

**PRIOR AWARD BY THE SAME ARBITRATOR BETWEEN THE SAME PARTIES CANNOT BE A
GROUND FOR BIAS**

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India has amended its procedural law, Arbitration and Conciliation Act, 1996 by an amending Act, Arbitration and Conciliation (Amendment) Act, 2015 with effect from 23rd October 2015. The said amending Act brought in the requirement of Arbitrators declaring their relationship with the Parties to the Arbitration as well as counsels & Law firms appearing in the Arbitration and the right to parties to challenge their appointment if there is reasonable basis for a bias or impartiality. It has followed “International Bar Association (IBA) guidelines on Conflict of interest in international Arbitrations” and introduced Schedule V & VII which prescribes the category of persons who cannot be considered for appointment as Arbitrator. This has brought in a huge change in the arbitration scene of India, since by its earlier judgments Supreme Court of India upheld the Arbitration clauses which empowered one of the parties, to appoint a sole arbitrator, in case of disputes between the parties, arising out of a contract between them. Hence, many litigations are surfacing on the issue of “independence” and “impartiality” after the 2015 amendment.

Hon’ble supreme court of India in a recent judgment delivered on 31st August 2017 in a case **between HRD Corporation (Marcus Oil and Chemical Division) and Gas Authority of India Limited (GAIL India Limited)**, 2017 SCC online SC 1024, dealt with the challenge filed under S.12 of the Act claiming that appointment of two Arbitrators of the three member panel Justice Mr Lahoti and Justice Mr Doabia are hit by Schedule V & Schedule VII of the amended Act. After the 2016 amendment Act, a dichotomy is made by the Act between persons who become “ineligible” to be appointed as Arbitrators and persons about whom justifiable doubts exist as to their independence or impartiality. Justice Lahoti’s appointment is challenged on the ground that the Arbitrator has been an adviser to GAIL in another unconnected matter. In fact Justice Mr Lahoti had given a legal opinion in another unconnected matter. Hence Court concluded that such an isolated issue of legal opinion given in an unconnected matter cannot be brought into the ambit of “business relationship” mentioned in VIIth Schedule and hence the said contention was rejected.

Relating to the appointment of Justice Mr Daobia the contention was that his appointment is hit by item 16 of the said Schedule VII of the Act. The reason for such a contention was that Mr Daobia was part of a tribunal which decided the same issue arising out of the same contract between the same parties for an earlier period. As per the above said item 16, a person who had an earlier involvement in the case, cannot be appointed as an Arbitrator. It was also argued that the said item 16 of the VIIth Schedule should be read with items 22 and 24th of Vth Schedule. The said disqualification under items 22nd and 24th of Vth Schedule is

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not absolute and cannot be disqualified even if the same party appointed the same person either 2 or more times and not proved to be biased. Hence the court held that the prior award given between the same parties by the same Arbitrator cannot be a disqualification under Schedule V& VII of the Arbitration and Conciliation Act,1996.

