

(2002) 08 DEL CK 0116
In the Delhi High Court
Case No : FAO (OS) 320 of 2001

Union of India (UOI) and Another

APPELLANT

Vs

S. Kumar

RESPONDENT

Date of Decision : 13-08-2002

Acts Referred:

Arbitration Act, 1940 — Section 20

Arbitration and Conciliation Act, 1996 — Section 85

Citation : (2004) 3 ARBLR 479

Hon'ble Judges : Devinder Gupta, J; B.N. Chaturvedi, J

Bench : Division Bench

Advocate : Jagjit Singh, for the Appellant; D. Moitra and S.K. Jain, for the Respondent

Final Decision : Dismissed

Judgement

1. It The challenge in this appeal is to the order passed on 20.07.2000 by learned Single Judge thereby deciding an application filed u/s 20 of the Arbitration Act, 1940, hereinafter referred to as 1940 Act, seeking direction to the respondents to file Arbitration agreement in Court and for reference of disputes to the Arbitrator so appointed, by the Court.

2. During pendency of the said application, Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act) came into force. Question thus arose before the learned Single Judge as to whether the petition filed u/s 20 of the Arbitration Act, 1940 would be governed by the 1940 Act or by the Arbitration and Conciliation Act, 1996. Learned Single Judge concluded that in view of the judgment of Supreme Court in Thyssen Stahlunion GMBH v. Steel Authority of India Ltd. 1999 (3) Arb. LR 532 (SC), the provisions of Arbitration and Conciliation Act, 1996 will be applicable to the proceedings between the parties and not the provisions of Arbitration Act, 1940. It was also observed that u/s 16 of the Arbitration and Conciliation Act, the Arbitral Tribunal now had the power to rule on its own jurisdiction including the objections that whether any question

can be referred to the Arbitrator or not ? In view of the clear power having now been given to the Arbitrator to rule on its own jurisdiction, the objection of the appellant that certain disputes are excepted matters and cannot be subject matter of reference were thus held to be adjudicable by the Arbitrator and not by the Court. Accordingly, while allowing the petition filed by the respondents, direction was issued to the General Manager to appoint Arbitrator within six weeks.

3. We have duly considered the submissions made at the Bar. The very fact that as on the day when Arbitration and Conciliation Act, 1996 came into force, the Arbitrator had neither been appointed nor entered upon reference, Arbitral proceedings had not commenced. Therefore, in view of Section 85 of the Arbitration and Conciliation Act, in our view no interference is called for in the impugned order passed by the learned Single Judge, which is perfectly just and legal. As such, no interference is called for in the impugned order. The appeal accordingly is dismissed. The stay order stands vacated.