

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

% **Date of Decision: 23<sup>rd</sup> December, 2015**

+ ARB.P. 351/2015 and I.A. No.21099/2015

GAIL (INDIA) LIMITED ..... Petitioner  
Through: Mr. Balbir Singh, Senior Advocate  
with Mr. Shridharan and Mr. Angad  
Sandhu, Advocates

versus

BETA INFRATECH PRIVATE LIMITED ..... Respondent  
Through: Mr. Piyush Joshi, Ms. Uttara Babbar  
and Mr. Sumiti Yadava, Advocates

+ ARB.P. 359/2015 and I.A. No.21100/2015

GAIL (INDIA) LIMITED ..... Petitioner  
Through: Mr. Balbir Singh, Senior Advocate  
with Mr. Shridharan and Mr. Angad  
Sandhu, Advocates

versus

SRAVATHI ENERGY PRIVATE LIMITED ..... Respondent  
Through: Mr. Piyush Joshi, Ms. Uttara Babbar  
and Mr. Sumiti Yadava, Advocates

+ ARB.P. 360/2015 and I.A. No.21101/2015

GAIL (INDIA) LIMITED ..... Petitioner  
Through: Mr. Balbir Singh, Senior Advocate  
with Mr. Shridharan and Mr. Angad  
Sandhu, Advocates

versus

GAMA INFRAPROP PRIVATE LIMITED ..... Respondent  
Through: Mr. Piyush Joshi, Ms. Uttara Babbar  
and Mr. Sumiti Yadava, Advocates

**CORAM:**  
**HON'BLE MR. JUSTICE J.R. MIDHA**

**JUDGMENT**

1. The petitioner is seeking appointment of an arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996.
2. Learned senior counsel for the petitioner submitted that the parties entered into three Gas Transmission Agreements dated 19<sup>th</sup> October, 2010 in Arb. P. 351/2015, 11<sup>th</sup> November, 2010 in Arb. P. 359/2015 and 18<sup>th</sup> November, 2010 in Arb. P. 360/2015. There is a valid arbitration agreement between the parties contained in clause 16 of the aforesaid agreements. The disputes have arisen between the parties whereupon the petitioner invoked the arbitration vide letters dated 05<sup>th</sup> May, 2015.
3. Learned counsel for the respondent did not dispute the existence of valid arbitration agreements and disputes between the parties. Learned counsel for the respondent however opposed the petition on the ground that the respondent has made a complaint against the petitioner before the Petroleum and Natural Gas Regulatory Board for indulging in a restrictive trade practice. It was submitted that the said complaint is pending before the Petroleum and Natural Gas Regulatory Board and, therefore, the petitions for appointment of arbitrator are not maintainable.
4. Learned senior counsel for the petitioner submitted that the complaint filed by the respondent before the Petroleum and Natural Gas Regulatory Board would not in any manner bar the arbitration proceedings being invoked by the petitioner under the valid arbitration agreements between the  
*Arb.P.351, 359, 360 of 2015*

parties. It is further submitted that the Petroleum and Natural Gas Regulatory Board's jurisdiction to adjudicate the disputes agreed to be resolved by arbitration is specifically excluded by Section 12(1)(a) of the Act which is reproduced hereunder:-

**“Section 12-Powers regarding complaints and resolution of disputes by the Board:**

*The Board shall have jurisdiction to-*

*(a) adjudicate upon and decide any dispute or matter arising amongst entities or between an entity and any other person on issues relating to refining, processing, storage, transportation, distribution, marketing and sale of petroleum, petroleum products and natural gas according to the provisions of Chapter V, unless the parties have agreed for arbitration”.*

*(Emphasis supplied)*

5. Learned senior counsel for the petitioner further submitted that the petitioner invoked Section 9 of the Arbitration and Conciliation Act by filing O.M.P. No. 1385/2014, 1386/2014 & 1387/2014 before this Court for seeking injunction against the petitioner from invoking bank guarantee and security deposit till the issue of termination of agreements was settled through arbitration in which vide orders dated 10<sup>th</sup> November, 2014, this Court directed the parties to take recourse to amicable settlement as contemplated in clause 16.1 of the Gas Transmission Agreement. It was submitted that having invoked Section 9 of the Arbitration and Conciliation Act, the respondent is estopped from opposing this petition for appointment for arbitrator.

6. Learned senior counsel for petitioner further submitted that a sole arbitrator be appointed by this Court to adjudicate the disputes between the parties. Learned senior counsel for the petitioner submitted that arbitration proceedings in similar matters are pending.

7. This Court is satisfied that there is a valid arbitration agreement between the parties contained in clause 16.2 of the Gas Transmission agreements dated 19<sup>th</sup> October, 2010, 11<sup>th</sup> November, 2010 and 18<sup>th</sup> November, 2010. Disputes have arisen between the parties whereupon the petitioner validly invoked the arbitration agreement.

8. There is no merit in the respondent's objection to the maintainability of this petition. The pendency of the complaint filed by the respondent before Petroleum and Natural Gas Regulatory Board would not bar the jurisdiction of the arbitral tribunal to adjudicate the disputes between the parties. The Petroleum and Natural Gas Regulatory Board is dealing with the complaint of the respondent. The petitioner has admittedly not raised its claims against the respondent before Petroleum and Natural Gas Regulatory Board. The Petroleum and Natural Gas Regulatory Board is not dealing with the claims raised by the petitioner in this petition and therefore, the petitioner would not get any relief with respect to its claims. The petitioner's legal remedy to agitate the claims against the respondent is within the exclusive jurisdiction of the arbitral tribunal by invoking the arbitration agreement between the parties.

9. The respondent itself took recourse of Section 9 of the Arbitration and Conciliation Act in O.M.P. No. 1385/2014, 1386/2014 & 1387/2014 and sought interim relief till the conclusion of the arbitration. Having invoked Section 9 of the Arbitration and Conciliation Act, the respondent cannot object to the arbitration proceedings.

10. The petitions are allowed and Justice R.V. Raveendran (Retd.) is appointed as the sole arbitrator to adjudicate the disputes between the parties including their claims and counter claims. The learned arbitrator shall ensure the compliance of the provisions of Arbitration and Conciliation Act

(Amendment) Ordinance, 2015 before commencing the arbitration.

11. Copy of this judgment be given *dasti* to counsels for the parties under signature of Court Master. Copy of this judgment be sent to the learned arbitrator.

**J.R. MIDHA, J.**

**DECEMBER 23, 2015**  
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