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

+ **FAO(OS) (COMM) 254/2018, CM APPL. 46598-46600/2018**

M/S SIMPLEX PROJECTS LIMITED Appellant
versus

**MINISTRY OF HEALTH & FAMILY WELFARE GOVERNMENT
OF INDIA & ORS** Respondents

+ **FAO(OS) (COMM) 255/2018, CM APPL. 46601-46603/2018**

M/S SIMPLEX PROJECTS LTD Appellant
versus

**MINISTRY OF HEALTH & FAMILY WELFARE GOVERNMENT OF
INDIA & ORS** Respondents

Present: Mr. S.D. Singh & Mr. Rahul Kumar Singh, Advs. for petitioner.
Mr. T.M. Singh, Adv. for R-2/RIMS.
Mr. Saurabh Mishra, Mr. Vivek Tyagi & Mr. Abhishek Singh, Advs. for
R-3.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER
% **21.12.2018**

Issue notice.

Mr. T.M. Singh, Advocate for respondent No.2 and Mr. Saurabh
Mishra, Advocate for respondent No.3 accepts notice.

These two appeals question the decision of the learned Single
Judge made on the request by the appellant under Section 9 of the
Arbitration and Conciliation Act (hereafter the "Act"). Both these
appeals claim a direction to the respondent (hereafter the "Central
Government") to decide the question of extension in terms of Clause 44.1

of the General Conditions of Contract (GCC) and decide its (i.e. the appellant's) representations of 26.02.2018 and 04.06.2018. These two representations for seeking extension were in regard to the two packages of contract entered into by the parties, whereby the appellant/contractor was awarded the work of completing construction and other works relating to expansion of the construction of hostels and residential quarters for increase of Under Graduate seats by 54 in the Regional Institute of Medical Sciences, Imphal (Manipur). The ground on which the learned Single Judge rejected the petitions was that the appellant/contractor had not invoked the arbitration Clause and therefore, could not claim the remedy under Section 9.

It was urged that the formulation and understanding of the Learned Single Judge, was incorrect inasmuch as Section 9 is not conditioned upon the invocation of the Arbitration Clause. On the merits, it was urged that the learned Single Judge overlooked the fact that the remedy sought i.e. appropriate direction to the Central Government was necessary having regard to the specific terms of Clauses 44.1, 44.2 & 44.3 of the GCC, which bound the concerned Engineer-in-charge to apply his mind and positively indicate whether the extension was granted and if so, to what extent. Learned counsel dealt with site conditions and stated that though the scope of work was to complete the construction, in reality, in fact, nothing has been constructed and furthermore, that there were work blockages on account of law and order conditions as well as the challenges posed by the terrain. It was furthermore, urged that as an agency of the state, the responders had to and were bound to behave in a reasonable manner and not arbitrarily. Here, it was highlighted that despite the repeated requests for extension of time, the Central

Government proceeded to expel the appellant from the site on 25.05.2018, even without a formal termination of the contract. The Court notices that the term of the contract was for 24 months – which ended on 21.03.2018. Learned counsel relied upon the observations of the learned Single Judge's decision in *KSL & Industries v. National Textile Corporation* (2012) 3 ALR 470 and submitted that even in respect of Section 9 proceedings, the Court is not powerless but can also direct the restoration or extension of a contract – even after taking note of the Section 14 of the Specific Relief Act.

This Court is of the opinion that regardless of the Single Judge's determination with respect to *per se* bar to the maintainability of Section 9 proceedings on account of the appellant's not having invoked the arbitration Clause, it cannot be granted that relief under such interim proceedings. The observations in *KSL Industries* (supra) in this regard in the opinion of the Court are facially too wide. If the appellant's contentions were to be accepted, then the Court would be bound to interpret the terms of the contract and pass some kind of an order directing *status quo ante* – more in the light of the mandatory interim injunction which the Supreme Court has warned repeatedly, can be granted only in rare and exceptional situations (*Samir Narain Bhojwani v Aurora Properties and Investments* 2018 SCC Online 1048). The Court does not discern any such rare or exceptional situation in the present case. The contractor took charge of the site consciously aware of its right and was placed under a responsibility to complete the work. At that stage, it acquainted itself as to the true position at the site. Likewise, as far as other challenges with respect to geographical terrain etc. were concerned as a business entity, it was aware of the risks of working in a disturbed

area. Furthermore, perhaps more crucially, the time for completing the work was fixed i.e. 24 months. Undoubtedly, Clause 24 and the various sub-clauses *prima facie* cast a responsibility on a concerned authority of the employer (i.e. Central Government) to consider a request for extension. However, that in a given case such extension is not granted, cannot *per se* be considered arbitrary nor can it result in the contractor insisting that such extension should be granted after the term of the contract is over - in this case dated on 31.02.2018.

Having regard to these facts, the Court is of the opinion that the interims reliefs, that the appellant sought are properly the subject matter of substantive dispute resolution in the arbitration proceedings. During the course of the hearing, the parties informed the Court that the dispute resolution mechanism has been resorted to by the appellant in the form of the notice to the concerned engineer who is bound to decide the further course of action in a time bound manner depending on the outcome. The appellant's right in these such cases are kept open to agitate the merits of the claim in arbitration proceedings.

For the foregoing reasons, the Court finds that there is no merit in these appeals. It is accordingly dismissed.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

DECEMBER 21, 2018/akv