(2021) 07 DEL CK 0119

In the Delhi High Court

Case No : Original Miscellaneous Petition (COMM) No. 98 Of 2021, Miscellaneous Application No. 3612 Of 2021

Indraprastha Gas Limited (IGL) APPELLANT

Vs

M/S Shree Tirupathi Udyog RESPONDENT

Date of Decision : 19-07-2021

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 9, 13, 16, 34, 34(2), 34(2)(a)
Indian Penal Code, 1860 — Section 336, 379

Citation : (2021) 07 DEL CK 0119

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Saurav Aggarwal, Shantanu Agarwal, Akasnsha Dixit, Harshit Malik, Srishti Tripathi, Sai Abhishek, Ananvay Anandvardhan, Anshuman Chowdhary, Devpriya Singh

Final Decision : Dismissed

Judgement

Vibhu Bakhru, J

1. Indraprastha Gas Limited (hereafter â??IGLâ?) has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996

(hereafter the â??A&C Actâ?) impugning an arbitral award dated 18.12.2019 (hereafter â??the impugned awardâ?) passed by an Arbitral Tribunal

comprising of a Sole Arbitrator.

2. The impugned award was rendered in respect of disputes that had arisen between the parties in relation to Gas Supply Agreements (GSAs) dated

22.03.2011 and 01.11.2014.

3. Briefly stated, the relevant facts that are necessary to address the controversy are as under:

4. IGL is a company registered under the Companies Act, 1956 and is, inter alia, engaged in the business of distribution of natural gas in the NCT of

Delhi.

5. The respondent (hereafter â??STUâ?) is a proprietorship concern of Sahil Gupta, having its office at Factory No. 90, Phase II, Badli Industrial

Estate, Delhi and is, inter alia, engaged in the business of manufacturing Aluminium, Brass and Copper sheets and circles.

6. Mr Sahil Gupta (the proprietor of STU) had entered into two separate GSAs dated 22.03.2011 and 01.11.2014 with IGL, to purchase Piped Natural

Gas (PNG). The GSA dated 22.03.2011 was entered by STU under the category of Large Industrial Customer and the GSA dated 01.11.2014 was

entered into as a Small Industrial Customer.

7. On 28.11.2014, IGL confirmed the termination of the GSA dated 22.03.2011 and, continued to supply PNG to STU under the GSA dated

01.11.2014

8. Pursuant to the GSAs, IGL undertook to sell and deliver PNG at the delivery point and, the respondent agreed to receive PNG at the delivery point

and pay for it at the contract price.

9. IGL claims that on 05.12.2014, during the course of a regular inspection by its authorised officials, it was found that STU had tampered with the

facilities of IGL in the factory of M/s Swastik Aluminium, which is a proprietorship concern of one Mr Rajiv Gupta, the uncle of Mr Sahil Gupta (the

brother of Sahil Guptaâ??s father).

10. It is the case of IGL that Mr Sahil Gupta in connivance with Mr Rajiv Gupta had unauthorisedly tapped the 32 mm MDPE with 4 bar pressured

pipe before the Metering Regulation System (MRS) and diverted a part of the supply of PNG to the two furnaces in the factory premises of STU as

well as the factory premises of M/s Ideeal Udyog, the proprietorship concern of Mr. Parveen Gupta, since deceased, who was the father of Sahil

Gupta and the brother of Rajiv Gupta.

11. Consequently, on 05.12.2014, IGL registered an FIR bearing no 1426/2014 with PS Samaipur Badli, inter alia, against STU (Mr Sahil Gupta) under

Sections 336 and 379 of the Indian Penal Code, 1860 (IPC) for theft of PNG by STU and M/s Swastik Aluminium.

12. On 11.12.2014, IGL terminated the GSA dated 01.11.2014 with effect from 05.12.2014. STU, M/s Swastik Aluminium and M/s Ideeal Udyog filed

a joint reply dated 13.12.2014 denying the averments raised by IGL. They stated that they had not indulged in the alleged act of bypassing the gas

connection meter and not consumed the gas supplied by IGL unauthorisedly or in any illegal manner.

13. In response to the joint reply, IGL issued a notice to STU on 09.01.2015 alleging that STU was involved in gas pilferage and further, asserted that

the GSA had been terminated. It further alleged that the actions of STU has resulted into heavy monetary losses to IGL. STU, M/s Swastik

Aluminium and M/s Ideeal Udyog sent a common response to this notice denying the allegations made by IGL.

14. Thereafter, a demand notice was issued by IGL on 05.02.2015 wherein IGL computed the total unauthorised quantity of PNG from July 2011 till

November 2014 as 10.57 lacs SCM (approximately) and accordingly, raised a provisional supplementary estimated demand of Rs. 5,36,01,330/-

payable by STU within three working days with effect from 09.02.2015. In response to the demand notice, STU, M/s Swastik Aluminium and M/s

Ideeal Udyog jointly sent a letter denying their liability.

15. Aggrieved by the same, IGL vide a letter dated 12.03.2015 invoked the Arbitration Clause under Article 15.3 of the GSA dated 22.03.2011 and

Article 23(iii) of the GSA dated 01.11.2014 and accordingly, nominated Mr. P.K. Pandey, Vice President (CNG O&M) of IGL as the Sole Arbitrator.

16. The appointment of the learned arbitrator was challenged by STU by filing an application dated 16.04.2015 before the Arbitral Tribunal under

Section 13 of the A&C Act. The said application was dismissed by the Arbitral Tribunal on 11.08.2015.

17. IGL, on 11.05.2015, also filed a petition under Section 9 of the A&C being OMP (I) Comm 218 of 2015, praying for the appointment of a Court

Commissioner for inspection of the factory premises of STU to obtain relevant information. Accordingly, vide an order dated 15.05.2015, this Court

appointed Mr SK Sharma as the Court Commissioner. The operative part of the said order is set out below:

â??8. The Court is informed that the factory premises of the four Respondents are located in the vicinity of each other and one CC may be sufficient to undertake inspection over a period of two or three days to gather the necessary information.

9. In light of the above submissions, the Court considers it appropriate to issue the following directions:

(i) The Court appoints Mr. S.K. Sharma, a former Registrar of this Court, residing at WZ-321, Sri Nagar, Shakur Basti, Delhi-110034 (Mob.No.

9818103888) as Court Commissioner. The CC will inform the parties at least one day in advance of his proposed visit to the sites.

(ii) The CC will inspect the factory premises of the four Respondents to ascertain the gas pipes running from the point where the meter of the

Petitioner was installed; take photographs of the pipeline and the equipments to which the pipelines may have been or are now connected.

(iii) Prepare an inventory of all the equipments installed in the premises including the furnace and take photographs thereof. The details of the

equipments including dimensions, capacity etc. and any relevant documents in relation to such equipments will be furnished to the CC by the

concerned Respondent.

(iv) Each of the Respondents will make available to the CC documents pertaining to production of the final product, payment of excise duty, vouchers

reflecting sales of the final product and registers showing the stocks on hand. The above figures shall be produced for the billing period as may be

specified by the representatives of the Petitioner who will be present at the site. It is clarified that whatever records are unable to be produced by the

concerned Respondent, the CC will make note to that effect. The CC in his report shall make note of whatever is pointed out by the Respondents at

the site.

(v) The memo of the proceedings drawn up by the CC shall be got signed by the representatives of the Petitioner and the Respondents.

(vi) One copy of the CCâ?s report of his visit enclosing the proceedings, documents, photographs etc., shall be filed in the Court in these proceedings

within two weeks of the completion of the visits and another copy thereof shall be filed by the Petitioner before the learned Arbitrator. Copies of the

CCâ??s report be made available to all the parties.

(vii) The fee of CC is fixed at Rs.2 lakhs which should be paid by the Petitioner to him in two instalments. 50% of fee be paid within one week from today and the balance within a week of the submission of the report. This is apart from all incidental expenses towards travel, secretarial assistance,

photography, etc. which shall be paid by the Petitioner as per actuals.

(vii) The CC should complete the above exercise preferably on or before 10th June 2015.â??

18. In compliance with the abovementioned order, the Court Commissioner inspected the premises of STU on 03.06.2015 and, filed the report before

this Court on 28.06.2015. The relevant extracts of the report are produced hereinbelow:

â??Mr Sahil Gupta stated that he was not in possession of any document whatsoever of M/s Shree Tirupathi Udyog. Mr Sahil Gupta further stated

that though M/s IGLâ?s gas connection in M/s Shree Tirupathi Udyog is in his name as sole proprietor but in fact M/s Ideeal Udyog is running its

business in M/s Shree Tirupathi Udyog factoryâ??s premises.

Mr Dileep Kumar, Addl. Manager, M/s IGL stated that the IGL meter and regulator were installed in M/s Shree Tirupathi Udyogâ?s premises in Mr.

Sahil Guptaâ?s name and were in existence till 7th December, 2014. M/s IGL never removed them. Mr Praveen Gupta stated that on 7th December,

2014 when he received the keys of M/s Shree Tirupathi Udyog from the Police and M/s IGL personnel, the IGL meter was found missing.

According to Mr. Dileep Kumar, one big size and one small size overhead fuel tanks did not exist on 7th December, 2014 and only one small size

overhead fuel tank existed in M/s Shree Tirupathi Udyogâ?s premises whereas Mr. Praveen Gupta insisted that all the three overhead fuel tanks were

in existence and are more than 10 years old.

Since no activity of M/s Shree Tirupathi Udyog was stated to be carried on by Mr Sahil Gupta, no document whatsoever was made available by Mr

Sahil Gupta to the Court Commissioner in spite of the fact that a list of documents prepared by M/s IGL was already sent to the learned counsel for

the respondent for making available the documents as per their list to the Court Commissioner at the time of inspection.â??

19. Thereafter, on 19.12.2016, IGL appointed Justice Dilip Raosaheb Deshmukh, a former judge of the Chhattisgarh High Court as the Sole Arbitrator

to adjudicate the disputes between the parties. The learned Arbitrator entered reference on 28.12.2016 and, rendered the impugned award on

18.12.2019.

20. A plain reading of the award indicates that the Arbitral Tribunal found that IGL had, in fact, failed to establish that there was any illegal tapping

from the premises of M/s. Swastik Aluminium (Factory premises no. 102). The Arbitral Tribunalâ??s reasoning for the said conclusion is as under:

â??(ix) It is also necessary to dwell on the nature of inspection conducted by IGL officials in the premises of M/s Swastik Aluminium and STU. Mr.

Narendra Nath Pandey (CW-1) admitted in cross examination Q.No.64 that â??On 4.12.2014 we had visited Swastik Aluminium, Tirupathi Udyog

and Ideeal Udyog where we found that the persons in these factories were involved in removing the pipelines installed in the above mentioned

premises and on interrogation no satisfactory explanation was given to us. A doubt therefore arose on 04.12.2014 regarding unauthorized usage of

PNG in these premises.â? In its Rejoinder by IGL in Para 9 it was stated â??... It is submitted that when inspection was being done on 04.12.2014 by

the officials of Claimant in the Badli Industrial areas the officials of the Claimant found an illegal tapping was made at the Claimantâ??s mainline

(MDPE} in the factory bearing No.100. On this the Claimantâ??s official inspected the factory premises of Respondent and the officials found that

certain men of the Respondent were removing certain pipes stating them to be old and relating to LPG. The Claimant though suspicious of illegality

could not find anything and therefore left the premises. ...â??. No such evidence has been led in relation to STU in this matter.

(x) Mr. Narendra Nath Pandey (CW-1) further admitted in answer to Q.No.66 that â??We did not inform the police on 4.12.2014, the DGM level

officials of IGLs were already in the team.â? In answer to Q.No.67 he stated that â??There is no document on record to show that a report of

unauthorised usage of PNG in any of the abovementioned premises (as mentioned in Q.No.66) was made to IGL on 4.12.2014.â? To Q.No.86 he

even admitted that the premises of M/s. Swastik Aluminium were not locked on 04.12.2014. No explanation is forthcoming as to why a report was not

lodged with the police on 4.12.2014 or a report was made to IGL officials on that day regarding the unauthorized consumption of PNG in the

abovementioned premises. As a result of the callous attitude of the IGL officials and as admitted by both Mr. Narendra Nath Pandey (CW-1) and Mr.

Dileep Kumar (CW-2) material evidence i.e. pipes, â??Tâ?? junction in M/s. Swastik Aluminium were not found.

(xi) Mr. Dileep Kumar in reply to Q.No.49 stated that the â??Tâ? junction was not seen or recovered from M/s. Swastik Aluminium and he was

unaware if police found it or not. It also emerges from the testimony of the above witnesses of IGL that the premises of M/s. Swastik Aluminium

were found locked on 05.12.2014 when they had undertaken digging work in the nearby premises and that they entered M/s. Swastik Aluminium and

STU with the police. What the police found is not known as no police officer has been examined. The photographs attached with the FIR on

05.12.2014 to P.S. Samaypur Badli were also not requisitioned. The Court Commissioner also did not find any incriminating material in M/s. Swastik

Aluminium and STU on the date of his inspection to show unauthorized consumption of PNG through a pipeline in M/s. Swastik Aluminium connected

with the IGL pipeline before the MRS by means of a â??Tâ?? junction.

Had the officials of IGL been more vigilant on 04.12.2014 they would have been able to discover material evidence relating to tapping of IGLâ?s PNG

pipeline through a â??Tâ?? junction in M/s. Swastik Aluminium.

(xii) What is equally disturbing is that no material is placed on record which would indicate that a panchnama was made by IGL officials on

04.12.2014 or 05.12.2014 or any report in writing was made to IGL regarding the unauthorized tapping of PNG line of IGL. The diagram made by Mr.

Dileep Kumar and placed in this Award was apparently not made on 05.12.2014. Mr. Dileep Kumar (CW-2) did not remember if he handed over any

such diagram either to the police or to the legal department. The witness was given opportunity to verify the said fact from the department but he was

unable to do so and reiterated his answer to Q.No.29 that he did not remember. In answer to Q.No.23 Mr. Dileep Kumar stated â??I have shown to

the police the entire situation on the spot i.e. in the premises of Shree Tirupathi Udyog (STU) but did not actually hand over any article myself. I do

not know about IGL. Vol.: The police was at all times at STU present with us during our visit.â?. IGL did not even requisition any panchnama or

seizure memo made by the police on 5.12.2014 and did not examine the investigating police officer. In answer to Q.No.22, Mr. Dileep Kumar (CW-2)

stated that he did not know if any incriminating articles evidencing theft of gas by Shree Tirupathi Udyog were seized by the police from its premises.

In the absence of incriminating material seized from M/s. Swastik Aluminium the photographs on record as taken by Mr. Dileep Kumar (CW-2) in

STU proves merely the existence of pipelines inside STU connected to its furnaces. Unless it is established by legal, reliable and unimpeachable

evidence that the IGLâ??s pipeline before the MRS of M/s. Swastik Aluminium was breached by an illegal tapping through a â??Tâ?? junction and such

pipeline was first carried inside M/s. Swastik Aluminium no inference can be drawn against Mr. Sahil Gupta or STU merely on the basis of some

pipelines inside the premises of STU. Apparently, despite the fact that the premises of STU was open on 04.12.2014 during inspection by more than

10 IGL officials including its DGM (Q .No.66) who found that pipelines were being removed by employees no action was taken by IGL officials on

04.12.2014 resulting in disappearance of material evidence in M/s. Swastik Aluminium. The presence of even a single independent witness with the

team of IGL officials on 4th or 5th December, 2014 is not borne out from the record.

21. Although Mr Saurav Aggarwal, learned counsel appearing for IGL, had earnestly contended that the findings and reasoning are not supported by

evidence and there is some evidence to the contrary. Clearly, this Court cannot, given the limited scope of interference under Section 34(2) and 34(2)

(a) of the A&C Act, embark on the exercise of re-appreciating and re-evaluating the evidence and supplanting its view on a question of fact, in place

of that of the Arbitral Tribunal.

22. The Arbitral Tribunalâ?s conclusion that IGL had failed to establish that there was an illegal tapping of its facility at the premises of M/s. Swastik

Aluminium is based on evaluation of evidence. This is not a case, where the finding of the Arbitral Tribunal is based on no evidence or material at all.

This Court may on examination of the evidence take a different view. However, this Court has no jurisdiction to do so in these proceedings. Unless

the court finds that the Arbitral Tribunalâ?s view is perverse and falls foul of the fundamental policy of Indian Law, no interference with the impugned

award would be warranted.

23. The Tribunal also found that providing a connection to the premises of STU by attaching a pipeline by Mr Rajeev Gupta from his premises

(premises of M/s Swastik Aluminium) could in no case constitute a breach of the GSA dated 01.11.2014 (hereafter also referred as â??2014 GSAâ?)

by Mr Sahil Gupta. Mr Aggarwal contended that the said view is perverse as drawing a connection to the premises of STU violates several Clauses

of 2014 GSA. In particular, he referred to the extracts of certain Clauses, which are set out below:

â??Article 2. The BUYER agrees to pay an amount of Rs.2,85,702 (in the form of a Cheque / Demand Draft in favor of Indraprastha Gas Limited,

payable at Delhi) as communicated by the SELLER as an interest free refundable Security Deposit towards the installation of dedicated Metering and

Regulating facilities. All equipments & fittings as provided by the SELLER for the purpose of supply of PNG shall be maintained by SELLER & shall

remain the property of SELLER. The BUYER shall remain the custodian of the equipments & fittings installed by SELLER and shall ensure the

safety of the same. The BUYER further undertakes to pay additional Security Deposit towards any upgradation/amendment in Metering & Regulating

facilities installed by the SELLER.

Article 4 Â The BUYER shall from the point of Delivery (Outlet Flange of Downstream of Meter) make all adequate arrangements for extending the

downstream pipeline(s) and installation of the burners and other equipments etc. for receiving the gas at its own risk and cost, as per mutually agreed

target supply period.

Article 5 The BUYER undertakes to use the PNG supplied solely for its own usage and in no way shall re-supply/re-sale gas to any other person or

property, either himself or through any other person or establishment.

Article 8 The BUYER shall ensure that nobody interferes or tampers with the Metering and Regulating facilities installed by the SELLER. The

BUYER shall allow unrestricted access to the SELLERâ?s authorized representatives to its premises to maintain/monitor/ rectify the Metering and

Regulating facilities, as and when required.

Article 25 TERMINATION:

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(ii) Pilferage/tempering with SELLERâ??s Metering & Regulating facilities.â??

24. As is apparent from the above, Articles 2, 4 and 5 of the 2014 GSA are not

applicable. Article 2 provides that the Buyer (in this case, STU) would

be the custodian of the equipment and fittings installed by the Seller (IGL) but the same would remain the property of IGL. There is no dispute about

the same. In terms of Article 4, STU was required to make all arrangements for receiving the gas at its own risk and cost. IGL was obliged to supply

the gas at the point of delivery. In terms of Article 5, STU had undertaken to use the PNG supplied solely for its own usage and not to re-supply or re-

sale the gas to any other person. Clearly, there is no allegation that STU has re-supplied the PNG received from IGL to any other person.

25. Article 8 of the 2014 GSA obliged STU to ensure that nobody tampers with the metering and regulating facility installed by IGL. Obviously, the

metering and regulating facilities installed by IGL are referred to those facilities that are installed by IGL at the factory premises of STU (premises

number 90). Even if it is accepted that Sh. Rajeev Gupta had unauthorizedly tapped the PNG pipeline at its factory premises (premises number 102)

and since, none of the Clauses of the GSA dated 01.11.2014 have been violated, the Arbitral Tribunalâ?s view cannot be faulted. In any case, the said

view is a plausible one and therefore, cannot be interfered with.

26. Mr Aggarwal had submitted that the finding of the Arbitral Tribunal is contrary to the express terms of the GSA dated 22.03.2011 (hereafter also

referred to as â??2011 GSAâ?). He referred to the expression â??Reasonable and Prudent Operatorâ? as defined under Clause 1.1 of the 2011

GSA. He submitted that the same required STU to act in good faith to perform its contractual obligations. He referred to Clause 2.1 of the 2011 GSA

whereby STU had agreed to receive PNG at the delivery points and pay for the gas quantities, at all the times, at the contract price. He also drew the

attention of this Court to Clause 2.2 and Clause 7.3 of the 2011 GSA.

27. Clause 7.3 of the 2011 GSA is similar to Clause 8 of the 2014 GSA. Clause 2.2 of the 2011 GSA provides that the Seller would sell and tender for

delivery at the delivery point(s) and the buyer (STU) agreed to receive the same at the delivery point(s).

28. The contention that the finding of the Arbitral Tribunal is contrary to the 2011 GSA and therefore, the impugned award is liable to be set aside is

unpersuasive. First of all, the Arbitral Tribunal found that the 2011 GSA had been terminated and, ceased to operate. Although it is contended that the said agreement was valid, clearly the said contention is erroneous. The 2011 GSA had been terminated; the Bank Guarantee furnished under the said

GSA had been returned; and a separate GSA was executed on 01.11.2014. Plainly, that was the only agreement between the parties that was valid at

the material time. It may have been possible for IGL to contend that while the 2011 GSA was operative, STU had breached the same. However, the

Tribunal found that there was no breach of the said Agreement. Secondly, as noticed above, Clause 2.1 of the 2011 GSA recorded the agreement that

IGL would supply PNG at delivery points and STU would receive the same at delivery points and pay for the gas quantity supplied at the contract

price. It is plausible to read the said Clause as applicable only to the gas supplied by PNG at the facility of STU. It is difficult to accept that the import

of the said Clause also extended to the gas supplied by IGL to another entity. Thus, the impugned award warrants no interference.

29. Mr Aggarwalâ?s contention that the aforesaid finding of the Arbitral Tribunal runs contrary to the order passed by the Arbitral Tribunal rejecting

the respondentâ?s application under Section 16 of the A&C Act and therefore, is liable to be set aside, is also unpersuasive. It was contended on

behalf of the respondent that the allegations were of commission of a criminal offence of theft and therefore, the disputes were not arbitrable. The

said contention was countered by IGL. It was contended on behalf of IGL that it had a prima facie case against Sahil Gupta/STU. It was contended

that the expression â??Sellerâ??s Facilityâ?? under the GSAs was of a wide amplitude and, would cover any point of pipeline of IGL supplying the PNG

and was not confined to MRS of STU.

30. The 2011 GSA defines the expression â??Sellerâ??s Facilityâ?? as under:

â??â??SELLERâ?s Facilitiesâ? means the Gas Transmission and Measurement Facilities and other equipment necessary for flow control and the

processing, measurement and testing of Gas to enable delivery to the BUYER at the Delivery Point.â??

The said expression is used in Clause 7.2 of the 2011 GSA which reads as under:

â??7.2 SELLERâ??s Facilities

(a) Prior to the Commencement Date, the SELLER shall, at no cost to the BUYER, with due diligence cause and procure the construction and

installation of SELLER Facilities.

(b) During the Contract Period the SELLER, shall cause and procure the maintenance the SELLERâ?s Facilities in accordance with the standard of

care of a Reasonable and Prudent Operator.

(c) SELLER shall supply and install the pipeline from itâ?s nearest distribution point up to the Metering and Regulating Station (MRS) installed for

supplying gas to the BUYER. BUYER shall provide free of cost adequate land and power connection in its premises for installation of Metering &

Regulating Station. The BUYER agrees to pay an amount of Rs. 2,85,702/- (Rupees Two Lakh Eighty Five Thousand Seven Hundred and Two Only)

as communicated by the SELLER as an interest free Security Deposit towards the installation of dedicated MRS to deliver gas at the Delivery Point.

In case, due to increase in Buyerâ?s gas demand in future or for any other reason, Seller requires any upgradation/amendment/replacement in

Metering and Regulating Station), the Security Deposit amount shall be accordingly reviewed by the Seller and the Buyer shall pay the additional

amount, if any, to the Seller.â??

7.3 The BUYER shall ensure that nobody interferes or tampers with the Seller facilities, which would remain the property of SELLER. The Buyer

shall also allow the Sellerâ?s authorized representatives to itâ?s premises to maintain/monitor the Sellerâ?s facilities. The SELLER shall be entitled to

remove the said facilities on termination/expiry of the contract without any further reference to the BUYER.

7.4 Access

Subject to Article 20.5, during the Contract Period, the SELLER and the BUYER shall afford to each other and their respective authorized

representatives reasonable rights of access to inspect the installation, maintenance, operation and repair of BUYERâ?s Facilities, in the case of the

BUYER, and SELLER facilities in the case of the SELLER.

31. It is apparent from the above that the expression â??Sellerâ?s Facilityâ? has not been used in a sense to include Sellerâ?s Facility installed in the

factory of any other person. Clause 7.2(a) obliges IGL to procure the construction and installation of Sellerâ?s Facility. As is expressly defined, the

Sellerâ?s Facility would be those facilities thatenable IGL to deliver the PNG to the buyer at the delivery point. Thus, the facility from the distribution

point to the metering point as well as the metering and regulation equipment would constitute the Sellerâ?s Facilities. Mr Aggarwalâ?s contention that

irrespective of where IGLâ?s pipeline is located, it would still constitute â?? Sellerâ?s Facilityâ? within the meaning under the 2011 GSA, is

unpersuasive. The pipeline and facilities, which do not enable supply of PNG to the particular Buyer (in this case STU), would not constitute Sellerâ?s

Facility under the 2011 GSA or the 2014 GSA.

32. Although there are broad findings in the order passed by the Arbitral Tribunal rejecting the respondentâ?s application under Section 16 of the

A&C Act. The said findings must be read in the context of the limited question of jurisdiction that was raised before the Arbitral Tribunal. The order

under Section 16 of the A&C Act was passed by the Arbitral Tribunal before the parties had led their evidence and, without evaluating the rival case

set up by the parties. In the circumstances, it would be necessary to construe the order passed under Section 16 of the A&C Act as a prima facie

finding and it did not preclude the Arbitral Tribunal to make the impugned award.

33. In any view of the matter, this Court is of the view that tapping of the Sellerâ?s Facility (IGLâ?s Facility) installed in a factory of another entity,

obviously by the said entity either singly or in connivance with any other party, would constitute a breach of the Agreement between IGL and that

entity and not the GSA entered into with the respondent.

34. In view of the above, the petition is unmerited and is, accordingly, dismissed. The pending application is disposed of.