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

+ **ARB.P. 180/2016**

RAITANI ENGINEERING WORKS PVT. LTD Petitioner

Through: Mr. Saurabh Gupta and Mr. Gagan
Gupta, Advocates.

Versus

UNION OF INDIA & ANR. Respondents

Through: Mr. Jagjit Singh, Mr. Preet Singh, Mr.
Sukhdev Singh and Ms Kiran
Kaushik, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
23.01.2017

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1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act') *inter alia* praying an Arbitrator be appointed to adjudicate the disputes that have arisen between the parties in relation to the contract dated 08.03.2010, which was executed pursuant to the respondent's letter dated 28.05.2009 accepting the petitioner's bid.

2. The learned counsel for the petitioner invoked the arbitration clause by its letter dated 07.07.2014 indicating seven claims including interest. The respondents replied to the aforesaid request by its letter dated 28.12.2015 suggesting the names of four Gazetted Officers (all employees of the

respondent) and requesting the petitioner to select two names out of the said panel for the appointment of an arbitrator by the respondents.

3. The learned counsel for the petitioner states that in terms of the Arbitration and Conciliation (Amendment) Act, 2015, an employee / officer of the respondents cannot be appointed as an arbitrator.

4. It is seen that, although ,the arbitration was invoked prior to 23.10.2015, that is, prior to the Amendment Act coming into force, nonetheless, the petitioner request for appointment of an independent arbitrator is not unjustified. The object of introducing amendments to Section 12, was to further mitigate the possibility of the arbitration proceedings being vitiated by bias. Given the object of the amendments, it is expected that the respondents- being a state under Article 12 of the Constitution of India- would implement the same notwithstanding that the amendments may not *sensu stricto* apply. Further, considering the fact that the respondents sent a letter suggesting names of the proposed arbitrator on 28.12.2015, which is after the amendment Act came into force, it was incumbent on the respondents to select a panel of independent arbitrators. Clearly, in terms of the Section 12(5) of the Act, an employee of either party to the arbitration agreement would be ineligible for being appointed as an arbitrator.

5. The respondent does not dispute the existence of the arbitration agreement. In the circumstance, it is directed that an arbitrator be appointed by Delhi International Arbitration Centre (DIAC). The parties shall appear before the co-ordinator, DIAC on 10.02.2017 at 3:30PM. The arbitration

shall be conducted under the aegis of DIAC and in accordance with its Rules.

6. The petition is disposed of.

VIBHU BAKHRU, J

JANUARY 23, 2017

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