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O.A.No.968 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.01.2025

Delivered on : 17.02.2025

CORAM

THE HON'BLE MR.JUSTICE P.B.BALAJI

O.A.No.968 of 2024

and

Arb. Application No.884 of 2024

and

Application No.407 of 2025

Gail (India) Limited,
Chennai Zonal Office,
No.16, BSNL Teleshoppe
Greams Road, Thousand Lights,
Chennai, Tamil Nadu-600 002.

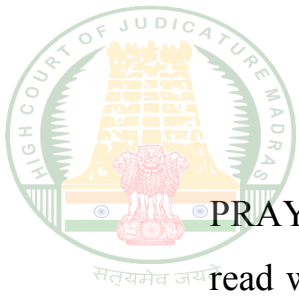
.... Applicant

VS

1.Hindustan Oil Exploration Company Limited,
HOEC House, Tanddalija Road,
Vadodara – 390 020
Also at Lakshmi Chamber, 192,
St. Mary Road, Alwarpet,
Chennai – 600 018.

2.PPN Power Generating Company Private Limited,
III Floor, Jhaver Plaza,
IA Nungambakkam High Road,
Chennai – 600 034.

...Respondents



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PRAYER: This Application filed under Order XIV Rule of OS Rules, 1956 read with Section 9 r/w. Section 2(e)(1) of the Arbitration and Conciliation Act, 1996, to grant interim injunction restraining the first respondent from supplying natural gas from the area contracted by the Applicant under the Gas Supply Contract dated 18.09.2009 to any third party pending disposal of the Arbitration.

For Applicant : Mr.P.V.S.Giridhar, Senior Counsel
for M/s.Giridhar & Sai

For Respondents : Mr.R.Sankaranarayanan,
Senior Counsel for R1
: Mr.Rahul Balaji for R2

ORDER

I have heard Mr.P.V.S.Giridhar, learned Senior Counsel for the applicant, Mr.R.Sankaranarayanan, learned Senior Counsel for the first respondent and Mr.Rahul Balaji, learned counsel for the second respondent and I have gone through the affidavit and counter affidavit filed by the respective parties and also the supporting documents.

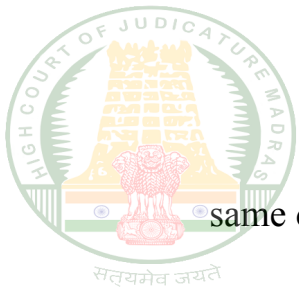
2. The application was moved by the learned Senior Counsel on 17.12.2024 and I was pleased to grant ex parte interim injunction restraining the first respondent from supplying natural gas in respect of the area



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contracted by the applicant under the Gas Supply Agreement dated 18.09.2009 to any third parties, for a period of four weeks. Subsequently, the first respondent appeared and also filed a counter seeking for vacating the said exparte interim order granted by me. Pending the above application, the applicant has taken out yet another application in Application No.407 of 2025, seeking a direction to the first respondent to produce the documents mentioned in the schedule to the Judges Summons. Though no counter affidavit has been filed by the respondents in the said application, the learned Senior Counsel Mr.R.Sankaranarayanan appearing for the counsel for the first respondent made his oral submissions and therefore, the said application has also been heard and orders were reserved along with applications in O.A.No.968 of 2024 and Arb. Appln No.884 of 2024.

3. The learned Senior Counsel Mr.P.V.S. Giridhar, appearing for the applicant would take me through the contract entered into between the applicant and the first respondent by way of a Gas Sale Contract (GSC) dated 18.09.2009 and the Gas Supply Purchase Contract (GSPC) between the petitioner and the second respondent. He would also invite my attention to the tripartite settlement agreement, which was also entered into on the



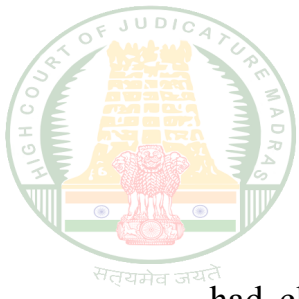
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same day between the petitioner and the respondents.

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4. The learned Senior Counsel by referring to the definitions of relevant terms and expressions in the Gas Sale contract dated 18.09.2009, would take me through the terms and conditions agreed upon between the petitioner and the respondents.

5. The sum and substance of the arguments of the petitioner is that the first respondent had no right to invoke the force majeure clause and by referring to various communications between the parties, the learned Senior Counsel would submit that certain barriers were recognised, even at the time of entering into the contract and therefore, the first respondent cannot invoke the force majeure clause and terminate the contract. He would further submit that the motive of the first respondent is *malafide* and the only intention of the first respondent is to enter into a fresh agreement for higher consideration with third parties and for such reasons, the first respondent cannot be permitted to invoke the force majeure clause, without any justification or situation warranting such invocation.



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6. Further arguments of the learned Senior Counsel are that the parties had clearly agreed upon for duration of the contract which shall be for a primary term of 15 years from the commencement date and the parties had also clearly defined that the run-in-period and commencement date, build up period, plateau period, fulfillment quantity and fulfillment date. However, during the build up period, the first respondent was not even able to offer the agreed 51000 MMBTU / day of DCQ and consequently the second respondent was unable to lift the gas and consequently compelled the second respondent to stop off taking the gas, citing less supply. This necessitated an amendment to the GSC on 10.07.2013, in and whereby vide amendment was entered into between the second respondent and the applicant and the first respondent added a new clause Article 7.2(i)(a) governing the build up period. The learned Senior Counsel would refer to the obligations of the first respondent and invite my attention to the Annexure - II, which set out the contract area. As per the arguments of the learned Senior Counsel for the applicant, the contract area is comprised in 75 sq.km and the first respondent cannot restrict its scope to three Wells alone and in fact, the first respondent had an obligation to dig fresh Wells within 75 sq.km of the contracted area and without doing so, the first respondent erroneously



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invoked the force majeure clause to deprive the rights of the applicants.

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7. He would also point out to the relevant clause Article 7, which speaks about the build up period and referring to the last paragraph of sub-clause (1), which requires that the seller shall make reasonable endeavours to enter into the plateau period at the earliest possible, he would submit that the first respondent has not taken any steps for entering into the plateau period and without doing so, the applicant's contract cannot be terminated.

8. In this regard, the learned Senior Counsel would place reliance on an additional affidavit of one Mr.K.Ashok who has set out various ways in which the production can be enhanced and stated that there has been a clear failure on the part of the first respondent to take any steps for even attempting to enhance production from the low-yield gas reservoir having an area of 75 sq.km. That apart, the learned Senior Counsel would take me through the 40th Annual Report of the first respondent 2023-24, where the first respondent has made promises to the shareholders that further Wells would be dug. In such scenario, the learned Senior Counsel would submit that there can be no rightful invocation of the force majeure clause itself in



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the first place, especially, when technology is very much available for enhancing the yield and it is only the first respondent, who is not willing for the same and thereby, breached clause 15.3 of the Contract.

9. The learned Senior Counsel would also place reliance on the decision of the Delhi High Court in Halliburton Offshore Services Inc. V. Vedanta Limited reported in 2020 SCC Online Del 2068, wherein the Delhi High Court has dealt with the force majeure clause agreed upon between the parties in the case before the Delhi High Court. Placing reliance on the said decision, the learned Senior Counsel for the applicant would submit that in the facts of the present case, the invocation of the force majeure clause was totally untenable and consequently, the interim protection already given to the applicant by way of ex-parte order should be allowed to continue, by allowing the injunction application as prayed for.

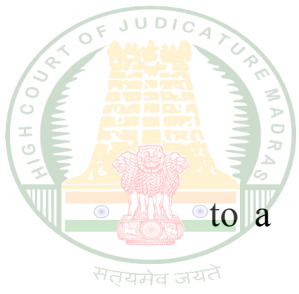
10. Insofar as the Application No.407 of 2025, the learned Senior Counsel would submit that despite notice to produce certain vital relevant documents, which are very well available with the first respondent, the first respondent has not given copies of the same to the applicant which has



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necessitated the present applicant to produce the said relevant documents. In this regard, the learned Senior Counsel would rely on the definitions of “Existing Gas Discovery” that states that in the gas discovery area in the contract area as exists as of the date hereof at a depth below 1500 metres true vertical depth sub sea (basement reservoir as defined in the revised plan of Development submitted by the seller pursuant to the PSC and approved by DGH). He would therefore submit that the said revised plan has not been produced and hence adverse inference has to be drawn against the first respondent.

11. Per contra, Mr.R.Sankaranarayanan, learned Senior Counsel would submit that the subject matter of the contract was only three Wells that were identified and not the other remaining areas comprised in 75 sq.km. He would further take me through the definition of run in period and the built up period as well as plateau period. The learned Senior Counsel would further submit that when the contract was in the build up period abnormal behavior was noticed and as against 51000 MMBTU only 17000 MMBTU could be achieved and therefore, the same was brought to the notice of the applicant and the contract was amended reducing 51000 units



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to a minimum 17000 units. He would therefore submit that despite the amendment, the first respondent was not able to achieve even 7000 MMBTU and therefore, the contract itself had to be drawn to a close. In this regard, he would take me through certain communications between the parties. In and by letter dated 03.10.2023, the first respondent has written to the applicant stating that the production in the field is very low and therefore, the contract has come to an end and the party should work on fresh arrangement for the benefit of both the parties. Subsequently, in and by letter dated 03.01.2024, the applicant had written the first respondent, stating that the contract is expiring on 17.09.2024 and therefore, the first respondent has to come up with the renewal of PY-1 of the existing agreement, to enable the applicant to continue to off take the gas. In and by letter dated 31.07.2024, the first respondent had written to the second respondent stating that there is no breach of contract between the first respondent and the second respondent and even thereafter, on 05.07.2024, the second respondent had written to the first respondent, stating that the first respondent was bound to supply “fulfillment quantity” of natural gas as agreed under the Contract, either other existing gas or gas from new Wells, which is not the first respondent's Wells. In response to the said letter, the



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first respondent had replied vide letter dated 31.07.2024 stating that there is no privity of contract between the first respondent and the second respondent and further exploration of new Well was not relevant to the Contract of the first respondent which was drawing to a close on 17.09.2024. The applicant, on 08.08.2024, had written to both the respondents referring to the agreements and decision of the first respondent not to renew / extend the contract beyond 17.09.2024. The applicant, in fact, under the said communication invoked Article 16 of the termination of contract of GSPC and requested the second respondent to consider termination of GSPC on 17.09.2024 itself, when the contract with the first respondent was due for expiry. The second respondent replied to the applicant's letter stating that the applicant has certain obligations, which are bound to be fulfilled and the second respondent sought for specific performance of the same, thereby, calling upon the applicant to withdraw its notice dated 08.08.2024. One day prior to the contract, on 17.09.2024, on 16.09.2024, the applicant had written to the first respondent stating that primary term expires only on 12.12.2024 and that the respondent cannot avoid any of the obligations cast on it. On 01.10.2024, the first respondent has written to the applicant referring to the Force Majeure Clause having been accepted by the applicant and the factum



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of the gas sale agreement coming to an end and consequently, there have been no obligations for sale gas. Further, the first respondent also stated that the applicant has no right under the agreement dated 18.09.2009, which according to the first respondent stood terminated on 10.07.2013 itself, once the volume agreed upon was reduced to 17000 MMBTU / day.

12. The learned Senior Counsel by referring to all the above exchange of correspondence between the parties would, therefore, submit that the force majeure event has been accepted by the applicant and it is not open to the applicant to turn around and contend otherwise and seek for interim injunction under Section 9 of the Arbitration and Conciliation Act (herein after referred to as "the Act"). He would further submit that the relief itself is beyond the scope of contract, which is only three Wells and there can be no impediment for the first respondent to enter into the contract insofar as the fourth or fifth Wells and the applicant is right is restricted to three Wells alone.

13. Insofar as the additional affidavit filed by the applicant, Mr.R.Sankaranarayanan, learned Senior Counsel would submit that the deponent is not an expert and he is only a Zonal Manager of the applicant company and the contents of the affidavit are merely self serving and cannot



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be given any weightage, that too, at the stage of deciding the Section 9 of application, which intends to only offer interim protection, pending Arbitration proceedings.

14. Insofar as the obligation for production of document also, the learned Senior Counsel, Mr.R.Sankaranarayanan would submit that at the stage of Section 9 application, when Arbitration proceedings, are not even commenced, it is not open to the applicant to seek for production of documents for the applicant to rely upon the same, in order to be entitled to an interim injunction from the Hon'ble Court. The learned Senior Counsel would submit that the respondent is engaging itself only in a fishing expedite and there cannot be any adverse interference against the first respondent at the stage of consideration of the Section 9 application, even before Arbitration proceedings have commenced.

15. Mr.R.Sankaranarayanan, learned Senior Counsel would place reliance on decisions of the Hon'ble Supreme Court in the case of ***M.R.Engineers and Contractors V. Som Datt Builders Limited*** reported in ***2009-7-SCC-696, Zonal General Manager, IRCON International Limited***



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V. Vinay Heavy Equipments reported in **2015-13-SCC-680** and the decision of the Hon'ble Division Bench of the Delhi High Court in the case of **MAC Associates V. Parvinder Singh** reported in **2024-SCC-Online Del 1313**. He would therefore pray for dismissal of all the applications.

16. Mr.Rahul Balaji, learned counsel for the second respondent would submit that the first respondent was fully aware of the role and rights that have accrued to the second respondent and cannot simply wash away and say that there is no privity of contract between the first respondent and the second respondent. The learned Counsel invited my attention to the agreement between the three parties and also in the GSC and the second respondent's right is set out. The learned counsel would further submit that the second respondent has been forced to look for that substitutes, since the promised gas has not been made available, which has resulted in serious prejudice and irreparable loss to the second respondent. The learned counsel would further submit that the first respondent cannot lightly brush aside the contention of the applicant citing “force majeure”, ignoring the vested rights of the second respondent. In any event, he would contend that in the dispute between the applicant and the first respondent, the second



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respondent's rights should not be in any manner prejudiced. He therefore prayed for suitable orders passed by this Court.

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17. I have carefully considered the submissions advanced by the learned Senior Counsel for the applicant and the first respondent as well as the learned counsel for the second respondent.

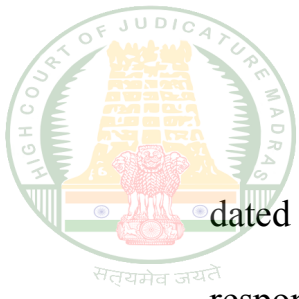
18. It is not in dispute that on 18.09.2009, three different contracts came into existence; One was a tripartite settlement agreement between the applicant, first respondent and the second respondent; the second was a Gas Sale Contract (GSC) between the applicant and the first respondent and the third was a Gas Supply Purchase Contractor (GSPC) with the applicant and the second respondent. The first respondent was carrying out exploration and development of gas, which has been styled PY-1 gas fuel, which is situated on the sea-bed of Kaveri basin in the Bay of Bengal admeasuring 75 sq.km, which is referred to as PY-1 gas fuel. A Production Share Contract was entered into between the first respondent and the Government of India which entitled the first respondent to transport and sell natural gases that were produced from the said PY-1 gas field.



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19. Pursuant to the said rights being conferred on the first respondent, the applicant entered into a Gas Sale and Transportation Agreement with the first respondent on 01.07.2023 for transportation and sale of gas from the existing PY-I gas. Soon thereafter, the applicant entered into a Gas Sales and Transportation Agreement on 29.04.2004 with the second respondent for transportation and sale of gas from the existing gas discovery, from PY-1 gas field. In respect of the contract, disputes arose between the applicant and the first respondent, especially, with respect of their GSTA agreement dated 01.07.2003 and the parties were referred to Arbitration to resolve the disputes. Admittedly, in and by an award dated 15.02.2008, specific performance of the said GSTA was directed against the first respondent. The first respondent challenged the said award before the Delhi High Court under Section 34 of the Arbitration and Conciliation Act, 1996. In the meantime, the second respondent had entered into natural gas sales and purchase agreement with the second respondent dated 28.04.2007 for sale and purchase of PY-1 gas. The applicant filed an application before the Delhi High Court for protection of the right of specific performance as awarded by the Arbitral Tribunal. The Delhi High Court in and by an order



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dated 28.11.2008 passed an order to the effect that in the event of the respondent therein entering into any agreement with a third party for sale of the said gas, the respondent shall disclose the award to the said party and the said agreement shall not in any manner whatsoever come in the way of the execution of the award, in the event of the objections being dismissed. Thereafter, a tripartite agreement came to be executed to give effect to the Arbitral award, especially under the changed circumstances.

20. On the same day, the applicant and the first respondent have entered into the GSC. Admittedly, the second respondent is not a signatory / party the said GSC dated 18.09.2009. However, in the definition clause, the buyer's consumer has been defined as the second respondent. Therefore, stopping here for the limited purpose of the argument of the learned counsel for the second respondent, it certainly cannot be said that the first respondent or for the matter, the applicant's were ignorant of the fact that the consumer of the applicant was the second respondent.

21. Though the learned Senior Counsel for the applicant made elaborate arguments on the effective date, existing gas discovery, fulfillment date, fulfillment quantity and force majeure, specifically, run in period and



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plateau period, on going through the contract, I find that clause 7.3 assumes relevance for the purpose of deciding the issues arising in the present dispute. Under clause 7.3, it is agreed between the applicant and the first respondent that if the first respondent wishes to provide gas from a source inside or outside of the contract area, other than from the existing gas discovery, it was open to the first respondent to notify the applicant to that effect and such notice has been agreed to be offered by the first respondent to sell the gas to the applicant in substitution for gas from the existing gas discovery. An option is given to the applicant to accept or reject the offer of the seller within 10 business days from the date of receipt of the notice and it is also further agreed between the parties that if there is a failure to accept or reject, then the applicant should be deemed to have accepted offer. In the event of the applicant accepting the offer or the offer having been deemed to accept, then the first respondent is required to provide substitute gas to the applicant which would be accepted by the applicant, who would also pay for it under the terms of the contract as if such gas was from the existing gas discovery. The said term clearly evidences the fact that the first respondent in order to meet its obligations to deliver the gas under the GSC was at liberty to provide gas from either a source inside or outside of the contract



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areas, other than from the existing case discovery. The interpretation of this clause would clinch the issue with regard to whether the contracted area was 75 sq.km. or whether it was only the subject three Wells and nothing more. The existing gas discovery has been defined to be gas discovery in the contract area as exists as of the date of the agreement, at a depth below 1500 mtrs through sub-sea (basement reservoir as defined in the Revised Plan of Development submitted by the Seller pursuant to the PSC and approved by the DGH). Therefore, it is clear on a plain reading of the definition of “existing gas discovery” and clause 7.3 that the contract area was the larger extent of 75 sq.km and the existing gas discovery was only three Wells, which were dug by the first respondent. Under Clause 7.3, the first respondent had an option to provide gas from a source either inside the contract area or even out side the contract area but not from the existing discovery, that is the three Wells. In such event, the first respondent had a choice to supply gas from a different Well. Such Well may also be situated within the contract areas of 75 sq.km. Then the first respondent is called upon and inform the applicant about the same and it is open to the applicant either to accept or reject the offer of the first respondent. Therefore, from the above, it is thus clear that the first respondent was to only identify /



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explore availability of gas from outside the existing gas discovery and was not obligated to deliver gas from within the contract area of 75 sq.km. In such circumstances, I am unable to accept the argument of the learned Senior Counsel for the applicant that the first respondent had an obligation to find new source of gas within the contract area. The first respondent cannot be compelled to explore new Wells and it was an option vested with the first respondent to take it forward.

22. Now, coming to the conduct of the parties, admittedly, the parties initially understood that the term of the GSC would come to a close by 17.09.2024. I have already discussed the exchange of correspondence between the parties. As early as on 03.10.2023, the first respondent has written to the applicant stating that the production of gas was abysmally low, the parties should re-work a new arrangement and should benefit both the parties. In the communication dated 03.01.2024, the applicant has stated that PY-I agreement with the validity of 15 years from the date of commencement date would expire on 17.09.2024 and since the supply of gas has reduced substantially and the second respondent has also expressed inability to lift less quantity, the first respondent was called upon to respond



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with regard to renewal of agreement beyond 17.09.2024, so that the applicant would be in a position to off take of PY-I gas. On 08.08.2024, the applicant has written to both the respondents referring to a tripartite agreement between all the three parties on 05.08.2024, wherein also the Applicant acknowledged the first respondent's inability to supply adequate gas and consequently inability of renewal beyond 17.09.2024.

23. Further, in the concluding portions of the said communication, the applicant has clearly expressed that the decision of the first respondent not to renew / extend the GSC beyond 17.09.2024 because of the various impediments was acceptable to the applicant and consequently, the applicant has invoked Article 14 of Contract of GSPC with the second respondent and requested the second respondent to consider the termination of GSPC contemporaneous to the expiry date of GSC, viz., 17.09.2024. Further, the applicant and the first respondent, on 10.07.2013, entered into an amendment No.1, 2, GSC dated 18.09.2009 and also assumed significance. The applicant has acknowledged the abnormal behavior of the Wells and that the DCQ originally agreed, could not be achieved and thereby, it was necessary for scaling down the same to 17000 MMBTU in and by the



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amendment during the build up period. It is further agreed that the sale / purchase would be an actual production by the first respondent and neither the applicant nor the first respondent were under any obligations, to supply or sell to the applicant and similarly the applicant was under no obligation to the first respondent for purchase of any such gas.

24. Admittedly, the agreed terms between the parties were watered down from what was originally agreed under the GSC. The applicant having accepted to an additional clause by way of amendment that the first respondent was under no obligation to supply or sell to the buyer during the build up period, when the DCQ was less than 17000 MMBTU, cannot therefore compel the first respondent to enlarge the existing gas discovery area and supply gas. From this angle also, I am unable to countenance the argument of the learned Senior Counsel for the applicant that the first respondent was obligated to take steps to move into the plateau period. Firstly, there was no request made by the applicant in this regard and on the contrary, the applicant has voluntarily restricted its right by amending the GSC by incorporation of a fresh clause Article 7.2(a)(i). Secondly the applicant has unequivocally accepted the refusal of the extension / renewal



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of the agreement beyond 17.09.2024. After being put on notice about the abnormal behavior of the Wells, the Applicant cannot now challenge the decision of the first respondent to not renew / extend GSC.

25. Even with regard to the force majeure clause, though submissions were made by the learned Senior Counsel relating to clause 15.2 and also placing reliance on the decision *Halliburton Offshore Services Inc's* case, I do not feel that even the necessity to go into this aspect elaborately, for the simple reason that when the first respondent had expressed difficulties in production of gas citing abnormal behavior of the Wells, the applicant, without any protest or demur accepted it and was only harping on the simultaneous termination of the Agreement with the second respondent. At that no point of time, when the issues were brought to the notice of the applicant by the first respondent, the applicant denied the same. Now, in any event, the agreement has also expired. Admittedly, the applicant and the first respondent have not entered into any fresh agreement or even extended the existing GSC. Therefore, in the light of all the above and considering the entitlement of the applicant for an interim order to compel the first respondent to continue to perform its obligation under the GSC dated



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18.09.2009 and to supply natural gas at the rates contracted under the GSC until fulfillment date, pending disposal of the Arbitration, I am unable to see any merit in the contentions put forth on the side of the applicant.

26. The present applicant filed appears to only be an application to merely protect the applicant against of legal action by the second respondent and nothing more. Insofar as the first respondent, they have clearly put it in black and white and accepted the decision of the first respondent. The reason for the first respondent taking such a decision was only because of the abnormal behavior of the reservoir, viz., existing three wells and in such circumstances, the applicant has impliedly accepted invocation of the force majeure clause in the contract. It is not now open to the applicant to state that the force majeure is not a 'Mantra' and that the circumstances warranting invocation of the force majeure clause should be proved and established by the first respondent, I see no reason for such requirement on the side of the first respondent, in the light of the conduct of the applicant as discussed hereinabove in detail.

27. Insofar as the additional affidavit filed on behalf of the applicant, as rightly pointed out by the learned Senior Counsel



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Mr.R.Sankaranarayanan, he is only an officer in charge of the applicant's company and the said affidavit though suggesting some strategy, would have no evidentiary value, at the stage of Section 9 application. The contents of the affidavit will have to be established by leading satisfactory evidence and also subject to cross examination of the deponent during the Arbitration proceedings. The averments set out in the additional affidavit cannot be accepted as gospel truth and at the stage of deciding the entitlement of the applicant to interim relief. With regard to the application seeking production of document also, the application for interim direction is premature. The parties have not yet gone before the Arbitral Tribunal and the pleadings have also not been made by way of claim statement of defence. In such circumstances, the applicant attempt to call upon the first respondent to produce document is premature and the question of drawing adverse inference for non production of the document at this early stage of the proceedings is not warranted.

28. With regard to the submissions of the learned counsel for the second respondent, admittedly the second respondent is not a party to the GSC between the applicant and the first respondent. It may be one thing to



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say that the first respondent was aware that the sale of gas from PY-I was to the second respondent. However, this alone cannot be put against the first respondent, to compel the first respondent to supply gas in terms of GSC to sell the said gas to the second respondent. Even though the agreements were entered into on the same day, ie. 18.09.2009, the agreement are distinct and have been entered into for different purposes. The gas sale contract between the applicant and the first respondent even though had acknowledged that the second respondent was one of its buyer's, it would not necessarily indicate that the second respondent was also a party to the said GSC. Admittedly, on the same day, yet another agreement was entered into between the applicant and the second respondent by way of a Gas Supply Purchase Contract. If at all, the second respondent has any grievance arising under the said Contract with the applicant, it will be always open to the second respondent to redress its grievances in a manner known to law. However, it will not be open to the second respondent to have a say in the dispute between the applicant and the first respondent. It is needless to say that any order passed in the present application will not in any manner affect the interest and rights of the second respondent, who is always at liberty to initiate appropriate legal proceedings, as it may be advised.

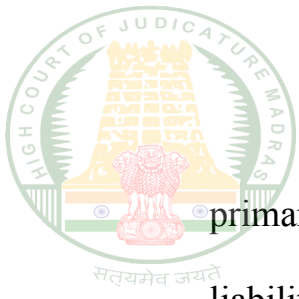


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29. Even in ***M.R.Engineer's*** Case, the Hon'ble Supreme Court held that in a case involving different documents and testing whether reference to a document was with the intention of incorporating the contents of the document in entirety it was held that where there is only reference to the document in a contract in a particular context, then the document will not get incorporated in its entirety into the contract. However, the clause which came up for consideration was an Arbitration clause in the document and in such context, the Hon'ble Supreme Court held that general reference to another contract will not be sufficient to incorporate the arbitration contract from the referred contract into the contract under consideration, unless there is a specific / special reference indicating mutual intention of the parties to incorporate the arbitration agreement into another document. Therefore, even applying the ratio laid down by the Hon'ble Supreme Court to the facts of the case, the mere reference of the second respondent as the buyer from the applicant would not bestow any right on the second respondent to compel supply of gas by the first respondent to the applicant.

30. In ***Zonal General Manager's*** case, while deciding the question of



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primary liability it has been held that the law on subcontract and employer liability is amply clear. It was held that in the absence of a covenant in the main contract to the contrary, the rules in relation to privity of contract will mean that the jural relationship between the employer and the main contractor on the one hand and between the sub contractor and the main contractor on the other hand and would be distinct and separate. In the present case also, I do not find any Clause to the contrary to exist in the main contract between the applicant and the first respondent with regard to the second respondent. Therefore, there is nothing to persuade me to deviate from the presumption of fixing liability insofar as GSC is concerned being either upon the applicant or the first respondent. The second respondent does not have any role to play, though he is a disclosed end buyer.

31. The Hon'ble Division Bench of the Delhi High Court in *MAC Associate's* case, held that in a 'two-contract case', a specific reference to arbitration clause contained in an earlier contract is required for its incorporation in the main contract between the parties but however, in a case of a 'single-contract', a general reference to the standard form contract would have the effect of incorporating the arbitration Clause in the main contract.



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Now, applying the ratio laid down by the Hon'ble Supreme Court in **Zonal General Manager's** case and the Hon'ble Division Bench of the Delhi High Court in **MAC Associate's** case, I do not find any right available to the second respondent, in the present dispute between the applicant and the first respondent. Of course, as already stated, any order that may be passed in the dispute between the applicant and the first respondent would not affect or bind the second respondent, who independent of the same, shall be at perfect liberty to seek remedy or enforce rights in accordance with law.

32. With regard to the Section 9 application, in view of the above discussions, having found that there is no compulsion for the first respondent to supply outside of the three wells, no injunction can be granted as prayed for by the applicant, especially, when the contract has also come to a close on 17.09.2024, which factum is clearly acknowledged by the applicant, even prior to these proceedings and when only here for the first time, to suit its convenience, the applicant toes a different line stating that the agreement does not expire on 17.09.2024, but much later by giving an interpretation based on some of the clauses of the GSC. The applicant's right to gas from PY-I stood extinguished on 17.09.2024 and the interim relief sought for by the applicant, viz., injunction to restrain the first respondent from supplying



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natural gas to any third party from the area contracted by the applicant (O.A.No. 968 of 2024) and pass an interim order directing the first respondent to continue to perform its obligation dated 18.09.2009 (A.A.No.884 of 2024) cannot be entertained and are liable to be dismissed. Also in view of the discussions and reasons stated herein above, Application No.407 of 2025 is also liable to be dismissed.

33. In fine,

(i) O.A.No.968 of 2024 interim injunction granted on 17.12.2024 is vacated.

(ii) Arbitration Application No.884 of 2024 is dismissed.

(iii) Application No.407 of 2025 is dismissed. No costs.

17.02.2025

Index : Yes/No
Internet: Yes
NCC: Yes/No
LS

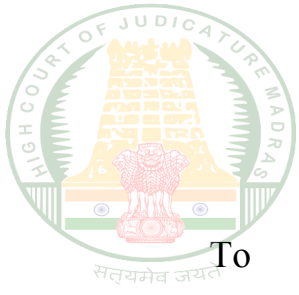
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WEB COPY



O.A.No.968 of 2024



O.A.No.968 of 2024

To

WEB COPY

1.Hindustan Oil Exploration Company Limited,
HOEC House, Tanddalija Road,
Vadodara – 390 020
Also at Lakshmi Chamber, 192,
St. Mary Road,
Alwarpet,
Chennai – 600 018.

2.PPN Power Generating Company Private Limited,
III Floor, Jhaver Plaza,
IA Nungambakkam High Road,
Chennai – 600 034.



WEB COPY



O.A.No.968 of 2024

P.B.BALAJI, J.

LS

Pre-delivery order made in
O.A.No.968 of 2024
and
Arb. Application No.884 of 2024
and
Application No.407 of 2025

17.02.2025