

\$~19(2022)

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

% *Date of Decision: 16th March, 2022*

+ **O.M.P. (E) (COMM.) 4/2022**

PSA NITROGEN LIMITED

..... Petitioner

Through: Mr Sanjay Gupta, Mr Devesh
Malan, Advocates.

versus

COMPANY SECRETARY GAIL (INDIA)
LTD.

..... Respondent

Through: Mr Tishampati Sen, Mr Anurag
Anand, Ms Uditia, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

VIBHU BAKHRU, J. (ORAL)

O.M.P. (E) (COMM.) 4/2022

1. The petitioner has filed the present petition under Section 27 of the Arbitration and Conciliation Act, 1996, *inter alia*, praying as under:-

- “a) Pass an Order/Directions to set aside the Order Dated 25th February 2022 and allow the Petitioner to conduct its evidence.
- b) Pass necessary order/directions for summoning and taking evidence of Mr. Kotak subramaniam as an

Witness and/or any other official in place of him.”

2. It is seen that by the procedural order dated 25.02.2022 passed by the Arbitral Tribunal, the evidence of the petitioner (Claimant before the Arbitral Tribunal) was closed. The said order records the statement made on behalf of the respondent that it did not wish to examine any witness. Therefore, the respondent’s evidence was closed as well. Prior to 25.02.2022, the matter was taken up by the Arbitral Tribunal on 12.01.2022. At the said hearing, the evidence of petitioner’s witness (CW-1) was recorded and he was discharged. The Arbitral Tribunal had noted that no affidavit of any other witness had been filed on behalf of the petitioner (claimant), despite several opportunities. However, at that stage, the learned counsel appearing for the petitioner had stated that the petitioner required to examine one further witness who is an officer of the respondent. However, no witness was present on behalf of the petitioner on 25.02.2022.

3. The Arbitral Tribunal had listed the matter for final hearing on 21.03.2022.

4. Section 27 (1) of the Arbitration and Conciliation Act, 1996 enables an application to be made to the Court for assistance in taking evidence. However, the said application is required to be made either by the Arbitral Tribunal or any party, with the approval of the Arbitral Tribunal.

5. Section 27 (1) of the A&C Act, is set out below:-

“27. Court assistance in taking evidence. –

(1) The arbitral tribunal, or a party with the

approval of the arbitral tribunal, may apply to the Court for assistance in taking evidence.”

6. In the present case, concededly, the petitioner does not have any approval of the Arbitral Tribunal to make this application. On the contrary, the petitioner seeks to challenge the order dated 25.02.2022 passed by the Arbitral Tribunal. This is clearly beyond the scope of Section 27 of the A&C Act.

7. The present petition is misconceived and is, accordingly, dismissed. The pending application is also disposed of.

VIBHU BAKHRU, J

MARCH 16, 2022

pkv/v

[Click here to check corrigendum, if any](#)