IN THE APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI [APPELLATE JURISDICTION]

APPEAL NO. 196 OF 2016 & IA NOS. 418, 419 OF 2016 & APPEAL NO. 197 OF 2016 & IA NOS. 420, 421 OF 2016

Dated: 28th APRIL, 2017

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

IN THE MATTER OF:

M/S JAY MADHOK ENERGY PRIVATE LIMITED
D-143, Defence Colony,
New Delhi–110024 ...**Appellant**

AND

PETROLEUM & NATURAL GAS REGULATORY BOARD
1st Floor, World Trade Center,
Babar Road,
New Delhi-110001 ...**Respondent**

Counsel for the appellant(s) : Mr. Parag P. Tripathi, Sr. Adv.
Mr. Atul Y. Chitale, Sr. Adv.
Mr. Vineet Malhotra
Mr. Mohit Paul
Mr. Vishal Gohri
Mr. Shubhendu Kaushik
Ms. Tanvi Kakar
Ms. Akansha Ghosh

Counsel for the Respondent(s) : Ms. Aparna Vohra
Mr. Prashant Bezboruah
Mr. Saurav Aggarwal

J U D G M E N T

PER HON'BLE MR. B.N. TALUKDAR, TECHNICAL MEMBER (P&NG)

1. In the Appeal Nos. 196 of 2016 and 197 of 2016, the Appellant M/s Jay Madhok Energy Pvt. Ltd. has challenged the Impugned Orders dated 15.07.2016 passed by the Respondent, the Petroleum and Natural Gas Regulatory Board (the Board) cancelling the authorizations granted to the Appellant for City Gas Distribution (CGD) network for the geographical areas of Kutch (East) and Ludhiana respectively and encashing the entire 100% of the performance bank guarantees submitted by the Appellant in both the authorizations. Since facts in both the appeals are similar and issues are same, both were heard in this tribunal together and accordingly dealt with in this common order. Appeal No. 196 of 2016 will be treated as a lead appeal. Counsel for the parties are agreed that judgment in Appeal No. 196 of 2016 will cover and decide Appeal No. 197 of 2016.

2. The Appellant is a company who started as a trading and distribution company in 1985, later strategically, it integrated into oil and gas exploration, production and city gas distribution activities.

3. The Respondent, Petroleum and Natural Gas Regulatory Board (the Board) is a statutory body constituted under the provisions of the Petroleum and Natural Gas Regulatory Board Act, 2006 ("PNGRB Act") to regulate "the refining, processing, storage, transportation, distribution, marketing and sale of petroleum, petroleum products and natural gas excluding production of crude oil and natural gas so as to protect the interests of consumers and entities engaged in specified activities relating to petroleum, petroleum products and natural gas and to ensure uninterrupted and adequate supply of petroleum, petroleum products and natural gas in all parts of the country and to promote competitive markets and for matters connected therewith or incidental thereto".

4. The background of the appeals and the gist thereof as understood from the learned counsel of the Appellant and the documents submitted by the Appellant are as under:-

The Respondent on 23.07.2010, under the provisions of the Petroleum and Natural Gas Regulatory Board (Authorizing entities to lay, build, operate or expand city or local natural gas distribution network) Regulations, 2008 (hereinafter "Authorization Regulations") invited bids for the geographical areas of Kutch (East) and Ludhiana along with 5 other areas for grant of authorization for laying, building and operating etc. for the CGD network in respect of these areas. On 18.02.2011, the Appellant submitted its bids for the geographical areas of Ludhiana, Jallandhar and Kutch (East) and on 06.09.2013, the Appellant was first granted the said authorization for the geographical area of Jallandhar. Subsequently, the Appellant was granted authorization for CGD network of Kutch (East) on 12.03.2015 and for Ludhiana on 25.06.2015. The instant case referred as Appeal No.196 of 2016 pertains to geographical area of Kutch (East) and

the case referred as Appeal No. 197 of 2016 pertains to geographical area of Ludhiana.

5. As per the Appellant, after receiving the authorization for the geographical area of Jalandhar on 06.09.2013 the Appellant came to know about the pendency of a Public Interest Litigation being Civil Writ Petition No. 13490 of 2008 before the High Court of Punjab and Haryana at Chandigarh involving the issue whether Compressed Natural Gas (CNG) station is a part of CGD network or not. Before the High Court of Punjab and Haryana M/s GAIL Gas gave a stand that CNG station is not a part of CGD network where as the bids of CGD network were invited by the Board on the basis of the fact that CNG stations are an integral part of CGD network. The Scope of Work mentioned in the bid document included CNG station as a part of CGD network.

6. On 18.09.2013, when the PIL was listed before the High Court of Punjab and Haryana, the Union of India through

Ministry of Petroleum and Natural Gas (MoPNG) filed an affidavit supporting the stand of M/s GAIL Gas that CNG station is not a part of CGD network. The Division Bench of the High Court of Punjab and Haryana while passing the order on 18.09.2013 in CWP No. 13490 of 2008 noted as under:

> "The affidavit has been filed by the Ministry of Petroleum and Natural Gas affirmed on 13.09.2013. the affidavit seeks to suggest that CNG station is not an integral part of City Gas Distribution (CGD) network as envisaged under the Petroleum and Natural Gas Regulatory Board (PNGRB) Act, 2006 (hereinafter referred to as the Act) and, thus, no authorization from PNGRB is required for setting up of CNBG stations.
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> A copy of this affidavit has, however, not been handed over to the PNGRB/respondent No.95. Learned counsel appearing for the said authority disputes this position and submits that the CNG stations cannot be carved out of the CGD network and in eight cities tenders have been so aw2arded and accepted by GAIL, as the GAIL has been the successful tenderer in four such cities. It is, thus, sought to be suggested that this issue has been raised by GAIL qua Jalandhar city as the GAIL has not been the successful tenderer.
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> The original records have been produced before us which show that there was an opinion obtained by the Ministry of Petroleum and Natural Gas from the Ministry of Law and Justice, Department of Legal Affairs to support its view as formulate4d on record.

> The result of the aforesaid is that this Court would have to consider this question as to the scope of the power of PNGRB keeping in mind the provision of the said Act."

7. As the said dispute was pending before the High Court of Punjab and Haryana, the Appellant wrote several letters to the Board seeking clarity on the said situation without any response from the Board.

8. The Board filed its affidavits on 08.01.2013 and 03.07.2013 before the High Court of Punjab and Haryana stating the implications of non-inclusion of CNG station in the CGD network in this bid for Jalandhar. Thereafter, on March 05, 2015, Govt. of India issued draft guidelines asking for comments from various entities proposing that CNG stations are not part of CGD network and no authorization from PNGRB is required for setting up of CNG station. It was also proposed that CNG station can be set-up by any entity. The Appellant sent a representation on 19.03.2015 to MoPNG stating that the said guidelines may not be approved as they would infringe upon the

rights of the parties to whom the Board had already granted authorization. On the same subject, the Appellant also wrote to the Board on 20.03.2015 but without any response.

9. The Regulation 11 of the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008 stipulates inter alia the following conditions.

10. The grant of authorization is subject to the entities achieving financial closure and natural gas tie-up within the time period specified under Regulation 11. Under Regulations 11 (3) and 11(4), the time period prescribed for achieving financial closure is 180 days from the date of grant of authorization. Under Regulation 11 (1), the entity is required to enter into a firm natural gas supply agreement or Heads of Gas Supply Agreement (HOA/Memorandum of Understanding (MOU)) for gas supply with natural gas producer/marketer within 120

days of the date of issue of authorization. Under Regulation 11(3), however, a time limit of 180 days is prescribed for obtaining financial closure alongwith a firm natural gas supply agreement.

11. In addition to above, the Board is also authorized under Article 13 of the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008 to monitor the physical progress of the activities of the authorized CGD network and take remedial action as per the provisions of the said regulations. This monitoring is in respect of the progress made against the physical targets quoted by the entity while bidding for the CGD network and as agreed by the Board to achieve during the exclusivity period. The physical targets are in terms of number of natural gas domestic connections, inch-kilometer of steel pipelines etc.

12. On monitoring the progress of both the CGD network projects for Ludhiana and Kutch (East), the Board not being satisfied with the progress, served a show-cause notice on 02.06.2016 to the Appellant. In the show-cause notice, the Board mentioned that even after more than 180 days of authorization, the Appellant could not meet the requirements of regulatory provisions for Financial Closure (FC) and Gas Supply Agreement (GSA) as per Regulation 11 which attracted the provisions of Regulations 16 dealing with consequences of default and termination of authorization procedure. By this notice, the Appellant was asked to appear before the Board on 04.07.2016 to present their cause. The Appellant responded to this notice on 08.06.2016 stating that they had achieved the Financial Closure and enclosed a copy of minutes of their Board meeting dated 28.03.2016 stating that the company would fund the project through internal accruals and a committed financial proposal from Deutsche Bank AG. The Board in turn on 15.06.2016 sent a letter to the Appellant asking for details of the Financial

Closure viz. details of FC documents by Deutsche Bank AG, name and details of the Director certifying the documents on behalf of the Appellant Company, copy of the full Board resolution for FC etc. The Appellant vide their letter dated 30.06.2016 clarified and answered the queries which had been sought by the Board. The representative of the Appellant appearing before the Board on 04.07.2016 also submitted that the Board of Directors of the Appellant had met again on 27.06.2016 and approved the resolution for Financial Closure for the project and the same was enclosed to their letter dated 30.06.2016. As regards Gas Supply Agreement, the representative of the Appellant during hearing on 04.07.2016, submitted that they also had entered into an in-principle agreement with Indian Oil Corporation and the formal agreement would be entered into before 10.07.2016 in addition to their in-principle agreement with Hazira LNG Pvt. Ltd. which they had submitted alongwith their bid on 18.02.2011. The Appellant finally

submitted the Gas Supply Agreement entered with Indian Oil Corporation on 11.07.2016 to the Respondent Board.

13. The Board, however, not being satisfied with the replies and documents submitted by the Appellant in respect of FC and GSA, passed the impugned order on 15.07.2016 relying on the findings that the Appellant failed to meet the requirements of Regulations 11(1) to (4) of the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008 and to comply with the terms of conditions of authorization, cancelling the authorization of the Appellant for laying, building, operating or expending the Kutch (East) and Ludhiana CGD networks and directed encashment of the entire performance bond submitted by the Appellant for both the authorizations and hence the appeals by the Appellant to APTEL.

14. We have heard Mr. Parag P. Tripathi and Mr. Atul Y. Chitale, Senior Advocates appearing for the Appellant. We have perused the written submissions filed by them. Gist of the submissions is as under:

- The impugned order is malafide and fraudulent because of the fact that the order has been passed by three members (signed by three members) though the matter was heard by two members of the Board.

- The order is not tenable inasmuch as it does not take into consideration the fact that the Appellant had directly supplied to the Board a copy of the Gas Supply Agreement (GSA) and also the Financial Closure (FC) in the format which was required by the Board.

- The Board failed to consider and appreciate that the show-cause notice had been issued in terms of Regulation 11 mentioning that it attracts the

provisions of Regulation 16 dealing with consequences of default and termination of authorization procedure. Regulation 16 requires that in case of any non-compliance, the Board is required to issue a notice to the entity granting reasonable opportunity to comply with the regulations.

- Though the notice mentioned about both the Regulations 11 and 16, the Board cancelled the authorization relying only on Regulation 11 which the Board could not have done (Ref. **Supreme Court judgment in Gorkha Security Services Vs. Govt. (NCT of Delhi) and Ors. (2014) 9 SCC 105 (J. Chelameshwar; A.K. Sikri, JJ).**

- The Board further erred in cancelling the authorization and encashing the entire bank guarantee under Regulation 11, which is contrary to the notice and Regulation 16 specifically provides that in case of first default, an opportunity requiring the entity to rectify the default be provided and that

in case of established first default, only 25% of the bank guarantee could be invoked.

- The Board failed to appreciate that the bids had been invited on the basis of the fact that CNG Stations are an integral part of CGD network. In the bid document, it is provided as under:-

> "1.2 **SCOPE OF WORK**
>
> The entities bidding for this work shall be required to lay, build, operate or expand the CGD networks to meet requirement of natural gas in domestic, commercial and industrial segments including Compressed Natural Gas in the vehicular segment in the said geographical area to be authorized and also comply with the relevant regulations.
>
> The entities shall be required to carry out the development of CGD project in line with the regulations laid down by the PNGRB."

- The issue as to whether CNG station is a part of CNG network is pending consideration and subjudice before the High Court of Punjab and Haryana at Chandigarh in Civil Writ Petition No. 13490 of 2008. Additionally, the Government of India has also issued draft guidelines wherein it is proposed that CNG stations are not part of CGD Network and no authorization from the Board is required for setting up of CNG station. It is also proposed that CNG station can be set-up by any entity.

- The Board failed to appreciate that the Board itself had issued a Public Notice dated 18.12.2013, which is also prominently available in its website stating as under:-

> "Sub: Setting up of CNG Station.
>
> This public notice is being issued for information of stakeholders in the wake of recent press-reports that CNG Stations are not an integral part of a city or local natural gas distribution (CGD) network and that no authorization from PNGRB is required for setting up of CNG Stations.

All stakeholders are hereby informed that the above matter is subjudice in the Hon'ble Punjab and Haryana High Court."

- The Board failed to consider that it has itself before the High court taken a stand that viability of the entire project would be adversely affected and the project would not be viable if CNG is not an integral part of CGD network. The Board before the High court in this regard in its affidavit dated 08.01.2013 stated as under:-

"12. That as per processing of bids received under the 3rd round of bidding is underway. In the circumstances if the GGL were not to emerge as a successful bidder for Gas of Jalandhar, Ludhiana or Chandigarh, its signing of agreements with Punjab Roadways (PUNBUS) would effectively amount to procuring the high potential CNG business in these Gas by circumventing the process of competitive bidding which cannot be allowed. It is submitted that the bidders would have considered the CNG business of PUNBUS and other transport agencies in assessing the business potential for working out these bids. By this kind of cherry-picking of major customers for CNG, the business potential of the entity that is going to be successful in the bidding process and the

viability of the CNG network will be adversely affected."

- Although the matter is subjudice, the Appellant in the PIL pending before the High court of Punjab and Haryana at Chandigarh filed its affidavit dated 28.05.2016 giving an undertaking to set up and install CNG Station within 6 months in the geographical areas of Ludhiana and Jalandhar.

15. We have heard Mr. Prashant Bezboruah and Mr. Saurav Aggarwal, learned counsel appearing for the Board and perused their written submissions. Gist of their submissions is as under:

- The Appellant could not meet the requirements of provisions of Regulation 11 of the Authorization Regulations in respect of Financial Closure and Gas Supply Agreement within the stipulated time period of 180 days from the date of authorization and even till the date of final hearing on 04.07.2016.

- Before cancelling the authorization on 15.07.2016, the Appellant was issued show-cause notice on 02.06.2016 asking them to appear before the Board on 04.07.2016 to clarify the delay in Financial Closure and Gas Supply Agreement.

- As per Regulation 10, the authorization is subject to entity achieving a firm natural gas tie-up and a Financial Closure as per Regulation 11. Reference to the very meaning of 'subject to', Apex Court's judgment in the case of **Petroleum and Natural Gas Regulatory Board Vs. Indraprastha Gas Ltd. [(2015) 9 SCC 2009]** is cited.

- It was made clear to the Appellant in the hearing on 04.07.2016 that any document submitted after this date of hearing would not be accepted.

- The very presence of Regulation 11 (5) in the Authorization Regulations means that if the fundamental requirements are not fulfilled by the

entity, then the authorization shall be cancelled and the PBG encashed entirely. An other interpretation would render the effect of Regulation 11 (5) otiose and would also affect the public interest prejudicially.

- Regulation 16 would not apply to a situation where Financial Closure is not achieved under Regulation 11. Regulation 16 deals with non-adherence to the 'terms and conditions'.

- The Board only has the power to cancel an authorization and hence, though the matter was heard by two members of the Board, the order was passed by three members of the Board. The quorum for conducting a Board meeting is minimum of three members and hence three members of the Board who attended the Board meeting including the two members who heard the matter signed the impugned order.

- The Appellant has not come with clean hands before this Hon'ble Tribunal. The Appellant has only brought

on record selective orders of the Hon'ble High Court of Punjab and Haryana and has willfully suppressed/concealed some other orders and documents. The suppressed documents/facts are material to the present case in as much as they clearly demonstrate that the Appellant has not approached this Tribunal with clean hands and has tried its best to conceal documents to mislead this Hon'ble Tribunal. This suppression/concealment ex-facie establishes that the very basis on which the appeals had been filed using the pendency of CWP No. 13490 of 2008 pending before the High Court of Punjab and Haryana as an excuse for not completing the Appellant's obligations is false. Further, the conduct of the Appellant in fact justifies the cancellation of the Authorization and the grounds on which the show-cause notice was issued to the Appellant and the authorization cancelled. (Ref: Judgment of **K.D. Sharma Vs. Steel Authority of India Ltd. – (2008) 12 SCC 481 (paras 34 to 51**

at pages 492 to 497 of the Judgment) and of **Dalip Singh Vs. State of UP-(2010) 2 SCC 114 paras 1 to 10 at pages 116 to 119** of the Judgment.)

- The Appellant has done no work at all and spent nothing – public interest warrants no relief to the Appellant.

- The Appellant was authorized on 25.06.2015 for the GA of Ludhiana and on 12.03.2015 for the GA of Kutch (East) and the Appellant quoted certain targets in terms of number of domestic connections and inch-kilometer of steel pipelines in their bid documents which they would achieve during a five year period for the respective GAs. Till the date of hearing on 04.07.2016, the Appellant has made zero progress on above.

16. It is now necessary to first have a look at the facts. On the issue of the impugned order being signed by three

members and hearing of the matters by two members of the Board, extensive submissions have been advanced by respective counsel of the rival parties. However, it is not necessary for us to deal with these submissions as we propose to decide these appeals on the interpretation of regulations as we shall see soon.

17. Specific to the issue of non-achievement of the Financial Closure by the Appellant, the Board submitted that the authorizations for CGD network for the geographical area of Kutch (East) and Ludhiana were granted to the Appellant on 12.03.2015 and 25.06.2015 respectively and till the date of impugned order (15.07.2016), the Financial Closure could not be achieved by the Appellant against the allowable time limit of 180 days from the date of authorization though the Appellant claimed that they submitted the same before the issue of the impugned order.

18. The learned counsel for the Appellant claims that all the queries raised by the Board on Financial Closure such as

non-mentioning of the name of the Director certifying the Appellant's Board resolution, whether financial closure was achieved through internal accruals or through financing from Deutsche Bank AG, non-mentioning of amount of financing etc. were all replied vide their letter dated 08.06.2016 followed by their subsequent letter dated 30.06.2016. The counsel also reiterated that all the documents that were asked by the Board to be submitted by the Appellant were also submitted as attachment to the letter of 30.06.2016.

19. The counsel of the Appellant further claims that the representative of the Appellant also replied to the queries raised by the Board during the hearing on 04.07.2016 before the Board. The relevant documents were also annexed to their written submission vide letter dated 11.07.2016.

20. The Board's main contention for not accepting the Financial Closure submitted by the Appellant is that the Appellant submitted only a proposed term sheet

submitted by Deutsche Bank to the Appellant showing their willingness to finance the CGD project for both Kutch (East) and Ludhiana geographical areas which was not on executed term sheet between the parties. As per the Board, this proposed term sheet could not be considered as a legally binding document to consider the Financial Closure to be complete.

21. On the issue of term sheet submitted by the Appellant, the learned counsel for the Appellant informed that international banks prefer to issue terms sheets rather than issuing letter due to their internal controls. The representatives of the Appellant at the hearing on 04.07.2016, informed the Board that in the context of the uncertain global economic scenario and deteriorating gas consumption in India during last year, the Indian banks have not been coming forward for investing in the city gas domain and therefore the Appellant had to perforce obtain the participation of the foreign bank. Moreover considering the due diligence exercised by such foreign bank, the process became time consuming. The same was

nevertheless achieved and approved by the Board of the Appellant. Further, while no requirement or format for approval of the foreign bank had been prescribed or sought from the Appellant, as desired later by the Board during the hearing, a specific confirmation had also been obtained from Deutsche bank.

22. On the issue of Gas Supply Agreement, the Appellant claims that during the hearing on 04.07.2016, the Appellant mentioned to the Board that the Gas Supply Agreement had been formalized. The representative of the Appellant also mentioned that there was hesitation in the Indian gas market arising out of fall in gas prices and the market shifting to low price spot gas rather than gas on long term or medium term basis. It was mentioned during the hearing that the long term gas agreements of 15-20 years period have become unworkable/dysfunctional due to the price fluctuation and the general trend is to move towards short term gas agreements/spot purchases. This has resulted in unsettled/uncertain market conditions

which delayed both the Financial Closure and the finalization of GSA.

23. As regards Financial Closure which was submitted on 11.07.2016, the Appellant's contention is that in case the Board had any further doubt with regard to format in which the Financial Closure was required, they ought to have provided the same to the Appellant. The counsel for the Appellant argues that the guidelines do not provide for any format in which the letter is to be obtained from the bank.

24. In response to the Appellant's claim that they submitted the Gas Supply Agreement, the Board submitted that in terms of Regulation 11(1) of the Authorization Regulations, the Appellant was supposed to enter into a firm natural gas supply agreement or Heads of Gas Supply Agreement (HOA/MOU) within 120 days of the date of issue of the authorization. The outer limit for finalizing the firm natural gas supply agreement was 180 days from the date of grant of authorization in terms of Regulation 11(3)

of the Authorization Regulations. None of these conditions were complied with by the Appellant till 04.07.2016 i.e. more than one year from the grant of authorization.

25. As per the Board, they made it clear to the Appellant in the hearing on 04.07.2016 that any documents submitted after the date of the hearing would not be entertained. In effect, the Gas Supply Agreement submitted by the Appellant on 11.07.2016 was in any case executed much beyond the 180 days allowed under the Regulations and even any reasonable extended time period.

26. The learned counsel for the Board claims that there was clear non-achievement of a firm natural gas supply agreement within the specified time period as per the Regulations. This was in effect a violation of the law as the Regulations framed by the Board have statutory force since they are approved by Parliament in accordance with the provisions of Section 62 of the PNGRB Act, 2006.

27. Learned counsel for the Appellant argues that the Board failed to consider and appreciate that the notice had been

issued in terms of Regulations 11 and 16 and that Regulation 16 requires that in case of any non-compliance, the Board is required to issue a notice to the entity granting reasonable opportunity to comply with the regulations. Regulation 16 also specifically provides that in case of first default, an opportunity requiring the entity to rectify the defect be provided and that in case of established first default, only 25% of the bank guarantee could be invoked.

28. The Appellant also submits that in case of other entities, who have either not entered into a Gas Supply Agreement or have not obtained Financial Closure, the Board has consistently been following the practice of granting an opportunity as envisaged under Regulation 16(1) (a). In all other cases, the Board has been regularly granting time. In the case of GAIL India Ltd., the Board had waited for about 4½ years after granting several opportunities to obtain Financial Closure. That when even after granting several opportunities and after about 4½ years had passed and even though neither Gas Supply Agreement

signed nor Financial Closure obtained, the Board granted several opportunities under Regulation 16(1) (a) and when after grant of several opportunities, the Financial Closure was not obtained, the Board had invoked 25% of the bank guarantee as envisaged under Regulation 16 and not the entire bank guarantee.

29. The counsel for the Appellant also cited another similar case of M/s Gas Transmission India Pvt. Ltd. (GTIPL) where the Board encashed 25% of the performance bank guarantee in accordance with the provisions of Regulation 16 (1) (c) (i) of NGPL Authorization Regulations for non-submission of Gas Transportation Agreement and Financial Closure within the stipulated time period. The Appellant submitted that the action of the Board in the present case is totally malafide inasmuch as it is the only case since the Board came into existence where the Board has proceeded to cancel the authorization or proceeded under Regulation 11(5). In all other cases, Board has proceeded under Regulation 16.

30. As response to these arguments made by the Appellant, the Board's contention is that Regulation 11 (5) of the Authorization Regulations is a specific and special Regulation dealing with the specific situation where the entity has failed to achieve Financial Closure and natural gas tie-up, as the authorization is subject to the entity achieving Financial Closure and firm gas tie-up. It is a regulation that is applicable only in a very specific situation of failure to comply with the provisions of Regulations 11(1) to 11(4). Regulation 11 (5) in essence relates to the fundamental building blocks of the CGD Network project and is in fact meant to deal with non-compliance with the very foundation of the CGD Network project. The very presence of Regulation 11 (5) in the Authorization Regulations means that if the fundamental requirements are not fulfilled by the entity, then the authorization shall be cancelled and the PBG encashed entirely. An other interpretation would render the effect of Regulation 11 (5) otiose and would also affect the public interest prejudicially.

31. As per the Board, Regulation 16 is a more general regulation, which is meant to cover situations where the authorized entity fails to comply with the terms and conditions of authorization, such as achievement of the targets of inch-kilometers or number of piped natural gas domestic connections or for failure to abide with any other terms and conditions of the regulations. There are several terms and conditions contained in the grant of authorization to an entity, which is as per Schedule D. For the non-compliance of these terms and conditions, Regulation 16 gets attracted. This is distinct than the requirement of achieving Financial Closure and firm Gas Supply Agreement, which are factors to which the authorization is "*subject to*".

32. On the issue raised by the Appellant on the show-cause notice dated 02.06.2016, the counsel for the Board insisted that the first part of the notice saying "non-compliance of requirement under Regulation 11" is correct and the Appellant also had not contested this point. The

second part of the notice is a legal matter pertaining to Regulation 16 and there has been an error in quoting the wrong legal provision. The factual part of the notice was correct and the counsel cited couple of cases and one of these is **N. Mani Vs. Sangeeta Theater & Ors. [(2004) 12 SCC 278]**, where the Apex Court held:

> "8. A perusal of the order of the High Court shows that the principal reason which has prevailed with the High Court in setting aside the order dated 30.10.1995 is that there is no reference made therein to Section 11 of the Act. In our opinion, the Division Bench of the High Court was not right in forming the opinion, which it has done. The power to grant permission has been specifically conferred on the Government by the proviso inserted to Rule 14 by GO No.1326 dated 06.09.1995. It is noteworthy that in an earlier round of litigation initiated by Respondent No.1 the constitutional validity of GO No. 1326 dated 06.09.1995 was upheld. Merely because Section 11 of the Act was not specifically referred to in the order dated 30.10.1995 that could not have been a ground for setting aside the permission dated 30.10.1995.
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> 9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the

power does exist and can be traced to a source available in law."

33. As regards suppression/concealment of facts, the Board pointed out that the Appellant suppressed/concealed the documents of the orders of High Court of Punjab and Haryana dated 03.11.2015 in CWP No.13490 of 2008 wherein the Appellant gave undertaking to start work within two weeks from the date of hearing (03.11.2015) for the geographical area of Ludhiana. As per the Board, the abovementioned documents contain factual information which is material for the present appeal and should have been brought to the attention of this Tribunal by the Appellant. Instead, the Appellant suppressed these documents in order to misguide the court and paint a false picture with respect to the conduct of the Appellant. Thus, the Board had prayed for the dismissal of the entire appeal on grounds of supersession of material facts in its counter affidavit.

34. In the context of suppression/concealment of material facts/documents, the Board has relied on the judgment of

K.D. Sharma Vs. Steel Authority of India Ltd. – (2008) 12 SCC 481 (paras 34 to 51 at pages 492 to 497 of the judgment) and the ***Dalip Singh Vs. State of UP – (2010) 2 SCC 114 (paras 1 to 10 at pages 116 to 119*** of the Judgment).

K.D. Sharma Judgment:

"38. …He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play `hide and seek' or to `pick and choose' the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of Writ Courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because, "the Court knows law but not facts".

39. …If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the Court, the Court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the Court does not reject the petition on that ground, the Court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of Court for abusing the process of the Court."

Dalip Singh Judgment:

"2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge passed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final."

35. The Appellant on the above allegation denied that true and correct facts have not been placed before the Tribunal or that the Appellant has in any manner attempted to mislead the Tribunal while seeking stay of the impugned order. The Appellant submitted that the impugned order which was passed on 15.07.2016 was made available to the Appellant only at about 3.30 – 4.00 P.M. on 18.07.2016 and the present appeal was filed before this Tribunal on 19.07.2016 within a short span i.e. less than 24 hours. The Appellant also stated that on the same date i.e. on 19.07.2016, the matter was also listed before the High Court of Punjab and Haryana at Chandigarh in CWP No. 13490 of 2008. The Appellant has placed on record all

necessary documents which were available with the Appellant at the time of filing of the appeal. While denying the allegation of suppression/concealment of facts, the Appellant stressed upon a point that the Appellant has itself placed on record its undertaking given and filed before the High Court of Punjab and Haryana at Chandigarh on 28.05.2016. Relevant portion of the said undertaking and the fact that the Appellant has given in the undertaking is as under:-

> "It shall fully endeavour to set up CNG Stations in the cities of Jalandhar and Ludhiana within a period of four months from the date of affidavit i.e. 28.05.2016 and in any case not later than six months."

36. As per the Appellant, it is the case of the Board that if CNG Stations are excluded from the purview of CGD Network and there is no exclusivity for CNG Station and if any person is allowed to set up CNG Station without having any permission or authorization from the Board, the entire viability of the project would be adversely affected. This is the stand of the Board before the High

Court of Punjab and Haryana at Chandigarh. In fact, the Board itself has issued a public notice dated 02.06.2016 in this regard. The Board cannot be permitted to resile from its own stand before the High Court and its own public notice.

37. From the above submissions made by the rival parties and the arguments and counter arguments made by their respective counsel, we summarize the cases and our views on the same are as under:-

The Petroleum and Natural Gas Regulatory Board (the Board) by its notification dated 23.07.2010 invited bids for a total of seven geographical areas in its third round of bidding for grant of authorization for laying, building and operating etc. for the CGD network in those areas. The Appellant alongwith other bidders submitted its bids for geographical areas of Ludhiana, Jalandhar and Kutch (East) on 18.02.2011 against the said notification of 23.07.2010. The Appellant was granted authorization for the geographical area of Jalandhar on 06.09.2013 and for

Kutch (East) on 12.03.2015 and for Ludhiana on 25.06.2015.

38. In the said notification of the Board, the Scope of Work was mentioned as under:-

"1.2 SCOPE OF WORK

The entities bidding for this work shall be required to lay, build, operate or expand the CGD networks to meet requirements of natural gas in domestic, commercial and industrial segments including Compressed Natural Gas in the vehicular segment in the said geographical area to be authorized and also comply with the relevant regulations.

The entities shall be required to carry out the development of CGD project in line with the regulations laid down by the PNGRB."

39. From the above Scope of Work, it is clear that in addition to supply of piped natural gas to domestic, commercial and industrial segment, it also included Compressed Natural Gas (CNG) in the vehicular segment.

40. We also understand from the Appellant that to supply CNG, it needs to have CNG station as a part of the CNG network.

41. There was a PIL, Civil Writ Petition No.13490 of 2008 filed in the High Court of Punjab and Haryana, Chandigarh on 29.07.2008, praying for issuance of writ of Mandamus directing the Respondents inter alia not to allow plying of diesel commercial transport vehicle within the municipal limits of Ludhiana, Jalandhar, Amritsar, Patiala and Union Territory of Chandigarh and allowing only CNG/LPG or battery operated vehicles and supply of CNG to all these five cities. The above PIL is still pending in the said High Court. Along with others, the Respondents in this PIL are Union of India through Ministry of Petroleum and Natural Gas (Respondent No.2), Gas Authority of India Ltd. (Respondent No.9), Petroleum and Natural Gas Regulatory Board (Respondent No.95) who is the Respondent in the present case and M/s Jay Madhok Energy Pvt. Ltd. (Respondent No.96) who is the Appellant in the present case. Before the High Court of Punjab and Haryana, M/s GAIL GAS has claimed that the CNG station is not a part of CGD network and Union of India also filed an affidavit

in the said High Court supporting stand of M/s GAIL GAS that the CNG station is not a part of CGD network. We also note that the Board had also issued a public notice dated 18.12.2013 saying that whether CNG station is an integral part of CGD or not is sub-judice in the High Court of Punjab and Haryana.

42. In the appeal paper book and also while arguing the case by the counsel of the Appellant, it was strongly put up in front of this court that the above matter is very much linked to the present appeal made by the Appellant. The learned counsel for the Appellant, Mr. Parag P. Tripathi, however, in the final arguments did not insist very much on this issue. The Appeal No.196 of 2016 which involves the geographical area of Kutch (East) is not anyway linked to the PIL pending in the Punjab and Haryana High Court since the geographical area does not form a part of the cities involved in the PIL. Learned counsel for the Appellant highlighted only three main grounds why the

impugned order issued by the Board needs to be quashed, out of which we are considering only two.

43. The two grounds which we need to address are as under:

(i) The Board served the show-cause notice on the Appellant for cancellation of the authorization by quoting both the Regulation 11 and Regulation 16 under the Petroleum and Natural Gas Regulatory Board (Authorizing entities to lay, build, operate or expand city or local natural gas distribution network) Regulations, 2008 whereas the cancellation of the authorization was effected by the impugned order relying only on Regulation 11.

(ii) The authorization for laying, building, operating etc. of the CGD network was cancelled by the impugned order because the Appellant did not submit the Gas Supply Agreement and the Financial Closure acceptable to the Board whereas both the documents i.e. the Gas Supply Agreement and the Financial Closure were duly submitted by the Appellant.

44. Let us now examine the above two main allegations of the Appellant as to why the impugned order needs to be quashed vis-à-vis the replies submitted by the Board and arguments made by their counsel to defend the impugned order.

45. Before going into the details of the allegations, let us understand the relevant regulations of the Petroleum and Natural Gas Regulatory Board (Authorizing entities to lay, build, operate or expand city or local natural gas distribution network) Regulations, 2008.

46. Grant of authorization is issued to the selected entity after furnishing the performance bank guarantee. The entity is required to furnish this performance bank guarantee within 15 days of issue of the letter of intent (LOI). The performance bond is furnished for guaranteeing the timely commissioning of the proposed CGD network as per the prescribed target and also for meeting the service obligation by the selected entity during the operating phase of the project. After furnishing the performance bank guarantee and completing the other required formalities, the entity is granted the authorization. Furnishing of performance bond is covered under Regulation 9 and grant of authorization is covered under Regulation 10. As per the Regulation 10, the grant of authorization to the selected entity is issued in the form of

Schedule D. Schedule D clearly spells out the terms and conditions of authorization. Along with other terms and conditions, Schedule D also talks of Financial Closure as one of the terms and conditions of authorization which reads as under:-

> "8. The entity shall submit a detailed and clear financial closure report to the Board within a period one hundred and eighty days from the date of authorization issued by the Board under regulation 10 of Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008."

47. The service obligations and relevant regulations for technical standards and specifications, including safety standards, any other regulations as may be applicable under the provisions of the Act are covered under separate terms and conditions in Schedule D.

48. Regulation 10 dealing with grant of authorization is linked to Regulation 11 which also talks of natural gas tie-up alongwith Financial Closure. Regulation 10 (2) reads as under:

"The grant of authorization is subject to the entity achieving a firm natural gas tie-up and a financial closure as per regulation 11."

49. Regulation 11 which talks of natural gas tie-up and Financial Closure reads as under:

"**11. Natural gas tie-up and financial closure.**

(1) The entity authorized under regulation 10 shall enter into a firm natural gas supply agreement **or Heads of Gas supply Agreement (HOA/ Memorandum of Understanding (MOU) for gas supply with natural gas producer/ marketer** for the proposed CGD network project with any entity owning natural gas in a transparent manner on the principle of "at an arm's length" for a period equal to or more than the exclusivity period for exemption from the purview of common carrier or contract carrier allowed under the Petroleum and Natural Gas Regulatory Board (Exclusivity for City or Local Natural Gas Distribution Networks) Regulations, 2008 within [**one hundred and twenty days]** of the date of issue of the authorization.

(2) The volume of natural gas supply under the agreement referred to in sub- regulation *(1)* shall be equal to at least fifty percent of the volumes considered in the determination of the network tariff bid for each year of the exclusivity period allowed for exemption from the purview of common carrier or contract carrier under the Petroleum and Natural Gas Regulatory Board (Exclusivity for City or Local Natural Gas Distribution Networks) Regulations, 2008

(3) **The authorized entity shall obtain the financial closure of the project from a bank or financial institution alongwith firm natural gas supply agreement within a period of one hundred and**

eighty days from the date of grant of authorization.

(4) In case of an internally financed project, the entity shall submit the approval of its Board of Directors' for the detailed feasibility report (hereinafter referred as DFR) of the project alongwith its financial plan within **one hundred and eighty days** of the authorization:

Provided that the Board may ask the entity to submit any further details or clarifications on the financial closure.

Provided further that financial closure shall mean a legally binding commitment of equity holders and debt financiers to provide or mobilize funding for the first phase of the CGD project which should not be less than ninety percent of the project cost to be incurred for the first five years of the CGD network.

(5) In case the entity fails to meet the requirements at sub-regulations *(1)* to *(4)*, the authorization of the entity for laying, building, operating or expanding CGD network shall be cancelled and the performance bond shall be encashed and the Board reserves the right to re-award the authorization in a transparent manner and the entity shall have no right whatsoever against the Board for seeking any compensation or remedy on this account."

50. As can be seen from above, natural gas tie-up and financial closure issues are covered under regulation 10 and Regulation 11. The Regulation 11 (5) also stipulates cancellation of grant of authorization for laying, building, operating or expanding CGD network and encashment of

performance bond which indicate that natural gas tie-up and financial closure are given high importance for successful completion of the project. We, however, notice that though cancellation of grant of authorization is highly stipulated in Regulation 11, the cancellation procedure is not at all mentioned in the said Regulation.

51. The consequences of the default leading to termination of the authorization are clearly dealt with in Regulation 16. Regulation 16 reads as under:

> **"16. Consequences of default and termination of authorization procedure.**
>
> *(1)* An authorized entity shall abide by all the terms and conditions specified in these regulations and any failure in doing so, except for *force majeure*, shall be dealt with as per the following procedure, namely:
>
> *(a)* the Board shall issue a notice to the defaulting entity allowing it a reasonable time to fulfill its obligations under the regulations.
>
> *(b)* no further action shall be taken in case remedial action is taken by the entity within the specified period to the satisfaction of the Board;
>
> **(c) in case of failure to take remedial action, the Board may encash the performance bond of the entity equal to percentage shortfall in**

meeting targets of inch-kms and/or domestic connections. Provided that, the value so encashed would be refunded, if the entity achieves the cumulative targets at the end of exclusivity period for exemption from the purview of common carrier or contract carrier. In case of failure to abide by other terms and conditions specified in these regulations, performance bond shall be encashed as under:

(i) **25% of the amount of the performance bond for the first default; and**

(ii) **50% of the amount of the performance bond for the second default:**

Provided that the entity shall make good the encashed performance bond in each of the above cases within two weeks of encashment failing which the remaining amount of the performance bond shall also be encashed and authorization of the entity terminated.

(iii) **100% of the amount of performance bond for the third default and simultaneous termination of authorization of the entity.**

(d) the procedure for implementing the termination of an authorization shall be as provided in Schedule G;

(e) without prejudice to as provided in clauses *(a)* to *(d)*, the Board may also levy civil penalty as per section 28 of the Act in addition to taking action as prescribed for offences and punishment under Chapter IX of the Act.

52. From above, we note that as per Regulation 16 (1) if an authorized entity commits any breach of terms and conditions specified in these regulations, it shall be dealt with in accordance with the procedure contemplated in Regulation 16 (1) (a), (b) and (c). Only exception to this will be force majeure. In regards to non-achievements of physical targets viz laying of inch-kms pipeline and domestic gas connections, the procedure is clearly spelt out separately linking encashment of performance bond to percentage shortfall and not linked to specific percentage of 25%, 50% etc. For other terms and conditions only, Regulation 16 (1) (c) stipulates for encashment of performance bank guarantee in terms of 25%, 50% etc.

53. As regards the show-cause notice, the Appellant's contention is that the notice served to the Appellant on 02.06.2016 contemplated action under Regulation 16, whereas the Board has proceeded and taken action under Regulation 11, which provide for harsher penalty. The notice states as under:

> "It is noted that even after more than 180 days of authorization for the authorized Geographical Area (GA) of Ludhiana, requirements of regulatory provisions for Financial Closure (FC) and Gas Supply Agreement (GSA) as per the provisions of Regulation 11 have not been met which attracts the provisions of Regulation 16 i.e. '*Consequences of default and termination of authorization procedure'* of PNGRB *(Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulation, 2008.*
>
> In view of the above, you are directed to present your case and appear before the Board to clarify the reasons for delay in the submissions of Financial Closure and Gas Supply Agreement on 4th July, 2016 at 1500 Hrs. at PNGRB, 1st Floor, World Trade Centre, Babar Road, New Delhi-110001, so that PNGRB can hear and decide the matter."

54. As per the learned counsel for the Appellant, a perusal of the notice shows and establishes that as per the own understanding of the Board, there was violation of provision of Regulation 11, for which provision of Regulation 16 are attracted. A conjoint reading of Regulation 11 and 16 shows that Regulation 11 provides for substantive law on default while Regulation 16 provides for procedure for implementation of Regulation 11.

55. The Appellant claims that both Regulation 11 and Regulation 16 are interlinked. The Board claims that both the Regulations are independent of each other. The Board also admits that they made an error in the second part of the notice i.e. the provision under which consequences would follow in case of failure to meet with requirements of Regulation 11 which they termed as legal matter of the case. The learned counsel for the Board reiterated that the factual part i.e. the first part of the notice was correct that under Regulation 11, the Appellant was scheduled to submit the Gas Supply Agreement and the Financial Closure within 180 days of the date of authorization which they failed to do so. Learned counsel for the Appellant reiterated that Regulation 16 has to be followed for any consequences of default and termination of authorization procedure which is very much relevant in the instant case.

56. Our strong observation is that there has been a big ambiguity between the intent of the show-cause notice served to the Appellant by the Board and the action taken against the Appellant vide their impugned order dated

15.07.2016. In this respect, we would rely on the judgment of the **Supreme Court in Gorkha Security Services Vs. Govt. (NCT of Delhi) & Ors., (2014) 9 SCC 105 (J. Chelameshwar; A.K. Sikri, JJ)** held as under:-

> "We are, therefore, of the opinion that it was incumbent on the part of the Department to state in the show cause notice that the competent authority intended to impose such a penalty of blacklisting, so as to provide adequate and meaningful opportunity to the appellant to show cause against the same. However, we may also add that even if it is not mentioned specifically but from the reading of the show cause notice, it can be clearly inferred that such an action was proposed, that would fulfill this requirement. In the present case, however, reading of the show cause notice does not suggest that noticee could find out that such an action could also be taken. We say so for the reasons that are recorded hereinafter."

Similar to the above case, in the instant case, the show-cause notice does not suggest that the authorization granted to the Appellant could be cancelled straightway relying on Regulation 11 without following Regulation 16. Hence, our considered opinion is that cancellation of the authorization based on the show-cause notice served to the Appellant is illegal. Show cause notice specifically

mentions Regulation 16. Cancellation of authorization without following the procedure under Regulation 16 is therefore illegal. In addition, the Board even otherwise, should have followed Regulation 16 to take action against the Appellant for non-fulfillment of their requirements which can be seen in the following paragraphs.

57. Coming to the specific issues of Gas Supply Agreement (GSA) and Financial Closure (FC), as per Regulation 11 (1), the Appellant was required to enter into a firm GSA with any entity owning natural gas in a transparent manner on the principle of "at an arm's length" within a period of 120 days i.e. by 11th July, 2015 in the case of Kutch (East) geographical area (ref. Appeal No.196) and by 24th October, 2015 for the geographical area of Ludhiana (ref. Appeal No.197). As per Regulation 11 (3), the Appellant was required to obtain the FC from a bank or financial institution alongwith firm natural gas supply agreement within a period of 180 days from the date of authorization i.e. by 11th September, 2015 for the

geographical area of Kutch (East) and by 24th December, 2015 for Ludhiana geographical area. In the case of internally financed project, the Appellant was required to submit the approval of the Board of Directors for the detailed feasibility report of the project alongwith its financial plan to the Board within 180 days of the date of authorization i.e. by 11th September, 2015 for the Kutch (East) geographical area and by 24th December, 2015 for the Ludhiana geographical area. In case the Appellant could not meet the above requirements of GSA and FC, as per Regulation 11 (5), their authorization for laying, building, operating or expending CGD network could be cancelled and the performance bond could be encashed by the Board which the Board did in both the authorizations.

58. In this regard, we note the admissions made by the Appellant that they could not submit the GSA and FC within the stipulated time period of 180 days from the date of authorization for both the geographical areas. In the case of GSA, however, the Appellant stated that they

submitted on the date of submission of the bid itself a letter from Hazira LNG Pvt. Ltd. wherein Hazira LNG Pvt. Ltd. expressed their in-principle agreement to supply regasified liquefied natural gas to the proposed distribution projects of the Appellant for Ludhiana and Kutch (East) alongwith some others. The Appellant submitted another formal Gas Supply Agreement with Indian Oil Corporation to the Respondent on 11.07.2016.

59. In this regard, we also note that the Board categorically mentioned on the day of final hearing on 04.07.2016 that they would not entertain any submissions made by the Appellant after 04.07.2016. During the arguments and also in their submissions, we have not noticed any observations of the Board on the GSA submitted by the Appellant except that the same was submitted to them after the final date of hearing i.e. 04.07.2016.

60. As regards the Financial Closure, the Appellant claims that they submitted the FC for both the geographical areas of Kutch (East) and Ludhiana to the Board on 11.07.2016

though belatedly. The Appellant claims that they replied all the queries regarding FC viz non-mentioning of the name the Director certifying the Appellant's Board resolution, whether financial closure was achieved through internal accruals or through financing from Deutsche Bank AG, non-mentioning of amount of financing etc. and the same were submitted vide their letter dated 08.06.2016 followed by their subsequent letter dated 30.06.2016. The learned counsel also reiterated that all the documents that were asked by the Board to be submitted by the Appellant were also submitted as attachment to the letter of 30.06.2016.

61. The learned counsel for the Appellant further claims that the representative of the Appellant also replied to the queries raised by the Board during the hearing on 04.07.2016 before the Board.

62. On these replies and clarifications made by the Appellant, the Board's view is that the provisions of Regulations 11 (3) and 11 (4) of the Authorization Regulations read with

the documents submitted by the Appellant and the written submissions made by it, would show that by no stretch of imagination can the Appellant be said to have achieved Financial Closure in the manner required under the Regulations.

The Board also has referred to the relevant para of their letter dated 18.07.2016 written to the Appellant which they quoted in their counter affidavit dated 19.08.2016 which reads as under:

> *"7) During the hearing on 4th July 2016 under Regulation 11 of PNGRB (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008, JMEPL submitted that its Board had a proposal by DB to extend financial support to the CGD networks of Ludhiana and Kutch (E). On being queries whether DB has issued the appropriate sanction letter, the entity clarified that the proposal of DB has been discussed in JMEPL Board meeting and copy of the presentation made by DB has been made available to PNGRB.*
>
> *8) The entity was advised that mere presentation to the JMEPL Board on an important matter like FC could not be taken as conclusive evidence in absence of firm financial commitment by the Bank."*

63. We also observe that no clear and specific format is given in the relevant Regulations for CGD network for submission of Financial Closure except the stipulations provided under Regulation 11 (4) which talks of legally binding commitment of equity holders and debt financiers. We also did not find any instructions given by the Board to the Appellant as to how the FC to be submitted to the Board. A clarity as to how a FC needs to be submitted to the Board would have eased out the above disputed situation between the rival parties.

64. Under Regulation 11 (5), the Board could have cancelled the authorization of the Appellant then and there only since the Appellant failed to meet the requirements as per Regulations 11 (1) – 11 (4), within 180 days of authorization but it was not done. Lot of communications was going on between the rival parties till 04.07.2016 when the Appellant was directed by the Board vide their show-cause notice dated 02.06.2016 to appear before the Board to clarify the reasons for delay in submission of FC and GSA so that the Board could hear and decide the

matter. After hearing the matter, the Board cancelled the authorization on 15.07.2016. The impugned order was based on the fact that the Appellant failed to submit the GSA and FC within 180 days of authorization.

65. On above, we observe that even if the Appellant would have submitted an acceptable FC and GSA after expiry of 180 days of authorization, the Board could not have declared the same to be valid to continue with the authorization since the Board cancelled the authorization relying on the fact that the Appellant could not submit FC and GSA within the stipulated time period of 180 days of authorization. It leads to believe that the Appellant was not given any scope to resubmit the FC and GSA which would have been acceptable to the Board though lot of correspondences was going on between the rival parties after the show-cause notice was issued to the Appellant. After going through Regulation 16, we find that such scope exists under Regulation 16 (1) (a) to allow reasonable time to fulfill the obligations.

66. We also note a categorical statement made in this court by the counsel for the Appellant that in case of other entities for similar matter i.e. non-submission of GSA and/or FC in time, the Board allowed additional time to submit the same and did not act as per Regulation 11 (5) to cancel the authorization, but acted as per Regulation 16 (1) (c) to encash 25% of the performance bank guarantee for the first default. We also note that the Appellant in their rejoinder dated 04.08.2016 gave an example of Gail India Ltd. in whose case, the Board waited for 4 ½ years time for submission of GSA and FC and thereafter encashed 25% of their performance bank guarantee for not submitting the same within the stipulated period of 180 days from the date of authorization.

67. The Board, on this issue, has submitted that no such ground was raised by the Appellant in the hearing before the Board nor did they mention in their Memo of Appeal. In this regard, we, however, note that the learned counsel for the Board made a statement before this court that the

instant case of the Appellant has been the first case where any authorization is being cancelled relying on Regulation 11. The learned counsel even mentioned that even assuming a mistake was committed by the Board in the past, there is no reason why the same approach should continue without correcting the mistake in future.

68. On a query from us, whether Petroleum and Natural Gas Regulatory Board (Authorizing, entities to lay, build, operate or expand city or local natural gas distribution network) Regulation, 2008 needs a review, the learned counsel for the Board stated that the review is already under process.

69. Considering all the above submissions of the rival parties and their respective counsel's arguments before this court, our considered view is that Regulation 11 (5) of the Petroleum and Natural Gas Regulatory Board (Authorizing, entities to lay, build, operate or expand city or local natural gas distribution network) Regulation, 2008 could have authorized the Respondent Board to cancel the

authorizations based on Regulation 11 (1) – 11 (4), but the procedure for implementation of cancellation should have been followed as per Regulation 16 (1) (c) which was also the intent of the show-cause notice. Regulation 16 is a specific regulation which deals with consequences of default and the procedure to be followed for cancellation of any authorization. Moreover having mentioned Regulation 16 in the show cause notice, the Board should have followed the said procedure.

70. From the written submissions and the counsel's arguments in this court, we have also noted one allegation made by the Board that the Appellant till the date of cancellation of their authorization, has not made any progress in the physical activities viz laying of inch-kilometer of steel pipeline and domestic connections vis-à-vis their targets.

71. On this issue, however, we opine that Regulation 11 does not talk of these targets at all, but talks only of GSA and FC. At the same time, Regulation 16 (1) (c) has a

separate provision to deal with the shortfall of these activities. Hence, this allegation, as per our view is not relevant in the instant case.

72. Similarly as regards the other allegation of the Board that the Appellant did not reveal the entire undertakings that they gave to the High Court of Punjab and Haryana at Chandigarh, we do not find any direct bearing on the instant case, since it is still pending with the same court, and the impugned order is also not based on the conduct of the Appellant.

73. While expressing this view of ours, we have also taken into account the submission made by Mr. Parag P. Tripathi, learned counsel for the Appellant that he is no more insisting on the case (Civil Writ Petition No.13490 of 2008) pending in the Punjab and Haryana High Court at Chandigarh for the geographical area of Ludhiana and he is relying only on the merits of the main appeals in the instant cases.

74. Based on our discussions and findings as above, the impugned orders are liable to be set aside and are accordingly set aside. We direct the Respondent i.e. the Petroleum and Natural Gas Regulator Board to follow Regulation 16 of the Petroleum and Natural Gas Regulatory Board (Authorizing entity to lay, build, operate or expand city or local natural gas distribution network) Regulations, 2008 and pass order in accordance with law.

75. Both the Appeals i.e. Appeal No. 196 of 2016 and Appeal No.197 of 2016 are disposed of in the aforesaid terms. Needless to say that IA Nos. 418 and 419 of Appeal No. 196 of 2016 and IA Nos. 420 and 421 of Appeal No. 197 of 2016 do not survive and are disposed of, as such.

76. Pronounced in the Open Court on this **28th day of April, 2017.**

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

Justice Ranjana P. Desai
[Chairperson]

√ **REPORTABLE / ~~NON-REPORTABLE~~**