

COURT-I

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(APPELLATE JURISDICTION)**

**APPEAL NO. 290 OF 2016 &
IA No. 80 of 2017**

Dated: 10th February, 2017

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. B.N. Talukdar, Technical Member (P&NG)**

In the matter of :

**GAIL (India) Ltd. ...Appellant(s)
Vs.
Petroleum & Natural Gas Regulatory Board & Anr. ...Respondent(s)**

Counsel for the Appellant(s) : Mr. Gourab Banerji, Sr. Adv.
Mr. Yoginder Handoo
Mr. Syed A. Haseeb
Mr. Sahil Tagotra

Counsel for the Respondent(s) : Mr. Sumit Kishore for R.1

Mr. Piyush Joshi
Ms. Sumiti Yadava
Ms. Maulishree Gupta for R.2

ORDER**IA No. 80 of 2017**

(Appl. for condonation of delay in filing written objection)

Delay in filing written objection to the maintainability is condoned and written objection is taken on record.

APPEAL NO. 290 OF 2016

In this appeal the Appellant/Gail India Limited (**Gail**) has challenged the Order, dated 30.08.2016, passed by Respondent No.1/Petroleum and Natural Gas Regulatory Board (**the Board**).

On the last occasion, objection to the maintainability of the appeal was raised by Respondent No.2. Hence, we have heard learned counsel for the parties on the question of maintainability today.

Counsel for Respondent No.2 has drawn our attention to the Order of the Supreme Court dated 13.01.2016 in Civil Appeal No. 11450 of 2014, which relates to earlier round of litigation in this case. Counsel submitted that as per Section 33 of the Petroleum and Natural Gas Regulatory Board Act (2006) (**the Act**) an appeal can be filed in this Tribunal by any person aggrieved by an order or decision made by the Board under this Act. Counsel submitted that this appeal is not filed against any order or decision made by the Board under this Act. It is filed after the Supreme Court's above-mentioned order. This is the main argument of counsel for Respondent No.2. The Order of the Supreme Court, to which our attention is drawn, indicates that Respondent No.2 had filed a complaint against the Appellant herein alleging restrictive trade practices. The said complaint was allowed by the Board by its Order dated 26.12.2013. Gail carried an appeal to this Tribunal. By its Order, dated 28.11.2014, this

Tribunal dismissed the said appeal. Thereafter, Gail carried the matter to the Supreme Court. The Supreme Court was, *inter alia*, of the view that this Tribunal and the Board had not addressed the issues raised in the complaint in light of relevant regulations. After setting aside the Board's order as well as this Tribunal's order, the Supreme Court remanded the matter to the Board with certain directions. Pursuant to the Supreme Court's directions, the Board disposed of the complaint. Being aggrieved by the said decision of the Board, Gail has approached this Tribunal by way of the instant appeal.

Against the background of above facts, it is not possible for us to hold that Gail is not aggrieved by order or decision made by the Board under this Act. What is contended by counsel for Respondent No.2 is that in view of the Supreme Court's order, referred to here-in-above, Gail cannot come to this Tribunal, but will have to approach the Supreme Court. We are unable to accept this contention. The Supreme Court has disposed of the Civil Appeal. It has not retained its control over the matter. Therefore, Gail cannot be deprived of its right to challenge the Board's order in this appeal as per the provisions of the Act. Once this Court disposes of this appeal and if the matter is carried to the Supreme Court, the Supreme Court will obviously see whether its order is complied with by the Board and whether this Tribunal's order disposing of the appeal is sustainable.

In the afore-stated circumstances, it is not possible for us to hold that the present appeal is not maintainable. Therefore, objection to the maintainability of the appeal is dismissed.

We have heard learned counsel for the parties on the admission. **Admit.** Issue notice. Mr. Sumit Kishore takes notice on behalf of Respondent No.1 and Mr. Piyush Joshi takes notice on behalf of Respondent No.2 and they undertake to file Vakalatnama within a week and seek four weeks time to file reply. They may file the same on or before 14.03.2017 after serving copy on the other side. Thereafter, rejoinder may be filed on or before 29.03.2017 after serving copy on the other side.

List the matter on **31.03.2017.**

(B.N. Talukdar)
Technical Member (P&NG)
Ts/Vg

(Justice Ranjana P. Desai)
Chairperson