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IN THE HIGH COURT OF DELHI AT NEW DELHI
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI
O.M.P (I) (COMM) 125/2022 & I.A. No. 6159/2022; 12th May 2022
GUJARAT GAS LIMITED versus VEDANTA LIMITED & ORS.

Contract Law - A party cannot demand its 'Right to First Refusal' after making a counter-offer to the seller. When the party that has been given the right to first refusal (RoFR) makes a counter-offer, the seller becomes entitled to sell the subject goods to the third parties.

Arbitration and Conciliation Act, 1996; Section 9 - the court while exercising powers under Section 9 of the A&C Act cannot grant interim relief in the nature of specific performance when it will undoubtedly and obviously be the essential claim and relief that the petitioner will seek in the arbitral proceedings. The Court would not grant mandatory injunctions at the interlocutory stage when disputed rival contentions are yet to be decided.

Petitioner through: Mr. Parag P. Tripathi, Sr. Advocate with Mr. Piyush Joshi, Mr. Srinivasan Ramaswamy, Ms. Vatsla Bhatia & Ms. Manali Joshi, Advocates.

Respondents through: Mr. Kapil Sibal, Sr. Advocate with Mr. Sandeep Sethi, Sr. Advocate with Ms. Ranjana Roy Gawai, Ms. Vasudha Sen & Ms. Aayushi Singh, Advocates. Mr. Jafar Alam & Mr. Saahil Kaul, Advocates for R-4.

J U D G M E N T

ANUP JAIRAM BHAMBHANI J.

By way of the present petition under section 9 of the Arbitration & Conciliation Act, 1996 ("A&C Act"), the petitioner seeks interim measures of protection against the respondents in the context of disputes that are stated to have arisen from Master Gas Sales Contract dated 30.05.2001 ("MGSC") and other related agreements as detailed hereinafter.

2. Although several prayers have been made in the petition, in view of what has transpired in the interregnum, the petitioner has at this stage, pressed only prayer (a), which reads as under :

"a. Restrain the Respondent No. 1, Respondent No. 2 and Respondent No. 3 from any sale or delivery of gas from CBOS/2 Block to any person other than the Petitioner till the dispute as to whether there was any valid and lawful termination of Gas Sales Contract dated 30.05.2001 with Apraava Energy Private Limited (Respondent No. 4) (erstwhile Gujarat Powergen Energy Corporation Limited and CLP India), is decided by an arbitration tribunal or till earlier resolution by amicable settlement of the dispute between the Petitioner and the Respondents"

3. On the basis of the averments contained in the petition and submissions made by Mr. Parag Tripathi, learned senior counsel appearing for the petitioner, the essential case set-up by the petitioner is the following :

(a) *Vidé* Master Gas Sales Contract dated 30.05.2001, the petitioner Gujarat Gas Ltd. ("Gujarat Gas") entered into a contract with a number of entities, some of whom are now respondents in the present petition. Since all contracting parties that are respondents,

have since changed their names for one reason or another, the following table summarizes their change of the names :

Original name, as it appears in the MGSC and in other related correspondence along with acronyms used in the contracts and correspondence	Changed name, as appears in the petition
Oil and Natural Gas Corporation Ltd. / ONGC	Oil and Natural Gas Corporation Ltd.
Tata Petrodyne Ltd. / TPL	Invenire Petrodyne Ltd.
Cairn Energy Ltd. / Cairn / VL	Vedanta Ltd.
Gujarat Powergen Energy Corporation Ltd. / CLP India Pvt Ltd. / GPEC	Apraava Energy Pvt Ltd.
Gujarat Gas Ltd. / GGL	Gujarat Gas Ltd. / GGL

Respondents Nos. 1 to 3 are being collectively referred to in the present proceedings as the “Sellers”, namely those who sold the natural gas that Gujarat Gas had contracted to purchase under the contractual arrangement.

(b) Simultaneously, Gujarat Gas also entered into a Gas Sales Contract dated 30.05.2001 (“Gujarat Gas GSC”) with the Sellers for long term purchase of certain volumes of gas produced at the CB-OS/2 Block located in Suvali, Surat, Gujarat.

(c) Furthermore, respondent No. 4 Apraava Energy Pvt. Ltd. (“Apraava Energy”) also entered into a Gas Sales Contract dated 30.05.2001 (“Apraava Energy GSC”) with the Sellers for purchase for certain volumes of gas produced at the CB-OS/2 Block.

(d) The MGSC, which was a tripartite agreement, was in the nature of an umbrella contract which served as a single operational interface for nomination and delivery of gas sold to Gujarat Gas under the Gujarat Gas GSC and to Apraava Energy under the Apraava Energy GSC; the intent and purpose being that in certain circumstances, Gujarat Gas had the right to acquire the gas allocated for sale to Apraava Energy by way of a “step-in” clause, as discussed in detail later.

(e) The essential dispute now, is between the petitioner, Gujarat Gas and respondent No. 1. Vedanta Ltd. (“Vedanta”), whereby it is Gujarat Gas’s grievance that upon termination of the Apraava Energy GSC by Vedanta, it was incumbent upon Vedanta to notify Gujarat Gas of such termination so that Gujarat Gas could “step-in” into the rights of Apraava Energy and elect to off-take the volume of gas that was being sold to Apraava Energy under the Apraava Energy GSC, which Gujarat Gas alleges Vedanta Ltd. did not do. It is Gujarat Gas’s contention that as per Article 9 of the MGSC, Gujarat Gas had a Right of First Refusal (“RoFR”) that entitled it to receive the entire volume of gas meant for sale to Apraava Energy under the Apraava Energy GSC if Vedanta’s contract with Apraava Energy was terminated. The entitlement of Gujarat Gas to receive the entire volume of gas meant for sale to Apraava Energy is referred to in technical jargon as increased “Daily Contract Quantity” (DCQ).

(f) It is further the grievance of Gujarat Gas that not only has Vedanta breached its obligation under Article 9 of the MGSC by not notifying Gujarat Gas as aforesaid, Vedanta has in fact proceeded to issue a tender offering the said volume of gas for sale to third parties.

4. In order to better understand the contention raised on behalf of Gujarat Gas, attention is drawn to the following provisions of the MGSC :

“ARTICLE 9 STEP IN

(a) ...

(b) *In the event that the Sellers intend to exercise their right to terminate either the GPEC GSC or the GGCL GSC **the Sellers shall notify GGCL (in the case of an intention to terminate the GPEC GSC) or GPEC (in the case of an intention to terminate the GGCL GSC), as soon as reasonably practicable following such decision and shall copy to GGCL or GPEC as the case may be any consequent notice of termination.***

* * * * *

(d) **Within two (2) months of receiving notification from the Sellers under Article 9(b) or (c) of this Contract, the Buyer under the surviving Gas Sale Contract, may elect on notice to the Sellers to increase its Daily Contract Quantity** by a quantity equal to the Daily Contract Quantity which would otherwise have applied under the terminated Gas Sale Contract with effect from the first Day of the next following Month.

* * * * *

(f) *If it is GGCL which makes the election to increase its Daily Contract Quantity under Article 9(d) of this Contract, then :*

(i) *for such increased quantities delivered prior to the end of the fifth Contract Year following the Commencement Date, such increased quantities shall be paid for at the Price which would have been payable under the GPEC GSC; and*

(ii) *for such increased quantities delivered after the end of such fifth Contract Year, the Price under the GGCL GSC shall prevail for the entirety of the Daily Contract Quantity.*

* * * * *

(h) If no election is made in accordance with Article 9(d) of this Contract by GPEC or GGCL, the Sellers shall be free to sell the Sales Gas which would otherwise have been sold under the Gas Sales Contract which is terminated to any third party.”

(emphasis supplied)

5. To support the present proceedings under section 9 of the A&C Act, the arbitration agreement and territorial jurisdiction clause comprised in Article 11 of the MGSC is also cited. Article 11 reads thus :

“ARTICLE 11 DISPUTES

“(a) Any unresolved dispute, difference or claim arising out of or in relation to this Contract shall be settled by arbitration in accordance with the Indian Arbitration and Conciliation Act 1996 (the “Act”). To the extent that the Act allows the Parties discretion to choose procedures applicable to the conduct of the arbitration, the UNCITRAL Arbitration Rules then in force shall apply.

“(b) The Arbitral tribunal shall consist of three arbitrators. In the case of a dispute between the Sellers (or any of them) and both Buyers as to a common issue under this Contract the Sellers shall appoint

one arbitrator and the Buyers shall appoint one arbitrator. In the case of a dispute between the Sellers (or any of them) and one Buyer only under this Contract the Sellers shall appoint one arbitrator and that Buyer shall appoint one arbitrator. In the case of a dispute between the Buyers only under this Contract each Buyer shall appoint one arbitrator. The two arbitrators so appointed shall by agreement appoint the third arbitrator. In default of agreement within fourteen (14) days one Party to the dispute may require the appointment of the third arbitrator, in which case the third arbitrator shall be appointed by the ICC in Paris.

* * * * *

“(f) The right to arbitrate disputes and claims under this Contract shall survive the termination of this Contract.

“(g) **The venue of arbitration proceedings conducted under this Contract, unless the Parties otherwise agree, shall be New Delhi** and proceedings shall be conducted in the English language.

* * * * *

“(i) **The Parties shall continue to perform their respective obligations under this Contract notwithstanding any dispute.**

* * * * *

(emphasis supplied)

6. Furthermore, Article 17 of the Gujarat Gas GSC is also highlighted, which contains the dispute redressal mechanism between the parties. For ease of reference, Article 17 of the Gujarat Gas GSC is extracted below:

“ARTICLE 17 DISPUTES

“17.1 Parties to Use Reasonable Endeavours to Settle Disputes

The Parties shall use their reasonable endeavours to settle amicably all disputes, differences or claims arising out of or in relation to this Contract or concerning the Interpretation or performance of it

“17.2 References to Sole Expert

Any matter that the Parties have agreed to refer to a sole expert under this Contract and any other matters which the Parties may agree to so refer, shall be referred to an independent and impartial person of international standing with relevant qualifications and experience appointed by an agreement between the Parties (a "Sole Expert"). If the Parties cannot agree on a Sole Expert within fourteen (14) days from the date a Party first notifies the other Parties that it wishes to refer a matter to a Sole Expert, the Sole Expert shall be appointed by the President for the time being of the United Kingdom Institute of Petroleum. Any Sole Expert so appointed shall be acting as an expert and not as an arbitrator. The decision of such Sole Expert on the matters referred to him shall (save in the case of manifest error or fraud) be final and binding on the Parties and not subject to arbitration.

“17.3 Unresolved Disputes

Any other matter, unresolved dispute, difference or claim arising out of or in relation to this Contract shall be settled by arbitration in accordance with the Indian Arbitration and Conciliation Act 1996 (the "Act"). To the extent that the Act allows the Parties discretion to choose procedures applicable to the conduct of the arbitration, the UNCITRAL Arbitration Rules then in force shall apply.

* * * * *

“17.6 Decision of Arbitral Tribunal to be Binding

The decision of the Arbitral tribunal, and, in the case of difference among the arbitrators the decision of the majority, shall be final and binding upon the parties to the dispute.

“17.7 Survival of Right to Arbitrate

The right to arbitrate disputes and claims under this Contract shall survive the termination of this Contract.

“17.8 Venue and Law of Arbitration Agreement

The venue of arbitration proceedings conducted under this Contract, unless the Parties otherwise agree, shall be New Delhi unless otherwise determined under Article 21.1 (e) and proceedings shall be conducted in the English language.

* * * * *

“17.10 Continuing Performance

The Parties shall continue to perform their respective obligations under this Contract notwithstanding any dispute.”

(emphasis supplied)

7. Particular attention has been invited to Article 11(i) of the MGSC and Article 17.10 of the Gujarat Gas GSC, which it is argued, bind the parties to continue to perform their obligations under the contract notwithstanding the disputes may have arisen between them.

8. Mr. Tripathi, learned senior counsel appearing for the petitioner has also taken the court through a long chain of correspondence exchanged between Gujarat Gas and Vedanta, in an effort to contend that in breach of its obligations under Article 9(b) of the MGSC, Vedanta failed to notify Gujarat Gas of the fact that Apraava Energy and Vedanta had consensually agreed to terminate the Apraava Energy GSC, which would have entitled Gujarat Gas to exercise its RoFR, namely to invoke the “step-in” clause, to purchase the entire volume of gas that was allocated for sale to Apraava Energy.

9. In this behalf, the following correspondence between the parties is of particular significance¹ :

(a) E-mail dated 20.02.2020 addressed by Vedanta to Gujarat Gas, the relevant portion of which reads as follows :

“We would like to inform you that VLand CLP are currently in discussion for termination of the CLP GSC. Subject to a mutually agreed arrangement arrived between the Parties, the CLP GSC would be terminated by the Parties thereunder. As per clause 9(b) of the MGSC, VL needs to inform the intention of termination of the CLP GSC to GGL to enable GGL to accept increase of the DCQ under the GGL GSC by a quantity of DCQ under the CLP GSC. The price on such increased DCQ, as has been mentioned under clause 9(f)(ii) of the MGSC, shall be the price prevailing under GGL GSC. Please note that the increase of DCQ shall be subject to the termination of the CLP GSC upon which an intimation would be sent by VL to GGL.

*We request you to **kindly confirm, via return mail, your acceptance of increased DCQ** as per details provided above.”*

(emphasis supplied)

¹ For acronyms cf. para 3 (a) above

10. By its reply dated 26.02.2020 Gujarat Gas responded to Vedanta's email dated 20.02.2020 in the following way :

"Thank you for your email. We have noted Vedanta Limited's (VL) proposal for increase in DCQ under GGL LGSC at the price prevailing under GGL GSC on account of ongoing discussion between VL and CLP for termination of CLP GSC.

As you know that current RLNG prices in international market is very low and available in Indian market less than US\$ 2.5 per MMBTU. Further it is evident from various reports and feedback from RLNG supplier(s), RLNG prices are likely to remain at this level for near future. In view of this, GGL hereby proposes to offtake the increase DCQ at CLP LGSC price which is US\$ 4.052 per GJ on net basis and we suggest to have a meeting to conclude the same."

(emphasis supplied)

11. Mr. Tripathi submits that Vedanta's e-mail dated 20.02.2020 was not in compliance of the requirements of Article 9(b) of the MGSC, inasmuch as it only conveyed to Gujarat Gas a *discussion for termination* between Vedanta and Apraava Energy; and therefore such communication did not trigger Gujarat Gas' right to off-take Apraava Energy's volume of gas by exercising its step-in right under the MGSC. It is contended that in this backdrop, Gujarat Gas expressed its *willingness* to off-take the increased volume of gas *but not* at the Gujarat Gas GSC price (which was higher) but at the Apraava Energy GSC price (which was lower). Gujarat Gas justified its position since, it said, the "*...current RLNG prices in international market is very low and available in Indian market less than US\$ 2.5 per MMBTU ...*"

12. It is further submitted on behalf of Gujarat Gas, that in the meantime the Ministry of Petroleum & Natural Gas, Government of India issued Notification dated 15.10.2020 laying-down certain measures for reforming the manner of marketing natural gas, which notification *inter-alia* said that natural gas would only be sold *via* bids invited through an electronic bidding portal so as to discover the market price, by following a transparent and competitive bidding process. Further to this notification, the Ministry brought-out another notification dated 03.12.2020 prescribing a process to discover the market price for domestically produced natural gas under which notification, the Ministry specifically clarified:

"11. The existing gas sales agreements, made in connection with contract provisions, would continue till duration of the agreements/contracts and thereafter subsequent sale of gas shall be subject to these guidelines. All Contractors shall provide the copy of their existing gas sales agreements to DGH."

(emphasis supplied)

13. It is argued on behalf of the petitioner, that therefore, as a matter of policy, the Ministry made it very clear that *existing* contractual gas sale agreements would continue to be honoured till the duration of the contracts; and only subsequent thereto, would the sale of gas be subject to the new guidelines of sale through electronic bidding, to discover the market price of gas.

14. It is submitted however, that in the meantime, since Vedanta had excess gas available for sale by reason of Apraava Energy having stopped off-taking gas, the following communications were exchanged between Vedanta and Gujarat Gas :

(a) By email dated 13.11.2020, Vedanta offered Apraava Energy's share of gas to Gujarat Gas by way of an increased DCQ on the following terms :

"Subject: CB gas sales from 16th November 2020

Dear Sir

As discussed yesterday, please find below the sales volume nomination and allocation procedure that will be followed from 16th November 2020 onwards:

1. Monthly DCQ letter will be sent to GGL offering GGL's share of CB gas 30 days in advance as per the GSC provisions (DCQ letter for November and December have been shared already)

2. Thereafter within the next 10 days, given that there is no communication/ acceptance from CLP on CLP's DCQ, Operator will offer CLP's share of gas to GGL in the form of increased DCQ. GGL officials will be expected to confirm acceptance of this increased DCQ.

"3. A day prior to every Gas Day, GGL will send in their nomination (referred to as MDCQ) for the Day before 1100 hrs which shall be 1.15*[increased DCQ accepted by GGL]"

(emphasis supplied)

(b) It is submitted that this sale of additional volume of gas was accepted by Gujarat Gas *vidé* email dated 14.11.2020, which reads as follows :

"Thanks for your email. I hereby confirm stated off take.

Regards,

Rahul Pandey"

It is the petitioner's contention that this position for off-take of increased DCQ continued from 16.11.2020 onwards.

15. Gujarat Gas contends that Vedanta and Apraava Energy mutually terminated their agreement in August 2021; however Vedanta issued a notice informing Gujarat Gas of the termination only on 02.12.2021, stating that since Gujarat Gas had not accepted the additional volume of gas " ... *in line with provisions of Article 9 of MGSC* ..." and the deadline of two months for doing so had passed, there was no obligation upon Vedanta to supply the additional volume of gas to Gujarat Gas and Vedanta was free to sell that gas to any third party. Pursuant thereto, it is contended, Vedanta has issued a request for proposal *vidé* E-Bidding Notice dated 21.03.2022 to auction the gas in accordance with the notifications issued by the Ministry.

16. It is contended that irrespective of the fact that termination of the Apraava Energy GSC *vidé* Termination Agreement dated 16.08.2021 was a consensual act between the two parties, Vedanta was under obligation under Article 9(b) to notify Gujarat Gas of such termination, in order for Gujarat Gas to have *effectively invoked and exercised its RoFR* to purchase the additional volume of gas in place of Apraava Energy.

17. It is submitted that in view of the above, namely, Vedanta's failure to fulfil its obligation to inform Gujarat Gas of termination of the Apraava Energy GSC; and particularly, in view of Article 11(i) of the MGSC, an interim order ought to be issued directing Vedanta to continue to supply the increased DCQ to Gujarat Gas, pending consideration of the disputes by the arbitral tribunal, as agreed to in Article 11(i) of the MGSC and Article 17.10 of the Gujarat Gas GSC.

18. Although no formal notice was issued on this petition, since the main contesting respondent, Vedanta, was represented at the hearing, Mr. Kapil Sibal, learned senior counsel appearing for them was heard at the pre-notice stage. It may be recorded that Vedanta is also stated to have filed a caveat application, though under a wrong filing categorisation; for which reason it was not on record.

19. In the course of its submissions opposing issuance of notice, Vedanta *inter-alia* highlighted the fact that consequent upon issuance of the Expression of Interest (“Eoi”) and Request for Proposal (“RFP”) dated 21.03.2022, an e-auction was held and contracts have already been signed with certain third parties; supply of gas to whom will commence soon.

20. In view of their submissions, Vedanta was directed to file a short affidavit to that effect.

21. Mr. Sibal submits that the allegation that Vedanta is in breach of its obligation under Article 9(b) since it failed to notify Gujarat Gas of the termination of its agreement with Apraava Energy, is factually incorrect.

22. It is Mr. Sibal’s contention that Article 9(b) expressly says that Vedanta is to notify Gujarat Gas “... *in the event that the Sellers intend to exercise their right to terminate the contract ...*” with Apraava Energy. Article 9(b) further contemplates that Vedanta shall also send to Gujarat Gas a copy of “...*any consequent notice of termination ...*”.

23. It is argued that on a plain reading of Vedanta’s e-mail dated 20.02.2020 it is clear that the *intention to terminate* the Apraava Energy GSC was duly communicated by Vedanta to Gujarat Gas; and that in response to that e-mail, Gujarat Gas in fact reverted by its email of 26.02.2020 *in effect rejecting* its RoFR under Article 9(b) *by making a counter-offer* to off-take the increased DCQ at the lower price as agreed to in the Apraava Energy GSC, on the ground that natural gas was available in the international market at much lower prices than had been agreed upon in the MGSC/Gujarat Gas GSC.

24. It is contended that such counter-offer amounted to rejection and negation of the RoFR under Article 9(b). This contention is sought to be supported by two other provisions of the contract. It is argued that Article 9(d) stipulates a two-month timeline for Gujarat Gas to have exercised its RoFR, which Gujarat Gas failed to do; and Article 9(f)(ii) stipulates that if Gujarat Gas elected to increase its DCQ, it would have to be at the price agreed upon under the Gujarat Gas GSC and not under the Apraava energy GSC, which Gujarat Gas did not accept.

25. On another note, it is clarified that the communication exchanged between the parties makes it clear, that the supply of extra volume of gas to Gujarat Gas by Vedanta from 16.11.2020 onwards had nothing to do with the agreement comprised in the MGSC or the Gujarat Gas GSC but was purely an *ad-hoc* arrangement, since at that time extra volume of gas was available and Vedanta was willing to dispose of the gas at the prevailing price in favour of any buyer, including Gujarat Gas.

26. In fact, it is pointed-out that since Gujarat Gas had not exercised its RoFR under Article 9(b) of the MGSC, *vidé* e-mail dated 26.06.2020, Vedanta sent to Gujarat Gas a reminder in the following words :

“Please refer to our email below and subsequent communication with reference to increased supplies of CB gas to GGL under the provisions of the MGSC. As per the clause 9(f)(ii) of the MGSC, the price for additional volumes elected by GGL shall be the price prevailing under GGL GSC. We would like to highlight that this would give GGL access to CB gas over the long term. We therefore request you to confirm your acceptance via return email.

We would like to re-iterate that we are keen to sell CLP's share of gas to GGL and await your confirmation on the above. In case required, we would be happy to have further discussion on the above as per your availability.”

(emphasis supplied)

It is submitted that to the above communication dated 26.06.2020, Gujarat Gas sent no response.

27. It is pointed-out that since Gujarat Gas did not exercise its RoFR, despite having been duly notified of Vedanta’s intention to terminate the Apraava Energy GSC, Vedanta issued the EoI/RFP, which led Gujarat Gas to issue notice dated 31.12.2021 raising disputes with Vedanta.

28. However, it is submitted that even after issuing notice dated 31.12.2021, Gujarat Gas still did not take any precipitate or concrete action for months; but is now seeking “urgent” measures of protection, on grounds which are totally unfounded.

29. On point of law, Mr Sibal submits, that section 9 of the A&C Act contemplates the grant of interim measures; of protection on certain restricted counts; but section 9 is not meant for grant of relief that may amount to directing specific performance of a contract as a measure of interim relief. Senior counsel submits that, in effect, what Gujarat Gas is seeking today is *enforcement* of its purported right to purchase gas from Vedanta under the MGSC/GSC, the grant of which, at this interim stage, would amount to granting specific performance of contract as an interim measure of protection.

30. Mr. Sibal reiterates that pursuant to the E-tender issued by Vedanta, the e-auction stands completed; successful bidders were shortlisted; and in fact contracts for supply of gas to the successful bidders have been signed; and supply of gas to those parties is scheduled to begin with effect from 01.05.2022.

31. In rejoinder, Mr. Tripathi points-out that the interim relief sought by Gujarat Gas is tenable under section 9, since under the amended provisions of section 14 of the Specific Relief Act, 1963 (as applicable with effect from 01.10.2018), the Legislature has *specifically deleted* the provisions of section 14(1)(a), whereby a contract was not specifically enforceable *if* compensation in money was adequate relief for non-performance. Senior counsel submits that this provision was specifically dropped since it is now the law, that a contract is specifically enforceable even if damages may be adequate relief for its non-performance.

32. It is further argued that the arrangement for supply of increased volume of gas for the period from 16.11.2020 onwards was *not* an *ad hoc* arrangement but was in fact sale made under the provisions of Articles 9(b) and 9(d), since Gujarat Gas had duly communicated to Vedanta its intention to exercise its RoFR under the MGSC; and that the proposal requesting supply of the additional volume of gas at the price agreed upon

with Apraava Energy, was a *mere proposal* which was subject to discussion but was not intended to derogate from the RoFR that vested in Gujarat Gas under the MGSC.

33. It is submitted that since the MGSC was never terminated, the option for Gujarat Gas to exercise its RoFR is still “alive”; and there is no question of Gujarat Gas seeking specific performance of the contract by way of the present petition. Attention is drawn to Article 12.1(c) of the Gujarat Gas GSC, to say that supply of increased volume of gas at a changed rate is in fact contemplated in the contract itself.

Discussions & Conclusions

34. The interim measures of protection contemplated under section 9, within which the prayer made in the present matter would fall, is section 9(1)(ii)(e), which is in the nature of an omnibus provision empowering the court to grant “such other interim measure of protection” as may appear to be just and convenient. The relevant portion of section 9 is extracted below :

“Section 9. Interim measure, etc., by Court.-(1) A party may, before or during arbitral proceedings, or any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court-

(a) ...

(b) ...

(c) ...

(d) ...

(e) *such other interim measure of protection as may appear to the Court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.*

* * * * *

35. Since the contractual relationship between the parties as comprised in the MGSC and the two GSCs between the parties clearly contains an arbitral mechanism in Article 11(a) of the MGSC, therefore, the petitioner is entitled to seek relief under section 9.

36. Upon a careful perusal of Article 9(b), (d), (h) and (f)(ii) of the MGSC and of the communications exchanged between the parties, in the opinion of this court, the following inferences arise :

(a) On a plain reading, of it, Article 9(b) of the MGSC requires Vedanta to notify Gujarat Gas of its *intent* to exercise the right to terminate the Apraava Energy GSC. Vedanta is required to notify Gujarat Gas “...as soon as reasonably practical ...” following such decision; and the provision further mandates that Vedanta shall “... copy Gujarat Gas on any consequent termination notice ...”²;

(b) Article 9(b) of the MGSC further stipulates that upon receiving notification from Vedanta as aforesaid, Gujarat Gas has the option (to elect) to increase its DCQ by the quantity which would become spare upon termination of the Apraava Energy GSC.

² cf. 4

Gujarat Gas is required to do so within 02 (two) months of being so notified under Article 9(b)³.

(c) E-mail dated 20.02.2020⁴ sent by Vedanta to Gujarat Gas clearly notified the latter that it was in discussion with Apraava Energy for a mutually agreed termination of the Apraava Energy GSC. Vedanta also informed Gujarat Gas that an increased DCQ in terms of Article 9(f)(ii) of the MGSC⁵ was available for Gujarat Gas to accept, at a price prevailing under the Gujarat Gas GSC;

(d) However, the response sent by Gujarat Gas *vidé* e-mail dated 26.02.2020⁶ was *not an unqualified acceptance* but clearly a counter-offer, informing Vedanta that while it *“proposes to offtake the increased DCQ”* it would be at the price available to Apraava Energy under the Apraava Energy GSC. This counter offer was made on the basis that gas prices in the international market were very low and that gas was available in the Indian market for less than the price agreed upon in the Gujarat Gas GSC. This was clearly not an acceptance of the offer for increased DCQ under Article 9(b) of the MGSC⁷.

(e) In fact Vedanta’s e-mail dated 26.06.2020⁸ evidences that Vedanta again asked Gujarat Gas to *“confirm their acceptance vide written e-mail”* of the increased DCQ available on the price as per Article 9(f)(ii) of the MGSC,⁹ suggesting that this would give Gujarat Gas access to the gas over the long term. It is clear therefore, that though Vedanta had duly notified Gujarat Gas of the availability of the increased DCQ in view of the proposed consensual termination of the Apraava Energy GSC, Gujarat Gas had not unequivocally exercised its RoFR or step-in right in that behalf.

(f) Since spare gas was available with Vedanta upon termination of the Apraava Energy GSC, at the same time, *vidé* its e-mail dated 13.11.2020¹⁰ Vedanta also informed Gujarat Gas of the sales volume nomination and allocation procedure for the spare gas that would be followed from 16.11.2020 onwards. The fact that this arrangement was not within the scope of the MGSC is evident *inter-alia* from the very “subject” of e-mail dated 13.11.2020 and from the contents of that e-mail, which specified that a monthly DCQ letter will be sent to Gujarat Gas 30 days in advance; and Gujarat Gas officials were required to confirm acceptance of the increased DCQ under this arrangement, among other things. This arrangement was, in the opinion of this court, purely an *ad-hoc* arrangement for disposal of the spare gas available with Vedanta. In fact, this e-mail specifically requested Gujarat Gas to confirm its agreement and acceptance for the procedure indicated in the e-mail.

(g) For completeness, it may also be noticed that *vidé* a mutually executed termination agreement dated 16.08.2021, Vedanta formally terminated the Apraava Energy GSC.

³ cf. para 4

⁴ cf. para 9(a)

⁵ cf. para 4

⁶ cf. para 10

⁷ cf. para 4

⁸ cf. para 26

⁹ cf. para 4

¹⁰ cf. para 14(a)

(h) *Prima-facie* on an objective reading of the communications exchanged between Gujarat Gas and Vedanta, the only fair inference that can be drawn, is that Vedanta duly notified Gujarat Gas of its intention to terminate the GSC with Apraava Energy; and invited Gujarat Gas to exercise its RoFR or “step-in” option to buy the additional volume of gas, that became spare in the hands of the Vedanta upon termination of the agreement with Apraava Energy. However, Gujarat Gas dithered in accepting and exercising its RoFR, and instead made a counter-offer as regards the price at which it was willing to buy the spare volume of gas; which Vedanta did not accept.

(i) It was in this backdrop that notice dated 31.12.2021 came to be issued by Gujarat Gas *inter-alia* to Vedanta, raising its disputes.

37. It is also seen that Gujarat Gas’s stand that Vedanta did not notify it of the termination of the Apraava Energy GSC is, in some sense, contradictory to its stand that the increased DCQ that it received from Vedanta from 16.11.2020 onwards was not an *ad-hoc* arrangement but was in lieu of its right under the “step-in” provision to receive the gas that became spare upon termination of the Apraava Energy GSC. If, on the one hand, Gujarat Gas says that Vedanta did not notify it of the termination of the Apraava Energy GSC, then, on its own reckoning Gujarat Gas could not have exercised any “step-in” rights and the extra volume of gas received from Vedanta could only have been on an *ad-hoc* arrangement.

38. This court is also persuaded to accept Vedanta’s contention that directing Vedanta to *continue to supply* the increased DCQ to Gujarat Gas under the MGSC or under the Gujarat Gas GSC *in pursuance of* the RoFR that was available to Gujarat Gas at this stage, would amount to directing Vedanta to specifically perform the contract. This will undoubtedly and obviously be the essential claim and relief that Gujarat Gas will seek in the arbitral proceedings, that would be initiated by Gujarat Gas against Vedanta.

39. It also weighs with the court that Gujarat Gas continued to receive increased DCQ from Vedanta for the period from 16.11.2020 onwards at the rate and in accordance with the procedure set-out in Vedanta’s e-mail dated 13.11.2020, thereby appearing to adopt the *ad-hoc* arrangement for supply of the increased volume of gas.

40. It has been argued on behalf of Vedanta that Gujarat Gas continued with the *ad-hoc* arrangement until recently since the price of gas was “convenient” to it over that phase; and is now seeking to revert to the arrangement under the MGSC and the Gujarat Gas GSC invoking the “step-in” clause only because gas prices have increased in the international market by reason of disruption in gas supplies due to disturbances in certain parts of the world. While not dispositive of the matter, there appears to be a ring of truth in this submission.

41. The relief sought, namely an order restraining Vedanta from selling the spare volume of gas to any third party can only be by issuance of a mandatory injunction requiring Vedanta to perform the obligations sought to be foisted upon it by Gujarat Gas, which Vedanta disputes. Courts have consistently frowned upon issuance of such mandatory injunctions at the interlocutory stage, when disputed rival contentions are yet to be decided.

42. This court does not consider it necessary to deal with the other rival contentions raised in the matter, so as not to step into the merits and demerits of the dispute and to obviate any prejudice to the proposed arbitral proceedings. It is also clarified that nothing in this judgment be construed as an expression of opinion on the merits of the disputes between the parties; and all observations are only *prima-facie* in nature, for the limited purpose of deciding the present petition.

43. In the above view of the matter, this court does not consider this a fit case for grant of any interim measure of protection.

44. The petition is accordingly dismissed at the pre-notice stage.

45. Pending applications, if any, also stand disposed of.

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