

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI**

(APPELLATE JURISDICTION)

**APPEAL NO. 159 OF 2014 &
I.A. Nos. 255 & 256 of 2014**

AND

**APPEAL NO. 160 OF 2014 &
I.A. Nos. 257 & 258 of 2014**

Dated: 10th March, 2017

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

**APPEAL NO. 159 OF 2014 &
I.A. Nos. 255 & 256 of 2014**

In the matter of:-

**1. GAIL (INDIA) LIMITED)
16, Bhikaji Cama Place)
R.K. Puram)
New Delhi – 110 016)**

AND

**1. M/s WELLSPUN MAXSTEEL)
LIMITED)
Welspun House, 7th Floor,)
Kamala City, Senapati Bapat)
Marg, Lower Parel (West))
Mumbai - 400013)**

2. **THE SECRETARY**)
 Government of India,)
 Ministry of Petroleum & Natural)
 Gas, Shastri Bhawan,)
 Room No. 216-A, Second Floor,)
 New Delhi - 110001)
3. **PETROLEUM AND NATURAL)
 GAS REGULATORY BOARD**)
 First Floor, World Trade Centre,)
 Babar Road,)
 New Delhi - 110001) ... **Respondents**

**APPEAL NO. 160 OF 2014 &
 I.A. Nos. 257 & 258 of 2014**

In the matter of:-

1. **GAIL (INDIA) LIMITED**)
 16, Bhikaji Cama Place)
 R.K. Puram)
 New Delhi - 110 016)

AND

1. **M/s ISPAT INDUSTRIES)
 LIMITED**)
 Now known as JSW Steel)
 Limited, JSW Centre, Bandra)
 Kurla Complex, Bandra East,)
 Mumbai - 400051)

2. **THE SECRETARY,**)
 Government of India,)
 Ministry of Petroleum & Natural)
 Gas, Shastri Bhawan,)
 Room No. 216-A, Second Floor,)
 New Delhi 110001)
3. **PETROLEUM AND NATURAL)**
GAS REGULATORY BOARD)
 First Floor, World Trade Centre,)
 Babar Road,)
 New Delhi – 110001) ... **Respondents**

Counsel for the Appellant(s) :Mr. Ramji Srinivasan, Sr. Adv.
 Mr. Ajit Pudussery
 Mr. Ranjana Roy Gawai
 Mr. Vivek Paul Oriel
 Mr. Vinod Kapoor
 Mr. Kanav Vohra
 Mr. Rohan Gupta

Counsel for the Respondent(s): Mr. G. Umapathy
 Mr. Aditya Singh
 Mr. Mekhala for R.1

Mr. Sumit Kishore for R.3

J U D G M E N T

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

1. Both these appeals can be disposed of by a common judgment because they challenge the same order and the counsel are agreed that facts and issues involved in them are

similar. We shall treat Appeal No.159 of 2014 as the lead case. Needless to say that the judgment in the said appeal will cover Appeal No.160 of 2014.

2. We shall begin with the gist of facts of Appeal No.159 of 2014 as narrated by the Appellant. The Appellant GAIL (India) Limited (**"GAIL"**) is a Public Sector Undertaking under the Ministry of Petroleum and Natural Gas. GAIL is primarily engaged in distribution and marketing of natural gas in India and also engaged in exploration, production, transmission, extraction, etc., of natural gas and its related process, products and services. Respondent No.1 M/s Wellspun Maxsteel Limited (**"the Company"**) is a company incorporated under the Companies Act 1956. It is engaged in the business of manufacturing of gas based sponge iron. Respondent No.2 is Ministry of Petroleum and Natural Gas, Government of India through its Secretary (**"MoPNG"**). Respondent No.3 is the Petroleum and Natural Gas Regulatory Board (**"the Board"**) constituted under the Petroleum and Natural Gas Regulatory

Board Act, 2006 (“**the said Act**”), which has passed the impugned order.

3. The Company has been purchasing natural gas from GAIL under the Gas Supply Agreement since 1993. On 30/12/2006, the Company entered into a Gas Sales and Transmission Contract (also referred to as GSTC) with GAIL for supply of natural gas at the Company’s plant situated in District Raigarh, Maharashtra. In terms of Article 10.1(a) of GSTC, the price of gas to be supplied under the contract was fixed at USD 4.75/MMBTU as per price order dated 19/04/2006 issued by MoPNG applicable from 01/04/2006. GAIL was charging gas price at the said rate from the Company.

4. In terms of Article 10.1(b) of GSTC, GAIL had reserved the right to fix the gas price at any time in future as per directive, instruction, order etc of the MoPNG issued from time to time and the Company was obliged to pay the same. Thus, under the contract it was made very clear to the Company that

the gas price is variable and in future GAIL shall revise the same in accordance with the directive/order of MoPNG in this regard.

5. In the year 2010, MoPNG revised the price of non-APM natural gases by issuing the direction vide its pricing order dated 24/11/2010 and fixed the revised price at USD 5.25/MMBTU. This revised price was made applicable with effect from 01/07/2010. Pursuant to this, GAIL vide its letter dated 29/11/2010, informed the Company about the upward revision of gas price made by MoPNG with effect from 01/07/2010. In terms of Article 10.1(b) of GSTC, GAIL along with the invoice for 2nd fortnight of November, 2010 also raised a Debit Note dated 04/12/2010 demanding payment of a sum of Rs.5,85,85,911.32 towards the differential amount for the period from 01/07/2010 to 15/11/2010.

6. The Company opposed the upward revision of gas price with retrospective effect and raising of debit note by GAIL. The Company wrote a letter dated 01/12/2010 to MoPNG

requesting it to reconsider its decision to implement the upward revision of gas price with retrospective effect and to issue necessary advice to GAIL. The Sponge Iron Manufacturers Association vide its letters dated 06/12/2010 and 08/12/2010 also requested MoPNG to reexamine the issue. Vide letter dated 10/01/2011, the Company requested GAIL to take up the matter suitably with MoPNG so as not to implement the price increase with retrospective effect from 01/07/2010.

7. On 08/01/2011, GAIL again wrote a letter to the Company demanding the payment of differential amount in terms of the debit note. In response to the said letter, the Company released the amount of Rs.5,85,85,911.32 as raised under the said Debit Note and made payment to GAIL under protest vide its letter dated 18/01/2011. By this letter the Company again requested GAIL to take up the matter with MoPNG so as not to implement the price increase with retrospective effect but to implement it with effect from 01/12/2010.

8. Again by letter dated 20/01/2011, GAIL explained its position to the Company that the gas price is fixed by the MoPNG from time to time and GAIL has to implement the same. The Company was asked by GAIL to pay revised price for the gas supplied with effect from 01/07/2010.

9. As the revision in gas price with retrospective effect was not revoked by MoPNG, the Company approached the Board by filing a formal complaint under Section 25 of the said Act. In the said complaint the Company *inter alia* requested the Board to issue a direction to GAIL to withdraw the revision in gas price with retrospective effect and to issue direction to GAIL for refund of the said amount of Rs.5,85,85,911.32 along with interest for the period commencing from 01/07/2010 to 30/11/2010.

10. The Company's case found favour with the Board. It is necessary to give a gist of the impugned order. The Board observed in the impugned order that it is not for the Board to

determine price or rise of price of natural gas because that falls within the domain of the Central Government, but it is empowered under Section 11(a) of the said Act to examine the legality of retrospectivity of the price rise. The Board observed that in construction of contract, intention of the parties is very material. Article 10.1(b) of the contract displays the intention that the seller has the right to fix the gas price at any time in future as per the direction of the Government of India issued from time to time. Relying on the judgment of the Supreme Court in **State of Rajasthan v. M/s Basant Agrotech (India) Ltd¹** the Board observed that the word “time to time” occurring in Article 11.01(a) may be associated with any number of times, subject to the principle of reasonableness and its impact does not engulf the spectrum of retrospectivity or retroactivity in its ambit and sweep. The Board held that therefore GAIL does not have any right or authority to recover the price rise with retrospective effect from the Company. The Board in the circumstances directed GAIL to refund a sum of

¹ 2013-15 SCC 1

Rs.5,85,85,911.32 along with interest at 12% p.a. from 01/07/2010 till the date of actual payment.

11. We have heard Mr.Ramji Srinivasan learned senior counsel appearing for GAIL at some length. We have gone through the written submissions filed by GAIL. Gist of the submissions is as under:

- (a) Fixing the price of Natural Gas, which is a notified product, is purely a policy decision within the exclusive domain of MoPNG. Reviewing or sitting in judgment over such policy decisions is contrary to the settled position of law.
- (b) The Board wrongly questioned the validity of action of GAIL in implementing the price revision of gas with retrospective effect, which was done only in compliance with the directives of MoPNG and in terms of Article 10.1 of the contract.

- (c) The validity of price order of MoPNG was never raised before the Board. Yet the Board has in effect modified the decision of MoPNG which was beyond its jurisdiction.
- (d) If the decision of the MoPNG cannot be challenged before the Board, then the consequent compliance thereof by GAIL cannot be interfered with by the Board.
- (e) The Board has interpreted the contract particularly Article 10 thereof contrary to the underlying intention of the parties at the time of entering into the contract.
- (f) The parties at the time of entering into the contract had clearly intended that the gas price payable by the Company under the contract would be the price as “Fixed by MoPNG from time to time” and GAIL shall implement and charge such price as fixed by MoPNG. The Company did not question the

right of GAIL in terms of the contract to charge gas price at a revised rate with retrospective effect.

- (g) The Board erred in applying legal principles governing the retrospective effect of tax law in the case of fixing of gas prices with retrospective effect, which is purely a policy decision by the executive.
- (h) The issue before the Board was related to fixing price of the goods sold and as such fell within the purview of the Sale of Goods Act, 1930 and legal principles governing retrospective effect of law are not applicable to the present case.
- (i) The challenge to the legality and validity of MoPNG's order dated 24/11/2010 does not and cannot lie before the Board for the following reasons:

- i) There is no power conferred by the said Act on the Board to declare that a price order issued by the Government is bad or illegal.
- ii) No prayer was made in the complaint seeking declaration as to the illegality of MoPNG Order dated 24/11/2010.
- iii) The powers of the Board with regard to “price” are limited to only monitoring and taking corrective measures to prevent restrictive trade practices.
- iv) Section 12(1)(a) and (b) do not confer any jurisdiction on the Board to decide any dispute with regard to price/enhancement in price.
- v) A conjoint reading of Section 24(2) alongwith Section 12 indicates that

the Board has no jurisdiction over matters relating to pricing.

- (j) Grievance of the Company, if any, relating to price of gas was required to be made to MoPNG as price of gas is fixed by it and GAIL has no role either in gas allocation or in fixing the price of gas.
- (k) The Board has returned contradictory findings. It has held that the determination of price of natural gas is within the domain of Central Government but it questions the retrospective operation of the price revision made by the Central Government.
- (l) Reliance is placed on the following judgments:
- a) **Kusuman Hotels Pvt. Ltd. v. Kerala State Electricity Board** ²
 - b) **Indraprastha Gas Limited v. PNGRB** ³
 - c) **Binani Zinc Limited v. Kerala State Electricity Board** ⁴

² 2008(13) SCC 213

³ 2012 (ELR) Delhi 1013

- d) **P.K. Sreekantan & Ors v. P. Sreekumaran** ⁵
- e) **Kurmanchal Institute of Degree and Diploma v. Chanallor Rohilkhand University** ⁶
- f) **Institute of Chartered Financial Analysis of India v. Council of Institute of Chartered Accountancy of India & and Ors** ⁷
- g) **Union of India v. Cynamide India & Anr**⁸.
- h) **Rayalseema Paper Mills v. Govt.of A.P** ⁹
- i) **Calcutta Discount Co. Ltd. V. Income Tax Officer** ¹⁰
- j) **Arun Kumar v. Union of India** ¹¹
- k) **Management of Express Newspaper Ltd. v. Workers and Staff Employed under it** ¹²
- l) **GAIL (India) v. GSPCL** ¹³

m) In view of the above impugned judgment is liable to be set aside.

⁴ 2009(11) SCC 244

⁵ AIR 2007 SC 516

⁶ 2007(6) SCC 35

⁷ 2007(12) SCC 210

⁸ 1987(2) SCC 720

⁹ 2003-1-SCC 341

¹⁰ AIR 1961 SC 372

¹¹ 2007(1) SCC 732

¹² AIR 1963 SC 569

¹³ Civil Appeal 8263 of 2013

12. We have heard Mr. Umapathy learned counsel appearing for Respondent No.1 Company. We have perused the written submissions filed by Respondent No.1 Company. Gist of the submissions is as under:

- (a) The Board has rightly set aside, by the impugned order, unjust retrospective recovery of the increase in the gas price made by GAIL from the Company. It falls within the powers conferred on the Board by Section 11(a) read with Section 11(f)(iii) and Section 12 of the said Act.
- (b) The Board has not interfered with the Government's power of fixation of price of natural gas. It has only held the retrospective recovery with effect from 01/07/2010 as illegal and directed refund of the amount with interest.
- (c) The Board has not exceeded its jurisdiction. It has only acted in accordance with the said Act.

- (d) GAIL and the Company are governed by the terms of the contract. The demand of differential payment with retrospective effect is contrary to the terms of the contract. On the question of interpretation of contract, reliance is placed on **DLF Universal Limited & Anr v. Director Town Planning and Country Planning Department, Haryana & Ors**¹⁴
- (e) Clause 10.1(b) of the contract clearly mandates that the gas price shall be amended on the basis of the Directives issued by the Government of India at any time in future “from time to time”. This clause lays down that the Central Government could revise price prospectively and not retrospectively. The Board has rightly placed reliance on the judgment of the Supreme Court in **Basant Agrotech (India) Ltd.**

¹⁴ (2010) 14 SCC 1

- (f) The submission of GAIL that Company only challenged the decision of the Central Government and not the right of GAIL in terms of the contract in implementing such retrospective price revision is wholly untenable. In its letter dated 10/01/2011 addressed to GAIL, the Company has stated that its representation was pending with the Government and GAIL too should take up the matter about retrospective recovery of price being unreasonable with the Government.
- (g) Policy decisions cannot be made retrospective and can be made only prospective.
- (h) The submission of GAIL that the Board has ignored the element of public interest is wholly untenable. The Gas Based Iron Producers while dealing with their Product Selling Price on monthly basis consider their actual input cost incurred during the said month and for

the finished products already sold out by them any subsequent unforeseeable increase in input cost (due to retrospective implementation of gas price) just cannot be recovered from their customers to whom they had sold their finished products. More so, in the Global competitive environment neither it is possible to do the business with a provision in the contract that any subsequent unforeseeable increase in the input cost at a later date or stage, if any, will be recovered by their customers (to whom products are already sold long back) nor same can be absorbed by the supplier, such unforeseeable and hefty increase in the input cost subsequently.

- (i) The term “from time to time” has only futuristic force and cannot have an anterior date. Reliance is placed on -

- (i) **Polychem Ltd. & Anr. v. State of Maharashtra & Ors**¹⁵
- (ii) **Kusumam Hotels (P) Ltd. v. Kerala SEB**¹⁶
- (iii) **Sri Vijayalakshmi Rice Mills v. State of AP**¹⁷
- (iv) **Gajraj Fertilisers (P) Ltd. v. State of Rajasthan & Ors.**

(j) On the question of jurisdiction reliance is also placed on the judgment of the Supreme Court in **Co-op Central Bank Ltd. v. Additional Industrial Tribunal**¹⁸

(k) Undoubtedly, the Board has jurisdiction to entertain the petition filed by the Company. The appeal is therefore liable to be dismissed.

13. Before dealing with rival contentions, we must note that there is no dispute about the legal position that the said Act does not confer any power on the Board to fix

¹⁵ (1998) 6 SCC 196

¹⁶ (2008) 13 SCC 213

¹⁷ (1976) 3 SCC 37

¹⁸ (1969) 2 SCC 43

retail price of natural gas. In **Petroleum and Natural Gas Regulatory Board v. Indraprastha Gas Limited** the Delhi High Court had to determine the issue whether the power to control/regulate/determine price can be deduced from the functions of the Board as described in Section 11 of the said Act. After quoting Section 11 of the said Act the Delhi High Court considered the clauses thereof and held that the Board has no power to fix retail price of natural gas. Relevant observations of the Delhi High Court could be quoted here:

“11.....
.....

Again, had the intent of the legislature been to confer the power on the Board to fix the Maximum Retail Price, nothing prevented the legislature from providing so expressly. Instead, functions of enforcing retail service obligations and marketing service obligations only have been conferred by the legislature. The definition of retail service obligations and marketing service obligations in Section 2(zk) and (w) also do not include obligation to sell at the prices fixed by the Board.”

The Delhi High Court’s above view was confirmed by the Supreme Court in **Indraprastha Gas Ltd.**

14. Against the backdrop of the above clear legal position we must recapitulate the facts. The Company has been purchasing natural gas from GAIL under the GSA since 1993. On 30/12/2016 the Company entered into a Gas Sales and Transmission Contract or GSTC with GAIL for supply of natural gas. It is necessary to reproduce clauses 10.1(a) and 10.1(b) thereof because counsel for the Company has relied on this contract and submitted that intention of the parties was to make the buyer pay the price fixed by the seller prospectively and that is reflected in the above terms. Clauses 10.1(a) and 10.1(b) of GSTC read as under:

“(a) For the supply of Gas against the quantity mentioned at Article 5.1 the price of Gas would be as per the applicable Government Pricing Orders. For the period w.e.f. 01.04.2006, as per Government Pricing Order No.L-12015/1/05-GP dated 19.04.2006 (Annexure II), the price of Gas is 4.75\$/MMBTU. The price is linked to a calorific value of 10000 kcal/Standard Cubic Meters on Net Calorific Value (NCV) basis. For the Price applicable on US \$ basis, provisional invoice will be raised considering the fortnightly quantity as per the SELLER’s certification multiplied by US\$ converted at SBI Card Rate – Bills Selling (the card rate of latest data available). The final adjustment would be based upon the actual PRICE paid for the bill for Tapti

Pannamukta joint venture fields for the current/subject month. For example gas supplied during April is paid in 1st week of June and accordingly adjustment on account of above supplies for April and May shall be done in June & July 1st Fortnight invoice(s) and so on.

(b) Notwithstanding Article 10.1(a), the SELLER shall have right to fix the Gas Price at any time in future as per directive, instruction, order, etc of the Government of India issued from time to time and the BUYER shall pay to the SELLER such price of Gas fixed by the SELLER.”

15. It is clear from Article 10.1(a) that the parties had agreed that the price of the gas to be supplied would be as per the applicable Government Pricing Order. The price of gas to be supplied under the contract was fixed at USD 4.75/MMBTU as per the Government Pricing Order dated 19/04/2006 which was applicable from 01/04/2006. Admittedly, GAIL was recovering gas price at the said rate from the Company.

16. Article 10.1(b) states that notwithstanding Article 10.1(a), the Seller shall have right to fix the gas price at any time in future as per directive, instruction, order etc of the

Government of India issued from time to time and the Buyer shall pay to the Seller such price of Gas fixed by the Seller.

17. Now it is necessary to enter certain relevant facts. MoPNG vide its letter dated 24/11/2010 informed GAIL of its decision regarding the fixation of the non-APM price of gas produced by National Oil Companies in Maharashtra as USD 5.25/MMBTU and further that this revised price shall be applicable with effect from 01/07/2010. GAIL by its letter dated 29/11/2010 informed the Company about the said revision of price and also conveyed that as per MoPNG's letter dated 24/11/2010 revised price shall be applicable with effect from 01/07/2010. The Company was informed that debit note for differential amount towards the period from 01/07/2010 to 15/11/2010 shall also be raised shortly. It is necessary to quote the said letter.

"No.GAIL/MZO/GSTC-APM-GAIL-WMSL/2010/Nov/01 Dated 29.11.2010

M/s Welspun Maxsteel Limited
Welspun House, 4th Floor
Kamala Mills Compound, Lower Parel(West)
Mumbai – 400 013.

Kind Attn: Shri Prakash Tatia, President(Marketing)

Subject- Supply of APM Gas to non-APM customers

Dear Sir,

This has reference to the Gas Sales and Transmission Contract (GSTC) dated 30.12.2006 between GAIL (India) Limited as Seller and Welspun Maxsteel Limited as Buyer as amended and supplemented by Amendment Agreements & Side Letters signed from time to time together referred as "Existing Contract".

In terms of Article 10.1(b) of the GSTC, the Seller has the right to fix the Gas Price at any time in future as per directive, instruction, order, etc., of the Government of India issued from time to time and the Buyer shall pay to the Seller such price of gas fixed by the Seller.

As you are aware, vide MoPNG's letter No.L-12015/1/05-GP dated 19.04.2006, the non-APM price of gas in Maharashtra, Gujarat & along HVJ was revised to USD 4.75/mmbtu.

In this regard, it is hereby conveyed that MoPNG through letter No.L-12015/12/10-GP dated 24.11.2010(copy enclosed) has informed of the decision regarding the fixation of the non-APM price of gas produced by National Oil Companies (NOCs) in Maharashtra as USD 5.25/mmbtu. Further, this revised price shall be applicable w.e.f.01.07.2010.

Accordingly, the Article 10 of the Existing Contract shall be modified to the extent as provided in the above-mentioned letter dated 24.11.2010 and accordingly invoices for gas supplies made to the Buyer w.e.f. 2nd Fortnight, November 2010 shall be raised. Also, debit note for the differential amount towards the period 01.07.2010 to 15.11.2010 shall also be raised shortly.

Thanking you,

Yours faithfully,

Sd/-
29/11/10

[Girija Shankar]
Chief Manager (Mktg.)"

18. It must be made clear here that the Company was aggrieved only by the retrospective application of the revised price and not by the revision of price. The Company communicated its grievance to MoPNG and also to GAIL.

Since there was no positive response from them and a debit note was served on the Company it moved the Board. As stated hereinabove the Board allowed the Company's petition and hence this appeal.

19. While agreeing with the view that no right is conferred on the Board by the said Act to fix the retail price of gas, Counsel for the Company contended that the parties are bound by the contract i.e. the GSTC and as per the GSTC, GAIL could not have recovered the revised price from the Company retrospectively. It is submitted that while interpreting the contract its purpose and joint intent of the parties has to be looked into. Following paragraph from **DLF Universal Limited** is relied upon in support of this submission.

“Interpretation of contract

13. It is a settled principle in law that a contract is interpreted according to its purpose. The purpose of a contract is the interests, objectives, values, policy that the contract is designed to actualize. It comprises the joint intent of the parties. Every such contract expresses the autonomy of the contractual

parties' private will. It creates reasonable, legally protected expectations between the parties and reliance on its results. Consistent with the character of purposive interpretation, the court is required to determine the ultimate purpose of a contract primarily by the joint intent of the parties at the time the contract so formed. It is not the intent of a single party; it is joint intent of both the parties and the joint intent of the parties is to be discovered from the entirety of the contract and the circumstances surrounding its formation."

20. It is contended that the Board has rightly placed reliance on judgment of the Supreme Court in **Basant Agrotech (India) Limited** where the words 'time to time' have been interpreted and it is clarified that the said words do not engulf the spectrum of retrospectivity or retroactivity in its ambit and sweep. It is contended that therefore the words 'time to time' appearing in Article 10.1(b) of GSTC would mean price revised prospectively. This view of the Board is correct. It is contended that GAIL could not have therefore recovered the revised price retrospectively.

21. There can be no debate over the proposition that while interpreting the contract the court has to discover the intent of the parties and keep in mind the purpose of the contract. We must keep this in mind while interpreting GSTC. However, where the terms of the contract are clear and admit of no ambiguity as is the case here one has to interpret the contract as per the clear terms.

22. The crucial Article of the GSTC on which reliance is placed by the Company is Article 10.1(a) in which the words 'time to time' appear. It *inter alia* states that the seller shall have right to fix the gas price at any time in future as per directive, instruction, order etc of the Government of India issued from time to time (emphasis supplied). Relying on **Basant Agrotech (India) Limited** it is urged that the words 'time to time' have futuristic tenor and they do not include retrospectivity in their sweep. So far as **Basant Agrotech (India) Limited** is concerned in that case the Supreme Court was dealing with a notification issued by the State Government enhancing tax with retrospective effect. Section

16 of the Rajasthan Finance Act 2008 empowered the State Government to issue notification from time to time to levy an environment and health cess. While interpreting this statutory provision and the notification issued by the Government the Supreme Court held that the words 'time to time' does not include within its ambit retrospectivity. This judgment in our opinion cannot be made applicable to a pricing order issued by the Government pursuant to a policy decision of the Government.

23. But even accepting that the words 'time to time' appearing in Article 10.1(b) do not include within its ambit retrospectivity, on a proper interpretation of Article 10.1(b) it is clear that GAIL cannot be faulted for charging the revised price retrospectively as directed by the MoPNG. Article 10.1(a) fixed the price of gas to be supplied under the contract at USD 4.75/MMBTU as per price order dated 19/04/2006 issued by MoPNG which was applicable from 01/04/2006. Admittedly, GAIL was charging gas price at the said rate from the Company. Article 10.1(b) reserves the right of GAIL,

notwithstanding Article 10.1(a), to fix the gas price at any time in future as per directive, instruction, order etc of the Government of India, issued from time to time. The words 'time to time' obviously relate to or refer to the words 'directive, instruction, order etc' of the Government of India. They are to be construed in relation to the pricing decision of the Government of India/MoPNG and not in relation to the decision of GAIL. Even if **Basant Agrotech (India) Limited** is applied to the present case it is clear that what is contemplated in Article 10.1(b) is any directive, instruction, order etc issued by the Government of India in future. Thus, under the GSTC it is made clear that gas price is variable and GAIL shall revise the same any time in future in accordance with the directive/order of MoPNG in this regard. Article 10.1(a) mandates the Company to pay such price fixed by GAIL as per the directives of MoPNG.

24. As already stated vide its pricing order dated 24/11/2010 MoPNG revised the price of gas at USD 5.25/MMBTU and made it applicable with effect from

01/07/2010. Pursuant to this GAIL vide its letter dated 29/11/2010 informed the company about the upward revision of gas price made by MoPNG with effect from 01/07/2010 and raised a Debit Note accordingly towards the differential amount for the period from 01/07/2010 to 15/11/2010. We do not see how GAIL can be faulted for carrying out the policy decision of MoPNG. Article 10.1(a) and 10.1(b) are clear and therefore their interpretation is not a difficult task. They also reflect the underlying intention and understanding of the parties that GAIL had no role in fixing the price of gas except to follow and implement the orders of MoPNG issued from time to time.

25. We find that the Board has accepted that the issue of determination of price or rise in price of natural gas was not before it for adjudication. It has categorically observed that such matters are within the domain of the Central Government. But the Board has then proceeded to exercise its jurisdiction under Section 11(a) of the said Act. The Board

has observed that it has been empowered to protect the interest of consumers by Section 11(a) of the said Act and therefore it will examine the legality of retrospectivity of the price rise. In our opinion, the Board has fallen in a grave error in doing so.

26. Section 11 delineates the functions and powers of the Board. Section 11(a) stresses the importance of fostering fair trade and competition amongst the entities to protect the interest of consumers. All actions of the Board will be guided by this basic principle. But Section 11(f) specifically demarcates the jurisdiction of the Board in respect of notified petroleum, petroleum products and natural gas. The jurisdictional limits of the Board qua natural gas are fixed by Section 11(f). It does not confer jurisdiction on the Board to fix retail price of natural gas. Under Section 11(f) iii, it can only monitor process and take corrective measures to prevent restrictive trade practices by the entities. By holding that GAIL was wrong in effecting retrospective recovery of revised price, the Board has in effect directed GAIL to defy the

MoPNG's direction. Such interference in matter of pricing of natural gas and its recovery as per the orders of MoPNG is legally not permissible. It is ultimately interference with the policy decision of MoPNG. The Board in our opinion misdirected itself in finding fault with GAIL's action by misinterpreting Article 11.1(b) of GSTC.

27. Reliance placed by the Company on Section 12 of the said Act is also misplaced. Section 12 does not confer any jurisdiction on the Board to decide any dispute with regard to price. Section 12(1)(a) vests power in the Board to adjudicate and decide any dispute or matter which relates to refining, processing, storage, transportation, distribution, marketing and sale of petroleum, petroleum products and natural gas. Disputes regarding price are not included in this Section. Section 12(b) also does not confer jurisdiction on the Board to decide disputes relating to price or price rise. Similar is the case with Section 24 of the said Act.

28. In view of the above, Order dated 03/04/2014 challenged in Appeal No.159 of 2014 passed by the Board will have to be set aside and is accordingly set aside. Since the issue involved in companion Appeal No.160 of 2014 is the same which we have considered in Appeal No.159 of 2014, for the reasons which we have stated hereinabove, Order dated 03/04/2014 challenged in Appeal No.160 of 2014 passed by the Board is also set aside. Appeals are disposed of in the above-stated terms. Needless to say that IA Nos.255 and 256 of 2014 in Appeal No.159 of 2014 and IA Nos.257 and 258 of 2014 in Appeal No.160 of 2014 also stand disposed of accordingly.

29. Pronounced in the Open Court on this **10th day of March, 2017.**

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

Justice Ranjana P. Desai
[Chairperson]

✓ ~~REPORTABLE/NON-REPORTABLE~~