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

+ **ARB.P. 811/2017**

SS TOTAL CONSTRUCTION (INDIA) PVT.LTD. Petitioner

Through: Mr Mohinder Kumar Madan and Ms
Rashmi B. Singh, Advocates.

versus

ALL INDIA INSTITUTE OF MEDICAL
SCIENCES & ANR.

..... Respondents

Through: Mr V.S.R. Krishna and Mr V.
Shashank Kumar, Advocates.

WITH

+ **ARB.P. 62/2018**

S.S. TOTAL CONSTRUCTION (INDIA)
PRIVATE LIMITED

..... Petitioner

Through: Mr Mohinder Kumar Madan and Ms
Rashmi B. Singh, Advocates.

versus

ALL INDIA INSTITUTE OF MEDICAL
SCIENCES

..... Respondent

Through: Mr V.S.R. Krishna and Mr V.
Shashank Kumar, Advocates.

AND

+ **ARB.P. 63/2018**

M/S S.S TOTAL CONSTRUCTION (INDIA)
PRIVATE LIMITED

..... Petitioner

Through: Mr Mohinder Kumar Madan and Ms
Rashmi B. Singh, Advocates.

versus

ALL INDIA INSTITUTE OF MEDICAL
SCIENCES

..... Respondent

Through: Mr V.S.R. Krishna and Mr V.
Shashank Kumar, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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21.05.2018

IA NO. 970/2018 IN ARB. P. 62/2018

IA NO. 972/2018 IN ARB. P. 63/2018

1. Exemptions are allowed, subject to all just exceptions.
2. The applications are disposed of.

ARB.P. 811/2017 & IA NO. 14983/2017

ARB.P. 62/2018 & IA NO. 971/2018

ARB.P. 63/2018 & IA NO. 973/2018

3. These are the petitions filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that an arbitrator be appointed to adjudicate the disputes that have arisen between the parties. It is seen that an arbitrator has already been appointed by the Superintendent Engineer and several hearings have been held before the arbitrator.
4. The question that the petitioner now seeks to urge is whether the said appointment is valid given that in terms of Clause 25 of the General Conditions of Contract (GCC), the arbitrator is required to be appointed by the Chief Engineer. It appears that the issue is arisen since the General Conditions of the Contract as applicable to CPWD contracts, has been adopted by the respondent.
5. The learned counsel appearing for the respondent states that the matter has since been clarified and the appointment of the arbitrator has been ratified by the competent authority; however, according to the petitioner, the valid appointment can only be made by Chief Engineer, CPWD.
6. It is apparent from the above that the above controversy relating to the mandate of the Arbitrator cannot be entertained in these petitions.

7. It will be open for the petitioner to raise these disputes before the Arbitral Tribunal and further also challenge the arbitral award on the ground of jurisdiction, if and when cause arises. In the event, the petitioner is of the view that the Arbitral Tribunal does not have the mandate to proceed, it will also be open for the petitioner to file an appropriate application in this regard. Needless to state that any such application(s) would be considered on its own merits. However, at this stage, the question for appointing an arbitrator under Section 11 of the Act does not arise.

8. The petitions and the applications are disposed of.

VIBHU BAKHRU, J

MAY 21, 2018

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