

COURT-I

**BEFORE THE APPELLATE TRIBUNAL FOR ELECTRICITY
(APPELLATE JURISDICTION)**

**IA No. 291 of 2016 in Appeal No. 131 of 2016 &
IA No. 292 of 2016**

Dated: 17th August, 2016

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. B.N. Talukdar, Technical Member (P&NG)**

In the matter of :

Gail (India) Ltd. Appellant(s)

Vs.

Sravanthi Energy Pvt. Ltd. & Anr. Respondent(s)

Counsel for the Appellant(s) : Mr. Gourab Banerji, Sr. Adv.
Mr. S.A. Haseeb
Mr. Sahil Tagotra
Mr. S. Ramakumar
Mr. Ravi Shankar

Counsel for the Respondent(s) : Mr. Piyush Joshi
Ms. Sumiti Yadava
Ms. Maulishree Gupta for R.1
Ms. Aparna Vohra for R-2

ORDER
(IA No. 291 of 2016)

On 11.04.2016 the majority members of the 2nd respondent - Petroleum and Natural Gas Regulatory Board ("**the Board**") disposed of three cases being Case No. Legal/125/2015 Sravanthi Energy Pvt. Ltd. Vs.Gail (India) Ltd.; Case No. Legal/129/2015 Beta Infratech Pvt. Ltd.

Vs.Gail (India) Ltd. and Case No. Legal/130/2015 Gama Infraprop Pvt. Ltd.

Vs. Gail (India) Ltd. Following is the operative part of the order:

“CT # 1 and the GTA as executed in furtherance thereof are not enforceable and the impugned invoices which have been raised by the respondent by unilaterally changing the CT Start Date and without making any delivery of gas, amounts to Restrictive Trade Practice and therefore deserve to be set aside.

The respondent is directed to cease its Restrictive Trade Practice forthwith.

A penalty of Rs. 10.00 lakhs is imposed on the respondent under Section 28 of the ‘Act’ and if they respondent continues to indulge in respective trade practice, he will be liable to pay an amount of Rs.25,000/- per day till it discontinues such practice.

The respondent is also directed to desist from imposing “ship or pay” charges or to invoke the bank guarantee of the petitioner.

The respondent shall return the Bank Guarantee and the security deposit to the petitioner within a month from today.

In case, the natural gas is sourced by the petitioner from different gas sellers that can be transmitted through the respondent’s pipeline under the regulatory provisions relating to the “common carrier” for which the transmission charges will be applicable as per relevant Tariff Orders/regulatory provisions.

The respondent shall pay an amount of Rs. 2.00 lakhs to each petitioner as costs.

The original copy of the order shall be kept on the record of Legal/125/2015 and its authenticated copies shall be placed on the record of both the other cases.”

The said order is challenged in this appeal.

We have admitted this appeal. In this application, the appellant has prayed that the Impugned Order be stayed. Respondent no. 1 has filed reply to the application for stay. Rejoinder has also been filed by the appellant.

We have heard the learned counsel for the parties at some length.

The operative part of the order contains certain directions, which are in the nature of a money decree. Therefore, it is not possible for us to stay the same in its entirety, without imposing any conditions.

We are informed that penalty of Rs. 10 lakhs has already been paid by Gail (India) Ltd. Therefore, no order is necessary in that regard.

Having heard the learned counsel, in our opinion, following interim order should be in place during the pendency of this appeal. Without prejudice to the rights and contentions of the 1st respondent, the order directing the appellant to pay an amount of Rs. 25,000/- per day stands suspended during the pendency of this appeal. Needless to say that the appellant shall not be debarred from participating in any competitive bidding process before the Board. The appellant shall deposit the security deposit with the Board, which shall then invest it in any nationalised bank

on usual terms. The said amount along with interest accrued thereon shall abide by the final order which shall be passed in this appeal.

We record the statement made by learned counsel for the appellant on instructions received from the officers present in the court that the appellant shall not invoke the Bank Guarantee during the pendency of this appeal. We accept the said statement. So far as “ship of or pay” charges are concerned, the appellant may raise invoices. The raising of invoices shall be however without prejudice to the rights and contentions of the 1st respondent. The appellant shall however take no coercive steps against the 1st respondent to enforce the said invoices. The respondent will keep the Bank Guarantee alive during the pendency of this appeal.

Learned counsel for the 1st respondent says that contempt petition will be withdrawn. We record and accept this statement. Application is disposed of.

List the matter on **11.11.2016.**

(B.N. Talukdar)
Technical Member (P&NG)
mk/kt

(Justice Ranjana P. Desai)
Chairperson