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

+ **O.M.P.(I) (COMM.) 331/2016 & I.A. No.10055/2016**

HARISONS INDUSTRIES Petitioner

Through: Mr. Abhishek Singh, Advocate.

versus

GAIL INDIA LTD. Respondent

Through: Mr. Dinesh Agnani, Senior Advocate
with Ms. Purnima Maheshwari, Advocate.

CORAM: JUSTICE S. MURALIDHAR

ORDER

30.11.2016

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1. The prayer in this petition under Section 9 of the Arbitration and Conciliation Act, 1996 ('Act') is that the court should "set aside the impugned show cause notice dated 4th August, 2016."

2. The aforementioned show cause notice (SCN) was issued by the Respondent GAIL to the Petitioner alleging failure by the Petitioner in fulfilling its contractual obligations under a Letter of Acceptance (LOA) dated 29th April, 2011 for "Laying and Construction of KCJP-GVK-Vemagiri Pipeline, Terminals and Associated Facilities in KG Basin". The SCN requires the Petitioner to explain why it "should not be put on Holiday list of GAIL due to non-fulfilment of the contractual obligation(s) under the above referred LOA".

3. It is not in dispute that the LOA contains an arbitration clause. However, what is pointed out by the Mr. Dinesh Agnani, learned Senior counsel for

GAIL, is that the GAIL is yet to take a decision on the SCN since no reply thereto has yet been filed by the Petitioner.

4. When the matter was listed on 19th August 2016, this Court restrained GAIL from passing any final order on the said SCN.

5. Mr. Abhishek Singh, the learned counsel for the Petitioner states that GAIL has already made up its mind and will not take an objective view of the matter. This is disputed by Mr. Agnani, the learned senior counsel for GAIL, who states that without even filing the reply, the Petitioner cannot have any such apprehension. He further submits that there is no reason to doubt that the said reply, when filed by the Petitioner, will not be considered on merits and an objective decision taken thereon by GAIL.

6. Be that as it may, it is not possible for this Court in a petition under Section 9 of the Act to grant a final relief, as it were, of setting aside a SCN. Section 9 is intended for interim measures pending arbitration of the main dispute.

7. As far as the SCN in question is concerned, the Petitioner is granted four week's time from today to file a reply thereto. After giving a hearing to the Petitioner thereafter, the concerned officer of GAIL will pass a reasoned order thereon within a further period of four weeks. The said order, if adverse to the Petitioner, will not be given effect to for a period of two weeks after it is communicated to the Petitioner to enable the Petitioner to seek appropriate reliefs in accordance with law.

8. The petition and application are disposed of in the above terms.

9. Copy of the order be given *dasti* under the signatures of the Court Master.

NOVEMBER 30, 2016
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S. MURALIDHAR, J.