

STUDENT NOTES

THE IMPLIED EXCLUSION OF JURISDICTION OF INDIAN COURTS OVER INTERNATIONAL COMMERCIAL ARBITRATION UNDER PART ONE OF THE ARBITRATION AND CONCILIATION ACT: PROPOUNDING THE TEST OF CERTAINTY

Ritwik Bhattacharya^{*} & *Mohit Rohatgi*^{**}

ABSTRACT

The prevailing position of law in India, on a question that should, in theory, have a straightforward answer is becoming increasingly difficult to resolve: under what circumstances would the jurisdiction of Indian courts be excluded under the Arbitration and Conciliation Act 1966, and what stipulations must contracting parties insert in their agreement to oust the jurisdiction of Indian courts? The focal point of this confusion is centred on the question as to what suffices to trigger this “implied exclusion” of Part one of the Act as laid down by the court in Bhatia International v. Bulk Trading S.A. Nearly a decade after the Bhatia International pronouncement the answer, this is still clouded. The Supreme Court’s latest judgment in Yograj Infrastructure v. Ssang Yong Engineering has added to the difficulty.

Though the issue of “implied exclusion” has arisen before the Supreme Court and various High Courts on several occasions, however, no Court has attempted to lay down definite requirements,

^{*} 5th Year, Bcomm. LLB. (Hons.) Gujarat National Law University, India. The author can be reached at ritwikb08@gnlu.ac.in.

^{**} 5th Year, Bcomm. LLB. (Hons.) Gujarat National Law University, India. The author can be reached at mohitr08@gnlu.ac.in.

which if fulfilled would constitute implied exclusion. The issue of “implied exclusion” has come before the courts in five different forms, depending on the seat of arbitration, the proper law, the procedural law, and the curial law. Through this paper the authors seek to lay down a definite test that could be followed uniformly by analyzing various previous decisions that have appeared before the Court on the matter. The soundness of the test will then be examined against the backdrop of the latest case on “implied exclusion” of Yograj Infrastructure v. Ssang Yong Engineering. A uniform specific test as suggested by the authors is much required to add the much needed stability in Indian arbitration laws.

KEYWORDS: *Indian Arbitration and Conciliation Act, implied exclusion, seat of arbitration proper law of contract, procedural law, curial law.*