



SHRI I.M NANAVATI MEMORIAL NATIONAL MOOT COURT COMPETITION,

2024-25

MOOT PROPOSITION

MantraTech Ports & Ors.

v.

Union of Suvarnadwipa & Ors.

1. Suvarnadwipa is an island country situated on the south-eastern tip of the great Bhāratakhandā peninsula. Throughout history, Suvarnadwipa acted as an important trading port, serving as the gateway to the eastern world. Due to its strategic location, the island has been subjected to numerous military campaigns.
2. The island was colonised by the Britanni people for over two-hundred years. During this colonial period, Suvarnadwipa evolved into a major global trading hub. The Britanni's rule ended in 1970 after a prolonged violent struggle, and Suvarnadwipa gained independence, emerging as a Sovereign, Socialist and Democratic Republic.
3. Suvarnadwipa's first Prime Minister, Mr. Ramadhir Chaudhari, was a visionary leader. Faced with limited natural resources and an inability to initiate an agricultural revolution, Mr. Chaudhari emphasized rapid economic growth.
4. Under Mr. Chaudhari's guidance, Suvarnadwipa fortified its position as a global hub for trade and ensured that the economy of Suvarnadwipa was free, innovative, dynamic and business friendly.
5. Mr. Chaudhari's policies focused on establishing Suvarnadwipa as a global trade hub, attracting foreign investment through business-friendly laws, low taxes, and advanced infrastructure. His reforms resulted in Suvarnadwipa becoming a preferred destination for global investors, transforming it into a free, innovative, and dynamic economy.

6. One of the major challenges Mr. Chaudhari faced was the overburdened court system, which caused significant delays in adjudicating commercial disputes. This became a matter of concern for Mr. Chaudhari while courting foreign investors.
7. One of the concerns that was regularly expressed to Mr. Chaudhari was that commercial disputes were getting tangled up in Suvarnadwipa's court systems for years on end and this was a leading factor in dwindling investor confidence.
8. Recognizing this issue, Mr. Chaudhari's deliberations with his trusted advisors led him to believe that the best recourse for Suvarnadwipa was to encourage parties to refer their dispute to other out-of-court settlement methods. At that time, Alternative Dispute Resolution, specifically Arbitration, was an unpopular choice due to a lack of competent arbitral institutions in the country.
9. To address this gap and to attract more foreign investors, after months of deliberations in the Parliament, Mr. Chaudhari's government passed the Suvarnadwipa Arbitration and Conciliation Act, 1996 (SACA) on January 1, 1996.
10. In tune with the provisions of the SACA, 1996, the Arbitral Council of Suvarnadwipa (ACS) was established. ACS is a not-for-profit international arbitration organization based in Suvarnadwipa. The legislation in Suvarnadwipa was fine-tuned by the legislature to encourage parties to refer their commercial disputes to arbitration. Mandatory time-lines were provided under the Suvarnadwipa Arbitration and Conciliation Act, 1996 for completion of arbitration. Further, the legislative framework provided for a fee schedule which could be charged by the arbitrators.
11. With time, ACS was heralded as one of the most significant arbitral institutions in the world with nearly 25% of the total disputes arbitrated around the world (by value) being adjudicated under aegis of ACS. Given the popularity of ACS, foreign investors regained their confidence regarding enforcement of contracts in Suvarnadwipa.
12. An Act "Suvarnadwipa Public Sector Dispute Resolution Act, 2009 (SPSDR)" (Annexure - I) was also implemented to further encourage foreign investment, mandating that all public contracts exceeding USD 100,000 include an arbitration clause.
13. Tragically, Mr. Chaudhari passed away on December 25, 2010. By this time, Suvarnadwipa was one of the most significant economies of the world. In the ensuing

January 2011 elections, Mr. JP Chaudhari, son of Mr. Chaudhari was elected as the Prime Minister of Suvarnadwipa with a thumping majority.

14. Now, Mr. JP Chaudhari or JayP, as his inner circle would address him, was nothing like Mr. Chaudhari. JayP lacked the vision that had enabled his father in turning a small island city into an economic behemoth. Soon after taking charge, JayP gave into cronyism and packed the government offices with men of his network who were found in want of merit.
15. JayP's government filled important positions with loyalists who lacked the competence to govern effectively. Given the change in perspective of the government of the day, a number of public sector undertakings (PSUs) started making questionable commercial decisions in their interactions with private parties.
16. MantraTech, a Britanni conglomerate is one of the largest corporate groups in the world with a portfolio which extends from salt to steel and airways to ports. Since Suvarnadwipa's independence, MantraTech had invested millions of dollars in the country and was a well-known name in the country. MantraTech Ports (MP) was a subsidiary of MantraTech which was incorporated in Suvarnadwipa and was a port operator and logistics company.
17. In June 2023, MP had entered into a Memorandum of Understanding (MoU) (Annexure - III) with Suvarnadwipa Port Trust (SPT). SPT is a PSU which is wholly owned by the Government of Suvarnadwipa and administers the Suvarnadwipa Port. Given the expanding growth of the Suvarnadwipa Port, SPT had decided to set up a new container terminal which would increase the capacity of Suvarnadwipa Port.
18. As per the terms of the MoU, MP was to invest a sum of USD 2 Billion for setting up the new container terminal. Once the port terminal was set up, a joint venture (JV) was to be incorporated which would own the port terminal with MP owning 75% stake in the JV while SPT was to own the balance 25% stake.
19. After signing the MoU, MP started constructing the container terminal without any delay and it was anticipated that the construction would be completed by 31 March, 2025. In the meanwhile, MP and SPT were in negotiations regarding the terms of the JV (JV Agreement).

20. However, the SPSDR Act, 2009 posed a matter of frustration for JayP and his government as the PSUs failed to defend themselves in a number of arbitrations. It led to a surge in arbitration cases involving PSUs, many of which resulted in substantial losses for the government. At one point of time, the total value of arbitral awards which had been passed against the PSUs and pending enforcement exceeded 20% of the total GDP of Suvarnadwipa.
21. In response, an Act “Suvarnadwipa Public Procurement Litigation and Adjudication Act of 2024 (SPPLA) was passed on January 1, 2024, with retrospective effect, repealing the SPSDR Act, 2009 (Annexure – IV).
22. As per the said Act, every contract between PSUs and private parties would be devoid of an arbitration clause and all disputes arising out of or related to the contract would be resolved exclusively through litigation while following the due process and judicial system laid down in Suvarnadwipa’s Constitution to resolve the disputes.
23. The SPPLA Act led to immense concern amongst foreign investors and to provide some respite to them and gain popularity, JayP issued a statement in the media stating:
“The SPPLA Act has been issued in the interest of public policy as the process of arbitration has resulted in an unsustainable burden on PSUs. Most importantly, I have full faith in the national courts of Suvarnadwipa that they will be able to provide a more controlled environment for ensuring justice in disputes involving state-owned entities instead of arbitrations wherein private parties can exploit the system to obtain favourable awards.”
24. MantraTech Ports was surprised with the enactment of the SPPLA Act and JayP’s statements. MP informed SPT that it wanted to add an arbitration clause in the JV Agreement. MP clarified that any dispute that may arise out of the JV was likely to be a high-stake, complex dispute which the courts of Suvarnadwipa might be unlikely to appreciate.
25. MP expressed concern over potential bias in Suvarnadwipa’s courts, given SPT’s status as a large PSU, but maintained faith in the court system’s impartiality. SPT, however, refused to include an arbitration clause, citing the SPPLA Act, and insisted that disputes be subject to the exclusive jurisdiction of Suvarnadwipa’s courts.

26. MP also expressed that arbitration is globally recognized as a faster, specialized mechanism, especially for complex, high-stakes commercial disputes. Forcing MP to litigate through Suvarnadwipa's courts, particularly when one party is a powerful state-owned entity, creates an unequal playing field, making it harder for foreign investors to protect their interests thereby creating lack of confidence in the investors and questions the tenets of the public policy objectives.
27. With a stalemate reached, MP, having already invested substantial funds into the container terminal project, felt cornered. MP decided to challenge the constitutionality of the SPPLA Act in the Supreme Court of Suvarnadwipa under the Constitution of Suvarnadwipa, claiming that the Act violated its various fundamental rights enshrined in Suvarnadwipa's Constitution.
28. During the proceedings before the Supreme Court of Suvarnadwipa, MP argued that by prohibiting arbitration and mandating litigation through the courts, the SPPLA Act limits MP's ability to choose the most efficient and effective means of dispute resolution, which is a critical aspect of its commercial freedom.
29. Furthermore, SPPLA Act's restriction on the method of dispute resolution is an unreasonable restraint on business activity thus breaching its right to freedom to conduct business, fair trial, and equal protection under the law, among others as there does not exist a rational nexus to legitimate government objectives.
30. On the other hand, the Government of Suvarnadwipa and SPT argued that the SPPLA Act does not restrict the right to do business but merely channels disputes through a transparent judicial system, which is not an unreasonable restriction, especially for contracts involving public resources.
31. Additionally, the said classification between PSU contracts and other contracts can be considered as reasonable and is rather the need of the hour as it involves protection of public resources and heightened need for scrutiny.
32. In light of the ongoing dispute between MantraTech and Suvarnadwipa Port Trust, several other private parties who have encountered similar contractual issues with various Public Sector Undertakings (PSUs) in Suvarnadwipa have also sought to join the litigation. These parties, having faced delays, contractual breaches, or disagreements over

performance obligations with PSUs in their respective agreements, have filed petitions for resolution.

33. Given the commonality of legal issues involved, the Honorable Supreme Court of Suvarnadwipa has decided to tag all these matters together. The Supreme Court has issued notice to all the parties and listed the matter for final hearing in January, 2025. All issues including maintainability of the petition have been kept open for the final hearing.

Notes:

- A. The Constitution and laws of Suvarnadwipa are pari-materia to the Indian Constitution and the laws of India.
- B. The participants are free to take additional issues for their arguments.
- C. Suvarnadwipa is a signatory to the United Nations Commission on International Trade Law (UNCITRAL) and has ratified its provisions through the enactment of the Arbitration and Conciliation Act, 1996 aligning its legal framework with international standards for arbitration and dispute resolution.
- D. The Arbitration and Conciliation Act, 1996, has to be read in consonance with the Arbitration and Conciliation (Amendment) Acts of 2015, 2019 and 2021.

Issued Raised

- I. Whether the petition challenging the Suvarnadwipa Public Sector Dispute Resolution Act, 2024 is maintainable before the Supreme Court of Suvarnadwipa.
- II. Whether the Suvarnadwipa Public Procurement Litigation and Adjudication Act, 2024 (SPPLA) is violative of Article 19 of the Constitution of Suvarnadwipa.
- III. Whether the Suvarnadwipa Public Procurement Litigation and Adjudication Act, 2024 (SPPLA) is violative of Article 14 of the Constitution of Suvarnadwipa.

Disclaimer

The Problem is a hypothetical Moot Problem. It is only for the academic purpose having no concern with any pending/decided cases before any court and all details and names of the parties are fictitious and have nothing to do with reality even if found similar it is only coincident.

ANNEXURE – I

Copy of the Suvarnadwipa Public Sector Dispute Resolution Act, 2009 (SPSDR)

Act No. 12 of 2009

An Act to provide for the incorporation of alternative dispute resolution methods of resolving disputes arising from public procurement contracts, ensuring efficiency, transparency, and accountability in such contracts.

Preamble

Whereas it is expedient to ensure that disputes arising from public procurement contracts are resolved in a timely, cost-effective, and efficient manner;

Whereas the Government of India acknowledges the importance of alternative dispute resolution (ADR) mechanisms, including arbitration and mediation, in reducing litigation burdens on courts and enhancing technical decision-making;

It is hereby enacted by the Parliament of India as follows:

Chapter I: Preliminary

Section 1: Short Title and Commencement

1. This Act shall be called the Public Sector Dispute Resolution Act, 2010.
2. It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Section 2: Definitions

In this Act, unless the context otherwise requires:

1. “Arbitration” means arbitration as per the provisions of the Arbitration and Conciliation Act, 1996.

2. “Public Procurement Contract” means any contract executed by a government entity, ministry, department, or public sector undertaking (PSU) for the procurement of goods, services, or works.
3. “Institutional Arbitration” refers to arbitration administered by specialized institutions like the Indian Council of Arbitration, with established rules of procedure.
4. “Public Sector Undertaking” means a Government Company as defined under Section 2 (45) of the Companies Act, 2013.

Chapter II: Objectives and Application

Section 3: Objective of the Act

The objective of this Act is to:

1. Promote the use of alternative dispute resolution as preferred modes of dispute resolution in public procurement contracts.
2. Reduce the burden on courts by providing quicker and more efficient methods of resolving disputes.
3. Ensure transparency, fairness, and public accountability in the resolution of disputes involving government entities.

Section 4: Applicability of the Act

This Act shall apply to:

1. All public procurement contracts executed by government ministries, departments, or public sector undertakings.
2. Disputes arising from the performance, non-performance, or termination of such contracts.

Chapter III: Arbitration in Public Procurement Contracts

Section 5: Mandatory Inclusion of Arbitration Clause

1. Every public procurement contract entered into after the commencement of this Act shall contain a mandatory arbitration clause, stating that any dispute arising from or in connection with the contract shall be resolved through arbitration.
2. The arbitration clause shall clearly define:
 - a. The procedure for appointing arbitrators.
 - b. The scope of the arbitrator's authority.
 - c. The applicable rules of arbitration.
3. The arbitration clause must be in conformity with the Arbitration and Conciliation Act, 1996.

Section 6: Technical Expertise in Arbitration

1. In disputes involving technical subject matter, the parties may appoint arbitrators with specialized knowledge or technical expertise relevant to the dispute.
2. The arbitral tribunal shall have the power to consult expert witnesses or appoint assessors to assist in technical matters, as deemed necessary.

Section 7: Finality of Arbitration Awards

1. Arbitration awards rendered under this Act shall be final and binding on the parties, subject to the limited grounds for appeal provided under the Arbitration and Conciliation Act, 1996.
2. No appeal or revision shall lie against an arbitral award except in cases involving fraud, bias, or violation of public policy.

Section 8: Institutional Arbitration

1. In cases where the complexity of the dispute or the financial stakes are high, parties shall be encouraged to opt for institutional arbitration.

2. Institutional arbitration shall be conducted as per the rules of the institution administering the arbitration, which may include the Indian Council of Arbitration or other recognized bodies.

Chapter IV: Government's Role as a Disputant

Section 9: Accountability to Parliament

1. When a government ministry, department, or public sector undertaking is a party to a dispute, it shall ensure that the use of ADR mechanisms is consistent with its accountability to Parliament.
2. The government shall act fairly and without bias, ensuring that all dispute resolution processes serve the public interest.

Section 10: Public Interest and Transparency

1. The government and public entities shall ensure that all ADR proceedings are conducted with due regard to transparency, fairness, and the protection of public resources.
2. The outcome of arbitration or mediation shall be subject to review by the appropriate authority to ensure compliance with public policy objectives.

Chapter V: Implementation and Capacity Building

Section 11: Training and Capacity Building

1. The Central Government shall establish programs for the training of officers involved in public procurement to familiarize them with the processes and benefits of alternative dispute resolution.
2. Regular workshops and training sessions shall be conducted to equip officials with the necessary skills to manage ADR proceedings effectively.

Section 12: Dispute Resolution Committees

1. The government may establish Dispute Resolution Committees to review disputes before they proceed to any of the methods of dispute resolution.

2. Such committees shall provide an initial assessment of the dispute and recommend the appropriate ADR mechanism to be followed.

Chapter VI: Miscellaneous

Section 13: Power to Make Rules

1. The Central Government may, by notification, make rules for carrying out the purposes of this Act.
2. Such rules may include guidelines for the appointment of arbitrators, mediation procedures, and the use of institutional arbitration.

Section 14: Repeal and Savings

1. Any provisions in public procurement laws or guidelines inconsistent with this Act are hereby repealed to the extent of such inconsistency.
2. Any proceedings initiated before the commencement of this Act shall continue as per the provisions in force at the time of initiation.

Schedule

The Schedule of Rules and Guidelines for Public Sector Dispute Resolution shall be notified by the Central Government from time to time, outlining the operational procedures and best practices to be followed.

ANNEXURE – II

Proposal for Setting up a New Container Terminal at Suvarnadwipa Port

From:

Suvarnadwipa Port Trust (SPT)
Government of Suvarnadwipa
Kaladweep Branch
Suvarnadwipa

To:

MantraTech Ports
A subsidiary of MantraTech Pvt. Ltd.
Corporate Office,
Kaladweep, Suvarnadwipa

Date: 20th January, 2023

Subject: Proposal for Joint Venture in the Development of a New Container Terminal at Suvarnadwipa Port

Dear Bhaskar Ravi,

We hope this communication finds you well.

It gives us immense pleasure to formally extend a proposal to MantraTech Ports for a strategic collaboration with Suvarnadwipa Port Trust (SPT) in the development of a state-of-the-art container terminal to expand the current capacity of Suvarnadwipa Port. This project is part of our larger vision to reinforce Suvarnadwipa Port's status as a premier hub for global trade and logistics.

As a subsidiary of the renowned MantraTech Pvt. Ltd., MantraTech Ports has a strong track record in port operations, logistics, and infrastructure development. We are confident that your expertise in port management and technological innovation will be instrumental in ensuring the success of this high-priority project.

Project Overview:

1. Project Scope:

- Setting up a new container terminal at Suvarnadwipa Port to increase its handling capacity.
- The terminal will accommodate the latest infrastructure for handling large container vessels, including advanced crane systems, storage facilities, and digitalized cargo management solutions.

2. Investment Requirements:

- MantraTech Ports will invest approximately USD 2 Billion towards the construction and development of the terminal.
- A Joint Venture (JV) will be established, where MantraTech Ports will hold a 75% stake and SPT will hold the remaining 25% stake in the project.

3. Duration and Completion Timeline:

- The construction phase is expected to begin by July 2023, with the terminal anticipated to be fully operational by March 2025.
- All project timelines and milestones will be mutually agreed upon to ensure timely completion and commissioning.

4. Key Features of the Joint Venture

- Infrastructure Excellence: The new terminal will feature cutting-edge equipment and technology, ensuring seamless operations and improved efficiency in port handling.
- Operational Efficiency: Our goal is to optimize throughput while reducing turnaround times, making Suvarnadwipa Port a preferred destination for shipping lines.
- Employment Generation: The project will provide a significant boost to local employment, offering opportunities for skilled and unskilled labor in Suvarnadwipa.
- Revenue Sharing: The proposed joint venture will have a clear revenue-sharing model, with profit-sharing aligned with the equity stakes.

5. Project Governance and Agreement:

- Upon acceptance of this proposal, both parties will work together to finalize the Joint Venture Agreement (JVA) outlining the roles, responsibilities, governance structure, and profit-sharing mechanisms.
- Dispute resolution mechanisms will be in line with industry standards, ensuring smooth collaboration throughout the project lifecycle.

Suvarnadwipa Port Trust is excited about the prospect of partnering with MantraTech Ports in this transformative project. We firmly believe that this collaboration will not only enhance the capacity and capabilities of Suvarnadwipa Port but also contribute significantly to the economic growth and trade efficiency of the region.

We look forward to your favorable consideration of this proposal. Please feel free to contact us for further discussions or clarifications on any aspect of this proposal. We are eager to initiate the next steps and proceed towards the successful execution of this ambitious project.

Thank you for your time and consideration.

Warm regards,

Abhishek Tripathi

Director

Suvarnadwipa Port Trust (SPT)

Email: abhishektripathi1234@xyz.com

Phone: +91 9191919191

ANNEXURE – III
MEMORANDUM OF UNDERSTANDING
BETWEEN
MANTRATECH PRIVATE LIMITED
AND
SUARNADWIPA PORT TRUST

This Memorandum of Understanding (“MoU”) is entered into on June 10, 2023 at Kaladwipa the capital of Suvarnadwipa, by and between:

MantraTech Port Limited (“MP”), a subsidiary company of MantraTech Private Limited incorporated under the laws of Suvarnadwipa, having its registered office at Kaladwipa, hereinafter referred to as “MP”, which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns;

AND

Suvarnadwipa Port Trust (“SPT”), a Public Sector Undertaking wholly owned by the Government of Suvarnadwipa, having its principal office at Kaladwipa, hereinafter referred to as “SPT”, which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns;

(MP and SPT are hereinafter collectively referred to as the “Parties” and individually as a “Party”).

WHEREAS:

1. SPT, in its capacity as the authority administering the Suvarnadwipa Port, has undertaken initiatives to expand and modernize the infrastructure of Suvarnadwipa Port to meet the increasing demand for container shipping services;
2. SPT has decided to establish a new container terminal at Suvarnadwipa Port to increase its capacity, efficiency, and ability to handle future trade growth;
3. MP is a renowned global leader in the construction and operation of port infrastructure, with significant expertise and resources to undertake large-scale infrastructure projects;
4. The Parties are desirous of collaborating on the construction and operation of the new container terminal at Suvarnadwipa Port;

NOW, THEREFORE, the Parties hereby agree as follows:

1. Purpose of the MoU

The purpose of this MoU is to establish the broad framework for cooperation between MP and SPT for the development, construction, and subsequent operation of a new container terminal at Suvarnadwipa Port. The Parties intend to jointly create a container terminal that enhances the port's capacity and strengthens its position as a major international port in the region.

2. Project Investment

- a.*** MP agrees to invest a sum of USD 2 Billion for the development and construction of the new container terminal at Suvarnadwipa Port.
- b.*** The funds shall be allocated towards the construction, installation, and commissioning of the terminal and all necessary associated infrastructure required for its operation.

3. Construction and Completion

- a.*** Upon the signing of this MoU, MP commenced construction of the new container terminal without delay.
- b.*** The Parties anticipate that the construction of the container terminal will be completed by March 31, 2025.
- c.*** Both Parties commit to take all necessary steps to ensure the timely completion of the project, including any required government approvals or permits.

4. Incorporation of a Joint Venture

- a.*** Once the container terminal is constructed, the Parties agree to establish a Joint Venture ("JV") for the ownership and operation of the terminal.
- b.*** MP shall own a 75% equity stake in the JV, while SPT shall own the remaining 25% equity stake.
- c.*** The JV shall be incorporated in accordance with the laws of Suvarnadwipa, and its governance and management shall be mutually agreed upon by the Parties through a separate Joint Venture Agreement to be executed following the completion of the terminal.

5. Roles and Responsibilities

a. MantraTech Private Limited (MP)

i. MP shall be responsible for:

- 1.** Undertaking and completing the construction of the container terminal as per the agreed timeline;
- 2.** Ensuring compliance with all technical, environmental, and safety standards during construction and operation;
- 3.** Investing the agreed capital of USD 2 Billion for the project;
- 4.** Managing the operations of the JV following the terminal's commissioning, subject to the terms of the future Joint Venture Agreement.

b. Suvarnadwipa Port Trust (SPT)

i. SPT shall be responsible for:

- 1.** Providing the land, rights, and necessary access within Suvarnadwipa Port for the construction of the new container terminal;
- 2.** Facilitating the acquisition of any necessary regulatory approvals, licenses, and clearances from the Government of Suvarnadwipa;
- 3.** Supporting MP in ensuring smooth execution of the construction and operation phases of the project.

6. Binding Effect

This MoU shall be considered as an expression of the intent of the Parties to collaborate on the development and operation of the new container terminal. The MoU does not create any binding legal obligations between the Parties except for those provisions relating to confidentiality, governing law, and dispute resolution.

7. Confidentiality

The Parties agree to maintain the confidentiality of any proprietary or sensitive information exchanged between them during the course of this collaboration, and shall not disclose such information to any third party without prior written consent, except as required by law.

8. Governing Law and Dispute Resolution

- a. This MoU shall be governed by and construed in accordance with the laws of Suvarnadwipa.
- b. Any disputes arising from or in connection with this MoU shall be resolved amicably through mutual discussions between the Parties and in accordance with the process determined by the laws of Suvarnadwipa.

9. Future Agreements

The Parties agree that this MoU is a preliminary understanding and that the detailed terms and conditions of the joint venture, financing, and other operational details shall be formalized in a definitive agreement to be executed at a later stage.

10. Termination

Either Party may terminate this MoU by providing Sixty (60) days' written notice to the other Party, provided that the termination of this MoU shall not affect any rights or obligations that have already accrued prior to such termination.

IN WITNESS WHEREOF, the Parties have caused this Memorandum of Understanding to be executed by their duly authorized representatives on the date first written above.

For MantraTech Private Limited

(Signature)

Name:

Designation:

Date:

For Suvarnadwipa Port Trust

(Signature)

Name:

Designation:

Date:

ANNEXURE – IV

Copy of the Suvarnadwipa Public Procurement Litigation and Adjudication Act, 2024

(SPPLA)

Act No. 4 of 2024

Preamble

An Act to provide for the adjudication of disputes arising out of public procurement contracts involving Public Sector Undertakings (PSUs) and private or other entities through the national courts of Suvarnadwipa, replacing the existing process of arbitration laid down under Public Sector Dispute Resolution Act, 2009.

1. *Short title, extent, and commencement*

- a. This Act may be called Public Procurement Litigation and Adjudication, 2024.
- b. It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint.

2. *Definitions*

In this Act, unless the context otherwise requires:

- a. “Public Sector Undertaking” means a Government Company as defined under Section 2 (45) of the Companies Act, 2013.
- b. “Public Procurement Contract” means any contract executed by a government entity, ministry, department, or public sector undertaking (PSU) for the procurement of goods, services, or works.
- c. “National Courts” refers to the competent courts of Suvarnadwipa, including district courts, the High Courts and the Supreme Court, as designated under this Act.

3. *Exclusive jurisdiction of national courts*

- a. Notwithstanding anything contained in any other law for the time being in force, all disputes arising out of public procurement contracts involving PSUs shall be adjudicated exclusively by the national courts of Suvarnadwipa.
- b. The jurisdiction of arbitral tribunals under the Arbitration and Conciliation Act, or any other legislation providing for alternative dispute resolution mechanisms, shall stand excluded for disputes under public procurement contracts with PSUs.

4. *Special Bench for Public Procurement Disputes*

- a. The Chief Justice of the High Court of Suvarnadwipa may establish a Special Bench to hear and decide cases related to public procurement disputes.
- b. The Special Bench shall comprise judges with expertise in commercial and procurement law.

5. *Time-bound resolution*

- a. All public procurement disputes shall be decided by the national courts within a period of twelve (12) months from the date of filing of the suit.
- b. Extension of this period shall only be granted under exceptional circumstances, with reasons recorded in writing by the court.

6. *Interim relief and specific performance*

- a. The national courts shall have the power to grant interim relief, including injunctions, in cases involving public procurement contracts.
- b. The courts may also direct specific performance of contractual obligations, wherever necessary, to ensure the continuity of public procurement operations.

7. *Repeal and savings*

- a. All provisions relating to arbitration under any existing law or contract concerning public procurement contracts involving PSUs shall be deemed repealed to the extent of inconsistency with this Act.
- b. Notwithstanding the repeal, any proceedings or awards in arbitration that have commenced or concluded prior to the commencement of this Act shall remain valid.

8. *Power to make rules*

- a. The Government of Suvarnadwipa may, by notification in the Official Gazette, make rules for the implementation and enforcement of this Act.
- b. Such rules may provide for procedural guidelines for the filing of cases, court fees, and any other necessary provisions to ensure the smooth operation of this Act.

9. *Retrospective application of the Act*

- a. Notwithstanding anything contained in this Act or any other law, the provisions of this Act shall apply retrospectively to all public procurement contracts entered

into by PSUs with any other party, on and after January 1, 2020, provided that such contracts are still in force as of the date of commencement of this Act.

- b. Any dispute arising out of a public procurement contract entered into on or after January 1, 2020, whether such dispute is currently under arbitration, negotiation, or any other dispute resolution process, shall be transferred to the national courts as per the provisions of this Act.
- c. All arbitration proceedings or awards initiated or issued under such contracts after January 1, 2020 but before the commencement of this Act shall be deemed null and void, and the parties shall have the right to file the dispute afresh in the national courts of Suvarnadwipa.
- d. The retrospective application of this Act shall not affect the validity of contracts, performance, or payments already executed in compliance with contractual terms, except with respect to dispute resolution provisions.

Schedule

This Act replaces arbitration with the national courts of Suvarnadwipa as the forum for dispute resolution in public procurement contracts involving PSUs, ensuring a judicial oversight mechanism for public contracts and fostering transparency and efficiency in the adjudication process.

ANNEXURE - V

Notification of Dispute Resolution Process

From:

Suvarnadwipa Port Trust (SPT)
Government of Suvarnadwipa
Kaladweep Branch
Suvarnadwipa

To:

MantraTech Ports
A subsidiary of MantraTech Pvt. Ltd.
Corporate Office,
Kaladweep, Suvarnadwipa

Date: 20th January, 2024

Subject: Notification of Dispute Resolution Process being governed by SPPLA 2024.

Dear Bhaskar Ravi,

I hope this message finds you well.

We are writing to formally inform you that in accordance with recent legislative changes, all contractual and procurement matters involving Suvarnadwipa Port Trust (SPT) will now be governed by the newly enacted Suvarnadwipa Public Procurement Litigation and Adjudication Act, 2024 (SPPLA Act), which came into effect on January 1, 2024.

Under the provisions of the SPPLA Act, all dispute resolution processes arising from or related to public contracts, including those involving MantraTech Ports, will be exclusively subject to litigation within the judicial system of Suvarnadwipa. This legislative shift mandates that any disputes arising from ongoing or future agreements between SPT and private entities will now follow the litigation procedures as outlined in the Act.

We understand that this may represent a change in the previously anticipated dispute resolution framework. However, we would like to reassure you that Suvarnadwipa's judiciary is equipped to handle such disputes with efficiency, transparency, and fairness, in accordance with the Constitution and legal norms of our country.

We highly value our Joint Venture with MantraTech Ports and remain committed to ensuring smooth collaboration in all our endeavors. Should you have any questions or require further clarifications regarding the application of the SPPLA Act to our current or future engagements, please feel free to reach out to us.

We look forward to your understanding and continued cooperation.

Warm regards,

Abhishek Tripathi

Director

Suvarnadwipa Port Trust (SPT)

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