

ITEM NO.26 + 62

COURT NO.11

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 3234-3235/2019

AG AND P LNG MARKETING PTE. LTD

Appellant(s)

VERSUS

IMC LIMITED & ANR.

Respondent(s)

(IA No.49870/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.49871/2019-STAY APPLICATION and IA No.49875/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

C.A. No(s). 3247-3248/2019 (XVII)

(IA NO. 51136/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT AND IA NO. 51127/2019-STAY APPLICATION AND I.A. NO. 51131/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES AND I.A. NO. 52421/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

C.A. No. 3289 of 2019

(FOR ADMISSION AND IA NO. 52528/2019- STAY APPLICATION)

Date : 01-04-2019 These appeals were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE HEMANT GUPTA

Counsel for the parties:-

Mr. Gopal Subramaniam, Sr. Adv.
Mr. Ramji Srinivasan, Sr. Adv.
Mr. Gaurav Juneja, Adv.
Mr. Aayush Jain, Adv.
Mr. Dibyanshu, Adv.
Ms. Deepa Chauhan, Adv.

Mr. Kapil Sibal, Sr. Adv.
Mr. P.S. Narasimha, Sr. Adv.
Mr. Nitin Kola, Adv.
Mr. Sumanto Basu, Adv.
Mr. Pukhrambam Ramesh Kumar, AOR
Ms. Ipshita Mukherjee, Adv.
Ms. Shenira Farid, Adv.
Mr. Rohan Sareen, Adv.
Mr. Jibran Tak, Adv.
Mr. Rahul G.Tanwani, Adv.

Mr. V.C. Shukla, Adv.
Mr. Sindoorra UNL, Adv.

Mr. Mukul Rohatgi, Sr. Adv.
Mr. Vikas Singh, Sr. Adv.
Mr. Buddy Ranganadhan, Adv.
Mr. Mahesh Agarwal, Adv.
Ms. Aanchal Mullick, Adv.
Mr. E.C. Agrawala, AOR
Mr. Shubham Kulshreshtha, Adv.

Mr. K.V. Vishwanathan, Sr. Adv.
Mr. Ravi Raghunath, Adv.
Ms. Bhargavi Kannan, Adv.
Ms. Nafisa Khandeparkar, Adv.
Ms. Aishwarya Modi, Adv.

UPON hearing the counsel the Court made the following
O R D E R

This batch of appeals arises on a difference of opinion between the Chairperson and the Member (Petroleum and Natural Gas) of the Appellate Tribunal for Electricity¹, reflected in their judgments dated 28 February 2019.

Following the difference of opinion, the Chairperson directed that the proceedings in the appeal should be placed before the Judicial Member of APTEL.

The Judicial Member has recused from hearing the appeals. This has led to the institution of the present appeals.

Section 37 of the Petroleum and Natural Gas Regulatory Board Act, 2006² provides for an appeal to this Court against any order, not being an interlocutory order, of APTEL on one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908. Section 30(1) provides that APTEL, which is established under Section 110 of the Electricity Act, 2003 shall be the appellate

1 ("APTEL")

2 "2006 Act"

tribunal for the purposes of the 2006 Act and shall exercise the jurisdiction, powers and authority conferred upon it by or under the latter Act.

Under the proviso to Sub-Section (1) of Section 30, the Technical Member of the Appellate Tribunal is designated as the Technical Members (Petroleum and Natural Gas) and has to possess the qualifications specified in sub-Section (2) of Section 31.

Under Sub-Section(2) of Section 30, the Central Government is empowered to appoint one or more Technical Members (Petroleum and Natural Gas) in APTEL or to designate a Technical Member of the said Tribunal possessing the qualifications specified in sub-Section (2) of Section 31.

Shri B.N. Talukdar was appointed by the Central Government as a Technical Member (Petroleum and Natural Gas). Shri Talukdar was a member of the Bench which also comprised of the Chairperson in which a difference of opinion has arisen by the order dated 28 February 2019.

The Chairperson, in the considered exercise of her discretion, was of the view that the proceedings should thereafter be listed before the Judicial Member. The Judicial Member has recused from hearing the proceedings. No other Judicial Member is available in APTEL to conduct the hearing. This has resulted in an impasse. Since the matter pertains to an infrastructure project, it is necessary that the dispute is resolved at an early date.

Having regard to this background, we are of the view that it would be appropriate if in the exercise of the jurisdiction conferred by Article 142 of the Constitution of India on this

Court, the proceedings before APTEL are transferred to this Court to bring finality to the dispute. The Court will have the benefit, in doing so, of the differing views which have been expressed by the Chairperson and by the Technical Member (Petroleum & Natural Gas).

We accordingly direct that the appeals before APTEL be withdrawn from APTEL and be transferred to this Court. The Registry shall send an intimation to the Registrar of APTEL so that the proceedings can be transmitted to the Registry of this Court on the receipt of the order.

Learned counsel appearing on behalf of the parties state that a common compilation shall be prepared. Brief written submissions be exchanged between the parties and be filed at least one week before the next date of listing.

Issue notice.

Learned counsel appearing on behalf of respondent No. 1 in Civil Appeal No. 3247-3248 of 2019 and Civil Appeal No. 3289 of 2019 waives service of notice.

Liberty to serve the remaining respondents through the learned counsel who appeared on their behalf before APTEL.

List this batch of appeals together with the proceedings, which are transferred to this Court on 22 April 2019 at 2.00 p.m.

The interim order passed by APTEL shall continue pending further orders.

(MANISH SETHI)
COURT MASTER (SH)

(SUNIL KUMAR RAJVANSHI)
BRANCH OFFICER