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

APPEAL NO. 102 OF 2016 &
IA NO. 307 OF 2017 & IA NO. 549 OF 2018

Dated: 9th January, 2019

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

IN THE MATTER OF:

M/S HINDUSTAN PETROLEUM CORPORATION LIMITED
8, Shoorji Vallbhdas Marg,
Post Box No. 155
Mumbai – 400 001 …**Appellant**

AND

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

Counsel for the Appellant(s) : Mr. M.G. Ramachandran
Mr. Manu Seshadri
Mr. Samarth Choudhary

Counsel for the Respondent(s) : Mr. Rahul Sagar Sahay
Mr. Siddharth Bangar

JUDGMENT

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

1. The Appellant M/s Hindustan Petroleum Corporation Ltd is a company incorporated under the Companies Act, 1956 and is inter-alia engaged in the business of petroleum refining, marketing and sale of petroleum products as well as construction and operation and maintenance of pipelines supplying petroleum products. The Appellant, amongst other things, is concerned with the construction of the Uran-Chakan-Shikrapur LPG pipeline which belongs to the Appellant and Bharat Petroleum Corporation Ltd. for transportation of their products on equal cost sharing basis.

2. 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".

3. In this appeal, the Appellant has impugned the order of the Board dated 04/03/2016 whereby the Board has directed encashment of 25% of the Performance Bank Guarantee (PBG) submitted by the Appellant amounting to Rs. 77,50,000/- under the provisions of Regulation 16(c)(i) of the Petroleum and Natural Gas Regulatory Board (Authorizing Entity to Lay, Build, Operate or Expand Petroleum and Petroleum Products Pipelines) Regulations, 2010 (Authorization Regulations). This encashment decision has been taken on account of delays in commissioning of the Uran-Chakan-Shikrapur LPG pipeline by the Appellant.

4. Before laying the Uran-Chakan-Shikrapur pipeline, the Appellant was transporting its LPG by road but the Appellant did not find this mode of transportation effective having found roads through mountains being congested and having found the vehicular pollution and inherent dangers of transporting LPG by road. There was also no effective facility for rail transportation. Because of these factors combined with some others, the Appellant finally decided to lay the line, i.e., Uran-Chakan-Shikrapur with a length of 164.65 Kms.

5. As the Uran-Chakan-Shikrapur pipeline was originally a dedicated captive pipeline of the Appellant, the Appellant applied for Right of User of land for laying the pipeline under the provisions of the Petroleum and Natural Gas Pipelines (Acquisition of Right of User in Land) Act, 1962 read with the provisions of the Guidelines for laying petroleum product pipelines framed by the Government of India vide Notification dated 20/11/2002 and the Appellant obtained the said permission from the Central Government on 07/10/2011.

6. In the mean time, the Petroleum and Natural Gas Regulatory Board Act, 2006 came into existence and subsequently the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to lay, build, operator or expand Petroleum and Petroleum Product Pipelines) Regulations, 2010 also came into force. Since the pipeline was authorized by the Central Government before the appointed day i.e. 01.10.2007, as per Regulation 17(1) of the PNGRB (Authorizing Entities to lay, build, operator or expand Petroleum and Petroleum Product Pipelines) Regulations, 2010, the Appellant applied to the Board for acceptance of Central Government Authorization for laying, building, operating or expanding the Uran-Chakan-Shikrapur LPG pipeline.

7. The Board before accepting the Central Government authorization, wrote to the Ministry of Petroleum and Natural Gas (MoPNG) vide letter dated

25/11/2011, seeking the following clarifications on the application Letter of the Appellant:-

(i) Whether the mentioned Uran-Chakan-Shikrapur LPG Pipeline was approved by Central Government before the appointed day in favour of M/s HPCL? If yes, the terms and conditions of the approval granted, i.e., whether pipeline was approved as dedicated pipeline or a common carrier pipeline.

(ii) Details of Bank Guarantee, if any, submitted by M/s HPCL to MoPNG for the said project in line with the "Supplementary Guidelines for laying Petroleum Product Pipelines, 2004".

8. In response thereto, the Ministry of Petroleum and Natural Gas by its letter dated 18/4/2012 clarified that the said pipeline was a captive pipeline in terms of clause 1(i) read with clause 2 of the guidelines for laying petroleum product pipelines issued under Notification dated 20/11/2002. Moreover no formal approval was required under the guidelines. It was further clarified that such pipelines were not covered under the PNGRB Act. It was also clarified that there was no requirement of bank guarantee from the Appellant as the said pipeline was not a common carrier pipeline.

9. Subsequently, the Board on 01.11.2012, granted acceptance vide letter dated 01/11/2012 under the provisions of Regulation 17(1) of the Authorization Regulations with the following main terms and conditions:-

(i) Scheduled completion of the project: 31/10/2015.

(ii) Provisional system capacity of the pipeline : 1 MMTPA with common carrier capacity as 0.2 MMTPA to be made available to parties on an open access and non-discriminatory basis.

(iii) Failure to complete the project within the scheduled time frame will lead to consequences as per relevant provisions of the PNGRB Act.

(iv) Appellant will furnish a performance bank guarantee of the amount specified in Regulation 8(1).

10. While implementing the project, as the project was lagging behind, the Appellant requested the Board vide letter dated 27/03/2015 to extend the time for completion. The Appellant submitted with reference to its presentation to the Board dated 8/7/2014 on the progress of the project and amongst other things highlighted the status of various statutory approvals, various external constraints faced by the Appellant during the execution of the project as well as how non-availability of certain critical statutory approvals was affecting the progress of the project. Moreover, it was also clarified to the Board that in the last two years the said project was being monitored by the Project Monitoring Group of the Cabinet Committee on Investment and quarterly review meetings were held in Delhi with the Chief Secretary, Government of Maharashtra in order to expedite approvals. However, despite the best efforts of the Appellant, there had been considerable delay in getting some critical approvals,

thereby affecting the project schedule. These factors as per the Appellant, were beyond the reasonable control of the Appellant and therefore an extension of time was sought submitting all details as to the progress of the project.

11. A progress review meeting was held by the Board on 19/11/2015 on the project. It was reiterated by the Appellant that the delays were beyond its reasonable control and could be construed as Force Majeure events. It was further clarified that though the pipeline is a cross country pipeline, almost 50% of the pipeline length was along roads and only 75 kms was cross-country. In Pune District, since there were a lot of representations to the State Government on routing of the pipeline, the route had to be changed. In addition, despite the persistent efforts of the Appellant there had been considerable delays because of various factors including forest clearance in Pune and Raigad districts which was delayed by 18 months, litigations in the Bombay High Court and National Green Tribunal, Pune etc.

12. The Appellant vide letter dated 02/12/2015 submitted the status of progress of the project mentioning that as on November, 2015, 100% of the orders had been placed for procurement of items and 80% of the procurement had already been received. An amount of Rs. 253.37 Crores was spent with 70% progress at station works and overall physical

progress of 77.5%. Work was delayed for 75% length of the pipeline for want of statutory approvals. There was delay in obtaining forest diversion approval with an anticipation that approval would be obtained for ROU only by October, 2016.

13. The Board, thereafter, asked the Appellant to submit detailed information and documents to examine whether the Appellant was facing Force Majeure conditions. The Appellant accordingly vide letter dated 02/12/2015 submitted a detailed note listing the factors which had impacted the progress of the project with relevant documentary support. A brief summary was also submitted giving reasons for delay of 12-18 months. 75% of the total length of the pipeline was affected due to various reasons for a duration of 18 months. In the said letter of 02/12/2015, the Appellant mentioned that though there was no Force Majeure clause in the acceptance letter of the Board, the Appellant had put in their best effort in spite of the factors being beyond their control. The Appellant requested to extend the project completion time till March, 2017.

14. After examining the request of the Appellant, while extending the project completion time till March, 2017, the Board vide the impugned order dated 04/03/2016 directed encashment of 25% of the performance bank guarantee amounting to Rs. 77,50,000/- under provision of Regulation

16(c)(i) of the Authorization Regulations on account of delays in commissioning of the project. Aggrieved by this order of the Board, the preset appeal has been filed by the Appellant to this Tribunal.

15. We have heard the Learned Counsel appearing for the Appellant and perused the submissions made by the Appellant. The gist of submissions is as under:-

(a) The Uran-Chakan-Shikrapur LPG pipeline is a dedicated/captive pipeline of the Appellant and therefore it is not subject to jurisdiction of the Board under the provisions of the PNGRB Act and consequently not subject to penalties of Regulation 16 of the Authorization Regulations. The Board's decision to accord acceptance of the pipeline does not take away the fact that it is dedicated/captive pipeline.

(b) Subject to provisions of Section 20 of the PNGRB Act, the Board may convert a pipeline into a common carrier or contract carrier pipeline. In the present case, the Board did not follow the relevant procedure as per this Act and hence it could not have declared the Appellant's pipeline as common carrier pipeline.

(c) Regulation 17 of the Authorization Regulations has to be read with Regulation 3. Regulation 17 entitles the Board to monitor the

progress of the pipeline, but Regulation 3 has spelt out the jurisdiction of the Board to be confined to contract/common carrier petroleum product pipelines only.

(d) A bare perusal of Section 16 of the PNGRB Act clearly contemplates that no entity shall lay, build, operate or expand any pipeline which is a common carrier or contract carrier pipeline without obtaining authorization under the Act. Moreover, the provisions of Section 17 provide that the entity who is laying, building, operating or expanding any pipeline as a common carrier or contract carrier authorized by the Central Government at any time prior to the appointed day, such entity shall furnish the particulars of such activities within six months from the appointed day. It means as per Section 17, the jurisdiction of the Board is attracted only with reference to pre-authorized pipelines which are common carrier or contract carrier pipelines and not to dedicated/captive pipelines.

(e) The provisions of Regulation 16(a) of the Authorizing Regulations clearly states that the Board shall issue notice to the defaulting entity allowing it a reasonable time to fulfill its obligations and in case remedial action is taken by the entity within the specified period, then no further action shall be taken by the Board. No

notice was served by the Board to the Appellant nor were the principles of natural justice followed while passing the impugned order.

(f) The Board has not considered the facts and circumstances of the case especially the delays because of Force Majeure factors like delays in receiving various statutory approvals etc. On one hand, the Board recognizes that there was delay in granting statutory approvals and on the other hand holds that substantive action was not taken to the satisfaction of the Board without elaborating further.

16. We have heard the Learned Counsel appearing for the Board and perused the Board's written submissions. The gist of submissions is as under:-

(i) The Uran-Chakan-Shikrapur LPG pipeline is not for captive use but it is a 50-50 effort by the Appellant and BPCL and both the entities propose to use the pipeline and intend to sell LPG transported through the pipeline. The regulatory scheme under PNGRB Act does not recognize captive pipelines; however, it indicates that the dedicated pipeline should be firstly dedicated to supply of petroleum products to a specific consumer and secondly, it should not be for resale. The word "captive" is defined by

Oxford dictionary [http://www.oxforddictionaries.com/definition /english/captive] as "(Of a facility or service) controlled by, and typically for the sole use of, an organization" which indicates that the same has to be for the use of sole use for the organization and not for resale.

(ii) The Appellant itself had applied to the Board vide its application dated 28th Feb 2011, for acceptance of Central Government authorization for laying, building, operating or expanding Uran-Chakan-Shikrapur LPG Pipeline and was granted such acceptance by the Board vide letter dated 1st Nov 2012 where the pipeline has been declared as "common carrier with common carrier capacity of 0.2 MMTPA". The Appellant not only has accepted the said acceptance letter of the Board but has also been regularly corresponding and submitting reports to the Board thereafter.

(iii) After enactment of the Petroleum and Natural Gas Regulatory Board Act, and especially the Authorization Regulations, the Guidelines for Laying Petroleum Product Pipelines, 2002 framed by Ministry of Petroleum and Natural Gas, have stopped being in force pursuant to clause 6.1 of the Ministry Guidelines.

(iv) The Authorization Regulations define the petroleum and petroleum products pipeline and its applicability as below:

"2. Definitions :

"petroleum and petroleum products pipeline" *means any pipeline including a branch or spur lines for transport of petroleum and petroleum products and includes all connected infrastructure such as pumps, metering units, storage facilities at originating, delivery, tap off points or terminal stations and the like connected to the common carriers or contract carriers including line balancing tanks and tankage required for unabsorbed interface, essential for operating a pipeline system* ***but excluding pipelines, which are dedicated for supply of petroleum products to a specific consumer which are not for resale:***

Provided that the transporter may own, hire, outsource or use on hospitality basis such connected facilities on non-discriminatory basis;

3. Applicability

These regulations shall apply to an entity-

(a) Which is laying, building, operating or expanding or which proposes to lay, build, operate or expand a petroleum and petroleum products pipeline for supply of petroleum products to a specific consumer into a common or contract carrier petroleum and petroleum products pipeline, as the cam may be."

Since the Uran-Chakan-Shikrapur pipeline is a petroleum product pipeline and is declared as a common carrier pipeline, the Authorization Regulations will apply to this pipeline.

(v) The Board in the approval dated 1st Nov 2012 to the Appellant's application dated 28th Feb 2011 explicitly mentioned :

> *"…The Board has **decided to declare the Uran-Chakan Shikrapur LPG pipeline as common carrier with common capacity of 0.2 MMTPA** which is required to be made available to a third party on an open access and non-discriminatory basis."*

(vi) Regulation 16 of the Authorization Regulations provide for consequences of default in abiding by the terms of authorization, and Regulation 17 provides for procedure to be followed by entities authorized by Central Government for laying, building, operating or expanding petroleum and petroleum products pipeline before the appointed day. Both the above regulations are relevant in the instant case. Both the regulations authorize the Board to take action in defaulting the terms and conditions of acceptance of authorization by encashing the bank guarantee submitted by the Appellant.

(vii) Force majeure conditions as claimed by the Appellant to have affected the progress of the project, were not prevalent. The problems and concerns raised as reasons for delay by the Appellant, could not have been considered as act of God or nature which could not have been foreseen by the Appellant. In this regard, the following two judgments are relied upon.

(i) Supreme Court's judgment dated 11.04.2013 in Energy Watchdog and Ors. Vs. Central Electricity

Regulatory Commission and Ors., in Civil Appeal Nos. 5399-5400, 5347, 5348, 5364, 5346, 5351-5352, 5415, 9635-9642 of 2016 and 9035 of 2014.

(ii) High Court of Delhi's judgment dated 22.12.2017 in Pasithea Infrastructure Ltd. Vs. Solar Energy Corporation of India and Ors., in OMP (I) (Comm.) 148/2017.

(viii) Regarding delay in statutory permissions, as claimed by the Appellant to have grossly affected the progress of the project, the Board in its impugned order stated as under:

"13. Though the execution period has already expired for UCSPL, HPCL has laid only 42 km of pipeline as per the last quarterly progress report, wherever possible, PNGRB has intervened and helped the entity by raising issues with the respective State Governments.

14. The statutory permissions may never be in place all in one go. One or the other clearance might remain pending but it does not stop the entity from pursuing other activities related to the project. The situation on the ground does not provide sufficient optimism for early commissioning of the pipeline."

(ix) By 31st October, 2015, the scheduled time period for project completion was already over; thus the Appellant was already in default. Out of the total length of the pipeline of 164.65 km, only 42 kms were constructed even after the expiry of the time period, and still the time period was extended till March, 2017. Various review meetings were held and number of letters sent to the Appellant as opportunities to rectify its defaults. No natural justice

was violated by the Board while encashing the bank guarantee since sufficient opportunities were given to the Appellant to rectify the defaults by conducting review meetings. In this regard, the following judgment of the Supreme Court of India is relied upon.

Judgment dated 21.02.2013 in A.S. Motors Pvt. Ltd. Vs. Union of India (UOI) and Ors., in Civil Appeal No. 1517 of 2013 (Arising out of S.L.P. (C) No. 2490 of 2008).

(x) Since it was the first default on the part of the Appellant, encashment of 25% of performance of bank guarantee was directed and took a lenient view by extending the time frame till March, 2017. The impugned order is in consonance with the relevant provisions of the PNGRB Act, 2006 and Rules. There is no error or any legal infirmity in the impugned order. The appeal may be dismissed as devoid of merits.

IN OUR CONSIDERATION

17. It is necessary to first have a look at the facts and circumstances of the case. Laying of the Uran-Chakan-Shikrapur LPG pipeline was originally authorized by the Central Government and later vide letter dated 01.11.2012, the Board accepted the Central Government's authorization with certain terms and conditions including furnishing of a performance

bank guarantee (PBG) for an amount of Rs. 3 Crores by the Appellant to the Board. The Appellant submitted this PBG No. 0999613BG0000855 dated 02.04.2013 with the State Bank of India.

18. As per the terms and conditions of authorizations, the Appellant was required to complete the job of laying of the pipeline within 3 years of authorization and accordingly, the scheduled completion of the project was 31.10.2015.

19. The consequences of defaults in meeting the above target and termination of authorization procedure are spelt out in Regulation 16 of the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand Petroleum and Petroleum Products Pipelines) Regulations, 2010. The said Regulation 16 is noted as below for our due reference in subsequent discussion.

> ***"16. Consequences of default and termination of authorization procedure.***
>
> *An authorized entity shall abide by all the terms and conditions specified in these regulations and any failure in doing so, except for the default of the service obligation under sub-regulation (1) of regulation 14 and 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 on the following basis, namely:-

(i) twenty five percent of the amount of the performance bond for the first default;

(ii) fifty percent 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 cases at sub-clause (i) and (ii) within a week of encashment failing which the remaining amount of the performance bond shall also be encashed and authorization of the entity terminated;

(iii) one hundred percent 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."

Sub-Regulation 16 (1) (c) (i) above is relevant in the instant case.

20. Though the Appellant in its written submissions during pleadings stated that the Board does not have jurisdiction to monitor and take action for not fulfilling the target for a dedicated/captive LPG pipeline and the Uran-Chakan-Shikrapur pipeline is a dedicated/captive pipeline of the

Appellant, the learned counsel Mr. M.G. Ramachandran appearing for the Appellant, during the last day of the arguments before this Court on 12.12.2018, mentioned that he is no more insisting on this issue and the main issue remains as the encashment of 25% of the PBG. We are, therefore, not discussing the issue of dedicated/captive pipeline vs. common carrier pipeline. We shall be now dealing with the issue of encashment of PBG only.

21. The scheduled date to complete the job of laying of the pipeline under reference was 31.10.2015 and the Appellant could not accomplish the same by that date. The Board accordingly encashed 25% of the PBG as per Regulation 16 of the Authorization Regulation as a first default on the part of the Appellant. It is fact that Regulation 16 authorizes the Board to encash the PBG; however, the issues of force majeure, serving notice and taking up remedial action as mentioned in Regulation 16 (a) and (b) would need to be addressed. The above three issues have been vehemently argued by the Appellant.

22. The learned counsel Mr. M.G. Ramachandran appearing for the Appellant admitted that there has been delay in completing the project, but the delays have occurred because of reasons beyond the Appellant's control. All the reasons for delay were explained and submitted to the Board, but the Board has considered the reasons for delay in a cursory manner

without analyzing the impact on the implementation of the project and has vaguely held that "**the situation on the ground does not provide sufficient optimism for the commissioning of the pipeline**" while imposing penalties. The impugned decision therefore clearly suffers from lack of reasons; non-application of mind and is contrary to the record.

23. The delays were on account of various reasons viz delay in obtaining various statutory approvals including forest clearance in Pune and Raigad districts, litigations in the Mumbai High Court and National Green Tribunal, Pune etc. Considerable delay took place in re-routing the pipeline in Pune district because of local obstructions.

24. We have also noted that the delays took place in spite of the fact that the project was being monitored by the Project Monitoring Group of the Cabinet Committee on Investment and quarterly review meetings were being held with the Chief Secretary, Government of Maharashtra in order to expedite approvals. For our better clarifications, we also directed the Appellant to submit to this Court the records on the steps taken by the Appellant to obtain various clearances from various departments/Government authorities. The Appellant submitted the same to us on 19.07.2017.

25. While perusing the records, we observe that sufficient correspondences were made and discussions held by the Appellant with various authorities for obtaining the clearances etc. We also observe that the Appellant before the impugned order was issued, submitted a letter dated 02.12.2015 to the Board giving the status of the project as on 7th November, 2015 which says that the Appellant had placed 100% orders for procurement and it had already acquired 80% of the procurement items and it had incurred expenditure of Rs. 253.37 Crores with 70% progress at station works and overall physical progress of 77.5%.

26. We also note from the impugned order dated 04.03.2016 that the Board admitted that there had been delay in obtaining approvals from various authorities which is reproduced as below:-

> *"12. The documents/communications furnished by the entity were analyzed and it was observed that there has been delay in granting approvals/permissions by the authorities."*

27. Learned counsel Mr. Rahul Sagar Sahay appearing for the Board stated before us that the reasons for delay were examined from the point of view of Force Majeure and it was found that the reasons could not be considered as Force Majeure conditions which the Appellant claimed it to be so. In this context, we have also observed that the Board extended the time schedule for completion of the project till March, 2017 while

encashing 25% of the PBG which would mean that the Board accepted the delay based on the reasons given by the Appellant. Both these actions of extending the time schedule and imposing penalty taken simultaneously appear to be contradicting.

28. We have also observed the following statement made in the impugned order by the Board and sought further details on the same from the learned counsel appearing for the Board.

> *"14. The Statutory permissions may never be in place all in one go. One or the other clearance might remain pending but it does not stop the entity from pursing other activities related to the project. The situation on ground does not provide sufficient optimism for early commissioning of the pipeline."*

We, did not, however, get any more details and also basis for making the above statement from the counsel/Board.

29. One of the contentions of the Appellant is that the Board ought to have issued a notice to the defaulting entity allowing it a reasonable time to fulfill its obligations under Regulations 16 (a) of the Authorization Regulations which the Board did not do. The Board's general reply is that ample opportunities have been provided to the Appellant of being heard and allowed reasonable time to fulfill its obligations. As per the Appellant, encasing the PBG without issuing a notice as per provisions of the Regulations is a violation of principles of natural justice.

30. In the above context, we observe that the scheduled time for completion of the project was by 31.10.2015 and the only review meeting of which minutes were issued was held on 19.11.2015 which happened after the scheduled completion date of 31.10.2015. We are not clear whether the Board followed the following regulations of the Authorization Regulations while monitoring the progress of the project.

> *"13. Post-authorization monitoring of activities (pre-commissioning)*
>
> *(1) …….*
>
> *(2) …….*
>
> *(3) …….*
>
> *(4) The Board shall monitor the progress of the entity in achieving various targets with respect to the petroleum and petroleum products pipeline project, and, in case of any deviations or shortfall, advise remedial action to the entity."*

Regulation 13 (4) above is relevant in the present case and we observe that the monitoring conducted by the Board was not sufficient enough to carry forward a project like the instant one in the interest of the nation and in the spirit of the PNGRB Act, 2006.

31. After carefully perusing the submissions made by the Appellant as well as the Respondent Board and after hearing the arguments made by the counsel appearing for the parties, it appears that the Board was not

careful enough to examine the reasons submitted by the Appellant for the delay. The impugned order lacks proper reasoning for not extending the scheduled completion time as requested by the Appellant before encashing the 25% of the PBG. The impugned order suffers from gross deficiency in explaining the grounds while considering to encash the PBG. We hold that a more elaborate analysis would need to be carried out by the Board on the correspondences made and documents submitted by the Appellant while requesting to extend the time schedule for completion of the project before encashing the PBG. We also hold that the Appellant needs to be heard by the Board afresh before taking a final decision. In view of our observations and discussions, we feel it prudent to remand the instant matter to the Board for a fresh and independent review.

ORDER

(i) The Respondent Board is directed to afford fresh reasonable opportunity of hearing to the Appellant and the Appellant is directed to appear before the Board as per notice of the Board with a permission to submit additional documents/details if not submitted earlier for perusal of the Board.

(ii) The Board is directed to issue a fresh order within a period of 4 (four) months from the date of this order after hearing the Appellant in accordance with law and in the interest of natural

justice and equity without being influenced by any observations made by us in the instant order.

32. The Appeal being Appeal No. 102 of 2016 is disposed of in the aforesaid terms. Needless to say that IA No. 307 of 2017 and IA No. 549 of 2018 do not survive and are disposed of, as such.

33. There is no order as to costs.

34. Pronounced in the Open Court on this **9th** day of **January, 2019.**

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

Justice Manjula Chellur
[Chairperson]

√ **REPORTABLE/~~NON-REPORTABLE~~**