

SUPREME COURT OF INDIA

Icici Ltd.

Vs.

East Coast Boat Builders & Engineers Ltd.

(S Majmudar and M J Rao JJ.)

21.10.1997

ORDER

1. Ms Suruchi Aggarwal is discharged from appearing for the respondent. Mr Rajesh Kumar has filed vakalatnama for the respondent.

2. By our order dated 10-7-1997 while issuing notice in this SLP it was directed to be placed for final disposal at notice stage itself on a non-miscellaneous day. Accordingly SLP was finally heard by us.

3. Learned advocates for the parties were heard at length. During the hearing it transpired that two main questions of law arose for our consideration. Firstly, whether in an application under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act"), the authority concerned had jurisdiction to consider whether the dispute sought to be referred for arbitration was arbitrable or not; and secondly whether on merits the disputes raised in the present case were covered by the arbitration agreement or not. So far as the first question is concerned it had to be resolved in the light of the statutory scheme of the Act, However if that question was decided in favour of the petitioner by holding that arbitrability of the disputes could be considered in applications under Section 11 of the Act, then the second question would assume great importance and in that contingency one of the disputes sought to be raised by the respondent centering round the question whether the escalation of price as claimed by the respondent could at all survive for

arbitration is required to be considered in the light of the express prohibition contained in the agreement against such disputes pertaining to escalation of price. So far as this aspect of the matter is concerned it was brought to our notice that the very question regarding habitability of such a dispute regarding escalation of price has been referred to a Bench of three learned Judges of this Court by a reference order in the case of K.R, Raveendranathan v. State of Kerala, . Under these circumstances it appears to us that both these questions are so interrelated that decision of the first question against the respondent may require consideration of the second question on all its aspects including the dispute regarding escalation of price and in that eventuality a similar reference to a larger Bench may be required to be made at that stage. Consequently in order to avoid such truncated decision on the main questions in controversy between the parties, it is appropriate that the entire matter may be referred for decision to a Bench of three learned Judges of this Court.

4. We, therefore, direct the office to place this matter before Hon'ble the Chief Justice of India for placing it for final disposal before an appropriate Bench of three learned Judges. As the question regarding scope of Section 11 of the Act will have a direct impact on a number of applications under Section 11 of the Act pending in different courts in this country, in our view, this is a matter which requires decision of this Court at an early date. Parties, therefore, will be at liberty to request Hon'ble the Chief Justice of India to get this matter placed at an early date for final disposal.

5. Ordered accordingly.

Court Master