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

+ **ARB.P. 240/2017**

**HINDUSTAN CONSTRUCTION COMPANY
LTD.**

..... Petitioner

Through: Mr Dayan Krishnan, Senior Advocate
with Mr Karan Luthra and Ms
Aakash Lodha, Advocates.

versus

IRCON INTERNATIONAL LTD.

..... Respondent

Through: Ms Leena Tuteja and Mr Ishaan
Chawla, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **10.04.2017**

IA Nos.4155-4156/2017

1. Allowed, subject to all just exceptions.
2. The applications stand disposed of.

ARB.P. 240/2017

3. This is a petition filed by the petitioner under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that an Arbitrator be appointed for adjudicating the disputes that have arisen between the parties. The principal grievance of the petitioner is that pursuant to its invocation of arbitration, the respondent has provided names of four former employees of the Railways to the petitioner to select two names for appointment of the Arbitral Tribunal. Mr Dayan Krishnan, learned senior counsel for the petitioner submits that by virtue of the

amendments introduced in Section 12 of the Act by the Arbitration and Conciliation (Amendment) Act, 2015, the appointment of a former employee as an arbitrator would fall foul of the entries in Schedule 5 and Schedule 7 to the Act. Therefore, none of the names suggested by the respondent can be appointed. He further states that the respondent having failed to comply with the request for arbitration in terms of the amended Act, has forfeited its right to appoint an arbitrator and, therefore, this Court ought to proceed to appoint an independent person. Mr Krishnan also fairly points out that in similar matters (**ARB P. nos. 596/2016 & 652/2016: Hindustan Construction Co. Ltd. v. IRCON International Ltd. decided on 22.11.2016**), a Coordinate Bench of this Court has taken a view that appointment of a former employee of the Railways would not contravene the provisions of the Section 12 of the Act as amended.

4. He also states that the said decision is the subject matter of challenge before the Supreme Court.

5. This Court is not persuaded to take a view which is contrary to the view already taken by the Coordinate Bench of this Court and, accordingly, the present petition is dismissed.

VIBHU BAKHRU, J

APRIL 10, 2017
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