes to very root of the matter and this legal question needs to be examined on the basis of interpretation of enabling provisions. The jurisdiction cannot be assumed by consent of parties. See ***AIR 1954 SC 340 (Kiran Singh vs. Chaman Paswan)***. For the aforementioned reasons, in ***Jabalpur Corridor***(Supra) and in ***Ashoka Infraways***(Supra), the Benches have committed an error in holding that the "concession agreement" is not a "works contract". Hence, these orders to the said extent are overruled.

<u>As to question No.(ii)</u> :

56. Section 7 of the Adhiniyam, 1983 reads as under:

> *"7. Reference to Tribunal (1) Either party to a works contract shall irrespective of the fact whether the agreement contains an arbitration clause or not, refer in writing <u>the dispute</u> to the*

Tribunal.

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

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

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

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

Sub-section (1) makes it clear that the aggrieved party to a works contract may refer its dispute in writing to the Tribunal *irrespective of the fact* whether there exists any agreement between the parties which contains an arbitration clause or not. Indisputably, the Adhiniyam of 1983 was held to be *intra vires*. A Full Bench of this Court in ***2007 (4) MPHT 444, (Shri Shankarnarayan Construction Co. vs. State of M.P.)*** held as under:

"Thus, if a works contract, as defined in Section 2(1)(i) of the 1983 Adhiniyam contains an arbitration clause, either party to the woks contract will have to refer the dispute to the Arbitration Tribunal as constituted under Section 3 of the 1983 Adhiniyam and cannot refer it to any other arbitrator for arbitration. The 1983 Adhiniyam is, therefore, a law for the time being in force relating to arbitration pursuant to an arbitration agreement between the State Government or its Undertaking and the contractor and is saved under sub-section (5) of Section 2 of the 1996 Act from the provisions of Part-I of the 1996 Act which are inconsistent with the provisions of the 1983 Adhiniyam."

57. In the said judgment it was held that the jurisdiction to decide a 'dispute' in a case of a works contract is with the Tribunal constituted under the Adhiniyam of 1983. In the case of ***Kiran Singh*** (Supra), the

Apex Court held as under:

> *"6. The answer to these contentions must depend on what the position in law is when a Court entertain a suit or an appeal over which it has no jurisdiction and what the effect of Section 11 of the Suit Valuation Act is on that position. It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity and that is invaldity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial or whether, it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pose any decree, and such a defect cannot be cured even by consent of parties."*
>
> *(Emphasis Supplied)*

58. In view of statutory mandate contained in Section 7(i) of the Adhiniyam, the parties to a works contract needs to approach the Tribunal for resolution of their 'dispute'. However, whether this mandate will be applicable in cases of terminated contract or not will be decided by the Supreme Court in a reference made in the case of ***L.G. Choudhary***(Supra). The curtains will be finally drawn on this issue by the Supreme Court. Since the said question is pending before the Supreme Court, we are not inclined to deal with the said aspect and the present order shall not be construed as an order dealing with aforesaid aspect.

As to question No.(iv)

59. Before dealing with rival contentions, it is apposite to take note of "statement of object and reasons" behind introduction of M.P. Madhyastham Adhikaran Sanshodhan Adhiniyam, 2016 which reads as under:

> *"Statement of Objects and Reasons*
>
> *In Civil Writ Petition No.6557/2013 M/s Jabalpur Corridor (India) Private Limited and another versus Madhya Pradesh Road Development Corporation Limited and others,*

> *the High Court of Madhya Pradesh in its order dated 4th December, 2013 has not regarded the concession agreement in the sense of works-contract, due to which dispute under a concession agreement is settled under the Arbitration and Conciliation Act, 1996 (Nos. 26 of 1996). Various departments and public undertakings are spending huge amount of money for payment of fees to arbitrators appointed under the said Act and for conducting meeting of the arbitrators. Also there is no uniform system for settlement of such disputes. Therefore, it is proposed to subsitute the definition of 'works-contract' in the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 (No. 29 of 1983) so that the "concession agreement" is included in the terms "works-contract'.*
>
> *(Emphasis Supplied)*

60. The parties are at loggerheads on the question of applicability of the amended provision. It is apt to mention that while deciding issues no. (i) and (iii) this Bench has already held that unamended definition of works contract is wide enough to include the concession agreement if it fulfills the necessary ingredients of a works contract. It is common ground on behalf of applicants/appellants that mere use the word "substitution" will not make the provision retrospective. The word "substitution" must be seen as per the scheme of the Statute.

61. There cannot be any quarrel about this preposition. The golden rule of interpretation of a Statute is that interpretation must depend on the text and the context. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A Statute is best interpreted when we know why it was enacted. (See: ***1987 (1) SCC 424, R.B.I. vs. Peerless General Finance Co. Ltd.***). It is well settled that adopting the principle of literal construction of the Statute alone, in all circumstances, without examining the context and scheme of the Statute, may not subserve the purpose of the Statute. In the words of V.R. Krishna Aiyer, J, such an approach would be "to see the skin and miss the soul", Whereas "the judicial key to construction is the composite perception of *deha* and the *dehi* of the provision. (See: ***1977 (2) SCC 256, Board of Mining Examining vs. Ramjee*** followed in ***2013 (3) SCC 489, Ajay Maken vs. Adesh Kumar***).

The statement of object and reasons shows that the reason for bringing this amendment is that this Court in the case of ***Jabalpur Corridor***(Supra) has not regarded the concession agreement in the sense of 'works contract' due to which the dispute under the concession agreement is settled under the Act of 1996. The basic reason for introducing the amendment is to clarify that the definition of works contract will include concession agreement. No new liabilities are fastened on the parties by bringing this amendment.

62. Shri Nagrath, learned senior counsel placed reliance on the judgment of Supreme Court in the case of ***M/s Mahalaxmi Oil Mills***(Supra). In the said case, the question was whether tobacco seed and tobacco cake will falls within relevant entry of the Excise Act. The Apex Court noted that the expression “means” as well as “includes” were used. It was held to be exhaustive. In the said case, in the first part of the definition, tobacco seed and cake was not mentioned. In the second part of definition, leaves, stalks and stems were mentioned but there was no mention about the seed. Tobacco seeds did not fall within the definition. Hence, Apex Court accepted the contention of the State that in absence of mentioning of words tobacco seeds in the definition clause, it will not be covered by the definition. In the present case, the amended definition is differently worded. The definition includes the services so hired for carrying out the aforesaid work and it also included the 'concession agreement'. On plain reading of the amended definition, we are unable to hold that it does not include concession agreement. The general principles laid down in the case of ***Vatika Township***(Supra) are clear. In the said case, it is held that one established rule of interpretation is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. As noticed, the present amendment in the definition of works contract is clarificatory in nature and in statement of object and reasons and in Section 2 of amending provision, it is made clear that the definition is “substituted”. At the cost of repetition, by way of amendment, respondents have neither imposed any new obligation and new duties nor attached any new disability on the applicants. The

amendment is in the nature of explaining a formal legislation. Hence, ***Vatika Township***(Supra) is of no assistance to the applicants. In the case of P. Kasilingam(Supra), it was held that the words 'means and includes' indicates an exhaustive explanation of meaning. The expression 'private college' was considered by the Apex Court in the said case. In that case law making authority deliberately refrained from including professional and technical colleges. In the present case, in the amended definition of 'works contract' the 'concession agreement' is included and, hence, said judgment is of no help to the applicants.

63. In our view, since intention behind the amendment is to clarify that concession agreement will also fall within the definition of works contract, it will be an amendment by which earlier definition is “substituted” and not “superseded”. In other words, there is a difference between “supercession” and “substitution” of a provision. (See ***AIR 1969 SC 504, Koteshwar Vitthal Kamad vs. K. Rangappa Baliga***). Such substitution is judicially recognized by Supreme Court in ***AIR 2004 SC 5100, Zile Singh vs State of Haryana*** and in ***AIR 1996 SC 2181 (State of Rajasthan vs. Mangilal Pindwal)***. A Full Bench of Karnataka High Court, in its recent judgment, reported in ***AIR 2014 (Karnataka) 120 (The Hassan Cooperative Milk Producers Societies Union Ltd. vs. State of Karnataka)*** opined that when amendment is made by substitution of a provision, it has the effect of replacing the old provision by the substituted provision and in absence of repugnancy, inconsistency and absurdity, it must be construed as if it is incorporated in the Act right from *ab initio*. Hence, in the present case of substitution of definition, it will be presumed that the amended definition is in force from the date unamended definition came into being.

64. The appellants also relied on ***2016 (9) SCC 720, Union of India vs. Indusind Bank Ltd.*** and another to bolster their submission that amendment in the definition cannot have any retrospective effect. The said judgment is of no help to the applicants . In the said case, it was held

that the amendment was remedial in nature and not clarificatory or declaratory of the law. Certain agreements covered by unamended provision were made void for the first time. It was found that rights and liabilities that have already accrued between the parties are sought to be taken away. In this backdrop, it was held that amended section will not apply retrospectively. In the present case, no legal statutory, vested or constitutional right of the applicants is taken away or altered by the amendment in the definition nor any fresh liability has been created.

65. This is trite law that right of preferring appeal or avail legal remedy is a substantive right whereas right relating to forum is procedural in nature. It is equally well settled that in contrast to Statutes dealing with the substantive rights, Statutes dealing with merely matters of procedure are presumed to be retrospective unless such a construction is textually inadmissible. See ***AIR 1927 P.C. 242 (Delhi Cloth and General Mills Ltd. vs. CIT Delhi)***, ***AIR 1975 SC 1843 (Gurbachan Singh vs. Satpal Singh)***, ***AIR 1990 SC 209 (Hitendra Vishnu Thakur vs. State of Maharashtra), AIR 1994 SC 2623***. ***Lord Denning, in Blyth vs. Blyth, 1966 (1) ALL ER 524*** opined that the rule that an act of Parliament is not to be given retrospective effect applies only to Statute which affect vested rights. It does not apply to Statute which only alter the form of procedure or admissibility of evidence, or the effect which the court gives to evidence. The said principle is followed by this court in the case reported in ***2016 (1) MPLJ 48, [Mescot Hospital & Research Centre vs. State of M.P.]***.

66. In view of foregoing analysis,we are constrained to hold that the amendment by Act No.7 of 2017 is clarificatory in nature and is applicable to pending and future contracts.

67. We are not oblivious of the fact that this order may create inconvenience in certain cases where parties may be required to resolve their dispute before a forum constituted under 1983 Adhiniyam. However,

inconvenience etc. cannot be a ground to interpret a definition or to provide a redressal forum which is otherwise not available as per law [see **AIR 1965 SC 1449** (***Raja Soap Factory and others vs. S.P. Shantharaj and others***) **Para 9**]. In view of ***1999 (9) SCC 559, State of H.P. vs. Nurpur Private Bus Operator Union***, the doctrine of prospective overruling cannot be utilised by the High Court. In ***2001 (1) SCC 534, Raymonds Ltd. vs. MPEB***, it was again held that doctrine of prospective overruling can be invoked only in matters arising under the constitution and that it can be applied by the Supreme Court of India.

68. Shri Nagrath urged that in the concession agreement it was made clear that the present dispute will be decided by the arbitration proceedings as per the Act of 1996 and Regulatory Body etc. may deal with future disputes. Suffice it to say that no clause of agreement can prevail over the statutory provisions of the Adhiniyam of 1983. If a dispute falls within the ambit of Section 2(i)(d) & (i) as per Section 7 of the Adhiniyam, the Tribunal constituted under the 1983 Adhiniyam alone will have jurisdiction.

As to question No.(v) :

69. The applicants/appellants advanced an alternative submission. It is contended that even if concession agreement is treated to be a works contract, the remedy under the Adhiniyam of 1983 can be invoked only when there exists a “dispute” between the parties.

70. It is common ground that only claim of ascertained money valued at Rs.50,000/- or more falls within the ambit of definition of “dispute”. In the present case, if applicants succeed, they will get some additional days to operate their projects. How much they will earn during those additional days is not quantifiable in terms of money. Hence, the remedy under the Adhiniyam cannot be invoked and the parties may be directed to settle their dispute under the provisions of Act of 1996. The said contention is

advanced on the basis of ***Satish Kumar Riazada***(Supra). Shri Nagrath, learned senior counsel contended that the amended definition of dispute brings within its fold only claims regarding 'ascertained money'. Thus, a dispute regarding interpretation of any provision of agreement etc. cannot be a subject matter of "dispute". He submits that the amendment in the definition of "dispute" shows that the Legislature intended to restrict the meaning and confined it to the "disputes" relating to claim of ascertain money.

71. Shri Amit Seth, learned counsel for the State opposed the same by contending that before the Concessionaire submits his bid, he undertakes an exercise by which he determines the gain in terms of money. On the basis of this determination only, he decides to proceed further and prepare his bid. It is further submitted that in order to compute and ascertain the sum of money in lieu of work executed, the average toll collection for a specified period, the cash flow chart, the financial identical rate of return (FIRR) and the yearly cash flow statement (YCFS) etc. are formed basis for ascertaining sum of money in terms of concession period. The said mechanism is provided in the terms of contract agreement itself. Reliance is placed on the order passed in WP No.3057/2016 ***(Ashoka Infraways Ltd. and another vs. State of M.P.)*** decided on 28.7.2016.

72. The aforesaid point raised by the parties requires serious consideration. For ready reference, the unamended and amended definition of "dispute" are reproduced in juxtaposition.

Amended [as by Madhya Pradesh Madhyastham Adhikaran (Sanshodhan) Adhiniyam, 1990], definition of "**dispute**" under the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983-

Unamended w.e.f. 7.10.1983	**Amended w.e.f. 21.4.1990**
2(d) "**dispute**" means any difference relating to any claim valued at Rupees 50,000 or more, arising out	2(d) "**dispute**" means claim <u>of ascertained money</u> valued at Rupees 50,000 or more relating to any difference

of the execution or non-execution of a works contract or part thereof.	arising out of the execution or non-execution of a works contract or part thereof.

The unamended definition of dispute includes “any difference” relating to “any claim” valued at Rs.50,000/- or more. In our view, the words “any difference”” and “any claim” are much wider than the words used in the amended definition which confined the dispute to the “claim of ascertained money”. The Legislature has definitely restricted the definition of dispute by consciously employing the words dispute means “claim of ascertained money”. In unamended definition, any difference relating to any claim which was valued at Rs.50000/- or more arising out of the execution or non-execution of works contract or part thereto was recognised as a dispute. Whereas, in the amended definition 'dispute' is confined to “claim of ascertained money”. There is a remarkable difference in the language employed in both the definitions. In amended definition, the law makers have not chosen the words “claim of ascertainable money. Indeed, they consciously used the word “ascertained”. The words “ascertainable” and “ascertained” have different meaning. “Ascertainable” means an amount which can be ascertained by any process of reasoning, formula, procedure, investigation, etc. whereas “ascertained” is the outcome of an exercise already undertaken for quantification of the amount. Hence, claim of “ascertained money” will arise only when such claim in terms of money has already been “ascertained”.

73. The Legislature has chosen to use the words “claim of ascertained money” and not the words claim of “ascertainable” money. The word “ascertain” is defined in Black's Law Dictionary as under:

> *“Ascertain. To fix; to render certain or definite; to estimate and determine; to clear of doubt or obscurity. To insure as a certainty. To find out by investigation. U.S. v. Carver, 260 U.S. 482, 43 S.Ct. 181, 182, 67 L.Ed. 361. Sometimes it means to “assess”; or to “hear, try and determine”.*

In Webster's Dictionary, the meaning of word “ascertain” reads as under:

> *“ascertain 1 To learn with certainty about; find out. 2 Obs. To make certain; determine; define. See synonyms under DISCOVER. KNOW [<OF acertener, a- to (<L ad-) + certain. See CERTAIN] -ascer-tain'a-ble adj. -as'cer-tain'a-ble-ness n. -as'-cer-tain'ably adv. -as'cer-tain'ment n.”*

In Stroud's Judicial Dictionary of Words and Phrases, Seventh Edition, Volume 1, it is mentioned that the word “ascertained” has two meanings, (1) “known”, (2) “made certain”. It is further expressed that where money to be paid, has “to be ascertained” in a certain way. It is further observed that the words “to be ascertained” are very strong words, and they look very like a condition precedent” (per Crompton J., Braunstein vs. Accidential Insurance, 31 L.J.Q.B.24. In P. Ramanatha Aiyar's The Law Lexicon, The Encyclopaedic Law Dictionary with Legal Maxims Latin Terms and Words & Phrases, 2nd Edition, 1997, same meaning is given.

In 'Corpus Juris Secundum', Vol. VI published by American Law Book Company, it is mentioned that 'ascertained' preterit and past participle of the verb “ascertain”. It has been defined as meaning determined; made certain; and, under certain conditions, has been held to imply knowledge and gained from evidence rather than from exercise of the senses. It is further observed that it is a condition precedent rather than a submission to the arbitration.

74. The meaning of 'ascertain'/ascertained given in various dictionaries mentioned hereinabove shows that it is an activity undertaken by which a claim is fixed or made definite. In other words, claim is learnt with certainty or it is made definite or determined. The Stroud's Dictionary makes it clear that where “ascertained” is used in relation to a claim of money to be paid, it has to be ascertained in a particular way. “To be ascertained” were held to be very strong words and were treated to be a

condition precedent.

75. We find substantial force in the arguments of Shri Nagrath and Shri Savla that even if the present agreement is treated as a works contract, the Tribunal will have no jurisdiction to decide the difference between the parties unless it falls within the statutory definition of "dispute" under the Act of 1983.

76. Shri Amit Seth submitted that money can be ascertained on the basis of average toll collection for a specified period or on the basis of cash flow chart, financial identical rate of return (FIRR) and yearly cash flow statement (YCFS). We do not see much merit in the said contention. As the applicants have based their claim to operate the project for a specified period, if they succeed in their claim, they will get extra days for operating the project. For example, if a Concessionaire who is operating a toll plaza succeeds, what he will get will be in terms of extension of days and not in terms of money which is ascertainable or ascertained. During extended period of operation of projects, how much will be the vehicular movement and how much toll will be collected cannot be ascertained at this point of time by any process of reasoning. Similarly, while operating a sports complex, how much the Concessionaire will earn cannot be determined/ascertained by any guess work. For this reason, the claim of the applicants is in terms of extension of days to operate the project and they are unable to putforth a claim of ascertained money. However, at this stage, it must be made clear that when a claim is ascertainable and yet the concessionaire has not ascertained the claim in order to wriggle out of definition of "dispute", the matter would be different and in such cases the forum for adjudication would be the Tribunal under the Adhiniyam of 1983. Hence, each case needs to be examined in this regard.

77. The respondents have placed reliance on the judgment of Indore Bench in WP No.3057/2016 (***Ashoka Infraways Ltd. vs. State of MP***). In

this judgment, the court has reproduced relevant parts of minutes of Additional Work Approval Committee dated 5.6.2006. The said reproduced portion shows that claim of the Concessionaire was in terms of more days whereas the approval was given for lesser number of days. For example, the Concessionaire claimed 1542 extra days whereas the Committee decided to give extra days to the extent of 1194 days. In para 8, this court calculated and taken into account extended number days. Thus, in our view, no principle of law is laid down in this order which shows that the amount in terms of money can be ascertained when claim of the concessionaire is regarding grant of extra number of days to operate the project.

78. In AIR 1964 Madras 108 **(*Thanjavur Permanent Bank Ltd. vs. Dharmasamvardhani Ammal*)** , the words "ascertained claim" were considered. The Division Bench opined as under :

> *"Ascertained sum" clearly means a sum which has been determined and quantified. It is not the appellant's case that its claim on account of alleged misappropriation by the respondent's husband of the bank's money has been established, and, if so, quantified or ascertained. So long as the liability, if any, of the respondent's husband is not established and ascertained in a precise sum, we do not see how the appellant could be permitted to claim a set off."*

In 1971 (3) SCC 23 (Badri Prasas vs. State of MP), the Apex Court considered the meaning of words 'ascertained goods'. It is held that "it has to be ascertained which trees fall within that description. Till this was ascertained, they were not 'ascertained goods' within Section 19 of the Sale of Goods Act". No doubt, these judgments are arising out of different Statutes. Still one thing is clear that the word "ascertained" means the amount/good is quantified, fixed or determined. In our view, in absence of any such claim of ascertained money by the applicants, their claim does not fall within the ambit of dispute as per Section 2(d) of the Adhiniyam of 1983.

79. In C.R. No.136/1988 (Progressive Construction Pvt. Ltd. vs. MPSEB) decided on 24.6.1996, this Court expressed its view that if a law prescribes a thing to be done in a particular manner, it has to be done in the same manner and other methods are forbidden. Following the said principles in Satish Kumar Raizada(Supra), this court considered the word "dispute" in the Adhiniyam and opined that the Tribunal can decide only such disputes which are covered by this definition. The "dispute" under this definition must be for "ascertained money". It means the sum which is "known" or "made certain" or "fixed" or "determined" or "quantified". Since in the said case, the reference was relating to fixing the rates of work it was held to be not relating to any "ascertained sum of money". We are in respectful agreement with the view taken by this court in Satish Kumar Raizada(Supra). In absence of claim of ascertained money, the cases of present applicants do not fall within the ambit of dispute and for this reason they cannot be relegated before the Tribunal constituted under the Adhiniyam of 1983. Thus, even if the concession agreement are works contract, in our view, the remedy before the Tribunal under the Act of 1983 is not available. The parties cannot be left remedy less and hence in our view the applicants'/appellant may pursue their remedy under the Act of 1996.

A conjoint reading of section 2(d) and section 7 of the Adhiniyam makes it clear that a reference to the Tribunal can be made and entertained only when it is in relation to "the dispute". This ancillary issue is answered accordingly.

80. So far contention of Shri Akshay Sapre is concerned, suffice it to say that in ***2000 (4) SCC 285 [Molar Mal (Dead)] Through LRs. vs. KAY Iron Works (P) Ltd.***, the Apex Court held that if the constitutionality of a provision is not under challenge, the court has to proceed by treating it to be an intra vires provision and interpret the same. In the present proceedings which are arising out of different sections of Act of 1996, we are unable to hold that we can still examine and decide the

constitutionality of notification by which the definition of works contract is substituted. The other judgments cited by Shri Sapre are not relevant in the facts and circumstances of this case.

81. Shri Shekhar Sharma by placing reliance on the judgment of ***Kesoram Industries Ltd*** (Supra) contended that the judgment of Supreme Court in ***Viatech Escher Wyass Flowel Ltd.***(Supra) cannot be treated to be overruled. We are afraid that such finding cannot be given by this Court in the teeth of specific finding given in this regard in the case of ***L.G. Choudhary*** (Supra). The Apex Court held that the judgment of ***Viatech Escher Wyass Flowel Ltd.*** (Supra) is *per incurium*. In the light of judgment of ***L.G. Choudhary*** (Supra), the judgment of ***M/s APS Kushwaha*** (Supra) is also of no assistance. The judgment of ***Ravikant Bansal*** (Supra) cannot hold the field. In view of judgment of this Court reported in ***1988 AIR (MP) 111 (DB) (Spedra Engineering Corporation vs. State of M.P.)***, it is clear that the Adhiniyam of 1983 is *intra vires* and its provisions are required to be read as such. Similarly, in view of judgment reported in **2008 (7) SCC 487 (*State of M.P. vs. Anshuman Shukla*)**, whether or not there exists different arbitration clause giving power of resolution of dispute to any authority, the jurisdiction to decide the dispute will remain with the Tribunal constituted under the Adhiniyam of 1983.

82. On the basis of foregoing analysis, we may summarize our conclusions as under:

(i) If an agreement by whatever name called falls within the definition of “works contract” and difference between the parties is covered in the definition of 'dispute' as defined under the Adhiniyam of 1983, it has to be referred for adjudication before the Tribunal constituted under Section 3 of the Adhiniyam of 1983.

(ii) In view of statutory provision of Section 7 of the

Adhiniyam of 1983, even in cases where the parties have incorporated a clause in such agreement regarding resolution of dispute by some other forum or under the Act of 1996, the forum subject to (i) above, would be the Tribunal under the Adhiniyam of 1983. This conclusion, however, will presently not include the cases of terminated contract, which aspect is pending consideration before a Larger Bench of the Supreme Court. The decision of Larger Bench will draw the curtains on this aspect.

(iii) The judgment of ***Jabalpur Corridor***(Supra) reported in ***2014 (2) MPLJ 276*** and ***Ashoka Infraways Ltd.***(Supra) reported in ***2016 (2) MPLJ 685*** are overruled.

(iv) The substituted definition of "works contract" is clarificatory in nature, hence it will be retrospective in operation.

(v) The words "claim of ascertained money" have a definite connotation and therefore only such difference arising out of execution or non-execution of a 'works contract' which are related with claims of above nature will be covered under Section 2(d) of the Adhiniyam of 1983.

82. This reference is decided accordingly.

83. Registry shall place these matters before the appropriate Bench expeditiously.

(S.K. Seth)	**(Sujoy Paul)**	**(J.P. Gupta)**
Judge	**Judge**	**Judge**

mkl/ys/as/dm/sk