

MANU/SC/0401/1999

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IN THE SUPREME COURT OF INDIA

L.P. No. 3695 of 1999

Decided On: 13.07.1999

Appellants: **Haryana Telecom Ltd.**

Vs.

Respondent: **Sterlite Industries (India) Ltd.**

Hon'ble Judges/Coram:

B.N. Kirpal and S. Rajendra Babu, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Arun Jaitley, Pradeep Kumar Bakshi and Peyush Kalra, Adv.

For Respondents/Defendant: Bharat Sangal, (N.P.), Adv.

ORDER

1. On a winding up petition having been filed by the respondent before the High Court, the petitioner herein moved an application under Section 8 of the Arbitration and Conciliation Act, 1996, inter alia, contending that the High Court should refer the matter to arbitration.

2. The Single Judge dismissed the application and the same was upheld by the Division Bench, while dismissing the appeal the High Court referred to similar cases relating to applications which have been filed under the provisions of the Indians Arbitration Act, 1940 where the consistent view of the High Courts was that the question regarding the winding up of a company could not be referred to an arbitrator.

3. It is submitted by learned Counsel for the petitioner that the language of Section 8 of the 1996 Act is different. Mr. Jaitely, submits that according to Section 8(1) the Judicial Authority is bound to refer that matter to the arbitration when an arbitration agreement exists between the parties.

4. Section 8 of the 1996 Act reads as under:

Power to refer parties to arbitration where there is an arbitration agreement-

(1) A judicial authority before which an action is brought in a matter which is the subject matter of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute refer the parties to arbitration.

(2) The application referred to in Sub-section

(1) shall not be entertained unless it is accompanied by the original

arbitration agreement or a duly certified copy thereof.

(3) Notwithstanding that an application has been made under Sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.

5. Sub-section (1) of Section 8 provides that where the judicial authority before whom an action is brought in a matter, will refer the parties to arbitration the said matter in accordance with the arbitration agreement. This, however, postulates, in our opinion, that what can be referred to the arbitrator is only that dispute or matter which the arbitrator is competent or empowered to decide.

6. The claim in a petition for winding up is not for money. The petition filed under the Companies Act would be to the effect, in a matter like this, that the company has become commercially insolvent and, therefore, should be wound up. The power to order winding up of a company is contained under the Companies Act and is conferred on the court. An arbitrator, notwithstanding any agreement between the parties would have no jurisdiction to order winding up of a company. The matter which is pending before the High Court in which the application was filed by the petitioner herein was relating to winding up of the company. That could obviously not be referred to the arbitration and, therefore, the High Court, in our opinion was right in rejecting the application.

7. For the aforesaid reasons this petition is dismissed in limine.

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