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

+ O.M.P. (T) (COMM.) 18/2021 & I.A. 2055/2021 (Section 151 CPC)

ELEKTA MEDICAL SYSTEMS

PVT. LTD. AND ANR

..... Petitioners

Through Mr. Deepesh Sharma, Adv.
versus

INSTITUTE OF LIVER

AND BILIARY SCIENCES

..... Respondent

Through Mr. Sanjay Poddar, Sr.
Advocate with briefing counsel (Attendance
not given)

CORAM:

HON'BLE MR. JUSTICE C .HARI SHANKAR

ORDER (ORAL)

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09.08.2021

(Video-Conferencing)

C .HARI SHANKAR, J.

O.M.P. (T) (COMM.) 18/2021

1. The petitioners, by this petition, seek termination of the mandate of the arbitrator, presently *in seisin* of the disputes between the parties in view of Section 12(5) of the Arbitration and Conciliation Act, 1996 (“the 1996 Act”) read with the judgments of the Supreme Court in *Bharat Broadband Network Ltd. v. United Telecoms Ltd*¹, *Perkins Eastman Architects DPC v. HSCC (India) Ltd*² and *Haryana Space Application Centre v. Pan India Consultants Pvt. Ltd*³

¹ (2019) 5 SCC 755

² 2019 SCC Online SC 1517

³ (2021) 3 SCC 103

2. Mr. Sanjay Poddar, learned Senior Counsel for the respondent, fairly concedes to the applicability of Section 12(5) of the 1996 Act as well as the aforesaid decisions and, therefore, submits that this Court may appoint an arbitrator in place of the arbitrator presently *in seisin* of the disputes.

3. As such, without meaning any disrespect to the learned Arbitrator presently seized with the disputes between the parties – who is a learned retired Judge of this Court – and solely because of the applicability of the aforesaid decisions of the Supreme Court read with Section 12(5) of the 1996 Act, this Court is constrained to terminate the appointment of the said learned Arbitrator.

4. In his place, this Court requests Hon'ble Ms. Justice Gita Mittal, former Chief Justice of the High Court of Jammu and Kashmir, who has also been Acting Chief Justice of this Court, and whose name is acceptable to learned Counsel for both sides, to take over as substitute arbitrator to arbitrate on the disputes between the parties. The learned Arbitrator would continue the proceedings from the stage at which they stand presently.

5. The learned Arbitrator is also requested to furnish the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on reference.

6. The learned Arbitrator would be entitled to fees as were being

paid to the earlier arbitrator, who was *in seisin* of the disputes.

7. The petition stands disposed of in the aforesaid terms.

I.A. 2055/2021 (Section 151 CPC)

In view of the order passed in the petition, this application stands disposed of.

AUGUST 9, 2021
r.bararia

C.HARI SHANKAR, J



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