Reserved On : 04/07/2025
Pronounced On : 19/09/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/PETN. UNDER ARBITRATION ACT NO. 198 of 2024
With
R/PETN. UNDER ARBITRATION ACT NO. 244 of 2024
With
R/PETN. UNDER ARBITRATION ACT NO. 6 of 2025
With
CIVIL APPLICATION (FOR JOINING PARTY) NO. 1 of 2025
In R/PETN. UNDER ARBITRATION ACT NO. 6 of 2025
With
R/PETN. UNDER ARBITRATION ACT NO. 7 of 2025
With
R/PETN. UNDER ARBITRATION ACT NO. 8 of 2025
With
R/PETN. UNDER ARBITRATION ACT NO. 9 of 2025
With
R/PETN. UNDER ARBITRATION ACT NO. 10 of 2025
With
R/PETN. UNDER ARBITRATION ACT NO. 11 of 2025
With
R/PETN. UNDER ARBITRATION ACT NO. 12 of 2025
With
R/PETN. UNDER ARBITRATION ACT NO. 13 of 2025
With
R/PETN. UNDER ARBITRATION ACT NO. 14 of 2025
With
R/PETN. UNDER ARBITRATION ACT NO. 16 of 2025
With
R/PETN. UNDER ARBITRATION ACT NO. 17 of 2025
With
R/PETN. UNDER ARBITRATION ACT NO. 18 of 2025
With
R/PETN. UNDER ARBITRATION ACT NO. 19 of 2025
With
R/PETN. UNDER ARBITRATION ACT NO. 20 of 2025
With
R/PETN. UNDER ARBITRATION ACT NO. 21 of 2025
With
R/PETN. UNDER ARBITRATION ACT NO. 22 of 2025
With
R/PETN. UNDER ARBITRATION ACT NO. 23 of 2025
With
R/PETN. UNDER ARBITRATION ACT NO. 60 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE D.N.RAY

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Approved for Reporting	Yes	No

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GPC INFRASTRUCTURE LTD.

Versus

GANDHINAGAR MUNICIPAL CORPORATION

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Appearance:

1. R/ARBI.P/ 198 /2024	MR. UNMESH SHUKLA, SR. ADV. FOR MR.SHASHVATA SHUKLA for the Petitioner No.1 MR CHINMAY M GANDHI for the Respondent No.1 MS NIKITA C GANDHI for the Respondent No.1
2. R/ARBI.P/ 244 /2024	MR. UNMESH SHUKLA, SR. ADV. FOR MR.SHASHVATA SHUKLA for the Petitioner No.1 MR KV GADHIA for the Respondent No.1
3. R/ARBI.P/ 6 /2025	MR. UNMESH SHUKLA, SR. ADV. FOR MR.SHASHVATA SHUKLA for the Petitioner No.1 MR. G. H.VIRK,GP WITH MR.SHYAMAL K.BHIMANI, ADV.WITH MR. PRASHANTH S.UNDURTI, ADV. WITH MR.SIMRANJIT H.VIRK, ADVOCATE WITH MS.RUCHI RAMPURIA, ADVOCATE for the Respondent No.1, 2, 3
C.A.No.1 /2025	Mr. ASPI M.KAPADIA, SR.ADVOCATE FOR THE APPLICANT MR. G.H.VIRK, GP WITH MR.SHYAMAL K.BHIMANI, ADV.WITH MR.PRASHANTH S.UNDURTI, ADV. WITH MR.SIMRANJIT H.VIRK, ADVOCATE WITH MS.RUCHI RAMPURIA, ADVOCATE for the Respondent Nos. 2 to 4 MR.SHASHVATA SHUKLA, ADVOCATE for Res.No.1
4. R/ARBI.P/ 7 /2025	MR. UNMESH SHUKLA, SR. ADV. FOR MR.SHASHVATA SHUKLA for the Petitioner No.1 MR.G. H. VIRK, GP WITH MR.SHYAMAL K.BHIMANI, ADV.WITH MR.PRASHANTH S.UNDURTI, ADV. WITH MR.SIMRANJIT H.VIRK, ADVOCATE WITH MS.RUCHI RAMPURIA, ADVOCATE for the Respondent No.1, 2, 3
5. R/ARBI.P/ 8 /2025	MR. UNMESH SHUKLA, SR. ADV. FOR MR.SHASHVATA SHUKLA for the Petitioner No.1 MR.G. H. VIRK, GP WITH MR.SHYAMAL K.BHIMANI, ADV.WITH MR. PRASHANTH S.UNDURTI, ADV. WITH MR.SIMRANJIT H.VIRK, ADVOCATE MS.RUCHI RAMPURIA, ADVOCATE for the Respondent No.1, 2, 3
6. R/ARBI.P/ 9 /2025	MR. UNMESH SHUKLA, SR. ADV. FOR MR.SHASHVATA SHUKLA for the Petitioner No.1 MR.G. H. VIRK, GP WITH MR.SHYAMAL K.BHIMANI, ADV.WITH MR.PRASHANTH S.UNDURTI, ADV. WITH MR.SIMRANJIT H.VIRK, ADVOCATE MS.RUCHI RAMPURIA, ADVOCATE for the Respondent No.1, 2, 3
7. R/ARBI.P/ 10 /2025	MR. UNMESH SHUKLA, SR. ADV. FOR MR.SHASHVATA SHUKLA for the Petitioner No.1 MR.G. H. VIRK, GP WITH MR.SHYAMAL K.BHIMANI, ADV.WITH MR.PRASHANTH S.UNDURTI, ADV. WITH MR.SIMRANJIT H.VIRK, ADVOCATE WITH MS.RUCHI

	RAMPURIA, ADVOCATE for the Respondent No.1, 2, 3
8. R/ARBI.P/ 11 /2025	MR. UNMESH SHUKLA, SR. ADV. FOR MR.SHASHVATA SHUKLA for the Petitioner No.1 MR.G. H. VIRK, GP WITH MR.SHYAMAL K.BHIMANI, ADV.WITH MR.PRASHANTH S.UNDURTI, ADV. WITH MR.SIMRANJIT H.VIRK, ADVOCATE WITH MS.RUCHI RAMPURIA, ADVOCATE for the Respondent No.1, 2, 3
9. R/ARBI.P/ 12 /2025	MR. UNMESH SHUKLA, SR. ADV. FOR MR.SHASHVATA SHUKLA for the Petitioner No.1 MR.G. H. VIRK, GP WITH MR.SHYAMAL K.BHIMANI, ADV.WITH MR. PRASHANTH S.UNDURTI, ADV. WITH MR.SIMRANJIT H.VIRK, ADVOCATE WITH MS.RUCHI RAMPURIA, ADVOCATE for the Respondent No.1, 2, 3
10. R/ARBI.P/ 13 /2025	MR. UNMESH SHUKLA, SR. ADV. FOR MR.SHASHVATA SHUKLA for the Petitioner No.1 MR.G. H. VIRK, GP WITH MR.SHYAMAL K.BHIMANI, ADV.WITH MR.PRASHANTH S.UNDURTI, ADV. WITH MR.SIMRANJIT H.VIRK, ADVOCATE WITH MS.RUCHI RAMPURIA, ADVOCATE for the Respondent No.1, 2, 3
11. R/ARBI.P/ 14 /2025	MR. UNMESH SHUKLA, SR. ADV. FOR MR.SHASHVATA SHUKLA for the Petitioner No.1 MR.G. H. VIRK, GP WITH MR.SHYAMAL K.BHIMANI, ADV.WITH PRASHANTH S.UNDURTI, ADV. WITH MR.SIMRANJIT H.VIRK, ADVOCATE WITH MS.RUCHI RAMPURIA, ADVOCATE for the Respondent No.1, 2, 3
12. R/ARBI.P/ 16 /2025	MR. UNMESH SHUKLA, SR. ADV. FOR MR.SHASHVATA SHUKLA for the Petitioner No.1 MR.G. H. VIRK, GP WITH MR.SHYAMAL K.BHIMANI, ADV.WITH MR.PRASHANTH S.UNDURTI, ADV. WITH MR.SIMRANJIT H.VIRK, ADVOCAE for the Respondent No.1, 2, 3
13. R/ARBI.P/ 17 /2025	MR. UNMESH SHUKLA, SR. ADV. FOR MR.SHASHVATA SHUKLA for the Petitioner No.1 MR.G. H. VIRK, GP WITH MR.SHYAMAL K.BHIMANI, ADV.WITH MR.PRASHANTH S.UNDURTI, ADV. WITH MR.SIMRANJIT H.VIRK, ADVOCAE for the Respondent No.1, 2, 3
14. R/ARBI.P/ 18 /2025	MR. UNMESH SHUKLA, SR. ADV. FOR MR.SHASHVATA SHUKLA for the Petitioner No.1 MR.G. H. VIRK, GP WITH MR.SHYAMAL K.BHIMANI, ADV.WITH MR.PRASHANTH S.UNDURTI, ADV. WITH MR.SIMRANJIT H.VIRK, ADVOCATE WITH MS.RUCHI RAMPURIA, ADVOCATE for the Respondent No.1, 2, 3
15. R/ARBI.P/ 19 /2025	MR. UNMESH SHUKLA, SR. ADV. FOR MR.SHASHVATA SHUKLA for the Petitioner No.1 MR.G. H. VIRK, GP WITH MR.SHYAMAL K.BHIMANI,, ADV.WITH MR.PRASHANTH S.UNDURTI, ADV. WITH MR.SIMRANJIT H.VIRK, ADVOCATE WITH MS.RUCHI

	RAMPURIA, ADVOCATE for the Respondent No.1, 2, 3
16. R/ARBI.P/ 20 /2025	MR. UNMESH SHUKLA, SR. ADV. FOR MR.SHASHVATA SHUKLA for the Petitioner No.1 MR.G. H. VIRK, GP WITH MR.SHYAMAL K.BHIMANI, ADV.WITH MR.PRASHANTH S.UNDURTI, ADV. WITH MR.SIMRANJIT H.VIRK, ADVOCATE WITH MS.RUCHI RAMPURIA, ADVOCATE for the Respondent No.1, 2, 3
17. R/ARBI.P/ 21 /2025	MR. UNMESH SHUKLA, SR. ADV. FOR MR.SHASHVATA SHUKLA for the Petitioner No.1 MR.G. H. VIRK, GP WITH MR.SHYAMAL K.BHIMANI,, ADV.WITH MR.PRASHANTH S.UNDURTI, ADV. WITH MR.SIMRANJIT H.VIRK, ADVOCATE WITH MS.RUCHI RAMPURIA, ADVOCATE for the Respondent No.1, 2, 3
18. R/ARBI.P/ 22 /2025	MR. UNMESH SHUKLA, SR. ADV. FOR MR.SHASHVATA SHUKLA for the Petitioner No.1 MR.G. H. VIRK, GP WITH MR.SHYAMAL K.BHIMANI, ADV.WITH MR.PRASHANTH S.UNDURTI, ADV. WITH MR.SIMRANJIT H.VIRK, ADVOCAE WITH MS.RUCHI RAMPURIA, ADVOCATE for the Respondent No.1, 2, 3
19. R/ARBI.P/ 23 /2025	MR. UNMESH SHUKLA, SR. ADV. FOR MR.SHASHVATA SHUKLA for the Petitioner No.1 MR.G. H. VIRK, GP WITH MR.SHYAMAL K.BHIMANI, ADV.WITH MR.PRASHANTH S.UNDURTI, ADV. WITH MR.SIMRANJIT H.VIRK, ADVOCATE WITH MS.RUCHI RAMPURIA, ADVOCATE for the Respondent No.1, 2, 3
20. R/ARBI.P/ 60 /2025	MR.MANISH BHATT, SR.ADVOCATE FOR MR. MUNJAAL BHATT, ADVOCATE & MR.MAYUR KISHANCHANDANI, ADVOCATE for the petitioner . MR.K.V.GADHIA, GP for the Respondent

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CORAM:**HONOURABLE MR.JUSTICE D.N.RAY**

CAV JUDGMENT

1. Heard learned Counsel appearing for the respective parties.

2. A batch of petitions has been instituted under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short

“the Arbitration Act, 1996”).The common question which arises for consideration in all these petitions pertains to the applicability of the Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992(for short **“the Arbitration Tribunal Act, 1992”**),which contemplates reference of disputes arising between parties to a works contract to the Tribunal established thereunder, in terms of Section 8 of the Arbitration Tribunal Act, 1992, despite the invokation of the respective arbitation clauses u/s 21 of the Arbitration Act, 1996.

3. Since the issues raised across the petitions are substantially identical, they were heard together. For the sake of convenience, Arbitration Petition No. 60 of 2025 is treated as the lead matter, and the decision rendered herein shall govern the outcome of the connected petitions as well.

4. Brief foundational facts are as under:-

4.1 The Petitioner is a company engaged in construction activities, whereas the respondent is an authority responsible for providing essential infrastructure and allied facilities, including entertainment amenities, within the territorial limits of Rajkot, Gujarat.

4.2 In January 2015, the respondent-authority issued a public tender for the development of an Integrated Group Housing Facility over the land situated at Bharat Nagar Slum 7B, Mavdi, Rajkot (TP No. 28; FP No. 49/1; Ward No. 13), under a Public Private Partnership (PPP) model. Pursuant thereto, Red Organisers Pvt. Ltd. (hereinafter referred to as the "erstwhile Concessionaire") submitted its bid, which was accepted, and a Letter of Acceptance was accordingly issued on 06.04.2015.

4.3 As per the tender stipulations, the erstwhile Concessionaire was obligated to construct 215 dwelling units with a minimum carpet area of 28 sq. meters each, along with 12 commercial shops having a total carpet area of 15 sq. meters. The total plot admeasured 30,505 sq. meters with a permissible FSI of 3. The said land was bifurcated into two parts:- Parcel A, designated for construction of the Slum Rehabilitation Project, and Parcel B, marked as freehold land for commercial utilization by the concessionaire.

4.4 The Petitioner's contention is that the permissible FSI of 3 is applicable to the entire plot area and not confined merely

to Parcel A. In support of this assertion, reliance has been placed upon clarifications issued by the Urban Development and Urban Housing Department, in addition to the tender conditions themselves.

4.5 Subsequently, the respondent and the erstwhile Concessionaire executed a Concession Agreement dated 11.06.2015 for development of the housing facility on the subject land. Despite the tender requirement of fewer dwelling units, the concessionaire undertook additional construction, ultimately delivering 314 dwelling units with an approximate carpet area of 37.08 sq. meters each, along with 20 shops admeasuring a total of about 16.49 sq. meters.

4.6 Thereafter, in compliance with the terms of the tender, a Deed of Conveyance was executed on 15.10.2018 between the respondent and the erstwhile Concessionaire with respect to Parcel B, the freehold land, admeasuring 25,846.61 sq. meters out of the total 30,505 sq. meters. On the very same date, the concessionaire sold the said freehold land to the present Petitioner through a registered sale deed, for a consideration of ₹65,00,00,000/-.

4.7 Consequently, disputes emerged between the parties, inter alia, pertaining to the applicability of permissible FSI of 3 (three) in respect of the freehold land i.e., Parcel B, cost towards additional construction undertaken for Parcel A,, and the levy of betterment charges. In view of these disputes, the Petitioner, invoking Clause 11 of the Concession Agreement dated 11.06.2015, issued a notice dated 26.11.2024 under Section 21 of the Arbitration Act, 1996, seeking reference of disputes to arbitration. Clause 11 provided for resolution of disputes by a Sole Arbitrator, namely the Municipal Commissioner of the respondent. The Petitioner, however, objected to unilateral appointment of an arbitrator by the respondent.

4.8 While no reply was initially filed by the respondent in the present proceedings, a communication dated 12.02.2025 was subsequently addressed, wherein the respondent disputed the claims and further contended that, in light of Notification dated 16.12.2024, municipalities and municipal corporations fall within the ambit of “public undertakings.” Hence, according to the respondent, the disputes are required to be

referred to the Gujarat Public Works Contracts Disputes Arbitration Tribunal.

- The Notification dated 16.12.2024 reads as under :-

"Notification
Legal Department,
Sachivalaya, Gandhinagar.
Dated the 16th December, 2024.

NO. GK/64/ARB/102024/UOR-01/D-1:- *In exercise of the powers conferred by sub-clause (iii) of clause (i) of sub-section(1) of section 2 of the Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992(Guj.4 of 1992)-(hereinafter referred to as "the said Act")the Government of Gujarat hereby specifies the 'Municipalities' defined under Sub-section (14) of section 2 of the Gujarat Municipalities Act, 1963 and Sub-section (34B) of section 2 Gujarat Provincial Municipal Corporations Act, 1949; and the 'Panchayats' defined under Sub-section (14) of section 2 of Gujarat Panchayat Act, 1993 to be the "public undertaking" for the purpose of the said Act.*

By order and in the name of the Governor of Gujarat.

(R.D.Maheta)
Deputy Secretary to Government"

- Subsequently, another Notification dated 14.05.2025 has been published, which reads as under :-

"Notification
Legal Department,
Sachivalaya, Gandhinagar.
Dated the 14th May, 2025.

NO.GK/10/ARB/102025/UOR-01/D-1:- *In exercise of the powers conferred by sub-clause (iii) of clause (i) of sub-section (1) of section 2 of the Gujarat Public Works Contracts*

Disputes Arbitration Tribunal Act, 1992(Guj.4 of 1992), the Government of Gujarat hereby amends the Government Notification, Legal Department NO. GK/64/ARB/102024/UOR-01/D-1, Dated the 16th December, 2024 with effect from 16th December, 2024 as follows, namely;-

In the said Notification, after the words and figures "the Gujarat Municipalities Act, 1963" the words, figures and brackets 'the corporation' defined under sub-section (10), shall be inserted.

By order and in the name of the Governor of Gujarat.

(A.K.Gohil)
Under Secretary to Government"

5. These petitions under Section 11 of the Arbitration Act, 1996 are now being considered in the above light.

6. **SUBMISSIONS ON BEHALF OF PETITIONERS:-**

6.1 Mr. Manish R. Bhatt, learned Senior advocate appearing on behalf of the Petitioner, submitted that in view of the amendment introduced by Section 12 of the Arbitration and Conciliation (Amendment) Act, 2015, read in conjunction with the recent judgment of the Hon'ble Supreme Court in **Central Organisation for Railway Electrification v. M/s. ECI SPIC SMO MCML (JV) A Joint Venture Company** reported in **2024 INSC 857**,(**CORE-II**) the respondent cannot either act as an arbitrator or assume the role of sole appointing

authority of the arbitrator. It is further contended that, admittedly, disputes in the present matter arose in the year 2019, i.e., prior to 16.12.2024.

6.2 With reference to the Notification dated 16.12.2024, by which the respondent Municipal Corporation has been brought within the ambit of a “public undertaking,” learned Senior advocate submitted that Section 8 of the Arbitration Tribunal Act, 1992 envisages reference to the Tribunal only where a dispute arises between the “parties” to a “works contract” with a “public undertaking.” It was argued that the language of the Notification, particularly the usage of the expression “the Government of Gujarat hereby specifies”, indicates that the inclusion of the respondent Corporation as a “public undertaking” has prospective effect. Hence, as on any date prior to 16.12.2024, the respondent was not covered within the definition of a “public undertaking” under Section 2 (1) (i) (iii) of the Arbitration Tribunal Act, 1992. Consequently, since invocation of arbitration by the Petitioner occurred prior to 16.12.2024, such inclusion is inconsequential for the present dispute. Hence, it is not necessary to even examine the notification dated 14.05.2025 any further.

6.3 It was further submitted that the Concession Agreement dated 11.06.2015 specifically incorporates a private arbitration clause, and the parties, at the time of entering into the said agreement, were fully aware that arbitration would be governed by the provisions of the Arbitration Act, 1996, along with its statutory amendments. Learned counsel argued that this contractual right of reference to private arbitration cannot subsequently be defeated by issuance of a Notification, which, according to the Petitioner, lacks legislative competence to override the terms of a duly executed agreement.

7. Mr. Unmesh Shukla, learned Senior Advocate appearing for the Petitioner in Arbitration Petition No. 6 of 2025 has submitted on the same lines that the Notification dated 16.12.2024, issued under the Arbitration Tribunal Act, 1992 is inapplicable to the present dispute for three distinct reasons:

- firstly, the Notification does not possess retrospective effect;
- secondly, any retrospective application would infringe vested contractual rights of the Petitioner and result in manifest prejudice; and
- thirdly, the disputes in the present case arose prior to issuance of the Notification.

7.1 It was further submitted that while the legislature, subject to constitutional limitations, may enact laws with retrospective or prospective effect, a subordinate legislation such as a Notification can only operate retrospectively where an express power in this regard is conferred under the parent statute. In this connection, reliance was placed upon the decisions of the Hon'ble Supreme Court in **State of Rajasthan v. Basant Agrotech (India) Ltd.**, reported in **(2013) 15 SCC 1**, and **Mahabir Vegetable Oils (P) Ltd. v. State of Haryana**, reported in **(2006) 3 SCC 620**.

7.2 According to Mr. Shukla, the Arbitration Tribunal Act, 1992 contains no provision, either express or implied, empowering the State Government to issue a Notification specifying a class of local authorities as "public undertakings" with retrospective effect. Therefore, the Notification dated 16.12.2024, even if valid, can only apply prospectively and cannot affect the present dispute, which had arisen and was invoked prior to the said date.

8. Mr. Aspi M. Kapadia, Learned advocate appearing in

Civil Application No. 1 of 2025 in Arbitration Petition No. 6 of 2024, advanced submissions on behalf of the Intervener, M.V. Omni Projects (India) Ltd. It was submitted that the contentions raised by the Petitioner are equally applicable to the case of the Intervener, inasmuch as, the Notification dated 16.12.2024 cannot govern disputes that arose prior to its issuance. Learned counsel supported the arguments advanced by Mr. Unmesh Shukla emphasizing that the Notification lacks retrospective operation, cannot override vested contractual rights, and has no bearing on disputes which were invoked before the said date.

9. **SUBMISSIONS ON BEHALF OF THE RESPONDENT**

9.1 Learned Government Pleader, Mr. Gursharan H. Virk, appearing for the respondent, submitted that on a plain reading of the Preamble and the provisions of the Arbitration Tribunal Act, 1992, it is evident that the legislative intent underlying the enactment was to ensure that disputes arising from “works contracts” are adjudicated by the Gujarat Public Works Contracts Disputes Arbitration Tribunal established under the said Act.

9.2 It was further contended that the definition of “public undertaking” under the Arbitration Tribunal Act, 1992 has, since inception, included within its scope local authorities. According to learned counsel, the Notification dated 16.12.2024 merely operates to specify the particular class of local authorities that would fall within the definition of “public undertaking,” as contemplated by the statute. Therefore, the Notification is neither beyond the scope of the Act nor dehors the legislative framework. On the contrary, its issuance is rooted in, and flows from, the statutory scheme of the Arbitration Tribunal Act, 1992.

9.3 Reliance was further placed on the decision of this Court in **M/s. SPML Infra Limited v. Gujarat Water Infrastructure** [Arbitration Petition No. 168 of 2019], wherein it was held that the Arbitration Tribunal Act, 1992, being a special law, would prevail over the general provisions of the Arbitration Act, 1996. Learned counsel emphasized that the same principle must govern the present matter, as the disputes in question arise out of a works contract within the meaning of the Arbitration Tribunal Act, 1992. In the abovementioned case, it was held that:-

> "*15... With the repeal of the Arbitration Act, 1940 by enactment of the Arbitration and Conciliation Act, 1996, the effect of Section 21 of the Arbitration Tribunal Act, 1992 is not diluted rather the provisions of the Arbitration Tribunal Act, 1992, which is a specific law would prevail over the general provisions of the Arbitration and Conciliation Act, 1996, which ceases to apply to any dispute arising from a works contract and all arbitration proceedings in relation to such dispute, shall have to be dealt with by the Arbitration Tribunal constituted under Section 3 of the Arbitration Tribunal Act, 1992.*"

10. **DISCUSSION AND FINDINGS:-**

10.1 The moot question that has fallen for consideration of this Court in this bunch of petitions is whether, the Notification No. GK/64/ARB/102024/UOR-01/D-1 dated 16.12.2024 and Notification No. GK/10/ARB/102025/UOR-1/D-1 dated 14.05.2025 issued under the Arbitration Tribunal Act, 1992 would apply retrospectively to the disputes in which the petitioners have sought the appointment of their respective Arbitrators?

10.2 The second question which calls for pronouncement by this Court is whether, if the answer to the first question hereinabove is in the negative, then whether the invocation under Section 21 of the Arbitration Act, 1996 would take the disputes out of the purview of the Arbitration Tribunal Act, 1992?

10.3 A perusal of the Arbitration Tribunal Act, 1992 shows that the Act begins with the preamble which reads as under:-

> *"AN ACT*
> *to provide for the constitution of a Tribunal to arbitrate in disputes arising from works contracts to which the State Government or a public undertaking is a party and to provide for matters connected therewith."*

11. Ostensibly, the Act was to "Arbitrate" the disputes arising between contractors of "works contracts" concerning the State Government or a "public undertaking" as defined in Section 2(1)(i) of the Arbitration Tribunal Act, 1992. Although, even if the word used is "Arbitrate", the proceedings under the Arbitration Tribunal Act, 1992 are nothing akin to "Arbitration" within the meaning of the Arbitration Act, 1996 or its predecessor, the Arbitration Act, 1940. This would be clear from the perusal of Sections 11, 12, 14 and 21 of the Arbitration Tribunal Act, 1992. Under Section 11, the Tribunal has power to review its own award. Under Section 12, the High Court has powers of revision akin to Section 115 of the Code of Civil Procedure, 1908 over the awards of the Tribunal. Under Section 14, all the proceedings before the

Tribunal are deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of the Indian Penal Code, 1860 and under Section 21, the provisions of the Arbitration Act shall in so far as they are inconsistent with the provisions of the Arbitration Tribunal Act, 1992, cease to apply to any dispute arising from a works contract and all arbitration proceedings in relation to such dispute pending before any arbitrator, umpire, Court or other authorities shall stand transferred to the Tribunal. Further, there is no power to challenge the awards under Section 34 of the Arbitration Act, 1996. From the above, it is clear that the Tribunal is certainly not a permanent arbitral institution within the meaning Section 2 (1) (a) of the Arbitration Act, 1996.

12. It will also be seen that the Arbitration Tribunal Act, 1992 was enacted in 1992 before the entire regime of Arbitration came to be changed under the Arbitration Act, 1996. It has been specifically pleaded by the petitioner that the Arbitration Tribunal Act, 1992 is one of the most misused piece of State legislation, inasmuch as, after coming into force of the Arbitration Act, 1996, the Arbitration Tribunal Act is redundant as it is an archaic piece of legislation which has no

place in civilised society and the sole purpose of the Act in the present day is to embroil the Government contractors in payment disputes which virtually ensures that the State/Public undertaking does not end up releasing any payment to the contractors due to massive pendency in the Tribunal which is grossly understaffed and virtually infrastructure less and where disputes are pending for more than 20 or even 25 years. Unfortunate as it may be, this Court is not competent to hear the challenge to the Arbitration Tribunal Act, 1992, even if it were made. Therefore, the abovestated situation has only to be kept in mind while according an interpretation to the retrospective operation of the Notification dated 16.12.2024 and 14.05.2025 it at all. The petitioners before this Court have entered into works contract agreements with the Ahmedabad Municipal Corporation (AMC) at various stages. Such contracts have arbitration clauses which have been agreed to between the parties. The petitioners in these petitions are exercising their rights to arbitrate their disputes to which the respondent-Corporation, by taking out the Notifications in question has sought to plead that since the Corporation is now covered within the meaning of “public undertaking” of the Arbitration Tribunal Act, 1992, these arbitration petitions

must fail and the petitioners must be relegated to the Tribunal.

13. It is the specific contention of Mr.Virk that, the moment the Corporation stands covered within the meaning of “public undertaking”, Section 21 of Arbitration Tribunal Act, 1992 will kick in and the Act of 1996 will cease to apply from that moment onwards and “all arbitration proceedings in relation to such disputes before an arbitrator, umpire, court or authority shall stand transfer to the Tribunal”. It is without doubt that the contracts entered into with the petitioners are works contract within the meaning of Section 2(1)(k). Thus, the proceedings under Section 11 of the Act being proceedings under the Arbitration Act, 1996 and pending before the Court, being this Court, shall automatically stand transferred to the Tribunal. Thus, it is not a matter of retrospective operation of the Notifications but rather by virtue of application of Section 21 of Arbitration Tribunal Act, 1992, these proceedings must cease immediately after the Notifications have come into force.

14. In the decision of this Court dated 06.10.2023 in

Arbitration Petition No. 168 of 2019 and the allied matters, on the question, whether in view of the Arbitration clause, an Arbitrator could be appointed in disputes that had arisen between the contractors and Gujarat Water Infrastructure Ltd., a Company incorporated under the Companies Act, 1956 with the Government of Gujarat being 100% shareholder in the Company and hence, falling within the meaning of "public undertaking", this Court had gone on to hold as under :-

> *"17. Following the above stated ratio, coming back to the instant case, we may note at the cost of reiteration that the Arbitration Tribunal Act, 1992 has been enacted on 23.03.1992, at the time when the Arbitration Act, 1940 was in existence, for a specific purpose to provide for the constitution of a Tribunal to arbitrate any dispute arising from works contract to which the State Government or a public undertaking is a party. Section 8(1) provided that irrespective of whether such works contract contains an arbitration clause or not, any dispute arises between the parties to the works contract shall be referred to the Tribunal for arbitration, within one year from the date when the dispute has arisen. The Tribunal is empowered to make an interim award under Sub-section (5) of Section 8 of the Arbitration Tribunal Act, 1992, and the award made by the Tribunal including an interim awconfers powers of the Civil Court upon the Tribunal in respect of the matters provided therein, for the purposes of exercise of its jurisdiction under the Act. Section 11(1) confers power of review of the award or interim award made by the Tribunal. Section 12, as noted herein before, provides for exercise of revisional powers by the High Court. Section 13 bars the jurisdiction of the Civil Court. The constitution of Tribunal as provided in Section 3(2) is to be decided by the Government, which shall consists of the Chairman and such number of other members as may be appointed by him. The Chairman of the Tribunal has to be qualified for appointment as a Judge of High Court and the other members of Tribunal shall possess the qualification*

prescribed in clause (b) of Sub-section (3) of Section 3, which may be of District Judge; Secretary of the Government of Gujarat; or the Chief Engineer of the Government of Gujarat. Section 21 as noted hereinabove states that the provisions of the Arbitration Act, 1940 insofar as they are inconsistent with the provisions of the Arbitration Tribunal Act, 1992, cease to apply to any dispute arising from a works contract and all arbitration proceedings in relation to such dispute, pending before an arbitrator, umpire, court or authority shall have to be transferred to the Tribunal. The Arbitration Tribunal Act, 1992 being a special statute dealing with the disputes arising from a works contract entered into with the State Government or a public undertaking, in view of the overriding effect given by Section 21 of the Arbitration Tribunal Act, 1992 would prevail over the general law governing the Arbitration and Conciliation under the then Arbitration Act, 1940,repealed and substituted by the Arbitration Act,1996. The specific nature of disputes arising between specific categories of persons is to be resolved by a specific process through a specific forum as observed by the Apex Court in Gujarat State Civil Supplies Corporation Limited (supra). Being a specific law, the provisions of the Arbitration Tribunal Act, 1992,would have precedence over or prevail over the Arbitration Act, 1996.

18. Taking clue from the above decision, we maynote that the Arbitration Act, 1996 does not specifyany specific dispute or specific class or category ofpersons to which the Act shall apply, as has been specified in the Arbitration Tribunal Act, 1992.Overriding effect given by the Legislature to theArbitration Act, 1940, which was in existence at thetime of enactment of the Arbitration Tribunal Act,1992 by virtue of Section 21 of the said Act, shallcontinue, to prevail over the subsequent enactment ofreplacement of the then Arbitration Act, 1940, whichis the Arbitration Act, 1996. As noted above, theArbitration Act, 1996 was enacted to consolidate andamend the law relating to the arbitration and conciliation and the Arbitration Act, 1940 stoodrepealed and substituted by the Arbitration Act, 1996. The result is that though being a subsequentenactment in point of time, the effect of Section 21of the Arbitration Tribunal Act, 1992 over the thenArbitration Act, 1940 would continue over the Arbitration Act, 1996.

19. Insofar as the arguments of the learned counsel for the petitioner based on Clause 20.3.1 of the Agreement that the parties agreed to the dispute resolution mechanism under the

Arbitration Act, 1996 and the Arbitration Agreement entered into between the parties under the Arbitration Act, 1996 would prevail over the statutory provisions of the Arbitration Tribunal Act, 1992, suffice it to note that Sub-section (1) of Section 8 provides choice or confers right upon a party to the dispute, irrespective of the agreement to the contrary, despite of existence of an arbitration clause in the Arbitration Agreement between the parties, to approach the Tribunal constituted under the Arbitration Tribunal Act, 1992 for arbitration. The substantive right created under Sub-section (1) of Section 8 of a party to approach the Tribunal for arbitration cannot be precluded because of the arbitration clause existing in the agreement arrived between the parties. Sub-section (1) of Section 8 would prevail over the Clause 20.3.1 of the Arbitration Agreement pressed into service before us to assail the applicability of the Arbitration Tribunal Act, 1992.

20. For the above discussion, the arguments made by the learned counsel for the petitioner that in view of Clause 20.3.1 of the Arbitration Agreement, arrived between the parties, the provisions of the Arbitration Tribunal Act, 1992 would not be attracted, is found to be misconceived.

21. The submission on the two issues referred by this Court to the Larger Bench in the order dated 28.04.2023 is of no benefit to the petitioner, inasmuch as, both questions referred by the learned Judge in the aforesaid order to the Larger Bench are not arising in the facts and circumstances of the instant case. The fact remains that there is no dispute about the respondent being the Company defined in Section 3 of the Companies Act, 1956, 100% share capital of which is held by the State Government, and as such, being a Public Undertaking, within the meaning of Sub-clause (i) of Clause (i) of Sub- section (1) of Section 2. Being a 'public undertaking' within the meaning of Section 2(i)(i) of the Arbitration Tribunal Act, 1992 and a party to the contract which is the 'Works Contract' within the meaning of Section 2(1)(k) of the Arbitration Tribunal Act, 1992, the dispute arising out of the agreement-in-question has to be referred to the Tribunal constituted under Section 3 of the Arbitration Tribunal Act, 1992, in view of the provisions of Section 8(1) of the Arbitration Tribunal Act, 1992. It is not open for the petitioner to agitate the Question No.1 referred to the Larger Bench in the order dated 28.04.2023, as in my considered opinion, such an issue does not arise in the instant case.

*22. As regards the judgment in **M/s.SMS Infrastructure Limited (supra)**, relied by the learned counsel for the petitioner, the same is not applicable in the facts of the instant case, inasmuch as, the issue raised therein was that the respondent Corporation could not be said to be a 'public undertaking' within the meaning of Section 2(1)(i) of the Arbitration Tribunal Act, 1992 as it is not so specified by notification published in the official gazette, as required by Sub-clause (iii) of Clause (I) of Section 2(1) of the Arbitration Tribunal Act, 1992. It was also contended therein that the contract entered into between the parties also could not be termed as 'Works Contract' as defined in Section 2(1) (k) of the Arbitration Tribunal Act, 1992. For the fact that the respondent, namely Gujarat Water Infrastructure Limited falls within the meaning of 'public undertaking' under Sub-clause (i) of Section 2(1)(i) of the Arbitration Tribunal Act, 1992, being a Company defined under Section 3 of the Companies Act, 1956, the ratio of this Court in **M/s.SMS Infrastructure Limited (supra)** will not be attracted. Further that the contract in question has been notified as 'Works Contract' by the Notification dated 23.09.2003, as noted hereinabove, the view taken in **M/s.SMS Infrastructure Limited (supra)** about the contract therein not being a 'Works Contract' as defined in Section 2(1)(k) of the Arbitration Tribunal Act, 1992, will not be applicable.*

23. In view of the above discussion, none of the arguments of the learned counsel for the petitioner merit consideration and are, accordingly turned down. The Arbitration petitions are liable to be dismissed, accordingly and as such are hereby dismissed.

24. However, it is kept open for the petitioner to approach the Arbitration Tribunal in accordance with the provisions of Section 8 of the Arbitration Tribunal Act, 1992. As much time has been lapsed due to the pendency of the present petitions, it is provided that, in case, the petitioners herein approach the Tribunal within the period of two months along with the copy of this order, their applications shall be entertained and decided on merits, without raising any objection as to the period of limitation prescribed in Sub-section (1) of Section 8 of the Arbitration Tribunal Act, 1992. Subject to the above discussions and directions, all the arbitration petitions herein stand dismissed."

15. It was vehemently submitted by the learned Counsel for the petitioners, placing reliance upon the decision of the Hon'ble Apex Court in **Om Construction Company Vs. Ahmedabad Municipal Corporation and Another** reported in **(2009) 2 SCC 486** that the entire controversy is fully covered by paragraph No.'19' and '20' of the aforesaid decision and that the decision of this Court in **Gujarat Water Infrastructure Ltd.,** (Supra) has not considered the date of application of a Notification by which the respondent therein became a "public undertaking". In **Om Construction** (Supra), the controversy that arose for the determination of the Hon'ble Supreme Court can be traced from the following paragraphs:-

> *"6. It appears that under General Conditions of Contract of the Engineering Department of the Ahmedabad Municipal Corporation, under its General Specifications it is provided that certain conditions are required to be followed which includes the condition that Form B-I would be applicable to the contract and clause 30 of Form B-I is relevant for this case. The relevant portions of clause 30 of Form B-I reads as follows :-*
>
> > *"30(1) Disputes to be referred to Tribunal: The disputes relating to this contract, so far as they relate to any of the following matters, whether such disputes arise during the progress of the work or after the completion or abandonment thereof, shall be referred to the Arbitration Tribunal, Gujarat State;*
> >
> > *(2)* * * * *

> *(3) The provision of Arbitration Act, shall in so far as they are inconsistent with the provision of this Act, cease to apply to any dispute arising from a works contract and all arbitration proceedings in relation to such dispute before an Arbitrator, Court or authority shall stand transferred to the Tribunal."*

7. The appellant filed a petition before the Gujarat High Court on 9th July, 2007, being Arbitration Petition No. 35 of 2007, under Section 11 of the Arbitration and Conciliation Act, 1996, hereinafter referred to as "the 1996 Act", inter alia, praying for the appointment of an Arbitrator to resolve the disputes between the parties. The High Court by its order dated 20th November, 2007, rejected the said petition. While doing so, the High Court took note of Section 2(1)(k) of the Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992, hereinafter referred to as the "Gujarat Tribunal Act", which defines "works contract" to mean a contract made by the State Government or Public Undertaking which is notified in the Official Gazette by the State Government.

8. The High Court also noticed Section 2(1)(i)(iii) of the aforesaid Act, which defines "public undertaking" to, inter alia, mean such class of local authorities as the State Government specifies by Notification in the Official Gazette. It was further noticed that in the absence of such Notification, the Ahmedabad Municipal Corporation was not a "Public Undertaking" and the contract entered into by it with the appellant could not, therefore, be termed as a "Works Contract" as defined in Section 2(1)(k) of the aforesaid Act. The High Court, therefore, held that the Arbitration Tribunal, Gujarat State, would have no jurisdiction to entertain the disputes between the parties emanating from the Work Order in question.

9. The High Court then went on to consider the applicability of the Arbitration and Conciliation Act, 1996, to the facts of the case. The High Court took note of the fact that the Agreement between the parties, and more particularly the Arbitration Agreement, did not lay down any procedure for appointing an Arbitrator or Arbitrators. Accordingly, in the absence of such procedure, the Designated Court could not invoke its jurisdiction under Sub-section (6) of Section 11 of the 1996 Act, which contemplates

a situation, where the appointment procedure as agreed to by the parties under Sub- section (2) of Section 11 is not followed. The High Court, therefore, while rejecting the applicability of the Gujarat Tribunal Act, also closed the doors for relief under the provisions of the 1996 Act.

10. The said order of the High Court, which has been challenged in this appeal, therefore, gives rise to the question as to whether in the absence of any procedure in the Arbitration clause for the appointment of an Arbitrator, can the Chief Justice of the High Court or the Designated Court appoint an Arbitrator under Section 11(6) of the 1996 Act in terms of the Agreement between the parties to have their disputes settled by arbitration."

15.1 Thereafter, the Hon'ble Supreme Court has gone on to hold as under :-

"19. We have carefully considered the submissions made on behalf of the respective parties and it appears that we are called upon to decide two questions in order to decide this appeal. The first and possibly basic question is whether in the absence of a Notification in the Official Gazette, the Municipal Corporation can at all be considered as a Public Authority for the purpose of Section 2(1)(k) of the Gujarat Tribunal Act, 1992. The other question is whether the absence of a procedure for appointment of an Arbitrator in the Arbitration Agreement itself, would constitute a bar for the appointment of an Arbitrator under Section 11(6) or any other provision of the 1996 Act, when not only the parties to these proceedings, but the High Court as well, had arrived at a conclusion that the provisions of the Gujarat Tribunal Act, 1992, would not be applicable in the instant case.

20. In this regard, we are inclined to accept the submissions of Mr. Gambhir notwithstanding the fact that the Ahmedabad Municipal Corporation had not been notified to be a "Public Undertaking" as defined in Section 2(1)(iii) of the Gujarat Tribunal Act, 1992. There is no dispute that the Ahmedabad Municipal Corporation is a local authority and it could assume the garb of a "Public Undertaking" only pursuant to a Notification published in that regard in the Official Gazette. On the other hand, even if Form B-I loses its relevance as far as the present contract is concerned, since

the parties have agreed to resolution of their disputes by arbitration, the provisions of Sub-section (5) of the 1996 Act can be pressed into service to enable the parties to invoke the powers of the Chief Justice to appoint an Arbitrator. The stand taken by Mr. Divan is highly technical and is not in aid of resolution of the disputes between the parties by an Arbitral Tribunal."

16. From a perusal of the above, I find that a question that was specifically framed was as under :-

"Whether in the absence of a Notification in the Official Gazette, the Municipal Corporation can at all be considered as a public authority (sic public undertaking) "works contract" and therefore, the contract entered into by it cannot be termed as defined in Section 2(1)(k) of the Arbitration Tribunal Act, 1992?".

The aforesaid question came to be answered specifically in **Om Construction** (Supra) in the following terms:-

"20. We are inclined to accept the submissions of Mr. Gambhir notwithstanding the fact that Ahmedabad Municipal Corporation had not been notified to be a "public undertaking" as defined in Section 2(1)(i)(iii) of the Gujarat Tribunal Act, 1992. There is no dispute that Ahmedabad Municipal Corporation is a local authority and it could assume the garb of a "public undertaking" only pursuant to a Notification published in that regard in the official gazette".

17. In other words, the ratio of the decision in **Om Construction** (Supra) is to the effect that only after the

Notification is published in the official gazette, the AMC could be considered to be a “public undertaking”. In the present case, the Notification having been issued on 16.12.2024, the respondent-AMC could not be said to be a “public undertaking” before 16.12.2024. Another way of looking at the situation would be that in **Om Construction** (Supra), which was decided on 13.01.2009, the Hon’ble Supreme Court has held the very same respondent-AMC not to be a “public undertaking” on the said date because there was no Notification declaring AMC to be a “public undertaking”. The position as on 13.01.2009 has continued till 16.12.2024, if not till 14.05.2025 on which date, the AMC eventually came to be declared as a “public undertaking” within the meaning of Section 2(1)(i)(iii) of the Arbitration Tribunal Act, 1992. Therefore, on and from 16.12.2024 or 14.05.2025, the respondent-AMC became a “public undertaking”.

18. In such view of the matter, the Notification dated 16.12.2024 and 14.05.2025 must be held to be prospective and cannot be said to be having retrospective operation. In view of the above position, I do not deem it necessary to refer to the myriad decisions cited and referred to by the

petitioners regarding prospective/retrospective operation of statutes and the power of the State to issue retrospective notifications.

19. Section 2(4) of the Arbitration Act, 1996 reads as under:-

> *"(4) This Part except sub-section (1) of section 40, sections 41 and 43 shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as the provisions of this Part are inconsistent with that other enactment or with any rules made thereunder"*

20. Section 8 of the Arbitration Tribunal Act, 1992 mandates that where any dispute arises between the parties to the works contract, any party may refer such dispute to the Tribunal. Thus, clearly Section 8 of the Arbitration Tribunal Act, 1992 is inconsistent with the provisions of Section 11 of the Arbitration Act and therefore, the provisions of the Arbitration Tribunal Act must prevail in view of Section 2(4) of the Arbitration Act.

21. The Hon'ble Supreme Court in the case of **Gujarat State Civil Supplies Corporation Limited v. Mahakali Foods Private Limited (Unit 2) And Another**, reported in

(2023) 9 SCC 401, has held as under:-

> *"32. Now, the first and foremost issue involved in these appeals is whether the provisions contained in Chapter V of the MSMED Act, 2006 with regard to the Delayed Payments to Micro and Small Enterprises would have the precedence over the provisions contained in the Arbitration Act, 1996, more particularly when the parties by execution of an independent agreement as contemplated in Section 7 of the Arbitration Act had agreed to submit to arbitration the disputes arising between them? In other words, whether the provisions contained in Chapter V of the MSMED Act, 2006 would have an effect overriding the provisions contained in the Arbitration Act, 1996?*
>
> *43. The court also cannot lose sight of the specific non obstante clauses contained in sub-section (1) and sub-section (4) of Section 18 which have an effect overriding any other law for the time being in force. When the MSMED Act, 2006 was being enacted in 2006, the Legislative was aware of its previously enacted Arbitration Act of 1996, and therefore, it is presumed that the legislature had consciously made applicable the provisions of the Arbitration Act, 1996 to the disputes under the MSMED Act, 2006 at a stage when the Conciliation process initiated under sub-section (2) of Section 18 of the MSMED Act, 2006 fails and when the Facilitation Council itself takes up the disputes for arbitration or refers it to any institution or centre for such arbitration. It is also significant to note that a deeming legal fiction is created in the Section 18(3) by using the expression as if for the purpose of treating such arbitration as if it was in pursuance of an arbitration agreement referred to in sub-section (1) of Section 7 of the Arbitration Act, 1996. As held in K. Prabhakaran v. P. Jayarajan, (2025) 1 SCC 754, a legal fiction presupposes the existence of the State of facts which may not exist and then works out the consequences which flow from that state of facts. Thus, considering the overall purpose, objects and scheme of the MSMED Act, 2006 and the unambiguous expressions used therein, this court has no hesitation in holding that the provisions of Chapter-V of the MSMED Act, 2006 have an effect overriding the provisions of the Arbitration Act, 1996."*

22. In the recent decision of the Hon'ble Apex Court in case

of **Umri Pooph Pratapur (UPP) Tollways Pvt. Ltd. Vs. M.P. Road Development Corporation and Another** reported in 2025 SCC OnLine SC 1569, the Hon'ble Apex Court was concerned with a somewhat similar conflict between the Arbitration Act and Madhya Pradesh Arbitration Tribunal Act, 1983 which is some what similar to the Arbitration Tribunal Act, 1992. In **Umri** (Supra), it was held as under:-

> ***"11.8.*** *Similarly, in Madhya Pradesh Rural Road Development Authority v. Backbone Enterprises Limited (supra), this Court once again reinforced the exclusive jurisdiction of the Madhya Pradesh Arbitration Tribunal in matters arising from works contracts covered by the 1983 Act.*
>
> ***11.9.*** *Given that the present Concession Agreement pertains to the construction of a State Highway situated entirely within the State of Madhya Pradesh and was awarded by Respondent No. 1, a State-controlled entity, the agreement clearly qualifies as a "works contract" under section 2(1)(i) of the 1983 Act. Consequently, the dispute arising therefrom falls within the exclusive jurisdiction of the Madhya Pradesh Arbitration Tribunal.*
>
> ***11.10.*** *In view of the above statutory framework and judicial pronouncements, the Arbitration and Conciliation Act, 1996 stands excluded by operation of law in such matters. The private arbitration proceedings initiated by the appellant are therefore, non est in law, and the proper forum for adjudication is the Madhya Pradesh Arbitration Tribunal established under the 1983 Act.*
>
> ***12.2.*** *It is trite law that parties cannot contract out of a statutory obligation enacted in furtherance of public interest.*

In Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd., this Court held that arbitration is not permissible where the legislature has reserved adjudication of disputes to a special forum. The relevant observation is as follows:

> *"35. The Arbitral Tribunals are private fora chosen voluntarily by the parties to the dispute, to adjudicate their disputes in place of courts and tribunals which are public fora constituted under the laws of the country. Every civil or commercial dispute, either contractual or non-contractual, which can be decided by a court, is in principle capable of being adjudicated and resolved by arbitration unless the jurisdiction of the Arbitral Tribunals is excluded either expressly or by necessary implication. Adjudication of certain categories of proceedings are reserved by the legislature exclusively for public fora as a matter of public policy. Certain other categories of cases, though not expressly reserved for adjudication by public fora (courts and tribunals), may by necessary implication stand excluded from the purview of private fora. Consequently, where the cause/dispute is inarbitrable, the court where a suit is pending, will refuse to refer the parties to arbitration, under Section 8 of the Act, even if the parties might have agreed upon arbitration as the forum for settlement of such disputes."*

13. *The appellant's submission that both parties intended to arbitrate under the 1996 Act carries no legal weight. The object and scheme of the 1983 Act is to channel all disputes arising from works contracts involving the State and its instrumentalities into a specialized statutory forum to ensure uniformity, efficiency, and public accountability. This intent is also reflected in Clause 44.4 of the Concession Agreement, which acknowledges that in the event of constitution of a competent statutory forum, such forum would override the contractual arbitration clause. Although it was argued that the Madhya Pradesh Arbitration Tribunal was not expressly contemplated under Clause 44.4, the existence of the Tribunal under the prevailing law and its exclusive jurisdiction cannot be contractually overridden or ignored."*

23. The petitioners have heavily relied upon the judgment in **R. M. Dasa Vs. The Gujarat Water Supply and Sewerage Board and Others** reported in **AIR 2009 Gujarat 130**, in the context of a Notification under section 2(1)(k) of the Arbitration Tribunal Act, 1992 to argue that since there is no notification under Section 2(1)(k) of the Arbitration Tribunal Act, 1992, these disputes would still fall outside the purview of the Arbitration Tribunal Act, 1992. **R. M. Dasa** (Supra) goes on to hold as under :-

> *"**8.1** Prior to Notification dated 23.09.2003 work of all types of pipe liens was not within the definition of Section 2(1)(k) of the Arbitration Tribunal Act, 1992. As per Section 2(1)(k) of the Arbitration Tribunal Act, 1992, "Work contract" means a contract made by the State Government or the public undertaking with any other person for the execution of any works Paragraph No. 8.1 to 8.4 relating to construction, repairs or maintenance of any building or superstructure, dam, weir, canal, reservoir, tank, lake, road, well, bridge, culvert, factory or workshop or of such other work of the State Government or, as the case may be, of the public undertaking, as the State Government may, by notification in the Official Gazette specify and includes- (i) a contract made for the supply of goods relating to the execution of any of such works (ii) a contract made by the Central Stores Purchase Organization of the State Government for purchase or sale of goods.*
>
> *Thus, under Section 2(1)(k) of the Arbitration Tribunal Act, 1992 vide Notification in the Official Gazette the State Government may specify work also. Thus in exercise of powers conferred by clause (k) of sub-section (1) of Section 2 of the Arbitration Tribunal Act, 1992, vide Notification dated 23.09.2003 the State Government has specified work of all types of pipe lines of the State Government for the purpose of the Arbitration Tribunal Act, 1992. As per section 8 of the*

Arbitration Tribunal Act, 1992, where any dispute arises between the parties with respect to such works contract, either party shall, irrespective of whether such works contract contains an arbitration clause or not, refer, within one year from the date when the dispute has arisen, such dispute in writing to the Tribunal for arbitration. Thus on and from 23.09.2003 even with respect to work of all types of pipe lines, any dispute arises between the parties to the works contract, either party shall, irrespective of whether such works contract contains an arbitration clause or not, refer, within one year from the date when the dispute has arisen, such dispute in writing to the Tribunal for arbitration.

8.2 *As per section 13 of the Arbitration Tribunal Act, 1992, save as otherwise provided by section 12, no Civil Court shall have jurisdiction to deal with or decide any question which the Tribunal is empowered to deal with and decide by or under the said Act and no injunction shall be granted by any Civil Court in respect of any action taken or to be taken in pursuance of any power by or under Arbitration Tribunal Act, 1992. Therefore, considering section 13 of the Arbitration Tribunal Act, 1992 on and after 23.09.2003, for any dispute arising between the parties to the work contract of pipe lines of the State Government or Public Undertaking, no Civil Court would have any jurisdiction and only the Tribunal constituted under the Arbitration Tribunal Act, 1992 shall have jurisdiction. It is to be noted that eve as per section 21 of the Arbitration Tribunal Act, 1992, the provisions of the Arbitration Act, 1940 shall in so far as they are inconsistent with the provisions of the Act, cease to apply to any dispute arising from a 'works contract' and all arbitration proceedings in relation to such dispute before an arbitrator, umpire, court or authority shall stand transferred to the Tribunal. Therefore, in a case where even arbitration proceedings relating to such dispute is pending before arbitrator, umpire, court or authority, it shall transfer to the tribunal constituted under the Act. Mr.Parmar, learned Advocate for the petitioner has sought to contend that in the present case Arbitration proceedings cannot be said to have been initiated and therefore, section 21 would not be applicable. It is submitted that only in a case where Arbitration proceedings were pending they were required to be transferred. Such contention cannot be accepted. When even in a case where arbitration proceedings were already pending before the arbitrator, they shall transfer to the tribunal, there is no question of subsequently now appointing arbitrator under the provisions of Arbitration and Conciliation*

Act, 1996.

8.3 *Therefore, considering the aforesaid provisions of Arbitration Tribunal Act, 1992, the contention on behalf of the petitioner that relevant date for consideration would be date on which works order was executed i.e. 12.04.1999 and not the date on which dispute has arisen cannot be accepted. Therefore, the contention on behalf of the petitioner that Notification dated 23.09.2003 would not be applicable retrospectively also cannot be accepted. There is no question of making Notification dated 23.09.2003 applicable retrospectively. By law considering section 2(1)(k), section 8, section 13, section 21, on and from the date on which particular contract / works contract is brought within definition of Section 2(1)(k), for the dispute arising between the parties to such works contract, only the tribunal constituted under Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992 would have jurisdiction.*

8.4 *As stated above, relevant date would be date on which dispute has arisen and not the date on which work contract was executed. On fair reading of section 8 relevant date for approaching Tribunal would be date on which dispute has arisen. In para – 10 of the petition, the petitioner himself has submitted that cause of action has arisen on 29.03.2005 and onwards and finally on 20.02.2007. Therefore, when the dispute has arisen with respect to work order on 29.03.2005 and onwards, even considering Notification dated 23.09.2003, 'work contract' is provided in Section 2(1)(k) of the Act and as and when any dispute arise between the parties to such works contract, either party shall refer the dispute in writing to the Arbitration Tribunal. Therefore, the contention on behalf of the petitioner that Notification dated 23.09.2003 bringing works of pipe lines within the definition of 'work contract' under section 2(1) (k) of the Arbitration Tribunal Act, 1992 shall not effect works contract executed prior to dated 23.09.2003 and/or for which work order/ contract is executed prior to 23.09.2003, the provisions of Arbitration Tribunal Act, 1992 would not be applicable, cannot be accepted and has no substance.*

Now so far as the decisions relied upon by the learned Advocate for the petitioner are concerned, they are not of any assistance to the petitioner in view of statutory provisions and findings and observations by this Court."

24. Thus, this Court had categorically observed that there would be no retrospective operation of the Notification under Section 2(1)(k) of the Arbitration Tribunal Act, 1992. Further, by considering Section 2(1)(k), 8, 13, 21 of the Arbitration Tribunal Act, 1992, this Court went on to hold that for the purpose of Section 8 i.e. to give jurisdiction to the Tribunal, the relevant date would be the date on which the dispute has arisen and not the date on which the works contract was executed. In the present case the relevant date in all the petitions would be the date of invocation of arbitration under the Arbitration Act, 1996, which is admittedly prior to the Notification under Section 2(1)(i)(iii) of the Arbitration Tribunal Act, 1992, which is dated 16.12.2024, on which date the respondent became eligible to have disputes arising out of its works contracts to be tried by the Tribunal. This is apart from the fact that there is no Notification under Section 2(1)(k) of the Arbitration Tribunal Act, 1992 which expressly brings the disputes in question within the meaning of the "works contract".

25. To my mind, even the respondent-AMC clearly understood that the Notification dated 16.12.2024 was not to

include the respondent and therefore, a further Notification dated 14.05.2025 came to be published in the official gazette amending the notification dated 16.12.2024 in the following terms :-

> *"In the said Notification, after the words and figures "the Gujarat Municipalities Act, 1963" the words, figures and brackets 'the corporation' defined under sub-section (10), shall be inserted."*

26. The plain and literal interpretation of the Notification No. GK/64/ARB/102024/UOR-01/D-1 dated 16.12.2024 does not bring "Municipal Corporations" as a class of local authorities within the purview of "public undertaking" for the purposes of section 2(1)(i)(iii) of the Arbitration Tribunal Act, 1992. The Notification only specifies "Municipalities" as defined under Sub-section (14) of section 2 of the Gujarat Municipalities Act, 1963 and Sub-section (34B) of section 2 of the Gujarat Provincial Municipal Corporations Act, 1949 and "Panchayats" defined under Sub-section (14) of section 2 of the Gujarat Panchayat Act, 1993 to be "public undertaking" for the purposes of the 1992 Act.

27. Thus, the Notification's plain and literal interpretation explicitly excludes Municipal Corporations from its purview.

While the Notification specifically encompasses "Municipalities" as defined under the Gujarat Municipalities Act, 1963 and the Gujarat Provincial Municipal Corporations Act, 1949, it conspicuously omits any reference to Municipal Corporations as a class of local authorities within the meaning of "public undertaking" under section 2(1) (i) (iii) of the Arbitration Tribunal Act, 1992.

28. For ease of reference the relevant provisions of the Gujarat Municipalities Act, 1963, Gujarat Provincial Municipal Corporations Act, 1949 and "Panchayats" defined under Sub-section (14) of section 2 of the Gujarat Panchayat Act, 1993 referred to in the Notification are reproduced hereunder:

- ***Gujarat Municipalities Act, 1963***

“2. In this Act, unless the context otherwise requires,-

[…]
(14) "Municipalty" means Nagar Panchayat constituted under Section 5(1) or as the case may be "Municipal Council" constituted under Section 5(2)."

- ***Gujarat Provincial Municipal Corporations Act, 1949***

"*2. In this Act, unless there be something repugnant in the subject or contest,*

[…]

(34B) "Municipal Area" means the territorial area of a Corporation as referred to in clause (d) of article 243P

of the Constitution of India"

- ***Gujarat Panchayats Act, 1993***

"*2. In this Act, unless the context otherwise requires,*

[...]

(14) "*Panchayat*" *means a village panchayat, taluka panchayat or district panchayat.*"

29. Section 2(1)(i)(iii) of the Arbitration Tribubal Act, 1992 requires a class of local authorities to be specified by a notification in the Official Gazette for them to come within the purview of a "public undertaking". Section 2(1)(i)(iii) reads as under.

> "*2. (1) In this Act, unless the context otherwise require,*
> *[...]*
> *(i)* "*public undertaking means-*
> *[...]*
> *(ii)* ***such class of local authorities*** *as the State Government may by notification in the Official Gazette specify."*
>
> *(emphasis supplied)*

30. This Court in the matter of **Gujarat Housing Board Vs. Arvind C. Patel** reported in **2002 (1) GLR 153: 2001 (1) GLH 646** while interpreting the expression "local authority" has held that the expression "local authority" in clause (ii) as well as in clause (iii) of Section 2(1) of the Act has the same meaning as the expression "local authority" in

Section 2(26) of the Bombay General Clauses Act and Section 3(31) of the General Clauses Act. Section 3(26) of the Bombay General Clauses Act, 1894 reads as under:

> "*Local Authority*" *shall mean a Municipal Corporation, Municipality, Local Board, Body of Port Trustees or Commissioners, or other authority legally entitled to, or entrusted by the Government with the control or management of a municipal or local fund*."

31. From a combined reading of the Notification and the sections reproduced hereinabove it is clear that the only class of local authorities specified in the Notification are "Municipalities" and "Panchayats". The Notification does not expressly or impliedly cover "Municipal Corporations" as a class of local authorities notified to be a "public undertaking" under the 1992 Act. Thus, Ahmedabad Municipal Corporation is not covered by the Notification dated 16.12.2024 and is therefore not a public undertaking. Hence even after 16.12.2024, AMC did not fall within the purview of the 1992 Act as to attract its other provisions including but not limited to Section 21 thereof. However, this position changed with the notification dated 14.05.2025, from which point of time, the “Corporation” came to be added.

32. In view of the above, I am of the clear opinion that prior to 14.05.2025, the respondent-AMC was not covered within the meaning of "public undertaking" under the Arbitration Tribunal Act, 1992. However, nothing turns on that. The only implication of the above is that by legal fiction, it is as if the Arbitration Tribunal Act, 1992 in resect of the present disputes came to be enacted on 14.05.2025.

33. Coming back to Section 21 of the Arbitration Tribunal Act, 1992, this Court still has to consider the submissions of Mr. Virk that by virtue of Section 21 of the Arbitration Tribunal Act, 1992, it matters not whether the Notifications in question are prospective or retrospective because no matter when the dispute arises, as long as the dispute is covered by the Arbitration Tribunal Act, 1992, by operation of Section 21 of the Arbitration Tribunal Act, 1992, such dispute and "all arbitration proceedings in relation to such disputes before an arbitrator, umpire, court or authority shall stand transferred to the Tribunal". As the present petitions are Arbitration proceedings pending before a Court with respect to disputes which have arisen under the Arbitration Tribunal Act, 1992,

the provisions of the Arbitration Act shall cease to apply to such dispute.

34. In these circumstances, by the brutal mandate of Section 21, since the disputes are live, the same shall "stand transferred to the tribunal". Therefore, even though, at the time of invocation or even the time of filing these petitions, the petitioners' right to arbitrate the disputes under the Arbitration Act had crystalized, the same, upon the operation of the Arbitration Tribunal Act, 1992 on and from 14.05.2025, in respect of AMC, will extinguish. Section 21 firmly shuts the barn door on the crystalized rights of the petitioners under the Arbitration Act. However, it is nobody's case that in respect of these disputes there is any notification under Section 2(1)(k) notifying these disputes to be "works contract". Given the definition of Section 2(1)(k), the State Government by Notification has the power to specify such other works of the State Government to be including within the meaning of works contract, apart from those which are specifically stated in Section 2(1)(k). In a recent decision of this Court in **Bankers Cardiogy Pvt. Ltd. & Another Vs. Commissioner of Commercial Tax & Another**, reported in

2025 SCC OnLine Guj 3255, it was observed as under:-

> *"**126.** "Works Contract" is defined as per Explanation (ii) to section 2(23) of the VAT Act explaining the expression "works contract" and it is to be appreciated and understood in light of the constitutional meaning.*
>
> ***127.** Clause (ii) of the Explanation to section 2(23) stipulates that for the purpose of sub-clause (b) of the expression "works contract' means a contract for execution of works and includes such "works contract" as the State Government may, by notification in the Official Gazette, specify and therefore, as observed by the Hon'ble Apex Court in paragraph no.87 of the decision in case of Larsen and Toubro Ltd. (supra) that the distinction between contract for sale of goods and contract for work of services has almost diminished in the matters of composite contract involving both contract of work / labour and a contract for sale, for the purposes of Article 366(29A)(b) of the Constitution of India. Therefore "Works contract" includes any agreement for "fitting out" of any movable property. It is not confined to any genre of contract. Therefore, fitting out or implanting of items into the physiology or the body of a human patient for alleviation of pain or for improvement of the life of the patient in the course of medical/surgical procedure is required to be construed as "works contract", more particularly, when the petitioners have not been able to demonstrate how the definition of "works contract" is not attracted to the facts of the present case.*
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> ***128.** An attempt has been made on part of the petitioners to distinguish the contentions raised on behalf of the respondents by canvassing that passing of property by principle of accretion is fundamental to "works contract" and human body is not a "property" and therefore, principle of accretion cannot apply to the treatment of patients because substantive civil law is divided into the law of property, the law of obligations and the law of status and there is a clear distinction between the legal treatment of "property" and of "persons". Reference was made to **Salmond on Jurisprudence** to submit that "persons" in chapter 10 are treated separately from "property" and the law does not treat persons as "property". It was also submitted that the "property" includes legal rights of a person, but such usage is obsolete in law as law has always treated persons and property separately which is also borne out from the provisions of the IPC by treating offences relating to persons*

and those related to property separately and even under the law of torts, torts relating to the person are treated separately from torts relating to property and therefore, to treat a live human body as a property is shockingly retrograde and harks back upon the pre-colonial era when humans were treated as objects and were kept in captivity as slaves and therefore, medical treatment to the human being cannot be equated with treatment to a property and therefore the use of medicines, implants, stents, consumables, etc. for such treatment cannot be subjected to sales tax under clause (b) of Article 366(29A) of the Constitution, and the treatment of the human body cannot be equated to "works contract". Reliance placed on section 19 of the Transplantation of Human Organs and Tissues Act, 1994 which prohibits the commercial dealing in human organs an offence punishable was also cited to canvas that there is a legislative drift to not to tax and the right to deal is the substratum of any property/ proprietary right and when such right has been taken away by another legislation, it cannot be said that human body/organs is "property". These submissions and contentions raised on behalf of the petitioners are very attractive but the same are not tenable in view of the decision of Hon'ble Apex Court in relation to the "works contract" as it is not in dispute that petitioner hospitals render composite health services which include the use and supply of prosthetics, consumables, implant, stents, medicines, etc. while treating the human body and therefore it would fall within the ambit of Article 366(29A)(b) of the Constitution read with section 2(23) of the VAT Act. The argument of the petitioners that accepting the submission that composite health services offered by the Hospitals would fall within the meaning of words "contract" within the ambit of Article 366 (29A)(b) of the Constitution would be retrograde step in jurisprudence is, on the contrary, a retrograde interpretation of the dynamic constitutional ingredients under Article 366 (29A)(b) of the Constitution which takes the entire jurisprudence back to pre-Gannon Dunkerly days, apart from stretching the context of "persons" and "property" to a point of absurdity. Therefore, definition of "sale" in section 2(23) of the VAT Act and the definition of the "works contract" as per explanation (ii) makes it clear that it is of wide import as the rendering of services together with supply of prosthetics, implants, stents, consumables, medicines etc. used for treatment of indoor patient cannot be given a restricted meaning by excluding the same from "works contract" on the basis that "works contract" as a concept was originally confined to contracts relating to immoveable properties alone. However, after the

> *46th Amendment to the Constitution, the definition of "works contract" was widened and it is broad based taking within its fold every possible and conceivable contracts involving transfer of property while providing services. Therefore, the definition of "works contract" can include hospital/ health/ Medical services including composite contracts where the provision of services also includes supply of goods along with medical service and the definition takes within its fold such services also and therefore, the respondent State was justified in proposing a demand to tax from the petitioner hospitals on supply of consumables, medicines, stents, implants, etc. for treatment of indoor patients and the reasons given in the decisions of five Hon'ble High Courts would have been acceptable in the era prior to the 46th Amendment to the Constitution as per the decision of Hon'ble Apex Court in case of* ***Gannon Dunerkerly*** *(supra) which has required the Parliament to introduce 46th Amendment to the Constitution so as to bring all genre of contents of services including the supply of goods within the purview of "works contract" as held by Hon'ble Apex Court in case of* ***Larsen and Toubro Ltd.*** *(supra)."*

35. It is thus clear that the definition of "works contract" is inclusive and expansive in nature and despite no specific Notifications, the disputes in question would be covered within the meaning of Section 2(1)(k) of the Arbitration Tribunal Act, 1992 particularly because the phrase "all other such works of the State Government or, as the case may be, of the public undertaking," would include within its reach every conceivable concessionaire and/or agreement which form the subject matter of these petitions.

36. Therefore, the subject matter of the agreement in

respect of which the petitioners have preferred these petitions would be clearly covered within the meaning of “works contract” under section 2(1)(k) of the Arbitration Tribunal Act, 1992.

37. It is thus clear that on and from the moment that the Act becomes applicable to the disputes forming the subject matter of these petitions, that is, from 14.05.2025, the said disputes cease to be arbitrable. Therefore, these petitions must necessarily fail.

38. It has further been submitted by learned Counsel for the petitioners that the reference to the Tribunal under Section 21 must be now held to be bad in view of the decision of the Hon'ble Supreme Court in **CORE-II (Supra)**. The submission is that due to the inability of the public undertaking to select an Arbitrator unilaterally, the compulsory reference to the Tribunal would be hit by the **CORE-II**. As I have already held that the Tribunal is not an Arbitral Tribunal, therefore, the decision of **CORE-II** does not apply to the facts of the present case.

39. The Arbitration Tribunal Act, 1992 is founded on the policy of the State Government that special disputes such as those pertaining to works contract shall be adjudicated by a Tribunal which could be manned by specialists who would adjudicate such disputes. More than three decades after the Arbitration Tribunal Act, 1992, it appears to me that the recent ruling of the five Judge Bench of the Hon'ble Supreme Court of India in **CORE-II (Supra)** has once again reinforced the thought process behind public undertakings that adhoc arbitration is not for them. While I have held in the foregoing paragraphs that the adjudicatory process envisaged in the Arbitration Tribunal Act, 1992 is not an arbitration process at all and that the Tribunal is not a "permanent arbitral institution" within the meaning of 2(1)(a) of the Arbitration Act, 1996, it seems the State and the instrumentalities of the State like "public undertakings", in the absence of institutionalized arbitration, have moved away from adhoc arbitration, back into the Tribunal regime.

40. In my limited experience of being part of a Division Bench having roster over Appeals from Commercial Courts' decisions under Section 34 of the Arbitration Act, 1996, I have

come across vast delays both in delivering the award as well as decades spent in the Section 34 Court. Institutional Arbitration, within its defined procedures and its propensity to adhere to timelines could have been a more effective choice for public undertakings, particularly in high-stake arbitration involving three Arbitrators. The administrative wings of the Institutional Arbitration effectively sets down the calendar and selects suitable Arbitrators and further provides facilities to the Arbitral Tribunal which have the effect of nudging the Arbitral Tribunal to strict adherence to its calendar so that emergency provisions such as those under Section 29(A) of the Arbitration Act, 1996 do not end up being routine proceedings before the Courts. These obvious advantages of Institutional Arbitration over adhoc arbitration are well acknowledged globally, whether in the context of International arbitration or domestic. The High Court as an instituition has set up the Arbitration Centre and is continuously working to have a state of the art Institutional Arbitration facility.

41. During the course of hearing, the petitioners had repeatedly stressed on the sheer farcical nature of the

proceedings before the Tribunal and the mind numbing pendency and ineptitude of the Tribunal as an Institution to even possibly adjudicate these disputes if referred.

42. Mr. Virk, wearing a different hat, in his capacity as Government Pleader of the State had ensured this Court that he will personally look into these issues and ensure sufficient competent personnel and administrative requirements which would enable the Tribunal to deal with large volumes of technical adjudication of the disputes pertaining to works contracts so that the State Government is not branded as an unfair employer which simply does not want to pay its contractors. This Court will hold Mr. Virk to his word.

43. When the Act was introduced in Gujarat just as in many other States, they were introduced in a regime governed by the 1940 Act, which soon after gave way to the 1996 Act under which arbitration including commercial arbitration has grown exponentially. Further, the setting up of commercial Courts to deal with the petitions under Section 8, 9, 34 etc., have grown in speed and efficacy to proportions which were not contemplated under the 1940 regime. In the background

of the working of the 1996 Act, the very purpose of enacting the Arbitration Tribunal Act, 1992, in hindsight, seems to be retrograde, if not redundant. The redressal to the deafening anguish of the petitioners unfortunately does not lie with this Court but perhaps with a different Court if not the Legislature or even Parliament.

44. In the end, these petitions are dismissed with no order as to costs. The petitioners are at liberty to approach the Tribunal with a reference under Section 8 of the Arbitration Tribunal Act, 1992 within a period of eight (8) weeks from the uploading of this judgment and order. If such a reference is filed within the period as aforesaid, then the time spent by the petitioners from the date of invocation of respective disputes till the uploading of a copy of this judgment and order shall be excluded for the purposes of calculating the period of limitation within the meaning of Section 16 of the Arbitration Tribunal Act, 1992. Consequently, the connected Civil Applications stand disposed of.

(D.N.RAY,J)

BINA SHAH