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**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
AT NEW DELHI  
(APPELLATE JURISDICTION)**

**APPEAL NO.116 OF 2016  
AND  
I.A. NOS.267 & 268 OF 2016**

**Dated: 03<sup>rd</sup> FEBRUARY, 2017.**

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

**IN THE MATTER OF:**

**M/s. SANWARIYA GAS LIMITED )  
(Formerly Known as M/s Saumya DSM )  
Infratech Limited), Through its Director, )  
Having its registered Office at D-80, )  
Sector-50, NOIDA -201310, UP. ) **... Appellant****

Versus

**PETROLEUM & NATURAL GAS )  
REGULATORY BOARD, )  
Through its Secretary, 1<sup>st</sup> Floor, World )  
Trade Centre, Babar Road, New Delhi-1 ) **... Respondents****

Counsel for the Appellant(s) : Mr. K.K. Rai, Sr. Adv.,  
Mr. S.K. Pandey  
Mr. Anshul Rai

Counsel for the Respondent(s) : Mr. Prashant Bezboruah  
Mr. Sumit Kishore

**J U D G M E N T**

**PER HON'BLE (SMT.) JUSTICE RANJANA P. DESAI – CHAIRPERSON**

1. The Appellant is a company incorporated under the Companies Act 1956. The Appellant is an authorised entity to *inter*

*alia* implement the Piped Natural Gas (“**PNG**”) and Compressed Natural Gas (“**CNG**”) project for various applications in domestic, commercial, industrial and automobile sectors in Indian cities. The Appellant is selling CNG in Geographical Area (“**GA**”) of Mathura. The Respondent is the Petroleum and Natural Gas Regulatory Board (“**the Board**”) constituted under the Petroleum and Natural Gas Regulatory Board Act 2006 (“**the said Act**”) having both the administrative and quasi-judicial functions. In this appeal the Appellant has challenged order dated 03/07/2013 passed by the Board.

2. It is necessary to give the gist of facts of the case.

(a) On 12/06/2009 the Appellant was granted authorisation for laying, building, operating or expanding CGD network in GA of Mathura.

(b) On 13/09/2010 the Board issued a notice to the Appellant in respect of authorisation for CGD network granted for GA of Mathura. In the said notice it was stated that as per the requirement of

Regulation 11(1) of the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City of Local Natural Gas Distribution Networks) Regulations, 2008 (**“the said Regulations”**), the Appellant needs to have a firm Gas Tie Up in place within 90 days of the grant of authorisation. It was intimated to the Appellant that the Appellant’s time limit for a proper Gas Tie Up lapsed on 09/09/2009. However, no information/confirmation on a Gas Tie Up has been supplied to the Board by the Appellant and therefore, *prima facie* it appears that the Appellant has failed to meet the requirement under Regulation 11(1). It was further intimated to the Appellant that the Appellant’s performance on achievement of physical target for the first year has been reviewed and a shortfall has been observed in Inch-Kms to be laid and domestic connections to be achieved thereby showing non-compliance with Regulation 13 and Schedule D of the said Regulations. The Appellant was called upon to

appear before the Committee constituted by the Board and present its case on 21/09/2010 at 11.00 hrs at the address specified in the notice.

- (c) Admittedly, the Appellant's representative appeared before the Committee on 21/09/2010 and gave reasons for non-compliance of the relevant regulations. The Board found the said reasons to be not satisfactory. The Board therefore sent a notice on 03/11/2010 to the Appellant calling upon the Appellant to show cause as to why action under Regulation 11(5) of the said Regulations and under Section 23 of the said Act should not be initiated against the Appellant. The Appellant sent reply dated 15/11/2010 to the Board. The Board addressed another letter dated 14/01/2011 to the Appellant. In the said letter the Board requested the Appellant to attend a meeting in the Board's office on 07/02/2011 in connection with the show cause notice issued by the Board on 03/11/2010. The Appellant was intimated that

the Appellant will have to clarify its position on various issues such as (i) inability to achieve firm Gas Tie Up within the stipulated time, (ii) Non-achievement of physical parameters as per commitments in the bid and (ii) Restructuring of the project finances and revised financial closure.

- (d) Instead of attending the said meeting the Appellant sent a letter dated 01/02/2011 requesting for adjournment. The Board accepted the request of the Appellant and communicated to the Appellant by its letter dated 04/02/2011 that future date will be communicated to the Appellant. By its e-mail dated 15/09/2011 the Board intimated to the Appellant that it has noticed that there were shortfalls in achievement of 2<sup>nd</sup> year targets for Mathura GA. The Appellant was asked to submit reasons for the said shortfalls as per the attached sheet latest by 20/09/2011. The Board addressed letter dated 16/03/2012 to the Appellant requesting the Appellant to depute its authorised

official to appear before the Committee constituted by the Board to look into the compliance issue on 28/03/2012 at 04.00 p.m. at the Board's office. Hearing was held on 28/03/2012. In the hearing the Appellant's representative requested for more time to present its case before the Committee. The Board granted the said request and by its e-mail dated 29/03/2012 directed the Appellant to appear before the Committee on 02/04/2012 at the Board's office.

- (e) The Board by its letter dated 10/12/2012 directed the Appellant to submit details of domestic PNG connections registered till 30/06/2012 in the attached format latest by 20/12/2012. By its letter dated 18/12/2012 the Appellant asked for further time of 20 days for submitting information on the ground that its office was shifted to some other premises. The Board by its letter dated 21/12/2012 and e-mail of the same date acceded to the request and extended the date to submit the

information latest by 31/12/2012. As no data was submitted though sufficient time was given to the Appellant the Board by its e-mail dated 01/01/2013 reminded the Appellant that the Board had not received any communication from the Appellant and therefore the Board will be constrained to consider the performance relating to the domestic connections only where the actual supply has started. By its letter dated 01/01/2013 the Appellant submitted information regarding registration of 9493 domestic PNG connections for Mathura GA in specified format. By its letter dated 10/01/2013 the Board asked for further details and information to enable verification of physical connections. The Appellant by its e-mail dated 14/01/2013 forwarded details about domestic connections. The Board by its letter dated 01/02/2013 asked for further details within two weeks stating that most of the information submitted by the Appellant was incomplete. Details of 28000 connections were

called for. By its letter dated 25/02/2013 the Appellant furnished details of 9493 domestic customers and map showing laying of pipeline. The Appellant stated that balance data will be provided shortly. On 21/05/2013 the Board addressed a letter to the Appellant stating that out of 28000 connections the Appellant has provided information in connection with only 9493 connections and that during verification it was found that the information submitted was factually incorrect and submission of incomplete and inaccurate data was a violation of Section 19 of the said Act. The Appellant was asked to appear before the Board on 31/05/2013 for a hearing in this regard.

- (f) On 22/05/2013 the Board addressed a letter to the Appellant regarding encashment of Performance Bank Guarantee. The Board asked the Appellant to replenish the encashed amount within two weeks as required under the said Act

and the said Regulations. The Appellant filed W.P.(C) 3914/2013 in the Delhi High Court challenging the said letter. The Delhi High Court listed the petition for final hearing on 17/07/2013. The Delhi High Court stayed the Board's direction to the Appellant to make good the encashment of the performance bond till the next date of hearing.

- (g) On 28/05/2013 the Appellant sent a letter to the Board seeking postponement of hearing which was to take place on 31/05/2013 to 03/07/2013. On 29/05/2013, the Board sent e-mail to the Appellant regarding rescheduling of the hearing of 31/05/2013 to 03/07/2013. On 25/06/2013 the Appellant sent a letter to the Board seeking postponement of hearing scheduled on 03/07/2013 till disposal of W.P.(C) 3914 of 2013 by the Delhi High Court relying on order dated 05/06/2013 passed by the Delhi High Court. The Board sent letter dated 26/06/2013 to the Appellant asking the Appellant to remain present

for the hearing on 03/07/2013 with material facts of the case in its defence. The Board stated that the hearing of 03/07/2013 was scheduled in terms of the Board's letter dated 21/05/2013 which related to submission of incomplete and inaccurate data regarding fulfilment of obligations to meet targets/project milestones whereas the Delhi High Court's order dated 05/06/2013 related to the letter dated 22/05/2013 regarding directions to make good the Performance Bank Guarantee and therefore the Appellant was asked to remain present for the hearing on 03/07/2013.

- (h) It appears that on 03/07/2013 the Appellant's representative visited the Board and handed over yet another representation reiterating its request for postponement of hearing. The representative of the Appellant conveyed to the Board that he would not be attending the hearing. The Board however decided to meet at 14.30 hrs in case the Appellant chooses to appear. However, no representative of

the Appellant remained present. According to the Board the Delhi High Court writ petition pertained to a separate issue. The Board had asked the Appellant to remain present in connection with submission of incorrect data. According to the Board, the Board therefore took a serious view of the matter and by its order dated 03/07/2013 imposed a penalty of Rs.25 lakhs on the Appellant.

- (i) It may be stated here that on 17/07/2013 the Delhi High Court passed an order in the pending petition being WP(C) No.3914/2013 directing the Appellant to provide security in the form of FDR. Accordingly, the Appellant deposited an FDR drawn in the name of the Appellant in the sum of Rs.25 lakhs with the Registrar General of the Delhi High Court qua penalty of Rs.25 lakhs imposed on the Appellant. On 08/04/2015 the Delhi High Court disposed of the writ petition giving liberty to the Appellant to prefer an appeal. The Delhi High Court continued its order dated 05/06/2013

granting stay to the replenishment of the Performance Bank Guarantee pending institution of the appeal and observed that thereafter this Tribunal will take an independent view as to the interim order. So far as FDR is concerned the Delhi High Court directed that it shall not be dissolved without the Delhi High Court's permission and it shall be kept alive pending disposal of the appeal. The Delhi High Court ordered that the FDR should remain with its Registry and this Tribunal would be free to pass appropriate orders with respect to the FDR at the time of disposal of the appeal. To complete the facts it needs to be noted that this Tribunal has continued the interim order passed by the Delhi High Court till disposal of this appeal.

3. We have narrated all the facts in detail with a purpose. The Appellant has challenged order/letter dated 22/05/2013 in Appeal No.115 of 2016. In this appeal the order dated 03/07/2013 is challenged. Appeal No.115 of 2016 will be dealt with by us on its own facts on merits. The Appellant however is trying to contend

that both these appeals are connected. The Board's contention is that they are separate appeals as they relate to independent issues. We shall deal with all the contentions raised by the parties against the backdrop of the above facts. We must now give the gist of the submissions of the parties.

4. We have heard Mr. Rai learned senior counsel appearing for the Appellant. Gist of his submissions is as under:

- (a) The impugned order is in violation of Section 13 of the said Act and Regulation 16 of the said Regulations and is opposed to Article 14 of the Constitution of India.
  
- (b) The impugned order imposing penalty on the Appellant assuming that the Appellant had submitted incorrect data with regard to domestic connection is illegal and bad in law as the same was passed behind the back of the Appellant without giving opportunity of being heard.

(c) The Board has admitted that no proceedings were held at 12 noon which was the time scheduled for hearing. The Board held the hearing at 2.30 p.m. without informing the Appellant.

(d) The impugned order deserves to be set aside because it is passed in violation of principles of natural justice.

5. We have also heard Mr. Prashant Bezboruah learned counsel appearing for the Board. Counsel submitted that the Appellant purposely tried to link the issue regarding encashment of Performance Bank Guarantee with the Show Cause Notice dated 21/05/2013. By Show Cause Notice dated 21/05/2013 the Appellant was called for a personal hearing in respect of submission of factually incorrect data regarding fulfilment of the Appellant's obligations. Counsel pointed out that the decision regarding encashment of Performance Bank Guarantee was already taken in Board meeting on 09/05/2013 for non-achievement of targets. The Appellant asked for postponement of hearing as regards Show Cause Notice dated 21/05/2013 till the disposal of the writ petition

pending in the Delhi High Court. In fact that writ petition pertained to issue regarding encashment of Performance Bank Guarantee. At the Appellant's request the Board rescheduled the hearing on 03/07/2013. On that day the Appellant's representative conveyed to the Board that he would not attend the hearing. The Board decided to meet at 14.30 hrs in case the Appellant decides to remain present. The Appellant did not remain present. Hence, the Board passed the impugned order imposing penalty on the Appellant. Counsel submitted that the Appellant purposely avoided the hearing. Ample opportunity was given to the Appellant to present its case. There is therefore no violation of the principles of natural justice. Counsel submitted that the Appellant has no case on merits and hence, the appeal be dismissed.

6. Before we proceed further we must remove the confusion created by the Appellant by linking Show Cause Notice dated 21/05/2013 with encashment of Performance Bank Guarantee. Relevant portion of Show Cause Notice dated 21/05/2013 reads thus:

*“With reference to the above quoted letters it may be observed that Saumya DSM Infratech Ltd. was asked to provide details of all the 28000 PNG domestic*

*connections that were claimed to have been made. However, in its latest letter dated 25/02/2013, SDSM had submitted data of only 9493 domestic customers out of 28000 domestic customers. The remaining data was to be provided to PNGRB subsequently, but no further information had been received till date.*

*2. In the interim, PNGRB has ascertained/verified the correctness of SDSM's submissions in respect of PNG domestic connections. During the verification exercise undertaken, it has been noticed that information submitted by SDSM is factually incorrect. Summary of findings of the verification exercise undertaken by PNGRB is at Annexe I.*

*3. Submission of incomplete and inaccurate data regarding fulfilment of SDSM's obligation to meet targets as per authorisation issued by PNGRB amounts to violation of the terms and conditions of authorisation granted under Section 19 of the Act and would attract further action as per provisions of the Act.*

*4. In this regard SDSM is advised to be present before the Board with any material facts of the case in their defence on 31/05/2013 at 1115 Hrs. for hearing before the Board at PNGRB office, 1<sup>st</sup> Floor, World Trade Centre, Babar Road, New Delhi 110001.*

It is clear from the above extract that the Appellant had submitted data of only 9493 domestic customers out of 28000 domestic customers. On verification of the said data the Board found the data to be factually incorrect. Since furnishing of incomplete and inaccurate data regarding fulfilment of obligation to

meet targets as per authorization attracts further action, the Appellant was advised to remain present in the Board's office with material facts. Penalty was imposed on the ground that the Appellant furnished incorrect data. Encashment of Performance Bank Guarantee vide order dated 22/05/2013 was done because as per Regulation 16(1)(c) of the said Regulations, the Board had come to a conclusion that breach of authorisation had occurred with respect to timely commissioning of the CGD Network and Gas Tie Up. The two issues are different. The Appellant should have, therefore, participated in the hearing fixed pursuant to Show Cause Notice dated 21/05/2013. It was wrong on the part of the Appellant to seek time from the Board on the ground of pendency of writ petition. The representative of the Appellant flatly refused to attend the hearing. The Board again sat at 14.30 hrs hoping that the Appellant's representative would appear, but the Appellant's representative chose not to appear. The Board, therefore, passed the impugned order.

7. Though we concur with the Board's view that the Delhi High Court's order dated was with reference to letter dated 22/05/2013 while the hearing before the Board was with reference Show Cause

Notice dated 21/05/2013 in connection with the Board's contention that the Appellant had furnished incorrect data regarding provision of PNG connections in Mathura GA and the Board's view that the Appellant should not have asked for postponement of the hearing scheduled on 03/07/2013 till final outcome of writ petition No.3914 of 2013, we cannot lose sight of the fact that the impugned order was passed in the absence of the Appellant. Judicial and quasi judicial bodies should adhere to the principles of natural justice. We are mindful of the fact that the Board was faced with a situation where the Appellant refused to appear before it. This is a case, therefore, where this Tribunal should step in to ensure that the principles of natural justice are not breached and cause of justice does not suffer.

8. In the circumstances, without expressing any opinion on the merits of the case we set aside the impugned order dated 03/07/2013 only on the ground that there is a breach of principles of natural justice. We direct the Board to issue notice to the Appellant to appear before it on a date convenient to the Board. The Appellant is directed to appear before the Board on that date with

the necessary material in its defence. The Board shall pass appropriate order in connection with the Show Cause Notice dated 21/05/2013 independently and in accordance with law after hearing the Appellant within four weeks from the date of hearing. We make it clear that on the Board's case that the Appellant has supplied incomplete and inaccurate data to the Board, we have not expressed any opinion. The FDR in the sum of Rs.25 lakhs drawn in the name of the Appellant is deposited with the Registrar General of the Delhi High Court. By its order dated 8/4/2015, the Delhi High Court granted liberty to the Appellant to file appeal in this Tribunal. The Delhi High Court has directed that the FDR shall be kept alive till disposal of the appeal by this Tribunal. The Delhi High Court has observed that this Tribunal would be free to pass appropriate orders with respect to FDR at the time of disposal of the appeal. We, therefore, direct that the FDR deposited with the Delhi High Court shall abide by the final order that may be passed by the Board. The FDR however shall not be realised for a period of four weeks from the date of the final order passed by the Board.

9. The Appeal is disposed of in the aforesaid terms. Needless to

say that IA Nos.267 and 268 of 2016 do not survive and are disposed of, as such.

10. Pronounced in the Open Court on this **3<sup>rd</sup> day of February, 2017.**

**B.N. Talukdar**  
**[Technical Member (P&NG)]**

**Justice Ranjana P. Desai**  
**[Chairperson]**

√ **REPORTABLE/~~NON-REPORTABLE~~**