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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ARB.P. 790/2016**

**HCL INFOTECH LIMITED**

..... Petitioner

Through: Mr Rajiv Nayar, Senior Advocate  
with Mr Sonal Kumar Singh and Ms  
Swati Sehgal, Advocates.

versus

**MAHANAGAR TELEPHONE NIGAM  
LIMITED**

..... Respondent

Through: Mr Saket Sikri and Mr Vaibhav  
Kalra, Advocates.

**CORAM:  
HON'BLE MR. JUSTICE VIBHU BAKHRU**

**ORDER  
08.02.2017**

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**VIBHU BAKHRU, J**

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that an arbitrator be appointed to adjudicate the disputes between the parties.

2. Mr Nayar, learned senior counsel appearing for the petitioner submits that although the arbitrator has been appointed on 07.10.2016, he is an ex-employee of the Government of India, Department of Telecommunication and, therefore, ineligible to act as such, by virtue of the provisions of Section 12(5) read with Seventh Schedule to the Act. He contends that, accordingly, the mandate of the arbitrator must be declared to be terminated

and an independent arbitrator may be appointed in his place.

3. Mr Sikri, learned counsel for the respondent has countered the aforesaid submission. He submits that the challenge as to the eligibility of an arbitrator or questions as to whether there are justifiable doubts as to his independence and impartiality must, in the first instance, be considered by the arbitrator so appointed and the discipline of Section 13 of the Act must be followed.

4. Mr Sikri also referred to the decision of a Coordinate Bench of this Court in **Hindustan Construction Co. Ltd. v. Ircon International Ltd.:** **2016 SCC OnLine Del 6073**. On the strength of the said decision, he submitted that a former employee of the Government is not disqualified under clause (1) of the Seventh Schedule to the Act for being appointed as an arbitrator in respect of disputes relating to a company, which is wholly owned by the Government of India.

5. I have heard the counsel for the parties. In ***Hindustan Construction Co. Ltd.*** (*supra*), a co-ordinate bench of this court had held as under:-

“12. While it is not in dispute that the Respondent is a Government of India undertaking which is wholly owned by the Central Government (Ministry of Railways) and incorporated under the Companies Act, 1956, for the purpose of Entry 1 of the Seventh Schedule to attract the disqualification, it must be shown that the proposed Arbitrator is an employee of the Northern Railway or has any other past or present 'business' relationship with it. The submission of Mr. Krishnan that a former employee of the Northern Railway should be considered as having 'present business relationship' with the Respondent is difficult to

accept. In other words, a former employee of the Northern Railway cannot be said to have had a business relationship with the Respondent merely because the Respondent is wholly owned by Government of India/Railways.

13. Mr. Krishnan draws the attention of the Court towards Entry No. 2 of the Seventh Schedule. Entry 2 of the Seventh Schedule attaches disqualification to the Arbitrator where he/she currently represents or advises one of the parties or "an affiliate of one of the parties." Given the fact that the Respondent is wholly owned by the Government of India/Railways and is thus an 'affiliate' organisation, only a presently serving employee of the Northern Railway would stand disqualified, and not a former employee. To hold otherwise, would be adding to the statute a disqualification that has not been made explicit."

6. Thus, in view of the aforesaid decision, a retired employee of the Government of India would not be ineligible under Section 12(5) of the Act for being appointed as an arbitrator in relation to disputes involving a wholly owned company of the Government of India. In this view, the challenge to the appointment of the arbitrator, solely on the ground that he was an employee of the Government of India, fails.

7. In the circumstances, the petitioner is at liberty to challenge the appointment of the arbitrator under Section 12(3) of the Act for any other reason other than the arbitrator being a past employee of the Government of India; however the said challenge would have to be raised before the arbitrator, in the first instance. If the said challenge is rejected by the arbitrator, the only recourse available to the petitioner is to challenge the arbitral award under section 34 of the Act in terms of section 13(5) of the Act.

8. In view of the above, it is not necessary to consider the question whether the issue as to the ineligibility of arbitrator under Section 12(5) of the Act could also be agitated under Section 14 of the Act. The said question remains open.

9. The petition is dismissed.

**FEBRUARY 08, 2017**  
**MK**

**VIBHU BAKHRU, J**

