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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 23.8.2018

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ARB.P. 532/2018 & I.A. No.9818/2018

HUGHES COMMUNICATION INDIA
LIMITED & ORS.

..... Petitioner

Through: Mr. Ankur Mahindro with Ms.
Aarzoo Aneja, Advs.

versus

UNION OF INDIA

..... Respondent

Through: Mr. Mukesh Kr. Tiwari with Mr.
Sanju Kr. Saxena and Mr. R. Mishra,
Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL)

1. This is a petition whereby the relief sought is that this Court appoint an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter referred to as "1996 Act").
2. It is not disputed before me, a fact which is recorded in the previous order that the petitioner had filed a suit in which an application under Section 8 of 1996 Act had been filed by the respondent. In view of the respondent moving an application under Section 8 of the 1996 Act, the suit was terminated.
3. It is in this background that the petitioner has approached this Court. Counsel for the petitioner has drawn my attention to a notice invoking the arbitration agreement. This notice is dated 20.3.2018. Counsel for the petitioner says that the respondent cannot now be given right to appoint an

arbitrator, as no steps were taken, despite service of notice dated 20.3.2018.

3.1 Furthermore, counsel for the petitioner says that as per Clause 29 of the contract obtaining between the parties, which contains the arbitration agreement, states the Secretary, Ministry of Defence, Government of India is to act as the Sole Arbitrator or his nominee. Learned counsel says that in view of the judgment of the Supreme Court in *TRF Limited vs. Energo Engineering Projects Limited*, (2017) 8 SCC 377, the Secretary, Ministry of Defence, Government of India or his nominee cannot be appointed as an arbitrator.

4. Mr. Tiwari, who, appears for the respondent, on the other hand, submits that the respondent has initiated the process of appointing an arbitrator and that this process would get completed soon.

5. I have heard counsel for the parties. In my view, on both counts, counsel for the petitioner is right. Since, the respondent did not take steps for the appointment of an arbitrator prior to the petitioner approaching this Court, the respondent has lost its right to appoint an arbitrator. [See *Datar Switchgears Ltd. vs. TATA Finance Ltd. and Another*, (2000) 8 SCC 151].

6. Insofar as the other submission of the counsel for the petitioner is concerned, once again, as indicated above, counsel for the petitioner is correct in contending that the Secretary, Ministry of Defence, Government of India or his nominee cannot be appointed as an arbitrator.

6.1 This is so in view of the relationship of the Secretary, Ministry of Defence, Government of India with the respondent is such that it is hit by the provisions of Section 12(5) read with the Seventh Schedule of the 1996 Act.

7. In these circumstances, Hon'ble Mr. Justice Moolchand Garg, former Judge of this Court is appointed as an arbitrator in the matter.
8. Learned counsel for both the parties agree that the rules and fee schedule prescribed by the Delhi International Arbitration Centre *qua* the arbitration proceedings conducted under its aegis should apply to the instant arbitration proceedings. It is ordered accordingly.
9. The captioned petition is disposed of in the aforementioned terms.
10. In these circumstances, counsel for the petitioner does not press I.A. No. 9818/2018. However, he will, if necessary, move an appropriate application before the arbitral tribunal concerning matters adverted to in IA No.9818/2018.
11. The captioned application shall also stand disposed of.
12. *Dasti.*

RAJIV SHAKDHER, J

AUGUST 23, 2018/pmc