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

+ EFA(OS) (COMM) 19/2024, CM APPL. 65554/2024-Stay, CM APPL. 65556/2024-Delay 16 days

M S ANDHRA PRADESH GAS POWER CORPORATION LTD

.....Appellant

Through: Mr. Arjun D. Singh and Mr. Yimyanger Longkumer, Advocates

versus

GAIL INDIA LTD

.....Respondent

Through: Mr. N. L. Ganapathi, Ms. Raini V. Tigga and Mr. Amogh S. Rao, Advocates

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

18.11.2024

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1. The present appeal under Section 13(1A) of the Commercial Courts Act, 2015 seeks to assail the interim order dated 01.08.2024 passed by the learned Single Judge in OMP(ENF.)(COMM.) 176/2022.

2. On the last date, learned senior counsel for the respondent appearing on advance notice, had submitted that the appeal itself was not maintainable. By drawing our attention to the provisions of Order XLIII of the Code of Civil Procedure, 1908, he had urged that since an appeal against such an order is not envisaged under the provision of Order XLIII of the CPC, no appeal, much less, the present one would be maintainable under Section



13(1A) of the Commercial Courts Act, 2015.

3. In support of his plea he had relied upon the decisions of Co-ordinate bench of this Court in FAO(OS) 23/2020 titled “*Odeon Builders Pvt. Ltd. Vs. NBCC (India) Ltd.*” 2021 SCC OnLine Del 4390 in FAO(OS) (COMM) 143/2020 titled “*Trex India Pvt. Ltd. Vs. CDE Asia Limited*” 2023 SCC OnLine 2388, of which one of us namely Justice Saurabh Banerjee was a member.

4. Consequently, we had granted time to the learned senior counsel for the appellant to obtain instructions. Today, he has not been able to find any decision or provision of law to controvert the submission of the respondent that the appeal is not maintainable.

5. In these circumstances, having perused the decisions in *Odeon Builders Pvt. Ltd. (supra)* and *Trex India Pvt. Ltd. (supra)*, we have no other option but to dismiss the appeal as not maintainable. The same is accordingly, alongwith accompanying applications, dismissed.

6. We, however, make it clear that since this Court has not expressed any opinion on the merits of the impugned order, it would be open for the appellant to raise grounds raised in the present appeal any appropriate remedy as per law which it may choose to avail.

REKHA PALLI, J

SAURABH BANERJEE, J

NOVEMBER 18, 2024/akr