

COURT-I

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

IA NO. 192 OF 2015 & APPEAL NO. 116 OF 2015

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IA NO. 191 OF 2015 & APPEAL NO. 115 OF 2015

Dated: 2nd December, 2016

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

IA NO. 192 OF 2015 & APPEAL NO. 116 OF 2015

In the matter of :

**GAIL (India) Limited
Gail Bhawan
16, Bhikaji Cama Place,
New Delhi – 110 066
Vs.**

.... Appellant(s)

- 1. Petroleum & Natural Gas Regulatory Board
1st Floor, World Trade Center,
Babar Lane, Barakhamba Road,
New Delhi – 110 001**
- 2. Haldyn Glass Limited
Village Gavasad,
Taluka Padra,
District Vadodara,
Gujarat**
- 3. Bharat Glass Tube Limited
Plot NO. 920B-9213
GIDC Industrial Estate,
Ankleshwar, Dist Bharuch
Gujarat**
- 4. Schott Glass India Private Limited
2nd Floor, SIDCUP Tower
Race Course, Vadodara 390 007
Gujarat**

5. **Shayam Industries**
402/403, Phase IV, GIDC Naroda,
Ahmedabad 382230
Gujarat

6. **Punjab Steel Limited**
Old Station Road,
Vadodara
Gujarat.

.... Respondent(s)

Counsel for the Appellant(s) : Mr. Ramji Srinivasan, Sr. Adv.
 Mr. Ajit Pudussery
 Mr. Vivek Paul Oriel
 Mr. Tushar

Counsel for the Respondent(s) : Mr. Saurav Aggarwal
 Ms. Astha for R.1

 Ms. Swapna Seshadri
 for R. 2 to 6

IA NO. 191 OF 2015 & APPEAL NO. 115 OF 2015

In the matter of :

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.... Appellant(s)

1. **Petroleum & Natural Gas Regulatory Board**
1st Floor, World Trade Center,
Babar Lane, Barakhamba Road,
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Counsel for the Appellant(s) : Mr. Ramji Srinivasan, Sr. Adv.
 Mr. Ajit Pudussery
 Mr. Vivek Paul Oriel
 Mr. Tushar

Counsel for the Respondent(s) : Mr. Saurav Aggarwal
 Ms. Astha for R.1

ORDER**IA NOS. 192 & 191 OF 2015**

(Appls. for stay)

In these applications the Appellant/Gail India Limited has prayed that the impugned orders dated 29.10.2014 and 22.10.2014 passed by Respondent No.1/Board be stayed during the pendency of this appeal.

In Appeal No. 161 of 2013 and other batch of appeals, where provisional initial tariff order was challenged, on 29.05.2015 we passed a detailed order and remanded the matter to the Board with a direction to finalise the tariff after hearing all the parties concerned. Paragraph (i) of the said order reads as under:

"The Board shall complete the process by 31.12.2015 in the first case being Appeal No. 161 of 2013 and pass a speaking and reasoned order. So far as the other cases are concerned, the Board shall conclude the hearing and pass speaking and reasoned orders by 31.03.2016. In the meantime, the Provisional Tariff already fixed shall continue to apply, subject to adjustment, if any, in terms of the Regulations. The entities are at liberty to notify all consumers that the current tariff is only provisional and it is subject to adjustment, if any, in terms of the Regulations, upon final tariff as may be determined by the Board."

Thus, we directed that the provisional tariff order shall continue to apply till the Board finalises the tariff order.

Mr. Ramji Srinivasan, learned senior counsel appearing for the appellant submitted *inter alia* that in Appeal No. 161 of 2013 and other batch of appeals the Appellant had implemented the provisional tariff order passed by the Board whereas in the present case it is not implemented. He submitted that balance of convenience is in favour of the Appellant and that this Tribunal should permit the Appellant to charge according to the Appellant's proposed provisional tariff as that would also be in the larger interest of the consumers.

On the other hand, learned counsel for the impleaded respondents submitted that the order in Appeal No. 161 of 2013 and other batch of appeals was passed on 29.05.2015. The present appeals are filed by the Appellant on 21/28.11.2014. They were admitted by this Tribunal on 22.05.2015. In all fairness learned counsel for the Appellant should have on 29.05.2015 pointed out to this Tribunal that the batch of appeals in which the similar issue was involved had been disposed of by this Tribunal, so that similar order could have been passed on that day. Counsel further pointed out that though there is no stay order from this Tribunal the Appellant is continuing to charge its proposed provisional tariff and not the fixed provisional tariff. Counsel urged that these facts may be taken into account and the applications be rejected.

Learned counsel for the Board has drawn our attention to the relevant tariff regulations, more particularly second proviso to Regulation 5 and submitted that the Appellant is in the breach of the first proviso to Regulation 5.

Mr. Ramji Srinivasan, learned senior counsel for the Appellant submitted that the subsequent developments need to be noted. Counsel submitted that this Tribunal passed order in Appeal No.161 of 2013 and batch of appeals on 29.05.2015. The Appellant had submitted its data for final determination of tariff as far back as on 15.06.2015. Counsel submitted that the Board by its final order consistently increased the tariff. Therefore, the impugned order deserves to be stayed and the Appellant should be permitted to charge its proposed provisional tariff. Learned counsel for the Board and learned counsel appearing for the impleaded respondents submitted that the statement made by learned counsel for the Appellant that the Appellant had submitted the data, has to be verified and therefore, merely on that basis status quo order as regards the tariff to be charged, cannot be passed.

Having heard learned counsel for the parties, we are of the opinion that instead of going into the rival contentions at this stage, in tune with our order dated 29.05.2015, it would be proper to direct Respondent No.1/Board to determine the final tariff as expeditiously as possible and at any rate by 30.06.2017. During the pendency of the proceedings before the Board, provisional tariff already fixed shall continue to apply. We make

it clear that we have not expressed any opinion on the merits of the case and the order directing that the provisional tariff shall continue to apply is passed without prejudice to the rights and contentions of the Appellant. Applications are disposed of.

APPEAL NO.116 & 115 OF 2015

Counsel for the parties are agreed that in view of the order passed in IA Nos. 192 & 191 of 2015, nothing survives in these appeals. Hence, the appeals are disposed of as infructuous. However, we make it clear that on the contentions raised by the parties we have expressed no opinion and contentions of the parties are kept open.

(B.N. Talukdar)
Technical Member (P&NG)
Ts/Vg

(Justice Ranjana P. Desai)
Chairperson