

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

APPEAL No.273 of 2013

IN

IA No.369 of 2013

Dated: 27th May, 2014

Present:

HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM, CHAIRPERSON
HON'BLE MR. NAYAN MANI BORAH, TECHNICAL MEMBER (P&NG)

In the Matter of:

Essar Power Limited,
27 KM, Surat-Hazira Road,
Hazira-394 270
Surat-Gujarat

...Appellant/Applicant

Versus

- 1. Gujarat State Petronet Limited (GSPL),**
Udyog Bhavan, Block No.15,
3rd Floor, Sector-11,
Gandhi Nagar,
Gujarat-382 011

- 2. Petroleum & Natural Gas Regulatory Board,**
1st Floor, Word Trade Centre,
Babar Road,
New Delhi-110 001

...Respondent(s)

Counsel for the Appellant(s) : Mr. Gopal Jain, Senior Advocate,
Mr. Rohit Gupta
Mr. Alok Shankar
Mr. Nilay Dave

Counsel for the Respondent(s): Mr. Piyush Joshi
Mr. Aspi Kapadia,
Ms. Sumiti Yadava
Ms. Nimisha S Dutta for GSPL
Mr. Rakesh Dewan
Ms. Sonali Malhotra for
P&NGRB

JUDGMENT

**PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,
CHAIRPERSON**

1. Essar Power Limited is the Appellant herein.
2. Gujarat State Petronet Ltd. (Gujarat Petronet) is the 1st Respondent. The Petroleum & Natural Gas Regulatory Board (Petroleum Board) is Respondent No.2.
3. The Appellant has filed this Appeal, on being aggrieved over the Impugned Interim Order dated 27.9.2013 passed by the Petroleum Board, imposing a condition directing the Appellant to the limited extent that the Appellant has to maintain the value of its Letter of Credit equivalent to the outstanding invoices towards **“Ship or Pay Charges”** within a month from the date of the order i.e. 27.09.2013 pending

disposal of the complaint, against the Appellant before the Petroleum Board.

4. The short facts are as follows:

(a) The Appellant owns a power plant at Hazira (Gujarat) having a capacity of 515 MW. It is a dual fuel plant running on Naphta as well as Natural Gas. The Plant commenced commercial production from 1.10.1997. Till March, 2004, the plant was being operated upon the Naphta fuel. Thereafter, the Appellant started using Natural Gas as a fuel for production of electricity from its plant.

(b) M/s. Gujarat State Petronet Limited (Gujarat Petronet), the First Respondent is engaged in the business of laying, building, operating and expanding natural gas pipeline networks.

(c) In terms of the Petroleum and Natural Gas Regulatory Board Act, 2006 (Petroleum Board Act), the Petroleum Board (Respondent No.2) is entrusted with the responsibility of authorising entities to lay, build, operate or expand natural gas pipelines and regulating and fixing the transportation tariff for common carrier and/or contract carrier pipelines.

(d) The Appellant entered into a Gas Transmission Agreement (GTA) with the Gujarat Petronet (R-1) on 31.12.2008 for supply

of gas for its Hazira Power Plant. Under the terms of the Transmission Agreement, the Appellant was the “Shipper” and the Gujarat Petronet (R-1) was the “Transporter of the Gas”.

(e) Under the Gas Transmission Agreement (GTA), the Gujarat Petronet was to raise fortnightly invoices towards billing and payment. It was also provided that in case of failure on the part of the Appellant to make payment to the Gujarat Petronet in time, the Gujarat Petronet was entitled to call upon the Appellant’s Letter of Credit in respect of outstanding amounts by issuing notice in writing.

(f) Under Clause 11.4 of the Gas Transmission Agreement, the respective obligations of the parties under the GTA would remain suspended during a period of Force Majeure to the extent that performance thereof is hindered by the occurrence of Force Majeure.

(g) The Appellant, the Buyer on 24.4.2009 entered into a Gas Sale and Purchase Agreement (GSPA) with Reliance Industries Limited (RIL) and Niko being the Sellers.

(h) By the terms of this Agreement, the Appellant buys the gas produced by the said Sellers from their field in the KG-DWN-98/3

Block (KG-D6 field). This Agreement also included a Force Majeure Clause.

(i) Thereafter, on 30.6.2009 as well as on 1.12.2009, the Transmission Agreements were amended in part as agreed to between the Appellant as well as the Gujarat Petronet. As per terms of the amended Agreement, it was provided that the Force Majeure circumstances and events shall not include, inter alia, failure or loss of Shipper's or Transporter's market for non availability of gas from the Seller.

(j) On 31.3.2011, the Ministry of Petroleum & Natural Gas, Government of India, issued notification and directed the Reliance Industries Limited and Niko that due to the reduction in KG-D6 production level, the gas was to be supplied only to the priority core Sectors viz Fertilizer, LPG, Power and City Gas Distribution (CGD) to meet their firm demands. It was further directed that pro-rata cuts are to be imposed on the firm demand of remaining sectors in the event of shortfall in supply of gas.

(k) Accordingly, the Reliance Industries Limited through their letter dated 4.5.2011 intimated to the Appellant that in pursuance of the said Government Notification, the cut in gas supply would be put in force from 9.5.2011.

(l) Being aware of the same, the Petroleum Board on 15.11.2012 formulated the Petroleum and Natural Gas Regulatory Board (Development of Model GTA) Guidelines, 2012. These guidelines were framed in the backdrop of drastic reduction in gas production from the KG-D6 gas fields.

(m) As per these guidelines, the “Ship or Pay Charges” should exclude, inter alia, gas quantities which have been reduced due to the directions of the Central/State Government or any Govt. Agency which is beyond the control of the Shipper or the Transporter.

(n) On 1.3.2013, the Reliance Industries Ltd sent an e-mail to the Appellant informing that in order to comply with the Government directives dated 31.03.2011, the supply of gas to the Appellant’s power plant may be fully curtailed due to the prevalent availability and demand of KG-D6 gas by the Core Sectors.

(o) On 12.4.2013, the Appellant sent a notice to the Gujarat Petronet declaring the invocation of the Force Majeure as the curtailment of the gas supply to the Appellant’s power plant has taken place due to the loss of production from KG-D6 Gas Field.

(p) The Appellant claimed that due to the above, no transportation charges would be payable as the event was a Force Majeure Event.

(q) However, the Gujarat Petronet (R1) sent a few letters to the Appellant complaining about the non-payment of invoices in respect of transportation of gas and called upon the Appellant to clear the outstanding amount failing which the Gujarat Petronet would be constrained to invoke the payment security in respect of the outstanding amount in terms of the Gas Transmission Agreement.

(r) The Appellant sent a reply stating that due to the non availability of the gas, the Appellant was not liable to pay transportation charges during the Force Majeure event. Notwithstanding the said letter, the Gujarat Petronet continued to raise Gas Transportation invoices and sent to the Appellant under the "Ship or Pay" clause of Gas Transmission Agreement. The Respondent also reiterated that non-receipt of due payment would compel them to invoke payment, security.

(s) Under those circumstances, the Appellant approached the Petroleum Board and filed a complaint on 1.7.2003 u/s 25 of the P&NGRB Act, 2006 (Petroleum Board Act) before the Petroleum Board against the Gujarat Petronet.

(t) Since the Appellant was not able to get urgent Interim Orders from the Petroleum Board, the Appellant filed a Writ Petition before the Hon'ble High Court of Delhi and asked for Interim Orders. However, the High Court by the Order dated 8.7.2013 dismissed the said Petition as withdrawn since the Delhi Court's jurisdiction was questioned by the Gujarat Petronet. Thereafter, the Appellant filed a Writ Petition before the Gujarat High Court on 9.7.2013 and obtained Interim relief against the Gujarat Petronet in the complaint proceedings pending before Petroleum Board.

(u) In the meantime, the Gujarat Petronet filed the reply to the Petition filed by the Appellant before the Petroleum Board. In response to the said reply, the Appellant also filed rejoinder.

(v) At that stage, the Gujarat Petronet on 30.8.2013, filed an Application before the Petroleum Board in the very same proceedings seeking for Interim Directions to the Appellant to pay the arrears or to maintain the value of the Letter of Credit to the extent of the outstanding amount of invoices raised by the Gujarat Petroleum, pending disposal of the complaint filed by the Appellant.

(w) During this time, Writ Petition filed by the Appellant was taken up for enquiry by the Gujarat High Court. On being pointed

out that the proceedings relating to the same issue are pending before the Petroleum Board, the High Court of Gujarat disposed of the Writ Petition directing the parties to resolve the dispute through the Petroleum Board. In this order, the High Court specifically directed that till the issue regarding interim relief sought for by the Gujarat Petronet is decided by the Petroleum Board, the Interim Relief granted by the High Court in favour of the Appellant would continue to operate.

(x) Accordingly, the Appellant appeared before the Petroleum Board and filed reply opposing the prayer of the Interim relief sought for by the Gujarat Petronet.

(y) After hearing the parties, the Petroleum Board passed the Impugned Interim Order dated 30.9.2013. In this Impugned Order, the Petroleum Board directed the Gujarat Petronet not to take coercive steps against the Appellant on the condition that the Appellant has to maintain the value of its Letter of Credit equivalent to the outstanding invoices towards 'Ship or Pay Charges' raised by the Gujarat Petronet during the period when there was no supply of gas due to the Government's directives. The Petroleum Board further directed that the Impugned Order be complied with within one month from the date of the Order.

(z) Thus, though the Impugned Order has been passed in favour of the Appellant directing the Gujarat Petronet not to take coercive steps as prayed for by the Appellant, the Petroleum Board imposed the condition on the Appellant to maintain the value of its Letter of credit equivalent to the outstanding invoices towards the “Ship or Pay” charges within one month from the date of the Order.

(zz) It is this condition, which has been imposed on the Appellant in the Impugned Interim Order that has been challenged in this Appeal, mainly contending that this condition was erroneous due to the fact that the Gujarat Petronet was already covered substantially and over- secured with respect to its invoices.

5. The learned Counsel for the Appellant while assailing the Impugned Order imposing the above condition on the Appellant, has made the following submissions:

(a) The condition of levying “Ship or Pay charges” on the Appellant by the Gujarat Petronet as per the Impugned Order is illegal as it over-protects the interest of the Gujarat Petronet.

(b) The Gas Transportation charge invoices or “Ship or Pay” charges of the Gas Transmission Agreement are

contrary to and in gross violation of Petroleum and Natural Gas Regulatory Board (Development of Model GTA) Guidelines, 2012 promulgated by the Petroleum Board on 15.11.2012. These guidelines specifically debar the Gujarat Petronet from raising any invoice for the period during which pipelines were not utilised for gas transmission due to curtailment in gas production at the supplier's end.

(c) The reduction in gas supply was in accordance with the Government directive of priority allocation of gas to the core sectors since the prevalent gas production from KG-D6 field was not sufficient to meet firm allocations to all sectors.

(d) The Gujarat Petronet has been regularly raising invoices claiming gas transportation charges under the Transmission Agreement notwithstanding the fact that the Gas Transportation got completely stopped from 1.3.2013. In the absence of gas supply, no transportation charges are payable by the Appellant to the Gujarat Petronet. Hence, any invoice towards the Gas Transportation charges where there was no gas transportation taking place, is illegal.

(e) The Gujarat Petronet was, in any case, secured to an extent of Rs.8.27 Crores being the amount of Letter of Credit and in fact, the Appellant had already paid an excess amount of Rs.7,27,21,794/- towards Ship or Pay charges for the period from 15.11.2012 to 28.02.2013. Thus, the Gujarat Petronet was substantially secured to an extent of approximately Rs.15 Crores.

(f) The condition imposed on the Appellant in the Impugned Order is unjustified because in order to maintain the Letter of Credit equivalent to value of invoices, the Appellant will have to provide cash/margin money to the bank. This would cause a financial burden on the Appellant. This condition would amount to violation of the Petroleum Board Guidelines, 2012. Hence, the Impugned Order imposing condition on the Appellant while directing the Gujarat Petronet not to take coercive step, is liable to be set aside.

6. In reply to the above submissions made by the Appellant, the Gujarat Petronet, the first Respondent, has advanced the following arguments:

(a) During the course of hearing in the Application seeking for interim relief, the Appellant itself had sought

the conditional relief provided in the Impugned Order. This is the order what the Appellant wanted. Therefore, the Appellant cannot be called an “aggrieved person” and, as such, it is not entitled to file an Appeal against the Impugned Order.

(b) The contractual relationship between the Appellant and the Gujarat Petronet is governed by the terms of the Gas Transmission Agreement dated 31.12.2008. These terms and conditions of the Agreement were duly negotiated and finalised between the parties and entered into by the Appellant and the Respondent voluntarily. The risks associated with supply of gas to Appellant from the Reliance KG-D6 field, if any, were not recognised or accepted by the Gujarat Petronet under the terms of the Gas Transmission Agreement.

(c) As on 30.11.2013, there is a total outstanding due of Rs.29,18,55,316.24 the Appellant owes to the Gujarat Petronet towards Gas Transportation charges under the terms of their Gas Transmission Agreement. Against this, the Appellant has provided a security of only Rs.8,26,57,572/-.

(d) Issuance of security by the Appellant in the form of Letter of Credit equivalent to their outstanding dues to the Gujarat Petronet will not cost any financial hardship to the Appellant. Such, an act by the Appellant will, however, provide a legitimate risk coverage and protection to the Gujarat Petronet. The opening of Letter of Credit against the outstanding dues does not require the Appellant to deposit equivalent amount of cash with the bank.

(e) The present situation relating to supply of gas to the Appellant from Reliance KG-D6 field is not a consequence of any directives issued by the Government of India. But it is clear and direct consequence of the failure of the Reliance to produce the gas from the KG-D6 field.

(f) As a matter of fact, under the Gas Transmission Agreement, the non-availability of gas from Reliance KG-D6 field or failure of reserves of the Reliance gas field were not event of Force Majeure as they were expressly excluded by the amendment of the Agreement. The Appellant has voluntarily taken a specifically commercial position not to procure gas from

sources other than the Reliance KG-D6 fields, and as such, the Appellant cannot be given relief in that regard from the Gujarat Petronet under the Gas Transmission Agreement. Under those circumstances, the Impugned Interim Order by the Petroleum Board is justified.

7. In the light of the rival contentions urged by the parties, the following questions would arise for consideration:

(a) Whether the Appellant is not an aggrieved person by the Impugned Order as pointed out by the Gujarat Petronet, and as such, the Appellant is not entitled to file this Appeal against the Impugned Order?

(b) Whether imposing the Impugned conditions on the Appellant by permitting Gujarat Petronet who is allegedly already over-secured to levy on the Appellant to provide suitable security in the form of Letter of Credit to the value equivalent to the outstanding invoices in the Impugned Interim Order pending resolution of the dispute before the Petroleum Board is justified at all to serve the ends of justice ?

8. We will now consider these questions one by one. As regards the first question, the Gujarat Petronet (R-1) has made the following submissions:
- (a) The Appellant had itself sought the relief provided in the Impugned Order and is, therefore, not an “aggrieved person” by the Impugned Order and therefore, is not entitled to file an Appeal and Interim Application against the Impugned Interim Order.
 - (b) The burden of proof lies with the Appellant who has to establish that it is an aggrieved person. This is not established in this case. Therefore, it has no locus-standi to file the present Appeal before this Tribunal.
9. We have carefully considered the submissions made by the rival parties on this issue.
10. The various considerations and situations which may lead to a person to be qualified as an “aggrieved person” have been dealt with in detail in the Judgment dated 6th January, 2014 by this Tribunal in Appeal No.222 of 2012 in the matter of Reliance Industries Ltd Vs Petroleum & Natural Gas Regulatory Board and Gujarat State Petronet Ltd.

11. In the said decision, we have held that the scope and ambit of the words “person aggrieved” would include any person whose interest may be prejudicially affected by what is taking place. In other words, it includes any person who has a genuine grievance against something which has been done which affects him, determines or threatens with injury of his rights and obligations.
12. According to the Appellant, in line with relief sought by it in case No.53 of 2013, the Petroleum Board rightly restrained the Respondent not to take any coercive steps to enforce payment of the outstanding invoices against the Appellant, but the Impugned condition that was imposed on the Appellant to maintain “the value of the Letter of Credit equivalent to the outstanding invoices towards “Ship or Pay charges” within a month of the date of the Order would highly prejudice the interests of the Appellant and as such the Interim Order is prejudicial to the interest of the Appellant and consequently the Appellant becomes an aggrieved person.
13. In this context, the following are admitted facts by both the parties:
 - (a) Gas Transportation volumes came down due to constraints of reduced gas production/supply and with

effect from 01.03.2013, gas transportation volume came down to the level of zero.

(b) There is a 'Ship or Pay' Clause in the GTA between the parties.

(c) On 15.11.2012, the Petroleum Board issued the Petroleum & Natural Gas Regulatory Board (Development of Model GTA) Guidelines, 2012.

14. Pending resolution of the dispute between the parties before the Hon'ble Petroleum Board, it has to be considered as to whether the provisions of above Model GTA Guidelines, 2012 would over-ride/supersede the "Ship or Pay Clause" of the Transmission Agreement or not. Consequently the Appellant might have to end up paying a substantial sum of money to the Respondent No.1 as gas transportation tariff even while there would be no gas transportation at all.
15. Under such potential circumstances, the Appellant would be practically and legally an aggrieved person and, therefore, it has to be concluded that the Appellant has got the locus-standi to file the present Appeal against the Impugned Interim Order.

16. Consequently, we hold that the right of filing this Appeal as an “aggrieved person” under Section 33 of the Petroleum & Natural Gas Board (PNGRB) Act, 2006 cannot be denied to the Appellant.
17. Accordingly, the 1st issue is decided in favour of the Appellant.
18. Let us now come to the next question as to whether the Impugned Interim Order is justified to serve the ends of justice?
19. According to the Appellant, the condition imposed on the Appellant in the Impugned Order is illegal since it over protects the interests of the Gujarat Petronet to an extent which over rides the objectives of the Guidelines, 2012 dated 15.11.2012.
20. On the other hand, the Gujarat Petronet has submitted that the Impugned Order has been passed taking into consideration the interests of both the parties by directing the Gujarat Petronet not to take any coercive steps to enforce the payment against the Appellant and directing the Appellant that it has to maintain the Letter of Credit to the value equivalent to the outstanding dues towards the “Ship and

Pay” charges thereby protecting the interest of both the parties and as such, the Impugned Order is justified.

- 21.** The factual position is that the present Appeal by the Appellant is against the Impugned Order which is itself an Interim Order dated 30.9.2013 passed by the Petroleum Board pending the proceedings in the complaint filed by the Appellant in case No.53 of 2013. The Model GTA Guidelines have been issued by the Petroleum Board in furtherance of its statutory powers. As such, the Guidelines-2012 have the statutory sanctions which all the concerned parties are bound to honour. In fact, the Petroleum Board in their Impugned Order specifically stated this : **“the other issue as to whether the parties will be bound by the contractual obligations or the Model GTA Guidelines will supersede the contract of the like nature deserves serious consideration.”**
- 22.** Thus, it is evident that the Petroleum Board is seized of the issue arising out of the rival contentions urged by the parties before it. Till such time, it is appropriate for the Petroleum Board to pass the Interim Order in such a way to protect the interests of both the parties pending disposal of the proceedings.

- 23.** Therefore, it cannot be said that the Petroleum Board could not pass such an Interim Order during the pendency of the proceedings arising out of the complaint filed by the Appellant.
- 24.** In other words, in the Interim Order, the Petroleum Board has not rendered any final finding with reference to the issues in question. In such a context, we have to see as to whether the Interim Order passed by the Petroleum Board is fair and just with a view to protect the interests of both the parties.
- 25.** Before dealing with such an issue, it would be apt to refer to the observations and directions made in the Impugned Order passed by the Petroleum Board which reads as under:

“During the course of hearing, Ld. Counsel for the petitioner drew our attention on the contents of para 25 of the petition and the order dated 12.4.2013 passed by this Board (Annexure-N of the petition) in GMR Vimagiri’s Case and submitted that the facts were identical in that matter and the respondent was restrained to take any coercive step or to enforce payment of invoices which were raised and remained outstanding after the date of issue of the Model GTA Guidelines, 2012.

On the other hand, Ld. Counsel for the respondent submitted that the case of the petitioner neither stands covered within the ambit of “force-majeure” nor the Model GTA Guidelines can be made applicable and as such the petitioner does not deserve any relief.

Alternatively, Ld. Counsel submitted that presently, the claims have been raised against the petitioner up till the period ending 16.8.2013 and in case, any interim relief is granted to the

petitioner, the interest of the respondent should also be protected, in order to avoid the prospective hardship, likely to be caused to the respondent and further, to avoid multiplicity of litigation.

.....

But for the purposes of providing interim relief, it may be stated that the respondent's pipeline was booked by the petitioner and from the date of total stoppage of supply from KG-D6 basin, the respondent's pipeline remained unutilized for the period regarding which the claims are being raised by the respondent.

Keeping in view all the facts and circumstances, it appears to be appropriate to provide interim relief to the petitioner by protecting interest of the Respondent also and the application is disposed of as under.

ORDER

The respondent entity is directed not to take any coercive step to enforce payment of its outstanding invoices provided the complainant maintains the value of its Letter of Credit equivalent to the outstanding invoices towards 'ship-or-Pay' charges within a month from today and till then, the parties shall maintain status-quo.

On making compliance of the direction by the petitioner within stipulated period, this order shall remain operative till it is specifically vacated by the Board / Court, as the case may be, whereas its non-compliance will result in vacation of this interim order without passing any further order by the Board."

26. The observations made by the Petroleum Board in the Impugned Order would clearly show that the Petroleum Board in the light of the present facts and also in the light of the rival contentions, wanted to provide Interim relief sought for by

both the parties to balance and protect the interests of both the parties. On that basis, the Petroleum Board directed Gujarat Petronet not to take any coercive steps to enforce the payment of its outstanding invoices provided that the Appellant maintains the value of its Letter of Credit equivalent to the outstanding invoices towards “Ship or Pay” charges and in the meantime the parties shall maintain the status-quo.

- 27.** Let us now go into the main question as to whether this Interim Order is justified or not?

- 28.** According to the Appellant, the Respondent is already over secured against the outstanding transportation charges. The term “over-secured” would imply that already more than adequate financial security coverage has been provided by the Appellant towards the outstanding gas transportation charges through the invoices levied by the Gujarat Petronet in terms of Gas Transmission Agreement. It is contended that since Gujarat Petronet enjoys the position of being over-secured, any further financial burden by way of imposing the Impugned condition on the Appellant would be unfair and uncalled for. There is no dispute in the fact that in the proceedings before the Petroleum Board, the Appellant itself

made its claim for interim relief on the basis of the earlier order dated 12.4.2013 by the Petroleum Board in the complaint by GMR Vemagiri Power Generation Limited in which the very same directions had been given.

- 29.** The Appellant in its complaint in case No.53 of 2013 filed before the Petroleum Board relied upon and sought parity with the Interim Order dated 12.4.2013 passed by the Petroleum Board in the matter of GMR Vemagiri Power Generation Limited case.
- 30.** The relevant portion of the complaint filed by the Appellant is as follows:

“.....This Hon’ble Board in a complaint filed by GMR Vemagiri Power Generation Ltd & GMR Energy Limited against Gail (India) Ltd bearing reference Numbers No.GF.No.Legal/13/2013 and F.No./Legal/ 32/2013, in similar facts and circumstances regarding levy of transportation charges by the transporter, passed an interim order inter alia directing the Respondent not to take any coercive action or precipitate steps to enforce payment for invoices after 15.11.2012 the date of issue of the guidelines by this Hon’ble Board”.

- 31.** Even during the course of hearing, the Appellant orally argued the same position which has been specifically recorded by the Petroleum Board in the Impugned Order.

32. The said observations made by the Petroleum Board is as follows:

“During the course of hearing Ld. Counsel for the Petitioner drew our attention on the contents of para 25 of the Petition and the order dated 12.4.2013 passed by this Board (Annexure N of the Petition) in GMR Vemagiri case and submitted that the facts were identical in that matter and the Respondent was restrained to take any coercive step or to enforce payment of invoices which were raised and remained outstanding after the date of issue of the Model GTA Guidelines, 2012.”

33. The main contention urged by the Appellant in the present Appeal is that the invoices raised by the Gujarat Petronet are illegal.

34. The question whether invoices issued by the Gujarat Petronet are legal or not is a subject matter to be determined by the Petroleum Board in the Complaint filed by the Appellant in case No.53 of 2013 which is still pending. Therefore, seeking an Interim relief cannot be granted based on the assumption that the Impugned invoices are not legally valid. The Petroleum Board in the Impugned Order has specifically stated that the issues raised by the parties including the validity of the invoices are subject to serious scrutiny and final decision of the Adjudicatory Body. In that context, the

Petroleum Board granted the Interim relief to protect the interest of both the Appellant and the Respondent. The determination as to whether invoices were valid or whether parties will be bound by the contractual obligations or whether Model GTA Guidelines will supersede the contract are all the issues deserving serious consideration by the Petroleum Board at the time of final disposal.

35. Thus, the Impugned Order directing the Gujarat Petronet not to take coercive steps against the Appellant while putting a condition on the Appellant to maintain the Letter of Credit to the value of outstanding invoices would confine itself with reference to the interim relief sought for by both the parties. This should not be taken to mean that final finding has been rendered by the Petroleum Board with reference to the validity of the invoices.
36. It is submitted by the Appellant that providing a Letter of Credit in compliance with the Impugned Order would adversely affect the cash flow of the Company.
37. On the other hand, it is submitted by the Gujarat Petronet that the Letter of Credit is a document issued by a Financial Institution / Bank and the equivalent cash is not required to be deposited with the bank and a Letter of Credit is in the

nature of an assurance given by the buyer's bank to remit the amount to sellers through seller's bank on maturity, as per the terms and conditions of document based on the contractual agreement between buyer and seller.

- 38.** In view of the above, , we do not think that the cash flow of the Appellant will be adversely affected in submitting such a Letter of Credit and this would not cause financial hardship to the Appellant.
- 39.** During the course of the hearing, the learned Senior Counsel for the Appellant has also made submission that it was ready to offer two alternative options namely: (1) Indemnity Bond and (2) Corporate bond by Group Companies as a security instead of Letter of Credit.
- 40.** Rejecting this alternative offer, the learned Counsel for the Respondent submitted that an Indemnity Bond is not an adequate security since it can be enforced only through a civil suit against the provider if the issuer fails to honour the bond and this would nullify the entire purpose of providing security. It is further contended by the Respondent that similarly a Corporate Bond provided by a Group Companies of the Appellant also does not provide any security to protect the interest of the Gujarat Petronet.

41. In view of the objections raised by the Gujarat Petronet to the effect that the alternative options suggested by the Appellant cannot be considered as adequate security to protect the interest of Gujarat Petronet, we are unable to accept the alternative offer as this option cannot be substituted for a Letter of Credit as required under the provisions of the Gas Supply Agreement.
42. In the light of the above, we are of the considered opinion that the Petroleum Board's Impugned Order directing the Gujarat Petronet not to take coercive steps, as well as by imposing the impugned conditions on the Appellant would not suffer from any infirmity or illegality. On the other hand, the Impugned Order protects the interests of both the parties.
43. **Summary of Our Findings:**
- (a) **The Appellant is an aggrieved person and as such it is entitled to file the Appeal.**
 - (b) **The condition imposed on the Appellant to maintain the value of its Letter of Credit equivalent to the outstanding invoices while directing the Gujarat Petronet not to take coercive steps in the Impugned Order is fair and justified.**

44. In view of the above, there is no merit in the Appeal. Accordingly, the Appeal is dismissed. In view of the dismissal of the Main Appeal, no Order need be passed in IA No.369 of 2013
45. The Appellant is directed to comply with the impugned orders of the Petroleum Board forthwith without any delay. The Petroleum Board may take up the Main matter and dispose of the same as early as possible after hearing the parties.

(Nayan Mani Borah)
Technical Member(P&NG)

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 27th May, 2014

✓ ~~REPORTABLE/NON-REPORTABLE~~