

**The power to appoint an arbitrator in an International Commercial Arbitration lies exclusively with the Supreme Court under Section 11(6) read with Section 11(12)(a) of the Arbitration and Conciliation Act, 1996**

The **Madhya Pradesh High Court** in the case of **State of Madhya Pradesh vs SMEC International [Arbitration Appeal No. 266 of 2023]** dated **April 08, 2026**, has held that the power to appoint an arbitrator in an International Commercial Arbitration lies exclusively with the Supreme Court under Section 11(6) read with Section 11(12)(a) of the Arbitration and Conciliation Act, 1996. Hence, an order passed by the High Court appointing an arbitrator in an International Commercial Arbitration suffers from an inherent lack of jurisdiction, rendering the constituted Arbitral Tribunal a coram-non-judice and the resultant arbitral award a nullity in law. Such a defect of inherent jurisdiction strikes at the very authority of the tribunal and cannot be cured even by the consent or active participation of the parties.

The Court observed that the respondent (SMEC International) is a body corporate incorporated in Australia, making the arbitration an 'International Commercial Arbitration' within the meaning of Section 2(1)(f)(ii) of the Act of 1996. Part I of the Act applies to international commercial arbitrations seated in India, making the Section 34 application maintainable; however, the ground of 'patent illegality' under Section 34(2A) is not available for international commercial arbitrations.

On Limitation under Section 34(3), the Court stated that Section 34(3) uses the passive phrase 'if a request had been made' under Section 33, without any qualification as to which party made it. The limitation period runs from the date the corrected award is disposed of, which was March 13, 2018. Thus, Section 34 application filed on August 06, 2018, was within the maximum period of three months plus the thirty days condonable period, making the Commercial Court's finding on limitation legally erroneous and perverse.

The Court clarified that while the contract is a 'works contract' under the M.P. Madhyasthan Adhikaran Adhiniyam, 1983, the jurisdictional objection was raised for the first time at the post-award stage under Section 34. Referring to the Supreme Court's decision in *Gayatri Project Ltd. v. M.P. Road Development Corporation Ltd.* [(2025) 10 SCC 750], the Court held that the award cannot be set aside solely on the ground of lack of jurisdiction under the M.P. Act when raised at this stage.

On the validity of Arbitrator appointment by the High Court, the Court observed that a conjoint reading of Section 11(6) and Section 11(12)(a) of the Act makes it abundantly clear that the power to appoint an arbitrator in an ICA lies exclusively with the Supreme Court. The Court has no jurisdiction to appoint an arbitrator in an international commercial arbitration, and such an order suffers from a complete lack of jurisdiction. This is an inherent lack of jurisdiction, not a mere procedural flaw, and it cannot be cured by the consent or participation of the parties.