

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI**

(APPELLATE JURISDICTION)

**APPEAL NO. 45 OF 2017 ON THE FILE OF THE
APPELLATE TRIBUNAL FOR ELECTRICITY, NEW DELHI**

Dated: 6th April, 2018

**Present: HON'BLE MR. B.N. TALUKDAR, TECHNICAL MEMBER (P&NG)
HON'BLE MR. JUSTICE N.K. PATIL, JUDICIAL MEMBER**

IN THE MATTER OF

GAIL (India) Limited

Having its Registered Office at:
GAIL Bhawan, Bhikaji Cama Place,
R.K. Puram
New Delhi-110 066, India

..... Appellant

VERSUS

1. The Petroleum And Natural Gas Regulatory Board

Through its Secretary,
Having its registered office at:
First Floor, World Trade Centre,
Babar Road,
New Delhi-110 001

2. Reliance Industries Limited

Through its General Manager
Having its registered office at:
Maker Chambers IV, Nariman Point,
Mumbai-400021

..... Respondents

Counsel for the Appellant ... Mr. Sacchin Puri, Sr. Adv.
Ms. Gunjan Arora
Mr. Sumit Kumar Vats
Mr. Kamil Khan

Counsel for the Respondent(s)... Mr. Sumit Kishore for R-1
Mr. Gaurav Mitra for R-2

J U D G M E N T

PER HON'BLE JUSTICE N.K. PATIL, JUDICIAL MEMBER

1. GAIL (India) Limited, New Delhi (hereinafter referred to as the “**Appellant**”) herein, questioning the legality, validity and propriety of the impugned Order dated 22.12.2016 passed in Case No. Legal/211/2016 on the file of the Petroleum & Natural Gas Regulatory Board, New Delhi, presented this Appeal for seeking following reliefs:

- (a) Allow the Appeal of the Appellant and set aside the Order, dated 22.12.2016;
- (b) Refer the matter to arbitration in terms of GTA/GSTA;
- (c) that the costs of this Appeal be awarded for by this Hon'ble Tribunal; and
- (d) Pass any further order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.

2. The Appellant has presented this Appeal for considering the following substantive questions of law:

- (A) Whether Respondent No.1 was in error by failing to appreciate that as per Section 8 of the Arbitration and Conciliation Act it is mandatory for Respondent No.1 to refer the matter to arbitration?
- (B) Whether a direction can be given in an order for filing of exhaustive counter reply without deciding the preliminary issue of jurisdiction?

- (C) Whether a direction can be given in an order for adducing evidence without deciding the preliminary issue of jurisdiction?
- (D) Whether in presence of arbitration agreements, Respondent No.1 can take cognizance of a purely contractual dispute and pass the Impugned Order derogatory to Section 12 of the PNGRB Act?
- (E) Whether the face of the pleadings under the Complaint of the Respondent No.2, no case of RTP is made out can be complaint of Respondent No.2 be maintained and pursued?
- (F) Whether the complainant be given an opportunity to improve its case beyond its pleadings to establish RTP when none is made out of the pleadings of Respondent No.2?

3. We have heard the learned senior counsel, Mr. Sacchin Puri, appearing for the Appellant, learned counsel, Mr. Sumit Kishore, appearing for the Petroleum and Natural Gas Regulatory Board, first Respondent herein and the learned counsel Mr. Gaurav Mitra, appearing for Reliance Industries Limited, second Respondent herein, at considerable length of time.

4. The learned counsel appearing for the first Respondent, on instruction, submitted that the new Board has been constituted and functioning. Further, he ensured that the matter pending adjudication between the Appellant and the second Respondent will be taken up and decided in accordance with law after affording reasonable

opportunities of hearing for both the parties as expeditiously as possible.

5. *Per-contra*, the learned senior counsel, Mr. Sacchin Puri, on instruction from the learned counsel, Mr. Sumit Kumar, appearing for the Appellant submitted that, in view of the first Respondent's functioning and having quorum, the appropriate direction may be issued to the first Respondent for disposal of the petition/complaint filed by the second Respondent before the first Respondent expeditiously and all the contentions of both the parties may be left open.

6. The learned counsel, Mr. Gaurav Mitra, appearing for the second Respondent, *inter-alia*, contended and submitted that, during the pendency of this Appeal before this Appellate Tribunal, the Appellant herein, has issued a notice for invocation of Arbitration due to non-payment of outstanding over-drawl charges under Gas Sales and Transmission Agreement (GSTA) dated 28.03.2011. The said notice issued, cannot be sustainable for Invocation of Arbitration clause when the matter has been seized by the first Respondent with respect to same dispute i.e. for a sum of Rs.2,66,18,186/-and thus, the said matter is not in dispute. Therefore, he submitted that, the liberty may be reserved to the second Respondent for filing necessary application for interim prayer staying the operation and execution of the impugned

notice issued for Invocation of Arbitration clause as referred above. Till such interim application is filed by the second Respondent considered by the first Respondent, therefore, he submitted that the Appellant may be directed not to precipitate the matter for a period of two weeks in the interest of justice and equity.

7. The learned counsel appearing for the Appellant on record has fairly submitted that, they will not precipitate the notice for Invocation of Arbitration clause, as referred above, for a period of two weeks.

8. After careful consideration of the submissions made by the learned counsel appearing for the Appellant and the learned counsel appearing for the first and second Respondents, as stated above, it is not in dispute that the matter was pending adjudication before the first Respondent and when the matter was pending adjudicated before this Appellate Tribunal, there was no quorum to take up the matter for further consideration. This fact is not disputed by the learned counsel appearing for all the parties. The first Respondent herein is directed to consider the matter pending adjudication and decide the same in accordance with law after affording reasonable opportunity of hearing to all the parties.

9. Taking into consideration this aspect of the matter, as stated above, we thus, direct the first Respondent to dispose-off the matter pending for adjudication on the complaint filed by the second

Respondent against the Appellant as expeditiously as possible at any rate within a period of three months from the date of appearance of the parties.

10. The second Respondent herein is permitted to file necessary interim application for seeking interim protection against the notice issued by the Appellant dated 14.02.2018 i.e. notice for Invocation of Arbitration due to non-payment of outstanding over-drawl charges under the GSTA dated 28.03.2011 immediately after serving copy of the same to all the parties.

11. The Appellant herein is hereby directed not to precipitate the matter for a period of two weeks.

12. The first Respondent is hereby directed to consider the interim application to be filed by the second Respondent and dispose-off the same after affording reasonable opportunity of hearing to all the parties in accordance with law and in the interest of justice and equity.

13. It is needless to clarify that the first Respondent may dispose-off the matter without being influenced by any observation made in the instant order.

14. The Appellant and the second Respondent herein are directed to appear before the first Respondent personally or through their counsel

without notice on 17.04.2018 to enable them to collect further date of hearing.

With these observations, the instant Appeal, being Appeal No. 45 of 2017, on the file of the Appellate Tribunal for Electricity, New Delhi, stands disposed-off.

(N.K. Patil)
Judicial Member

(B.N. Talukdar)
Technical Member (P&NG)

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