



## Delhi High Court holds Sections 19 and 27 of the Arbitration Act to be the governing provisions for order of production of documents by arbitral tribunals<sup>1</sup>

### Brief Facts

The Appellant preferred an appeal under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 (“Act”) impugning the procedural order (“**Impugned Order**”) dated 31 August 2018 passed by a majority of the arbitral tribunal (“**Tribunal**”) ordering production of documents.

Around 12 April 2000, the Appellant entered into a Production Sharing Contract (“**PSC**”) with the Respondents for the exploration, extraction, evacuation and sale of natural gas with the intent of sharing “*profit petroleum*”. Subsequently, a dispute arose between the Appellant and the Respondents with respect to the recovery and appropriation of costs from revenues obtained on the sale of gas by the Respondents. Consequently, a notice of arbitration dated 23 November 2011 was served upon the Appellant by the Respondents and the resultant arbitration commenced in December 2015.

Five procedural orders were passed by the Tribunal, the first one being order dated 23 December 2015. In this order, the Tribunal *inter alia* provided that the arbitration proceedings would be governed by the Indian Constitution and statutes. The fifth procedural hearing was held on 3 and 4 August 2018, wherein each individual request for disclosure of documents submitted by parties was examined by the Tribunal, resulting in the Impugned

Order. The Tribunal appreciated the relevant laws and accordingly dealt with each of the Appellant’s objections. The Tribunal granted all of the Respondents’ requests for production of various documents, while holding that the Tribunal was not bound by provisions of Code of Civil Procedure, 1908 or the Evidence Act, 1872 by virtue of Sections 18 and 19 of the Act. Despite the Tribunal’s observation regarding it being bound by the principles of natural justice alone, it did appreciate the case laws presented before it and accordingly, passed the Impugned Order. Hence, an appeal against the same was preferred by the Appellant before the High Court under Section 37(2)(b) of the Act.

### Issue

Whether the power of an arbitral tribunal to order production of documents falls within the ambit of Section 17 of the Act?

### Judgment

The Court rejected the Appellant’s contention that the power to order production of documents was conferred on the Tribunal by Section 17 of the Act and accordingly, dismissed the appeal.

The Court held that the source of power lies in Section 19 and Section 27 of the Act. Sections 19(4) and 27 of the Act make it apparent that the Tribunal’s power to order production of documents lies therein. Section 19(3) provides for the Tribunal’s right to decide upon the

### In this Issue

#### Brief Facts

#### Issue

#### Judgment

#### Analysis





# Arbitration Case Insights

appropriate procedure to conduct arbitral proceedings, upon failure of the parties to agree upon the same. Furthermore, Section 19(4) confers upon the Tribunal the power to establish the admissibility, relevance, materiality and weight of any evidence presented before it. In conjunction with the power to allow any party to approach the Court for assistance in taking evidence from the opposite party, both the provisions collectively confer on the Tribunal the power to gather evidence. Thus, the High Court placed such orders outside the purview of judicial review under Section 37 of the Act.

## Analysis

The Delhi High Court has held that procedural orders of a tribunal regarding the production of documents shall fall within the ambit of Section 19 of the Act as opposed to Section 17 of the Act, thus providing immunity to such

procedural orders from judicial review. The Court further stated that the legislative policy seems to favour the unimpeded progression of arbitral proceedings by preventing procedural orders passed by arbitral tribunals from being interdicted. The High Court further observed that deviation from such a legislative policy would in fact thwart the expediency of such proceedings and allow an uncooperative party to unnecessarily prolong arbitral proceedings.

The decision encourages speedy and efficient adjudication of disputes by way of arbitral proceedings by supporting the legislative intent behind the adoption of such a method of dispute resolution. It allows an arbitral tribunal to swiftly determine disputes and make arbitral awards without being encumbered by delays attributable to judicial review of procedural orders.

## In this Issue

### Brief Facts

### Issue

### Judgment

### Analysis

<sup>1</sup> Authored by Smarika Singh, Partner, Shreya Sircar, Principal Associate and Sneha Poddar, Associate; *Union of India v. Reliance Industries & Ors.*, ARB. A. (COMM.) No. 57 of 2018, Delhi High Court, 2018 SCC OnLine Del 13018, judgment dated 18 December 2018.

**Quorum:** Rajiv Shakdher, J.

## PRACTICE AREA EXPERTS

### Pallavi Shroff

Managing Partner and  
National Practice Head Dispute Resolution  
+91 98100 99911  
E: pallavi.shroff@AMSShardul.com

### Siddhartha Datta

Partner  
+91 90070 68488  
E: siddhartha.datta@AMSShardul.com

### Binsy Susan

Partner  
+91 96500 80397  
E: binsy.susan@AMSShardul.com

### Tejas Karia

Partner and Head, Arbitration Practice sub-group  
+91 98107 98570  
E: tejas.karia@AMSShardul.com

### Ila Kapoor

Partner  
+91 98717 92737  
E: ila.kapoor@AMSShardul.com

### Aashish Gupta

Partner  
+91 98189 19857  
E: aashish.gupta@AMSShardul.com

### Anirudh Das

Partner  
+91 98100 98329  
E: anirudh.das@AMSShardul.com

### Rishab Gupta

Partner  
+91 98217 80313  
E: rishab.gupta@AMSShardul.com

### Smarika Singh

Partner  
+91 97170 98075  
E: smarika.singh@AMSShardul.com

## Disclaimer

This is intended for general information purposes only. It is not a substitute for legal advice and is not the final opinion of the Firm. Readers should consult lawyers at the Firm for any specific legal or factual questions.