IN THE HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

BEFORE
HON'BLE SHRI JUSTICE VIVEK RUSIA,
ACTING CHIEF JUSTICE
&
HON'BLE SHRI JUSTICE VIVEK AGARWAL
&
HON'BLE SHRI JUSTICE SUBODH ABHYANKAR
&
HON'BLE SHRI JUSTICE VINAY SARAF
&
HON'BLE SHRI JUSTICE ALOK AWASTHI

WRIT PETITION No. 9623 of 2021

NITIN ENTERPRISES THROUGH NITIN LODWAL
Versus
URBAN ADMINISTRATION AND DEVELOPMENT DEPARTMENT AND OTHERS

Appearance:

Shri Amit Mishra, Advocate for the petitioner through V.C.

Shri A.K. Sethi, Senior Advocate as *Amicus Curiae*with Shri Rahul Sethi and Ms. Astha Nagori, Advocates.

Shri Piyush Mathur, Senior Advocate as *Amicus Curiae*with Shri Madhusudan Dwivedi and Shri Abhishek Bajpai, Advocates.

Shri Amit Agrawal, Senior Advocate as *Amicus Curiae* with Shri Arjun A. Agrawal, Shri Savil Parashar and Shri Garvit Singh, Advocates.

Shri Veer Kumar Jain, Senior Advocate as *Amicus Curiae* with Shri Vaibhav Jain and Shri Devashish Dubey, Advocates.

Shri R.S. Chhabra, Senior Advocate as *Amicus Curiae*with Shri Mudit Maheshwari and Shri Raghav Raj Singhand, Advocates.

Shri Naman Nagrath, Senior Advocate with Shri Harsh Parashar and Ms.Yashika Bondwal Advocate.

Shri Shekhar Sharma, Senior Advocate with Shri Shubham Verma and Ms. Amrita Joshi, Advocates through V.C.

Shri Anshuman Singh, Advocate with Shri Anuj Shrivastava and Ms. Darshana Baghel, Advocates.

Shri Piyush Shrivastava, Advocate.

Shri Suyash Mohan Guru, Advocate with Shri Hindesh Pal and Shri Akshat Agrawal, Advocates.

Shri Amit Kumar Singh, Advocate.

Shri Prashant Singh, Advocate General with Shri Sonal Gupta, Additional Advocate General, Shri Ashish Yadav, Additional Advocate General, Shri Neelesh Yadav, Additional Advocate General, Shri Shrey Raj Saxena, Deputy Advocate General and Shri Sudeep Bhargava, Deputy Advocate General, Shri B.D.Singh, Deputy Advocate General and Ms. Mrinal Elkar and Shri Shreshth Suryavanshi, Shri Sahil Sonkusale, Panel Lawyer and Shri V. S. Jha, Advocate,for respondents No.1 and 2/State.

Shri Manoj Munshi, Senior Advocate with Shri Lucky Jain, Shri Chinmay Mehta and Shri Mayank Munshi, Advocates for respondent No.3.

Shri Siddharth Sharma Advocate with Shri Shantanu Sharma, Advocate for the respondent Nos.4 to 6.

Shri Sumit Nema, Senior Advocate with Shri Arun Dwivedi, Advocate.

Shri Aniket Abhay Naik, Advocate with Shri Pradyumna Kibe, Advocate.

Shri Ajay Mishra, Advocate

Shri Navneesh Johri, Advocate

Shri H.Y. Mehta, Advocate

Shri Rohit Mangal, Advocate with Shri Achal Pathak and Shri Somesh Gobhuj, Advocates.

Shri Parth Sharma, Advocate.

Shri Vivek Ranjan Pandey, Advocate with Ms.Shambhavi Shrivastava, Advocate.

Reserved on : 07.07.2026
Pronounced on : 07.08.2026

Whether approved for reporting :	**Yes**
Law laid down :	**(i)Article 298 of the Constitution of India -** Power to blacklist/debar a contractor in addition to a clause of contract emerges from the inherent power of the State and its instrumentalities flowing from the power to carry on the trade or business provided under Article 298 of the Constitution of India and blacklisting is essentially an administrative act in

	nature. (Para nos. 292 to 308) **(ii) Blacklisting order can only be passed by Chief Engineer and/or any authority equivalent to Chief Engineer -**Blacklisting or debarment order can only be passed by the Chief Engineer or any officer equivalent to his rank on the strength of the circular issued by Public Works Department on 24.03.2015 and the Competent Authority and/or Appellate Authority defined under the contract can only recommend for blacklisting or debarring a contractor to the Chief Engineer and cannot pass the order of blacklisting or debarment despite a clause in the contract. (Para 292 to 308) **(iii)Blacklisting is civil and commercial death of a person or entity –** Blacklisting is having severe civil consequences, loss of business opportunities, goodwill and amounts to a civil and commercial death of a person or entity, who is prevented from participation in future tenders. It is a stigma and the loss caused due to the order of blacklisting or debarment is not a monetary loss, thus not computable / quantifiable / ascertainable. (Para nos. 309 to 335) **(iv) Section 2(1)(d) of Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983** - The challenge to the order of blacklisting does not amount to a dispute defined under Section 2(1)(d) of the Adhiniyam, 1983 and thus not referable to the statutory arbitration tribunal. (Para nos. 336 to 365)

	(v) The judgment delivered in the matter of **Gouri Ganesh Shri Balaji Constructions "C" Class Contractor Vs. Executive Engineer, PWD reported in 2018(3) MPLJ 163** and **Awasthi Brothers Construction Company v/s The State of Madhya Pradesh & Others reported in 2019 SCC OnLine 4298** have not held that the loss due to order of blacklisting is an ascertainable loss and the Full Bench and Division Bench in these cases held that the relief for blacklisting is a consequential relief and may be sought from the statutory arbitral tribunal with the main monetary claim. (Para nos. 336 to 365) **(vi) Gouri Ganesh**[1]and **Awasthi Brothers**[19] have not laid down the correct law in holding that the relief of blacklisting is a consequential relief and referable to the Arbitral Tribunal constituted under the Adhiniyam, 1983. (Para nos. 336 to 365) **(vii)** Fulll Bench of this Court in **Viva Highways Ltd. Vs. M.P. Road Development Corporation Ltd reported in 2017(2) MPLJ 681** has correctly held that the loss due to blacklisting order is not ascertainable in money. (Para nos. 336 to 365) **(viii) Section 20 of Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 -**As the challenge to the blacklisting order does not fall under the definition of dispute given under Section 2(1)(d) of Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983, the bar created under Section 20 of the Adhiniyam, 1983 is not applicable.

	(ix) Article 226 of the Constitution of India -Writ petition under Article 226/227 of the Constitution of India is maintainable, even in a case of composite order of blacklisting and termination of contract,if any fundamental right of any citizen is infringed or any order is passed in violation of the principles of natural justice and thus, the writ petition may be entertained by the constitutional courts challenging the order of blacklisting depending upon the facts and circumstances of each case. (Para nos. 373 to 379) **(x)**T**heMadhya Pradesh Madhyastham Adhikaran Sanshodhan Adhiniyam, 2025 -** The amendment incorporated in the Adhiniyam, 1983 are not having any effect on the maintainability of the dispute, qua blacklisting. (Para nos. 276 to 290) **(xi) Section 17A and 17AB of theMadhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 –** Amended Section 17A and newly inserted Section 17AB empowers the tribunal to grant the interim relief to the parties in appropriate cases. (Para nos. 276 to 290)

ORDER

***Per : Vinay Saraf J.*-**
(for Shri Justice Vivek Rusia, Acting Chief Justice, Shri Justice Alok Awasthi and himself)

1. The present reference was originally made to a Full Bench by order dated 20.7.2021, whereby the Division Bench of this Court was of the view that a Full Bench of this Court in **Gouri Ganesh Shri Balaji Constructions "C" Class Contractor Vs. Executive Engineer, PWD**[1] did not correctly appreciated the decision of earlier full bench in **Viva Highways Ltd. Vs. M.P. Road Development Corporation Ltd.**[2] and accordingly requested the Chief Justice for constitution of a larger bench to consider the questions framed by the Division Bench by order dated 20.7.2021.
2. Thereafter the matter was referred to a Full Bench and on 9.9.2024, the Full Bench of this Court after examining the decision in the case of **Viva Highways Ltd.**[2]and **Gouri Ganesh**[1] was of the view that the matter requires consideration by larger bench as both the judgments have been delivered by the Full Benches, having equal strength of Judges and accordingly the matter was put up before the Chief Justice for constitution of a larger bench and the Chief Justice constituted a larger bench. The bench heard the arguments on several hearings and thereafter the judgment was reserved, however, the same could not be delivered awaiting the notification of the amendment in the **Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983** (herein-after referred to as the 'Act

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[1]Gouri Ganesh Shri Balaji Constructions "C" Class Contractor Vs. Executive Engineer, PWD, 2018(3) MPLJ 163.
[2]Viva Highways Ltd. Vs. M.P. Road Development Corporation Ltd, 2017(2) MPLJ 681.

1983') and the case was fixed for further hearing. On 30.04.2026, the notification to implement the Amendment Act, 2025 has been published and once again the matter was put up before the Acting Chief Justice and theLarger Bench was reconstituted and the larger bench heard the matter and concluded the hearing of the case finally.

3. The learned Division Bench at the time of referring the matter to the Hon'ble Chief Justice for constituting a larger bench requested to consider the following questions:-

> ***(i)Whether the loss arising out of blacklisting order can be ascertainable/ascertained and hence falls within the ambit of Section 2(1)(d) of the Adhiniyam. If not, whether the Full Bench in Gouri Ganesh (supra) and Division Bench in Awasthi Brother Construction Company (supra) have correctly opined that against blacklisting order also contractor has a remedy before the Tribunal constituted under the Adhiniyam ?***
>
> ***(ii) If a composite order of termination of contract and blacklisting is called in question in a writ petition and no remedy is available to the contractor against the blacklisting order before the Tribunal, whether a writ petition against a composite order is entertainable despite availability of remedy against the termination of works contract under the Adhiniyam ?.***

FACTUAL MATRIX OF THE CASE

4. Petitioner Nitin Enterprises is a proprietorship firm and registered contractor with PWD since 2007 for 10 years i.e. upto 2027. Shri Nitin Lodhwal is the proprietor of the petitioner firm. Indore Municipal Corporation invited the tender bearing No.125/SE/BILLS/18-19/G-03 dated 15.2.2019 for cement concrete work at Amrapuri road in Ward Number 21 under Zone

No.5, Indore. The petitioner firm participated in the tender process and as the offer submitted by the petitioner firm was lowest, the tender submitted by the petitioner was accepted and approved by the corporation on 23.3.2020. The petitioner thereafter furnished the performance bank guarantee worth Rs.2,64,300/- and signed memo of agreement and submitted the same. Accordingly, work order was issued on 23.3.2020 with a stipulation that the contractor will complete the work within 240 days including rainy season from the date of letter of intent with no encumbrances.

5. As the petitioner failed to complete the work within the prescribed period, on 30.10.2020,the Superintending Engineer, Public Works, Indore Municipal Corporation issued an order of termination of the agreement dated 23.3.2020 stating that the model code of conduct rules has been violated by the petitioner.By the said composite order dated 30.10.2020 the petitioner was blacklisted for three years. A subsequent order dated 17.11.2020 was issued and the Municipal Corporation forfeited all original FDRs furnished by the petitioner towards performance bank guarantee. Immediately on 18.11.2020 the petitioner submitted a representation for reconsideration and revocation of the agreement by recalling the cancellation order submitting various reasons for not completing the work within time and also requested for recalling the order of blacklisting.

6. On 10.3.2021, the petitioner again issued a reminder to the Chief Engineer, Indore Municipal Corporation, Urban Administration and Development Department, Bhopal complaining that the Commissioner, Indore Municipal Corporation has not decided the representation submitted by the petitioner.

7. As the representation of the petitioner was not decided and the Indore Municipal Corporation floated fresh NIT on 9.2.2021 for the same work, the petitioner filed the subject writ petition seeking quashment of the order of termination of contract and blacklisting the petitioner.
8. Indore Municipal Corporation submitted preliminary objection of maintainability of writ petition stating that the subject contract falls within the category of works contract as per the definition clause prescribed U/S.2(i) of the Act, 1983 and, therefore, the petition is not maintainable in view of the judgment delivered by the full bench of this Court in the matter of **Gouri Ganesh**[1].
9. The Division Bench of this Court heard the arguments advanced by the counsel for the parties on the question of maintainability / entertainability of this petition in view of the objections raised by the Indore Municipal Corporation and passed the order of reference on 20.7.2021. The relevant paragraphs of the order dated 20.7.2021 reads as under:-

> ***"02***. *Parties are at loggerheads on the question of maintainability. By impugned order dated 30.10.2020, the petitioner Firm's contract was terminated, and the firm is blacklisted for a period of three years. The stand of petitioner is that impugned order is passed without affording opportunity of hearing and is issued in utter violation of principles of natural justice. The reasons assigned in the impugned order are factually incorrect. The petitioner's work commenced much before model code of conduct relating to elections came into being. Thus, the order is arbitrary and illegal. The petitioner's fundamental right to carry out his business and complete the contract is infringed. Thus, all the necessary ingredients on the strength of which a writ petition can be entertained despite availability of statutory alternative remedy are available and hence in the light of judgment of Supreme Court in* ***(2011) 5 SCC 697, (Union of India & Others v/s Tantia Construction Private Limited)*** *this petition*

*can be entertained. Recently in **2021 (2) M.P.L.J. 44 (UMC Technologies Pvt. Ltd. Vs. Food Corporation of India & another)** in a case of blacklisting of 'works contract', interference was made because principles of natural justice were grossly violated.*

***03.** Shri Amit Mishra, learned counsel for the petitioner fairly submitted that nature of work / contract given to the petitioner certainly falls within the definition of 'works contract' as per Madhya Pradesh Madhyastham Adhiniyam, 1983 (Adhiniyam). Despite the fact that it is a "works contract", in a case of this nature the petitioner cannot be relegated to avail remedy before the Tribunal constituted under the Adhiniyam because (i) the judgment of Full Bench in **2018 (3) M.P.L.J. 163, (Gouri Ganesh Shri Balaji Constructions "C" Class Contractor vs/ Executive Engineer, PWD)** does not help the respondents. The loss and deprivation arising out of blacklisting is not ascertainable.*

***04.** Per contra, Shri Manoj Munshi, learned counsel for respondents No.3 to 6 urged that the judgment of Full Bench in **Gouri Ganesh (supra)** in no uncertain terms makes it clear that in a case of blacklisting also, the loss is computable in terms of money and in that event, the appropriate remedy for the petitioner is to approach the Tribunal constituted under the Adhiniyam.*

***05**. In view of aforesaid stand of parties, an interesting conundrum arose for our consideration is whether in a case of this nature where petitioner's "works contract" has been terminated and he is also blacklisted, a writ petition is tenable / maintainable or not and whether petitioner should be relegated to avail remedy under the Adhiniyam.*

***06.** We have noticed another pronouncement by a Division Bench of this Court reported in **2019 SCC OnLine 4298, (Awasthi Brother Construction Company v/s The State of Madhya Pradesh & Others)**, wherein after considering the judgment of Full Bench in **Gouri Ganesh (supra)**, the Division Bench opined that dispute as to blacklisting will also lay before the same forum. The same forum means the forum constituted under the Adhiniyam of 1983.*

***07.** Section 2(1)(d) and Section 7(1) of Adhiniyam are reproduced as under:-*

"2(1)(d) "dispute" means claim of ascertained money valued at Rupees 50,000 or more relating to any difference arising out of the execution or non-execution of a works contract or part thereof."
"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 the dispute to the Tribunal."
(emphasis supplied)

08. *These provisions were considered by full bench in the case of* **Gouri Ganesh** *(supra) which reads as under:-*

"55. Thus, we hold that the expression "ascertained amount" appearing in Section 2(1)(d) of the State Act includes the amount of consequential relief. If a particular consequential relief can be claimed, the aggrieved person must claim that relief in a reference otherwise the reference would not be maintainable. The consequential relief in a case of termination of contract can be the value of the remaining work; value of revenue recovery certificate would be the consequential relief and the ***amount of loss computable in terms of money in case of black-listing of the Firm would be the consequential relief"****.*
(emphasis supplied)

09. *Para – 9 of the judgment of* **Awasthi Brothers Construction Company** *(supra) reads as under:-*

"9. As the petitioner has already raise the dispute qua termination of his contract; therefore, as per decision of Shri Gouri Ganesh Shri Balaji Construction "C" Class Contractor (supra) (as held in paragraphs – 40,41 and 55) ***the dispute as to blacklisting will also lay before the the same forum.****"*
(emphasis supplied)

10. *In* **Gouri Ganesh** *(supra), the Full Bench observed that amount of loss is computable in terms of money in case of blacklisting of the Firm. Following this observation of full bench, in* **Awasthi Brothers Construction Co***. (supra) another division bench opined that the dispute relating to blacklisting will also lay before the tribunal constituted under the Adhiniyam.*

11. *We are in respectful disagreement with the aforesaid view taken by full bench in* ***Gouri Ganesh*** *(supra) and division bench in* ***Awasthi Brothers Construction Co.*** *(supra). In our considered view, the loss arising out of termination of contract is certainly computable/ascertainable. However, loss arising out of blacklisting cannot be computed in terms of money. When a contractor is blacklisted, he is deprived to submit his bid for future contracts for a particular period (three years in the present case). The concept of blacklisting is explained by Supreme Court in* ***Erusian Equipment & Chemicals Ltd. V. State of W.B. (1975) 1 SCC 70*** *as under:-*

> *"20. Blacklisting has the <u>effect of preventing a person from the privilege and advantage of entering into lawful relationship</u> with the Government for purpose of gains."*
> *(emphasis supplied)*

12. *In* ***Gorkha Security Services. Vs. government (NCT of Delhi) and others (2014) 9 SCC 105*** *it was held as under about blacklisting:-*

> *"It is described as "civil death" of a person who is foisted with the order of blacklisting. Such an order is stigmatic in nature and <u>debars such a person from participating in government tenders which means precluding him from the award of government contracts</u>."*
> *(emphasis supplied)*

13. *At present, by no process of reasoning it can be ascertained as to how many NITs will be issued during next three years. The nature of future contracts and amount involved therein cannot be ascertained at this point of time by any guess work or mathematical or astrological calculation. The blacklisting of a contractor has a drastic effect of preventing him to submit his bid for future and at present the contractor cannot assess what will be the future loss arising out of such contracts. In view of Sec.2(1)(d) and Sec.7 of the Adhiniyam, the division bench in* ***Awasthi Brothers Construction Co.*** *(supra) opined that the remedy for contractor is to approach the tribunal. It is noteworthy that another full bench in* ***Viva Highways Ltd. Vs. Madhya Pradesh Road Development Corporation Ltd 2017(2)MPLJ 681*** *considered the aspect of ascertainability in sufficient detail. Relevant paragraphs reads as under:-*

“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-nessn. as-cer-tain'ably adv. as-certain'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 v. 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 and 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.

78. In AIR 1964 Madras 108, Thanjavur Permanent Bank Ltd. v. 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."

82. On the basis of foregoing analysis, we may summarize our conclusions as under:
(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(1)(d) of the Adhiniyam of 1983."
(emphasis supplied)

14. *In the judgment of* ***Gouri Ganesh*** *(supra), although full bench agreed with the ratio decidendi of the previous full* *bench judgment of **Viva Highways** (supra), went a step further and observed that loss arising out of blacklisting is computable. To this extent, we respectfully disagree with the view taken in **Gouri Ganesh** (supra). The necessary corollary of such disagreement would be that if amount arising out of blacklisting is not ascertainable/ascertained, the dispute relating to blacklisting will not fall within the ambit of "dispute" as defined in Sec.2(1)(d) of Adhiniyam. In that case, petitioner cannot be relegated to avail the remedy under the Adhiniyam.*

***15.** Another ancillary question needs consideration is that if amount of loss arising out of blacklisting order is not ascertainable and does not fall within the ambit of "dispute" and writ petition is tenable, whether petitioner should still be relegated to avail the remedy under the Adhiniyam because composite order under challenge contains both the negative aspects i.e. (i) termination of contract (ii) blacklisting.*

***16.** In view of above disagreement with the view taken by previous benches, we deem it proper to request Hon'ble The Chief Justice for constituting a larger bench to consider following questions:-*

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THE M. P. MADHYASTHAM ADHIKARAN ADHINIYAM, 1983

10. **The Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983** received the assent of the President on 07^{th} October, 1983. This Act was enacted with an object to establish a tribunal to arbitrate any dispute to which the State Government or a public undertaking is a party and for matters incidental thereto or connected therewith. The Act classifies works contracts from other contracts and provides for arbitration by statutory tribunal of the disputes arising out of such contracts with an object to ensure speedy impartial trial by the independent tribunal.Supreme Court

in **State of Madhya Pradesh &another Vs. Anshuman Shukla**[3]**,** while referring to the Act, 1983 and dealing with the nature of the arbitral tribunal constituted under the said Act held that the said Act is a Special Act and provides compulsory arbitration. It provides for reference and the tribunal has been given the power of rejecting the reference at the threshold. The Act provides a special procedure, limitation and the time limit for passing an award, which attains finality. The Supreme Court while referring to the provisions of the Act 1983, held as under:-

> *"28. The provisions of the Act referred to hereinbefore clearly postulate that the State of Madhya Pradesh has created a separate forum for the purpose of determination of disputes arising inter alia out of the works contract.The Tribunal is not one which can be said to be a Domestic Tribunal. The Members of the Tribunal are not nominated by the parties. The disputants do not have any control over their appointment. The Tribunal may reject a reference at the threshold. It has the power to summon records. It has the power to record evidence. Its functions are not limited to one Bench. The Chairman of the Tribunal can refer the disputes to another Bench. Its decision is final. It can award costs. It can award interests. The finality of the decision is fortified by a legal fiction created by making an Award a decree of a Civil Court. It is executable as a decree of a Civil Court. The Award of the Arbitral Tribunal is not subject to the provisions of the Arbitration Act, 1940 and the Arbitration and Conciliation Act, 1996. The provisions of the said Acts have no application."*

11. Division bench of this High Court in **M/s.Spedra Engineering Corporation Engineers and Contractors, Bhopal Vs. State**[4], has observed as under :-

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[3]State of Madhya Pradesh & another Vs. Anshuman Shukla, (2008) 1 SCC 487.

[4]M/s. Spedra Engineering Corporation Engineers and Contractors, Bhopal Vs. State (AIR 1988 MP 111).

*"**9.**M.P.Madhyastham Adhikaran Adhiniyam, 1983, has been enacted to provide for the establishment of a tribunal to arbitrate in disputes to which the State Government or a public undertaking owned or controlled by the State Government is a party. 'Dispute' has been defined under section 2(d) meaning any difference relating to any claim valued at Rs, 50,000/- or more, arising out of the execution or non-execution of a works contract or part thereof. Section 2(i) defines 'works contract' which has been quoted earlier. Under section 2(2) words and expressions used but not defined in this Act but defined in the Arbitration Act shall have the meanings assigned to them in that Act. The State Government has to constitute an Arbitration Tribunal under section 3 for resolving all such disputes and differences pertaining to works contract. Under section 4, the State Government has to appoint a chairman and as many mergers to the Tribunal as it may consider necessary. No person shall be appointed as Chairman unless he is or has been a Judge of a High Court. No person shall be qualified for appointment as a member unless (i) he is or has been a District Judge of not less than seven years standing, or (ii) he is or has been a Revenue Commissioner or of equivalent rank for not less than 5 years, or (hi) he is or has been a Chief Engineer in the service of the State Government for a period not less than 5 years. Section 5 fixes the tenure of the Chairman and members for a period of 3 years but under sub-section (3) the State Government may in its discretion extend the period for a further term not exceeding 3 years having regard to the number of cases pending. The Chairman and the members shall be paid such salaries, allowances and other perquisites as may be prescribed under the rules as per section 6. Under section 7(1) either party to a works contract shall irrespective of the fact whether the agreement contains an arbitration clause or not, refer in writing the dispute to the Tribunal. Section 9 empowers the Chairman to constitute one or more Benches of one or more uneven number of members as he thinks fit. Under section 10 the Tribunal may make regulations for transaction of business before it. Section 11 empowers the Tribunal to regulate its own procedure as it may think just and fair. Under section 12 the Tribunal shall have the same power as are vested in a Court under the Code of Civil Procedure. The Tribunal is required to give award under section 16. Finality is attached to the award under section 17 which can be executed as a decree by civil Court under section 18. Revision is provided against the award to the High Court under section 19 on grounds similar to those provided under section 115, CPC and those contained in*

section 30 of the Indian Arbitration Act. Under section 20, notwithstanding anything contained in the Arbitration Act, no civil Court shall have jurisdiction to entertain or decide any dispute of which cognizance can be taken by the Tribunal. However, under sub-section (2) nothing in sub-section (1) shall apply to any arbitration proceedings either pending before any arbitrator or umpire or before any Court or authority. The Chairman and members are public servants u/s 22. Section 24 provides that the proceedings before the Tribunal shall be deemed to be judicial proceedings for the purposes of any offence affecting administration of justice. Records and documents forming part of such records shall be open to inspection of all parties or their agents under section 27. Under section 28 the State Government has power to direct the Tribunal to munition records, registers etc. and to furnish information and statistics. Under section 29 the State Government has framed M.P.Madhyastham Adhikaran Niyam, 1984, prescribing the salary and other service conditions of the Chairman and members of the Tribunal. The Tribunal in exercise of powers under section 10 has framed M.P. Madhyastham Regulation, 1985 regulating the procedure to be followed by it. From the narration of the provisions of the Act and the rules hereinabove, it is clear that the Act has been enacted to provide for arbitration of disputes relating to any claim valued at Rs. 50,000/- or more arising out of works contract with the Government or any public undertaking owned or controlled by it. Therefore, the claims below Rs. 50,000/- are not to be referred to the Tribunal for adjudication.

***10**. Here the Act classifies works contract from other contracts and provides for arbitration by a statutory tribunal of the dispute arising out of such contracts. Evidently, there is a reasonable classification with the object to ensure speedy and impartial trial by an independent tribunal. There is no question of any discrimination simply because other types of contracts which are clearly distinguishable and could be separately classified do not come within the purview of this enactment. Mostly in the works contracts with the Government or its undertakings, invariably there is a provision for arbitration by an arbitrator to be appointed by the Government with an option given to the contractor to select one out of the list of arbitrators submitted who are mostly Engineers working or retired from the State Government service."*

12. The State Legislature enacted the Act, 1983 to establish a special statutory mechanism for adjudication of disputes arising out of works contract involving the State Government or its instrumentalities including public sector undertakings.The definition of dispute is described in Section 2(1)(d) of Act, 1983 and the definition of Works Contract in Section 2(1)(i), Section 3 provides for constitution of Tribunal and Section 7(A) for reference petition, Section 7(B) prescribed the limitations, Section 16 deals with the award, Section 17 provides for finality of award, Section 17(A) confers inherent powers and Section 20 creates a bar to the jurisdiction of Civil Court.For better appreciation, the relevant provisions of the Act, 1983 are extracted below:

> ***"Section 2(1)(d)*** *: "dispute" means claim of ascertained or ascertainable money valued at Rupees 50,000 or more relating to any difference arising out of the execution or non-execution of a works contract or part thereof;*
>
> ***Section 2(1)(i)*** *: "works-contract" means an agreement in writing or a letter of intent or work order issued for the execution of any work relating to construction, repair or maintenance of any building or superstructure, dam, weir, canal, reservoir, tank, lake, road, well, bridge, culvert, factory, work-shop, powerhouse, transformer or such other works of the State Government or Public Undertakings or of the Corporations of the State as the State Government may, by notification, specify in this behalf at any of its stages, entered into by the State Government or by an 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 the execution of any of the said works and also includes the services so hired for carrying out the aforesaid works and shall also include all concession agreement, so entered into by the State Government or public undertakings or Corporation, wherein a State support is involved or not."*

The agreements in writing for the execution of the work relating to construction, repair or maintenance of electric lines, water supply and sewerage/drainage system shall also be "works contract"

After Amendment :

(As per Amendment, 2025) Section 2(1)(i)*: "works-contract" means an agreement in writing or a letter of intent or work order issued for 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, workshop, powerhouse, transformers, electric line, water supply and sewerage/drainage system or such other works of the State Government or public undertakings or of the corporations of the State as the State Government may, by notification, specify in this behalf at any of its stages, entered into by the State Government or by an official of the State Government or public undertakings or by public undertakings or corporation or bay any official of the State Government for and on behalf of such corporation or public undertakings 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 and also includes services so hired for carrying out the aforesaid works and shall also include all concession agreement and all ancillary agreements including escrow agreement, substitution agreement, so entered into by the State Government or public undertakings or corporation, wherein a State support is involved or not, and may also include the works assigned by the Central Government or its public undertaking to the State Government, wherein the State of Madhya Pradesh or its undertaking is an executing agency."*

Section 7-A*. Reference Petition.-(1) Every reference petition shall include whole of the claim which the party is entitled to make in respect of the works contract till the filing of the reference petition but no claims arising out of any other works contract shall be joined in such a reference petition.*
(2) Where a party omits to refer or intentionally relinquishes any claim or any portion of his claim, he shall not afterwards be entitled to refer in respect of such claim or portion of claim so omitted or relinquished.
(3) Notwithstanding anything contained in sub-section (1) or sub-section (2) disputes relating to works contract which may arise after filing of the reference petition may be entertained as

and when they arise, subject to such conditions as may be prescribed.

Section 7-B. *Limitation.- (1) The Tribunal shall not admit a reference petition unless-*
(a) the dispute is first referred for the decision of the final authority under the terms of the works contract; and
(b) the petition to the Tribunal is made within one year from the date of communication of the decision of the final authority:
Provided that if the final authority fails to decide the disputes within a period of six months from the date of reference to it, the petition to the Tribunal shall be made within one year of the expiry of the said period of six months.]
(2) Notwithstanding anything contained in sub-section (1), where no proceeding has been commenced at all before any Court preceding the date of commencement of this Act or after such commencement but before the commencement of the Madhya Pradesh Madhyastham Adhikaran (Sanshodhan) Adhiniyam, 1990, a reference petition shall be entertained within one year of the date of commencement of Madhya Pradesh Madhyastham Adhikaran (Sanshodhan) Adhiniyam, 1990 irrespective of the fact whether a decision has or has not been made by the final authority under the agreement.]
(2-A) Notwithstanding anything contained in sub-section (1), the Tribunal shall not admit a reference petition unless it is made within three years from the date, on which the works contract is terminated, foreclosed, abandoned or comes to an end in any other manner or when a dispute arises during the pendency of the works contract:
Provided that if a reference petition is filed by the State Government, such period shall be thirty years.

By way of amendment, 2025*, in sub-Section (2), the word "intentionally" has been omitted.*
in sub-section (1) in the proviso, the following words have been added "Provided further that is a reference petition is filed by the State Government or public undertaking, such period shall be 3 years. Sub-section (2) and 2(a) have been deleted.

ARGUMENTS ON BEHALF OF THE PETITIONER :

13. **Shri Amit Mishra**, learned counsel appearing on behalf of the petitioner contended that blacklisting in its very character is an administrative and discretionary measure rooted in executive

power intended to protect the sanctity and probity of governmental contracts. Blacklisting does not emanate from the contract itself nor does it bear any determinable or ascertainable monetary character that could convert it into a "dispute" within the meaning of Section 2(1) (d) of the Act of 1983. Definitionof Section 2(1) (d), provides that the term "dispute" means "a claim of ascertained or ascertainable money valued at fifty thousand rupees or more relating to the execution or non-execution of a works contract.

14. A claim that is capable of being computed in monetary terms either ascertained or ascertainable can be entertained by the Tribunal and administrative or declaratory grievances such as challenges to blacklisting orders do not fall within this fold. By the 1990, Amendments the legislature consciously narrowed the scope of the term by deleting the broader expression "any dispute relating to any claim" and restricting it solely to claims of a monetary nature. This deliberate legislative omission is a decisive indicator that non-pecuniary administrative acts, such as blacklisting or debarring a contractor from future tenders were never intended to be brought within the domain of the tribunal.

15. Referring to the structural provisions of the Act, learned counsel pointed out that Section 7-A mandates that every reference must include "the whole of the claim arising from the works contract up to the date of filing." Sub-sections (2) and (3) of Section 7-A further bar the splitting of claims or inclusion of claims from different contracts. This statutory prescription ensures that the Tribunal is confined to adjudicate specific, quantifiable, contract-bound monetary disputes and not to entertain vague, future or speculative claims. Blacklisting, being neither a quantifiable loss

nor an event arising directly from the execution of a contract is therefore outside the purview of the Tribunal.

16. Section 8(3) of the Act, requires that the Chairman to assign matters to a Bench "having regard to the nature of the dispute, the amount involved, and other relevant factors." This provision reinforces that the jurisdiction of tribunal is essentially and exclusively pecuniary hinging upon the monetary quantification of a claim. Unless the dispute involves an amount determinable in terms of money there exists no jurisdictional foundation for the Tribunal to act.

17. Blacklisting is not a contractual penalty or a consequence of breach, but an independent administrative act falling within the domain of public law. The authority to blacklist emanates from executive instructions, departmental manuals or clauses incorporated in tender conditions empowering the State to ensure integrity in public procurement. However, the exercise of such power must conform to the principles of natural justice, fairness, and non-arbitrariness as enshrined under Articles 14 and 21 of the Constitution. The challenge to such administrative orders lies within the writ jurisdiction of constitutional courts under Article 226 and not before a statutory arbitral tribunal, whose competence is confined to contractual claims. Reliance has been placed upon the judgment of the Apex Court in **Kulja Industries Ltd. v. Bharat Sanchar Nigam Limited[5].**

18. The learned counsel also draws support from **Anilma Associates v. Union of India[6],** wherein the Delhi High Court applied the

[5]Kulja Industries Ltd. v. Bharat Sanchar Nigam Limited, (2014) 14 SCC 731.

[6]Anilma Associates v. Union of India, 106 (2003) DLT 262.

doctrine of double jeopardy to administrative blacklisting, holding that the imposition of multiple bans or debarments on the same contractor for the same cause violates fairness and the principles of natural justice. Blacklisting is punitive and administrative in nature thereby falling outside the legislative intent and jurisdictional contour of a statutory tribunal.

19. Explaining on Section 7-A (2) and (3) of the Adhiniyam, Shri Mishra submitted that even if a contractor suffers alleged losses on account of blacklisting such losses would be speculative or remote within the meaning of Section 73 of the Indian Contract Act, 1872. Only losses that are direct, proximate, and capable of computation are compensable. Since the deprivation caused by blacklisting is indeterminate affecting future business prospects and reputation it is neither capable of precise calculation nor legally compensable under the Act of 1983. Hence, even if the Tribunal were to assume jurisdiction it would lack statutory competence to quantify or adjudicate such speculative claims. Learned counsel further pointed out that the Tribunal under the Act of 1983 is a creation of statute and therefore enjoys no inherent or equitable jurisdiction. Its powers are circumscribed strictly by the text of the Act. It cannot assume declaratory jurisdiction akin to a civil court nor can it examine administrative actions that do not give rise to a monetary claim.

20. In continuation, Shri Mishra distinguishes the scheme of the Act of 1983 from that of the Arbitration and Conciliation Act, 1996. Under Section 16 of the latter enactment an arbitral tribunal may determine its own jurisdiction including issues as to arbitrability.

However, the statutory Tribunal under the Act of 1983 functions within a confined legal framework and does not possess the power to decide upon its own jurisdiction beyond the parameters set forth in Section 2(1)(d) and Section 7-A. Learned counsel further emphasized that arbitrators whether private or statutory derive their authority from the arbitration agreement and cannot exercise public law powers. Since blacklisting is an executive act arising out of public law considerations it cannot be subjected to arbitration or statutory adjudication.

21. Learned counsel in conclusion submitted that blacklisting is not a "dispute" within the meaning of Section 2(1)(d) as it does not involve any ascertainable monetary claim and that grievances arising from blacklisting must be agitated before appropriate constitutional forums through writ petitions as the tribunal constituted under the Act of 1983 have no jurisdiction to declare or annul blacklisting nor to grant any relief founded upon speculative future losses or reputational harm.

ARGUMENTSBY LEARNED *Amicus Curiae* :

22. Bench appointed Shri Ashok Sethi, Piyush Mathur, Amit Agrawal, V. K. Jain and Ravindra Singh Chhabra, learned senior advocates as *amicus curiae* to assist the bench.

23. **Shri Amit Agrawal**, learned *amicus curiae* and senior advocate opened his submissions by submitting that the principal question before this Bench is whether an order of blacklisting would fall within the definition of "dispute" under Section 2(1) (d) of the Adhiniyam and if so whether the loss alleged to arise therefrom is an "ascertained or ascertainable sum of money" within the

jurisdiction of the Arbitral Tribunal constituted under the said enactment.

24. Learned senior counsel at the outset submitted that this precise question did not arise for determination before the Full Bench in **Gouri Ganesh**[1]. The learned counsel drew the attention of this court to the three questions referred in **Gouri Ganesh**[1]**,** which all pertained to the maintainability of disputes arising from the termination of a works contract and the scope of consequential reliefs flowing therefrom. Blacklisting learned senior counsel urged was not one of the referred issues. While the Bench made passing reference to blacklisting those observations was neither part of the reference nor of the ratio decidendi. More significantly, learned senior counsel pointed out that at the time **Gouri Ganesh**[1]was decided on 03.05.2018, the expression "ascertainable" had not yet been inserted in Section 2(1)(d), the said amendment having come into force only on 28.04.2019. Hence, any interpretation regarding ascertainability of loss in the context of blacklisting could not have arisen from the statutory text as it then stood. Consequently, the observations in **Gouri Ganesh**[1]cannot be read as conferring jurisdiction upon the Tribunal to entertain challenges to blacklisting orders.

25. Proceeding further, learned senior counsel submitted that Section 2(1)(d) when read in conjunction with Section 3 of the 1983 Act, confines the jurisdiction of the Tribunal to disputes "arising out of a works contract" where the claim relates to an ascertained or ascertainable sum of money not less than ₹50,000/-. The ***sine qua non*** for invoking the jurisdiction of the Tribunal therefore is that the claim must emanate directly from the contract and must be

capable of monetary quantification. The act of blacklisting, on the other hand, is an exercise of the State's sovereign executive power under Article 298 of the Constitution of India, which though often triggered by contractual disputes has an independent public-law character governed by Article 14 of the Constitution. The power to blacklist is inherent in the State as an incident of its executive authority and does not emanate from the contract itself. Thus, even if a contract or tender document incidentally refers to blacklisting the source of that power is not contractual but constitutional.

26. In support of this submission, reliance is placed on a long line of decisions of the Supreme Court beginning with **Erusian Equipment & Chemicals Ltd. V. State of W.B.**[7], **Raghunath Thakur v. State of Bihar**[8], **Patel Engineering Ltd. v. Union of India**[9]and **Gorkha Security Services v. Government (NCT of Delhi)**[10]**,** wherein the Apex Court further emphasized that blacklisting, being a measure having severe civil consequences, must be preceded by a clear and specific show-cause notice and an opportunity of hearing. These judgments learned senior counsel submitted that makes it abundantly clear that blacklisting is not a mere contractual remedy but an administrative act to be tested on public-law principles of fairness and non-arbitrariness.

27. Addressing the question of ascertainability of loss, learned senior counsel submitted that while damages arising from wrongful termination of a works contract can, in appropriate cases, be quantified by settled measures, the same cannot be said of

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[7] Erusian Equipment & Chemicals Ltd. Vs. State of W.P., (1975) 1 SCC 70.
[8] Raghunath Thakur Vs. State of Bihar, (1989) 1 SCC 229.
[9] Patel Engineering Ltd. Vs. Union of India, (2012) 11 SCC 257.
[10] Gorkha Security Services Vs. Government (NCT of Delhi), (2014) 9 SCC 105.

blacklisting. For termination-related claims, the law is well settled by **A.T. Brij Paul Singh and Bros. v. State of Gujarat**[11] wherein the Apex Court held that a contractor wrongfully prevented from completing a contract is entitled to damages for loss of profit, often calculated as a reasonable percentage of the unexecuted portion of the work, usually around 15%, provided breach on the part of the employer is established. This principle was subsequently approved in **HUDCO v. Progressive Constructions Ltd.**[12]. Similarly, in **State of Kerala v. K. Bhaskaran**[13], the Apex Court recognized loss of profit as a recoverable head of damages, where the contract was illegally rescinded. However, the same measure, learned senior counsel contended cannot apply to blacklisting. Unlike termination, blacklisting does not deprive the contractor of any existing contractual right or quantifiable claim; it merely renders him ineligible for future contracts. Whether the contractor would have participated in, qualified for, or been awarded any such contracts is purely speculative. There is thus no ascertainable sum of money capable of determination, nor any established formula to compute the notional loss resulting from blacklisting.

28. The learned senior counsel distinguished the decision of **Gangotri Enterprises Ltd. v. M.P. Road Development Corporation**[14], wherein the Supreme Court observed that the expression "ascertainable" includes amounts that may be determined during the course of proceedings based on pleadings and evidence. Learned senior counsel submitted that **Gangotri**

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[11] A.T. Brij Paul Singh and Bros. Vs. State of Gujarat, (1984) 4 SCC 59.
[12] HUDCO Vs. Progressive Constructions Ltd., (2011) 2 SCC 241.
[13] State of Kerala Vs. K. Bhaskaran, (1985) 4 SCC 119.
[14] Gangotri Enterprises Ltd. Vs. M.P. Road Development Corporation, (2018) 16 SCC 296.

Enterprises[14]dealt with the quantification of contractual claims for work done and cannot be extended to encompass speculative losses arising from an executive disability such as blacklisting.

29. Learned senior counsel also referred to Section 7-A of the 1983, Act, which mandates that a claimant include the whole of his claim in one reference petition and provides for accrual of counter-claims during pendency of proceedings. Learned senior counsel submitted that this provision, being procedural, cannot enlarge the Tribunal's substantive jurisdiction. If the subject matter itself is outside Section 2(1) (d) labeling it as "consequential relief" cannot confer jurisdiction. The procedural provisions cannot cure a foundational defect of competence.

30. Turning to the question of arbitrability, counsel relied on the trilogy of judgments **Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.[15], A. Ayyaswamy v. A. Paramasivam**[16], and **Vidya Drolia v. Durga Trading Corporation**[17]. In **Booz Allen**[15]the Supreme Court held that disputes relating to rights in personam are generally arbitrable, while those involving rights in rem, which affect the world at large are not. In **Booz Allen**[15]some examples of non-arbitrable matters*inter alia* criminal proceedings, matrimonial and guardianship cases, insolvency and winding-up, testamentary matters, and tenancy disputes under rent control statutes were explained. The rationale lies in the fact that arbitral tribunals being private fora based on party autonomy, cannot adjudicate upon matters requiring collective adjudication or public enforcement.

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[15] Booz Allen & Hamilton Inc. Vs. SBI Home Finance Ltd., (2011) 5 SCC 532.
[16] A. Ayyaswamy Vs. A. Paramasivam, (2016) 10 SCC 386.
[17] Vidya Drolia Vs. Durga Trading Corporation, (2021) 2 SCC 1.

31. The same principle was elaborated in A. **Ayyaswamy**[16]wherein the Apex Court observed that disputes falling within the exclusive domain of special public fora, or involving public policy and statutory rights are not amenable to arbitration. In **Vidya Drolia**[17] the Apex Court reaffirmed that sovereign functions of the State, public-law actions, and matters involving ***erga omnes*** effects are non-arbitrable by their very nature and it was specifically held that even where the dispute appears inter parties, if its effect extends to third parties or to public law arbitration is excluded. Learned senior counsel submitted that blacklisting clearly falls within this category. Although the order is addressed to a single contractor its effect extends to all public authorities, which as a matter of policy and practice refrain from engaging blacklisted entities. The order thus operates *in rem* altering the status of the contractor in the public domain and cannot be adjudicated by a private or statutory arbitral tribunal.

32. In this connection, learned senior counsel relied on the dictum in **Dwarkadas Marfatia & Sons v. Board of Trustees of the Port of Bombay[18],** wherein the Apex Court observed that every action of the State or its instrumentalities even in the contractual sphere must be informed by reason and is subject to judicial review under Articles 226 and 32. The arbitral tribunal under the 1983, Act though a creature of statute, functions within a limited domain of private-law adjudication and does not exercise the power of judicial review. It cannot test the vires, mala fides, or constitutional validity of an administrative order. These are quintessentially functions of the constitutional courts.

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[18] Dwarkadas Marfatia & Sons Vs. Board of Trustees of the Port of Bombay, (1989) 3 SCC 293.

33. Learned counsel then delineated three recurring factual situations in government contracts:

(i) where blacklisting occurs during subsistence of the contract, without termination such blacklisting is independent and only challengeable in writ jurisdiction;
(ii) where termination and blacklisting are separate but sequential actions the termination and monetary claims may go before the Tribunal, but blacklisting being public-law in character must be tested under Article 226; and

(iii) Where termination and blacklisting are embodied in a composite order while the termination component may be contractual, the blacklisting component remains non-arbitrable.

34. In such composite cases, counsel submits, the writ petition is maintainable notwithstanding the availability of a remedy before the Tribunal as relegation would lead to conflicting findings and practical futility. The rule of alternative remedy is discretionary and yields, where the statutory remedy is neither efficacious nor capable of affording the relief sought particularly, when the challenge is on constitutional grounds.

35. Summarizing his arguments, learned senior counsel submitted that blacklisting whether standalone or composite with termination is an executive act with public-law implications. The Tribunal under the 1983 Act has no jurisdiction to examine the legality of such orders nor can it award compensation for speculative, non-quantifiable losses alleged to arise therefrom. The jurisdiction of the High Court under Article 226, being part of the basic structure, remains intact and cannot be excluded by a state enactment. If **Gouri Ganesh**[1] **orAwasthi Brothers Construction Company v/s The State of Madhya Pradesh & Others**[19] are read as

[19] Awasthi Brothers Construction Company Vs. The State of M.P. and others, 2019 SCC OnLine 4298.

recognizing a tribunal remedy against blacklisting, the same it is respectfully submitted does not correctly state the law.

36. Learned senior counsel, therefore urged that the first question referred to this Bench be answered in the negative holding that loss alleged to arise out of blacklisting is not an "ascertained or ascertainable sum of money" within the meaning of Section 2(1)(b) of the 1983 Act, and that blacklisting being a public-law measure with ***erga omnes*** effect, is non-arbitrable. As regards the second question, learned senior counsel submitted that where a composite order of termination and blacklisting is challenged, the writ petition is maintainable despite the existence of an alternative remedy for termination, as the tribunal lacks jurisdiction over the blacklisting component and the alternative remedy is not efficacious. Accordingly, the learned senior counsel prayed that this Court hold that challenges to blacklisting lie exclusively within the constitutional writ jurisdiction of this Court and not before the Tribunal constituted under the 1983, Act.

37. **Shri V.K. Jain**, learned*amicus curiae*and senior advocate divided the reference into four principal questions and two ancillary ones. The first question learned senior counsel submitted is whether the loss arising from blacklisting is ascertainable or unascertainable. The second question concerns, whether such loss falls within the ambit of Section 2(1)(d) of the Adhiniyam.The third question relates to whether a remedy against an order of blacklisting lies before the Tribunal and whether the view taken in **Gouri Ganesh**[1]or **Awasthi Brothers**[19] correctly represents the law. The fourth question is whether a composite order of termination and blacklisting can be challenged in a writ petition, and whether

reference to the Tribunal constitutes an alternative and efficacious remedy. The two ancillary aspects according to learned Senior Counsel are: (1) even assuming that an alternative remedy exists, whether such remedy can be regarded as efficacious and speedy; and (2) whether an order of blacklisting affects the fundamental rights of a contractor under Articles 19(1) (g) and 21 of the Constitution so as to sustain recourse to Article 226.

38. Developing these propositions, Shri Jain submitted that blacklisting has a practical effect of permanently disabling the contractor from future participation in public tenders, thereby amounting to a civil and commercial death. The loss resulting therefrom is neither certain nor capable of being quantified within the meaning of Section 73 of the Contract Act. It is a reputational loss, incapable of being compensated in money. The stigma persists even if damages are awarded. Hence, the Tribunal, whose power is limited to awarding compensation or damages, cannot grant effective relief; it cannot remove the stigma, restore the reputation, or undo the disqualification.

39. According to the learned Senior Counsel, the power of blacklisting does not arise out of a works contract. It is a sovereign or administrative power of the State to protect public interest and ensure probity in public dealings. Even when the tender or contract incorporates a clause referring to blacklisting, such clause merely recognizes that inherent executive power; it does not transform the issue into a contractual dispute. Where no such clause exists, the authority can nevertheless exercise its public-law power, but such exercise remains subject to constitutional scrutiny under Article 226. Thus, blacklisting is not a “dispute arising out of or connected

with a works contract" within Section 2(1) (d) of the Adhiniyam. The Tribunal's jurisdiction extends only to disputes of a contractual nature involving monetary claims. It cannot declare an administrative act void, cannot restore a contract, and cannot adjudicate on proportionality, fairness, or violation of fundamental rights.

40. Shri Jain emphasized that termination of contract and blacklisting are conceptually distinct.Termination flows from breach of contractual terms; blacklisting, on the other hand, is a penal and preventive measure resting on considerations of public interest, fraud, or dishonesty. A breach of contract however grave does not automatically entail blacklisting.The Apex Court in **Kulja Industries**[5]and earlier in **Eurasian**[7]has held that blacklisting is a drastic step and can be justified only on strong, independent material. Therefore, even when both termination and blacklisting are contained in one Composite order, the two must be treated as severable. The termination part may, if the contractor so chooses be referred to the Tribunal for monetary relief; the blacklisting component, being a matter of public law must be challenged before the High Court under Article 226.

41. On the ancillary questions, Shri Jain submitted that even if the Tribunal is treated as an alternative forum, it cannot be said to be efficacious or speedy.The Tribunal has no power to grant immediate interim relief. Blacklisting takes effect instantly and prevents participation in all subsequent contracts. Only the High Court in exercise of its writ jurisdiction, can grant urgent stay or interim suspension of such order. The writ jurisdiction is thus both efficacious and necessary. The process of Tribunal being confined

to quantification of loss would not meet the exigency of immediate protection.

42. Learned senior counsel urged that blacklisting directly impinges upon fundamental rights guaranteed under Articles 19(1) (g) and 21 of the Constitution. It affects a citizen's right to livelihood and to carry on trade or business. The power of judicial review to test such action for arbitrariness, proportionality, or violation of natural justice lies exclusively with the High Court. Hence, a writ petition is maintainable even in the face of an alternative remedy. Reference was made to **Whirlpool Corporation v. Registrar of Trademarks**[20]wherein it was held that the bar of alternative remedy does not apply when the action complained of is without jurisdiction, violates natural justice or infringes fundamental rights.

43. The learned Senior Counsel further submitted that the Tribunal's powers under the Adhiniyam are confined to the award of damages or compensation. It has no power to declare an administrative order invalid or to restore a contract. The power to review administrative decisions, to quash blacklisting orders or to test them on constitutional grounds vests only in the High Court. The Tribunal can at best determine monetary loss suffered from wrongful termination, but not the legality of the blacklisting itself.

44. Learned senior counsel submitted that blacklisting is not a consequential relief. Section 34 of the Specific Relief Act makes clear that when declaratory relief cannot be granted without consequential relief, it becomes consequential. But blacklisting, being independent of any declaration regarding contract, is not consequential. If served with a blacklisting order, the person can

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[20] Whirlpool Corporation Vs. Registrar of Trademarks, (1998) 8 SCC 1.

directly approach the High Court. The High Court may stay the order and once the matter becomes sub-judice the blacklisting will not operate. Immediate relief is necessary where only blacklisting is in issue without monetary claim; the only remedy is under Article 226.Even where termination is challenged along with blacklisting, the Tribunal has no power to restore a contract.

45. Reliance is placed on the **Techno Prints v. Chhattisgarh Textbook Corporation**[21]wherein it held that writ petition is the only remedy and blacklisting is stigmatic challenge to which will lie only under Article 226. Reference is also made to the Apex Court judgment in **Blue Dreamz Advertising (P) Ltd. v. Kolkata Municipal Corporation**[22]**,**wherein blacklisting was challenged during pendency of arbitration proceedings In **N. Radhakrishnan v. Maestro Engineers**[23] the Apex Court held that disputes involving elements of cheating or fraud are not arbitrable as detailed evidence is required and since blacklisting always involves elements akin to fraud or criminal misconduct and therefore cannot be referred to arbitration or the statutory Tribunal.

46. Learned Senior Counsel summarized his submissions by stating that even if an alternative remedy exists before the Tribunal, it would not be efficacious or speedy. Blacklisting directly affects the fundamental rights of a person under Articles 19(1) (g) and 21. The power of the Tribunal is only to award damages or compensation, not to remove stigma or grant restoration. The power to restore or quash blacklisting lies exclusively with the High Court.

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[21] Techno Prints Vs. Chhattisgarh Textbook Corporation, 2025 SCC OnLine SC 343.
[22] Blue Dreamz Advertising (P) Ltd. Vs. Kolkata Municipal Corporation, 2024 SCC OnLine SC 1896.
[23] N. Radhakrishnan Vs. Maestro Engineers, (2010) 1 SCC 72.

47. Learned senior counsel concluded that writ jurisdiction is the only efficacious remedy against blacklisting and that blacklisting is not arbitrable and does not fall under Section 2(1)(d) of the Adhiniyam and the Tribunal has no jurisdiction to adjudicate blacklisting and since termination and blacklisting are distinct only the High Court can test the legality, proportionality, and validity of a blacklisting order.

48. **Shri Ashok Sethi**, learned *amicus curiae* and senior advocate submitted that Section 2(1)(b) restricts the expression "dispute" to a claim of an ascertained sum of money arising from the execution or non-execution of a works contract or part thereof. A blacklisting order does not entail any ascertainable monetary claim and is not founded on execution or non-execution of the contract, but is an administrative act having the effect of debarment from future dealings. Consequently, such action does not amount to a "dispute" as statutorily defined and cannot be made the subject matter of reference before the Tribunal.

49. Learned senior counsel further submitted that Section 7 of the Adhiniyam does not confer any independent or wider jurisdiction upon the Tribunal, but merely provides for reference of those disputes, which fall within the ambit of Section 2(1) (b). As a result, the Tribunal is incompetent to examine or adjudicate upon the legality or propriety of an order of blacklisting. Such an order, being an administrative or quasi-judicial act of the State, can only be tested under Article 226 of the Constitution before the High Court, as has been settled by a catena of judgments of the Hon'ble Supreme Court dealing with blacklisting in the realm of administrative law.

50. In regard to cases where the impugned order combines both termination of the contract and blacklisting of the contractor, learned senior counsel urged that the two components are legally distinct. Termination of the contract is a contractual matter giving rise to a quantifiable claim and hence may be referred to the Tribunal. Blacklisting, on the other hand, is an administrative measure not generating any ascertained monetary consequence, and therefore, its legality can only be examined in writ jurisdiction. If both are treated as a single composite cause of action there would arise a possibility of conflicting findings by two different fora on the same factual matrix one before the Tribunal concerning termination, and another before the High Court concerning blacklisting, which would lead to procedural confusion and multiplicity of proceedings.

51. Learned senior counsel further contended that any alleged loss said to arise from blacklisting would in any event be purely speculative in nature. The consequences of blacklisting depend upon uncertain future events such as participation in tenders that may or may not be floated and hence such loss cannot be computed with reasonable certainty. Reference was made to Section 73 of the Indian Contract Act, 1872, which permits compensation only for such losses as naturally arise in the usual course of things or which can be reasonably foreseen at the time of contract. Losses contingent upon uncertain future tenders according to the learned senior counsel are hypothetical and therefore not compensable.

52. **Shri Piyush Mathur**,learned *amicus curiae* and Senior Advocate opened his submissions by setting out the interpretative foundation upon which the Adhiniyam ("the 1983 Act") must be understood.

Learned senior counsel submitted that while interpreting a statute, three primary principles guide the Courts that are strict construction, liberal construction and harmonious construction. According to the learned senior counsel, the Adhiniyam when read as a whole represents a self-contained, comprehensive, and well-designed legislative code. It provides for the constitution of a special tribunal, the Madhyastham Adhikaran, intended to adjudicate disputes that arise from works contracts to which the State Government or its public undertakings are parties.

53. Shri Mathur emphasized that the Act is a "perfect and complete code" capable of dealing with all contingencies and eventualities that can emerge from contractual relationships between the State and contractors.The Adhiniyam prescribes the manner of filing references, defines the nature of disputes that can be entertained, outlines the procedure to be followed and provides appellate and revisional remedies. Learned senior counsel submitted that the Adhiniyam is "a complete legislative ecosystem" for contractual disputes involving the State.

54. To explain the scope of the Act, Shri Mathur invited attention to its Preamble. According to the learned Senior counsel this Preamble is of great importance, because it shows that the legislative intent was not merely to provide a forum for claiming monetary compensation, but to create a mechanism for resolution of all disputes "incidental to or connected with" works contracts. The language "and for matters incidental thereto or connected therewith" must in his submission be construed liberally so as to include every difference or dispute that flows from the contractual

relationship, whether it relates to execution, discharge, performance, or satisfaction of the contract.

55. Learned senior counsel submitted that the spirit of the act is not confined to monetary claims alone. Rather, it seeks to establish a comprehensive dispute resolution mechanism for all contractual disagreements between the State and contractors. The legislative intention, therefore, is expansive, not restrictive. Proceeding further, Shri Mathur read Section 3 which provides for the constitution of the Tribunal. The language used therein authorizes the State Government to constitute the Tribunal "for resolving all such disputes or differences pertaining to works contracts arising out of or connected with execution, discharge, or satisfaction of any such works contract."

56. Learned senior counsel submitted that the use of the phrase "arising out of or connected with" gives the Tribunal the widest possible jurisdiction. The words "connected with" are of particular significance, as they include not only direct disputes, but also consequential matters arising indirectly from the contractual relationship. Thus, the learned Senior counsel submitted that termination of a contract, recovery of dues, or even consequential issues flowing from contractual relations could fall within the ambit of the Tribunal's jurisdiction, subject to the statutory limitations.

57. Having explained the structure, Shri Mathur then turned to the definitions which he termed the "key determinants" of jurisdiction. Under Section 2(1)(d), "dispute" has been defined to mean "claim of ascertained or ascertainable money valued at Rs.50,000 or more relating to any difference arising out of the execution or non-

execution of a works contract or part thereof." This definition, according to him, places two conditions for maintainability before the Tribunal that are the claim must be of an ascertained or ascertainable money value of ₹50,000 or more and the claim must arise out of the execution or non-execution of a works contract.

58. Learned Senior counsel further referred to Section 2(1)(i) defining "works contract," which includes agreements, letters of intent, or work orders relating to construction, maintenance, supply of goods or materials, or any such work undertaken for the State Government or its undertakings. It even includes concession agreements and services hired for carrying out works. Learned senior counsel submitted that this wide definition shows that the legislature deliberately used expansive terminology to include within its fold every form of contractual work or service performed for the State.

59. Accordingly, Shri Mathur submitted that while the definition of "dispute" may appear restrictive, the definition of "works contract" broadens the Act's operation. Both must be read together harmoniously. To illustrate the completeness of the act the learned senior counsel relied heavily on Section 7-A which governs the reference petition. Sub-section (1) of section 7-A requires that all claims that have arisen till the filing of the reference must be included in a single petition, and that claims arising from other works contracts cannot be joined. However, Sub-section (3) creates a further category by providing that disputes arising after the filing of the reference petition may also be entertained subsequently, subject to prescribed conditions.

60. According to the learned senior counsel this statutory arrangement ensures that every conceivable dispute whether arising before or after filing the reference can find its remedy before the Tribunal. Thus, even if a blacklisting order is issued subsequent to the termination of a contract and after filing of the reference, such a grievance can still be brought before the Tribunal by invoking Section 7-A(3).

61. Shri Mathur then elaborated on how the Tribunal has the power to protect parties' interim rights. Under Section 16, the Tribunal is authorized to pass an interim award. Learned senior counsel pointed out that this provision does not restrict the Tribunal to act only after recording evidence. The phrase "after recording evidence, if necessary" makes it clear that evidence may not always be required, if the matter can be decided on the basis of pleadings and documents. Therefore, where a contractor challenges blacklisting during pendency of the reference, the Tribunal can decide that issue as an interim award under Section 16. The only statutory requirement is that reasons must be given.

62. Learned senior counsel then connected this with Section 19 of the Adhiniyam, which empowers the High Court to exercise revisional jurisdiction over the Tribunal's award, including an interim award. The Explanation to Section 19 specifically clarifies that an "award" includes an "interim award." Thus, if the Tribunal passes an interim award refusing or granting relief in relation to blacklisting, the aggrieved party can approach the High Court under Section 19 for revision.

63. Learned senior counsel also emphasized on Sub-sections (2) and (3) of Section 19. Under Sub-section (2), revision lies when the

Tribunal has either exercised jurisdiction not vested in it, failed to exercise jurisdiction vested in it, acted illegally, or committed material irregularity or misconduct. Sub-section(3) further declares that the High Court's powers in revision are equivalent to those under Section 115 of the Code of Civil Procedure, 1908, thereby ensuring judicial supervision. In his submission, this mechanism provides sufficient safeguards for aggrieved parties, proving that the Act is indeed a complete self-contained code.

64. Shri Mathur next dealt with Section 17-A, which preserves the Tribunal's inherent powers, but imposes a restriction that "no interim order by way of injunction, stay or attachment before award shall be granted." He clarified that this provision concerns interim orders, not interim awards. According to learned senior counsel, an interim award is a formal adjudication that finally determines a specific issue, whereas an interim order is merely a temporary arrangement. Therefore, while Section 17-A restricts the Tribunal from granting injunctions or stays, it does not prohibit it from deciding an issue like blacklisting on merits through an interim award.

65. Learned senior counsel maintained that such an award would be appealable and revisable under Section 19 and could safeguard the contractor's rights even during pendency of the main reference. Having shown the comprehensiveness of the act, Shri Mathur then turned to its limitations. Learned senior counsel submitted that although the 1983 Act is a complete code for contractual disputes, it does not confer on the Tribunal any jurisdiction to examine the legality or validity of administrative orders, such as orders of termination or blacklisting.

66. Learned senior counsel explained that the Tribunal's jurisdiction is confined to adjudicating contractual claims for money damages, compensation, or payments arising from execution or non-execution of a contract. It cannot go into questions like whether a termination order was passed by a competent authority, whether it violated principles of natural justice, or whether it was mala fide or ultra vires. Those are questions of legality and administrative propriety, which can only be examined by the High Court in its writ jurisdiction under Article 226 of the Constitution.

67. Learned senior counsel clarified that a contractor may claim compensation before the Tribunal, but if he wishes to challenge the legality of the termination or blacklisting itself, the contractor must approach the constitutional court. The Tribunal by design is not empowered to "quash" or "set aside" administrative orders. On the specific question of blacklisting, Shri Mathur described it as an administrative order rather than a contractual or statutory one. According to him, blacklisting is a decision of the executive authority declaring that the government or public body will no longer deal with a particular contractor in future. It is not a penalty arising out of contract, but a preventive measure taken on the administrative side.

68. Learned senior counsel submitted that while blacklisting may have been triggered by contractual conduct, it is not emanating from the contract. It is an independent executive act that severs future commercial relations and thereby restricts the person's right to carry on trade or business. Hence, it squarely affects Article 19(1)(g) of the Constitution, which guarantees the right to carry on business.

69. Learned senior counsel elaborated that once a person is blacklisted by one government department, the effect often travels beyond that department, because other departments, as a matter of policy, may also avoid dealing with that person. Thus, blacklisting causes severe civil consequences that go beyond the contract and amount to restriction of fundamental rights. Therefore, in his submission, challenges to blacklisting must be made before the High Court, not before the Tribunal, because the Tribunal lacks the constitutional authority to decide issues relating to fundamental rights.

70. Addressing the Court's query on whether the restriction imposed by blacklisting could be justified as a "reasonable restriction" under Article 19(6), Shri Mathur agreed that all fundamental rights are subject to reasonable restrictions. However, learned senior counsel clarified that the authority to determine whether a restriction is "reasonable" lies with the constitutional courts alone. The Tribunal, being a statutory forum, has no competence to adjudicate constitutional validity. Learned senior counsel further explained that blacklisting though preventive in character must still conform to the principles of natural justice and fair play. Where it does not, it is liable to be set aside by the High Court. Only thereafter, once the blacklisting order is quashed, can the contractor claim losses or damages before the Tribunal.

71. To illustrate the distinction between preventive and punitive measures, Shri Mathur offered an analogy: when a person commits certain offences and is convicted, it is a punitive consequence; but if the same person is detained under the National Security Act to prevent future disturbances, it is preventive. Similarly, termination of a contract may be punitive, while blacklisting is preventive as it

prevents future dealings. The two are distinct both in nature and legal consequence.

72. Learned senior counsel emphasized that while the Tribunal can examine contractual breaches and compensatory aspects, it cannot test preventive administrative orders like blacklisting, which involve the exercise of executive discretion and touch upon constitutional freedoms. In cases where the order of termination and the order of blacklisting are composite, Shri Mathur suggested a dual-remedy approach. The contractor may challenge the legality of both orders in writ proceedings before the High Court, while reserving the right to claim consequential monetary reliefs before the Tribunal once the orders are quashed.

73. Learned senior counsel cautioned that approaching the Tribunal directly against blacklisting would be misconceived as the Tribunal cannot declare such an administrative act illegal. The Tribunal's jurisdiction is confined to evaluating contractual consequences not administrative validity.

74. Shri Piyush Mathur summarized his submissions that the 1983 Act is a complete and self-contained code governing all claims and disputes arising from works contracts involving the State or its undertakings. It provides for filing of references, counter-claims, interim awards, and revisionary supervision by the High Court.

75. Sections 3, 7-A, 16, 17-A, and 19 collectively ensure a full mechanism for adjudication of contractual claims. The Tribunal's jurisdiction is limited to contractual disputes involving ascertainable monetary claims. It cannot adjudicate upon the legality or constitutionality of termination or blacklisting orders, as these are administrative actions and not contractual matters.

Blacklisting affects the fundamental right to trade or business under Article 19(1) (g) and therefore falls within the supervisory jurisdiction of the High Court. Any claim for damages or loss due to blacklisting can arise only after such an order is declared illegal; till then, no "ascertained or ascertainable" claim exists within the meaning of Section 2(1)(d).

76. Learned counsel in conclusion thus submitted that "the Act is a complete code for its subject, but not a cure for all problems." The Adhiniyam governs all matters that flow from the contract, but not those that arise independently of it such as blacklisting, which being an administrative act affecting fundamental rights stands beyond the Tribunal's competence and within the exclusive realm of constitutional adjudication.

77. **Shri Ravindra Singh Chhabra**, learned *amicus curiae* and Senior Advocate submitted that the losses arising out of an order of blacklisting cannot be said to be ascertainable or assertive within the meaning of Section 2(1) (d) of the Adhiniyam. Learned Senior Counsel contended that such loss is in essence, speculative and hypothetical in character being based not on existing or quantifiable damages, but on uncertain future events such as the possibility of securing government contracts.

78. Drawing support from **Black's Law Dictionary (11th Edition)** learned Senior Counsel submitted that the term **"ascertainable"** denotes the susceptibility of something to a definitive and assured determination. Since losses stemming from blacklisting hinge upon indeterminate factors such as future bidding, administrative discretion and the competitive environment, they are incapable of being definitively assessed. These losses do not arise naturally in

the usual course of events and are therefore outside the statutory scope of claimable damages under the Adhiniyam. Reliance is placed upon **A.T. Brij Paul Singh**[11].

79. In aid of this proposition, reliance is placed upon **Section 73 of the Indian Contract Act, 1872** and **particularly Illustration (i)** appended thereto. The illustration makes it manifest that where a mill owner loses a government contract due to delayed delivery of a machine, compensation may be awarded only for the loss of profits from the mill and not for the loss of the prospective government contract, which is treated as remote and too uncertain. In the same manner, Shri Chhabra argued that a contractor aggrieved by blacklisting cannot claim damages for indeterminate future opportunities foregone. Such damages are incapable of precise computation and are inherently speculative. Therefore, such disputes do not qualify as "disputes" involving ascertainable pecuniary claims within the jurisdiction of the Tribunal under the 1983 Adhiniyam.

80. Shri Chhabra further submitted that the issue of blacklisting travels far beyond the scope of mere contractual breach and engages constitutional dimensions. The act of blacklisting, being penal in nature, carries severe civil consequences and affects the fundamental rights guaranteed under Articles 14, 19(1)(g), and 21 of the Constitution of India. The grounds on which a blacklisting order may be challenge such as bias, arbitrariness, violation of natural justice and disproportionality are matters, which the Tribunal being a creature of statute with limited jurisdiction is not competent to adjudicate upon.

81. The remedy for such grievances lies only before the writ court in exercise of powers under Article 226. This position is further buttressed by the fact that under Section 17A of the Adhiniyam, the Tribunal is statutorily barred from granting interim relief. In matters of blacklisting, where urgent relief may be necessary to prevent irreparable harm to the reputation and livelihood of a contractor, the absence of such power renders the Tribunal an inefficacious forum. Reliance is placed on **Alok Kumar Choubey v. State of M.P.[24],** wherein it was held that the Tribunal by reason of such statutory restriction cannot be treated as an efficacious alternative remedy.

82. Addressing the second part of the reference, Shri Chhabra submitted that a composite order comprising both termination of contract and blacklisting cannot be bifurcated for the purpose of remedies. Emphasizing the lexical difference between **"common"** and **"composite"** learned Senior Counsel urged that a composite order is one, in which the elements of termination and blacklisting are so interwoven that they lose their distinct character and form a new unified entity. He likens such an order to a composite product, formed by combining elements A and B to create a new product X with entirely different properties.

83. Therefore, where an order contains both termination and blacklisting, it is inseverable and cannot be split to confine one part to the jurisdiction of the Tribunal and the other to writ jurisdiction. The presence of blacklisting taints the entire order and the matter in its entirety falls within the supervisory jurisdiction of the High Court. The writ court thus retains jurisdiction to entertain a petition

[24] Alok Kumar Choubey Vs. State of M.P., 2021 SCC OnLine MP 1375.

against a composite order even though a remedy against the termination component may exist before the Tribunal. To hold otherwise would result in a fractured remedy and denial of justice.

84. Learned Senior Counsel submitted that in matters involving blacklisting, the doctrines of fairness, proportionality and Wednesbury reasonableness come into play. These principles have been repeatedly invoked by the Hon'ble Apex Court to safeguard against arbitrary state action. In **Jagdish Mandal v. State of Orissa**[25], the Apex Court cautioned that while commercial decisions merit limited interference, cases involving blacklisting or imposition of penal consequences stand on a different footing, requiring a higher degree of fairness in action.

85. Similarly, in **Noida Toll Bridge Co. Ltd. v. Federation of Noida Residents Welfare Association**[26]**,** the Apex Court emphasized that judicial review over state contracts is justified, where constitutional principles of non-arbitrariness and public interest are at stake. These authorities underscore that judicial review is not ousted merely because the dispute arises from a contract, particularly when the action complained of is punitive or stigmatic in nature.

86. The law is well settled that availability of an alternative remedy is a rule of discretion, not compulsion. In **Harbanslal Sahnia v. Indian Oil Corporation**[27], the Apex Court held that writ jurisdiction may be exercised despite alternate remedies, where fundamental rights are violated, principles of natural justice are breached or the impugned action is wholly without jurisdiction.

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[25] Jagdish Mandal Vs. State of Orissa, (2007) 14 SCC 517.

[26] Noida Toll Bridge Co. Ltd. Vs. Federation of Noida Residents Welfare Association, (2025) 6 SCC 717.

[27] Harbanslal Sahnia Vs. Indian Oil Corporation, (2003) 2 SCC 107.

Subsequent pronouncements, including **Patliputra Entertainment Pvt. Ltd. v. Bihar State Tourism Development Corporation**[28], **Muthupandeeswari v. Tamil Nadu Civil Supplies Corporation**[29] and **M.S. Actech Information System Ltd. v. Small Farmers Agribusiness Consortium**[30] reiterated that blacklisting, being punitive and having civil consequences may be directly challenged under Article 226 notwithstanding arbitration or statutory forums. Thus, the remedies under the Adhiniyam cannot eclipse constitutional oversight in cases, where the state action of blacklisting is arbitrary, disproportionate or violative of fundamental rights.

87. Shri Chhabra further submitted that if the government wishes to avoid writ scrutiny, it must issue separate orders for termination and blacklisting. The moment the two are conjoined, the entire order attracts constitutional review. Asserting that blacklisting disputes lie wholly outside the Adhiniyam learned Senior Counsel concluded that the Tribunal has no jurisdiction to entertain such claims. The writ court alone possesses the necessary authority and constitutional mandate to test such action on the touchstone of fairness, reasonableness, proportionality, and legality.

SUBMISSIONS BY OTHER ADVOCATES :

88. This bench has permitted all the lawyers to appear and assist the bench on the legal issues involved in the matter, irrespective to the fact that they have not been appointed by any party to the *lis*.

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[28] Patliputra Entertainment Pvt. Ltd. Vs. Bihar State Tourism Development Corporation, 2022 SCC OnLine Pat 5373.
[29] Muthupandeeswari Vs. Tamil Nadu Civil Supplies Corporation, MANU/TN/1826/2025.
[30] M.S. Actech Information System Ltd. Vs. Small Farmers Agribusiness Consortium, MANU/DEOR/27250/2025.

89. **Shri Naman Nagrath**, learned Senior counsel advanced elaborate submissions addressing both the conceptual and jurisdictional aspects of blacklisting and its relationship with the Adhiniyam. Learned Senior counsel submitted that blacklisting by its nature, scope and legal consequence is an act penal in character, public in nature, and punitive in effect and therefore cannot be treated as a mere contractual dispute or as a "quantifiable or ascertainable" claim within the meaning of Section 2(1)(d) of the Adhiniyam.

90. Learned senior counsel submitted that any attempt to bring such a dispute within the adjudicatory domain of the Tribunal would offend both the legislative intent and the basic tenets of administrative law, which demand that punitive actions of the State be subjected only to judicial review before a constitutional court.At the threshold, the learned Senior Counsel classified blacklisting orders into three categories, each distinguishable by its source of power and character. The first category learned Senior counsel submitted that blacklisting is imposed by the State in exercise of its executive powers under Article 298 of the Constitution of India, independently of any contractual framework. Such orders are manifestations of sovereign administrative power directed not merely against a particular contract but against participation of the contractor in future governmental activities. These decisions are public in nature, rooted in considerations of probity and trust in public administration and therefore fall squarely within the realm of public law.

91. The second category is where blacklisting is carried out pursuant to a statutory rule or a formal policy framed by the State or its instrumentalities, prescribing the manner, conditions and procedure

for such disqualification. In both these situations, the decision of blacklisting is detached from the contractual relationship and hence the only appropriate forum of redressal is the writ court under Article 226, where such action can be tested on grounds of legality, procedural fairness, proportionality and reasonableness.

92. The third category learned senior counsel submitted is, where blacklisting is undertaken by invoking a contractual clause for instance, where a tender condition empowers the employer to blacklist a contractor for alleged breach or misconduct. Even in such cases Shri Nagrath contended the act of blacklisting cannot be reduced to a private contractual matter for its effect transcends the four corners of the contract: it affects the contractors right to carry on business with the State, it carries a public stigma and it visits the contractor with civil consequences of the highest order often amounting to "civil death" in the commercial domain.

93. Consequently, even contractual blacklisting partakes of the nature of administrative action by the State, subject to constitutional limitations.The writ court therefore retains jurisdiction to judicially review such action even if a parallel arbitral proceeding may exist with respect to other contractual disputes like termination or payment.

94. The learned Senior Counsel next submitted that the stage at which blacklisting is imposed does not alter its character. It may occur prior to the formation of a contract, as when the registration or enlistment of a contractor is cancelled upon discovery of fraudulent antecedents; it may arise during the subsistence of the contract either through a composite order of termination and blacklisting or by way of two separate orders or it may even be imposed after the

conclusion of a contract, upon later revelation that the contract had been obtained by fraud or misrepresentation.

95. In all such cases, the punitive and stigmatic consequence remains identical. What varies is only the timing not the nature of the act. Therefore, irrespective of the stage a blacklisting order being an administrative penalty cannot be relegated to an arbitral tribunal. The writ court remains the only efficacious forum for examining the validity and propriety of such orders.

96. Proceeding to the question of remedies, Shri Nagrath submitted that where blacklisting is issued in exercise of sovereign or policy-based powers, the remedy lies exclusively before the writ court. Even in cases where blacklisting is contractual, the jurisdiction of the High Court under Article 226 remains available to test the action on public law parameters, including the principles of natural justice, non-arbitrariness, and proportionality.

97. Learned senior counsel urged that the writ court may expressly clarify that its adjudication on the legality of blacklisting shall not prejudice the merits of contractual disputes pending before the Tribunal; nevertheless the availability of a contractual arbitration clause cannot displace the constitutional remedy.Only in exceptional cases, where the facts disclose that the writ petition is not maintainable due to disputed questions requiring detailed evidence may the High Court in its discretion relegate the parties to an alternate forum. But such cases are rare, as judicial review remains available even when some factual controversies exist, so long as they do not require elaborate evidence.

98. The learned Senior Counsel then turned to the core question of quantification of losses and damages arising from blacklisting.

Learned Senior Counsel submitted that the decision in **Gouri Ganesh**[1] holding such losses to be "ascertainable" was legally unsustainable. Learned Senior Counsel elaborated that under Section 73 of the Indian Contract Act, 1872, compensation can be awarded only for losses, which have actually occurred and which naturally arose in the ordinary course of events from a proven breach.

99. The statutory language using the expressions "caused" and "arose" clearly contemplates past events, not speculative future contingencies. A contractor cannot claim damages merely because, during the pendency of a blacklisting order, he was unable to secure future contracts, since such inability is hypothetical and contingent upon multiple independent factors. Further, if the blacklisting is ultimately found to be justified, there can be no compensable loss at all. Thus, a claim for damages based on blacklisting arises only after the order has been adjudged illegal by a competent forum. Prior to such declaration, no right to compensation accrues.

100. Shri Nagrath therefore contended that the cause of action for claiming damages crystallizes only upon judicial declaration of illegality not on the date of blacklisting itself. Until then, the loss remains indeterminate and unascertainable. Moreover, Section 73 expressly excludes compensation for "remote or indirect loss". Loss of future business opportunities arising incidentally from a blacklisting order is not only remote but also relates to transactions with third parties which fall entirely outside the contractual matrix. Hence, any such claim would be barred by the second limb of Section 73. Accordingly, the assertion in **Gouri Ganesh**[1] that losses

arising from blacklisting are quantifiable or ascertainable at the time of claim filing is inconsistent with both statutory text and principle.

101. In continuation, the learned senior counsel examined the effect of the 2019 amendment to Section 2(1)(d) of the Adhiniyam, whereby the word "ascertainable" was added to the existing phrase "ascertained claim." Learned Senior Counsel submitted that this amendment was merely clarificatory and procedural, designed to include claims that were accrued but not yet computed, such as pending bills, renewal fees, or commission charges arising during the pendency of an existing claim. It cannot be interpreted to extend jurisdiction over claims, which had not yet arisen in law, such as those dependent upon a future declaration of illegality.

102. The amendment learned senior counsel argued was never intended to transform speculative grievances into arbitrable disputes. The term "ascertainable" refers to claims that are capable of being measured or crystallized within the same proceeding, not to claims, which depend upon a future contingency like the outcome of a writ petition declaring blacklisting to be illegal. Thus, in cases of blacklisting, since the compensatory right arises only after a subsequent adjudication such disputes cannot be treated as "ascertainable" within the meaning of the amended provision.

103. With respect to the Full Bench decisions in **Viva Highways**[2] **and Gouri Ganesh**[1], Shri Nagrath urged that Viva Highways, which attained finality as its findings were not disturbed by the Supreme Court. The later Full Bench in **Gouri Ganesh**[1] while purporting to expand the Tribunal's jurisdiction failed to notice the binding ratio of **Viva Highways**[2] and proceeded without examining the

substantive law under Section 73 of the Contract Act. Therefore, **Gouri Ganesh**[1] to the extent it implies otherwise cannot be treated as laying down good law and must yield to the earlier precedent.

104. Learned Senior Counsel further contended that **Gouri Ganesh**'s[1] reliance on Section 34 of the Specific Relief Act, 1963 to hold that a declaration of illegality of blacklisting must necessarily be accompanied by a claim for consequential damages is fundamentally misplaced. Section 34 applies only when consequential relief is available and capable of being sought at the time of filing. Since, in the context of blacklisting, no cause of action for damages arises until the order is declared illegal, the ability to seek such consequential relief does not exist at the time of filing.

105. Therefore, the bar of Section 34 does not apply. In fact, Section 7-A (2) of the Adhiniyam expressly allows a claimant to relinquish monetary claims, thereby recognising the right of a party to restrict its challenge to declaratory relief alone. To hold otherwise would result in an absurdity and even writ courts, which routinely quash blacklisting orders without any monetary claim,would then be rendered incompetent to entertain such challenges. Thus Shri Nagrath demonstrates the fallacy of the reasoning in **Gouri Ganesh**[1].

106. The learned Senior Counsel then emphasized that blacklisting in all its forms is punitive and entails serious civil and reputational consequences. Drawing analogy from cases relating to imposition of monetary penalties or recoveries learned Senior Counsel submitted that it is settled law that when a contractor disputes such penalties and initiates legal proceedings, the recovery must await

the outcome of adjudication. The same principle applies with greater force to blacklisting, which imposes an embargo on future business and destroys the entity's commercial existence. Consequently, any order of blacklisting must either await adjudication or remain in suspension pending the outcome of the contractor's challenge.

107. Finally, addressing the efficacy of remedies, Shri Nagrath submitted that even assuming that claims of damages arising out of blacklisting were theoretically maintainable before the Tribunal, the procedural precondition under Section 7-B of the Adhiniyam requiring an approach to the departmental authority before invoking the Tribunal's jurisdiction renders such a remedy illusory and ineffective.

108. In matters involving immediate civil and commercial disablement such as blacklisting or encashment of bank guarantees only a writ petition affords an immediate, efficacious and preventive remedy. The Tribunal procedure being sequential and delayed offers no real relief against the operative force of blacklisting. Thus, the only efficacious and constitutionally consistent forum remains the High Court exercising writ jurisdiction.

109. In summation, the learned Senior Counsel urged that blacklisting irrespective of its source or form is not an arbitrable dispute under the Adhiniyam; that damages therefrom arise only upon a later judicial declaration of illegality; that the 2019 amendment of the Adhiniyam adding the word "ascertainable" does not enlarge the Tribunal's jurisdiction; that the decision in **Gouri Ganesh**[1] is *per incuriam* in so far as it deviates from **Viva Highways**[2]; as Section 34 of the Specific Relief Act has no application to a declaratory

challenge to blacklisting; and that such punitive orders, having the effect of civil death, can be subjected only to judicial review by the constitutional courts. Therefore, the learned Senior Counsel concluded that the remedy under Article 226 is not merely available, but exclusive and the Tribunal constituted under the Adhiniyam has no jurisdiction to entertain or determine disputes arising out of or consequent upon an order of blacklisting.

110. Learned Senior counsel further submitted that the State had wrongly tried to treat the expressions "ascertained," "ascertainable," and "quantified" as meaning the same thing under Section 2(1)(d) of the Adhiniyam. Learned Senior Counsel explained that these words refer to different stages of a claim. An ascertained claim is one that is already determined and fixed in amount when the case is filed. An ascertainable claim is one that, though not yet calculated, can be determined from the existing evidence or record. But a claim for loss due to blacklisting is neither ascertained nor ascertainable at the time of filing because such loss has not yet happened. It may arise only if, later, the order of blacklisting is declared illegal. Till then, there is no actual or measurable loss.

111. The learned Senior Counsel further pointed out that losses caused by blacklisting are completely different from losses caused by termination of contract. In termination cases, the cause of action and the amount of loss are generally known, when the contract ends for example, unpaid bills or damages for delay. But in blacklisting, the alleged loss depends on future events, like the contractor's disqualification from future tenders, which may or may not happen. In some cases, no tender may even be issued

while the contractor is blacklisted. Hence, the loss at the time of filing is zero or nil, and such a claim cannot fall under Section 2(1)(d) of the Adhiniyam, which requires a claim to be based on an ascertained or ascertainable monetary dispute.

112. Learned Senior Counsel submitted that in**Gangotri Enterprises**[14]dealt with losses that had already occurred and could be determined during the proceedings. Those rulings do not apply here because blacklisting losses arise only after adjudication declaring the order to be illegal not before. Thus, they are speculative and outside the Tribunal's jurisdiction.

113. The learned Senior Counsel emphasized that the jurisdiction of the Tribunal is limited to disputes arising out of execution or non-execution of a works contract. Losses claimed because of blacklisting, however, often relate to other contracts or future tenders, which are beyond the particular works contract in question. If the State's argument were to be accepted, the Tribunal would have to examine tenders and contracts to which it is not a party, which is not permitted under the Adhiniyam.

114. Learned Senior Counsel cited decisions of the High Court in **MBL Highway Development Co. v. MPRDC**[31] and **M/s Aryavrat Tollways Pvt. Ltd. v. MPRDC**[32] wherein arbitrators were appointed under the Arbitration and Conciliation Act, 1996 instead of the Tribunal, because the disputes involved multiple or third-party agreements beyond the scope of the Adhiniyam. The Hon'ble Apex Court has affirmed these decisions showing that the Tribunal's powers are strictly confined to works contracts.

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[31] MBL Highway Development Co. Vs. MPRDC, AC No.50/2021.
[32] M/s Aryavrat Tollways Pvt. Ltd. Vs. MPRDC, ARB P 107/2024.

115. Shri Nagrath submits that the Full Bench in **Viva Highways**[2] correctly held that losses arising due to order of blacklisting are not quantifiable. That judgment has been upheld by the Supreme Court by dismissal of SLP (C) No. 17070/2017 and has also been cited with approval in **Umri Pooph Pratappur (UPP) Tollways Pvt. Ltd. v. M.P. Road Development Corporation**[33]. Therefore, **Viva Highways**[2]remains binding law and the later judgment in **Gouri Ganesh**[1]cannot overrule or dilute it.

116. He submits that blacklisting cannot be treated as a "difference" rather than a "dispute".Section 2(1)(d) clearly defines "dispute" as a claim relating to any "difference" arising out of a works contract. Thus, a "difference" becomes a "dispute" only when it results in a monetary claim that is ascertained or ascertainable.

117. The learned Senior Counsel submitted that considering blacklisting separately from termination would amount to splitting a cause of action. Learned Senior Counsel submitted that termination and blacklisting are two separate and independent actions, wherein termination arises out of contract while blacklisting is an executive action having public law elements. The principle against splitting cause of action does not apply to such distinct remedies. Learned Senior Counsel referred to the judgments of the Hon'ble Apex Court in **B.C. Biyani v. State of M.P.**[34] and **Blue dreams**[22]. Likewise, the Division Bench of this Court in **M/S.Gulshan Rai Jain II v. Municipal Corporation Bhopal**[35] set aside the

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[33] Umri Pooph Pratappur (UPP) Tollways Pvt. Ltd. Vs. M.P. Road Development Corporation, 2025 SCC OnLine SC 1569.
[34] B.C. Biyani Vs. State of M.P., 2016 SCC OnLine SC 2070.
[35] M/s. Gulshan Rai Jain II Vs. Municipal Corporation Bhopal, WP No.26679/2024.

blacklisting portion of a composite order and left the termination dispute to the Tribunal.

118. On the claim of the State that speculative or consequential losses can still be quantified, the learned Senior Counsel submitted that this view ignores the plain language of Section 73, which expressly bars recovery of remote or indirect losses. The State itself accepts this in its own written submissions, where it concedes that speculative losses cannot be awarded. Similarly, the Delhi High Court in **Delhi Paper Products v. Union of India**[36] rejected a claim based on blacklisting as being "too remote and fundamentally flawed."

119. As to the argument that the Tribunal may at least grant a declaratory relief against blacklisting, Shri Nagrath submitted that this question does not arise at all because the Tribunal lacks jurisdiction to entertain such matters in the first place. A reference petition cannot be maintainable when the monetary claim at its inception is nil or unquantified. Allowing such petitions would mean that the Tribunal could entertain disputes based on mere possibilities or future contingencies, which is contrary to law.

120. Learned senior counsel submitted that the Full Bench in **Gouri Ganesh**[1] while expanding the scope of Section 2(1)(d) by importing Section 34 of the Specific Relief Act and reading in declaratory and consequential reliefs virtually overruled **Viva Highways**[2] without reference although both benches were of equal strength. According to learned senior counsel such enlargement amounts to judicial legislation, impermissible even in reference jurisdiction.

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[36] Delhi Paper Products Vs. Union of India, 2023 SCC OnLine Del 154.

121. In conclusion, the learned Senior Counsel submitted that the State seeks to shield its administrative actions from judicial review by forcing contractors to approach the Tribunal even in cases of blacklisting. Learned Senior Counsel submitted that this would have serious and unjust results as it would allow speculative damage claims against the State while denying immediate judicial scrutiny of its punitive orders. Learned Senior Counsel therefore urged to hold that challenges to blacklisting are not arbitrable and not maintainable before the Tribunal and lie only before the High Court under Article 226 of the Constitution as matters of public law and administrative fairness.

122. **Shri Shekhar Sharma**, learned Senior Advocate at the outset submitted that blacklisting in the State of Madhya Pradesh operates under the registration policy of the State Government and is entirely diverged from any contractual clause thus a challenge to blacklisting lies only under Article 226 of the Constitution, and a writ petition is the sole efficacious remedy.

123. Elaborating Shri Sharma traced the evolution of the State's framework beginning with the policy of 1999 under which each department maintained its own registration and disciplinary panels. This decentralized system was replaced by the order dated 17th August 2011 which introduced centralized registration and a comprehensive mechanism governing suspension, cancellation, demotion and blacklisting.

124. The 2011 order designated the Chief Engineer as the competent authority to initiate action requiring a reasoned order after notice hearing and also provided an appeal to the Engineer-in-Chief or equivalent whose decision was declared final and binding. The

2015 amendment retained only suspension and blacklisting thereby codifying a self-contained system applicable to all departments, boards and corporations of the State. According to learned senior counsel this framework constitutes a complete and independent code superseding any inconsistent provisions in individual works contracts and leaving no scope for arbitral adjudication.

125. Relying on **State of Orissa v. Bhagyadhar Das**[37] learned senior counsel submitted that where an instrument declares a decision final the matter becomes an exceptional matter outside arbitration. Since the 2011 policy confers finality on the appellate decision blacklisting under it cannot be referred to arbitration. The learned Senior Counsel also cited **State of Orissa vs Damodar Das**[38],wherein the Apex Court held that a clause making an engineer's decision "final and binding" such a finality clause merely excludes arbitral recourse. Hence, when the policy itself provides an appellate hierarchy culminating in finality, the subject-matter is excluded from the Tribunal's jurisdiction and can be examined only in writ proceedings.

126. Learned senior counsel further classified blacklisting into two distinct categories: (i) pre-contractual, where misrepresentation, forgery at the bidding stage leads to debarment and (ii) post-contractual, where fraudulent acts such as misuse of advance or embezzlement during performance trigger disciplinary proceedings. In both situations learned senior counsel contended that the power of blacklisting emanates from the statutory policy and not from the contract. The authority passing the order typically

[37] State of Orissa Vs. Bhagyadhar Das, (2011) 7 SCC 406.
[38] State of Orissa Vs. Damodar Das, (1996) 2 SCC 216.

the Chief Engineer or registering authority is not even a contracting party. Consequently, the dispute does not arise "out of the execution or non-execution of a works contract" as required by Section 2(1) (d) of the Adhiniyam.

127. Shri Sharma also drew attention to the statutory scheme of the Adhiniyam and the Madhyastham Adhikaran Rules, 1984, submitting that Rule 10(2) of the said Rules prescribes an ad valorem fee based on the amount claimed which necessarily confines the Tribunal's jurisdiction to monetary claims capable of computation. Declaratory, injunctive or administrative reliefs are by implication excluded. Shri Sharma stressed that blacklisting has grave constitutional implications, resulting in civil death of the contractor. It directly infringes Articles 14, 19(1) (g), and 21, destroying professional reputation and livelihood. Any monetary loss alleged to arise therefrom such as future tender opportunities is inherently speculative and unascertainable. The Tribunal which is confined to quantified monetary claims cannot grant any efficacious relief in such cases therefore, the remedy lies only under the writ jurisdiction of this Court.

128. Regarding composite orders, learned senior counsel submitted that termination and blacklisting are distinct and severable. Termination being a contractual action, may be referred to the Tribunal but blacklisting, being policy-based remains non-arbitrable. Even if both are contained in one order, the blacklisting part must be tested in a writ petition as judicial review cannot be ousted where constitutional rights are affected. Imposing both termination and blacklisting for the same act amounts to double jeopardy offending Article 20(2) of the Constitution.

129. Adverting to the definition of “dispute” in Section 2(1)(d), the learned Senior Counsel maintained that the Adhiniyam restricts jurisdiction to claims of ascertained or ascertainable money. Only such claims as can be scientifically quantified under Sections 73 and 74 of the Indian Contract Act, 1872 fall within its scope. Learned senior counsel further relied on **Tulsi Narayan Garg v. State of M.P.**[39] to show that only quantified claims may be recovered pursuant to an award and on **Devendra Kumar Patel v. State of M.P.**[40] to illustrate that suspension or blacklisting is an immediate administrative measure independent of arbitral adjudication.

130. Shri Sharma concluded that blacklisting in Madhya Pradesh is an action under statutory policy not under a works contract and that the finality clause in the 2011 policy excludes arbitration and that writ jurisdiction is the sole remedy and hence the judgement of **Viva Highways**[2]lays down the correct restrictive interpretation of “dispute”, which has been erroneously diluted in **Gouri Ganesh**[1].

131. He further submitted that no reply has been placed on record by the learned Advocate General clarifying the stand of the State in regard to the policy governing blacklisting. Despite repeated references to the orders of 1999, 2011 and 2015 and the binding nature of the centralized registration policy, the State has not stated whether blacklisting is indeed exercised under that policy or independently under the contract. This omission learned senior counsel urged assumes significance because the existence of the policy as a self-

[39] Tulsi Narayan Garg Vs. State of M.P., (2009) 10 SCC 648.
[40] Devendra Kumar Patel Vs. State of M.P., WP No.4316/2022.

contained code would by itself take the subject outside the ambit of the Adhiniyam.

132. Learned senior counsel submitted that the **Viva Highways**[2] confines the Tribunal's jurisdiction strictly to ascertained or ascertainable monetary claims arising from the contract, whereas **Gouri Ganesh**[1] impermissibly expands it to cover even declaratory and consequential reliefs. According to learned senior counsel Clause 2(1) (d) of the Adhiniyam is explicit that only disputes concerning ascertained sums are cognisable and speculative loss cannot be equated with a "dispute" under the Act. Hence, **Gouri Ganesh**[1] travels far beyond the jurisdiction.

133. **Shri Anshuman Singh,** learned counsel commenced his submissions by stating that the power of blacklisting exercised by the State or its instrumentalities does not stem from any clause of a works contract, but flows from the inherent executive power of the State under Article 298 of the Constitution of India.

134. Learned counsel submitted that the decision of the State to debar or blacklist a contractor is an exercise of executive discretion grounded in public policy and administrative necessity and is not a contractual right arising out of mutual consent.The act of blacklisting learned counsel submitted is prospective in nature and is intended to regulate the future conduct of the Government in its dealings with contractors and therefore cannot be described as a "dispute arising out of or in relation to the execution or non-execution of a works contract" within the meaning of Section 2(1) (d) of the Adhiniyam. It is, in essence, an executive and policy measure having civil consequences that affect a person's right to

trade and carry on business thereby attracting the protection of Articles 14, 19(1) (g) and Article 21 of the Constitution.

135. Learned counsel then referred to authoritative legal definitions to explain the concept and nature of blacklisting. Learned counsel cited **Black's Law Dictionary (5th Edition, 1979)**, which defines a blacklist as "a list of persons marked out for special avoidance, antagonism, or enmity by those who prepare it" and also referred to **P. Ramanatha Aiyar's Law Lexicon (1997 Edition)**,wherein it is defined as "a list of persons or firms unworthy of credit, or with whom it is not advisable to enter into contracts."

136. These definitions learned counsel pointed out have been judicially noticed and quoted with approval by the Hon'ble Apex Court in **State Bank of India v. Rajesh Agarwal**[41],wherein the Court observed that blacklisting has serious reputational and economic implications that go beyond ordinary contractual disputes. Relying on **M/S Patel Engineering**[9], learned counsel submitted that even in the absence of any contractual clause providing for blacklisting, the Government retains the inherent power under Article 298 to decide with whom it shall enter into contractual relations in the future. The Apex Court in this decision had held that the right of the State to blacklist is an executive function distinct from its contractual rights, but that such power must be exercised fairly, reasonably and in conformity with constitutional principles.

137. Developing this argument further, Shri Singh referred to **Gorkha Security**[10] and **Kulja Industries**[5] to emphasise that blacklisting is an administrative act having civil and penal consequences, which affect a contractor's reputation and right to carry on business.

[41] State Bank of India Vs. Rajesh Agarwal, (2023) 6 SCC 1.

Hence, such orders are required to satisfy the tests of fairness, proportionality and reasonableness under Article 14.

138. Learned counsel also referred to the recent judgments of the Supreme Court in **Techno Prints**[21] and **Blue Dreamz**[22]**,** wherein the Court reaffirmed that the power of State to blacklist though inherent must conform to the principles of natural justice and cannot be exercised arbitrarily. Learned counsel stressed that these authorities collectively establish that blacklisting is a public law act subject to constitutional review and not a contractual claim determinable by a statutory tribunal confined to money disputes.

139. Shri Singh then traced the legislative history and purpose of the Adhiniyam and submitted that the enactment was a response to the growing backlog of civil suits and private arbitrations in the 1970s and 1980s relating to public works contracts, which frequently resulted in injunctions that stalled essential public projects. The Legislature in order to ensure continuity of development works and prevent disruption of public infrastructure created a specialized statutory tribunal to adjudicate limited disputes of monetary nature between contractors and the State. The focus of the enactment was not to create an alternate system of general civil adjudication, but to restrict the jurisdiction of the Tribunal to quantifiable money claims arising directly from the execution or non-execution of works contracts.

140. Learned counsel referred to **M.P. Rural Road Development Authority v. L.G. Chaudhary - I**[42] and to **L.G Chaudhary - II**[43] to show that the jurisdiction of the Tribunal is exclusive in

[42] M.P. Rural Road Development Authority Vs. L.G. Chaudhary-I, (2012) 3 SCC 495.
[43] L.G. Chaudhary-II, (2018) 10 SCC 826.

form,but narrow in substance as it is confined only to matters that can be translated into ascertained or ascertainable money claims.

141. He further relied on the text of Section 2(1) (d) of the Adhiniyam and emphasized that this definition restricts the jurisdiction of the Tribunal to money claims only and excludes administrative, declaratory or constitutional issues. The Tribunal cannot declare rights, set aside executive orders, or grant injunctions. Reliance was placed on **Progressive Construction Pvt. Ltd. v. Madhya Pradesh Electricity Board**[44], wherein the High Court held that the Tribunals though vested with certain powers of a civil court, is a limited forum empowered only to decide monetary disputes and cannot issue declaratory or injunctive reliefs. Learned counsel also cited **Upper Doab Sugar Mills Ltd. v. Shahdara (Delhi) Saharanpur Light Railway Co. Ltd.**[45], wherein the Apex Court held that statutory tribunals cannot exercise powers beyond those conferred upon them by law and that questions of equity or convenience cannot expand their jurisdiction.

142. Learned counsel then further submitted that the Full Bench decision in **Gouri Ganesh**[1]and the Division Bench decision in **Awasthi Brothers**[19] have misconstrued the scope of the Adhiniyam by conflating contractual disputes with executive decisions. Learned counsel submitted that the Full Bench in **Gouri Ganesh**[1]held inter alia that a contractor challenging termination of contract is in effect seeking specific performance and therefore must approach the Tribunal and that a mere declaratory relief against termination is meaningless without a claim for damages.

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[44] Progressive Construction Pvt. Ltd. Vs. Madhya Pradesh Electricity Board, 1996 SCC OnLine MP 779.
[45] Upper Doab Sugar Mills Ltd. Vs. Shahdara (Delhi) Saharanpur Light Railway Co. Ltd., AIR 1963 SC 217.

143. Learned counsel respectfully disagreed with this reasoning submitting that it is legally unsustainable, because specific performance is a remedy exclusively within the jurisdiction of civil courts under Sections 10 to 14 of the Specific Relief Act, 1963. The Tribunal being a statutory body cannot grant such a relief nor can it restore a terminated contract.Its function is limited only to awarding compensation for monetary loss resulting from breach.

144. Shri Singh further submitted that the Division Bench in **Awasthi Brothers**[19] committed a similar error by holding that when termination of contract is already before the Tribunal, the blacklisting aspect must also be raised before the same forum as a "consequential relief" under Section 7-A of the Adhiniyam. According to him, such reasoning reflects a category mistake, because termination and blacklisting are two different causes of action. Termination concerns the rights and obligations arising out of a specific works contract, whereas blacklisting is a prospective administrative action excluding the contractor from all future contracts. The analogy to Order II Rule 2 of the Code of Civil Procedure was therefore, in his view, wholly inappropriate, as the proceedings before the Tribunal are not civil suits and a writ petition under Article 226 cannot be equated with a civil proceeding so as to attract such procedural bars.

145. Learned counsel next addressed the question, whether loss arising out of blacklisting could ever be described as "ascertained or ascertainable money" within the meaning of Section 2(1) (d) of the Adhiniyam. Learned counsel submitted that such loss, by its very nature, is speculative and incapable of precise calculation. In a case of termination, damages are ascertainable, because they are linked

to the contract itself such as unpaid bills, cost of materials, or loss of profit on the unexecuted portion of work.These can be determined on the basis of tender rates, records or established legal principles.

146. However, in a case of blacklisting, the alleged loss arises from exclusion from all future contracts, the occurrence and profitability of which are inherently uncertain. It depends upon hypothetical events, whether tenders will be issued, whether the contractor will participate, whether it will succeed and what profit it might have made. Therefore, such loss cannot be termed as "ascertainable money." Learned counsel relied on **Unibros v. All India Radio**[46] and **Batliboi Environmental Engineers Ltd. v. Hindustan Petroleum Corporation Ltd.**[47]**.**

147. Learned counsel further submitted that the remedy before the Tribunal is neither adequate nor efficacious. Although the Adhiniyam was intended to provide a speedy forum, in practice matters remain pending for years together. Learned counsel referred to W.P. No. 292 of 2021, where documentary evidence was placed on record to show that claims filed as early as 2005 remain undecided. Such inordinate delay defeats the legislative purpose and leaves parties remediless.

148. Learned counsel therefore submitted that even assuming jurisdiction existed, the Tribunal does not provide an "efficacious" remedy as understood in law. Relying on the decision in **Dhulabhai v. State of M.P.**[48] learned counsel argued that exclusion of civil court's jurisdiction is permissible only when the

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[46] Unibros Vs. All India Radio, 2023 SCC OnLine SC 1366.
[47] Batliboi Environmental Engineers Ltd. Vs. Hindustan Petroleum Corporation Ltd., (2024) 2 SCC 375.
[48] Dhulabhai Vs. State of M.P., AIR 1969 SC 78.

special statute provides a complete, adequate, and efficacious remedy. Since the Tribunal cannot quash blacklisting orders, cannot issue declaratory reliefs, and cannot act promptly, the constitutional remedy under Article 226 only remains open to the aggrieved party.

149. Addressing the second point of reference, Shri Singh submitted that such an order consists of two distinct components. Termination of a works contract may fall within the scope of the Tribunal, but blacklisting, being an executive act, does not. Learned counsel contended that compelling the contractor to approach two separate forums would cause multiplicity of proceedings and inconsistent decisions. Since the Tribunal cannot grant relief against blacklisting, a writ petition before the High Court is maintainable against the composite order in its entirety.

150. In support of this,learned counsel referred to **Whirlpool Corporation**[20], wherein the Supreme Court held that the existence of an alternative remedy does not bar writ jurisdiction, where the impugned action is violative of natural justice or fundamental rights. As blacklisting directly affects the contractor's right to livelihood under Article 19(1) (g), the writ Court's jurisdiction under Article 226 is both appropriate and necessary to ensure complete justice. In summation, learned counsel submitted that blacklisting is an independent administrative action not a contractual dispute and that the loss arising from such action is not ascertainable in terms of Section 2(1)(d) of the Adhiniyam and since the Tribunal lacks jurisdiction to grant declaratory or injunctive reliefs and the statutory remedy before it is neither adequate nor efficacious.

151. Learned counsel contended that the decisions in **Gouri Ganesh**[1] **and Awasthi Brothers**[19] have wrongly extended the jurisdiction of the Tribunal to matters of executive policy contrary to legislative intent. Learned counsel therefore urged that the reference be answered by holding that blacklisting does not fall within the jurisdiction of the Tribunal constituted under the Adhiniyam and that a writ petition against a composite order of termination and blacklisting is only maintainable before the High Court as the appropriate and effective forum.

152. In rejoinder, learned counsel contended that the State's submissions seeking to enlarge the jurisdiction of the Madhya Pradesh Arbitration Tribunal under the Adhiniyam were legally unsustainable and contrary to both the text and intent of the statute.

153. Learned counsel on the State's contention that Sections 16 and 17A of the Adhiniyam conferred upon the Tribunal broad and open-ended powers to grant declaratory or equitable reliefs, including annulment of blacklisting orders submitted that the language of Section 16 is confined to the making of "awards," which by statutory definition relate only to monetary claims that can be ascertained or quantified. Section 17-A, which provides the Tribunal with inherent powers to make such orders as may be necessary to meet the ends of justice is procedural and cannot be interpreted as a source of substantive jurisdiction.

154. The inherent power of a statutory tribunal cannot be invoked to create jurisdiction where none exists. The Tribunal is not a civil court of plenary jurisdiction; it is a creature of the statute, bound by the four corners of the Adhiniyam, therefore, the exercise of declaratory powers or the setting aside of an executive order like

blacklisting, which does not constitute a money claim would amount to judicial overreach and violate the principle that jurisdiction cannot be assumed by implication or necessity.

155. Learned counsel clarified that the State's reliance on Section 17-A to justify expansive powers ignores the structural logic of the Act. The definition of "dispute" in Section 2(1)(d) operates as the foundation and the limit of the Tribunal's jurisdiction. Every relief, whether principal or incidental, must fall within the boundaries of that definition. A declaration annulling a blacklisting order is neither a claim of ascertained money nor an ascertainable financial liability arising from the execution or non-execution of a works contract. It is, rather, a public-law remedy intended to correct an administrative wrong. The Tribunal being confined to money disputes cannot convert itself into a constitutional forum for judicial review of executive orders. Learned counsel submitted that if a declaration is required to remove a legal disability imposed by the State such as blacklisting the proper remedy is a writ petition under Article 226 and not a reference before the Tribunal.

156. Expanding on this point, learned counsel stressed that declaratory relief in blacklisting matters serves a distinct and substantive purpose. Blacklisting extinguishes a contractor's legal status as an eligible participant in government tenders, amounting, in commercial terms, to a form of "civil death." The declaration sought in such cases is not ancillary or symbolic, but the primary remedy itself one that restores legal capacity and reputation.

157. Learned counsel next addressed that an arbitral tribunal constituted under the Act, 1996 can grant declarations, because the 1996 Act and the 1983 Adhiniyam operate in completely distinct legislative

domains. The 1996 Act is a general law of consensual arbitration based on party autonomy and the UNCITRAL Model Law, whereas the 1983, Adhiniyam is a special statute enacted to regulate a specific class of disputes, those arising out of State works contracts and to establish a compulsory statutory forum with limited jurisdiction.

158. Under the 1996 Act, arbitral tribunals are vested with broad remedial powers including the authority to grant declaratory reliefs, apply equitable principles and issue interim injunctions under Sections 16, 17, 28, and 31. In contrast, the Adhiniyam neither incorporates nor mirrors any such provisions.The Adhiniyam restricts the Tribunal to adjudicate only monetary disputes that meet the statutory definition. Therefore, precedents relating to the 1996 Act cannot be transposed to enlarge the jurisdiction of the Madhyastham Adhikaran Tribunal.

159. To further clarify this distinction, learned counsel relied on the judgment of the Hon'ble Apex Court in **Booz Allen**[15]**,** wherein the Court drew a clear line between arbitrable and non-arbitrable disputes. The Court held that disputes involving rights in personam are arbitrable, whereas those involving rights in rem such as matters of status, guardianship, or insolvency are reserved for courts and tribunals exercising public jurisdiction. Applying that principle learned counsel submitted that blacklisting affects the public status of a contractor in its dealings with the State and therefore falls in the realm of public law, not private contractual law. It is thus inherently non-arbitrable and outside the domain of any arbitral or statutory tribunal functioning under the Adhiniyam.

160. Learned counsel then placed reliance on **Nahar Industrial Enterprises Ltd. v. Hong Kong & Shanghai Banking Corporation**[49], wherein the Apex Court held that statutory tribunals cannot be equated with civil courts of general jurisdiction and that they can only exercise powers expressly conferred upon them. Similarly, in **Balawa v. Hasanabi**[50], it was held that a Tribunal's jurisdiction is confined within the four corners of the enabling Act and cannot be expanded by analogy or implication. Drawing from these principles, learned counsel submitted that the Madhyastham Adhikaran Tribunal cannot, under any interpretation assume powers to issue declaratory or injunctive relief against blacklisting orders. To do so would transform it into a constitutional forum, which was never the legislative intent behind its creation.

161. Turning to the definition of "dispute" under Section 2(1) (d), learned counsel argued that the monetary threshold of ₹50,000 is not just a procedural filter, but an essential element of jurisdiction. The Legislature intended that the Tribunal should entertain only substantial monetary disagreements and that each claim referred must independently satisfy this threshold. The State's contention that once any one claim qualifies the Tribunal may examine all related issues, including non-monetary ones, is contrary to statutory language and principle.

162. Learned counsel submitted that the legislative design makes the existence of a money claim of ₹50,000 or more the **sine qua non** of a valid reference and in absence of such a claim, there is no

[49] Nahar Industrial Enterprises Ltd. Vs. Hong Kong & Shanghai Banking Corporation, (2009) 8 SCC 646.
[50] Balawa Vs. Hasanabi, (2000) 9 SCC 272.

"dispute" and hence no jurisdiction. Consequently, a claim arising purely from blacklisting, unaccompanied by a specific monetary component also cannot be said to constitute a "dispute" within the meaning of the Adhiniyam.

163. Learned counsel further contended that the attempt of the State to read the term "differences" in Section 3 as an independent source of jurisdiction is misplaced. The Preamble and Section 3 merely state that the Tribunal shall adjudicate disputes and differences relating to works contracts, but the operative limitation is in Section 2(1) (d). The specific definition must prevail over general expressions. The phrase "differences connected therewith" must therefore be understood in the limited sense of monetary disagreements incidental to the contract and not as a licence to entertain non-monetary administrative matters.

164. Learned counsel drew attention to the doctrine of *ejusdem generis* as explained in **Maharashtra University of Health Sciences v. Satchikitsa Prasarak Mandal**[51],wherein the Court held that when a general term follows specific terms, the general term must be construed in the same class as the specific ones. Applying this principle, "differences" must be confined to the same genus as "disputes," i.e., monetary disputes arising from contract performance or breach, and not executive actions like blacklisting.

165. On the State's stand that losses from blacklisting are ascertainable using economic models such as the "but-for," Emden, or Hudson formulas learned counsel submitted that such formulations are theoretical and have no statutory foundation under the Adhiniyam. These methods are occasionally employed in commercial

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[51] Maharashtra University of Health Sciences Vs. Satchikitsa Prasarak Mandal, (2010) 3 SCC 786.

arbitration to quantify loss of profit on existing projects, not to estimate indefinite and hypothetical losses resulting from future disqualification.

166. The term “ascertainable” in Section 2(1) (d) refers to claims that can be determined with reasonable certainty based on contractual records or measurable evidence not to speculative projections of lost opportunities or reputation. The Act provides no mechanism to compute such indeterminate losses and extending its jurisdiction to cover speculative claims would convert the Tribunal into an open-ended forum defeating the legislative intent of providing a focused and limited remedy for monetary disputes.

167. Learned counsel also clarified that the mere existence of a pending monetary claim before the Tribunal does not transform every related grievance into a statutory dispute. Each cause of action must independently meet the statutory requirements. Thus, even if termination-related claims are validly referred to the Tribunal, the blacklisting component being an independent executive act must be challenged separately before the High Court through writ jurisdiction.

168. In summation, learned counsel maintained that the Tribunal constituted under the Adhiniyam is a special statutory forum of narrow jurisdiction, confined exclusively to adjudication of monetary disputes of ascertained or ascertainable value arising from execution or non-execution of works contracts. It neither has the competence to declare administrative orders void nor to grant equitable relief. The remedy before it even if available is not efficacious for grievances such as blacklisting, which implicate constitutional rights and executive discretion. Blacklisting is a

public-law act affecting legal status, and the appropriate remedy lies before the High Court in its writ jurisdiction to challenge the blacklisting order irrespective whether it is independent or is a part of a composite order involving contract termination.

169. **Shri Piyush Shrivastava**, learned counsel submitted that the term "claim" in Section 2(1)(d) is not defined and should be understood as an assertion of a legal right, not necessarily confined to money claims. Learned counsel submitted that the contractor has the choice to seek declaratory relief before the writ court rather than being compelled to pursue a monetary claim before the Tribunal.

170. Learned counsel further submitted that even assuming such disputes could be entertained, the remedy before the Tribunal is not efficacious, as Section 17-A of the Adhiniyam expressly bars the grant of interim relief. Reliance was placed on **Alok Kumar**[24]**,**wherein it was held that a statutory remedy that does not allow urgent protection cannot be deemed effective and in cases of blacklisting, where immediate stay is vital to prevent irreversible damage only the writ jurisdiction of the High Court under Article 226 can afford effective relief.

171. In conclusion learned counsel urged that the loss from blacklisting is neither ascertained nor ascertainable, it is not consequential to termination and the statutory remedy under the Adhiniyam is not efficacious. Therefore, such disputes are not arbitrable and the validity of blacklisting orders can only be tested before the writ court in its constitutional jurisdiction under Article 226.

172. **Shri Suyash Mohan Guru,**learned counsel submitted that blacklisting is a purely executive act arising from the inherent power of the State to decideto whom engage in contractual

relations with. The learned counsel pointed to the Government of Madhya Pradesh's letter dated 24.03.2015 (No. F 17-1/2010/19/B/) issued by the Public Works Department to illustrate that blacklisting is not carried out in pursuance of any contractual mechanism, but by an executive order. This executive character is also supported by the judgments in **Patel Engineering Ltd.**[9] and **Raghunath Thakur v. State of Bihar**[52].

173. Expounding further on the limited jurisdiction conferred upon the Tribunal by the 1983 Adhiniyam, the learned counsel refers to Section 2(1)(d), which defines "dispute" to assert that blacklisting does not result in such a claim and is not susceptible to the adjudicatory mechanism of the Tribunal. The Tribunal lacks the competence to grant declaratory or injunctive relief, particularly of the kind necessary to annul a blacklisting order. Moreover, the Tribunal is not empowered to adjudicate claims involving the violation of fundamental rights or administrative fairness both of which are central to the challenge against blacklisting.

174. The learned counsel further submitted that where a composite order includes both termination of contract and blacklisting, and the contractor challenges the Composite order in entirety, the High Court's jurisdiction under Article 226 remains invocable. Learned counsel contended that even though termination may be preferable to the Tribunal under the 1983 Adhiniyam, the blacklisting component being outside the Tribunal's jurisdiction can only be challenged before the High Court. Reliance is placed on the decision of the Madras High Court in **Community Action for**

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[52] Raghunath Thakur Vs. State of Bihar, (1989) Supp (1) SCC 229.

Rural Development v. The Secretary[53], wherein it was held that the availability of an alternative remedy does not preclude the exercise of writ jurisdiction, particularly when the order challenged is stigmatic, affects fundamental rights or violates the principles of natural justice.

175. Learned counsel further refers to **Shree Construction Co. v. State of M.P.**[54] to argue that the Tribunal is not empowered to issue declaratory relief. Hence even if one were to concede that termination of contract may fall within the Tribunal's jurisdiction, the blacklisting order by its very nature requires adjudication by the constitutional courts. In conclusion, learned counsel submits that the judgments in **Gouri Ganesh**[1] and **Awasthi Brothers**[19] erred in treating blacklisting as a dispute amenable to the jurisdiction of the Tribunal under the 1983 Adhiniyam and the appropriate forum for challenge is the High Court under its writ jurisdiction.

176. **Shri Amit Kumar Singh**, learned counsel submitted that the Tribunal lacks declaratory jurisdiction. The use of the expression "arbitrate" rather than "decide" in the Preamble and in Section 3 of the Adhiniyam clearly manifests the legislative intent to create a body for arbitration of monetary disputes and not for adjudication of administrative or constitutional issues.

177. Learned counsel further contended that the Tribunal cannot be considered an efficacious forum for redressal against blacklisting. Firstly, it is devoid of power to decide questions involving violation of fundamental or constitutional rights. Secondly, Section

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[53] Community Action for Rural Development Vs. The Secretary, 2015(3) LW 90.
[54] Shree Construction Co. Vs. State of M.P., Civil Revision No.198/1990.

17-A of the Adhiniyam expressly bars the Tribunal from granting interim relief in the nature of injunction or stay, thereby depriving litigants of immediate protection against punitive administrative action. Thirdly, the scheme under Section 7 requiring prior reference to the final authority under the contract renders the process cumbersome and ill-suited for matters demanding urgent judicial intervention.

178. Learned counsel then referred to Section 20 of the Adhiniyam which bars the jurisdiction of civil courts only in respect of disputes cognizable by the Tribunal. Learned counsel submitted that since the Tribunal is not empowered to declare rights or civil status, the bar of jurisdiction does not extend to matters like blacklisting, which determine the legal status of a contractor in public law. Learned counsel submitted that the blacklisting affects the civil and commercial standing of the contractor and therefore cannot be subjected to the Tribunal's limited arbitral process. To allow the Tribunal to entertain such issues would amount to conferring upon it powers it does not possess under the statute.

179. Learned counsel further invited the Court's attention to the broader jurisprudential dimension of the issue, invoking the capability-based and context-sensitive approach to justice. Learned counsel argued that when the alternate remedy is burdened with delay, procedural rigidity, and lacks preventive jurisdiction insisting upon its exhaustion defeats the very object of ensuring effective access to justice. Referring to **Abdul Sammad v. Executive Committee of Marigaon Mahkuma Parishad**[55] learned counsel submitted that the term "efficacious" connotes a remedy capable of producing

[55] Abdul Sammad Vs. Executive Committee of Marigaon Mahkuma Parishad, AIR 1981 Gau 15.

the intended result. The Tribunal with its severe backlog and limited powers cannot be said to provide such a remedy. Learned counsel thus urged the Court to assess the efficacy of the statutory remedy not in abstract terms, but through a capability-based framework that considers the real and timely accessibility of justice to affected parties.

180. In conclusion, Shri Amit Kumar Singh submitted that since blacklisting entails serious civil and constitutional consequences affecting the right to livelihood and trade such matters lie exclusively within the writ jurisdiction of this Court and that the view taken in **Gouri Ganesh**[1] to the contrary deserves reconsideration and overruling to that extent.

181. **Shri Ajay Mishra**, learned counsel submitted that although an order of blacklisting may originate in the backdrop of a works contract, the nature, effect, and remedy concerning blacklisting stand on a distinct legal footing and are not amenable to adjudication by the Madhyastham Adhikaran under the Adhiniyam. Learned counsel contended that blacklisting by its very character transcends the boundaries of a single contractual arrangement especially when its consequences extend prospectively impacting the ability of contractors to participate in future tenders and procurements. Such consequences are not confined to the rights and obligations under the terminated contract, but operate as a disqualification from future potential business opportunities with the State and its instrumentalities.

182. Learned counsel further invited attention to the statutory definition of "works contract" under the Adhiniyam, which requires an agreement in writing or a letter of intent or work order for the

execution or non-execution of defined categories of public work. Learned counsel submitted that blacklisting is not an act contemplated within this definition especially, when it is imposed after the cessation of the contract and not as a measure relating to its execution. Learned counsel submitted that the blacklisting order even if traceable to an earlier contract assumes the nature of an administrative decision with prospective applicability and does not fall within the adjudicatory domain of the Tribunal constituted under the Adhiniyam.

183. Learned counsel submitted that the loss arising out of blacklisting is speculative and futuristic in nature involving elements such as loss of reputation and exclusion from future tenders, which are not specifically quantifiable. Learned counsel submitted that such losses cannot be computed in monetary terms with certainty and as such are outside the scope of a tribunal that can only entertain claims of "a certain sum of money." Furthermore, under Section 14 of the Specific Relief Act a contract that is determinable in nature cannot be specifically enforced and therefore the Tribunal having no power to enforce a contract likewise cannot grant any effective relief with respect to an order of blacklisting arising from such termination.

184. Learned counsel emphasized that Section 19 of the Adhiniyam expressly bars the Tribunal from issuing declaratory or injunctive relief. Learned counsel argued that any claim for compensation on account of blacklisting presupposes a finding that the blacklisting was illegal, which in turn necessitates a declaration to that effect. Since the Tribunal cannot issue such a declaration it cannot grant consequential damages either. Learned counsel submitted that

without a finding that the termination or blacklisting was wrongful there can be no legitimate monetary claim and thus the jurisdiction of the Tribunal is excluded.

185. Learned counsel also pointed out the procedural hardship involved and submitted that the standard works contracts provide for multi-tiered internal mechanisms requiring the contractor to first approach the Engineer or Superintending Engineer before invoking the jurisdiction of Tribunal. In cases of blacklisting where immediate restraint is required against a disabling administrative action such procedures are inadequate and ineffective. Learned counsel submitted that the urgency and breadth of impact of blacklisting require a forum that can grant immediate declaratory and injunctive relief, which only the writ court under Article 226 can provide.

186. Learned counsel further submitted that compelling the contractor to split remedies approaching the High Court for declaratory relief and the Tribunal for monetary compensation would lead to multiple proceedings on the same cause of action, increase the burden on the State and potentially result in conflicting findings. The principle of complete justice requires that such disputes be adjudicated in one forum which can fully and effectively address all facets of the grievance.

187. In conclusion, Shri Ajay Mishra submitted that blacklisting even if flowing from a works contract constitutes an independent administrative action with wide-ranging and prospective consequences. The Tribunal under the Adhiniyam lacking both declaratory powers and the capacity to assess speculative, non-quantifiable losses cannot entertain such matters. Learned counsel

thus prayed that this larger bench be held that disputes pertaining to blacklisting do not fall within the jurisdiction of the Madhyastham Adhikaran and the appropriate remedy lies under Article 226 of the Constitution.

188. Learned counsel **Shri Vivek Ranjan Pandey** appearing on behalf of the Intervenor commenced his elaborate submissions by submitting that the central question before this Larger Bench is essentially jurisdictional concerning the limits of statutory power under the Adhiniyam. Learned counsel contended that jurisdiction is not a matter of inference or assumption, but of statutory conferment, and no court, by interpretative expansion, can enlarge the scope of a statutory forum beyond the legislative intent. Learned counsel submitted that the Adhiniyam being a special enactment governing disputes strictly arising out of works contracts confines the authority of the Tribunal to adjudicate money claims that are ascertained or ascertainable, within the meaning of Section 2(1) (d). Any attempt to include within its ambit challenges to blacklisting orders learned counsel argued amounts to judicial legislation, which is impermissible in constitutional jurisprudence.

189. Learned counsel urged that the Full Bench decision in **Gouri Ganesh**[1] is ***per incuriam*** as it travelled beyond the plain language of the statute by treating blacklisting and termination of contract as composite and arbitrable disputes. Shri Pandey submitted that such a view overlooks the express bar contained in Section 7-A, which limits reference petitions to claims arising out of a single works contract and excludes all claims of a distinct or non-monetary nature. By reading into the Adhiniyam powers of declaratory or

injunctive jurisdiction, the **Gouri Ganesh**[1]ruling effectively enlarged the domain of Tribunal, thereby conferring upon it a jurisdiction that the legislature never intended to grant. Such enlargement Learned counsel argued stands contrary to settled principles laid down in **A.R. Antulay v. R.S. Nayak**[56], **Chiranjilal Goenka v. Jasjit Singh**[57]and **Rites Ltd. v. Railway Claims Tribunal**[58].

190. Proceeding further, Shri Pandey submitted that blacklisting is not a contractual consequence, but a constitutional and administrative act traceable to Article 298 of the Constitution of India, which vests in the executive the power to enter into or to refrain from entering into contracts. The source of power for blacklisting thus lies not in any contract, but in the inherent executive authority of the State and consequently the challenge thereto partakes of the character of a constitutional claim. Such a claim learned counsel emphasized cannot be relegated to a statutory tribunal of limited jurisdiction, but must be tested on the touchstone of constitutional guarantees before the writ court. The act of blacklisting learned counsel urged has civil consequences of the most severe nature it casts a slur, inflicts a stigma and leads to what has been described by the Apex Court as "civil death" of the contractor. It affects the contractors' right to livelihood, reputation, and trade protected under Articles 14, 19(1) (g), 21, and 300-A of the Constitution.

191. In support of these submissions, learned counsel drew the attention of this court to a consistent line of authorities beginning with **Erusian**[7], **Patel Engineering**[9]and **Gorkha Security**[10]**,** wherein the

[56] A.R. Antulay Vs. R.S. Nayak, (1988) 2 SCC 602.
[57] Chiranjilal Goenka Vs. Jasjit Singh, (1993) 2 SCC 507.
[58] Rites Ltd. Vs. Railway Claims Tribunal, (2013) 16 SCC 283.

Supreme Court held that the absence of a specific show-cause notice mentioning the proposed penalty vitiates the entire proceeding. Learned counsel further referred to **Vet India Pharmaceuticals Ltd. v. State of U.P.**[59] **and Blue Dreamz**[22], wherein it was reiterated that blacklisting entails grave civil and reputational consequences and cannot be imposed without adherence to principles of natural justice and proportionality.

192. Shri Pandey submitted that blacklisting is a public law act of exclusion that transcends the contractual matrix as it is forward-looking, operating across future tenders and dealings and has an ***erga omnes*** impact on the contractors reputation and commercial standing. Such action, being administrative and regulatory in nature cannot be subjected to arbitration or to the adjudicatory process of a statutory tribunal designed solely for bilateral monetary disputes. In this regard, learned counsel invoked the tests of non-arbitrability laid down in **Vidya Drolia**[17] and developing his argument further, Shri Pandey submitted that even if a contractor claims monetary loss as a consequence of blacklisting such loss is incapable of precise ascertainment. The alleged injury comprises not only pecuniary deprivation, but loss of goodwill, brand equity, future opportunities, and personal repute, which are all intangible and incapable of computation through any judicially recognized formula. Invoking the maxim "***lex non cogit ad impossibilia*"** learned counsel submitted that the law does not compel the performance of impossibilities consequently, when quantification is inherently speculative, it cannot be forced into the

[59] Vet India Pharmaceuticals Ltd. Vs. State of U.P., (2021) 1 SCC 804.

mound of a "claim of ascertained or ascertainable money" as required by Section 2(1)(d) of the Adhiniyam.

193. Learned counsel then addressed the question of remedies emphasizing that the Tribunal constituted under the Adhiniyam lacks the power to grant injunctive or declaratory reliefs. Learned counsel pointed out that in a matter involving blacklisting, the immediate necessity is to seek a stay of the operation of the impugned order to prevent irreparable harm to the contractors reputation and livelihood. Therefore, to compel an aggrieved contractor to approach such a forum would amount to denial of effective access to justice.

194. Learned counsel further submitted that **Gouri Ganesh**[1]failed to consider that declaratory relief unaccompanied by injunctive protection is meaningless and that justice cannot be done unless the adjudicating forum has authority to grant complete relief. He described the analogy drawn in **Gouri Ganesh**[1]between declaratory relief under the Specific Relief Act and proceedings before the Tribunal as constitutionally unsound. To import such provisions learned counsel argued would amount to rewriting the statute.

195. Shri Pandey also addressed the conceptual interplay between Articles 21 and 300-A of the Constitution contending that the contractors' goodwill is an intangible form of property protected under Article 300-A, and its arbitrary destruction by blacklisting amounts to deprivation of property without authority of law. Citing **CIT v. B.C. Srinivasa Setty**[60], **K.T. Plantation Pvt. Ltd. v. State**

[60] CIT Vs. B.C. Srinivasa Setty, (1981) 2 SCC 460.

of Karnataka[61]and **Lucknow Nagar Nigam v. Kohli Brothers Colour Lab Pvt. Ltd.**[62] learned counsel maintained that goodwill is a property right having both commercial and constitutional protection. The deprivation of such an asset through blacklisting absent of statutory sanction constitutes not merely contractual injury, but constitutional infraction.

196. Learned counsel submitted that the power of judicial review under Article 226 forms part of the basic structure of the Constitution and cannot be ousted by implication or by conferral of alternative statutory remedies. Even where an arbitration clause or a statutory forum exists learned counsel urged that the writ jurisdiction remains available to correct manifest illegality, arbitrariness, or violation of natural justice. Reliance is placed on **Union of India v. Tantia Construction Co.**[63] and **M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd.**[64]**.**

197. In conclusion, Shri Pandey earnestly submitted that blacklisting is a non-arbitrable, non-statutory and constitutionally governed subject-matter that the judgment of **Gouri Ganesh**[1] is *per incuriam*and that challenges to blacklisting orders or composite orders of termination and blacklisting fall squarely within the supervisory and constitutional jurisdiction of the High Court under Article 226.

198. Learned counsel **Shri Navneesh Johari** submitted that the controversy surrounding the arbitrability of blacklisting must be understood in light of the administrative circulars that regulate

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[61] K.T. Plantation Pvt. Ltd. Vs. State of Karnataka, (2011) 9 SCC 1.
[62] Lucknow Nagar Nigam Vs. Kohli Brothers Colour Lab Pvt. Ltd., (2025) 6 SCC 628.
[63] Union of India Vs. Tantia Construction Co., (2011) 5 SCC 697.
[64] M.P. Power Management Co. Ltd. Vs. Sky Power Southeast Solar India (P) Ltd., (2023) 2 SCC 703.

registration, suspension and debarment of contractors read conjointly with the statutory framework of the Adhiniyam (hereinafter, "the Adhiniyam"). Learned counsel urged that the authority to blacklist emanates not from the terms of a works contract but from an independent statutory and administrative power exercised by the State to uphold transparency, fairness, and probity in public contracting. The jurisdiction of the Arbitration Tribunal on the other hand is confined to disputes arising out of the execution or non-execution of a works contract as per Section 2(1)(d) of the Adhiniyam. Consequently, blacklisting being a regulatory and disciplinary action does not constitute a "dispute" within the Tribunal's competence.

199. Learned counsel invited the attention of this court to a series of **departmental circulars dated 19.11.1999, 17.08.2011, 24.03.2015, 28.01.2005 and 29.03.2011,** which codify the process of registration, renewal, suspension, cancellation and blacklisting of contractors under the Public Works Department (PWD).

200. A cumulative reading of these circulars he contended reveals a four-tier framework governing a contractors engagement with the State namely: (i) the initial registration of a contractor in the approved list; (ii) the tender and bid stage governed by the Notice Inviting Tender (NIT); (iii) the stage of contract formation through acceptance and execution of the agreement and (iv) the stage of execution, performance and completion of work. Each stage learned counsel submitted that carries distinct legal consequences and the power to suspend, cancel or blacklist may be invoked even at the very first stage before any works contract is executed. This feature learned counsel argued conclusively establishes that the

power of blacklisting is administrative in origin and not contingent upon a contractual nexus.

201. Developing the distinction between administrative and contractual actions Shri Johari submitted that the nature of blacklisting depends upon its source and purpose. When a contractor is blacklisted for reasons such as submission of false documents, failure to renew securities, mis-utilization of advance or abandonment of work, which all are enumerated grounds in the PWD circulars, the Government acts as an administrative authority, safeguarding the integrity of public works. Such decisions learned counsel urged are not taken in the capacity of a contracting party, but as a public authority entrusted with ensuring discipline and honesty in contractual dealings. Even where blacklisting follows termination of a contract the act retains its administrative character being a measure of public policy to prevent recurrence of misconduct rather than a contractual remedy.

202. Addressing the scenario of pre-contractual blacklisting the learned counsel submitted that when a bidder during the tender process submits forged or fabricated documents and the bid document provides that such misconduct shall invite blacklisting, no arbitrable dispute can arise, because no concluded contract exists at that stage. The Notice Inviting Tender and the bid submission amounts only to an invitation and an offer respectively, there is no concluded contract until acceptance is communicated.

203. Hence, any order of blacklisting at this stage cannot be said to "arise out of" the execution or non-execution of a works contract. Even where the bid document contains a clause for arbitration under the Arbitration and Conciliation Act, 1996 such a clause

cannot operate absent a concluded agreement. The same rationale learned counsel contended governs the Adhiniyam, therefore jurisdiction of the Tribunal cannot be extended to such pre-contract disputes.

204. On the question of ascertainability of loss, learned counsel placed strong reliance upon Section 73 of the Indian Contract Act, 1872, which confines the award of compensation to losses that arise naturally in the usual course of events or those, which were within the contemplation of the parties at the time of contracting. The Section expressly excludes remote and indirect losses.

205. Applying this principle, learned counsel submitted that any loss alleged to have been suffered on account of blacklisting is speculative, remote, and hypothetical. The alleged injury pertains to loss of reputation or prospective business opportunities factors that depend on future contingencies and cannot be quantified with precision. Such damages neither arise in the usual course of things nor admit of definite computation. Therefore, even if blacklisting is unlawful or arbitrary, the resultant loss is not ascertainable within the meaning of Section 2(1)(d) of the Adhiniyam and cannot be the subject matter of an arbitral claim before the Tribunal.

206. Elaborating further learned counsel stated that a contractor claiming such loss must produce clear, objective evidence such as balance sheets for preceding years, average yearly profits, number of tenders lost due to blacklisting and exact pecuniary detriment caused thereby. A mere assertion that "I have lost future business" or "my reputation has been harmed" is wholly inadequate. The loss in such cases is of an intangible and opportunity-based nature incapable of definite valuation. Hence, the Tribunal which is

constituted todetermine claims of ascertainable monetary consequence arising out of works contracts cannot adjudicate upon such conjectural grievances.

207. Learned counsel submitted that a contractor cannot disguise an administrative grievance against blacklisting as a monetary claim to invoke the Tribunal's jurisdiction. The true nature of the claim, not its form, determines jurisdiction. As blacklisting is an administrative and disciplinary act the only competent forum for redressal is the writ jurisdiction of this Court under Article 226 of the Constitution. On the issue of composite orders, learned counsel submitted that where an order combines termination of contract, recovery of amounts and blacklisting, the challenge must address the order as an integrated whole. A contractor cannot isolate the blacklisting component and seek declaratory relief in respect thereof before the Tribunal. A claim before the Tribunal must necessarily involve a definite and quantifiable monetary component directly arising from execution or non-execution of the works contract.

208. A standalone challenge to blacklisting devoid of ascertainable loss would not satisfy the statutory requirement of a "dispute" under the Adhiniyam. Thus, according to the learned counsel, the act of blacklisting, whether occurring before or after the contract, does not constitute a "dispute" within the meaning of Section 2(1) (d) of the Adhiniyam, and any challenge thereto must be addressed through constitutional rather than arbitral remedies.

209. **Shri H. Y. Mehta**, learned counsel urged with emphasis that the Adhiniyam is not a comprehensive or exhaustive code, and that its ambit does not extend to administrative measures such as

blacklisting. Learned counsel contended that unlike the Arbitration and Conciliation Act, 1996, which makes express provision for pre-arbitral, pendent lite, and post-award proceedings, the 1983 Act is a restricted statute confined solely to monetary claims arising out of the execution or non-execution of a works contract. The Tribunal constituted under the Adhiniyam has not been conferred with any power to grant declaratory relief demonstrates that the Act contemplates adjudication of money claims alone and cannot be invoked for declaratory or preventive relief against blacklisting.

210. Shri Mehta further contended that blacklisting is a public-law measure and not a contractual consequence. Learned counsel relied upon the decision of the Apex Court in **Erusian Equipment**[7] to submit that blacklisting does not relate to any particular contract, but is an administrative act, punitive and prospective in nature, whereby the State exercises its inherent right to determine with whom it will deal in the future.The act of blacklisting therefore cannot be equated with the contractual act of termination. According to Shri Mehta while termination arises out of a contract and requires adjudication upon its terms blacklisting flows from the sovereign or administrative power of the State affects the right of livelihood of the contractor and thus engages the constitutional guarantees under Articles 14, 19(1)(g), and 21 of the Constitution of India.

211. Learned counsel submitted that termination and blacklisting stand on entirely distinct footings and neither is a necessary corollary of the other. Termination simpliciter may occur without blacklisting, and vice versa; both may also coexist in different circumstances. Learned counsel submitted that blacklisting is not merely a sequel

to contractual breach, but an independent punitive act, the validity of which must be tested on the touchstone of constitutional and administrative law rather than contract law. Judicial intervention in cases of termination concerns the terms of the contract, whereas intervention in blacklisting concerns violation of constitutional safeguards.

212. With regard to the maintainability of a claim before the Tribunal, Shri Mehta submitted that the Adhiniyam envisages a reference only when there exists a claim of ascertained or ascertainable money value arising out of execution or non-execution of a works contract. The order of blacklisting however emanates from governmental circulars or administrative directions, and not from the contract itself. Consequently, such an order cannot be said to "arise out of" a works contract so as to attract the jurisdiction of the Tribunal. The cause of action in cases of blacklisting accrues on a different footing and at a different time since the "final authority" under Section 7-B for contractual disputes is distinct from the authority competent to issue or decide appeals against blacklisting.No time-frame for such administrative appeals is prescribed leading to procedural anomalies that make the Adhiniyam inapplicable to such situations.

213. On the question of ascertain ability of loss, Shri Mehta referred to the etymological and legal meaning of the term "ascertainable." Drawing from Latin and Old French origins of the word as well as from Webster's, Chambers and the Advanced Law Lexicon learned counsel submitted that "to ascertain" means to determine with certainty. An "ascertainable sum" must therefore be one that is fixed, definite, and known at the time of reference. The losses

alleged to flow from blacklisting are indeterminate and speculative depending on future contingencies such as success or failure in tenders yet to be floated and cannot be said to be quantifiable with certainty. Hence, they do not constitute “ascertainable” losses within the meaning of Section 2(d) of the Adhiniyam.

214. In conclusion, learned counsel submitted that blacklisting, being an administrative and punitive act with uncertain monetary implications is alien to the statutory scheme of the 1983 Adhiniyam.The Madhyastham Adhikaran therefore lacks jurisdiction to entertain such matters and the only efficacious remedy lies in invoking the constitutional jurisdiction of this Court under Article 226 of the Constitution of India.

215. Learned counsel **Shri Rohit Mangal**, submitted that the central question referred to this Hon’ble Court is whether a blacklisting order passed by the State Government can be said to constitute a “dispute” falling within the ambit of Section 2(1)(d) of the M.P. Madhyastham Adhikaran Adhiniyam, 1983so as to be amenable to the jurisdiction of the Arbitration Tribunal constituted under the said enactment. At the outset, counsel submitted that blacklisting, though arising incidentally from a contractual relationship, is essentially an act of administrative censure. It is a unilateral exercise of the State’s sovereign power to determine, whether a particular contractor is fit to be entrusted with future government contracts. As such it cannot be equated with contractual disputes concerning execution, non-execution or breach of specific terms, which are capable of being adjudicated upon by the Tribunal.

216. Learned counsel emphasized that the legislative intent behind the Adhiniyam is to provide a specialized forum for adjudication of

contractual disputes involving claims for recovery of a specified sum of money, which are ascertainable in monetary terms. Section 2(1) (d) defines "dispute" narrowly and restrictively, as a claim for the recovery of an amount of Rs. 50,000 or more arising out of the execution or non-execution of a works contract. The element of quantifiable monetary demand is therefore foundational to invoke the jurisdiction of the Tribunal.

217. Blacklisting, on the contrary, is not a claim for money. It is a penal and stigmatic order with wide-ranging civil consequences, including impairment of the right to livelihood under Article 19(1) (g) and the right to reputation under Article 21 of the Constitution of India. The loss that may be suffered on account of blacklisting such as being ineligible for future contracts is speculative, hypothetical and incapable of definite ascertainment. It is not a direct monetary consequence, but collateral fallout and as such cannot form the subject matter of a reference under the Adhiniyam.

218. Learned counsel submitted that the power to blacklist is essentially discretionary and administrative in nature. Its legality must be tested on grounds of arbitrariness, proportionality, and violation of natural justice for which the appropriate remedy lies before the High Court under Article 226 of the Constitution. It was further submitted that even if the contractor chooses to seek damages arising out of blacklisting such a claim would be incidental and derivative not one for a sum certain or falling within the scope of Section 2(1)(d). In terms of Section 73 of the Indian Contract Act, damages must flow directly from the breach and must be capable of being ascertained. Loss arising from blacklisting fails on both

counts, it is neither direct nor capable of specific computation. Thus, such a claim is legally untenable before the Tribunal.

219. In conclusion, Shri Mangal urged that the blacklisting order, being in the nature of an executive action having independent and severe consequences beyond the contract, cannot be construed as a "dispute" within the meaning of the Adhiniyam. To do so would stretch the language of the statute beyond its plain meaning and undermine the constitutional safeguards attached to such administrative decisions. Therefore, the only efficacious remedy against blacklisting lies before the High Court and not before the arbitral tribunal constituted under the 1983 Act.

SUBMISSIONS ON BEHALF OF RESPONDENT/STATE:

220. **Shri Prashant Singh**, Learned Advocate General appearing for the State Government commenced submission by drawing attention to the statutory scheme of the Adhiniyam. It was urged that the Adhiniyam was enacted with a conscious legislative purpose namely to provide a specialized, efficacious and self-contained mechanism for adjudicating disputes and differences arising out of works contracts executed with the State and its instrumentalities. The preamble to the enactment makes this intent manifest by employing wide expressions such as "for adjudication of disputes and matters incidental thereto,", which clearly show that the Legislature contemplated not only direct monetary claims, but also collateral, connected and consequential issues that may arise in the performance or termination of such contracts. Learned A.G. therefore contended that any construction of the Act must be

guided by the purposive object of channeling all controversies arising out of works contracts into one statutory forum.

221. Turning to the genesis of the reference learned A.G. pointed out that the controversy arose because the Division Bench, while considering the maintainability of a contractors' claim relating to blacklisting expressed doubt about the correctness of earlier pronouncements namely, the Full Bench in **Gouri Ganesh**[1]and the Division Bench in **Awasthi Brothers**[19] in consequence, this reference was made to a Larger Bench, and formulated two specific questions for authoritative determination: first, whether losses occasioned by blacklisting can be treated as ascertained or ascertainable and therefore arbitrable before the Tribunal; and second, whether, in the event of a composite order of termination of contract and blacklisting, a writ petition is maintainable in spite of the statutory remedy available under the 1983 Act for termination disputes.

222. On the first question, the learned A.G. categorically submitted that the Division Bench adopted an unduly restrictive understanding of the expression "ascertained." Learned A.G. submitted that equating the term "ascertained" with "pre-fixed" or "liquidated" sums, thereby excluding from the Tribunal's jurisdiction any claim, which required investigation, assessment, or judicial computation is directly contrary to binding pronouncements of the Apex court in **Gangotri Enterprises**[14]**,** wherein the Apex court clarified that the term "ascertained money" includes not only amounts, which have been pre-determined, but also those which can be determined during the course of adjudication through evidence, accounting formula, or judicial reasoning. Similarly, in **Umri Pooph**[33]the

Apex Court construing the very same Act held that after the 2019 Amendment, which inserted the expression "ascertainable," the jurisdiction of the Tribunal extends to all claims which, though not pre-quantified, can be judicially worked out and went on to include even unascertained.

223. Learned A.G. further submitted that the legislative insertion of the word "ascertainable" by way of the 2019 Amendment is of pivotal significance. The insertion was not casual but deliberate, intended to address the narrow interpretation placed by certain benches following the **Viva Highways**[2] decision, which had confined the Tribunal's jurisdiction to claims of already ascertained sums. By broadening the definition of "dispute" in Section 2(1)(d) to include "ascertainable" claims, the Legislature sought to clarify that the Tribunal's jurisdiction covers all claims, which are capable of determination through adjudicatory processes, including assessments of damages, compensation for wrongful termination, or losses resulting from blacklisting. Learned A.G. contended that the principle of ***contemporanea expositio*** supports this view, which is that the Legislature being aware of judicial interpretations consciously amended the statute to correct the mischief and enlarge the Tribunal's reach.

224. Learned A.G. then addressed the statutory architecture in greater detail. Learned A.G. submitted that Section 3 of the Act is the primary vesting provision contains the language of the widest amplitude. The section provides that the Tribunal shall have jurisdiction over "all disputes or differences pertaining to works contracts or arising out of or connected with the execution, discharge or satisfaction of any such contract." Reliance was

placed upon **Renusagar Power Co. Ltd. v. General Electric Co.**[65] wherein the Supreme Court held that expressions like "arising out of" and "in connection with" are of broad import, intended to cover even incidental or collateral issues. Similarly, in **Union of India v. Salween Timber Construction (India)**[66]**,** wherein it was held that any matter requiring reference to the contract terms falls within the arbitral scope.

225. Learned A.G. argued that the phrase "disputes or differences" is not to be construed synonymously rather"dispute" refers to crystallized monetary claims, while "difference" is a broader genus, encompassing any controversy between the parties whether monetary, declaratory, or consequential. This construction finds support in **Inder Singh Rekhi v. DDA**[67],wherein it was held that a dispute arises upon assertion and denial and in **Ghulam Qadir Baksh v. State of J&K**[68] wherein the High Court distinguished between the two terms that "difference" is the genus of which "dispute" is a species. The same view is found in **Gary B. Born, International Commercial Arbitration (3rd Ed., 2021)** wherein it is noted that "differences" include disagreements over rights, obligations, or conduct even before crystallization into quantified claims. Therefore, once the contractor contests a blacklisting order, a "difference" arises within the statutory meaning bringing it within Section 3.

226. Learned A.G. submitted that the pecuniary threshold of ₹50,000 prescribed in Section 2(1) (d) operates only as an entry filter and

[65] Renusagar Power Co. Ltd. Vs. General Electric Co., (1984) 4 SCC 679.
[66] Union of India Vs. Salween Timber Construction (India), AIR 1969 SC 488.
[67] Inder Singh Rekhi Vs. DDA, (1988) 2 SCC 338.
[68] Ghulam Qadir Baksh Vs. State of J&K, AIR 1972 J&K 44.

not as a jurisdictional limiter. The purpose of this threshold is merely to exclude trifling or frivolous claims from burdening the Tribunal. Once that threshold is crossed under any head most commonly termination-related claims or forfeiture of deposits the Tribunal becomes seized of jurisdiction over the entire bundle of connected controversies including blacklisting.To treat the ₹50,000 requirement as mandating independent quantification of every head of claim would lead to fragmentation, multiplicity and defeat of legislative intent. In this regard, reliance was also placed on the maxim ***“de minimis non curat lex”*** to emphasize that the Legislature intended only to exclude petty disputes not to truncate the Tribunal’s plenary jurisdiction once the threshold was satisfied.

227. Expanding upon this submission learned A.G. pointed out that blacklisting losses, though prospective in nature, are not too or totally speculative in law. They can be quantified using established methods of assessment recognized both in Indian jurisprudence and international arbitral practice. For instance, the “but for” test, which compares the contractor’s expected position had blacklisting not occurred with the actual position yields a computable differential. Reliance was placed on **P.C. Markanda’s Building and Engineering Contracts (6th Ed.) and Hudson’s Building and Engineering Contracts (13th Ed.)** both of which outline recognized formulae including the **Emden, Hudson and Eichleay formulae** for assessing loss of profit and overheads resulting from termination or disqualification from future contracts.These methods ensure that losses are capable of judicial ascertainment and fall squarely within the enlarged definition of “dispute” under the Act.

228. Learned A.G. pointed out that the principles of damages for loss of commercial opportunity and reputation have long been recognized in Anglo-American jurisprudence. In **Chaplin v. Hicks**[69], the Court of Appeal (Fletcher Moulton L.J.) held that even when the exact quantum of opportunity loss cannot be precisely calculated the plaintiff is entitled to substantial compensation on a reasonable assessment. The principle was affirmed in **Story Parchment Co. v. Paterson Parchment Paper Co., 282**[70] and **Bigelow v. RKO Pictures Inc.**[71] wherein the U.S. Supreme Court declared that while damages cannot rest on speculation, they may be determined through reasonable approximation where wrongful conduct has rendered precise computation impossible. The same reasoning underlies **Michelle O'Neill v. John Carson**[72], and the ICSID award in **Joseph Charles Lemire v. Ukraine**[73] wherein damages for reputational harm and future opportunity were quantified based on economic analysis and comparators. The Learned A.G. also referred to the **UNIDROIT Principles of International Commercial Contracts (2016) - Article 7.4.3** which recognizes that damages may be established by "reasonable approximation." Learned A.G. thus submitted that these authorities clearly demonstrate that the law does not require mathematical certainty but only rational estimation.

229. To show that Indian law mirrors this position reliance was placed on **M/s Erusian Equipment**[7], **Rashtriya Ispat Nigam Ltd. v.**

[69] Chaplin Vs. Hicks, (1911) 2 KB 786.
[70] Story Parchment Co. Vs. Paterson Parchment Paper Co. 282, U.S. 555 (1931).
[71] Bigelow Vs. RKO Pictures Inc., 327 U.S. 251 (1946).
[72] Michelle O'Neill Vs. John Carson, (2023) NIMaster 9 (Northern Ireland).
[73] Joseph Charles Lemire Vs. Ukraine in ICSID Case No. ARB/06/18 in Award of 28 March, 2011.

Dewan Chand Ram Saran[74], **Deep Industries Ltd. v. ONGC**[75]and **Sai Consulting Engineers Pvt. Ltd. v. Rail Vikas Nigam Ltd.**[76] and likewise relied on the Delhi High Court decisions in **Prabhatam Advertisement Pvt. Ltd. v. MCD (South Zone)**[77], **Satish Chand Rajesh Kumar Pvt. Ltd. v. NDMC**[78]and **Cobra Instalaciones y Servicios S.A. v. Haryana Vidyut Prasaran Nigam Ltd.**[79]and the **Madras High Court in Sundresh Oil Company Ltd. v. Union of India**[80]**.**

230. Learned A.G. then highlighted the provisions of the Tribunal's powers and submitted that Section 16 which empowers the Tribunal to make "awards and orders," is not confined to monetary reliefs read with Section 17-A, it confers inherent powers to secure the ends of justice and Section 18 which accords the award the status of a civil decree, this scheme shows that the Tribunal is competent to grant declaratory, consequential and injunctive reliefs. Thus, the Tribunal can not only award damages for wrongful termination, but also declare a blacklisting illegal or disproportionate. In this regard, reliance was placed on **Anshuman Shukla**[3] wherein this Court recognized the Tribunal's competence to grant broad remedies, as well as on **Olympus Superstructures Pvt. Ltd. Vs. Meena Vijay Khetan and others**[81]and **NTPC v. Wig Brothers Builders & Engineers**[82], **Vidya Drolia**[17],

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[74] Rashtriya Ispat Nigam Ltd. Vs. Dewan Chand Ram Saran, (2012) 5 SCC 306.
[75] Deep Industries Ltd. Vs. ONGC, (2020) 15 SCC 706.
[76] Sai Consulting Engineers Pvt. Ltd. Vs. Rail Vikas Nigam Limited, (2021) 10 SCC 530.
[77] Prabhatam Advertisement Pvt. Ltd. Vs. MCD (South Zone), 2015 SCC OnLine Del 14501.
[78] Satish Chand Rajesh Kumar Pvt. Ltd. Vs. NDMC, 2022 SCC OnLine Del 1220.
[79] Cobra Instalaciones Servicios S.A. Vs. Haryana Vidyut Prasaran Nigam Ltd., 2024 SCC OnLine Del 2755.
[80] Madras High Court in Sundresh Oil Company Ltd. Vs. Union of India, WP No.12007 of 2022 order dated 20.1.2023.
[81] Olympus Superstructures Pvt. Ltd. Vs. Meena Vijay Khetan and others, AIR 1999 SC 2102.
[82] NTPC Vs. Wig Brothers Builders & Engineers, (2016) 13 SCC 70.

Fertilizer Corporation of India Ltd. v. Raja Bahadur Motilal Poonjabhoy & Sons[83]and **Deccan Paper Mills Co. Ltd. Vs. Regency Mahavir Properties**[84]**.**

231. On the second reference question concerning composite orders of termination and blacklisting, the learned A.G. submitted that such orders form a single transactional matrix and cannot be artificially bifurcated. Termination-related losses are usually ascertainable and exceed the statutory pecuniary threshold. Once jurisdiction is attracted on this account, the Tribunal must adjudicate the connected issue of blacklisting as well. To permit a writ petition under Article 226 merely because blacklisting is appended to termination would amount to splitting causes of action, risking conflicting findings, and undermining the coherence of the statutory mechanism. Learned A.G. urged this is contrary to the doctrine of *res judicata* and the principle against splitting of claims. It also offends the larger doctrine of institutional coherence, whereby specialized statutory fora must be respected to maintain consistency and expertise in adjudication. Reliance was placed on **State of H.P. v. Gujarat Ambuja Cement**[85] which held that writ jurisdiction should not be invoked when efficacious statutory remedies exist and on **Union of India v. T.R. Varma**[86] reiterating the discretionary and residual nature of writ power.

232. Learned A.G. contended that the doctrine of harmonious construction requires that Section 2(1)(d), Section 3, Section 7, Section 16 and Section 17-A be read conjointly so that no

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[83] Fertilizer Corporation of India Ltd. Vs. Raja Bahadur Motilal Poonjabhoy & Sons, AIR 1980 SC 1031.
[84] Deccan Paper Mills Co. Ltd. Vs. Regency Mahavir Properties, AIR 2020 SC 4047.
[85] State of H.P. Vs. Gujarat Ambuja Cement, (2005) 6 SCC 499.
[86] Union of India Vs. T.R. Varma, AIR 1957 SC 882.

provision is rendered otiose and the legislative purpose is advanced. The doctrine of purposive interpretation recognized in **Indian Administrative Services Assn. v. Union of India**[87] mandates that statutes be interpreted to further their object and here the object is to provide a complete, efficacious forum for resolving all works contract disputes. The maxim *"**ut res magis valeat quam pereat**"* was also submitted emphasizing that statutory provision must be construed to make them workable rather than ineffective.

233. In summation, learned A.G. submitted that the losses flowing from blacklisting are ascertainable both in principle and in practice by recognized judicial and economic methods and thus fall within Section 2(1) (d). The Madhyastham Tribunal has full jurisdiction under Sections 3, 16, and 17-A to adjudicate both monetary and declaratory claims including those concerning the legality and proportionality of blacklisting.

234. The pecuniary threshold is merely procedural, and once any claim in any head exceeds ₹50,000 the entire contractual controversy falls within the Tribunal's competence. Composite orders of termination and blacklisting cannot be bifurcated for separate writ adjudication. The Act of 1983, constitutes a complete and exclusive code designed to serve as a single, efficacious, and final adjudicatory mechanism for all disputes and differences arising out of works contracts with the State Government. Thus, the composite orders of termination and blacklisting must therefore be carried in their entirety before the Tribunal and writ petitions under Article 226 are not maintainable in the presence of available statutory remedy.

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[87] Indian Administrative Services Assn. Vs. Union of India, 1993 Supp(1) SCC 730.

SUBMISSIONS ON BEHALF OF RESPONDENT/CORPORATION :

235. **Shri Manoj Munshi,** learned Senior Counsel appearing for the respondents submitted that the pivotal question before this Larger Bench concerns the scope of the expression "ascertained or ascertainable money" under Section 2(1)(d) of the Adhiniyam and the proper forum for adjudicating grievances arising from blacklisting orders. Learned Senior Counsel opened his argument by submitting that before the Tribunal can assume jurisdiction a duty lies upon the contractor or litigant to make a categorical declaration that whether because of blacklisting he has suffered a loss, which is either already ascertained or is ascertainable in terms of money. If such a declaration is absent, it cannot be presumed that a "dispute" exists under Section 2(1) (d) conversely once such a claim is pleaded Section 7-A obliges inclusion of the whole bundle of claims monetary as well as declaratory within the same reference.

236. Learned senior counsel explained that the Legislature by the 2019 amendment adding the phrase "ascertained or ascertainable," intended to widen the jurisdiction of the Tribunal beyond fixed sums to those capable of quantification through evidence. He relied on **Gangotri Enterprises**[14]and **Umri Pooph**[33] which recognize that ascertainment may occur during adjudication. The provision, learned senior Counsel submitted must be read alongside Sections 3 and 7-A. Section 3 envisages that the Tribunal shall decide all disputes or differences "arising out of or connected with the execution, discharge or satisfaction" of a works contract thereby extending jurisdiction even after completion when satisfaction of the employer is in question; Section 7-A(1) embodies the "whole-

claim rule" analogous to Order II Rule 2 CPC; Section 7-A(2) bars subsequent litigation of omitted claims and Section 7-A(3) allows inclusion of claims that accrue later.

237. Distinguishing between ascertained and ascertainable loss, Shri Munshi argued that the statute covers only a loss that has actually occurred and can be quantified, not a speculative or probable loss. Learned Senior Counsel submitted that the blacklisting may have two kinds of consequences. The first category is where loss has already occurred; for example, when a tenderer is disqualified from a bid or loses profits on a terminated contract. Such loss is ascertainable and therefore triable by the Tribunal. The second is a prospective or hypothetical loss; for instance, where during a period such as the pandemic no tenders were issued and therefore no real monetary prejudice was suffered. In that situation, the claim is neither ascertained nor ascertainable on the date of filing, and the Tribunal cannot assume jurisdiction. However, if such loss later materializes it may be added by amendment under Section 7-A (3). The filing date therefore, is crucial for determining jurisdiction.

238. Turning to the question whether declaratory relief is permissible before the Tribunal, Shri Munshi drew an analogy from the Arbitration and Conciliation Act 1996 and the Specific Relief Act 1963. Learned senior counsel relied on **Olympus**[81] and **Deccan Paper Mills**[84]. Since the Madhyastham Adhikaran tribunal acts as a substitute for civil courts in the domain of works-contract disputes, learned senior counsel argued that the same reasoning applies to the Tribunal and therefore it can issue declarations integral to such disputes.Section 16 of the Adhiniyam, which parallels Section 31 of the 1996 Act empowers it to pass reasoned

awards, interim or final and should be interpreted to include declaratory awards. The absence of express words conferring declaratory power does not amount to a prohibition.

239. Learned senior counsel then referred to Section 34 of the Specific Relief Act, whose proviso forbids bare declarations, where further relief is possible. The Full Bench in **Gouri Ganesh**[1] has already applied this principle to the Adhiniyam holding that challenges to termination or blacklisting must include consequential reliefs such as monetary compensation, omission would bar later litigation under Section 7-A (2). Hence, a contractor, who approaches the Tribunal must include every relief whether declaratory, consequential, and monetary within the same proceeding.

240. Discussing alternative forum learned senior counsel submitted that when a contractor expressly pleads that he has no monetary claim of ₹50,000 or more, or that his grievance is limited to blacklisting simpliciter, the Tribunal's jurisdiction is ousted and the remedy lies before the civil court under Section 9 CPC. The jurisdiction of the civil court has not been expressly barred.Conversely, where a qualifying monetary claim exists, the Tribunal's jurisdiction is exclusive and the entire cause of action must be pursued there.

241. On the maintainability of writ petitions, learned Senior Counsel referred to **Sky Power Ltd**[64]**, Joshi Technologies International Inc. v. Union of India**[88]**, Tata Cellular v. Union of India**[89]**, Jagdish Mandal**[25] **and Michigan Rubber v. State of Karnataka**[90]**.** These decisions collectively hold that judicial review in contractual matters is confined to correcting public-law

[88] Joshi Technologies International Inc. Vs. Union of India, 2015(7) SCC 728.
[89] Tata Cellular Vs. Union of India, 1994(6) SCC 651.
[90] Michigan Rubber Vs. State of Karnataka, (2012) 8 SCC 216.

infirmities such as want of notice, absence of reasons or manifest disproportionality, but does not extend to re-adjudicating contractual disputes. Hence, a writ is maintainable only where blacklisting is tainted by procedural or constitutional illegality. Where such defects are absent, the contractor must seek remedy under the Adhiniyam.

242. Summarizing his propositions, Shri Munshi submitted that three distinct situations arise. First, if the contractor asserts an ascertained or ascertainable claim exceeding ₹50,000, the exclusive forum is the Tribunal, which can adjudicate both the declaratory and consequential monetary reliefs. Second, if the contractor disclaims such a claim and confines his grievance to blacklisting without pecuniary impact, the civil court's jurisdiction survives under Section 9 CPC. Third, where blacklisting suffers from patent illegality or violation of natural justice, a writ petition under Article 226 remains maintainable notwithstanding alternate remedies. In every case, however the contractor must make an initial declaration of his claim's nature and quantum for only on that basis can jurisdiction be determined.

243. Concluding, the learned Senior Counsel urged that the term "dispute" in Section 2(1)(d) be interpreted purposively and harmoniously with constitutional and arbitral jurisprudence. The Tribunal is competent to adjudicate all claims arising out of works contracts monetary as well as declaratory once the statutory threshold is met.Post-2019, the monetary consequences of blacklisting if demonstrably ascertainable are within the Tribunal's ambit and Writ jurisdiction subsists solely to correct procedural or constitutional defects. The legislative intent of Section 7-A is to

compel parties to bring the whole claim at once, precluding fragmentation across multiple forums. Thus, learned senior counsel prayed that while affirming the State's inherent power to blacklist subject to natural-justice safeguards this larger bench should also hold that all consequential monetary and declaratory disputes belong to the statutory forum leaving Article 226 jurisdiction to operate only as a narrow constitutional safety-valve.

244. According to **Shri Sumit Nema,** learned Senior Counsel, the jurisdiction conferred upon the Tribunal under the Adhiniyam is of the widest amplitude and is intended to cover any dispute or difference arising out of, or connected with, the execution or non-execution of a works contract. Learned senior counsel submitted that the Preamble, Section 3, and Section 2(1) (d) together depict a legislative design to create a self-contained mechanism for adjudicating all disputes having their genesis in the contractual relationship with the State. The term "dispute" as defined under Section 2(1) (d) includes claims of "ascertained or ascertainable money" and, therefore, does not mandate prior quantification or actual loss; it suffices that the claim is capable of being valued with reference to the contract from which it arises.

245. Learned senior counsel further submitted that an order of blacklisting is never an independent administrative act, but an offshoot of the contractual terms since every such order emanates from the alleged breach or non-performance of the works contract. The show-cause notice, the reply thereto, and the consequential order are all referable to contractual clauses particularly those stipulating the grounds of default or misconduct warranting blacklisting. Hence, even if the contract has been executed and

fully discharged, the blacklisting, being predicated upon the terms of that very contract draws its legal colour and valuation from the contract itself.

246. The learned Senior Counsel illustrates that even where there is no termination, no recovery and no immediate financial repercussion such as in cases where the only consequence is debarment for a period of years, the dispute remains maintainable before the Tribunal, for the valuation at the threshold must be relatable to the contract value and not to speculative future loss. The words "ascertained or ascertainable money valued at ₹50,000 or more," in his submission refer to the potential monetary dimension derived from the contract and not to the actual quantified claim at inception. Therefore, the test of maintainability under Section 2(1)(d) is satisfied whenever the dispute arises from a works contract exceeding the prescribed monetary threshold.

247. Developing the argument further, Shri Nema submitted that the power of the Tribunal to grant interim relief is preserved under Section 16, which expressly authorises the making of an interim award on any matter capable of final adjudication.

248. A harmonious construction of Sections 16 and 17-A learned senior counsel concluded his argument by submitting that while the Tribunal is restrained from staying monetary recoveries before award it nevertheless retains the inherent power to render interim awards protecting substantive rights including, in appropriate cases, permitting a contractor to participate in future tenders pending final adjudication. To hold otherwise would render Section 16 otiose, contrary to the rule of interpretation embodied in the maxim ***"ut res magis valeat quam pereat"*** as affirmed by the

Supreme Court in **CIT v. Hindustan Bulk Carriers**[91] and **East India Hotels v. Union of India**[92].

249. The learned Senior Counsel also pointed out that the legislature has consciously employed both the expressions "disputes or differences" in Section 3 and "dispute.…relating to any difference" in Section 2(1)(d) thereby indicating that not all "differences" need be translated into quantified monetary disputes. A difference in interpretation or application of contractual clauses would suffice to invoke the Tribunal's jurisdiction. The term "difference" has been deliberately inserted to encompass disagreements, which though not immediately measurable in monetary terms nevertheless arise out of the execution, discharge or satisfaction of a works contract.

250. Addressing the issue of maintainability vis-à-vis the writ jurisdiction of this Court Shri Nema argued that the jurisdiction under Article 226 is supervisory and not intended for appreciation of evidence or resolution of disputed questions of fact, particularly in contractual matters such as blacklisting, which require examination of the contract, compliance with its terms, and determination of breach. Reliance is placed on **Whirlpool Corporation**[20]**, Union of India v. Puna Hinda**[93] and **Sky Power**[64]. Learned senior counsel submitted that even if interim protection is sought under Article 226 in aid of pending proceedings, the final adjudication of the legality and effect of blacklisting must rest with the Tribunal, which alone is competent to examine evidence and render findings thereon.

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[91] CIT Vs. Hindustan Bulk Carriers, (2003) 3 SCC 57.
[92] East India Hotels Vs. Union of India, (2001) 1 SCC 284.
[93] Union of India Vs. Puna Hinda, (2021) 10 SCC 691.

251. In summation, Shri Nema asserts that the question before this Larger Bench pertains only to maintainability and not to efficacy. Once it is accepted that the blacklisting emanates from a works contract and that the claim is capable of valuation by reference to that contract, the dispute becomes maintainable under the Adhiniyam. The efficacy of the relief or the nature of interim protection may vary from case to case, but the jurisdictional competence of the Tribunal to entertain such disputes cannot be doubted.

252. Thus, according to the learned Senior Counsel, the correct legal position is that challenges to blacklisting orders having their origin in works contracts are maintainable before the Tribunal, the valuation of the dispute being relatable to the contract value and that the Tribunal possesses adequate statutory and inherent powers to secure substantive justice, while the High Court's writ jurisdiction under Article 226 is confined to supervisory or interim oversight and not to the final adjudication of such contractual controversies.

SUBMISSIONS BY OTHER ADVOCATES IN SUPPORT OF THE STAND OF RESPONDENTS :

253. Learned Deputy A.G. **Shri Sudeep Bhargava** submitted that the first reference question naturally bifurcates into two limbs; firstly, whether loss arising from a blacklisting order is "ascertained" or "ascertainable" within the meaning of Section 2(1)(d) of the Adhiniyam and secondly, if not, whether the Full Bench in **Gouri Ganesh**[1] and the Division Bench in **Awasthi Brothers**[19] rightly held that a contractor aggrieved by blacklisting has recourse before the Tribunal constituted under the Adhiniyam. On the first limb

learned Deputy A.G. submitted that the legislative amendment to Section 2(1)(d) brought after the decision in **Viva Highways**[2], whereby the term “ascertainable” was consciously added to the existing phrase “ascertained”, thereby expanding the scope of the definition of “dispute.”

254. According to learned Deputy A.G. this statutory enlargement was intended to override any restrictive judicial interpretation and bring within the Tribunal’s jurisdiction even such monetary claims that may not be presently quantified, but are capable of being established by oral and documentary evidence. In this context, reliance was placed on the authoritative pronouncement of the Hon’ble Supreme Court in **Umri Pooph**[33], wherein it was held that claims which are determinable through quantification fall within the ambit of “ascertained” and the scope of dispute includes even “unascertained” monetary claims. Learned Deputy A.G. thus submitted that post-amendment, the Tribunal’s jurisdiction is wide enough to cover both “ascertained” and “ascertainable” monetary disputes and that claims arising from blacklisting are clearly included within this ambit as they are somewhat capable of valuation once evidence is led.

255. On the second limb of the first reference question, learned Deputy A.G. contended that the Full Bench in **Gouri Ganesh**[1] and the Division Bench in **Awasthi Brothers**[19] correctly held that blacklisting is an action often flowing from or incidental to termination of contract, and therefore falls within the sweep of the Adhiniyam. Learned Deputy A.G. relied on the preamble of the Act, which expressly includes “matters incidental to or connected therewith” and further relied on the decision of the Full Bench in

Birla Corporation, wherein it was held that all such incidental questions are within the Tribunal's domain.

256. Blacklisting, in his submission, cannot be segregated from the main contractual dispute, particularly when termination and blacklisting arise from a common factual matrix. Where such a composite order results in financial consequences, particularly a claim exceeding ₹50,000/-, the remedy lies before the Tribunal constituted under the Adhiniyam. Where the claim is less than ₹50,000/-, recourse may lie to arbitration, if the contract provides so, and where the contractor seeks to challenge blacklisting in isolation and without pressing a monetary claim, the departmental appellate forum would be appropriate. At all events, where the grievance involves questions of fact such as notional loss, or loss of future opportunities, evidence will necessarily have to be led and hence writ jurisdiction should ordinarily not be invoked.

257. On the issue of writ petitions against composite orders of termination and blacklisting,learned Deputy A.G. submitted that the nature of such orders must be properly appreciated. He classified composite orders into three categories: interdependent orders (where blacklisting and termination are causally connected), consequential orders (where blacklisting follows directly from termination) and independent orders (where blacklisting rests on distinct grounds such as fraud or misrepresentation).

258. In cases falling under the first two categories, where the factual foundations and legal consequences are intertwined and the contractor seeks monetary relief, the proper forum is the Tribunal provided the claim meets the statutory threshold. In rare instances of independent blacklisting, where procedural illegality is evident

such as breach of natural justice or lack of jurisdiction, writ jurisdiction may still lie, though as an exception and not the rule. Learned Deputy A.G. cautioned that a bifurcated challenge before different fora would amount to impermissible forum shopping, which has been frowned upon by the Supreme Court in **Union of India v. Cipla Ltd.**[94] and **Chetak Construction Ltd. v. Om Prakash**[95].

259. To the constitutional objections raised by the counsel for petitioners and amicus curies learned Deputy A.G. submitted that the plea of violation of Article 19(1)(g) was wholly misplaced. Learned Deputy A.G. asserted that a blacklisting order operates only inter parties i.e., between the contractor and the department issuing the order. It does not create a blanket disqualification against doing business with other departments or private entities. He therefore argued that the right to trade or practice one's profession is not taken away by a departmental blacklisting order. On the issue of whether such orders are *in personam* or *in rem* learned Deputy A.G. submitted that blacklisting is undoubtedly *in personam* its effect is limited to the relationship between the department and the contractor. If another department voluntarily incorporates a clause to exclude blacklisted contractors that self-imposed restriction does not convert the original blacklisting order into one *in rem*.

260. Learned Deputy A.G. similarly rejected the argument that Tribunals constituted under Article 323-B are incapable of safeguarding fundamental rights and submitted that all such

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[94] Union of India Vs. Cipla Ltd., (2022) 7 SCC 124.
[95] Chetak Construction Ltd. Vs. Om Prakash, (1998) 4 SCC 577.

Tribunals are bound by principles of natural justice and in cases of violation they are competent to record evidence and render decisions accordingly. Placing reliance on Section 7-A of the Adhiniyam, learned Deputy A.G. submitted that all claims arising out of a works contract must be brought before the Tribunal in one proceeding. Sub-section (2) of Section 7-A stipulates that if a claimant omits to raise a claim in the original reference, such claim shall be deemed to have been waived.

261. Learned Deputy A.G. illustrated this principle with an example: where a contractor seeks possession, but omits a claim for *mesne profits* that was within his knowledge, such claim would be barred. Applying the same analogy here, if a contractor challenges only termination before the Tribunal, while reserving blacklisting for a writ petition, it would amount to a split in claims, which is contrary to the letter and spirit of the Act. Such bifurcation is not only procedurally improper, but also encourages forum shopping, which has been held to be a disreputable practice in law.

262. To answer the criticism that losses arising from blacklisting are speculative and not capable of quantification, learned Deputy A.G. submitted methodologies for computing unliquidated damages and suggested that the contractor's previous balance sheets may reveal a projected growth trajectory from which loss of opportunity could be deduced. A comparative analysis of similarly placed contractors not subjected to blacklisting could yield benchmarks for estimating notional loss.

263. Learned Deputy A.G. also proposed a general formula for quantification: **ULD = TDL (as EI or RI) – MLD – RIL**, where ULD is Unliquidated Damages, TDL is Total Direct Loss, EI is

Expectation Interest, RI is Reliance Interest, MLD is Mitigation of Loss Due to Default, and RIL is Remote or Indirect Loss. Thus losses arising out of blacklisting though not liquidated are certainly ascertainable and the Tribunal is the proper forum to determine them. In conclusion, learned Deputy A.G. submitted that the Tribunal is a complete and effective forum, equipped to adjudicate such disputes both in law and on facts.

264. **Shri Parth Sharma,** learned counsel submitted that the 2019 amendment introducing the term "ascertainable" in Section 2(1) (d) manifests the legislature's clear intention to expand the Tribunal's jurisdiction so as to encompass all contractual disputes, including those arising from blacklisting orders. Learned counsel brought the attention of this court to the Statement of Objects and Reasons of the Amendment Act, which indicates that exclusion of claims involving uncertain monetary value would defeat the very purpose of the statute. Hence, the phrase "ascertainable money" must be interpreted broadly to include claims, where loss though not yet quantified is capable of being computed through contractual analysis.

265. Learned Counsel submitted that in light of the Preamble, the legislative purpose was always to bring every civil dispute emanating from a works contract, including blacklisting, within the Tribunal's fold. Reliance is placed on **R.M.D. Chamarbaugwalla v. Union of India**[96] and **Delhi Airtech Services (P) Ltd. v. State of U.P.**[97]**,** wherein it was held that the statute must be construed as

[96] R.M.D. Chamarbaugwalla Vs. Union of India, 1957 SCR 930.
[97] Delhi Airtech Services (P) Ltd. Vs. State of U.P., (2011) 9 SCC 354.

a whole, considering its object, history, and preamble to discern legislative intent.

266. Learned counsel submitted that the writ jurisdiction under Article 226 is not barred, but is to be exercised sparingly and that High Courts may intervene only where (i) fundamental rights are violated, (ii) principles of natural justice are breached or (iii) the order is without jurisdiction. In all other cases, the alternative statutory remedy must be exhausted first. Learned counsel further cites **Union of India v. T.R. Verma**[98] and **Venkateswaran v. Wadhwani**[99] to emphasize that when a statute both creates a right and provides the mode of enforcement, parties must follow that procedure. Accordingly, since the Adhiniyam provides a complete mechanism for redressal before the Tribunal to resort to Article 226, without availing that remedy is impermissible unless exceptional grounds exist.

267. In conclusion, Shri Sharma submits that blacklisting causes civil consequences and falls squarely within the Tribunal's jurisdiction under Section 2(1) (d), especially after the 2019 amendment. A writ petition challenging such orders is maintainable only in cases involving breach of natural justice or fundamental rights otherwise; the contractor must seek redressal before the Tribunal under the Adhiniyam.

268. **Shri Aniket Naik**, learned counsel submitted that the essence of his argument rests on the proposition that a challenge to an order of blacklisting is maintainable before the Madhya Pradesh Madhyastham Adhikaran Adhiniyam of 1983, when such a

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[98] Union of India Vs. T.R. Verma, AIR 1954 SC 207.
[99] Venkateswaran Vs. Wadhwani, AIR 1961 SC 1506.

challenge is articulated as a claim for loss of opportunity or loss of chance. Learned counsel submitted that the term "dispute" under Section 2(1)(d) of the Adhiniyam is broad enough to encompass such claims, provided they are ascertainable and based on a real and substantial possibility rather than upon conjecture or speculative prospects. Even if there is no independent claim for loss of profit arising from a terminated contract, a standalone claim for damages caused by the loss of opportunity during the blacklisting period is maintainable before the Tribunal.

269. Expanding on this submission, learned counsel stated that the crucial question is not whether damages can be precisely computed but whether they are capable of assessment through judicial estimation. Learned counsel referred to the established principle of contract law that difficulty in assessment is no bar to recovery relying on the exposition in **Anson on Contract** under the chapter "Damages – Difficulty of Assessment No Bar." Learned counsel submitted that so long as the claimant demonstrates a real and substantial loss of chance, the Tribunal can and should evaluate such loss without denying jurisdiction merely because its precise quantification is complex. Reliance is placed on decisions of **Simpson v. London & North Western Railway Co. and Chaplin v. Hicks**[100] in which courts awarded compensation for loss of a valuable opportunity despite the inherent difficulty in estimating its worth.

270. Addressing the Court's concern that blacklisting may relate to indefinite future possibilities such as unknown tenders or indeterminate procurements, Shri Naik clarified that not every lost

[100] Simpson Vs. London & North Western Railway Co. and Chaplin Vs. Hicks (1911).

possibility qualifies for compensation. The law recognizes only those chances that are real, probable, and measurable. Learned counsel conceded that claims resting on unknown future events across unspecified authorities or tenders for which the contractor had not demonstrated eligibility or intent would be speculative and thus excluded. However, when the period of blacklisting is definite for example, three years and the contractor can show that tenders were actually floated during that period within his usual area of operation and for which he was qualified and ready to bid, the loss becomes an ascertainable head of claim.

271. In order to demarcate the boundary between compensable and non-compensable losses, learned counsel relied upon the **Singapore High Court judgment in Global Switch v. Arup**[101] which distinguishes a loss of profits claim from a loss of opportunity claim. Learned counsel submitted that in a loss of profit claim, the claimant must prove on a balance of probabilities that profits would indeed have been earned, but for the breach, whereas in a loss of chance claim the claimant must only show that the breach caused the loss of a real and substantial chance leaving the valuation of that chance to judicial estimation by applying a probability-based discount. To reinforce the above the learned counsel cited the decision of the **English Court of Appeal in Allied Maples Group Ltd. v. Simmons & Simmons**[102] which was approved by the House of Lords in Gregg v. Scott, where the courts laid down that matters within the claimant's own control must be proved conclusively, while matters depending on external

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[101] Global Switch Vs. Arup.
[102] Allied Maples Group Ltd. Vs. Simmons & Simmons.

factors may be valued as a percentage probability. In effect, the Tribunal is not required to conduct a full-scale “trial within a trial” but to value the lost chance proportionally, provided it is shown to be genuine and not merely theoretical.

272. Applying these principles to blacklisting disputes, Shri Naik formulated a two-stage framework. Under Stage I, the claimant must establish that the blacklisting was unlawful or unsustainable, that it covered a specific period and that during that time, there existed tangible tenders within his operational scope, where he was eligible and capable of bidding. Further, it must be shown that the contractor genuinely intended to participate, which can be verified by his past bidding history, availability of financial resources and business records. Under Stage II, once the existence of a real chance is established, the Tribunal must determine the quantum by identifying the tenders the contractor could reasonably have pursued applying a realistic success rate derived from his historical record and multiplying the expected awards by an appropriate profit margin. Any exaggerated or geographically inflated claim must be rejected.

273. When confronted with the concern that such an approach might open the floodgates to indeterminate claims, Shri Naik responded that the evidentiary discipline of Stage I effectively filters out unfounded assertions. Eligibility, capacity, and bona fide intent operate as jurisdictional gates and a contractor who has historically executed a limited number of projects cannot plausibly claim to have lost hundreds of unrelated tenders across the nation. Learned counsel submitted that the Tribunal is fully competent to correlate claims with objective evidence such as financial turnover,

manpower, equipment and bidding capacity thereby ensuring that speculative exaggeration is curbed.

274. Learned counsel submitted that the claim should be confined to the duration of the blacklisting order and although in practice, other procuring entities may adopt exclusion clauses referring to previous blacklisting, any extended stigma effect after the order is set aside becomes too remote and cannot be compensated. The Tribunal should therefore confine compensation strictly to the blacklisting period ensuring that causation remains proximate and that the claim does not transform into an unending chain of speculative consequences.

275. Shri Naik submitted that a refusal to grant temporary protection does not itself bar final adjudication on merits. If, at the end of the proceedings, the Tribunal finds the blacklisting illegal the consequent claim for damages assessed through the loss-of-chance framework adequately compensates the contractor. In conclusion, learned counsel prayed that this larger bench recognize the arbitrability and assessability of claims arising from blacklisting when framed as loss of opportunity or loss of chance and that compensation be limited to the actual duration of the blacklisting and that the claimant bear a strict burden of proving eligibility, capacity, genuine intent and that valuation be conducted on a probability weighted basis anchored in empirical performance data. This learned counsel contended that achieves harmony between the statutory requirement of “ascertainability” under Section 2(1) (d) and the long standing legal principle that difficulty of assessment is no bar to the grant of just compensation.

EFFECT OF THE AMENDMENT, 2025 :

276. The matter was finally heard on 19.9.2025 and reserved for orders, thereafter oral request was made to the bench on behalf of the State that the Amendment of 2025 in Adhiniyam, 1983 may be notified shortly and consequently the order may not be passed. Thereafter on 30.4.2026 the amendment was notified and by way of amendment Sections 2,4, 5,7(A), 7(B), 10, 16, 17(A), 20, 29 and 32 have been amended and Section 4A, 5A, 13A and 17-AB was inserted in the Act.

277. One limb of the argument on behalf of the petitioner and other lawyers was that the statutory arbitration tribunal is not having any power to extend any interim protection or issue any interim injunction in the matter and, therefore, the alternate remedy to approach to the Arbitration Tribunal is not efficacious in any manner. The amendment in Section 17-A and by insertion of Section 17-AB in the Adhiniyam, the Tribunal has been conferred powers to pass the interim orders.

Amended Section 17-A reads as under:

> *"**17-A. Inherent powers**.— Nothing in this Act shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such order as may be necessary for the ends of justice or to prevent abuse of the process of the Tribunal :*
> *further that the Tribunal shall have no power to review the award including the interim award".*

Newly inserted Section 17-AB of Amended Act reads as under:-

> *"**17AB.** (1) A party may, before or during arbitral proceedings or at any time after making of the award but before it is enforced in accordance with Section 18, apply to a Tribunal,-*

(1) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or

(ii) for an interim measure of protection in respect of any of the following matters, namely: -

(a) the preservation, interim custody, encashment of bank guarantee or sale of any goods which are the subject-matter of the arbitration agreement;

(b) the preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(c) order of restitution.

278. **Learned Advocate General** submits that by way of insertion of Section 17-AB in the Adhiniyam, 1983, the Statutory Arbitration Tribunal has been conferred power to grant interim measures in the appropriate cases and after insertion of Section 17-AB the apprehension of the contractors are misplaced that if they are directed to challenge the blacklisting order before the Tribunal, the Tribunal would not be competent to grant the interim relief and if the matter remains pending for years together even after the completion of the period of blacklisting, their attempt for redressal of the dispute will render infructuous. He further submits that by conferring powers to the Tribunal, now a party may before or during arbitral proceedings or at any time after making of award but before its enforced in accordance with Section 18, applies to the tribunal seeking interim measures including the order of

restitution and order for preservation, interim custody, deferment of encashment of bank guarantee or sale of any goods, which are the subject matter of arbitration agreement and to preserve the subject matter of the arbitration.

279. Learned Advocate General submits that Section 17-A vests inherent powers, over reaching the other provisions, to make all order necessary for the ends of justice or to prevent abuse of process and by way of amendment the first proviso to Section 17-A has been deleted and now the powers have been made absolute and unfettered. Before the amendment the first proviso restricted the powers from granting the injunction, stay or attachment before award, but that proviso has been deleted and the inherent powers have been extended to the Tribunal, which are akin to the inherent jurisdiction of civil courts U/S.151 of the Code of Civil Procedure and the Tribunal may also pass the order of temporary injunction in the appropriate circumstances. He submits that the power is now made absolute and unfettered and the tribunal may stay deferment or grant any other relief in accordance with law in blacklisting disputes. The tribunal may make all orders necessary for the ends of justice and to prevent abuse of process.

280. Learned Advocate General further submits that by insertion of Section 17-AB the powers have been conferred to the Tribunal to grant the interim relief even before initiation of arbitration proceedings, during proceedings or post award, pre-enforcement. These powers are akin to the powers of the civil courts U/S.9 of the Arbitration and Conciliation Act, 1996. Section 17-AB(1)(ii)(c) provides for orders of restitution and restitution means that any action which has been taken against any person may be restored

back to the earlier original position. As per learned Advocate General by exercising these powers in appropriate cases, the Tribunal by way of interim measure, may restore the status of the contractor back to the stage prior to the passing of the blacklisting order, meaning thereby the effect of blacklisting could be deferred by the Tribunal till final redressal of the dispute.

281. Learned Advocate General referred to the definition of restitution given in the **Black's Law Dictionary (6th Edition)**, wherein it is described that restitution means restoration to original position prior to loss – injury (legal injury also) or the position had the breach not occurred. **Law of Lexicon (5th Edition)** provides the definition that act of restoring; restoration of a person to former position or statute; of a thing to its original state or for. He referred the judgment of the Supreme Court in **Dr. Poornima Advani Vs. Government of NCT and another**[103] wherein the Supreme Court has held that the restitution may be in three senses; (i) restoration of a thing to its rightful owner - status;(ii) compensation for benefit from wrong doing; and (iii) compensation reparation for loss.

282. The Supreme Court has further held that the restitution as an interim measure puts a stop to continuing loss pending the final award. With the aid of the aforesaid pronouncement, the learned AdvocateGeneral submits that blacklisting being a concomitant injury in works contract disputes, falls squarely within the ambit and causes the injury as the loss of status as eligible bidder, loss of property (goodwill), loss of eligibility to participate in commerce with the State and all its agencies or loss of entitlement to be trusted with public funds. He further submits that goodwill is also a

[103] Dr. Poornima Advani Vs. Government of NCT and another, (2025) 7 SCC 269.

property and conferring the power to the Tribunal for passing the interim order to preserve of any property or thing, which is the subject matter of the dispute, the Tribunal can pass an interim order to prevent the loss of the goodwill.He submits that the powers conferred to the Tribunal U/S.17-AB is in addition to the inherent powers granted U/S.17-A and not in qualification of Section 17-A. Both the sections are independent and in addition to each other. The only requirement for exercising the powers by the Tribunal is that the Tribunal should be satisfied that grant of interim measure would meet the ends of justice.

283. Learned Advocate General submits that the amendment in Adhiniyam in 1983 caters all eventualities.The Tribunal is competent to grant all necessary relief, interimor final, in blacklisting disputes and thus approaching to the Tribunal is a wholly efficacious remedy for all work contract disputes. He submits that the apprehension of the contractors is misplaced that the remedy to approach the Tribunal is not efficacious.

284. **Shri Naman Nagrath**, learned Sr. Advocate submits that the insertion of Section 17-AB in the Adhiniyam 1983 will be of no use in the matters of blacklisting as the Tribunal is not having jurisdiction to entertain the disputes arising out of the order of blacklisting and if the forum is not having jurisdiction to decide the dispute finally, the forum cannot exercise the powers to grant the interim relief in the matter. He further submits that the power to grant interim relief will depend upon the maintainability of the main dispute before the Tribunal and as the order of blacklisting is not quantifiable or ascertainable, the dispute will not fall under the definition of dispute provided U/S.2(1)(d) of Adhiniyam, 1983

and, therefore, no interim relief can be granted by the Tribunal. He submits that the amendment has no relevancy to the questions referred to the larger bench for consideration and the stand of the State that in result of the amendment in the Adhiniyam 1983, the remedy to approach the Tribunal assailing the order of blacklisting will become efficacious, is not acceptable at all. He further submits that the jurisdiction of Tribunal remains unaltered and by way of amendment the definition of dispute provided U/S.2(1)(d) has not been touched and consequently even after the amendment only the ascertained or ascertainable dispute in money arising out of the works contract of Rs.50,000/- or morewill be referable to the Tribunal and as the loss of blacklisting is not ascertainable, therefore, despite the amendment, the dispute will not be referable to the Tribunal and the Tribunal still possesses jurisdiction only over the disputes falling within the statutory definition.

285. Shri Nagrath further submits that in Section 17-AB, there is no reference whatsoever to the events of blacklisting, debarment, any executive order or cancellation of empanelment and thus no interim relief can be granted by the Tribunal by exercising the powers conferred U/S.17-AB in respect of these issues. The Tribunal can grant the interim measures in respect of preservation of property, interim custody, encashment of bank guarantee, inception of property, appointment of guardians and restitution. He submits that the Advocate General has incorrectly interpreted the newly inserted provision of Section 17-AB that the Tribunal may grant the interim relief in respect of blacklisting or debarment orders.

286. Shri Nagrath submits that the powers conferred u/S.17-AB substantially resemble to those available U/S.9 of the Arbitration

and Conciliation Act, 1996, but even by exercising powers u/S.9 of the Act, the competent court cannot grant any relief in respect of a matter, which is not arbitrable. Firstly, it is essential to decide that whether the subject matter is arbitrable or not and if the subject matter is not arbitrable, then conferment of the power to grant interim relief has no relevance.

287. Shri Nagrath, Sr. Counsel submits that the amendment in the Adhiniyam, 1983 has no relevance to the present Reference and the larger bench has been called upon to determine whether blacklisting disputes fall within Section 2(1)(d) and the amendment incorporated during the pendency of the Reference have not amended the provisionsof Sec.2(1)(d) and the legislature consciously refrain from expanding the scope of Section 2(1)(d), meaning thereby blacklisting, debarment are not intended to be covered by the legislature in the scope of dispute referable to the statutory arbitral Tribunal. In short he submits that The Madhya Pradesh Madhystham Adhikaran (Sanshodhan) Adhiniyam, 2025 is far from the questions of reference and the legislative intent is unmistakable, while the issue of blacklisting is not covered under the definition of dispute.

288. **Shri Anshuman Singh**, Advocate submits that the Amendment of 2025 does not touch Section 2(1)(d), which remains unamended and, therefore, the amendment has no effect on the points of Reference. He further submits that rather the amendment deletes the first provision to Section 17(A) which had restricted interim injunctions, stays or attachment before award and replaces it with the measures enumerated in Section 17-AB modeled almost verbatim to Section 9 of the Act 1996. He supported the arguments

of senior Advocate Shri Nagrath to the extent that the real question is not that the Tribunal is having power to extend the interim reliefs or not, but the real question is whether the forum can deal with the dispute at all and until and unless it is decided that the Tribunal is having jurisdiction to entertain the dispute of blacklisting and can deal with the dispute, the conferment of the powers of interim relief U/S.17-AB would not be relevant to decide the main issue.

289. If the larger bench comes to the conclusion that blacklisting falls within the jurisdiction of the Tribunal, then the second question would arise that whether the alternate remedy to approach the Tribunal is efficacious or not. He submits that the forums empowered to entertain a dispute is never regulated by its power to grant interim relief. The power U/S.9 of the 1996 Act to the Courts to grant interim relief itself confined to arbitrable disputes, where a dispute involves rights *in rem* or exercise of sovereign or public powers or no interim relief can be granted U/S.9 of the Act 1996 at all.To support his arguments, he relied on the judgment of the Supreme Court delivered in the matter of **Booz Allen**[15]**,** wherein the Supreme Court held that no interim relief can be granted U/S.9 at all, however pressing the need for protection, for the power to protect a right pre-supposes a forum competent to adjudicate that right. He submits that the similar logic will be applicable to Section 17-AB and mere existence of an interim power thereunder does not mean that the Tribunal has jurisdiction U/S.2(1)(d). The power can only be exercised in aid of a dispute over which the Tribunal already has jurisdiction, not a source of the jurisdiction, it does not otherwise possesses. He submits that the amendment 2025 have no relevance to the subject Reference.

290. **Shri Navneesh Johri**, Advocate submits that the inclusion of Section 17-AB is a massive relief for managing day-to-day contractual disputes such as staying the invocation of performance bank guarantee, stopping to recover of disputed amounts, or keeping termination in abeyance pending final award, but is not having any impact on the order of blacklisting as intentionally the blacklisting order is not included in Section17-AB and deliberately the same is not referred in the inserted Section and kept out of this amended Section. He submits that despite insertion of Section 17-AB, the jurisdiction of Tribunal conferred U/S.2(1)(d) cannot be enlarged as the definition of dispute remains confined to claims for an ascertained or ascertainable money arising out of execution of performance of a works contract. He submits that an order of blacklisting is not a claim for ascertained money, nor it is a mere breach of a contract condition but it is a punitive administrative action by the State carrying civil consequence, therefore, by mere conferring the power of interim measures, the same would not be referrable to the Tribunal and consequently the Tribunal cannot grant any interim relief in respect of the order of blacklisting. He submits that the amendment has no relevance to the subject Reference.

DISCUSSIONS AND FINDINGS :

291. We have heard the arguments on behalf of the petitioner, respondents and also the arguments advanced by learned *amicus curiae* appointed by this Court and other advocates, those were permitted to assist the bench. We examined the record of the case, the judgments of Supreme Court and High Courts relied by the

learned arguing counsels and after examining the same, in view of this bench, for the purpose of answering the questions referred by the learned Division Bench, the following issues are required to be considered:-

(i) POWER OF BLACKLISTING / DEBARMENT :

292. Blacklisting orders may be classified into three categories, each distinguishable by its source of power and character. The first category is where blacklisting is imposed by the State in exercise of its executive powers under Article 298 of the Constitution of India, independently of any contractual framework. Such orders are manifestations of sovereign administrative power directed not merely against a particular contractor, but against participation of the contractor in future governmental activities. These decisions are public in nature, rooted in considerations of probity and trust in public administration and, therefore, fall squarely within the realm of public law.

293. The second category is where blacklisting is carried out pursuant to a statutory rule or a formal policy framed by the State or its instrumentalities, prescribing the manner, conditions and procedure for such disqualification.

294. The third category is, where blacklisting is undertaken by invoking a contractual clause; for instance, where a tender condition empowers the employer to blacklist a contractor for alleged breach or misconduct. Even in such cases the act of blacklisting cannot be reduced to a private contractual matter for its effect transcends the four corners of the contract, it affects the contractors right to carry on business with the State, it carries a public stigma and it visits the

contractor with civil consequences of the highest order often amounting to “civil death” in the commercial domain.

295. Blacklisting/debarment may be ordered at several stages inter-alia pre-contractual blacklisting or debarment due to any misrepresentation, forgery in the bidding process, failure to enter into a contract despite successful in bidding process or any other eventuality occurs before execution of contract. Blacklisting/debarment may be ordered even during currency of the contract and the employer may continue with the contractor with a direction to complete the work. Thirdly, blacklisting/debarment may be ordered post contractual stage, where the work has already been completed, completion certificate issued, all payments made, performance guarantee released and thereafter it discovered that the contractor acted fraudulently, such as misuse of advance or embezzlement during performance and in that situation also the contractor may be blacklisted or debarred.

296. For the purpose of passing the order of blacklisting or debarment, it is not essential that there should be a condition or clause in the contract itself and debarment is permissible even in the absence of any specific clause or condition mentioned in the contract, in the event of any eventuality, which empowers the employer to blacklist or debar the contractor.

297. The power to blacklist flows from the power to do business by the government and its instrumentalities. The power to do business is flows from Article 298 of the Constitution of India, whereby the government and its instrumentalities have been permitted to do the business. Article 298 of the Constitution reads as under:-

> *“**298. Power to carry on trade, etc.**-The executive power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose:*
> *Provided that-*
> *(a) the said executive power of the Union shall, in so far as such trade or business or such purpose is not one with respect to which Parliament may make laws, be subject in each State to legislation by the State; and*
> *(b) the said executive power of each State shall, in so far as such trade or business or such purpose is not one with respect to which the State Legislature may make laws, be subject to legislation by Parliament.”*

298. Power to carry on trade or business also provides the power to deny the business with any person or entity. Article 298 of the Constitution provides the power to carry on any trade to the Union and the State and to the acquisition, holding and disposal of property and making of contracts for any purpose. The State can carry on executive functions by making a law or without making a law. The State has a right to trade, however the State should deal with equality with allthe person or entity and government cannot choose to exclude persons by discrimination, however at the same time the Union or State is empowered to deny the business with any particular person. The State may deregister any contractor, debar any contractor and blacklist in case he found guilty of malpractices and/or any other reasons.

299. The Supreme Court in the matter of **Erusian Equipment**[7] held that the executive power under Article 298 of the Constitution to carry on trade and to acquire, hold and dispose property and make contract for any purpose by Union and the State or any instrumentalities. Article 298 provides the power to restrict the trade with any person or body, but the State should act considering the provisions of Article 14, 19 and 21 of

the Constitution. No one can compel the State to negotiate or enter into a contract and the duty to act fairly applies to both, the State and the contractor. The relevant paras of the judgment reads as under:-

> *"12. Under Article 298 of the Constitution the Executive power of the Union and the State shall extend to the carrying on of any trade and to the acquisition, holding and disposal of property and the making of contracts forany purpose. The State can carry on executive function by making a law or without making a law. The exercise of such powers and functions in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the law and equal, protection of the laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination. The order of black- listing, has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of black- listing. A person who has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or expectation. When the State acts to the prejudice of a person it has to be supported by legality.*
>
> *13. But for the order of blacklisting, the petitioner would have been entitled to participate in the purchase of cinchona. Similarly the respondent in the appeal would also have been entitled but for the order of blacklisting to tender competitive rates.*
>
> *14. The State can enter into contract with any person it chooses. No person has a fundamental right to insist that the Government must enter into a contract with him. A citizen has a right to earn livelihood and to pursue any trade. A citizen has a right to claim equal treatment to enter into a contract which may be proper, necessary and essential to his lawful calling.*
>
> *15. The blacklisting order does not pertain to any particular contract. The blacklisting order involves civil consequences.*

It casts a slur. It creates a barrier between the persons blacklisted and the Government in the matter of transactions. The blacklists are "instruments of coercion".

16. In passing an order of blacklisting the Government department acts under what is described as a standardised Code. This is a Code for internal instruction. The Government departments make regular purchases. They maintain list of approved suppliers after takings into account the financial standard of the firm, their capacity and their past performance. The removal from the list is made for various reasons. The grounds on which blacklisting may be ordered are if the proprietor of the firm is convicted by court of law or security considerations so warrant or if there is strong justification for believing that the proprietor or employee of the firm, has been guilty of malpractices such as bribery, corruption, fraud. or if the firm continuously refuses to return Government dues or if the firm employs a Government servant, dismissed or removed on account of corruption in a position where he could corrupt Government servant. The petitioner was blacklisted on the ground of justification for believing that the firm has been guilty of malpractices such as bribery, corruption, fraud. The petitioners were blacklisted on the ground that there were proceedings pending against the petitioners for alleged violation of provisions under the Foreign Exchange Regulations Act.

17. The Government is a government of laws and not of men. It is true that neither the petitioner nor the respondent has any right to enter into a contract but they are entitled to equal treatment with others who offer tender or quotations for the purchase of the goods. This privilege arises because it is the Government which is trading with the public and the democratic form of Government demands equality and absence of arbitrariness and discrimination in such transactions. Hohfeld treats privileges as a form of liberty as opposed to a duty. The activities of the Government have a public element and, therefore, there should be fairness and equality. The State need not enter into any contract with anyone but 'if it does so, it must do as fairly without discrimination and without unfair procedure. Reputation is a part of person's character and personality. Blacklisting tarnishes one's reputation.

18. Exclusion of. a member of the public from dealing with a State in sales transactions has the effect of preventing him from purchasing and doing a lawful trade in the goods by discriminating against him in favour of other people. The State can impose reasonable conditions regarding rejection and acceptance of bids or qualifications of bidders. Just as exclusion of the lowest tender will be arbitrary similarly exclusion of a person who offers the highest price from participating at a public auction would also have, the same aspect of arbitrariness.

19. Where the State is dealing with individuals in transactions of sales and purchase of goods, the two important factors are that an individual is entitled to trade with the Government and an individual is entitled to a fair and equal treatment with others. A duty to act fairly can be interpreted as meaning a duty to observe certain aspects of rules of natural justice. A body may 'be under a duty to give fair consideration to the facts and to consider the representations but not to disclose to those persons details of information in its possession. Sometimes duty to act fairly can also be sustained without providing opportunity for an oral hearing. It win depend upon the nature of the interest to be affected, the circumstances in which a power is exercised the nature of sanctions involved therein.

20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist."

300. The Supreme Court in the matter of **Patel Engineering Ltd.**[9] held that authority to contract conferred power to debar or blacklist. However, the decision of State or its instrumentalities not to deal with certain persons or class of persons on account of undesirability of entering into contractual relationship with such

person should be taken in a fair and transparent manner. The relevant paras of the judgment reads as under:-

> *"14. The nature of the authority of State to blacklist persons was considered by this Court in the abovementioned case and took note of the constitutional provision (Article 298), which authorises both the Union of India and the States to make contracts for any purpose and to carry on any trade or business. It also authorises the acquisition, holding and disposal of property. This Court also took note of the fact that the right to make a contract includes the right not to make a contract. By definition, the said right is inherent in every person capable of entering into a contract. However, such a right either to enter or not to enter into a contract with any person is subject to a constitutional obligation to obey the command of Article 14. Though nobody has any right to compel State to enter into a contract, everybody has a right to be treated equally when State seeks to establish contractual relationships. The effect of excluding a person from entering into a contractual relationship with State would be to deprive such person to be treated equally with those, who are also engaged in similar activity.*
>
> *15. It follows from the above Judgment that the decision of State or its instrumentalities not to deal with certain persons or class of persons on account of the undesirability of entering into contractual relationship with such persons is called blacklisting. State can decline to enter into a contractual relationship with a person or a class of persons for a legitimate purpose. The authority of State to blacklist a person is a necessary concomitant to the executive power of the State to carry on the trade or the business and making of contracts for any purpose, etc. There need not be any statutory grant of such power. The only legal limitation upon the exercise of such an authority is that State is to act fairly and rationally without in any way being arbitrary – thereby such a decision can be taken for some legitimate purpose. What is the legitimate purposethat is sought to be achieved by the State in a given case can vary depending upon various factors.*

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22. These two Clauses become relevant in the context of the second submission made by the learned counsel for the petitioner that as per the bid document, the power to blacklist is available only in the cases of the commission of any or some of unacceptable practices by the bidder or his agents, etc., but not in the case, where the successful bidder declines to enter into a contract on being declared as a successful bidder. No doubt, the bid document expressly declares that in the case of the commission of a corrupt practice, etc., the bidder shall not be eligible to participate in any tender issued by the second respondent for a period of two years from the date on which it is found that a corrupt practice has been committed. Such an express stipulation is not to be found in the bid document, in the context of the failure of the successful bidder to execute the necessary documents to conclude the contract. In our opinion, that is not determinative of the authority of the 2nd respondent to blacklist a bidder, such as, the petitioner herein, who declines to execute the necessary documents for creating a concluded contract after the offer made by the bidder, is accepted by the second respondent.

23. The authority of the second respondent to enter into contracts, consequently, the concomitant power not to enter into a contract with a particular person, does not flow from Article 298, as Article 298 deals with only the authority of the Union of India and the States. The authority of the second respondent to enter into a contract with all the incidental and concomitant powers flow from Section 3 (1) and (2) of the National Highways Authority Act, 1988. The nature of the said power is similar to the nature of the power flowing from Article 298 of the Constitution, though it is not identical.

24. The second respondent, being a statutory Corporation, is equally subject to all constitutional limitations, which bind the State in its dealings with the subjects. At the same time, the very authority to enter into contracts conferred under Section 3 of the NHA Act, by necessary implication, confers the authority not to enter into a contract in appropriate cases (blacklist). *The 'bid document' can neither confer powers, which are not conferred by law on the second respondent, nor can it substract the powers, which are conferred by law either by express provision or by necessary implication."*

301. The Supreme Court in the matter of **Kulja Industries**[5] considered the power of blacklisting and held that the power to blacklist a contract, where the contract for the supply of material or equipment or for the execution of any other work whatsoever is inherent in the party allotting the contract and there is no need for any such power being specifically conferred by statute or reserved by contractor. The relevant paras of the judgment reads as under:-

> *"17. That apart the power to blacklist a contractor whether the contract be for supply of material or equipment or for the execution of any other work whatsoever is in our opinion inherent in the party allotting the contract. There is no need for any such power being specifically conferred by statute or reserved by contractor. That is because 'blacklisting' simply signifies a business decision by which the party affected by the breach decides not to enter into any contractual relationship with the party committing the breach. Between two private parties the right to take any such decision is absolute and untrammelled by any constraints whatsoever. The freedom to contract or not to contract is unqualified in the case of private parties. But any such decision is subject to judicial review when the same is taken by the State or any of its instrumentalities. This implies that any such decision will be open to scrutiny not only on the touchstone of the principles of natural justice but also on the doctrine of proportionality. A fair hearing to the party being blacklisted thus becomes an essential pre-condition for a proper exercise of the power and a valid order of blacklisting made pursuant thereto. The order itself being reasonable, fair and proportionate to the gravity of the offence is similarly examinable by a writ Court.*
>
> ----xxx------xxx-----xxx------
>
> *25. Suffice it to say that 'debarment' is recognised and often used as an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commission or frauds including misrepresentations, falsification of records and other breaches of the regulations under which such contracts were*

allotted. What is notable is that the 'debarment' is never permanent and the period of debarment would invariably depend upon the nature of the offence committed by the erring contractor.

26. In the case at hand according to the respondent-BSNL, the appellant had fraudulently withdrawn a huge amount of money which was not due to it in collusion and conspiracy with the officials of the respondent- corporation. Even so permanent debarment from future contracts for all times to come may sound too harsh and heavy a punishment to be considered reasonable especially when (a) the appellant is supplying bulk of its manufactured products to the respondent-BSNL and (b) The excess amount received by it has already been paid back."

302. The Public Works Department of State of Madhya Pradesh has issued several directions to regulate, restriction, suspension and debarment of contractors and the authority to blacklist emanates from the circulars and not from the terms of a works contract and it is an independent statutory and administrative power exercised by the State to uphold transparency, fairness and probity in public contract as blacklisting being a regulatory and disciplinary action.

303. The Public Works Department has issued an order, whereby the direction has been issued for blacklisting of a contractor dated 24.3.2015 and the power to blacklist a contractor flows from the said circular, which reads as under:-

मध्यप्रदेश शासन
लोक निर्माण विभाग
मंत्रालय

क्रमांक एफ 17—1/2010/19/बी/ आदेश दिनांक /03/2015

::आदेश::

1. इस विभाग के समसंख्यक आदेश दिनांक 29.08.2011 द्वारा म.प्र. शासन के निर्माण विभाग/निगम/मण्डल/बोर्डो में ठेकेदारों के पंजीयन की विभागवार व्यवस्था के स्थान पर केन्द्रीयकृत व्यवस्था लागू करने का निर्णय लिया गया था। इस व्यवस्था के अंतर्गत पंजीयन के लिए कार्य विभाग नियमावली 1983 के चेप्टर 2 सेक्शन 16 (2.095 से 2.102) के स्थान पर प्रारूप ''अ'' प्रतिस्थापित किया गया है। प्रारूप ''अ'' के बिन्दु क्रमांक 7 में म.प्र. शासन, लोक निर्माण विभाग के आदेश क्रमांक 7882/9671/19/यो दिनांक 19.11.1999 (छायाप्रति

संलग्न) के अनुसार ठेकेदार के पंजीयन का निचली श्रेणी में अवनत करते (Demotion), रद्द करने (Cancellation), निलंबित करने (Suspension) एवं ठेकेदार के नाम को काली सूची में डालने (Black listing) की कार्यवाही के निर्देश दिये गये है। यह निर्णय लिया गया है कि अब मात्र Suspension अथवा Black Listing की कार्यवाही की जाएगी।

2. संबंधित विभाग/उपक्रम का मुख्य अभियंता अथवा समकक्ष अधिकारी निम्न परिस्थितियों में ठेकेदार का नाम काली सूची मे डालने (Black Listing) अथवा उसका पंजीयन निलम्बन करने (Suspension) की कार्यवाही कर सकेंगे यदिः–

1. The affidavit/Self declaration contains any false information or suppresses any material information
2. Such bidder whose bid is accepted fails to execute the agreement. The suspension will be in addition to forfeiture of his earnest money or any other penalty imposed as per the tender condition.
3. Contractor fails to use mobilization advance given to him for the purpose it was meant.
4. Contractor fails to renew the securities deposited to the department.
5. If documents submitted are found to be false.
6. The contractor is found to be non-serious in executing the agreemented works or leaves the agreemented work incomplete, irrespective of the expiry of the full contract period.
7. The contractor fails to rectify any lapse(s) in quality of the work done within a reasonable time.
8. Contractor fails to maintain/repair/redo the work upto the expiry of performance guarantee period, when it is specifically brought to his notice.
9. On any other ground which is considered reasonable after recording reason.

Note:-

i During the period of suspension neither his registration will be renewed nor fresh registration will be issued.

Ii Black listed contractor will not be allowed fresh registration or renewal of his registration till order of black listing is revoked or cancelled.

iii Contractor or firms black listed or suspended or any of it's partner will not be registered under any other name.

iv Period of suspension should be for a definite period.

3. ठेकेदार का पंजीयन निलंबित करने अथवा नाम काली सूची में रखने का निर्णय सक्षम अधिकारी अपचार की गंभीरता के आधार पर करेंगे।

(सी.पी.अग्रवाल)
सचिव
मध्यप्रदेश शासन
लोक निर्माण विभाग
भोपाल दिनांक 24/03/2015

304. The exercise of State's sovereign executive power under Article 298 of the Constitution of India is an independent public law character governed by Article 14 of the Constitution. The power to blacklist is inherent in the State as an incident of its executive authority and does not emanate from the contract itself. Thus, even if a contract or tender document incidentally refers to blacklisting, the source of that power is not contractual, but constitutional.

305. Power of blacklisting is an administrative power of the State to be exercised to protect public interest and ensure probity in public dealings, even when the tender or contract does not incorporate a clause referring to debarment or blacklisting. Such clauses merely recognize that inherent executive power may be exercised by the employer in the event of occurrence of some eventualities. Where no such clause exists, the authority can nevertheless exercise its public law power.

306. Debarment or blacklisting of contractor is an exercise of executive discretion and does not solely based on contractual right arising out of mutual consent. The act of blacklisting is prospective in nature and is intended to regulate the future conduct of the contractors, while dealing with the government and are not always arising out of or in relation to the execution or non-execution of a works contract. Blacklisting is not a contractual consequence, but a constitutional and administrative act traceable to Article 298 of the Constitution of India, which vests in the executive power to enter into or to refrain from entering into works contract. The source of

power for blacklisting thus lies not in any contract but in the inherent executive authority of the State.

307. Even if a contract provides a clause for debarment or blacklisting but the exercise of that clause is always an act of administrative and thus, the power may be exercised at any stage.

308. **The power to blacklist/debar a contractor not only generated from the terms and conditions of the contract, but it is inherent power of the State and its instrumentalities flowing from the power to carry on the trade or business provided under Article 298 of the Constitution of India and blacklisting is an administrative act in nature.**

(ii) LOSSES AND EFFECT OF THE ORDER OF BLACKLISTING :

309. Order of blacklisting or debarment restrains a contractor from participating in the future public tenders and thereby amounting to a civil and commercial losses to the contractor. It is a reputational loss, stigma and punitive in nature. The effect of blacklisting is that once a person or entity is blacklisted by any Government department, the same travels beyond the department and other departmentsand as a matter of policy may also refrain from dealing with such person or entity. Blacklisting causes severe civil consequences that go beyond that contract and amounts to restriction of fundamental right to do business. It is a restriction on the Government and its instrumentalities to deal with a person or entity, who has been blacklisted or debarred. The blacklisting travels far beyond the scope of mere contractual breach and engages serious consequences. The act of blacklisting being punitive in nature, affects the fundamental rights of a person.

310. The Supreme Court in the matter of **Gorkha Securities Services**[10] has held that blacklisting is having very serious consequences and it amounts to a civil death of a contractor or entity. The relevant Para of the judgment reads as under:

> *"**14**. It is a common case of the parties that the blacklisting has to be preceded by a show-cause notice. Law in this regard is firmly grounded and does not even demand much amplification. The necessity of compliance with the principles of natural justice by giving the opportunity to the person against whom action of blacklisting is sought to be taken has a valid and solid rationale behind it. With blacklisting, many civil and/or evil consequences follow. It is described as "civil death" of a person who is foisted with the order of blacklisting. Such an order is stigmatic in nature and debars such a person from participating in government tenders which means precluding him from the award of government contracts."*

311. The Supreme Court in the matter of **UMC Technologies Private Limited v. Food Corporation of India and another**[104] has held that the blacklisting is having serious consequences on the reputation and business of a person. The relevant Para reads as under:

> *"**16**. Specifically, in the context of blacklisting of a person or an entity by the State or a State Corporation, the requirement of a valid, particularised and unambiguous show-cause notice is particularly crucial due to the severe consequences of blacklisting and the stigmatisation that accrues to the person/entity being blacklisted. Here, it may be gainful to describe the concept of blacklisting and the graveness of the consequences occasioned by it. Blacklisting has the effect of denying a person or an entity the privileged opportunity of entering into government contracts. This privilege arises because it is the State who is the counterparty in government contracts and as such, every*

[104] UMC Technologies Pvt. Ltd. Vs. Food Corporation of India and Another, (2021) 2 SCC 551.

eligible person is to be afforded an equal opportunity to participate in such contracts, without arbitrariness and discrimination. Not only does blacklisting take away this privilege, it also tarnishes the blacklisted person's reputation and brings the person's character into question. Blacklisting also has long-lasting civil consequences for the future business prospects of the blacklisted person."

312. The order of blacklisting has the effect of debarring a person from equality of opportunity in the matter of public contract. A person who is on the list is unable to enter into advantageous relations with the Government because of the order of blacklisting. A person who has been dealing with the Government in the matter of sale and purchase of material has a legitimate interest or expectation. Blacklisting order involves civil consequences. It casts a slur. It creates a barrier between the person blacklisted and the Government in the matter of transactions. The blacklists are instruments of coercion. The blacklist has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for the purpose of gain.

313. The Supreme Court in the matter of **Raghunath Thakur**[8] has held that the order of blacklisting is having civil consequences and restricts a business venture from the future business with the Government and its instrumentalities with blacklisting civil and / or evil consequences. It is an order stigmatic in nature and debars a person from participating in Government contracts.

314. The Supreme Court in the matter of **Techno Prints**[21] held that the order of blacklisting is punitive in nature and while participating in a tender, the bidder is required to furnish a statement / undertaking that he has not been blacklisted by any institute so far and if the

bidder has been previously debarred or blacklisted, he will be precluded from participating in the tender process, resultantly, the blacklisting is having serious consequences.

315. The Supreme Court in the matter of**Blue Dreams Advertising (P) Ltd.**[22] considered the effect and losses of the blacklisting / debarment order and held that blacklisting is having civil consequence though it debars the dishonest business organizations or irresponsible or erring business integrity to participate in the Government contracts, but the same is having serious consequences and thus, should be exercised in a transparent manner and blacklisting ought not to have been made until and unless it requires to prevent the bidder to participate in the further contracts.

316. The issue of blacklisting travels far beyond the scope of mere contractual breach and engages constitutional dimensions. The act of blacklisting being penal in nature carries civil consequences and affects the fundamental rights of a contractor and it affects the contractor's right to carry on the business with the State. It carries a public stigma and it leads to the conduct of civil consequences of the highest order amounting to civil death in the commercial domain. The order of blacklisting is punitive and imposes an embargo on future business and destroys the commercial existence of the entities. The losses caused by blacklisting are completely different from the losses caused by termination of contract. In termination cases, the cause of action and the amount of loss are generally known, but in blacklisting, the alleged loss is having far reaching consequences and, therefore, the alleged injury comprises

not only pecuniary deprivation, but also loss of goodwill, brand equity, future opportunities and personal repute.

317. **The effect of blacklisting or debarment order is far reaching and a person or entity against which the order is passed is prohibited from dealing with the Government or its instrumentalities and thus, the blacklisting is having severe civil consequences, loss of business opportunities and amounts to a civil and commercial death of a person or entity.**

318. **The order of blacklisting is a stigma and the same is in the nature of penalty or punitive. Losses due to order of blacklisting or debarment is not only monetaryin the contract in hand, but it is having a far reaching effect of prohibition from doing business not only with the concerned department, but beyond that department, as the blacklisted person or entity is not permitted to deal with any Government or public body in future.**

(iii) WHETHER LOSESS CAUSED BY ORDER OF BLACKLISTING / DEBARMENT ARE ASCERTAINABLE :

319. The order of blacklisting/debarment is having far reaching impact and the same not only debars the contractor from dealing with the concerned department, but debars to deal with other departments also and having serious civil consequences, however, the core question is whether the losses caused due to blacklisting a person or entity, who suffers loss of goodwill, business and opportunity, are ascertainable or quantifiable.

320. The Full Bench of this Court in **Viva Highways**[2] considered the issue that whether the losses caused due to blacklisting order are

ascertainable or not and after considering the provisions of the Adhiniyam, 1983 has held as under:-

> *"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 W.P. No. 3057/2016, Ashoka Infraways Ltd. v. State of M.P. 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 of 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. v. 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 1973 M.P.L.J. Note No. 20 : (1971) 3 SCC 23, Badri Prasad v. State of M.P., 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(1)(d) of the Adhiniyam of 1983.

79. In C.R. No. 136/1988, Progressive Construction Pvt. Ltd. v. 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 agreements are works contract, in our view, the remedy before the Tribunal under the Act of 1983 is not available. The parties cannot be left remedyless and hence in our view the applicants'/appellant may pursue their remedy under the Act of 1996."

321. The subsequent Full Bench of this Court in the matter of **Gouri Ganesh**[1] examined the issue and held that the losses occurred due to the order of blacklisting or debarment are consequential relief to the order of termination of contract and held as under:-

> *"52. It appears that the process of statutory Arbitral Tribunal is being sought to be avoided by resorting to mechanism that the contractor is not claiming the ascertained money of more than Rs. 50,000/- though in substance, the claim is for ascertained money. Such mechanism cannot be permitted to be resorted to, so as to avoid the intention of the State Legislature that all disputes must be resolved by a statutory Arbitral Tribunal. There cannot be multiple forums for a party to seek resolution of disputes such as to seek declaration of termination of the contract from an Arbitral Tribunal under the Central Act and the consequential relief from other forums. The department would be justified in declining such claim, if not included in the reference. It is perfectly reasonable to resist the reference or dispute for the reason that an aggrieved person has not included the consequential relief though available in terms of Section 7-A(1) of the State Act, as in terms of Sub-section (2) of Section 7-A of the State Act, if the claim is not included in the reference, such claim cannot be sought subsequently.*
>
> *53. In view of the above, mere astuteness in drafting of a plaint/reference of a petition to seek simpliciter termination of agreement without seeking consequential relief would not be maintainable. If a particular consequential relief can be claimed, the aggrieved person must claim that relief in a reference otherwise the reference would not be maintainable. The consequential relief will differ from case to case. In a case of termination of contract, as argued by the petitioner, if the termination of contract is held to be bad as argued by the petitioner, the petitioner would be entitled to complete the remaining work; therefore, the consequential relief would be the balance amount of the work to be done. The value*

of the balance work would be ascertained amount. It can also include challenge to revenue recovery certificate consequent to the termination of contract. The value of such revenue recovery certificate would be the consequential relief, which an aggrieved person has to claim in a reference. There can be a situation of black-listing of the Firm prior to seeking reference. Since black-listing has a civil consequences and the amount of loss is computable in terms of money, such damages have to be ascertained and claimed in a reference under the provisions of the State Act. The above situations are not exhaustive but only illustrative. The consequential relief in each case would dependent upon the nature of the contract, relief which can be claimed by an aggrieved person. In terms of Clause (2) of Section 7-A of the State Act, if the aggrieved person omits to claim a relief though available on the date of seeking reference; he is debarred from claiming such relief in a subsequent action. It only means that for consequential relief, if not claimed in the reference, cannot be claimed subsequently. Therefore, keeping in view the rule that all claims must be included in one petition, as may be arising on the date of reference, has to include the consequential reliefs otherwise the reference would be not maintainable, not for the reason that it is not a works contract or it involves not an ascertained money but for the reason that the aggrieved person though could claim ascertained amount but having omitted to claim so, the reference would not be maintainable and would be liable to be declined.

54. The judgment of the Division Bench of Indore Bench of this Court in Shree Construction Company (supra) and the Single Benches of this Court in Satish Kumar Raizada-I (supra) and Satish Kumar Raizada-II (supra) have literally explained the words "ascertained amount" but have not taken into consideration that the consequential relief which accrues to an aggrieved person, if omitted to do so, the reference itself would not be maintainable.

> *55. Thus, we hold that the expression "ascertained amount" appearing in Section 2(1)(d) of the State Act includes the amount of consequential relief. If a particular consequential relief can be claimed, the aggrieved person must claim that relief in a reference otherwise the reference would not be maintainable. The consequential relief in a case of termination of contract can be the value of the remaining work; value of revenue recovery certificate would be the consequential relief and the amount of loss computable in terms of money in case of black-listing of the Firm would be the consequential relief. Such instances are only illustrative and are not exhaustive. The consequential relief in each case would dependent upon the nature of the contract, relief which can be claimed by an aggrieved person. In terms of Clause (2) of Section 7-A of the State Act, if the aggrieved person omits to claim a relief though available on the date of seeking reference; he is debarred from claiming such relief in a subsequent action. Therefore, keeping in view the rule that all claims must be included in one petition, as may be arising on the date of reference, has to include the consequential reliefs otherwise the reference would be not maintainable, not for the reason that it is not a works contract or it involves not an ascertained money but for the reason that the aggrieved person though could claim ascertained amount but having omitted to claim so, the reference would not be maintainable and would be liable to be declined."*

322. The losses arise from blacklisting are not computable as blacklisting disables the contractor from future participation in public tender. The losses which can be quantified, have been enumerated in Section 73 of the Indian Contract Act, which provides that the damages must flow directly from the breach and must be capable of being ascertained. The losses due to blacklisting order are loss of reputation, opportunity, itcauses

stigma and there is no formula to compute the loss or damages, however reputation can be restored, stigma can be removed and disqualification can be undo, but the same cannot be computed in money.

323. In any event the alleged loss said to be arises from blacklisting would be purely speculative in nature as the consequences of blacklisting effects uncertain future events, such as participation in tenders,those may be or may not be floated and hence such loss cannot be computed with reasonable certainty. The Indian Contract Act 1872 provides the provisions for computation of loss U/S.73, which reads as under:-

> *"73.Compensation for loss or damage caused by breach of contract.—When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach. Compensation for failure to discharge obligation resembling those created by contract.—When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.*
>
> > *Explanation.—In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by*

the non-performance of the contract must be taken into account."

324. The illustration (i) and (p) of Section 73 are relevant to understand the intention of the Legislature which reads as under:-

"(i) A delivers to B, a common carrier, a machine, to be conveyed, without delay, to A's mill informing B that his mill is stopped for want of the machine. B unreasonably delays the delivery of the machine, and A, in consequence, loses a profitable contract with the Government. A is entitled to receive from B, by way of compensation, the average amount of profit which would have been made by the working of the mill during the time that delivery of it was delayed, but not the loss sustained through the loss of the Government contract.

(p)A contracts to sell and deliver 500 bales of cotton to B on a fixed day. A knows nothing of B's mode of conducting his business. A breaks his promise, and B, having no cotton, is obliged to close his mill. A is not responsible to B for the loss caused to B by the closing of the mill."

325. Section 73 of the Contract Act permits compensation only for such losses as naturally arose in the usual course of things from the breach of contract for which the parties knew, when they made the contract, to be likely to result from the breach of it. Section 73 provides that such compensation is not to be given for any remote or indirect loss or damage sustained by reason of breach. For ascertaining the loss or damages arising from a breach of contract, the means, which existed of remedying the inconvenience caused by the nonperformance of the contract, may be taken into account. As per Section 73 of the Contract Act, only the computable losses can be claimed as damages for the breach of contract and losses

occurred due to order of blacklisting are uncertain and contingent upon uncertain future tenders, which are hypothetical and therefore not computable.

326. Under Section 73 of the Indian Contract Act, 1872, compensation can be awarded only for losses, which have actually occurred and which naturally arose in the ordinary course of events from a proven breach. The loss remains indeterminate and unascertainable. Moreover, Section 73 expressly excludes compensation for "remote or indirect loss". Loss of future business opportunities arising incidentally from a blacklisting order is not only remote, but also relates to transactions with third parties which fall entirely outside the contractual matrix. Hence, any such claim would be barred by the second limb of Section 73.

327. Definition of 'ascertainable' described in **Blacks' Law Dictionary 11th Edition** denotes the susceptibility of something to a definitive and assured determination. Losses stemming from blacklisting hinge upon indeterminate factors such as future bidding, administrative description, and the competitive environment, therefore, they are incapable of being definitely assessed. These losses do not arise naturally in the usual course of events and are therefore outside the statutory scope of claimable damages U/S.73 of the Contract Act. A Contractor aggrieved by blacklisting cannot claim damages for indeterminate future opportunities foregone. Such damages are incapable precise computation and are inherently speculative. Therefore, the computation of such loss travels far beyond the scope of Section 73 of the Contract Act and in India, the compensation or loss or damages due to breach of

contract can be awarded only as per the provisions of Sec.73 of the Contract Act.

328. As in India the losses can be computed only as per Section 73 of the Indian Contract Act, the method of computation of loss and the judgments relied by the learned A.G delivered by foreign courts are not relevant and in India the speculative losses cannot be computed and claimed. Thus no finding is being recorded in respect of the method of computation of speculated losses. The statutory arbitral tribunal is not having any additional power to assess the loss and award the damages or compensation. It has to act as per the provisions of the Contract Act and the Contract Act does not provide any method for computation of uncertain losses. In the event of blacklisting the alleged losses depends on future events, like the contractors disqualification from future tenders, which may or may not happen.

329. In some cases no tender may even be issued, while the contractor is blacklisted, and they are speculative and depends upon the floating of future tender by the different departments, the eligibility of the contractor to participate in them and the expectation to become successful in the tender process. These all are uncertain. The losses arise for exclusion from all future contracts, the occurrence and profitability of which are inherently uncertain, therefore, depends upon hypothetical events, whether tenders will be issued or not, whether the contractor will participate or not, whether it will succeed or not and what profit it might have made in the event of successful bid. Therefore, such losses cannot be ascertained and termed as ascertainable money.

330. The Supreme Court in the matter of **Mcdermott International Inc. Vs. Burn Standard Co.Ltd & Ors.**[105] considered the scope of computation of losses and held that a Court of law may insist on some proof of actual damages, and may not allow the parties to take recourse to one formula or the other. There should be a claim of ascertained money and no damages can be awarded in case the actual loss is not proved.

331. The Supreme Court in the matter of **Karsandas H. Thacker Vs. The Saran Engineering Co.Ltd.**[106] considered the scope of grant of damages and held that to receive the compensation for any loss by way of the damage caused to the claimant, it is essential to prove that the party to the contract knew, when entering into the contract that due to result of breach of it, it may cause the loss to the opposite side. U/S.73 of the Contract Act, compensation may not be awarded for any remote or indirect loss or damage sustained by the reason of the breach.

332. Even if a contractor claims monetary loss as a consequence of blacklisting, such loss is incapable of precise ascertainment and the alleged injury comprises not only pecuniary deprivation, but loss of goodwill or brand equity, future opportunities and personal repute, which are all intangible and incapable of computation through any judicially recognised formula accepted in India.

333. The lossesarise from blacklisting are neither ascertained nor ascertainable.It is neither consequential to termination nor quantifiable and based on hypothetical events, speculations. Such damages neither arise in the usual course of things nor admit of

[105] Mcdermott International Inc. Vs. Burn Standard Co. Ltd. And others, (2006) 11 SCC 181.
[106] Karsandas H. Thacker Vs. The Saran Engineering Co. Ltd., 1969 SCC OnLine SC 120.

definite computation. Blacklisting does not deprive the contractor of any existing contractual rights or quantifiable claim, it merely renders in ineligible for future contracts and there is neither ascertainable sum in money capable of determination nor any established formula to compute the notional loss resulting from blacklisting. The compensation can be awarded only for losses, which have actually occurred and which naturally arose in the ordinary course of events from a proven approach.

334. The Division Bench of Delhi High Court in **Delhi Paper Products**[36] considering the issue of compensation and losses due to blacklisting order held that the loss due to blacklisting is not computable and the claim of damages was disallowed by the Delhi High Court.

335. **<u>In conclusion as the losses occurred due to blacklisting or debarment order are completely in speculation and imaginary, thus are not quantifiable as the same depends upon the several uncertain contingencies, which cannot be considered for the purpose of computation of losses and there is no recognized formula in Indian Law to compute the uncertain future losses depending on uncertain contingencies and thus the losses occurred due to blacklisting such as loss of goodwill, opportunity, stigma, prevention from participating in the future tenders, loss of business etc. are not computable and, therefore, not ascertainable.</u>**

(iv) **<u>WHETHER, DISPUTE OF BLACKLISTING IS REFERABLE TO THE ARBITRATION TRIBUNAL:</u>**

336. Definition of dispute has been prescribed in Section 2(1)(d) of the Adhiniyam, 1983 and as per the definition the dispute means claim of ascertained and or ascertainable money valued at Rs.50,000 or more relating to any difference arising out of the execution or non-execution of a works contract or part thereof. The reference has been made in respect of a dispute arising out of a works contract, and, therefore, firstly it is essential to consider the situation wherein the contract is a works contract and it contains a dispute resolution mechanism in accordance with Adhiniyam, 1983.

337. The Indore Bench in **M/s. Shree Construction Company**[107] has held as under:-

> *"15. The amount of Rs. 96,041.96 p. was never mentioned either before the Superintending Engineer or before the Chief Engineer. Thus, it can reasonably be presumed that the claimant had not claimed ascertained amount before the said authorities earlier. It is indeed necessary to have a dispute which could be referred to the Tribunal so as to enable the Tribunal to resolve the same. The dispute has been defined in the Adhiniyam which reads as under:—*
>
> *"D. Disputes means any difference relating to any claim valued at Rs. 50.000/- or more, arising out of the execution or non-execution of a works contract or part thereof."*
>
> *Connotation of the word 'dispute' has been elaborately dealt with by this Bench in the case reported in P.C. Rajput v. State of M.P., 1994 MP LJ 387). It has been held in the aforesaid judgment that the dispute would mean assertion of claim by one side and denial by other and it is an essential condition so as to call it a dispute. Black's Law Dictionary also defines the word dispute in the following manner:*
>
> *"Dispute : A conflict or controversy-*

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[107] M/s. Shree Constructions Company Vs. State of Madhya Pradesh and others, Civil Revision No.198/1990 decided on 30.6.1995.

A conflict of claims or rights an assertion of a right, claim or demand of one side, met by contrary claims or allegations on the other. The subject of litigation; may be for which a suit is brought and open which issue is joint and in relation to which powers are called and witnesses examined."

16. In the aforesaid case when the assertion of the claim itself was not made the question of any denial of the same did not arise.

17. Thus, it is clearly indicative of the fact that fixed and ascertained amounts have got to be claimed and there should be denial of it. But seeking the relief of declaration would not be a dispute which could be granted by the Tribunal. We accordingly hold that the Tribunal has no power or jurisdiction as per the provisions of the Adhiniyam to grant the relief of declaration.

18. A reference to the Tribunal for resolving a dispute can be made by filing a petition u/s 7 of the Adhiniyam. For ready reference sec. 7 of the Adhiniyam is reproduced herein below:

"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 the dispute 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."

The said Adhiniyam came into force w.e.f. 1.3.1985. After coming into force of the said Adhiniyam. Certain proceedings under sec. 20(2) of the Adhiniyam have been saved; but under sec. 20(1) of the Adhiniyam, no civil court shall have jurisdiction to entertain or decide any dispute of which cognizance can be taken by the Tribunal under this Adhiniyam."

338. If the dispute is arising out of a works contract, wherein a clause of blacklisting is available whether it will fall within the definition of the 'dispute' described in Section 2(1)(d) or not was considered by the Indore Bench of this Court in **Rajesh Agrawal Vs. Executive Engineer, Public Works Department**[108] the Court held as under:-

> *"……. Since in the present case the applicant is not raising dispute relating to the claim of ascertained money valued at Rs. 50,000/- or more, hence the matter cannot be referred under Section 7 to the Madhyastham Tribunal. Counsel for both the parties have referred to various judgments in support of their respective plea; whether it is a works contract or not, but those judgments are not relevant and this Court need not go into that aspect of the matter since even if the contract is held to be a works contract but since the dispute itself is not covered under Section 2(d), hence it is not arbitrable under the Madhyastham Act.*
>
> *Thus, 1 am of the opinion that the applicant has rightly approached this Court under the Arbitration and Conciliation Act, 1996. The arbitration agreement is also not in dispute.*
>
> *In the aforesaid circumstances, the provisions of the Arbitration and Conciliation Act, 1996 are clearly attracted in the matter, therefore, considering the dispute between the parties, I am of the opinion that an independent Arbitration is required to be appointed to resolve the same."*

339. Thereafter matter of **Viva Highways**[2] was referred to a full bench for consideration of the issue and full bench after considering the earlier judgments delivered by High Court in different matters held as under:-

> *"72. The aforesaid point raised by the parties requires serious consideration. For ready reference, the unamended*

[108] Rajesh Agrawal Vs. Executive Engineer, Public Works Department, AC No.9/2013 decided on 21.4.2025.

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(1)(d) "dispute" means any difference relating to any claim valued at Rupees 50,000 or more, arising out of the execution or non-execution of a works contract or part thereof.	*2(1)(d) "dispute" means claim of ascertained money valued at Rupees 50,000 or more relating to any difference 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".*

340. Once again the matter was referred to the full bench for consideration of the issue that whether the dispute relating to termination of a contract without claiming any consequential relief is maintainable before the Arbitral Tribunal under the M.P. Madhyastham Adhikaran Adhiniyam, 1983, in the matter **Gouri Ganesh**[1] and the full bench examined the issue and has held that:-

> *"13. Assuming that the question whether there was "arbitration agreement" between the parties as per first para to Clause 29 is still open this Court is of the opinion that there is "arbitration agreement" in the first para empowering the Dy. Housing Commissioner to act as arbitrator. Clause 29 has been quoted in extensor above. In simple language relevant for the present purposes it provides that all "disputes" relating to …….instructions "as to thing whatsoever" in any way "arising out of or relating to the contract" ……. "estimates" concerning the works, or the "execution" or failure to execute the same whether arising during the progress of work or after the completion "shall be referred to" the Dy. Housing Commissioner for his "decision". The words "all disputes", "relating to the contract", "execution", "shall be referred" and "decision" used in the first para of the clause have significance. These are of crucial importance for determining the question whether this clause constitutes "arbitration agreement" or not. According to section 7 of the Act "arbitration agreement" means "an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not". Section 2(a) of the Arbitration Act, 1940 defined "arbitration agreement" as - "a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein in or not".*
>
> *14. It is well settled that the "arbitration agreement" is required to be interpreted liberally. The meaning of such a clause in the contract must be gathered by adopting a*

common sense approach and it must not be allowed to be thwarted by a pedantic or legalistic interpretation. One of the essential ingredients of a submission to arbitration is that the parties should intend that the dispute intended to be referred should be determined in a quasi-judicial manner. The existence of a dispute, the reference of the case to the authority and the express unequivocal intention to attach finality to the order of the authority are extremely significant factors. Where the relevant clause in the contract contemplates of parties, disputes and finality of decision which are essential ingredients to bring in the provision of arbitration, the clause constitutes an arbitration clause. There is no requirement of the words "arbitrator" or "arbitration" to be mentioned in the clause to make it an arbitration clause. There is no doubt a distinction between "arbitration", "expert determination" and "finality clause".

16. In State of U.P. v. Tipper Chand, (1980) 2 SCC 341, clause 22 of the agreement was considered which provided: "Except where otherwise specified in the contract the decision of the Superintending Engineer for the time being shall be final, conclusive and binding on all parties to the contract upon all questions relating to the meaning of the specifications, design, drawing and instructions hereinbefore mentioned. The decision of such Engineer as to the quality of workmanship, or materials used on the work, or as to any other question, claim, right, matter or things whatsoever, in any way arising out of or relating to the contract, designs, drawing specifications, estimates, instructions, orders, or these conditions, or otherwise concerning the works, or the execution or failure to execute the same, whether arising during the progress of the work, or after the completion or abandonment of the contract by the contractor, shall also be final, conclusive and binding on the contractor". In this case it was not held to be an arbitration agreement on the ground "there being no mention in it of any dispute, muchness of a reference thereof". The ratio of this decision is that, if there is mention of the dispute and also a reference thereof to the authority concerned then it would have been an arbitration agreement."

341. The Full bench considered the correctness of the order passed in the case of **M.P. Housing Board Vs.Satish KumarRaizada**[109] and after considering the judgment delivered in the matter of **Viva Highways**[2] by earlier full bench in the matter of **Gouri Ganesh**[1] has held as under:-

> *"33. In view of the above, we find that the arbitration is resolution of disputes between two contracting parties by the persons chosen by them to be arbitrators and in the case of arbitration under the State Act, by statutory constituted Tribunal. An Arbitrator is to do justice in the sense of arriving at a fair decision and is not bound by strict law of evidence as contained in Indian Evidence Act. However, the Arbitrator while arriving at a fair decision has to keep in mind the law applicable to the contract and to the facts of the matter before it.*
>
> *34. The next question which arises for consideration is in respect as to whether the dispute relating to termination of a contract without claiming any consequential relief is maintainable before the Arbitral Tribunal. We find that in a reference under Section 7-A of the State Act, an aggrieved person is required to include whole of the claim which the parties are entitled to make in respect of the works contract till the filing of the reference petition. Sub-section (2) further contemplates where a party omits to refer or intentionally relinquishes any claim or any portion of his claim, he shall not afterwards be entitled to refer in respect of such claim or portion of claim so omitted or relinquished.*
>
> *35. The Section 34 of the Specific Relief Act, 1963 contemplates that the courts have discretion as to declaration of status or right, however, it carves out an exception that a court shall not make any such declaration of status or right where the complainant, being able to seek further relief than a mere declaration of title, omits to do so. The Supreme Court in a judgment reported as (2012) 8 SCC 148 (Union of India v. Ibrahim Uddin) held that a Court shall not make any such declaration of status or right where the complainant, being able to seek further relief than a*

[109] M.P Housing Board Vs. Satish Kumar Raizada, 2003(2) MPLJ 346.

mere declaration of title, omits to do so. The findings are as under:—

> *55. The Section provides that courts have discretion as to declaration of status or right, however, it carves out an exception that a court shall not make any such declaration of status or right where the complainant, being able to seek further relief than a mere declaration of title, omits to do so.*
>
> *56. In Ram Saran v. Smt. Ganga Devi, (1973) 2 SCC 60, this Court had categorically held that the suit seeking for declaration of title of ownership but where possession is not sought, is hit by the proviso of Section 34 of Specific Relief Act, 1963 (hereinafter called "The Specific Relief Act") and, thus, not maintainable. In Vinay Krishna v. Keshav Chandra, 1993 Supp (3) SCC 129, this Court dealt with a similar issue where the plaintiff was not in exclusive possession of property and had filed a suit seeking declaration of title of ownership. Similar view has been reiterated observing that the suit was not maintainable, if barred by the proviso to Section 34 of the Specific Relief Act. (See also : Gian Kaur v. Raghubir Singh, (2011) 4 SCC 567).*
>
> *57. In view of the above, the law becomes crystal clear that it is not permissible to claim the relief of declaration without seeking consequential relief.*
>
> *58. In the instant case, the suit for declaration of title of ownership had been filed, though the respondent 1-plaintiff was admittedly not in possession of the suit property. Thus, the suit was barred by the provision of Section 34 of the Specific Relief Act and, therefore, ought to have been dismissed solely on this ground. The High Court though framed a substantial question on this point but for unknown reasons did not consider it proper to decide the same."*

40. The principles of law laid down while interpreting Section 42 of the Specific Relief Act, 1877 or Section 34 of the Specific Relief Act, 1963, may be in the context of payment of appropriate court fee, are applicable with full vigour in relation to a reference petition under Section 7-A of the State Act as the reference under sub-section (1) of Section 7-A of the State Act is analogous to the plaint before the Civil Court. Thus, in terms of sub-section (1) of Section 7-A of the State Act, an aggrieved person has to include whole of the claim which an aggrieved person is entitled to make in respect of the works contract including the consequential relief. The sub-section (2) of Section 7-A of the State Act is analogous to the provisions of Order 2 Rule 2 of Code of Civil Procedure, 1908. Sub-section (3) of Section 7-A of the State Act permits the raising of dispute which may arise after filing of reference petition. If the consequential relief is omitted though available then such claim cannot be raised afterwards not only before the Arbitral Tribunal but before any other forum as all claims have to be raised before one forum.

41. Thus, in terms of Section 7-A of the State Act, the consequential relief such as right to complete the remaining work or to challenge the revenue recovery certificate or to challenge the order of black listing, if passed, are required to be included in a reference under Section 7-A of the State Act. In fact, when claim is raised disputing the termination of contract and as a consequence to complete remaining works, the claim is in fact seeking specific performance of the contract.

42. Another argument raised by learned counsel for the petitioner is that "ascertained money" appearing in Section 2(1)(d) of the State Act means a sum which is known or certain. The argument is that if an order of blacklisting has been passed before the date on which reference is sought, the petitioner may not be in a position to quantify the damages. Learned counsel for the petitioner relies upon the Full Bench judgment in Viva Highways' case (supra) wherein it has been held that the "ascertained money" means a sum which is "known" or "made certain" or "fixed" or "determined" or "quantified". Learned counsel for the petitioner also refers to a judgment in Satish Kumar Raijada's case (supra) wherein, the reference was found to be not maintainable under the State Act as the dispute was *in relation to fixation of rates of works, therefore, it was held to be a case not relating to ascertained sum of money.*

45. As per the aforesaid judgments including Full Bench judgment of this Court in. Viva Highways Ltd. (supra), the Court can examine as to whether the valuation of a suit is arbitrary and unreasonable and if the plaint is demonstrated to be undervalued, the Court can examine the valuation and can refuse to accept the valuation given. Similarly, in terms of Section 2(1)(d) of the State Act, the valuation to claim ascertained money at less than Rs. 50,000/- can be to avoid the arbitration by a statutory Arbitral Tribunal. Therefore, keeping in view the purpose of the Act that all disputes of works contract excluding the disputes of petty amount should be decided by a statutory Arbitral Tribunal, an aggrieved person cannot resort to undervaluation of the claim. Thus, when a person excludes the consequential relief(s), which could be claimed, so as to exclude the jurisdiction of the statutory Arbitral Tribunal, the purpose of the Act gets defeated. Such undervaluation of the claim would bar an aggrieved person to seek remedy from any other forum as well.

46. In fact, in Civil Appeal No. 4017/2018, Gangotri Enterprises Ltd. v. Madhya Pradesh Road Development Corporation decided on 18-4-2018, the Supreme Court held that the expression "ascertained money" as used in section 2(1)(d) of the State Act will include not only the amount already ascertained but the amount, which may be ascertained during the proceedings on the basis of the claims/counter claims of the parties. The relevant extract reads as under:—

> *"2. Our attention has been drawn to the definition of "dispute" under section 2(d) of the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 ("1983 Act") which is as follows: "'dispute' means claim of ascertained money valued at Rupees 50,000 or more relating to any difference arising out of the execution or non-execution of a works contract or part thereof." 3. We consider it appropriate to clarify that the expression "ascertained money" as used in section 2(d) of the 1983 Act will include not only the amount already ascertained but the amount which may be ascertained during the proceedings on the basis of claims/counter claims of the*

parties." Therefore, in addition to the consequential relief which an aggrieved person has to claim in a reference under section 7-A of the State Act even the expression "ascertained money" includes the amount which may be ascertained during the proceedings on the basis of the claims/counter claims of the parties. The said order concludes that ascertained amount is not only the claim raised but also the amount determine.

47. The Full Bench in Viva Highways Ltd. (supra) also held that when a claim is ascertainable, yet the same is not ascertained in order to wriggle out of definition of "dispute", the matter would be different. Attention of the Full Bench was not invited to section 34 of the Specific Relief Act, 1963 and the consequential relief, which is required to be included in a reference not only before the Civil Court but also before the Arbitral Tribunal in terms of section 7-A of the State Act. Therefore, though we agree with the finding of the Full Bench in Viva Highways Ltd. (supra) but we go a step further to say that a reference has to include the consequential relief as well.

48. Further, the Full Bench in Viva Highways Ltd. (supra) though held that by applying an artistic linguistic engineering, an agreement can be worded in a unique or a different way. While examining the nature of contract, it was held that it may have a different nomenclature but these factors will not determine its real nature. The said finding is equally applicable in respect of reference of dispute to an Arbitral Tribunal before the State Act. The ascertained money has to include the consequential relief which will dependent upon the facts of each case. The reference that the contractor is claiming only fixation of rates and therefore, not ascertained money, is not tenable as the aggrieved person was able to claim a particular rate of work though it may not be accepted by the Arbitral Tribunal but there cannot be any open ended fixation of rates of work as such is not the substantial relief. The substantial relief is computable in terms of money, therefore, while seeking reference, an aggrieved person has to claim specific amount in proceedings under the State Act. Thus, the astuteness in draft of reference so as to not to claim any money though ascertainable, cannot oust the jurisdiction of the statutory Arbitral Tribunal under the State Law.

49. We find that in the judgments in Satish Kumar Raizada-I (supra), in a dispute of fixation of rates, the Court held that it is not for ascertained sum of money. In Satish Kumar Raizada-II (supra), the Single Bench was again dealing with the claim for fixation of rates. We find that the view of this Court in the above judgments is not the correct enunciation of law. There cannot be any simpliciter declaration of fixation of rates of work. An aggrieved person has to claim a particular rate of work which the Court may or may not grant but the quantification of rate of work was required to be made. It was mere astuteness in drafting of the reference, which led the Court to say that it is not a claim of ascertained money. The ascertained money, as held by the learned Single Bench is not only which is "known" or "made certain" or "fixed" or "determined" or "quantified" but includes all the amounts which could be quantified as without consequential relief, no claim would be maintainable.

50. In Shree Construction Company (supra), a Division Bench of this Court held that there has to be a fixed and ascertained amount which had to be claimed and denied but the relief of declaration would not be a dispute whichcould be granted by the Tribunal. However, the argument that consequential relief which arises out of declaration has to be claimed was not raised or examined. In fact, the learned counsels for the parties were candid to say that in none of the judgment before this Court, the question whether the consequential relief, which should have been included in the reference in terms of section 34 of the Specific Relief Act, has not been raised or examined.

51. Therefore, the jurisdiction of the Tribunal cannot be avoided only for the reason that the party is claiming only declaration and not the consequential relief as without the consequential relief, the declaration is meaningless. Every declaration has necessary consequence. Even in simpliciter termination of the agreement, there is a forfeiture of the security amount. There is a provision for getting the work done by the department at the cost of the contractor or from third party at the risk and cost of the contractor. If the contractor seeks completion of the remaining work after termination of the contract, the contractor is, in fact, seeking specific performance of the contract, therefore, he has to value the suit at least to the extent of work to be completed.

All these reliefs are computable in terms of money, which are required to be disputed by an aggrieved person before a statutory Arbitral Tribunal. Similarly, challenge to revenue recovery certificate under the guise of challenge to only termination of agreement is again not tenable because the consequential relief is to that of challenge to recovery certificate. Similarly, under the guise of termination of contract, an aggrieved person is required to challenge the order of black-listing as the black-listing as civil consequences and such civil consequences are computable in terms of money. However, such claim should have arisen before seeking a reference under Section 7(A) of the State Act else such claim is barred in terms of Sub-section (2) of Section 7-A of the State Act as a party who omits to refer or intentionally relinquishes any claim or any portion of his claim, he shall not afterwards be entitled to refer in respect of such claim or portion of claim so omitted or relinquished. Therefore, reading of Sub-section (2) of Section 7-A of the State Act will make it abundantly clear that if a consequential relief was available to an aggrieved person before the date of making reference under Sub-section (1) of Section 7-A of the State Act, such person will not be entitled to claim such relief. Such aggrieved person cannot claim that for declaration he is not approaching the statutory Arbitral Tribunal but will claim consequential relief in other proceedings or from the department directly. The same is not permissible. Once the aggrieved person has failed to include the claim of the consequential relief, any such relief cannot be claimed in any subsequent proceedings. Therefore, mere declaration of termination of contract is not the substantial relief and in the guise of mere declaration an aggrieved person cannot be permitted to omit the consequential relief which the party may be entitled to claim in a reference under the State Act.

53. In view of the above, mere astuteness in drafting of a plaint/reference of a petition to seek simpliciter termination of agreement without seeking consequential relief would not be maintainable. If a particular consequential relief can be claimed, the aggrieved person must claim that relief in a reference otherwise the reference would not be maintainable. The consequential relief will differ from case to case. In a case of termination of contract, as argued by the petitioner, if the termination of contract is held to be bad as argued by the petitioner, the petitioner would be entitled *to complete the remaining work; therefore, the consequential relief would be the balance amount of the work to be done. The value of the balance work would be ascertained amount. It can also include challenge to revenue recovery certificate consequent to the termination of contract. The value of such revenue recovery certificate would be the consequential relief, which an aggrieved person has to claim in a reference. There can be a situation of black-listing of the Firm prior to seeking reference. Since black-listing has a civil consequences and the amount of loss is computable in terms of money, such damages have to be ascertained and claimed in a reference under the provisions of the State Act. The above situations are not exhaustive but only illustrative. The consequential relief in each casewould dependent upon the nature of the contract, relief which can be claimed by an aggrieved person. In terms of Clause (2) of section 7-A of the State Act, if the aggrieved person omits to claim a relief though available on the date of seeking reference; he is debarred from claiming such relief in a subsequent action. It only means that for consequential relief, if not claimed in the reference, cannot be claimed subsequently. Therefore, keeping in view the rule that all claims must be included in one petition, as may be arising on the date of reference, has to include the consequential reliefs otherwise the reference would be not maintainable, not for the reason that it is not a works contract or it involves not an ascertained money but for the reason that the aggrieved person though could claim ascertained amount but having omitted to claim so, the reference would not be maintainable and would be liable to be declined.*

54. The judgment of the Division Bench of Indore Bench of this Court in Shree Construction Company (supra) and the Single Benches of this Court in Satish Kumar Raizada-I (supra) and Satish Kumar Raizada-II (supra) have literally explained the words "ascertained amount" but have not taken into consideration that the consequential relief which accrues to an aggrieved person, if omitted to do so, the reference itself would not be maintainable.

55. Thus, we hold that the expression "ascertained amount" appearing in section 2(1)(d) of the State Act includes the amount of consequential relief. If a particular consequential relief can be claimed, the aggrieved person must claim that relief in a reference otherwise the reference would not be *maintainable. The consequential relief in a case of termination of contract can be the value of the remaining work; value of revenue recovery certificate would be the consequential relief and the amount of loss computable in terms of money in case of blacklisting of the Firm would be the consequential relief. Such instances are only illustrative and are not exhaustive. The consequential relief in each case would dependent upon the nature of the contract, relief which can be claimed by an aggrieved person. In terms of Clause (2) of section 7-A of the State Act, if the aggrieved person omits to claim a relief though available on the date of seeking reference; he is debarred from claiming such relief in a subsequent action. Therefore, keeping in view the rule that all claims must be included in one petition, as may be arising on the date of reference, has to include the consequential reliefs otherwise the reference would be not maintainable, not for the reason that it is not a works contract or it involves not an ascertained money but for the reason that the aggrieved person though could claim ascertained amount but having omitted to claim so, the reference would not be maintainable and would be liable to be declined."*

342. The Tribunal's jurisdiction extends only to disputes of a contractual nature involving monetary claims, however, in **Gouri Ganesh**[1] the full bench dealing with a question that whether the dispute relating to termination of a contract without claiming any consequential relief is maintainable before the Arbitral Tribunal under the M.P. Madhyastham Adhikaran Adhiniyam, 1983, has held that if a relief is in the nature of consequential, as per the provisions of Sec. 34 of the Specific Relief Act, the same may be claimed in the same dispute. The object of the enactment of the Adhiniyam, 1983 was to provide a forum to the government and contractors to settle all the disputes arising out of the works contract and therefore the legislature has not restricted the jurisdiction of the Tribunal to grant the consequential relief to a

quantified money claims arising directly from the execution or non-execution of the works contract.

343. The Apex court also observed in **L.G. Chaudhary(I)**[42] **and L.G. Chaudhary(II)**[43] that the jurisdiction of the Tribunal is exclusive in form but narrow in substance as it is confined to only matters that can be translated into ascertained or ascertainable money claims. The definition of dispute described U/S. 2(1)(d) of the Adhiniyam, 1983 restricts the jurisdiction of the Tribunal to money claims only and excludes administrative, declaratory or constitutional issues. The Tribunal cannot declare rights or set aside executive orders or grant perpetual injunctions. The single bench of this Court in **Progressive Construction**[12] held that the Tribunal's though vested with certain powers of a civil court, but the forum empowered only to decide monetary dispute and cannot issue declaratory or injunctive reliefs. Supreme Court in **Upper Doab Sugar Mills**[45] held that statutory Tribunal cannot exercise power beyond those conferred upon them by law and that questions of equity or convenience cannot expunge their jurisdiction.

344. In **Awasthy Brothers**[19] the division bench of this Court held that any challenge to termination of contract will lie before the Tribunal, in fact it is a relief of specific performance and a mere declaratory relief against termination without a claim for damages is meaningless. The relief of declaration and/or injunction can be granted under the provisions of the Specific Relief Act.

345. In **Awasthy Brothers**[19] , the division bench of this court while dealing with a writ petition challenging order of blacklisting arising out of a contract, in respect of which the matter was already pending before arbitration tribunal after relying on the judgment of

full bench delivered in the matter of **Gouri Ganesh**[1] has held as under :-

> *"(7) On the strength of the decision in Shri Gouri Ganesh ShriBalaji Construction "C" Class Contractor (supra), it is contended onbehalf of the State of Madhya Pradesh that since the petitioner hasspecific forum for rederessal of grievance, as determined by LargerBench, present writ petition is not tenable.*
>
> *(8) Learned counsel for the petitioner, however, submits that theorder of blacklisting cannot be said to be arising out of a contract;therefore, it cannot be said that there is accrual of the cause whichcan only be adjudicated under the Adhiniyam, 1983. The contention,however, when tested on the anvil of given facts of the casedeserves to be rejected.*
>
> *(9) As the petitioner has already raise the dispute qua terminationof his contract; therefore, as per decision in Shri Gouri Ganesh ShriBalaji Construction "C" Class Contractor (supra) (as held inparagraphs 40, 41 and 55) the dispute as to blacklisting will also laybefore the same forum.*
>
> *(10) Consequently, we decline to entertain the writ petition underArticle 226 of the Constitution."*

346. Considering the provisions of Section 7A of the Act, 1983, Order II Rule 2 of CPC and Section 34 of Specific Relief Act, the Full Bench in **Gouri Ganesh**[1] held that when a claimant is entitled to any consequential relief, he should seek the same and the Tribunal which is empowered to entertain the main monetary claim, is also empowered to entertain the consequential relief by virtue of Section 7A of the Act. At the same time, the Full Bench has held that for bringing the matter out of the jurisdiction of the Tribunal, the claimant is not authorized to omit the main relief and seek only the consequential relief. As per Full Bench it is not permissible in law.

347. Full Bench in the matter of **Gouri Ganesh**[1] was dealing the issue of consequential relief and, therefore, Full Bench opined on the

issue of consequential relief and it was not considered by the Full Bench in that matter that whether the relief of blacklisting is quantifiable or not. The Division Bench in the matter of **Awasthi Brothers**[19] followed the Full Bench judgment in **Gouri Ganesh**[1] and dismissed the petition. In that case also the main litigation was already pending before the arbitration tribunal and, therefore, considering the relief of blacklisting as consequential relief, the contractor was relegated to the arbitration tribunal.

348. Though the provisions of Order II Rule 2 of CPC provides that a party should include all the claims in a lis and Section 7A of the Adhiniyam also speaks the same that all claims should be included, but the issue is that when the Tribunal is not empowered to issue any declaratory decree, the relief in respect of the declaring blacklisting order illegal, void and ineffective can be sought before the Tribunal. The Tribunal is not a civil Court and enjoys the jurisdiction conferred under the Adhiniyam, 1983 only. Section 7 of the Adhiniyam provides for reference of the dispute to the Tribunal and the definition of dispute has been prescribed in Section 2(1)(d), which includes only monetary claims of Rs.50,000 or more. Section 7A provides to include all claims in respect of the subject contract.

349. The legislature has conferred the jurisdiction to the Tribunal to adjudicate limited disputes of monetary nature between the contractors and the State and the jurisdiction of the Tribunal was restricted to the quantifiable money claims only arising directly from the execution or non-execution works contracts and excludes other disputes. The Tribunal cannot declare rights and set aside executive orders.

350. The Full Bench in the matter of **Gouri Ganesh**[1] considered the issue assuming that the contractor claims declaration in respect of cancellation of contract with monetary relief in all the cases and therefore considering the provisions of Order II Rule 2 of CPC and Section 34 of Specific Relief Act held that the relief in respect of the blacklisting order is a consequential relief and can be claimed in a reference to be filed before the Tribunal. However, it is not essential that in every case the contractor raises any monetary claim. In a situation when work is over, completion certificate issued, performance guarantee released and thereafter due to defective work or commission of any fraud revealed later on, the contractor is blacklisted by the employer, the contractor would challenge only the order of blacklisting and there will be no monetary claim or declaratory decree in respect of the cancellation of contract. If it is accepted that the relief of blacklisting is a consequential relief, in that circumstances the contractor will be remediless as no claim can be referred for the purpose of consequential relief only. There may be several eventualities resulting in the blacklisting of a contractor and it is not essential that in all the contingencies the contractor is required to raise monetary claim and therefore it cannot be accepted that in every circumstances the relief of cancellation of blacklisting is a consequential relief.

351. For the purpose of considering the jurisdiction of the Tribunal it is also essential to consider that whether a dispute of blacklisting can be referred to the arbitration Tribunal constituted under the Arbitration and Conciliation Act, 1996. In all the eventualities of blacklisting, the element of cheating, fraud or forgery is involved.

The Apex Court in the matter of **Booz Allen**[15] considering the issue that which type of disputes are referable to the arbitration held as under:-

> *"34. The term "arbitrability" has different meanings in different contexts. The three facets of arbitrability, relating to the jurisdiction of the Arbitral Tribunal, are as under:*
>
> > *(i) Whether the disputes are capable of adjudication and settlement by arbitration? That is, whether the disputes, having regard to their nature, could be resolved by a private forum chosen by the parties (the Arbitral Tribunal) or whether they would exclusively fall within the domain of public fora (courts).*
> >
> > *(ii) Whether the disputes are covered by the arbitration agreement? That is, whether the disputes are enumerated or described in the arbitration agreement as matters to be decided by arbitration or whether the disputes fall under the "excepted matters" excluded from the purview …*
> >
> > *(iii) Whether the parties have referred the disputes to arbitration ? That is, whether the disputes fall under the scope of the submission to the Arbitral Tribunal, or whether they do not arise out of the statement of claim and the counterclaim filed before the Arbitral Tribunal. A dispute, even if it is capable of being decided by arbitration and falling within the scope of arbitration agreement, will not be "arbitrable" if it is not enumerated in the joint list of disputes referred to arbitration, or in the absence of such joint list of disputes, does not form part of the disputes raised in the pleadings before the Arbitral Tribunal.*
>
> *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.

36. The well-recognised examples of non-arbitrable disputes are: (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (iii) guardianship matters; (iv) insolvency and winding-up matters; (v) testamentary matters (grant of probate, letters of administration and succession certificate); and (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes.

37. It may be noticed that the cases referred to above relate to actions in rem. A right in rem is a right exercisable against the world at large, as contrasted from a right in personam which is an interest protected solely against specific individuals. Actions in personam refer to actions determining the rights and interests of the parties themselves in the subject-matter of the case, whereas actions in rem refer to actions determining the title to property and the rights of the parties, not merely among themselves but also against all persons at any time claiming an interest in that property. Correspondingly, a judgment in personam refers to a judgment against a person as distinguished from a judgment against a thing, right or status and a judgment in rem refers to a judgment that determines the status or condition of property which operates directly on the property itself. (Vide Black's Law Dictionary.)

38. Generally and traditionally all disputes relating to rights in personam are considered to be amenable to arbitration;

and all disputes relating to rights in rem are required to be adjudicated by courts and public tribunals, being unsuited for private arbitration. This is not however a rigid or inflexible rule. Disputes relating to subordinate rights in personam arising from rights in rem have always been considered to be arbitrable."

352. The Supreme Court held that the blacklisting is a dispute of public importance and not a private dispute between the contracting parties only. It involves public policy and such right is not referable right. Blacklisting is not a mere contractual remedy, but an administrative act on public law principles of fairness and non-arbitrariness.

353. Though Section 7A of the Adhiniyam, 1983 mandates that the claimant should include the whole of his claim in one reference petition, however, this provision being procedural cannot enlarge the Tribunal's substantive jurisdiction and if the subject matter itself is outside the scope of Section 2(1)(d) labelling it as consequential relief cannot confer jurisdiction. The procedural provision cannot cure a foundational defect of competence.

354. Supreme Court in the matter of **A. Ayyasamy**[16] has held as under:-

"35. Ordinarily every civil or commercial dispute whether based on contract or otherwise which is capable of being decided by a civil court is in principle capable of being adjudicated upon and resolved by arbitration "subject to the dispute being governed by the arbitration agreement" unless the jurisdiction of the Arbitral Tribunal is excluded either expressly or by necessary implication. In Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd. [Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd., (2011) 5 SCC 532 : (2011) 2 SCC (Civ) 781] , this Court held that (at SCC p. 546, para 35) adjudication of certain categories of proceedings is reserved by the legislature exclusively for public fora as a matter of public policy. Certain other categories of cases, though not exclusively reserved for adjudication by courts and tribunals may by necessary implication stand excluded from

the purview of private fora. This Court set down certain examples of non-arbitrable disputes such as : (SCC pp. 546-47, para 36)

> *(i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences;*
>
> *(ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights and child custody;*
>
> *(iii) matters of guardianship;*
>
> *(iv) insolvency and winding up;*
>
> *(v) testamentary matters, such as the grant of probate, letters of administration and succession certificates; and*
>
> *(vi) eviction or tenancy matters governed by special statutes where a tenant enjoys special protection against eviction and specific courts are conferred with the exclusive jurisdiction to deal with the dispute.*

This Court held that this class of actions operates in rem, which is a right exercisable against the world at large as contrasted with a right in personam which is an interest protected against specified individuals. All disputes relating to rights in personam are considered to be amenable to arbitration while rights in rem are required to be adjudicated by courts and public tribunals. The enforcement of a mortgage has been held to be a right in rem for which proceedings in arbitration would not be maintainable. In Vimal Kishor Shah v. Jayesh Dinesh Shah [Vimal Kishor Shah v. Jayesh Dinesh Shah, (2016) 8 SCC 788 : (2016) 4 SCC (Civ) 303] , this Court added a seventh category of cases to the six non-arbitrable categories set out in Booz Allen [Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd., (2011) 5 SCC 532 : (2011) 2 SCC (Civ) 781] , namely, disputes relating to trusts, trustees and beneficiaries arising out of a trust deed and the Trust Act.

38 [Ed. : Para 38 corrected vide Official Corrigendum No. F-3/Ed.B.J./101/2016 dated 17-7-2017.] . Hence, in addition to various classes of disputes which are generally considered by the courts as appropriate for decision by public fora, there are classes of disputes which fall within the exclusive domain of *special fora under legislation which confers exclusive jurisdiction to the exclusion of an ordinary civil court. That such disputes are not arbitrable dovetails with the general principle that a dispute which is capable of adjudication by an ordinary civil court is also capable of being resolved by arbitration. However, if the jurisdiction of an ordinary civil court is excluded by the conferment of exclusive jurisdiction on a specified court or tribunal as a matter of public policy such a dispute would not then be capable of resolution by arbitration.*

355. The Apex Court in **Vidya Drolia**[17] held as under:-

"76. In view of the above discussion, we would like to propound a fourfold test for determining when the subject-matter of a dispute in an arbitration agreement is not arbitrable:

76.1. (1) When cause of action and subject-matter of the dispute relates to actions in rem, that do not pertain to subordinate rights in personam that arise from rights in rem.

76.2. (2) When cause of action and subject-matter of the dispute affects third-party rights; have erga omnes effect; require centralised adjudication, and mutual adjudication would not be appropriate and enforceable.

76.3. (3) When cause of action and subject-matter of the dispute relates to inalienable sovereign and public interest functions of the State and hence mutual adjudication would be unenforceable.

76.4. (4) When the subject-matter of the dispute is expressly or by necessary implication non-arbitrable as per mandatory statute(s).

76.5. These tests are not watertight compartments; they dovetail and overlap, albeit when applied holistically and pragmatically will help and assist in determining and ascertaining with great degree of certainty when as per law in India, a dispute or subject-matter is non-arbitrable. Only when the answer is affirmative that the subject-matter of the dispute would be non-arbitrable.

76.6. However, the aforesaid principles have to be applied with care and caution as observed in Olympus Superstructures (P) Ltd. [Olympus Superstructures (P) Ltd. v. Meena Vijay Khetan, (1999) 5 SCC 651] : (SCC p. 669, para 35)

"35. … Reference is made there to certain disputes like criminal offences of a public nature, disputes arising out of illegal agreements and disputes relating to status, such as divorce, which cannot be referred to arbitration. It has, however, been held that if in respect of facts relating to a criminal matter, say, physical injury, if there is a right to damages for personal injury, then such a dispute can be referred to arbitration (Keir v. Leeman [Keir v. Leeman, (1846) 9 QB 371 : 115 ER 1315]). Similarly, it has been held that a husband and a wife may refer to arbitration the terms on which they shall separate, because they can make a valid agreement between themselves on that matter (Soilleux v. Herbst [Soilleux v. Herbst, (1801) 2 Bos & P 444 : 126 ER 1376] , Wilson v. Wilson [Wilson v. Wilson, (1848) 1 HL Cas 538] and Cahill v. Cahill [Cahill v. Cahill, (1883) LR 8 AC 420 (HL)])."

78. In view of the aforesaid discussions, we overrule the ratio in N. Radhakrishnan [N. Radhakrishnan v. Maestro Engineers, (2010) 1 SCC 72 : (2010) 1 SCC (Civ) 12] inter alia observing that allegations of fraud can (sic cannot) be made a subject-matter of arbitration when they relate to a civil dispute. This is subject to the caveat that fraud, which would vitiate and invalidate the arbitration clause, is an aspect relating to non-arbitrability. We have also set aside the Full Bench decision of the Delhi High Court in HDFC Bank Ltd. [HDFC Bank Ltd. v. Satpal Singh Bakshi, 2012 SCC OnLine Del 4815 : (2013) 134 DRJ 566] which holds that the disputes which are to be adjudicated by the DRT under the DRT Act are arbitrable. They are non-arbitrable."

356. As the element of fraud is involved in the dispute of blacklisting, the dispute appears to be a dispute of public policy and public

importance and therefore the dispute of blacklisting is even not referable to the private arbitration under the Act 1996 and therefore the same cannot be referred to the statutory Tribunal constituted under the provisions of the Adhiniyam, 1983. Though the order is addressed to a single contractor, however its effect extends to all public authorities, which as a matter of policy and practice refrain from engaging blacklisted entities and thus the order operates *in rem* altering the status of the contractor in the public domain and cannot be adjudicated by a private or statutory arbitrator.

357. The Supreme Court in the matter of **Kulja Industries**[5] held as under:-

> *"18. The legal position on the subject is settled by a long line of decisions rendered by this Court starting with Erusian Equipment & Chemicals Ltd. v. State of W.B. [(1975) 1 SCC 70] where this Court declared that blacklisting has the effect of preventing a person from entering into lawful relationship with the Government for purposes of gains and that the authority passing any such order was required to give a fair hearing before passing an order blacklisting a certain entity. This Court observed: (SCC p. 75, para 20)*
>
> *"20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist."*
>
> *Subsequent decisions of this Court in Southern Painters v. Fertilizers & Chemicals Travancore Ltd. [1994 Supp (2) SCC 699 : AIR 1994 SC 1277] ; Patel Engg. Ltd. v. Union of India [(2012) 11 SCC 257 : (2013) 1 SCC (Civ) 445] ; B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd. [(2006) 11 SCC 548] ; Joseph Vilangandan v. Executive Engineer (PWD) [(1978) 3 SCC 36] among others have followed the ratio of that decision and applied the principle of audi alteram partem to the process*

that may eventually culminate in the blacklisting of a contractor.

21. It is also well settled that even though the right of the writ petitioner is in the nature of a contractual right, the manner, the method and the motive behind the decision of the authority whether or not to enter into a contract is subject to judicial review on the touchstone of fairness, relevance, natural justice, non-discrimination, equality and proportionality. All these considerations that go to determine whether the action is sustainable in law have been sanctified by judicial pronouncements of this Court and are of seminal importance in a system that is committed to the rule of law. We do not consider it necessary to burden this judgment by a copious reference to the decisions on the subject. A reference to the following passage from the decision of this Court in Mahabir Auto Stores v. Indian Oil Corpn. [(1990) 3 SCC 752] should, in our view, suffice: (SCC pp. 760-61, para 12)

> *"12. It is well settled that every action of the State or an instrumentality of the State in exercise of its executive power, must be informed by reason. In appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the Constitution. Reliance in this connection may be placed on the observations of this Court in Radhakrishna Agarwal v. State of Bihar [(1977) 3 SCC 457 : (1977) 3 SCR 249] . … In case any right conferred on the citizens which is sought to be interfered, such action is subject to Article 14 of the Constitution, and must be reasonable and can be taken only upon lawful and relevant grounds of public interest. Where there is arbitrariness in State action of this type of entering or not entering into contracts, Article 14 springs up and judicial review strikes such an action down. Every action of the State executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, in such monopoly or semi-monopoly dealings, it should meet the test of Article 14 of the Constitution. If a governmental action even in the matters of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unreasonable. … It appears to us that rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are*

part of the rule of law applicable in situation or action by State instrumentality in dealing with citizens in a situation like the present one. Even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination in the type of the transactions and nature of the dealing as in the present case."

358. The Supreme Court in the matter of **Raghunath Thakur v. State of Bihar**[8] has held as under:-

"4. Indisputably, no notice had been given to the appellant of theproposal of blacklisting the appellant. It was contended on behalf of theState Government that there was no requirement in the rule of giving anyprior notice before blacklisting any person. Insofar as the contention thatthere is no requirement specifically of giving any notice is concerned, therespondent is right. But it is an implied principle of the rule of law thatany order having civil consequence should be passed only afterfollowing the principles of natural justice. It has to be realised thatblacklisting any person in respect of business ventures has civilconsequence for the future business of the person concerned in anyevent. Even if the rules do not express so, it is an elementaryprinciple of natural justice that parties affected by any order shouldhave right of being heard and making representations against theorder. In that view of the matter, the last portion of the order insofaras it directs blacklisting of the appellant in respect of futurecontracts, cannot be sustained in law. In the premises, that portion ofthe order directing that the appellant be placed in the blacklist in respect offuture contracts under the Collector is set aside. So far as the cancellationof the bid of the appellant is concerned, that is not affected. This order will, however, not prevent the State Government or the appropriate authorities from taking any future steps for blacklisting the appellant if the Government is so entitled to do in accordance with law i.e. after giving the appellant due notice and an opportunity of making representation. After hearing the appellant, the State Government will be at liberty to pass any order in accordance with law indicating the reasons therefor. We, however, make it quite clear that we are not expressing any opinion on the correctness or otherwise of the allegations made against the appellant. The appeal is thus disposed of."

359. The larger bench of the Supreme Court in the matter of **L.G. Chaudhary II**[43] considering the scope of the statutory arbitral tribunal, in a matter, wherein the arbitrator was appointed under the provisions of 1996 Act and award was passed by the private arbitrator and thereafter the objection of jurisdiction was raised. The Supreme Court held as under:-

> *"3. The appellants raised objection that the matter being covered by a special State Act, namely, M.P. Madhyastham Adhikaran Adhiniyam, 1983 ("the M.P. Act", in short), the application under Section 11 of the Arbitration and Conciliation Act, 1996 could not be entertained. The High Court, however, overruled the said objection relying upon the judgment of this Court in VA Tech Escher Wyass Flovel Ltd. v. M.P. SEB [VA Tech Escher Wyass Flovel Ltd. v. M.P. SEB, (2011) 13 SCC 261 : (2012) 3 SCC (Civ) 468] .*
>
> *4. When the matter was considered by a Bench of this Court on 24-1-2012 (order in M.P. Rural Road Development Authority v. L.G. Chaudhary Engineers and Contractors [M.P. Rural Road Development Authority v. L.G. Chaudhary Engineers and Contractors, (2012) 3 SCC 495 : (2012) 2 SCC (Civ) 210]), this Court held that the judgment in VA Tech Escher Wyass Flovel Ltd. [VA Tech Escher Wyass Flovel Ltd. v. M.P. SEB, (2011) 13 SCC 261 : (2012) 3 SCC (Civ) 468] was per incuriam insofar as it held that the M.P. Act stands impliedly repealed by the Central Act. While Hon'ble Ganguly, J., held that the State Act will cover a dispute even after termination of the "works contract", Hon'ble Gyan Sudha Mishra, J. took a different view as follows : (M.P. Rural Road Development case [M.P. Rural Road Development Authority v. L.G. Chaudhary Engineers and Contractors, (2012) 3 SCC 495 : (2012) 2 SCC (Civ) 210] , SCC p. 511, para 51)*
>
>> *"51. It is no doubt true that if the matter were before an arbitrator appointed under the Arbitration and Conciliation Act, 1996 for adjudication of any dispute including the question regarding the justification and legality as to whether the cancellation of works contract was legal or illegal, then the said arbitrator in view of the ratio of the judgment of the Supreme Court in Maharshi Dayanand University v. Anand Coop. L/C Society Ltd. [Maharshi Dayanand University v. Anand Coop. L/C Society Ltd.,*

(2007) 5 SCC 295] , as also in view of the persuasive reasoning assigned in the judgment and order in Heyman v. Darwins Ltd. [Heyman v. Darwins Ltd., 1942 AC 356 : (1942) 1 All ER 337 (HL)] would have had the jurisdiction to adjudicate the dispute regarding the justification and legality of cancellation of works contract also. But the same cannot be allowed to be raised under the M.P. Act of 1983 since the definition of "works contract" unambiguously lays down in explicit terms as to what is the nature and scope of "works contract" and further enumerates the specific nature of disputes arising out of the execution of works contract which would come within the definition of a "works contract". However, the same does not even vaguely include the issue or dispute arising out of cancellation and termination of contract due to which this question, in my considered opinion, would not fall within the jurisdiction of the M.P. State Arbitration Tribunal so as to be referred for adjudication arising out of its termination."

5. We find from the definition under Section 2(d) of the Arbitration and Conciliation Act, 1996 that even after a contract is terminated, the subject-matter of dispute is covered by the said definition. The said provision has not been even referred to in the judgment rendered by Hon'ble Gyan Sudha Mishra, J.

6. In view of the above, we are of the opinion that the view expressed by Hon'ble Ganguly, J. is the correct interpretation and not the contra view of Hon'ble Gyan Sudha Mishra, J. Reference stands answered accordingly.

7. Taking up appeal on merits, we find that the High Court proceeded on the basis of the judgment of this Court in VA Tech Escher Wyass Flovel Ltd. [VA Tech Escher Wyass Flovel Ltd. v. M.P. SEB, (2011) 13 SCC 261 : (2012) 3 SCC (Civ) 468] which has been held to be per incuriam. The M.P. Act cannot be held to be impliedly repealed.

8. We are, thus, in agreement with the proposed opinion of Hon'ble Ganguly, J. in para 42 of the reported judgment which reads as follows : (M.P. Rural Road Development case [M.P. Rural Road Development Authority v. L.G. Chaudhary Engineers and Contractors, (2012) 3 SCC 495 : (2012) 2 SCC (Civ) 210] , SCC p. 509, para 42)

"42. Therefore, appeal is allowed and the judgment of the High Court which is based on the reasoning of VA Tech Escher Wyass Flovel Ltd. v. M.P. SEB [VA Tech Escher Wyass Flovel Ltd. v. M.P. SEB, Misc. Appeal No. 380 of 2003, order dated 5-3-2003 (MP)] is set aside. This Court holds the decision in VA Tech Escher Wyass Flovel Ltd. v. M.P. SEB [VA Tech Escher Wyass Flovel Ltd. v. M.P. SEB, (2011) 13 SCC 261 : (2012) 3 SCC (Civ) 468] has been rendered in per incuriam. In that view of the matter the arbitration proceeding may proceed under the M.P. Act of 1983 and not under the Arbitration and Conciliation Act, 1996."

360. The order of blacklisting is having far reaching effect and it affects the working of public office also and thus cannot be considered as an order *in personam*. The Supreme Court in the matter of **Jagdish Mandal**[25] has held as under:-

"22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or

contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached";

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action."

361. As it is discussed hereinabove that the loss due to blacklisting is not ascertainable, the contractor cannot raise any monetary claim arising out of order of blacklisting and therefore the dispute of blacklisting alone will not be referable to the Tribunal. The jurisdiction of the Tribunal is limited only to awarding compensation for monetary loss resulting from breach. If the loss is not ascertainable then certainly the dispute cannot be referred to the Tribunal. The Tribunal cannot grant any relief simpliciter challenging blacklisting and contractor cannot be compelled to approach the Tribunal only for setting aside the blacklisting orders.

362. Sections 16, 17A and 17AB provides some powers to the Tribunal, but the jurisdiction of the Tribunal cannot be decided on the basis of the powers conferred under these Sections, which are the powers to grant interim relief, but the jurisdiction of the Tribunal can be decided only on the basis of the definition of dispute, which is

referable to the Tribunal. The inherent power of statutory Tribunal cannot be invoked to create jurisdiction, where it is not exist.

363. The Tribunal is a creature of the statute and bound by the four corners of the Adhiniyam, which provides a definition of disputes and only the dispute can be referred to the Tribunal. The exercise of declaratory powers or setting aside an executive order like blacklisting, which does not constitute money claim and not ascertainable, would not be referrable to the Tribunal and every relief whether principal or incidental must fall within the four corners of the definition. All declaration to annul blacklisting order is neither a claim of ascertained money nor ascertainable, rather it is a public law remedy intended to correct an administrative wrong. The Tribunal being confined to the money disputes cannot convert itself into a forum for judicial review of executive orders and if a declaration is required to remove a legal disability imposed by the State, such as blacklisting, the proper remedy is not a reference before the Tribunal.

364. The judgment of the full bench of this Court in **Gouri Ganesh**[1] and division bench in **Awasthy Brothers**[19] have not considered all the eventualities wherein the order of blacklisting may be passed and therefore considered the relief of blacklisting as a consequential relief to the main monetary relief, whereas the relief of blacklisting cannot be always considered as consequential relief and even if the main relief is a relief of declaration, the same cannot be entertained by the statutory arbitration tribunal and in view of this Court **Gouri Ganesh**[1]and **Awasthy Brothers**[19] have not laid down the correct law in holding that the relief of blacklisting is a consequential relief and

referable to the Arbitral Tribunal constituted under the Adhiniyam, 1983.

365. **In view of the above discussion, the dispute of blacklisting is not an ascertainable monetary dispute and as the public element of public importance is involved in the dispute, the same is not referable to the statutory arbitration tribunal constituted under the provisions of the Adhiniyam, 1983.**

(v) JURISDICTION OF CIVIL COURT:

366. Section 9 of the CPC provides that the civil courts have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

367. The civil court is having jurisdiction to entertain the suits for declaration and compensation also. Challenging the order of blacklisting will amount to a dispute of declaring the order illegal, void and not applicable and, therefore, the suit will lie before the civil court.

368. If any tribunal is not clothed with the powers to decide any particular dispute, the civil courts will have jurisdiction to entertain the same and decide in accordance with law. The courts constituted for deciding civil disputes between the persons have jurisdiction to entertain a suit irrespective to the fact that the disputes arising out of a works contract between a contractor and government or its instrumentalities. The Supreme Court in the matter of**Rajasthan SRTC Vs.Bal Mukund Bairwa(2)**[110] has held that if the jurisdiction of the civil court is not expressly barred, every dispute

[110] Rajasthan SRTC Vs. Bal Mukund Bairwa(2), 2009(4) SCC 299.

shall lie before the civil court. The relevant paras of the judgment reads as under:

> *"12. Section 9 of the Code is in enforcement of the fundamental principles of law laid down in the maxim ubi jus ibi remedium. A litigant, thus having a grievance of a civil nature has a right to institute a civil suit in a competent civil court unless its cognizance is either expressly or impliedly barred by any statute. Ex facie, in terms of Section 9 of the Code, civil courts can try all suits, unless bared by the statute, either expressly or by necessary implication.*
>
> *13. The civil court, furthermore, being a court of plenary jurisdiction has the jurisdiction to determine its jurisdiction upon considering the averments made in the plaint but that would not mean that the plaintiff can circumvent the provisions of law in order to invest jurisdiction on the civil court although it otherwise may not possess. For the said purpose, the court in given cases would be entitled to decide the question of its own jurisdiction upon arriving at a finding in regard to the existence of the jurisdictional fact.*
>
> *14. It is also well settled that there is a presumption that a civil court will have jurisdiction and the ouster of civil court's jurisdiction is not to be readily inferred. A person taking a plea contra must establish the same. Even in a case where the jurisdiction of a civil court is sought to be barred under a statute, the civil court can exercise its jurisdiction in respect of some matters particularly when the statutory authority or tribunal acts without jurisdiction."*

369. As the order of blacklisting is a civil death of a contractor or entity, it falls under the civil dispute and a civil court has the jurisdiction to determine the validity of the order of blacklisting and try the suit. The Supreme Court in the matter of **Urban Improvement Trust, Bikaner Vs. Gordhan Dass**[111] has held as under:-

> *"29. Adverting next to the appellant's argument on maintainability of a suit, it is no more res integra that ouster of jurisdiction of civil courts cannot be a matter of course.*

[111] Urban Improvement Trust, Bikaner Vs. Gordhan Dass, 2024(3) SCC 250.

Section 9 of the Code of Civil Procedure empowers the courts to try all civil suits, unless barred. The contour of the jurisdiction of the civil court has been succinctly enunciated by a five-Judge Constitution Bench in Dhulabhai [Dhulabhai v. State of M.P., 1968 SCC OnLine SC 40 : (1968) 3 SCR 662] . M. Hidayatullah, J. writing for the Bench laid down the tests on the bar of jurisdiction of the civil courts. The relevant principles are extracted below : (SCR pp. 682-83)

> *"(1) Where the statute gives a finality to the orders of the special tribunals the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.*
>
> *(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.*
>
> *Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.*
>
> *
>
> *(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply."*
>
> *(emphasis supplied).*

30. In Ramesh Gobindram v. Sugra Humayun Mirza Wakf [Ramesh Gobindram v. Sugra Humayun Mirza Wakf, (2010) 8 SCC 726 : (2010) 3 SCC (Civ) 553] , a two-Judge Bench of this Court observed that the jurisdiction of the civil courts to try suits of a civil nature is expansive and the onus to prove *the ouster of the jurisdiction is on the party that asserts it. The Court observed that even in cases where the jurisdiction of the civil court is barred by a statute, the test is to determine if the authority or tribunal constituted under the statute has the power to grant reliefs that the civil courts would normally grant in suits filed before them. The relevant observations are extracted below : (SCC p. 730, para 12)*

"12. The well-settled rule in this regard is that the civil courts have the jurisdiction to try all suits of civil nature except those entertainment whereof is expressly or impliedly barred. The jurisdiction of the civil courts to try suits of civil nature is very expansive. Any statute which excludes such jurisdiction is, therefore, an exception to the general rule that all disputes shall be triable by a civil court. Any such exception cannot be readily inferred by the courts. The court would lean in favour of a construction that would uphold the retention of jurisdiction of the civil courts and shift the onus of proof to the party that asserts that the civil court's jurisdiction is ousted."

31. In this case, applying the test laid down in Dhulabhai [Dhulabhai v. State of M.P., 1968 SCC OnLine SC 40 : (1968) 3 SCR 662], it has to be determined whether the Act provides an adequate final remedy of the kind the civil court would normally grant in a suit, such that the jurisdiction of the civil court must necessarily be inferred to have been ousted. For that purpose, the statutory scheme of the Tenancy Act, 1955 is to be carefully examined. Additionally, as per the test laid down by Dhulabhai [Dhulabhai v. State of M.P., 1968 SCC OnLine SC 40 : (1968) 3 SCR 662], jurisdiction of civil court would not be ousted in cases where the fundamental principles of judicial procedure and the provisions of the particular Act are not complied with."

370. Even the Full Bench of this Court in **Gouri Ganesh**[1] had discussed the jurisdiction of civil court and held that if the dispute does not fall within the scope of bar created under Section 20 of Act, 1983, the dispute will lie before the civil court. The relevant para reads as under:-

"23. It is contended that in matters other than works contract, if there is arbitration clause, then parties have to seek recourse to appointment of an Arbitrator under the Central Act. If there is no

arbitration agreement between the parties, the remedy of aggrieved person is before the Civil Court alone. It is argued that in terms of L.G. Chaudhary-II (supra), the State Act will prevail over the Central Act. But in the cases of works contract, if the ascertained amount including consequential relief is less than Rs. 50,000/- then the aggrieved person has to approach Civil Court as the Civil Court has plenary jurisdiction under Section 9 of the Code of Civil Procedure, 1908 in respect of all matters which are not expressly or impliedly barred. Therefore, even in the cases of works contract, if the ascertained amount along with consequential relief is less than Rs. 50,000/-, the remedy for the aggrieved person is before the Civil Court and not under the Central Act as the State Act is complete Code and that no provision of the Central Act would be applicable to any person to seek resolution of disputes in the matter of works contract under the Central Act. It is contended that bar of jurisdiction of Civil Court as contained in Section 20 of the State Act is only in respect of matters which fall within the scope of the State Act. However, in the case of contracts other than the works contract, if there is an arbitration clause, the matter is required to be decided in terms of the provisions of the Central Act."

371. From the above discussion, we are of the view that the dispute of blacklisting is not arbitrable and, therefore, jurisdiction of civil court cannot be treated as bar to entertain the relief of declaration arising out of blacklisting in the scope of bar created by Section 20 of the Adhiniyam, 1983, which provides that no civil court shall have jurisdiction to entertain or decide any dispute of which cognizance can be taken by the Tribunal under this Act.

372. **In view of the above, the conclusion is that as the dispute of blacklisting is not referable to the statutory arbitral tribunal, the suit for declaration will lie before the civil court.**

(vi) ENTERTAINABILITY OF A WRIT PETITION:

373. As discussed above, the dispute arising out of an order of blacklisting is neither referable to the private arbitration tribunal or statutory arbitration tribunal and can be raised before the civil court. However, it is argued before this Court that the efficacious remedy lies before this Court under Article 226 of the Constitution of India. The blacklisting is an administrative order and such administrative order and the power of blacklisting must be exercised in conformity to the principles of natural justice, fairness, non-arbitrariness as envisaged under Article 14 of the Constitution. The challenge to said administrative orders would lie within the writ jurisdiction of the constitutional courts under Article 226 of the Constitution of India. However, in the matters wherein the parties are having alternate remedy, the constitutional courts may refrain themselves from entertaining the writ petition. In some of the eventualities, the constitutional courts can entertain the writ petition arising out of the order of blacklisting.

374. In **Gorkha Securities Servies**[10], the Supreme Court has held that before passing any order of blacklisting issuance of show-cause notice is essential and if the order of blacklisting is passed without issuance of any show-cause notice, it amounts to the infringement of the fundamental rights of the contractor and in that circumstances the writ petition is entertainable. The relevant paras are as under:-

> *"26. In the present case, it is obvious that action is taken as provided in sub-clause (ii). Under this clause, as is clear from the reading thereof, the Department had a right to cancel the contract and withhold the agreement. That has been done. The Department has also a right to get the job which was to be carried out by the defaulting contractor, to*

be carried out from other contractor(s). In such an event, the Department also has a right to recover the difference from the defaulting contractor. This clause, no doubt, gives further right to the Department to blacklist the contractor for a period of 4 years and also forfeit his earnest money/security deposit, if so required. It is thus apparent that this sub-clause provides for various actions which can be taken and penalties which can be imposed by the Department. In such a situation which action the Department proposes to take, need to be specifically stated in the show-cause notice. It becomes all the more important when the action of blacklisting and/or forfeiture of earnest money/security deposit is to be taken, as the clause stipulates that such an action can be taken, if so warranted. The words "if so warranted", thus, assume great significance. It would show that it is not necessary for the Department to resort to penalty of blacklisting or forfeiture of earnest money/security deposit in all cases, even if there is such a power. It is left to the Department to inflict any such penalty or not depending upon as to whether circumstances in a particular case warrant such a penalty. There has to be due application of mind by the authority competent to impose the penalty, on these aspects. Therefore, merely because of the reason that Clause 27 empowers the Department to impose such a penalty, would not mean that this specific penalty can be imposed, without putting the defaulting contractor to notice to this effect.

27. We are, therefore, of the opinion that it was incumbent on the part of the Department to state in the show-cause notice that the competent authority intended to impose such a penalty of blacklisting, so as to provide adequate and meaningful opportunity to the appellant to show cause against the same. However, we may also add that even if it is not mentioned specifically but from the reading of the show-cause notice, it can be clearly inferred that such an action was proposed, that would fulfil this requirement. In the present case, however, reading of the show-cause notice does not suggest that noticee could find out that such an action could also be taken. We say so for the reasons that are recorded hereinafter."

375. Further, in the matter of **Techno Prints**[21] after considering the earlier judgments, the Supreme Court has held that if an order of blacklisting is passed without following the principles of natural

justice, the petition may be entertained by the constitutional courts under Article 226 of the Constitution as while participating in the tender, the bidder is required to furnish a statement / undertaking that it has not been blacklisted by any institution so far and in case of blacklisting, the bidder is debarred from participating in the tender process of even other departments and, therefore, the dispute can be entertained by the constitutional courts under Article 226 of the Constitution. The Supreme Court in the matter of **Techno Prints**[21] has held as under:-

> *"25. This Court in Kulja Industries Limited v. Chief General Manager Western Telecom Project BSNL, (2014) 14 SCC 731 : AIR 2014 SC 9 has made pertinent observations as regards the power of an Authority to blacklist a company on the basis of the terms of the underlying contract. In the said case, Kulja Industries (Contractor) was blacklisted by BNSL (Authority) on the allegations of having obtained fraudulent payments from the Authority. This Court in the said case set aside the order of blacklisting passed by the Authority as it had the effect of permanently affecting the business of the contractor. This Court identified the limits of powers of statutory authorities to take coercive actions against companies. This Court after examining the terms and conditions prescribed in the tender document relating to disqualification and blacklisting observed that the power to disqualify a contractor was provided for in the tender document and such power could be read as an inherent power and in terms of the same, the Authority would have to show that the supplier:*
>
> > *a. Habitually failed to supply the equipment in time;*
> > *b. The equipment supplied by the supplier did not perform satisfactorily or were not of a particular standard; or*
> > *c. Failed to honour the bid without sufficient grounds.*
>
> *26. Undoubtedly, Kulja Industries (supra) looked into the final order of blacklisting passed by the Authority concerned. We are still at the stage of a show cause notice. However, what is important to note, are the aforesaid three guiding situations or grounds on which the Authority may be justified in exercising its power to blacklist the contractor.*

27. This Court in The Blue Dreamz Advertising Pvt. Ltd. v. Kolkata Municipal Corp., 2024 INSC 589 while quashing and set asiding the blacklisting order as affirmed by the High Court in almost identical facts observed as under:

> *1. In case there exists a genuine dispute between the parties based on the terms of the contract, blacklisting as a penalty cannot be imposed.*
> *2. The penalty of blacklisting may only be imposed when it is necessary to safeguard the public interest from irresponsible or dishonest contractors, and*
> *3. The Corporation being a statutory body, have a higher threshold to satisfy before passing such blacklisting order and therefore, the measures undertaken by it should be reasonable.*

28. Again, the aforesaid decision of this Court was rendered in a case where the blacklisting order was already passed.

29. However, what is important for us to say is that when there are guiding principles explained by this Court as to when & in what circumstances a blacklisting order can be passed then, in our opinion such principles should also be borne in mind by the Authority at the time of issuing a show cause notice. We say so because in the facts of a given case like the one on hand, on the face of which it could be said that there was no good reason for the Authority to issue a show cause notice calling upon the contractor why he should not be blacklisted. Why ask the contractor to face the proceedings when applying the aforesaid principles, the issue of show cause notice would be an empty formality. We are saying all this keeping in mind the peculiar facts of this case.

30. Therefore, the Authority is expected to be very careful before issuing a show cause notice. It is expected to understand the facts well and try to ascertain what sort of violation is said to have been committed by the contractor. As noted above, there is always an inherent power in the Authority to blacklist a contractor. But possessing such inherent power and exercising such power are two different situations and connotations. There may be a power but there should be reasonable ground to exercise such power.

31. To put it by way of an illustration, the Police has the power to arrest but it is not necessary that in all cases arrest must be *effected. The Police should know whether at all arrest is necessary.*

32. We may put it in a slightly different way. Take for instance, the show cause notice in the present case is the final order of blacklisting. The final order in any case cannot travel beyond the show cause notice. Therefore, we take the show cause notice as the final order. Whether it makes out a case for blacklisting? This should be the test to determine whether it is a genuine case to blacklist a contractor or visit him with any other penalty like forfeiture of EMD, recovery of damages etc. We say so because once an order of blacklisting is passed the same would put an end to the business of the person concerned. It is a drastic step. Once the final order blacklisting the Contractor is passed then the Contractor is left with no other option but to go to the High Court invoking writ jurisdiction under Article 226 of the Constitution and challenge the same. If he succeeds before the Single Judge then it is well and good otherwise he may have to prefer a writ appeal or LPA as the case may be. This again would lead to unnecessary litigation in the High Courts. The endeavour should be to curtail the litigation and not to overburden the High Courts with litigations of the present type more particularly when the law by and large is very well settled and there is no further scope of any debate.

33. As observed by this Court in Erusian Equipment & Chemicals Ltd. v. State of W.B., (1975) 1 SCC 70, an order of blacklisting casts a slur on the party being blacklisted and is stigmatic. Given the nature of such an order and the import thereof, it would be unreasonable and arbitrary to visit every contractor who is in breach of his contractual obligations with such consequences. There have to be strong, independent and overwhelming materials to resort to this power given the drastic consequences that an order of blacklisting has on a contractor. The power to blacklist cannot be resorted to when the grounds for the same are only breach or violation of a term or condition of a particular contract and when legal redress is available to both parties. Else, for every breach or violation, though there are legal modes of redress and which compensate the party like the Corporation before us, it would resort to blacklisting and at times by abandoning or scuttling the pending legal proceedings.

34. Plainly, if a contractor is to be visited with the punitive measure of blacklisting on account of an allegation that he has committed a breach of a contract, the nature of his conduct must be so deviant or aberrant so as to warrant such a punitive measure. A mere allegation of breach of contractual obligations without anything more, per se, does not invite any such punitive action.

35. Usually, while participating in a tender, the bidder is required to furnish a statement undertaking that it has not been blacklisted by any institution so far and, if that is not the case, provide information of such blacklisting. This serves as a record of the bidder's previous experience which gives the purchaser a fair picture of the bidder and the conduct expected from it. Therefore, while the debarment itself may not be permanent and may only remain effective for a limited, pre-determined period, its negative effect continues to plague the business of the debarred entity for a long period of time. As a result, it is viewed as a punishment so grave, that it must follow in the wake of an action that is equally grave.

36. In the overall view of the matter more particularly in the peculiar facts of the case, we have reached the conclusion that asking the appellant herein to file his reply to the show cause notice and then await the final order which may perhaps go against him, leaving him with no option but to challenge the same before the jurisdictional High Court will be nothing but an empty formality. Even otherwise, issuing of show cause notice if not always then at least most of the times is just an empty formality because at the very point of time the show cause notice is issued the Authority has made up its mind to ultimately pass the final order blacklisting the Contractor. In other words, the show cause notice in most of the cases is issued with a pre-determined mind. It has got to be issued because this Court has said that without giving an opportunity of hearing there cannot be any order of blacklisting. To meet with this just a formality is completed by the Authority of issuing a show cause notice."

376. Entertainability of the writ petition depends upon several factors. The writ petition is always maintainable, but if the alternate remedy is efficacious, the constitutional courts refrain themselves to entertain the petition and imposes self-restrictions. In case of

violation of fundamental rights, despite having an alternate remedy, the power of judicial review to test such action for arbitrariness, proportionality or violation of natural justice lies exclusively with the High Court under Article 226 of the Constitution. The Supreme Court in the matter of **Whirlpool Corporation**[20]has held that the bar of alternative remedy does not apply when the action complained of is without jurisdiction and violates natural justice or infringes fundamental rights. The relevant paras of the judgment are as under:-

> *"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose.*
>
> *15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."*

377. Supreme Court in its celebrated matter **Blue dreams**[22] considered the issue of entertainability of writ petition in the blacklisting matters and observed as under:-

"25. In other words, where the case is of an ordinary breach of contract and the explanation offered by the person concerned raises a bona fide dispute, blacklisting/debarment as a penalty ought not to be resorted to. Debarring a person albeit for a certain number of years tantamounts to civil death inasmuch as the said person is commercially ostracised resulting in serious consequences for the person and those who are employed by him.

26. Too readily invoking the debarment for ordinary cases of breach of contract where there is a bona fide dispute, is not permissible. Each case, no doubt, would turn on the facts and circumstances thereto.

27. Examining the facts of this case from that perspective, we find that the appellant, after the award of the tender, has admittedly paid an amount of Rs 3,71,96,265, though, according to the Corporation, the outstanding amount as on the date of the debarment was Rs 14,63,24,727. However, as would be clear from the facts discussed hereinabove, right from the inception there have been issues between the appellant and the Corporation with regard to the fulfilment of the reciprocal obligations in the bid document. There has been exchange of correspondence between the parties with each side blaming the other for not performing the reciprocal obligations. While the appellant had a case with regard to the non-issuance of work orders; non-receipt of formal format of bank guarantee; refusal of no-objection certificate for obtaining connection from Calcutta Electric Supply Corporation Ltd.; existence of only 200 out of 250 allotted street hoardings and so on demonstrating breach of obligations by the Corporation, the Corporation had a case that bank guarantee was not the mode of payment and as such there was no reason to insist on bank guarantee; that in the joint inspection the appellant's men failed to cover all the areas and thereafter when the appellant was asked to submit a list of allotted location, the appellant failed to furnish the same and further there was huge default on the part of the appellant."

378. The Division Bench of this Court in the matter of **Alok Kumar Choubey**[24] entertained the writ petition arising out of a works contract challenging the validity of an order, whereby the amount of performance guarantee (security) submitted by the contractor was forfeited. The Division Bench considered the various

pronouncements of the Supreme Court and seven well recognized exceptions to the rule of alternative remedy have been culled out from the judgments of Supreme Court for entertaining a writ petition under Article 226/227 of the Constitution of India and the Division Bench summarized them. The relevant paras reads as under:-

> *"6. Dealing first of all the preliminary objection of the respondents that since the petitioner has got an efficacious alternative remedy in view of dispute resolution system provided under Clause 12 of the agreement, the writ petition ought not to be entertained, what is to be seen is whether such remedy can indeed said to be 'efficacious'. The word 'efficacious' is adjective according to grammar and its noun is 'efficacy', which is derived from Latin word 'efficacie' which means capacity7 to produce results. Accordingly, the word 'efficacious' means able to produce the intended effect or result. The Gauhati High Court in Abdul Sammad v. Executive Committee of the Marigaon Mahkuma Parishad, AIR 1981 Gau 15, held that it is well-known that the meaning of the term "efficacious" is "able to produce the intended result". The High Court negatived the preliminary objection raised by the respondents with regard to maintainability of the writ petition, as its view was that the alternative remedy provided in that case was not likely to produce the intended result.*
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> *7. In Raja Anand v. State of Uttar Pradesh, AIR 1967 SC 1081, relying upon the judgment in White and Collins v. Minister of Health, [1939] 2 K.B. 838, the Supreme Court held that where the jurisdiction of an administrative authority depends upon a preliminary findings of facts, the High Court is entitled in a writ proceeding to determine upon its independent judgment whether or not the finding of facts is correct. In State of Madhya Pradesh v. D.K. Jadav, AIR 1968 SC 1186, the apex Court again held that when the jurisdiction of an administrative authority depends on preliminary findings of fact, the High Court can go into the correctness of the same under Article 226.*
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> *8. The Supreme Court in Salonah Tea Co. Ltd. v. Superintendent of Taxes, Nowgong - (1988) 1 SCC 401, held that normally in a case where tax or money has been realized*

without the authority of law, there is in such cases concomitant duty to refund the realization as a corollary of the constitutional inhibition that should be respected unless it causes injustice or loss in any specific case or violates any specific provision of law. If the tax was collected without authority of law, the respondents had no authority to retain the money and were liable to refund the same, held the Supreme Court. It held that in an application under Article 226 of the Constitution, the Court has power to direct refund, however, courts have made a distinction between those cases where a claimant approaches a High Court seeking relief of obtaining refund only and those where refund is sought as a consequential relief after striking down of the order of assessment etc. A petition solely praying for issue of a writ of mandamus directing the State to refund the money allegedly collected by the State of tax is not ordinarily maintainable for the simple reason that a claim for such a refund can always be made in a suit against authority which had illegally collected the money as a tax. In Godavari Sugar Mills Limited v. State of Maharashtra reported in (2011) 2 SCC 439, also it was held by the Supreme Court that there is a distinction between cases where a claimant approaches the High Court seeking the relief of obtaining only refund and those where refund is sought as a consequential relief after striking down the order of assessment.

9. The judgment of the Supreme Court in Whirlpool Corporation v. Registrar of Trade Marks, reported in (1998) 8 SCC 1, is the landmark decision on the question of maintainability of writ petition despite availability of alternative remedy. In that case too, it was held by the Supreme Court that under Article 226 of the Constitution, the High Court having regard to the facts of the case, has discretion to entertain or not to entertain a writ petition. The High Court has imposed upon itself certain restrictions, one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction, but the alternative remedy has been consistently held by the Supreme Court not to operate as a bar in at least four contingencies, namely, where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or where the vires of an Act is challenged.

In Whirlpools Corporation (supra), the Supreme Court followed its earlier two Constitution Bench judgments in A.V. Venkateswaran, Collector of Customs v. Ramchand Sobhraj Wadhwani - AIR 1961 SC 1506 and Calcutta Discount Co. Ltd. v. ITO, Companies Distt. - AIR 1961 SC 372.

In A.V. Venkateswaran, Collector of Customs (supra), the Supreme Court held as under:—

> *"The passages in the judgments of this Court we have extracted would indicate (1) that the two exceptions which the learned Solicitor General formulated to the normal rule as to the effect of the existence of an adequate alternative remedy were by no means exhaustive, and (2) that even beyond them a discretion vested in the High Court to have entertained the petition and granted the petitioner relief notwithstanding the existence of an alternative remedy. We need only add that the broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual fact which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus preeminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the Court"*

In Calcutta Discount Co. Ltd. (supra), the Supreme Court held as under:

> *"Though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Courts will issue appropriate orders or directions to prevent such consequences. Writ of certiorari and prohibition can issue against the*

Income Tax Officer acting without jurisdiction under Section 34, Income Tax Act."

10. The Supreme Court in Union of India v. State of Haryana - (2000) 10 SCC 482, has added one more exception to the rule of alternative remedy, namely, the writ petition can be entertained despite alternative remedy if the question raised is purely legal one, there being no dispute on facts.

11. In Verigamto Naveen v. Govt. of A.P., reported in (2001) 8 SCC 344, the Supreme Court held that the freedom of the Government to enter into business with anybody it likes is subject to the condition of reasonableness and fair play as well as public interest. It was further held that after entering into a contract, in cancelling the contract, which is subject to terms of the statutory provisions, it cannot be said that the matter falls purely in a contractual field and therefore, it cannot be held that since the matter arises purely on contract, interference under Article 226 of the Constitution is not called for.

12. In State of Tripura v. Manoranjan Chakraborty, (2001) 10 SCC 740, the Apex Court held that if gross injustice is done and it can be shown that for good reason the Court should interfere, then notwithstanding the alternative remedy which may be available by way of appeal or revision, a Writ Court can in an appropriate case exercise its jurisdiction to do substantial justice.

13. In State of H.P. v. Gujarat Ambuja Cement Limited - (2005) 6 SCC 499 : AIR 2005 SC 3936, the Supreme Court while considering the objection of alternative remedy to filing of writ petition under Article 226 of the Constitution, held that despite existence of alternative remedy, it is within the discretion of the High Court to grant relief under Article 226 of the Constitution. But normally the High Court should not interfere if there is efficacious alternative remedy is available. If somebody approaches the High Court without availing alternative remedy provided, the High Court should ensure that he has made out a strong case that there exists good ground to invoke the extraordinary jurisdiction. Following observations of the Supreme Court are reproduced herein for the facility of reference:—

"Where under a statute there is an allegation of infringement of fundamental rights or when on

the undisputed facts the taxing authorities are shown to have assumed jurisdiction which they do not possess can be the grounds on which the writ petitions can be entertained. But normally, the High Court should not entertain writ petitions unless it is shown that there is something more in a case, something going to the root of the jurisdiction of the officer, something which would show that it would be a case of palpable injustice to the writ petitioner to force him to adopt the remedies provided by the statute. It was noted by this Court in L. Hirday Narain v. Income Tax Officer, Bareilly, (1970) 2 SCC 355 : AIR 1971 SC 33 that if the High Court had entertained a petition despite availability of alternative remedy and heard the parties on merits it would be ordinarily unjustifiable for the High Court to dismiss the same on the ground of non exhaustion of statutory remedies; unless the High Court finds that factual disputes are involved and it would not be desirable to deal with them in a writ petition."

14. In Zonal Manager, Central Bank of India v. Devi Ispat Limited, (2010) 11 SCC 186, the Supreme Court held that writ of mandamus can be issued even in contractual matters and in paragraph- 28 of the said judgment, the apex Court held as under:—

"28. It is clear that (a) in the contract if there is a clause for arbitration normally, a writ court should not invoice its jurisdiction; (b) the existence of effective alternative remedy provided in the contract itself is a good ground to decline to exercise its extraordinary jurisdiction under Article 226; and (c) if the instrumentality of the State acts contrary to the public good, public interest, unfairly, unjustly, unreasonably discriminatory and violative of Article 14 of the Constitution of India in its contractual or statutory obligation, writ petition would be maintainable. However, a legal right must exist and corresponding legal duty on the part of the State and if any action on the part of the State is wholly unfair or arbitrary, writ courts can exercise their power. In the light of the legal position, writ petition is

maintainable even in contractual matters, in the circumstances mentioned in the earlier paragraphs."

15. In Joshi Technologies International Inc. v. Union of India, reported in (2015) 7 SCC 728, the Supreme Court held that the State in its executive capacity, even in the contractual field, is under obligation to act fairly and cannot practice some discrimination. If the facts of such case are disputed and require assessment of evidence the correctness of which can only be tested satisfactorily by taking detailed evidence. Involving examination and cross-examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article 226 of the Constitution.

16. Seven well recognized exceptions to the rule of alternative remedy, which can be culled out from the afore-discussed judgments of the Supreme Court for entertaining a writ petition under Article 226/227 of the Constitution, can be summarized thus : (i) where the writ petition has been filed for enforcement of fundamental rights; (ii) where there has been violation of principle of natural justice; (iii) where the order of proceedings is wholly without jurisdiction; (iv) where the vires of any Act is under challenge; (v) where availing of alternative remedy subjects a person to very lengthy proceedings and unnecessary harassment; (vi) where the writ petition can be entertained despite alternative remedy if the question raised is purely legal one, there being no dispute on facts; and (vii) where State or its intermediary in a contractual matter acts against public good/interest unjustly, unfairly, unreasonably and arbitrarily. Despite afore-noted exceptions, especially fifth and seventh of the above, whether or not in a particular case the writ court should entertain a petition under Article 226/227 of the Constitution of India rather than requiring the petitioner to avail alternative remedy, would always depend on the facts situation of a given case, upon the petitioner making out a strong case. If it is shown that the facts of the case are not disputed and the Government or its instrumentality has been found acting unjustly, unfairly and unreasonably even in regard to its contractual obligations, the High Court would be justified in entertaining the writ petition despite availability of alternative remedy.

17. In view of what has been discussed above, the question is no longer res integra that if instrumentality of the State acts contrary to the public good, public interest unfairly, unjustly, *unreasonably, discriminatory and violative of Article 14 of the Constitution of India in its contractual or statutory obligation, the writ petition would be maintainable."*

379. **<u>The writ petition under Article 226 of the Constitution of India is always maintainable however due to availability of the alternate remedy against the order of blacklisting, the entertainability of the writ petition will depend upon the facts and circumstances of each case and in the appropriate cases, the constitutional courts may entertain the writ petition,even in a case of composite order of termination of contract and blacklisting except the cases, wherein recording of evidence is required to decide the validity of the order of blacklisting</u>**.

<u>CONCLUSIONS</u>

380. On the basis of the foregoing analysis, we may summarize our conclusion and the questions referred by the learned division bench are answered,as under:-

(i) Power to blacklist/debar a contractor in addition to a clause of contract emerges from the inherent power of the State and its instrumentalities flowing from the power to carry on the trade or business provided under Article 298 of the Constitution of India and blacklisting is essentially an administrative act in nature.

(ii) Blacklisting or debarment order can only be passed by the Chief Engineer or any officer equivalent to his rank on the strength of the circular issued by Public Works Department on

24.03.2015 and the Competent Authority and/or Appellate Authority defined under the contract can only recommend for blacklisting or debarring a contractor to the Chief Engineer and cannot pass the order of blacklisting or debarment despite a clause in the contract.

(iii) Blacklisting is having severe civil consequences, loss of business opportunities, goodwill etc. and amounts to a civil and commercial death of a person or entity, who is prevented from participation in future tenders. It is a stigma and the loss caused due to the order of blacklisting or debarment is not a monetary loss, thus not computable/quantifiable/ascertainable.

(iv) The challenge to the order of blacklisting does not amount to a dispute defined under Section 2(1)(d) of Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 and, therefore, not referable to the statutory arbitration tribunal.

(v) The judgment delivered in the matter of **Gouri Ganesh Shri Balaji Constructions "C" Class Contractor Vs. Executive Engineer, PWD**[1]and **Awasthi Brothers Construction Company v/s The State of Madhya Pradesh & Others**[19] have not held that the loss due to order of blacklisting is an ascertainable loss and the Full Bench and Division Bench in these cases held that the relief for blacklisting is a consequential relief and may be sought from the statutory arbitral tribunal with the main monetary claim.

(vi) In view of this Court **Gouri Ganesh**[1] and **Awasthi Brothers**[19] have not laid down the correct law in holding that the relief of blacklisting is a consequential relief and referable to the Arbitral Tribunal constituted under the Adhiniyam, 1983.

(vii) Full Bench of this Court in **Viva Highways Ltd. Vs. M.P. Road Development Corporation Ltd**[2] has correctly held that the loss due to blacklisting order is not ascertainable in money.

(viii) As the challenge to the blacklisting order does not fall under the definition of dispute given under Section 2(1)(d) of Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983, the bar created under Section 20 of the Adhiniyam, 1983 is not applicable and a civil suit for declaration is maintainable to challenge the order of blacklisting before civil court.

(ix) Writ petition under Article 226/227 of the Constitution of India is maintainable, even in a case of composite order of blacklisting and termination of contract, if any fundamental right of any citizen is infringed or any order is passed in violation of the principles of natural justice and thus, the writ petition may be entertained by the constitutional courts challenging the order of blacklisting depending upon the facts and circumstances of each case.

(x) The amendment, 2025 incorporated in the Adhiniyam, 1983 are not having any effect on the maintainability of the dispute, qua blacklisting.

(xi) As per amended provisions of Section 17-A and newly inserted Section 17-AB, the statutory arbitration tribunal empowers to grant the interim relief to the parties in appropriate cases.

381. The question no. 1 and 2 of the reference are answered accordingly.

382. Before we close, we record our indebtedness to the learned amicus curiae Shri Amit Agrawal, Shri V.K. Jain, Shri Ashok Sethi, Shri Piyush Mathur and Ravindra Singh Chhabra – Senior Advocates, Shri Naman Nagrath, Shri Shekhar Sharma, Shri Sumit Nema, Senior Advocates, Shri Suyash Mohan Guru, Shri Anshuman Singh, Shri Vivek Ranjan Pandey, Shri H. Y. Mehta, Shri Piyush Shrivastava Advocate, Shri Amit Kumar Singh Advocate, Shri Aniket Abhay Naik, Shri Pradyumna Kibe, Shri Ajay Mishra, Shri Navneesh Johri, Shri Rohit Mangal, who appeared voluntary in this case and enlightened us with regard to issues involved in this writ petition, which are of seminal importance, both for constitutional law as well as for the society in general.

383. All the learned counsels apart from oral submissions have submitted their excellent brief written notes touching various issues with the copies of the judgments of Supreme Court and High Courts relied by them and uploaded the same on the ERP of the official website of this Court, which were sought to be canvassed by them before this Court, and hence rendered valuable assistance to us.

384. The parties shall bear their own costs.

385. The Registrar is directed to place this matter before appropriate Bench.

(Vivek Rusia)	**(Vinay Saraf)**	**(Alok Awasthi)**
Acting Chief Justice	**Judge**	**Judge**

***Per : Subodh Abhyankar J. (Concurring)*-**

386. I have had the privilege of reading the judgment as scripted by brother Vinay Saraf, J. and although I am also in respectful agreement with the same with minor variations, however, on the issues involved, it is necessary for me to express my own opinion as well, for the reason that I also happened to be one of the signatories to the decision rendered by the Full Bench in the case of ***Gauri Ganesh*[1]*,*** the veracity of whichis being scrutinized by this Larger Bench.

387. In retrospect, I find that ***Gauri Ganesh*[1]** does not lay down the good law by interpreting the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 (hereinafter referred to as 'the Adhiniyam of 1983') and by reading into it such provisions which are neither envisaged nor intended by the legislature and have rightly been excluded from its purview.

388. Before I proceed to deal with the issues at hand as posed in the reference, it would also be necessary to reflect upon the reference itself which has been made by the Division Bench of this Court in the present petition ***(Nitin Enterprises vs Urban Administration And Development Department)*** vide its order dated 20.07.2021, while disagreeing with the decision rendered by the Full Bench of this Court in the case of ***Gauri Ganesh*[1].** The relevant paras of the same read as under:-

> *14. In the judgment of Gouri Ganesh (supra), although full bench agreed with the ratio decidendi of the previous full bench judgment of Viva Highways (supra), went a step further and observed that loss arising out of blacklisting is computable. To this extent, we respectfully disagree with*

the view taken in Gouri Ganesh (supra).The necessary corollary of such disagreement would be that if amount arising out of blacklisting is not ascertainable/ascertained, the dispute relating to blacklisting will not fall within the ambit of "dispute" as defined in Sec.2(1)(d) of Adhiniyam. In that case, petitioner cannot be relegated to avail the remedy under the Adhiniyam.

15. Another ancillary question needs consideration is that if amount of loss arising out of blacklisting order is not ascertainable and does not fall within the ambit of "dispute" and writ petition is tenable, whether petitioner should still be relegated to avail the remedy under WP No.9623/2021 8 the Adhiniyam because composite order under challenge contains both the negative aspects i.e. (i) termination of contract (ii) blacklisting.

16. In view of above disagreement with the view taken by previousbenches, we deem it proper to request Hon'ble The Chief Justice forconstituting a larger bench to consider following questions:-

*(i) Whether the loss arising out of blacklisting order can beascertainable/ascertained and hence falls within the ambit of Section2(1)(d) of the Adhiniyam. If not, whether the Full Bench in **GouriGanesh** (supra) and Division Bench in **Awasthi Brother ConstructionCompany** (supra)b have correctly opined that against blacklisting orderalso contractor has a remedy before the Tribunal constituted under theAdhiniyam ?*

(ii) If a composite order of termination of contract andblacklisting is called in question in a writ petition and no remedy isavailable to the contractor against the blacklisting order before theTribunal, whether a writ petition against a composite order isentertain able despite availability of remedy against the termination ofworks contract under the Adhiniyam?

17. Registry of this Court is directed to place this order to the notice of Hon'ble The Chief Justice.

389. Although, I am of the considered opinion that prior to placing this matter to this Larger Bench of five Judges, it should have been placed before a Bench comprising of three Judges as has also been held by the Supreme Court in the case of ***Union of India Vs. Hansoli Devi & Others, (2002) 7 SCC 273***[112], However, since the present reference has been heard at length, and also the legal issues are indeed involved, it has to be answered so that the conundrum revolving around an order of blacklisting of an entity can be resolved. At the cost of repetition, the reference has been made on the following questions of law:-

> *(i) Whether the loss arising out of blacklisting order can be ascertainable/ascertained and hence falls within the ambit of Section 2(1)(d) of the Adhiniyam. If not, whether the Full Bench in Gouri Ganesh (supra) and Division Bench in Awasthi Brother Construction Company (supra) have correctly opined that against blacklisting order also contractor has a remedy before the Tribunal constituted under the Adhiniyam ?*
>
> *(ii) If a composite order of termination of contract and blacklisting is called in question in a writ petition and no remedy is available to the contractor against the blacklisting order before the Tribunal, whether a writ petition against a composite order is entertainable despite availability of remedy against the termination of works contract under the Adhiniyam?*

390. The reason for my deferring from the earlier view taken in the case of ***Gauri Ganesh***[1] has its roots in the observations made in the said case while mandating consequential relief in an application filed

[112] Union of India Vs. Hansoli Devi & Others, (2002) 7 SCC 273

under Section 7 of the Adhiniyam of 1983. The relevant para of ***Gauri Ganesh*[1]*,*** which is germane for the purpose of deciding the reference is as hereunder: -

> *"55. Thus, we hold that the expression "ascertained amount" appearing in Section 2(1) (d) of the State Act includes the amount of consequential relief. If a particular consequential relief can be claimed, the aggrieved person must claim that relief in a reference otherwise the reference would not be maintainable. The consequential relief in a case of termination of contract can be the value of the remaining work; value of revenue recovery certificate would be the consequential relief and the amount of loss computable in terms of money in case of black-listing of the Firm would be the consequential relief".*

391. In my considered view, the scheme of the Adhiniyam of 1983 is to ensure that the work, once started shall not be stopped merely if the contractor commits any breach of the contract or for any other reason and thus the remaining work can be awarded to some debitable agency who would carry out the work at the cost and consequence of the original contractor. That is why the definition of dispute as provided under Section 2(1)(d) is confined only to the monetary claims and nothing more, and any other relief in the form of a declaration and injunction is clearly barred by necessary implication. Section 2(1)(d) reads as under:-

> *2. Definitions.—(1) in this Act, unless the context otherwise requires:-*
>
> *(d) "dispute' means claim of ascertained or ascertainable money valued at Rupees 50,000 or more relating to any difference arising out of the execution or non-execution of a works contract or part thereof;*

392. Earlier there was no provision of injunction or stay in the Adhiniyam of 1983, and in fact it was specifically barred under Section 17A, but according to the newly added section 17AB of The Madhya Pradesh Madhyastham Adhikaran (Sanshodhan) Adhiniyam, 2025 (hereinafter referred to as 'the Amendment Act of 2025') certain orders of interim nature can be sought. This provision is discussed in the subsequent paragraphs of this order.

393. Thus, so far as the termination of a contract is concerned, the legislative intent was clear right from the beginning that a contractor can only claim the disputed amount as provided under Section 2(1)(d) read with Section 7 of the Adhiniyam of 1983, and no other relief can be allowed to be claimed by him, and any other relief, other than the claim of ascertained or ascertainable money was deliberately excluded from the purview of the Tribunal. It must be noted that the Tribunal is not a Civil Court and does not enjoy the powers of the same, and cannot pass a declaratory decree, and if it is held that for all the practical purposes, the Tribunal is a Civil Court, then the very purpose of constitution of the Tribunal under the Adhiniyam of 1983 shall be lost. In this regard it would be apt to refer to Section 34 of the Specific Relief Act, 1963 (hereinafter referred to as 'the Act of 1963'), which reads as under:-

> ***"S.34. Discretion of court as to declaration of status or right.—***
> *Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:*

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation.—A trustee of property is a "person interested to deny" a title adverse to the title of someone who is not in existence, and whom, if in existence, he would be a trustee."

(Emphasis Supplied)

394. It appears that the observations made in the case of ***Gauri Ganesh***[1] have borne out of the proviso to Section 34 of the Act of 1963. Assuming that a declaration can also be made by the Tribunal which can also be executable as a decree of a Civil Court, it would lead to an anomalous situation, because in a case of termination of contract, during the pendency of the litigation before the Tribunal if the contract is reassigned to some other party (*viz*., a debitable agency), in case of a favourable order by the Tribunal in favour of the contractor, would the work be taken back from the succeeding agency in the middle of its contract and again given back to the contractor ?, the answer is a clear no. If this is allowed to happen, it would result not only in heavy losses to public exchequer but would also frustrate the very object of the Act which is to ensure that the work once started should not be stopped in any manner.

395. In such circumstances, I am of the considered view that any relief of declaration by the Tribunal holding that the termination of contract is illegal or bad, cannot be deemed to be ***'declaration'*** in terms of Section 34 of the Specific Relief Act, 1963 but only a pronouncement that the contract has been wrongly terminated by the Government Agency, for which the contractor is liable to be paid the claims as provided under the Adhiniyam of 1983.

396. On the other hand, there may also be instances where the contractor is only aggrieved by the order of blacklisting simpliciter, without any financial claim or consequences, but owing to the order passed in the case of ***Gauri Ganesh***[1], in order to bring his case within the ambit of the Adhiniyam of 1983, the contractor is compelled to make a false claim in addition to assailing the order of blacklisting, thus, to hold that a contractor must put a value to his relief in case of his assailing the order of blacklisting, would only promote the dishonesty which was certainly not the object of the legislature while enacting the Act of 1983.

397. So far as the nature of the order of blacklisting is concerned, it cannot be described better than what the Supreme Court has already held in the case of ***Gorkha Security Services v. State (NCT of Delhi)***[10]***,*** that it has the effect of causing civil death of a person. The relevant para of the same reads as under:-

> *"16. It is a common case of the parties that the blacklisting has to be preceded by a show-cause notice. Law in this regard is firmly grounded and does not even demand much amplification. The necessity of compliance with the principles of natural justice by giving the opportunity to the person against whom action of blacklisting is sought to be taken has a valid and solid rationale behind it. With blacklisting, many civil and/or evil consequences follow. It is described as "civil death" of a person who is foisted with the order of blacklisting. Such an order is stigmatic in nature and debars such a person from participating in government tenders which means precluding him from the award of government contracts."*
>
> ***(Emphasis Supplied)***

398. Thus, it is apparent that an order of blacklisting is a drastic step taken by the State resulting in an immediate civil death of a person

precluding him from participating in government and other tenders also and if not remedied immediately, the person may never be able to recover from an irretrievable damage to his business and the reputation which may not be ascertained in terms of money. But in certain cases, a contractor may be able to put a value to the losses suffered by him due to an order of blacklisting which is a different class of cases. Thus, the remedy against an order of blacklisting, in my considered opinion, in certain category of cases, can only be had by him by invoking writ jurisdiction of this Court under Article 226 of the Constitution of India to claim his fundamental rights under Articles 14 and 19 of the Constitution, and not by applying to the Arbitration Tribunal which may take years together to decide the case.

399. Regarding the category of cases which may be taken to the High Court in a writ, I am also of the considered opinion that the remedy available to a contractor against the order of blacklisting would also depend upon the order of blacklisting itself, for an instance, if the order has been passed without giving due opportunity of hearing to the contractor, or without observing the due process as prescribed in the contract, or without properly showing cause to the petitioner that he is likely to be blacklisted, or any other matter which does not require leading of any elaborate evidence, where the contractor is not seeking any monetary claim as well, the fastest remedy that would be available to a contractor would be to file a writ petition under Article 226 of the Constitution of India.

400. However, in any other case of blacklisting in which monetary claim has also been made by the contractor over and above the minimum amount of Rs. 50,000/- as provided under Section

2(1)(d), which require elaborate evidence, the remedy would be to approach the Arbitration Tribunal only. Thus, in case of an order of blacklisting, a contractor can approach only either the High Court under Art. 226 of the Constitution or to the Arbitration Tribunal under the provisions of the Adhiniyam of 1983, whereas u/s.20 of the same there shall be a bar of jurisdiction of the Civil Court.

401. **In view of the aforesaid discussion, I am of the considered view that the observations made in para 55 by the Full Bench of this Court in the case of *Gauri Ganesh*[1] and subsequently,*Awasthi Brother ConstructionCompany*[19],which followed *Gauri Ganesh*[1], do not enunciate the law properly, and thus, I hold that under the Adhiniyam of 1983, a contractor cannot be compelled to seek a relief of declaration against the order of blacklisting and to seek monetary claim as a consequential relief.**

402. **Further, in the case of a composite order of termination of contract and blacklisting, since an order of termination of contract can only have financial implications, it can only be taken to the Arbitration Tribunal seeking monetary claims, but regarding the blacklisting part of it, I am of the considered view that the same can be challenged separately by way of writ petition if the conditions as specified in para 399 above are satisfied, and otherwise it can be assailed along with the order of termination before the Arbitration Tribunal if it falls within the category of cases described in para 400 above.**

403. So far as the Amendment Act of 2025 is concerned, which came into force on 30th of April, 2026, Shri Prashant Singh, learned AG has tried to rely upon Section 17AB of the same to submit that an interim order can be passed by Arbitration Tribunal in case of an

order of blacklisting.For ready reference, Section 17ABwhich refers to the interim measures is being reproduced as hereunder:-

> ***"17AB.*** *(1) A party may, before or during arbitral proceedings or at any time after making of the award but before it is enforced in accordance with Section 18, apply to a Tribunal,-*
>
> *(i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or*
>
> *(ii) for an interim measure of protection in respect of any of the following matters, namely: -*
>
> *(a) the preservation, interim custody, encashment of bank guarantee or sale of any goods which are the subject-matter of the arbitration agreement;*
>
> *(b) the preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;*
>
> *(c) order of restitution.*
>
> *(2) No order of interim measures shall be passed without affording opportunity of hearing to opposite party. In appropriate cases Tribunal may discharge, or vary, or set aside the order of interim measures particularly where party in whose favour order is passed is not cooperating to conclude the case."*

404. A bare perusal of the said section would clearly reveal that it does not address the issues raised in this petition in any manner. I am of the considered view that by way of any interim order etc. as

prescribed under Section 17AB, there is no room under to redress the grievance of a contractor who has been blacklisted.

405. Accordingly, the reference is answered.

406. I sincerely appreciate the efforts put in by all the Advocates, Senior Advocates, Advocate General, Additional Advocate Generals and the other Advocates of the Office of the Advocate General, who have assisted this Court to arrive at the conclusion in respect of the issues involved.

(Subodh Abhyankar)
Judge

Per : Vivek Agarwal J. (Dissenting):

407. I have gone through the judgment authored by learned brother Justice Shri Vinay Saraf, in a very meticulous and thorough manner, answering various issues.

408. While answering these issues, learned brother Justice Shri Saraf has come to the following conclusions:-

(i)*Power to blacklist/debar a contractor in addition to a clause of contract emerges from the inherent power of the State and its instrumentalities flowing from the power to carry on the trade or business provided under Article 298 of the Constitution of India and blacklisting is essentially an administrative act in nature.*

(ii) *Blacklisting or debarment order can only be passed by the Chief Engineer or any officer equivalent to his rank on the strength of the circular issued by Public Works Department on 24.03.2015 and the Competent Authority and/or Appellate Authority defined under the contract can only recommend for blacklisting or debarring a contractor to the Chief Engineer and cannot pass the order of blacklisting or debarment despite a clause in the contract.*

(iii)*Blacklisting is having severe civil consequences, loss of business opportunities, goodwill etc. and amounts to a civil and commercial death of a person or entity, who is prevented from participation in future tenders. It is a stigma and the loss caused due to the order of blacklisting or debarment is not a monetary loss, thus not computable/quantifiable/ascertainable.*

(iv)*The challenge to the order of blacklisting does not amount to a dispute defined under Section 2(1)(d) of Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 and, therefore, not referable to the statutory arbitration tribunal.*

(v)*The judgment delivered in the matter of* **Gouri Ganesh Shri Balaji Constructions "C" Class Contractor Vs. Executive Engineer, PWD**[1]*and* **Awasthi Brothers Construction Company v/s The State of Madhya Pradesh & Others**[19] *have not held that the loss due to order of blacklisting is an ascertainable loss and the Full Bench and Division Bench in these cases held that the relief for blacklisting is a consequential relief and may be sought from the statutory arbitral tribunal with the main monetary claim.*

(vi) *In view of this Court* **Gouri Ganesh**[1] *and* **Awasthi Brothers**[19] *have not laid down the correct law in holding that the relief of blacklisting is a consequential relief and referable to the Arbitral Tribunal constituted under the Adhiniyam, 1983.*

(vii) *Full Bench of this Court in* **Viva Highways Ltd. Vs. M.P. Road Development Corporation Ltd**[2] *has correctly held that the loss due to blacklisting order is not ascertainable in money.*

(viii) *As the challenge to the blacklisting order does not fall under the definition of dispute given under Section 2(1)(d) of Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983, the bar created under Section 20 of the Adhiniyam, 1983 is not applicable and a civil suit is maintainable to challenge the order of blacklisting before civil court.*

(ix) *Writ petition under Article 226/227 of the Constitution of India is maintainable, even in a case of composite order of blacklisting and termination of contract, if any fundamental right of any citizen is infringed or any order is passed in violation of the principles of natural justice and thus, the writ petition may be entertained by the constitutional courts challenging the order of blacklisting depending upon the facts and circumstances of each case.*

***(x)** The amendment, 2025 incorporated in the Adhiniyam, 1983 are not having any effect on the maintainability of the dispute, qua blacklisting.*

***(xi)** As per amended provisions of Section 17-A and newly inserted Section 17-AB, the statutory arbitration tribunal empowers to grant the interim relief to the parties in appropriate cases.*

409. While going through the elaborate judgment rendered by learned brother Justice Shri Vinay Saraf, few points came to my mind, namely, whether doors of statutory Forum can be closed forever in the matters arising out of blacklisting. The aim and object behind establishment of the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983, are that it is "An Act to provide for the establishment of a Tribunal to arbitrate in disputes to which the State Government or a Public Undertaking, [wholly or substantially owned or controlled by the State Government], is a party, and for matters incidental thereto or connected therewith."

410. This Act was amended in the year 1990, vide M.P. Act No.9 of 1990 (24.04.1990). The aim and object of this amendment were that "The working of the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983, for the last few years has revealed certain difficulties which have come across during the implementation thereof. With a view to tie over the said difficulties and for efficient functioning of the Tribunal, it is proposed to:-

i. …

ii. …

iii. make provision for inherent powers of the Tribunal and powers of correcting arithmetical and clerical mistakes in the award on the lines of Sections 151 and 152 of the Code of Civil Procedure, 1908;

iv. make a specified provision to the effect that no review would lie in the matter of the award and the Tribunal shall have no power to grant injunction, stay or attachment before award;

v. …

411. In the case of **Jabalpur Corridor (India) Pvt. Ltd. v. M.P. Road Development Corporation Ltd.[113],** it is held that the Act of 1983 is an Act enacted under Entry 13 of List III of Seventh Schedule of the Constitution of India and is a special enactment which provides for the establishment of a Tribunal to arbitrate in disputes to which the State Government or a Public Undertaking wholly or substantially owned or controlled by the State Government is a party and for the matters incidental thereto or connected therewith.

412. It is also now well settled that the Act classifies 'works contracts' from other contracts and provides for arbitration by a statutory Tribunal of the dispute arising out of said works contract. Thus, there is a reasonable classification with the object to ensure speedy and impartial trial by an independent Tribunal.

413. As far as constitutionality of the Act is concerned, it has already been held to be intra vires.

414. The Hon'ble Supreme Court in case of **V.A. Tech Escher Wyass Flovel Ltd. Vs. M.P. State Electricity Board[114]**, held that the provisions of the Act of 1983, are applicable only when there is no arbitration Clause between the parties and in cases where there is

[113]Jabalpur Corridor (India) Pvt. Ltd. v. M.P. Road Development Corporation Ltd.2014(2) MPLJ 276
[114]V.A. Tech Escher Wyass Flovel Ltd. Vs. M.P. State Electricity Board (2010) 2 MPHT (SC)

an arbitration Clause, the Act of 1983 stands impliedly repealed by the Arbitration and Conciliation Act, 1996.

415. However, in the case of **M.P. Rural Road Development Authority and another Vs.M/s L.G. Chaudhary Engineers & Contractors**[42]**,** the matter which was placed before the Larger Bench of the Hon'ble Supreme Court for consideration was "whether the provision of Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 which statutorily provides for the parties to the works contract to refer all disputes to the Arbitration Tribunal constituted under Section 7 of the Act will continue to operate in view of the provisions ofArbitration and Conciliation Act, 1996 which is a Central Act, subsequently enacted." This case declared the case of **V.A. Tech Escher Wyass Flovel Ltd.**[113]*per incuriam*.

416. In the case of **Ravi Kant Bansal Vs. M.P. Rural Road Development Authority**[115]**,** it is held that in case where the arbitration clause itself mentions that the arbitration will be by the Madhya Pradesh Arbitration Tribunal, in that case arbitration has to be done by the Tribunal.

417. Section 2(1)(d) of the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983, defines "dispute", which reads as under:-

> *"(d) "dispute" means, claim of ascertained or ascertainable money valued at Rupees 50,000 or more relating to any difference arising out of the execution or non-execution of a works contract or part thereof;"*

418. When we go through the definition of 'dispute' as given under Section 2(1)(d) of the Madhya Pradesh Madhyastham Adhikaran

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[115]Ravi Kant Bansal Vs. M.P. Rural Road Development Authority 2011(4) MPHT 115 (SC)

Adhiniyam, 1983, there are certain important ingredients, namely, claim of ascertained or ascertainable money valued at Rupees 50,000 or more relating to any difference arising out of the execution or non-execution of a works contract or part thereof.

419. When these different words are read in the context of OM No. F 17-1/2010/19/B/ dated 24.03.2015, then it is mentioned in the said OM that earlier OM dated 19.11.1999 provided for demotion, cancellation, suspension and blacklisting of a contractor.

420. The OM dated 24.03.2015 has done away with the requirements of demotion and cancellation and has only provided two modes, namely, that of blacklisting and suspension. Even conditions have been enumerated when this act of blacklisting or suspension may be invoked. The conditions are as under:-

(i) The affidavit/self-declaration contains any false information or suppresses any material information.

(ii) Such bidder whose bid is accepted fails to execute the agreement. The suspension will be in addition to forfeiture of his earnest money or any other penalty imposed as per the tender condition.

(iii) Contractor fails to use mobilization advance given to him for the purpose it was meant.

(iv) Contractor fails to renew the securities deposited to the department.

(v) If documents submitted are found to be false.

(vi) The contractor found to be non-serious in executing the agreement works or leaves the agreemented work incomplete, irrespective of the expiry of the full contract period.

(vii) Contractor fails to rectify any lapse(s) in quality of the work done within a reasonable time.

(viii) Contractor fails to maintain/repair/redo the work upto the expiry of performance guarantee period, when it is specifically brought to his notice.

(ix) On any other ground which is considered reasonable after recording reason.

Note :-

i. During the period of suspension neither his registration will be renewed nor fresh registration will be issued.

ii. Black listed contractor will not be allowed fresh registration or renewal of his registration till order of black listing is revoked or cancelled.

iii. Contractor or firms black listed or suspended or any of it's partner will not be registered under any other name.

iv. Period of suspension should be for a definite period."

421. Thus, it is evident that suspension or blacklisting is for specified reasons enumerated above and when these reasons are taken into consideration, then first reason is furnishing of false information or suppression of material information; Second reason is, after acceptance of bid, failure of the contractor to execute the agreement. That will entail forfeiture of earnest money, imposition of any other penalty as per the tender condition and in addition thereto, suspension; failure of the contractor to use mobilization advance for the purpose which was given; failure of contractor to

renew the securities deposited to the department; if documents submitted are found to be false; the contractor found to be non-serious in executing the agreement works or leaves the agreemented work incomplete; or, there are lapse(s) to rectify in the quality of the work done within a reasonable period or lapse to adhere to performance guarantee period; or, for other any ground which is considered reasonable after recording reason.

422. Thus, it is evident that all the 9 reasons mentioned in the OM dated 24.03.2015, gives rise to civil consequences and also gives rise to either ascertained or ascertainable claims either for wrongly giving the declaration found to be false, resulting in loss of profit or for forfeiture of earnest money or wrongly holding non-utilization of mobilization advance, performance guarantee security, etc.

423. These conditions are part of tender document executed by various departments under the heading of "Special Conditions of Contract".

424. There is a specific mention of the fact in the preamble of the Act of 1983, to provide for establishment of a Tribunal to arbitrate in disputes to which theState Government or a Public Undertaking, is a party, and for matters incidental thereto or connected therewith.

425. Section 14 of the General Clauses Act, 1897, when taken into consideration, then the Hon'ble Supreme Court in case of **State of Uttar Pradesh Vs. Maharaja Dharmander Prasad Singh**[116]**,** held that a power to regulate and in that context to grant permit or permission, will include a power to suspend or cancel the permit or permission as incidental or supplementary to the regulation.

[116]State of Uttar Pradesh Vs. Maharaja Dharmander Prasad Singh (1989) 2 SCC 505

426. Thus, when the State has the power to enter into a contract, it has incidental or supplementary power to cancel the contract and suspend or blacklist the contractor. Therefore, the power to enter into a contract also includes the power to blacklist.Thus, blacklisting emerges from contract itself and in usual course, it cannot be separated from the execution of the contract.

427. It has been noted by learned brother Justice Shri Saraf that the act of blacklisting is not quantifiable i.e. ascertainable and, therefore, when the learned brother has specifically held that remedy in case of blacklisting is available in two forums, namely, writ court or a civil court, then when this fact is examined in the light of the judgment of the Hon'ble Supreme Court in case of **Rashtriya Ispat Nigam Ltd. And another Vs. Verma Transport Co.**[117], it is evident that the Hon'ble Supreme Court held that both in the matter of termination as well as the order of blacklisting, arbitral proceedings are maintainable. In paragraphs 34, 36, 38, 39, 40 and 42, it is held as under:-

> *"34. Thus, they did not submit themselves to the jurisdiction of the court. They did not waive their right. They in effect and substance questioned the jurisdiction of the court in proceeding with the matter. In fact, in its application filed under Section 8 of the 1996 Act, the appellant raised a contention that the suit was liable to be dismissed and the order of injunction vacated in view of the arbitration clause.*
>
> *35. ... ...*
>
> *36. The expression "first statement on the substance of the dispute" contained in Section 8(1) of the 1996 Act must be contradistinguished with the expression "written statement".*

[117] Rashtriya Ispat Nigam Ltd. And another Vs. Verma Transport Co. (2006) 7 SCC 275

It employs submission of the party to the jurisdiction of the judicial authority. What is, therefore, needed is a finding on the part of the judicial authority that the party has waived its right to invoke the arbitration clause. If an application is filed before actually filing the first statement on the substance of the dispute, in our opinion, the party cannot be said to have waived its right or acquiesced itself to the jurisdiction of the court. What is, therefore, material is as to whether the petitioner has filed his first statement on the substance of the dispute or not, if not, his application under Section 8 of the 1996 Act, may not be held wholly unmaintainable. We would deal with this question in some detail, a little later.

37. ... ...

38. In State of Uttar Pradesh and another Vs. Janki Saran Kailash Chandra and another, an application for time to file written statement was considered to be a step in the proceedings. We have noticed hereinbefore the respective scope of Section 34 of the 1940 Act vis-à-vis the scope of Section 8 of the 1996 Act. In view of the changes brought about by the 1996 Act, we are of the opinion that what is necessary is disclosure of the entire substance in the main proceeding itself and not taking part in the supplemental proceeding.

39. By opposing the prayer for interim injunction, the restriction contained in sub-section (1) of Section 8 was not attracted. Disclosure of a defence for the purpose of opposing a prayer for injunction would not necessarily mean that substance of the dispute has already been disclosed in the main proceeding. Supplemental and incidental proceedings are not part of the main proceeding. They are dealt with *separately in the Code of Civil Procedure itself. Section 94 of the Code of Civil Procedure deals with supplemental proceedings. Incidental proceedings are those which arise out of the main proceeding. In view of the decision of this Court in Food Corporation of India and another Vs. Yadav Engineer & Contractor, the distinction between the main proceeding and supplemental proceeding must be borne in mind.*

40. We may notice that a distinction has been made between supplemental proceedings and incidental proceedings by one of us in Vareed Jacob v. Sosamma Geevarghese.

41. ... ...

42. Waiver of a right on the part of a defendant to the lis must be gathered from the fact situation obtaining in each case. In the instant case, the court had already passed an ad interim ex parte injunction. The appellants were bound to respond to the notice issued by the Court. While doing so, they raised a specific plea of bar of the suit in view of the existence of an arbitration agreement. Having regard to the provisions of the Act, they had, thus, shown their unequivocal intention to question the maintainability of the suit on the aforementioned ground."

428. The Hon'ble Supreme Court in the case of **Rashtriya Ispat Nigam Ltd.**[116] in paragraphs 29, 30 and 44, dealt with the aspect of blacklisting as well, which read as under:-

"29. So far as the question of blacklisting is concerned, an error was committed by the High Court in opining that the respondent Firm had been blacklisted without issuing any

notice. In fact, from a perusal of the notice dated 23-5-2002, it appears, upon recital of the relevant facts, it was stated:

> *"6. In view of the above, before taking a final decision on blacklisting you and debarring you from participating in tenders floated by RINL, VSP or entering into any agreement with RINL, VSP, you are hereby calling upon to explain as to why you should not be blacklisted and debarred as mentioned above. You may submit your explanation within seven days of receipt of this notice. In case we do not receive your explanation within the abovementioned period, it will be presumed that you have nothing to say in the matter and decision on further suitable action will be taken accordingly."*

30. No final decision had, therefore, been taken. The basic question was whether there had been breaches of contract on the part of the respondents. The contention of the respondent before the trial court had been that the order of blacklisting had arisen from the terms of the contract itself, as would appear from the following averments:

> *"14. That the plaintiff has learnt that the defendants without following the basic principles of natural justice are intending to terminate the consignment agency contract of the plaintiff and to blacklist the plaintiff on alleged ground that one of the ex-partners of the plaintiff is claimed to be guilty of misrepresentation of overcharging the freight by misrepresentation from a different company. Anyhow this is no ground to do so.*

44. Furthermore, as noticed hereinbefore, the High Court committed a manifest error in holding that the respondent Firm had been blacklisted without any notice as only a notice to show cause in that behalf had been issued. A final decision in regard to blacklisting of the respondent Firm was yet to be taken. The respondents could file their show cause and could *have satisfied the authorities of Appellant 1 that no case has been made out for blacklisting."*

429. In the case of **Sukanya Holdings (P) Ltd. Vs. Jayesh H. Pandya**[118], the Hon'ble Supreme Court has held as under:-

"13. Secondly, there is no provision in the Act that when the subject-matter of the suit includes subject-matter of the arbitration agreement as well as other disputes, the matter is required to be referred to arbitration. There is also no provision for splitting the cause or parties and referring the subject-matter of the suit to the arbitrators.

14. ... ...

15. ... ...

16. The next question which requires consideration is - even if there is no provision for partly referring the dispute to arbitration, whether such a course is possible under Section 8 of the Act. In our view, it would be difficult to give an interpretation to Section 8 under which bifurcation of the cause of action, that is to say, the subject-matter of the suit or in some cases bifurcation of the suit between parties who are parties to the arbitration agreement and others is possible. This would be laying down a totally new procedure not contemplated under the Act. If bifurcation of the subject-matter of a suit was contemplated, the legislature would have used appropriate language to permit such a course. Since there is no such indication in the language, it follows that bifurcation of the subject-matter of an action brought before a judicial authority is not allowed.

17. Secondly, such bifurcation of suit in two parts, one to be decided by the Arbitral Tribunal and the other to be decided

[118] Sukanya Holdings (P) Ltd. Vs. Jayesh H. Pandya (2003) 5 SCC 531

by the civil court would inevitably delay the proceedings. The whole purpose of speedy disposal of dispute and decreasing the cost of litigation would be frustrated by such procedure. It would also increase the cost of litigation and harassment to the parties and on occasions there is possibility of conflicting judgments and orders by two different forums."

430. Thus, it is evident that even the Hon'ble Supreme Court has held that bifurcation of suit in two parts, one to be decided by the Arbitral Tribunal and the other to be decided by the civil court would inevitably delay the proceedings. The whole purpose of speedy disposal of dispute and decreasing the cost of litigation would be frustrated by such procedure. It would also increase the cost of litigation and harassment to the parties and on occasions there is possibility of conflicting judgments and orders by two different forums.

431. Thus, the spirit of the judgment of the Hon'ble Supreme Court in the case of **Sukanya Holdings (P) Ltd.**[117] is that bifurcation of cause of action in two parts, one to be decided by the Arbitral Tribunal and the other to be decided by the civil court would inevitably delay the proceedings.

432. Actually, the Hon'ble Supreme Court in case of **Sukanya Holdings (P) Ltd.**[117] has categorically noted in paragraph 16 that "*If bifurcation of the subject-matter of a suit was contemplated, the legislature would have used appropriate language to permit such a course. Since there is no such indication in the language, it follows that bifurcation of the subject-matter of an action brought before a judicial authority is not allowed.*"

433. The Hon'ble Supreme Court subsequently in the case of **Booz Allen & Hamilton Inc. Vs. SBI Home Finance Ltd.**[15] has quoted

the judgment of the Supreme Court in the case of **Sukanya Holdings (P) Ltd.**[117] and has held as that "*If the three issues referred by the appellant are the only disputes, it may be possible to refer them to arbitration*."

434. An exception has been carved out that in a mortgage suit, since it is not only about determination of the existence of the mortgage or determination of the amount due, it is about enforcement of the mortgage with reference to an immovable property and adjudicating upon the rights and obligations of several classes of persons, who have the right to participate in the proceedings relating to the enforcement of the mortgage, vis-a-vis the mortgagor and mortgagee, then in that case it is held that even if some of the issues or questions in a mortgage suit are arbitrable or could be decided by a private forum, the issues in a mortgage suit cannot be divided.

435. Thus, the spirit of the judgment of the Hon'ble Supreme Court in the case of **Booz Allen & Hamilton Inc.**[15] is that an agreement to sell or an agreement to mortgage does not involve any transfer of right in rem but creates only a personal obligation. Therefore, if specific performance is sought either in regard to an agreement to sell or an agreement to mortgage, the claim for specific performance will be arbitrable. A mortgage suit for sale of the mortgaged property is an action in rem, for enforcement of a right in rem. A suit on mortgage is not a mere suit for money. A suit for enforcement of a mortgage being the enforcement of a right in rem, will have to be decided by the courts of law and not by Arbitral Tribunals. When this reasoning is examined, then the order of blacklisting is arbitrable.

436. Thus, I am of the opinion that bifurcating the aspect of blacklisting while referring the issue of termination of contract to the Arbitration Tribunal, being not permissible, should not have been resorted to.

437. When these facts are taken into consideration, then also, the reasoning of the learned brother Justice Shri Saraf, does not appeal to my legal conscious.

438. This reasoning of the learned brother Justice Shri Saraf in itself accepts that in terms of the provisions contained in the Court Fees Act, 1870, specifically in terms of Section 7 (paragraph iv) of the Court Fees Act, gives a right to the plaintiff in any of the suits mentioned in the clauses of that paragraph to place any valuation that he likes on the relief he seeks, subject, however, to any rule made under Section 9 of the Suits Valuation Act and the court has no power to interfere with the plaintiff's valuation, as held by the Hon'ble Supreme Court in case of **Commercial Aviation and Travel Co. Vs. Vimla Pannalal.**[119]

439. It is also well settled that in a declaratory suit covered by Article 3-A of the Schedule-I of the Court Fees Act, without any consequential relief, the plaintiff is entitled to put his own valuation for the purpose of jurisdiction which will be the basis for computation of the Court fees payable. Valuation cannot be correlated to the property indirectly involved in the declaratory claim.

440. Similarly, the law is that the valuation for the purposes of jurisdiction of suit for a declaration and consequential relief will be the amount at which the relief is valued in the plaint for the

[119] Commercial Aviation and Travel Co. Vs. Vimla Pannalal AIR 1988 SC 1636

purposes of Court fee, as held by the Supreme Court in **Jamnadas Vrijlal Vs. Chandulal Jamnadas**[120], and **Shrimant Sunderabai Vs. Collector of Belgaum**[121].

441. Thus, when the learned brother Judge is of the opinion that a party being affected by an order of blacklisting, can approach a Civil Court, then in terms of the provisions contained in the Suits Valuation Act and the Court Fees Act, some valuation is required to be put by the plaintiff seeking such declaration and that valuation in terms of the judgment of the Division Bench of this Court in the case of **A.K. Ghosh Vs. Dhruv Kumar Haryani**[122], is to be accepted. Thus, it is evident that the plaintiff can always put a valuation and that valuation can be Rs.50,000/- or more.

442. The second issue which emerges is in regard to the applicability of Article 298 of the Constitution.

443. Article 298 was substituted by the Constitution (Seventh Amendment) Act, 1956. It deals with the executive power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose:

Provided that -

(a) the said executive power of the Union shall, in so far as such trade or business or such purpose is not one with respect to which Parliament may make laws, be subject in each State to legislation by the State; and

(b) the said executive power of each State shall, in so far as such trade or business or such purpose is not one with respect

[120] Jamnadas Vrijlal Vs. Chandulal Jamnadas AIR 1937 BOM 167
[121] Shrimant Sunderabai Vs. Collector of Belgaum AIR 1918 PC 135
[122] A.K. Ghosh Vs. Dhruv Kumar Haryani 2011 (4) MPLJ 493

to which the State Legislature may make laws, be subject to legislation by Parliament.

444. The fact of the matter is that in the given facts and circumstances of the case, and the subject under reference, neither the Union nor the State, were carrying on any trade or business and were dealing with acquisition or holding and disposal of property, but deals with contracts entered.

445. Article 298 was not intended to facilitate avoidance of contractual obligations voluntarily incurred, but only to empower the Government to enter into contracts, in exercise of its 'executive' power and without legislative sanction.

446. In the case of **Har Shankar Vs. Deputy Excise & Taxation Commissioner**[123], it is held that in case of breach of the terms of a contract, the aggrieved party must seek his remedies under the Law of Contract. It is also held that the remedy is not under the writ jurisdiction of Supreme Court or a High Court.

447. This proposition of law can be seen from the judgment in the case of **Har Shankar,**[122] so also in **Premji Bhai Parmar and others Vs. Delhi Development Authority and others**[124]**,** so also in case of **State of Haryana Vs. Jage Ram and others**[125], particularlyin paragraphs 12 and 13.

448. In case of **Premji Bhai Parmar,**[123] it is provided that unless there is violation of any constitutional provision such as Article 14, or it involves the violation of any statutory provision, apart from the

[123]Har Shankar Vs. Deputy Excise & Taxation Commissioner AIR 1975 SC 1121
[124]Premji Bhai Parmar and others Vs. Delhi Development Authority and others AIR 1980 SC 738
[125]State of Haryana Vs. Jage Ram and others AIR 1980 SC 2018

contract, as held in **Radhakrishna Agarwal Vs. State of Bihar**[126], writ jurisdiction cannot be invoked.

449. The law is also very clear that though the State or any of its instrumentalities is free to enter into any contract with any person, its action would offend Article 14, if it acts arbitrarily, as held in the case of **Ramana Dayaram Shetty Vs. International Airport Authority of India**[127]; **Harminder Singh Arora Vs. Union of India**[128]; and, **Star Enterprises Vs. City and Industrial Development Corporation of Maharashtra Ltd.**[129].

450. Thus, it is evident that when grounds have been specified vide OM dated 24.03.2015, for exercising authority to either suspend the licence or to blacklist a contractor, unless they are assailable on the touchstone of Article 14, in my opinion, the provisions of Article 298 of the Constitution, will not be applicable.

451. In fact, Article 299 provides for making of contracts in exercise of the executive power of the Union or of a State. The rationale behind Article 299 is that there should be a definite procedure according to which contract must be made by the agent of the Government in order to bind the Government, otherwise public funds may be depleted by clandestine contracts made by any and every public servant, as held in the case of **Chatturbhuj Vithaldas Jasani Vs. Moreshwar Parashram**[130].

452. Thus, a suit lies against the Government for wrongs done by public servants in the course of business or transactions which a trading

[126] Radhakrishna Agarwal Vs. State of Bihar (1977) 3 SCC 457
[127] Ramana Dayaram Shetty Vs. International Airport Authority of India AIR 1979 SC 1628
[128] Harminder Singh Arora Vs. Union of India AIR 1986 SC 1527
[129] Star Enterprises Vs. City and Industrial Development Corporation of Maharashtra Ltd. (1990) 3 SCC 280
[130] Chatturbhuj Vithaldas Jasani Vs. Moreshwar Parashram (1954) 1 SCC 214

company or a private person could engage in, such as the following:-

(i) Injury due to the negligence of servants of the Government employed in a dockyard or a railway;

(ii) trespass upon or damage done to private property in the course of a dispute as to a right to land between Government and the private owner, even though committed in the course of a colourable exercise of statutory powers;

(iii) whenever the State has benefited by the wrongful act of its servants whether done under statutory powers or not, the State is liable to be sued for restitution of the profits unlawfully made, just as a private owner, e.g., where Government retains property or moneys unlawfully seized by its officers a suit lies against the Government for its recovery, with interest;

(iv) defamation contained in a resolution issued by Government;

(v) injury done by vehicles maintained for the service of its employees; or engaged in famine relief work;

(vi) Government has also been made liable for penal interest for wrongfully withholding the Last Pay Certificate, in contravention of the statutory duty of its employees, as a result of which a pensioner has suffered loss of pension for an unduly long period since the date of his retirement;

(vii) death or injury caused to a person by Police atrocities;

(viii) loss or deny to goods seized by Customs authorities.

453. Thus, it is evident that a contractor suffering order of blacklisting can seek damages and those damages can be ascertained or are ascertainable as held by the Division Bench of this Court in **Awasthi Brothers Construction Company**,[19] wherein the judgment of Larger Bench of this High Court in **Shri Gouri Ganesh**[1] is referred.

454. Another issue which emerges for consideration is the multiplicity of forums for deciding an issue of blacklisting. The fact of the matter is that what is to be decided is whether the issue of blacklisting and termination forms a single arbitral controversy or not. This is already answered in case of **Sukanya Holdings (P) Ltd.**[117]

455. Another aspect is whether multiplicity of forums can be permitted, especially in view of the amendment to the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983, which has deleted the first proviso to Section 17-A of the Principal Act. The first proviso, before the amendment dated 30.04.2026, read as under:-

> "Provided that no interim order by way of injunction, stay or attachment before award shall be granted:"

456. Thus, once the first proviso has been deleted, then it means that Tribunal has been given unlimited power to grant interim relief in a case of an order of blacklisting and once that power is already conferred upon the Tribunal, thenthere appears to be no justification for creating multiplicity of forums, especially when the only ground for challenging the action of the State, be it blacklisting or any other action, in the matter of contracts, is limited to the violation of constitutional guarantees.

457. Thus, in view of the foregoing discussion, I am in respectful disagreement with the finding of the learned brother Justice Shri Saraf that an order of blacklisting does not amount to a 'dispute' as defined under Section 2(1)(d) of the Act of 1983, and is, thus, not referable to the statutory Arbitration Tribunal. 'Dispute' is to be read in a more comprehensive manner taking complete definition of 'dispute', which includes difference.

458. The definition of "dispute" as mentioned in Section 2(1)(d) of the Act of 1983 states that "dispute" means" claim of ascertained or ascertainable money valued at Rupees 50,000 or more relating to any difference arising out of the execution or non-execution of a works contract or part thereof."

Emphasis is laid on the words "relating to any difference arising out of the execution or non-execution of a works contract or part thereof." When the intention of the Legislature is to include all differences arising out of the execution or non-execution of a works contract, then blacklisting cannot be separated from the definition of "dispute" and would be included therein, which can be referred to the Tribunal under the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983.

459. That, the remedy of writ, cannot be an exclusive remedy for a party aggrieved of the order of blacklisting. In the first glance, a party should be asked to approach the Tribunal because the order of blacklisting arises from contractual liability and the violation of certain terms and conditions, which are part of the contract, but if there is an element of violation of the provisions contained in Articles 14, 19, or 21 of the Constitution, then needless to say, the remedy of a writ is always available. However, in my opinion,

shutting out the remedy of approaching the statutory Tribunal will do more violence, rather than bringing peace to the aim and object of the legislation.

460. It is well settled that the Court does not formulate any policy, and remains away from doing anything that would amount to legislation, rules and regulations, or policy relating to the aspects of arbitration. The Courts can test the validity of the same when they are challenged. The Court cannot direct the making of legislation or, for that matter, any kind of subordinate legislation. In fact, there is no challenge to the vires of the provisions of the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983, and unless the vires are challenged, the Court should refrain from dealing with the matter as if it were laying down a kind of subordinate legislation.

461. Thus, in my opinion, even the order of blacklisting is amenable to the Arbitration Tribunal and there is no need to create a separate forum unless there is violation of fundamental rights. To that extent, the ratio of law laid down in cases of **Shri Gouri Ganesh Shri Balaji Constructions "C" Class Contractor**[1]and **Awasthi Brothers Construction Company,**[19] though have not considered the judgment of the Hon'ble Supreme Court in the case of **Rashtriya Ispat Nigam Ltd. and another,**[116] but has adopted the same analogy that bifurcation of subject matter of a cause of action would cause several anomalies and will not be justified. Even otherwise, complicated questions of fact which requires evidence, cannot be adjudicated in summery jurisdiction of the High Court and, therefore, forum being the court of first instance i.e.

Madhyastham Adhikaran, will be the appropriate forum for adjudication.

462. It is also evident from the scheme of the Act of 1983 that against the orders of the Madhyastham Adhikaran, the remedy of arbitration revision is available before the High Court, and when there is already a remedy of arbitration revision, in case of non-exercise of the authority to grant interim relief by the Tribunal, taking a different view, i.e., of shutting the doors, will not be in the interest of justice.

463. **Accordingly, in my opinion, the reference should be answered to the effect that cases of Shri Gouri Ganesh Shri Balaji Constructions "C" Class Contractor[1] and Awasthi Brothers Construction Company[19] have rightly held that even against the order of blacklisting, the remedy lies before the Arbitration Tribunal constituted under the Act of 1983, in respect of disputes originating from works contracts executed by the State Government or its undertakings.**

(Vivek Agarwal)
Judge

ORDER

In view of the majority opinion, questions referred by the learned division bench are answered, as under:-

(i) Power to blacklist/debar a contractor in addition to a clause of contract emerges from the inherent power of the State and its instrumentalities flowing from the power to carry on the trade or business provided under Article 298 of the Constitution of India and blacklisting is essentially an administrative act in nature.

(ii) Blacklisting or debarment order can only be passed by the Chief Engineer or any officer equivalent to his rank on the strength of the circular issued by Public Works Department on 24.03.2015 and the Competent Authority and/or Appellate Authority defined under the contract can only recommend for blacklisting or debarring a contractor to the Chief Engineer and cannot pass the order of blacklisting or debarment despite a clause in the contract.

(iii) Blacklisting is having severe civil consequences, loss of business opportunities, goodwill etc. and amounts to a civil and commercial death of a person or entity, who is prevented from participation in future tenders. It is a stigma and the loss caused due to the order of blacklisting or debarment is not a monetary loss, thus not computable/quantifiable/ascertainable.

(iv) The challenge to the order of blacklisting does not amount to a dispute defined under Section 2(1)(d) of Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 and, therefore, not referable to the statutory arbitration tribunal.

(v) The judgment delivered in the matter of **Gouri Ganesh Shri Balaji Constructions "C" Class Contractor Vs. Executive Engineer, PWD**[1]and **Awasthi Brothers Construction Company v/s The State of Madhya Pradesh & Others**[19] have not held that the loss due to order of blacklisting is an ascertainable loss and the Full Bench and Division Bench in these cases held that the relief for blacklisting is a consequential relief and may be sought from the statutory arbitral tribunal with the main monetary claim.

(vi) In view of this Court **Gouri Ganesh**[1] and **Awasthi Brothers**[19] have not laid down the correct law in holding that the relief of blacklisting is a consequential relief and referable to the Arbitral Tribunal constituted under the Adhiniyam, 1983.

(vii) Full Bench of this Court in **Viva Highways Ltd. Vs. M.P. Road Development Corporation Ltd**[2] has correctly held that the loss due to blacklisting order is not ascertainable in money.

(viii) As the challenge to the blacklisting order does not fall under the definition of dispute given under Section 2(1)(d) of Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983, the bar created under Section 20 of the Adhiniyam, 1983 is not applicable.

(ix) Writ petition under Article 226/227 of the Constitution of India is maintainable, even in a case of composite order of blacklisting and termination of contract, if any fundamental right of any citizen is infringed or any order is passed in violation of the principles of natural justice and thus, the writ petition may be entertained by the constitutional courts challenging the order of blacklisting depending upon the facts and circumstances of each case.

(x) The amendment, 2025 incorporated in the Adhiniyam, 1983 are not having any effect on the maintainability of the dispute, qua blacklisting.

(xi) As per amended provisions of Section 17-A and newly inserted Section 17-AB, the statutory arbitration tribunal empowers to grant the interim relief to the parties in appropriate cases.

(Vivek Rusia)
Acting Chief Justice

(Vivek Agarwal)
Judge

(Subodh Abhyankar)
Judge

(Vinay Saraf)
Judge

(Alok Awasthi)
Judge

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