

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN**

**AND**

**THE HON'BLE DR JUSTICE SHAMEEM AKTHER**

WRIT APPEAL NO.261 OF 2017

**JUDGMENT:** {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

Heard Sri D.Prakash Reddy, learned Senior Counsel appearing on behalf of the appellant. Though the name of Sri P.Rajasekhar, learned Standing Counsel for BHEL, is printed in the cause list, neither is he present nor is there any representation on his behalf.

Sri D.Prakash Reddy, learned Senior Counsel, would draw our attention to the grounds of appeal to submit that, since e-auction is being conducted by the Metal Scrap Trade Corporation Limited and the terms and conditions of the auction do not contain an arbitration clause, the learned Single Judge had erred in relying on the instructions of the learned Standing Counsel that there existed an arbitration clause requiring the petitioner to approach the Arbitration Tribunal for resolution of the dispute.

As the matter was disposed of on the basis of instructions of the learned Standing Counsel, and the very existence of an arbitration clause is disputed by the appellants herein, a counter affidavit should have been invited from the respondents in this regard, and an order should have been passed only after the respondents were able to show that there exists an arbitration clause which the petitioner was required to invoke.

The order under appeal is set aside. Writ Petition No.34800 of 2016 is restored to file. The Learned Single Judge shall examine afresh all contentions, including whether there exists an

alternative remedy which the appellant-writ petitioner should exhaust before invoking the extraordinary jurisdiction of this Court. All these contentions may be considered after the respondents file their counter affidavit in the Writ Petition.

The Writ Appeal stands disposed of, accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

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**(RAMESH RANGANATHAN, ACJ)**

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**(DR. SHAMEEM AKTHER, J)**

6<sup>th</sup> March 2017  
RRB

