

SUPREME COURT OF PAKISTAN ORDER
15 MARCH 2002

Munir A. Sheikh A-CJ 1. By this common order, we propose to decide Civil Petition Nos. 281 and 306 of 2002 as questions of law and facts are identical in both of them.

2. Civil Petition No. 281 of 2002 is directed against the judgment dated 14 February 2002 of the Lahore High Court, Rawalpindi Bench through which application made by respondent Government under section 20 of the Arbitration Act 1940 has been accepted and it has been held that the arbitration clause contained in the Investment Agreement between the parties that the arbitration will be governed by Pakistani laws was binding on the parties in spite of the fact that subsequent to the said agreement, there was a Bilateral Investment Treaty for reference of the dispute regarding investment to the ICSID.

3. Since the questions raised by the petitioners in both these petitions are substantial questions of law of public importance, therefore, leave is granted to consider, inter alia:

- (a) Whether the arbitration agreement between the parties was binding upon them notwithstanding the coming into force of the Bilateral Investment Treaty;
- (b) Whether the trial court was right in holding that the petitioner was not an investor within the meaning of the said word as defined in Bilateral Investment Treaty?
- (c) Whether it has been rightly held keeping in view the circumstances of the case that the petitioner had waived its right to seek remedy before ICSID?

4. The trial court declined the request of the respondent Government for stay of arbitration proceedings before ICSID initiated by the petitioner in Civil Petition No. 281 of 2002 after filing of the application under section 20 of the Arbitration Act by the respondent Government before the trial court against which Civil Petition No. 306 of 2002 has been filed by it.

5. We have heard learned counsel for the parties on the question of stay of both or any of the proceedings or to bind the parties not to proceed with the same. We find that before initiating proceedings before ICSID, the petitioner in Civil Petition No. 281 of 2002 had already invoked jurisdiction of general court in Switzerland for recovery of the amount allegedly due under the Investment Agreement in which it failed up to the level of highest court. In the application before the trial court in these proceedings moved by the respondent Government, though the petitioner in CP 281/2002 raised the objection of jurisdiction but it had also filed counter claim for recovery against the Government of Pakistan. Apart from this as noted above, proceedings before ICSID have been moved later in time after the application made by the

Government of Pakistan under section 20 of the Arbitration Act, therefore, keeping in view these circumstances and to avoid conflict of the decisions of the two arbitration forums, one invoked by the Government of Pakistan before the trial court and the other initiated by the petitioner in Civil Petition 281 of 2002 before ICSID, we order that both the arbitration proceedings shall remain stayed and both the parties are also hereby restrained from proceeding further with the same till the disposal of the appeals.

6. In view of important questions of law and to avoid delay, the appeals shall be fixed in the third week of May, 2002.