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DELHI HIGH COURT ON INDEPENDENCE OF ARBITRATOR

A. Introduction

The High Court of Delhi (“**HC**”), in *Monica Khanna & Ors v. Mobit Khanna & Anr.*,¹ upheld that the arbitrator must ensure compliance with Section 12 of the Arbitration and Conciliation Act, 1996 (“**Act**”)² relating to ‘grounds for challenge’ before commencing arbitration proceedings so that the arbitrator appointed to adjudicate the dispute preserves the integrity and neutrality of the arbitration process.

B. Brief Facts:

1. Application was filed before HC seeking appointment of Arbitrator under Section 11³ of the Act.
2. There was no dispute with respect to the arbitration agreement between the parties. But the petitioners submitted that the appointment of arbitrator in accordance with the Memorandum of the Arbitration Agreement was in violation of the Act, i.e., Section 12(5) read with Schedule 7 of the Act.
3. It was submitted that the appointed arbitrator was an advisor/consultant to the respondent and also director and shareholder in PEB Steel Lloyd (India) Ltd. (**PEB**), which in turn is a subsidiary/affiliated company of Lloyd Insulation Limited, where a respondent is director.
4. The respondents admitted that:
 - a. They had availed the professional services of the arbitrator as chartered account (“**CA**”) consultant and that he was also independent director in PEB.
 - b. Petitioners were well aware of the position held by the arbitrator at the time the arbitration agreement was entered into.
 - c. Petitioners had made false and frivolous objections with respect to appointment of the arbitrator to delay performing their obligations.

¹ ARB.P. 202/2021 available at http://164.100.69.66/jupload/dhc/JRM/judgement/19-06-2021/JRM18062021AA2022021_140623.pdf

² Sec. 12 on ‘Grounds for Challenge’. When a person is approached for appointment as arbitrator, he must disclose existence of any past or present relationship with any of the parties that is likely to rise doubts as to his independence and impartiality. Also, sub-section (5) directs that notwithstanding any prior agreement to the contrary, where a person falls under any category specified in Seventh Schedule, he is ineligible.

³ Sec. 11 on ‘Appointment of Arbitrators’.

C. Order and Reasoning:

1. HC held that: “*On careful consideration of the rival contentions of the parties, this Court has serious doubt to the independence of the named arbitrator and therefore, it would be appropriate and in the interest of justice to appoint an independent arbitrator to adjudicate the disputes between the parties.*”⁴
2. Section 12 provides for the grounds for challenging the appointment of an arbitrator. Section 12(5) was added to the Act by amendment in 2015.⁵ As discussed in Supreme Court judgement,⁶ the provision relates to the *de jure* ability of an arbitrator to act as such. If any person whose relationship with the parties or counsel or the subject matter of the dispute falls under the Seventh Schedule, the *non-obstante* clause in the provision wipes out any prior agreement to the contrary.
3. The relationship between arbitrator and respondents in the instant case was within the scope of relationships listed in the Seventh Schedule of the Act. Therefore, HC held that arbitrator is ineligible to adjudicate the dispute. The petition was allowed, and appointment of new arbitrator was ordered.

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⁴ Paragraph 10 of the Judgement.

⁵ Arbitration and Conciliation (Amendment) Act, 2015.

⁶ *Bharat Broadband Network Limited vs. United Telecoms Limited* MANU/SC/0543/2019.

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